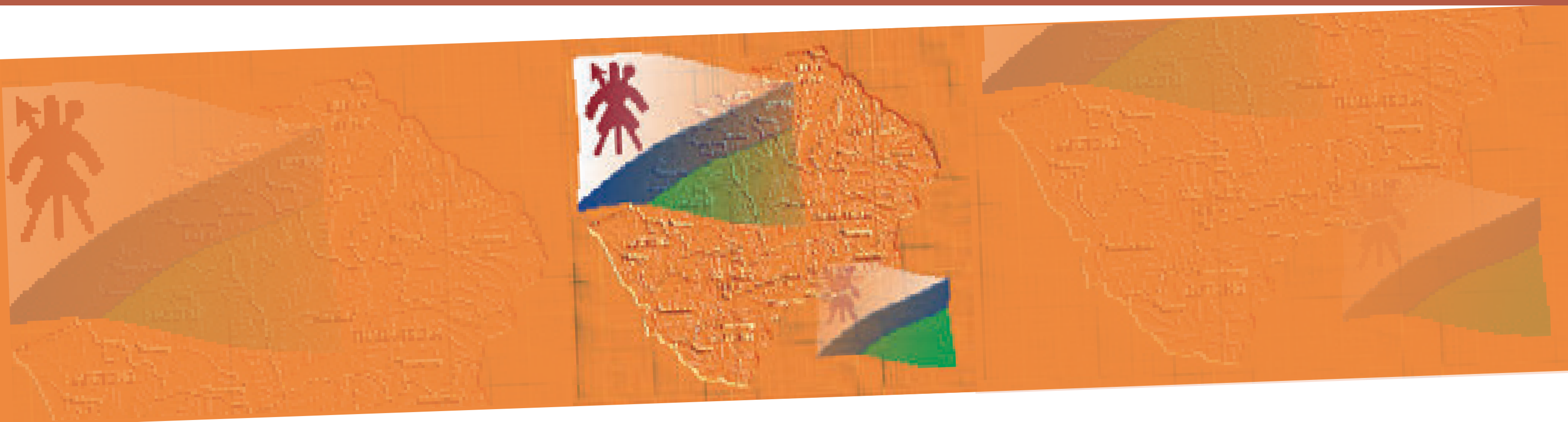
UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
UNCTAD

report on the implementation of the investment policy review



LESOTHO

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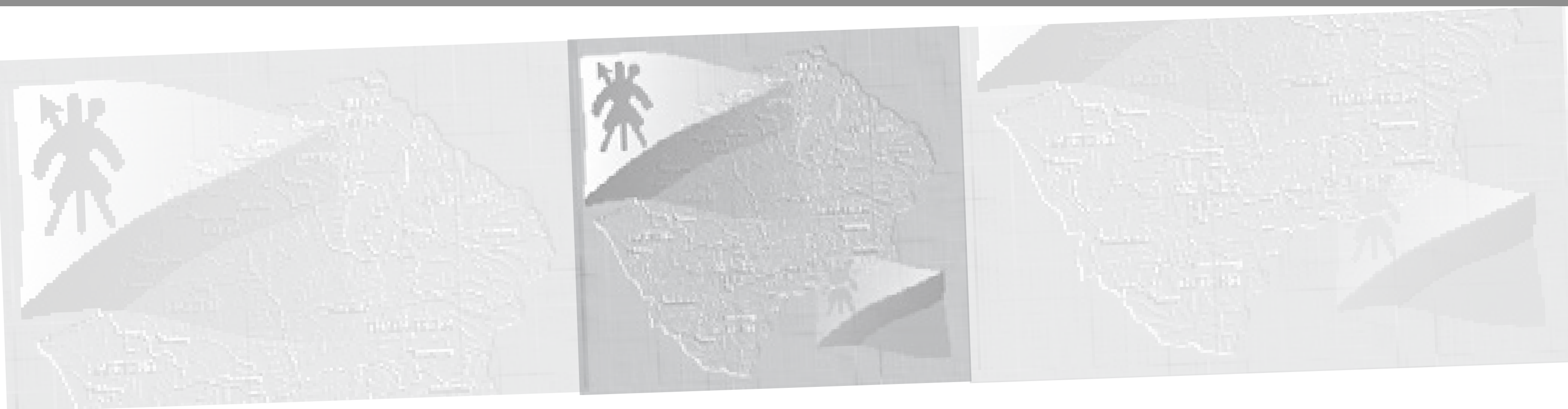

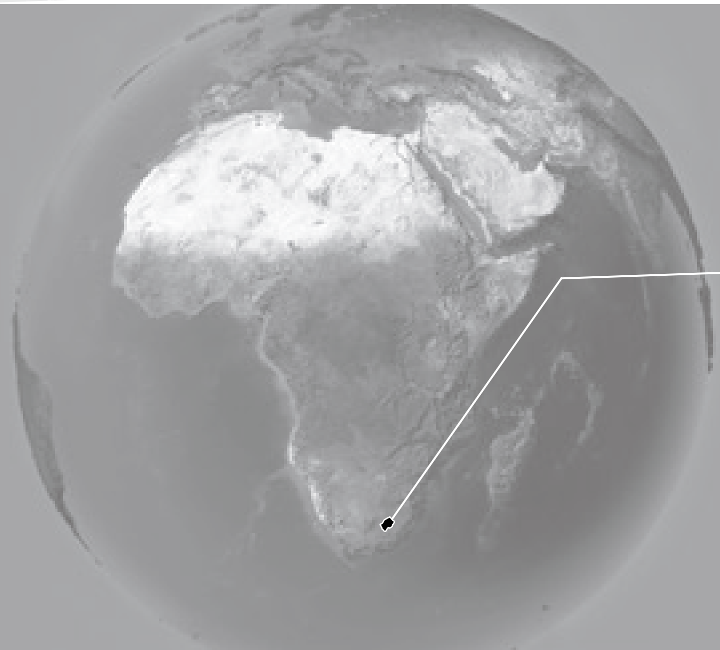

LESOTHO

UNITED NATIONS
New York and Geneva, 2014

Note

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The following symbols have been used in the tables:

