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Investment Policy Review

Burkina Faso

Main conclusions and recommendations

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Investment Policy Review of Burkina Faso
(French original)

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Main conclusions and recommendations

Until recently, Burkina Faso had attracted little foreign direct investment (FDI), a significant part of which through the privatisation process. These investments were mostly of a relatively small size and oriented towards the production of goods and services for the local market. Yet, despite their limited size, FDI inflows have had a positive impact, inasmuch as they generate employment in the formal sector and generated local value-addition. Over the past few years, FDI in the telecommunication sector has also allowed the development of reliable and regionally competitive mobile and internet services.

Recently FDI flows in the mining sector have also increased sharply, at first in prospection and exploration and more recently in exploitation. This trend illustrates both the strength of the potential for investment in the mining sector in Burkina Faso and the establishment of a favourable sectoral regulatory framework. In spite of the sharp increase in FDI flows as a result of these investments in mining and telecommunications, foreign investment outside of these two sectors remains very limited.

Burkina Faso continues to face major structural challenges and constraints. Productive capacities are limited by weaknesses in terms of infrastructure (transport, electricity, water and sanitation) and human capital. Similarly, the landlocked situation of the country imposes additional costs to international trade operations.

In spite of these constraints, Burkina Faso has the potential to attract higher flows of FDI, to diversify their nature (beyond mining and telecommunication investments) and to enhance their impact on development and poverty reduction. Such an outcome would require efforts at several levels. On the one hand, it is essential that the Government intensify its efforts to increase the level of education and training of the population. The international community should also sustain its support to Burkina Faso in developing physical infrastructure, including through private - public partnerships whenever possible.

On the other hand, it appears clearly that Burkina Faso's potential to attract FDI is restricted by the small size of its domestic market and its landlocked position. It is thus essential that regional integration within the West African Economic and Monetary Union (WAEMU) and Economic Community of West African States (ECOWAS) be continued and intensified. The creation of a regional economic and political community is no doubt one of the tools available for the countries in the region to overcome their challenges in terms of size and landlocked position.

The development potential of FDI remains insufficiently tapped in Burkina Faso. Although the most significant structural constraints cannot be solved in the short term, a number of measures could be adopted in order to attract larger FDI inflows and maximize their impact on development. The measures recommended in this report are articulated around two axes – a regulatory axis and an institutional axis. These two axes are explained below.

A. Regulatory axis

The improvements in the regulatory framework for mining over the past few years and the subsequent sharp increase in investments in prospection, exploration and exploitation indicate that regulatory improvements can have significant and rapid effects on activity in sectors with genuine business potential. Without expecting them to create business opportunities where little potential exists, reforms in the legal framework for investment in Burkina Faso are necessary to promote the development of a more dynamic and flourishing private sector, supported by more sustained and diversified FDI inflows.

The regulatory reforms that are most susceptible to have a significant impact on investment and the attractiveness of Burkina Faso as a destination for FDI are the following.

1. FDI entry, establishment and protection

Burkina Faso has applied a de facto policy of almost entire openness to FDI for more than a decade. Legal basis nevertheless remain that could allow the Government to put in place relatively arbitrary barriers to FDI. Also, certain elements of the investment code deserve to be improved. The revision to the code envisaged by the Government should be an opportunity to better establish the legal foundations of the policy of openness to FDI and to provide more certainty to investors over the long run. The main modifications to the FDI entry, establishment and protection regime should involve the following measures:

- Eliminating the procedure of previous authorization ("autorisation préalable") to the investment and replacing it with a simple declaration. The implementation of any investment would obviously remain conditional upon obtaining necessary licences (mining, telecommunication, environmental impact assessment or other).
- Eliminating the "foreign trader's card" ("carte de commerçant étranger") and the minimum capital requirement for foreign investors. This latter requirement is not applied and is not an efficient filter to ensure that FDI is beneficial for the development of Burkina Faso.
- Defining the sectoral FDI entry restrictions that Burkina Faso may wish to preserve in lieu of the potential barriers that could be erected under the "foreign trader's card". The possible restrictions should be defined clearly and precisely and be relatively limited.
- Strengthening the provisions of the investment code relative to the right to transfer funds, investor-State dispute resolution mechanisms and protection and compensation against expropriation and nationalization.

2. An efficient and attractive tax and customs framework

The corporate tax regime and the implementation of customs regulations are important impediments to Burkina Faso attractiveness as an investment destination. These elements not only limit the attractiveness of the country for new investors, but also fail to promote reinvestments by established investors. There are two prominent issues in terms of corporate taxation. On the one hand, the tax regime does not yield a satisfactory level of income for the Government. On the other hand, it is also insufficiently attractive for investors, partly as a result of its complexity, its administrative burden and the poor design of the fiscal incentives.

These weaknesses in the corporate tax regime have been recognized by the Government. This has pushed it to adopt a blueprint for a strategic tax reform at the end of 2008. This document shows a clear willingness to simplify corporate taxation, rationalize fiscal incentives and improve tax management. An overhaul of the tax code is proposed here with the view of putting in place a new system that should be attractive and inciting for investors while at the same time allowing the Government to collect a reasonable level of tax revenue. Such an overhaul calls for a complete reformulation of the general tax regime and a comprehensive review of the system of investment incentives, which does not work satisfactorily at the moment. It would be based on the following elements:

- An attractive and regionally competitive general tax regime (outside of incentives).
- A system of investment incentives adapted to the development objectives of Burkina Faso, targeted and subject to a cost/benefit analysis: incentives should not "counterbalance" a poor general tax regime and should be offered only inasmuch as they allow the realization of investments that would not occur otherwise.
- A general evaluation of the tax regime and its attractiveness and not only an assessment based on one or two headline rates: tax depreciation provisions, loss-carry forward, impact on cash-flow, complexity and administrative burden.
- A clear, foreseeable and impartial regime.

Concretely, the establishment of a corporate tax regime according to the elements defined above would require a complete overhaul of the tax code and would imply to:

- Put in place a modern corporate income tax in lieu of the current scheduled tax ("impôt cédulaire"). The corporate income tax would replace the tax on industrial and commercial profits (BIC) as well as the tax on the benefits of non-commercial trades (BNC).
- Eliminate the minimum tax (IMF, "impôt minimum forfaitaire") in order to help companies improve their cash flow position, or at least allow that if payments under the IMF exceed the amount due under the BIC, the excess be pushed to the next fiscal year or be used to offset payments due under another tax.
- Put in place an attractive and competitive general tax regime, which would imply to:
    - Lower the headline corporate income tax rate to 25 per cent;
    - Allow unlimited loss carry-forward;
    - Allow faster rates of depreciation for tax purposes;
    - Completely rethink the regime of fiscal incentives. The accreditation regime ("regime d'agréments") creates a number of problems mostly in terms of its potentially arbitrary nature, the tenuous link between the tax incentive and the decision to invest, the cost/benefit ratio and the appropriateness of incentives with regard to Burkina Faso's development objectives. A more targeted and limited system of incentives would be more suitable instead. These incentives should impose as small an administrative burden as possible by linking them to the nature of the operation.
- Rationalize a number of taxes and eliminate certain withholding taxes in order to reduce the administrative burden imposed on companies and the income tax department (DGI).
- Introduce a 0 per cent VAT rate that would apply to exports of goods and services. Refunds of excess VAT payments should also be possible for companies that are in establishment or expansion phase.
- Simplify and reduce as much as possible the procedures required to pay taxes, including through a more extensive use of computers within the income tax department (DGI).

In addition, it is key for Burkina Faso to significantly improve customs, both on the administrative front (computerization and profiling) and in terms of enforcement of customs regulations (fight against smuggling) and the fight against corruption. This calls for a more comprehensive application of UNCTAD's ASYCUDA system.

3. A better administration and governance

The general administrative burden and corruption remain an important impediment to investment. Conscious of this problem, the Government has initiated a process of administrative simplification with the support of its technical and financial partners through the "Doing Business Better" programme. This initiative deserves to be continued and reinforced through a wider programme to identify licences and/or procedures that serve no real purpose, are redundant or could be simplified. A working group with such a mandate could be established.

In the medium term, it would also be important for Burkina Faso to initiate a programme of e-governance. Such a programme should apply at first to tax administration (corporate income tax and VAT) and to customs – whose computerization is only partial so far – before applying to the land survey and other administrative services directly in contact with investors. UNCTAD currently contributes to the development of such an e-governance project in several countries, including Guatemala, Mali and Viet Nam.[1]

It is also important that Burkina Faso strengthen its efforts to fight corruption, which remains one of the major constraints to investment, partly because it generates unfair competition between the formal and informal sectors. E-governance can help in the fight against petty corruption. In turn, the adoption of a specific legal framework would promote the global fight against corruption. The framework could, for example, require a higher level of transparency regarding the assets of senior civil servants or define penal sanctions for certain practices.

The establishment of client charters within the main administrative and public services that interact directly with investors could also be useful. Such client charters have already been put in place in a number of African countries with technical assistance from UNCTAD. They promote a culture of services within public administration, set standards of treatment and clearly state the costs related to certain services or licences.[2]

4. Regional integration and competition for development

Burkina Faso's market is too small to attract sizeable and diversified foreign investments in and of itself, aside from those is resource extraction. As a result, the reinforcement of regional integration within the WAEMU should remain high on the list of priorities for the Government. Burkina Faso's central position within the WAEMU region should also be one of the main elements to promote the country as a location for foreign investors.

The issue of competition is particularly important in the context of rising prices for staple goods on the world market and the fight against "the high cost of living" ("la vie chère"). An appropriate competition policy should also allow an optimisation of the impact of FDI on economic development. It is thus essential that Burkina Faso put in place a competition policy and regulations that suit its needs.

Given that most competencies in terms of competition have been transferred to the WAEMU, Burkina Faso will have to work with its regional partners in order to achieve its competition policy and regulation objectives. In terms of regulations, competition issues that only affect the local market and have no impact on trade between members of the union could again be decentralized to the national level. This would avoid excessive distance between the competent authority and the matters on which it has to rule. One could also envisage the establishment of a special competition regime for agriculture in order to promote the development of productive capacities of staple goods through a more sustained support for investment in the sector.

From the institutional point of view, it is key that capacity at the national competition authority and at the WAEMU Commission be significantly reinforced. Compliance with competition rules in

[1] See for example the case of Mali: http://mali.e-regulations.org/

[2] See for example the case of Rwanda : www.rwandainvest.com/spip.php?article17

sectors that significantly impact the business climate and production costs in the region (road and air transport, port and airport logistics, telecommunications) is essential for the development of enterprises and the private sector. Ensuring such compliance requires strengthened monitoring of markets and competition practices.

5. General constraints to the development of productive capacities

Weaknesses in physical and human infrastructure are a major constraint to the development of productive capacities and the competitiveness of enterprises, as in many African countries. It is beyond the mandate of this review to propose general policies in this field, but some suggestions may be given, including concerning the potential role of foreign investors.

One the one hand, regional integration should constitute an important tool to mitigate the constraints and extra costs imposed by the landlocked position of the country. Simplifying trade and transport procedures at the regional level could yield substantial benefits and improve the competitiveness of Burkina Faso. The development of regionally integrated infrastructure (transport, electricity) also offers the possibility to solve certain structural constraints.

Foreign direct investment has already significantly contributed to the development of telecommunication infrastructure, and the potential for the future developments is important, in particular in terms of internet access and international communications. In terms of transport and electricity, the potential to attract FDI is very limited and significantly more complicated to develop. Regulatory reforms in the electricity sector must nevertheless be continued in order to allow, in the medium term, the attraction of independent power producers. It is also important that Burkina Faso starts thinking about the potential for infrastructure development that the emergence of a sizeable mining sector could promote. The economic and financial viability of certain infrastructure projects could be ensured by the needs of certain mines, and public-private partnerships could emerge in the future.

Deeper regional integration should also be seen as a way to mitigate human capital constraints. While the principle of free circulation of people and workers with the WAEMU is effective, additional efforts are needed in order to facilitate this free circulation, including in terms of mutual recognition of degrees and qualifications. In the medium term, it may also be useful for Burkina Faso to revise the procedures to allow the entry of non-WAEMU workers in order to facilitate access to skills that are no available regionally. Obviously, the development of human capacity in the long term will require first and foremost an energetic education policy that conforms to the needs of the economy (including technical and vocational training).

B. Institutional axis: putting in place an integrated framework

Generating an increase in FDI inflows, particularly outside of the mining sector, requires not only an improved regulatory framework but also a proactive investment promotion policy. The Government is aware of this twin need to reform the investment climate and investment promotion, and it is determined to put in place an integrated institutional framework. This framework will be articulated around an investment promotion agency (IPA) and the Presidential council for investment (PCI).

The principal role of the IPA will be investment promotion and facilitation, while the mandate of the PCI will be to promote improvements in the investment climate and define a FDI attraction strategy. The two new structures should work in close cooperation and integrate themselves in the existing institutional framework. From an operational perspective, it is suggested that the IPA federates and coordinates the efforts to all the agents involved in FDI promotion in Burkina Faso.

FDI promotion efforts should fall along seven main stages: (1) promotion and image building; (2) targeting and welcoming; (3) facilitation; (4) licensing and supervision; (5) aftercare; (6) advocacy; and (7) strategy and policy. These functions and the interactions between the API, the PCI and the various existing institutions during each of the stages are summarized in figure IV.1.

1. The investment promotion agency

As the agency in charge of federating FDI promotion efforts, the API will have to play a crucial role in coordinating the promotion efforts of the existing structures, such as the BUMIGEB, Chambre of commerce and industry (CCI), Maison de l'Entreprise and the foreign trade office (ONAC). It may also be useful to do some consolidation work, including through the creation of a one-stop shop within the IPA. This one-stop shop would consolidate and merge the operations currently ensure by the CEFORE and CGU. Although the IPA would be focused on FDI, the one-stop shop services would be accessible to national investors as well as foreign investors.

It is recommended that the IPA be structured around three departments:

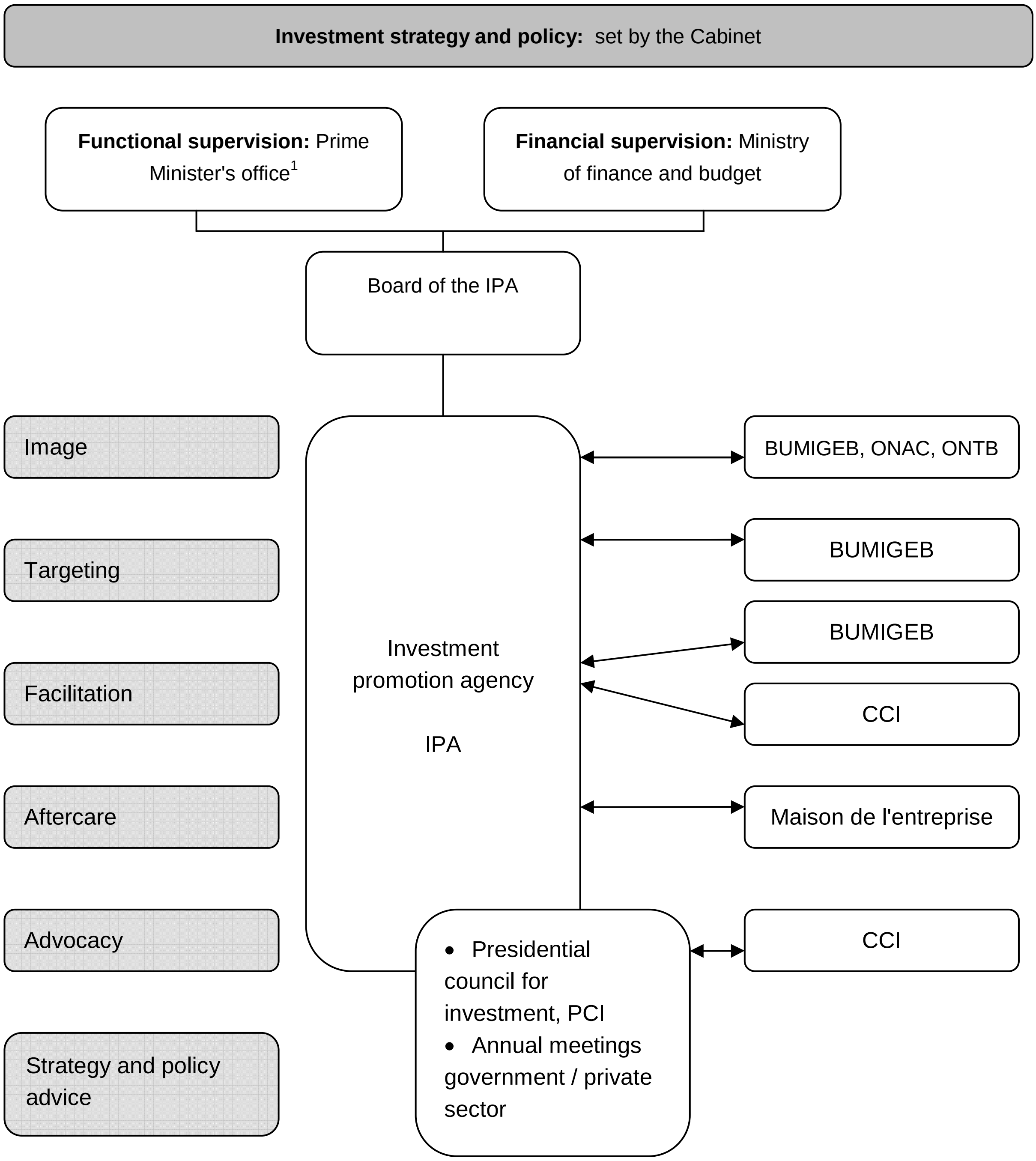
- **Promotion and welcoming:** this department would be in charge of implementing the overall promotion and image building policy among the international investors community. It would also be in charge of targeting and welcoming potential investors. This department would represent about one quarter of the resources of the agency.

- **Facilitation and aftercare:** this department would include the one-stop shop and an aftercare unit. The one-stop shop would allow national and foreign investors to undertake a limited number of administrative steps required to establish a company, including those that are currently centralized under the CEFORE. A facilitator, the department would also assist investors in obtaining necessary permits delivered by other administrations. An aftercare unit would offer established investors the support that they might need and would seek to promote reinvestments and expansions. This department would mobilize just over one half of the resources of the agency.

- **Advocacy and secretariat to the PCI:** this department would be in charge of promoting improvements in the business climate by identifying problems and proposing solutions. It would also serve as the secretariat of the PCI, whose principal role will be to propose and promote the implementation of reforms to the investment climate. This department would represent just under one quarter of the resources of the agency.

In addition to these three functional departments, there would be a department of administration and the office of the director general. Overall, the agency would include about 30 employees. The profile and the job description of the employees, as well as the detailed functions of each department and the tools available to carry out the work are discussed in depth in the chapter III of this report.

Figure IV.1. Integrated institutional framework for investment promotion



[1] The functional supervision could be ensured by the President's office, the Prime Minister's office or the Ministry of Commerce, enterprise promotion and handicraft. Given the need for the IPA to mobilize support at the interministerial level and at the highest level of the State, supervision from the Prime Minister's office may be an efficient solution.
Source: UNCTAD.

Furthermore, it would be desirable that the IPA be an autonomous public agency. This would confer the flexibility, stability and independence needed for its work. It is also desirable that the agency be supervised by a board. Its members should come from the public and private sector. Representatives from the President's office, the main line ministries, the BUMIGEB, the chamber of commerce and industry and the ONAC should also be members of the board. This would allow for the fostering of coherence and coordination of investment promotion efforts, but also to establish a direct communication channel between the institutions in charge of leading the country's investment policy.

2. The Presidential council for investment

The PCI will have to play a lead role in the process of improving the business climate and in defining Burkina Faso's investment strategy. Beyond being a mechanism of dialogue between the President and the private sector, the usefulness of the PCI will reside primarily in the concrete improvement of the policy and investment climate. It is thus essential that the PCI be focused on clear and measurable operational objectives.

In light of this, it is recommended that the PCI put in place working groups whose main purpose will be to ensure that the recommendations elaborated during the plenary meetings are implemented. Such working groups will require logistical and technical support. This role should be played by the IPA, which would provide the secretariat support to the PCI. As a result of its regular and close contacts with the investors' community, the IPA should be well positioned to play this role and to contribute actively to the advocacy process.

It is essential that the work of the PCI be coordinated with the efforts undertaken in the context of the annual meetings between the Government and the private sector. Given the distinct nature of these two structures of dialogue between the public and private sectors, it is desirable that both be maintained. At the same time, the coherence between action plans must be ensured. It is thus recommended that the annual meetings be organized immediately after the meetings of the PCI. More importantly, it is recommended that the working groups of the PCI and the joint committees established under the annual meetings be merged.

It is also desirable that the number of working groups be relatively limited and that each be in charge of a theme of particular importance for investment promotion. A number of main themes could be highlighted, including:

- The preparation of an FDI strategy and associated sectoral policies;
- Governance;
- Infrastructure;
- Taxation, customs and competition;
- Mining and agro-industry.

C. An FDI strategy and impact maximization

Burkina Faso does not currently have a specific FDI promotion strategy. Such a strategy would nevertheless be useful to frame the work of the future investment promotion agency, which is going to be established by the authorities (section B). The strategy would determine the key sectors that would be subject to a proactive promotional campaign. Certain sectoral policies should also be defined in order to promote foreign investments, either through general promotion, targeting, support measures or fiscal incentives.

Burkina Faso should also start thinking about ways to optimize the impact of FDI on development and poverty reduction. Such a step is particularly important with respect to investments in mining, which have recently become sizeable. The development potential of mining investments is large. It is important, however, to adopt policies not only to control and avoid negative impacts (on local communities or on the environment), but also to promote the development of ancillary industrial or services activities. The growth of the mining sector could also allow the development of certain infrastructure projects (transport and electricity in particular) by making them financially viable. The Government should also put in place policies to diversify and perpetuate activity in the mining areas, so that the local economy does not stop when the mine closes.