- **Two dots (..)** indicate that date are not available or not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row.
- **A dash (-)** indicates that the item is equal to zero or its value is negligible.
- **A blank in a table** indicates that the item is not applicable.
- **A slash (/) between dates** representing years — for example, 2009/10, indicates a financial year.
- **Use of an end dash (–) between dates** representing years — for example 2008–2010 signifies the full period involved, including the beginning and end years.
- **Reference to the “dollars” ($)** means United States dollars, unless otherwise indicated.
- **Annual rates of growth or change**, unless otherwise stated, refer to annual compound rates.
- **Details and percentages** in tables do not necessarily add to totals because of rounding.

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UNCTAD/DIAE/PCB/2013/6

contents

Abbreviations

AGOA	African Growth and Opportunity Act
ASYCUDA	Automated System for Customs Data
EIA	environmental impact assessment
FDI	foreign direct investment
IPR	investment policy review
LDC	least developed country
LNDC	Lesotho National Development Corporation
MTICM	Ministry of Trade and Industry, Cooperatives and Marketing
OBFC	One-Stop Business Facilitation Centre
SADC	Southern African Development Community
SME	small and medium-sized enterprise

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1. Introduction

The Investment Policy Review (IPR) of Lesotho was published in 2003. The Review assessed the investment environment and sketched the building blocks of a foreign direct investment (FDI) strategy to meet the country's development objectives. On this basis, it recommended that Lesotho strengthen its investment framework, skills base, and trade and investment infrastructure in order to improve export competitiveness and reduce reliance on trade preferences. The Review suggested underpinning this strategy with an investment policy centred on a modern investment law.

In 2012, the Government requested UNCTAD's assistance in the formulation of an investment policy. An exploratory mission was conducted in May 2013, the findings of which are detailed in this report, which aims to assess progress made in implementing the recommendations set out in the Review and to inform the new investment policy.[1]

[1] This report was prepared by Massimo Meloni under the direction of Chantal Dupasquier. Overall guidance was provided by Joerg Weber and James Zhan. Substantive contributions and support were provided by Rory Allan, Thamara Romero and Hamed El Kady. Irina Stanyukova provided statistical support.

2. Summary of findings

In the 10-year period since the publication of the Review, the main development challenges facing Lesotho, as well as the key issues affecting its investment climate, have not significantly changed.

As recognized in the Review, Lesotho is a success story among African countries for the attraction of FDI in textiles. It is one of very few countries on the continent currently exporting apparel to the United States of America. Textile manufacturing accounts for around 50 per cent of total merchandise exports (World Integrated Trade Solution database, 2013) and is the third largest source of formal employment after the public sector and South African mines.

However, the sector, and consequently the whole economy, are still heavily dependent on trade preferences and, in particular, on the third-country fabric provision of the African Growth and Opportunity Act (AGOA).[1] The provision was extended in 2012 and is now scheduled to expire with AGOA in 2015. According to the Ministry of Trade and Industry, Cooperatives and Marketing (MTICM) of Lesotho, failure to extend the third-country fabric provision in 2012 would have put at risk 40 per cent of the textile factories and resulted in 15,000 job losses.[2]

Already in 2003, the IPR of Lesotho recommended that uncompetitive elements in the investment climate be addressed to promote export orientation within and beyond textile manufacturing. The rationale behind this was to prepare the economy for the end of the trade preferences. The key recommendations of the report and an assessment of their implementation status are provided in the IPR implementation matrix in section 4.

As shown in the IPR implementation matrix, progress in implementing the suggested reforms is mixed. In some areas, significant progress was achieved. However, most of the IPR recommendations remain unaddressed or partially implemented. They remain nonetheless valid and, if anything, have become more urgent.

Significant progress in implementing IPR recommendations was recorded in the following areas:

- Lesotho adopted the National Strategic Development Plan in 2012. The Plan, which will guide Government action in the coming years, is derived from an objective assessment of the development challenges and opportunities for Lesotho. It proposes tangible directions for policy reform, which are often in line with IPR recommendations. Among other things, the Plan calls for the adoption of an "overarching investment policy".
- A number of gaps in the legal and regulatory framework for investment have been addressed in line with the recommendations of the Review. For example, the Mining and Minerals Act (2005) significantly improved the mining regime and introduced a distinction between artisanal and large-scale mining; the Environmental Act

[2] The third-country fabric provision allows duty-free, quota-free access to the United States market for textiles manufactured in the least developed countries (LDCs) of Africa, even when the raw material is sourced from non-AGOA countries.

[3] See Aylward and Raphuthing (2012), Impact of the Third Country Fabric Provision – Prospects for Lesotho's Textile Industry, MTICM and the Lesotho National Development Corporation (LNDC).

(2008) introduced a modern environmental impact assessment (EIA) system; and the Companies Act (2011) significantly streamlined company establishment and improved shareholders' protection.

- Several initiatives to improve the operating climate for business have been launched, including the One-Stop Business Facilitation Centre (OBFC), where companies can be established in less than three days; the introduction of foreign exchange accounts for exporters, which removed risks and costs from currency transactions; and the forthcoming adoption of UNCTAD's Automated System for Customs Data (ASYCUDA), which should help reduce customs processing time.

However, as seen in section 4, overall IPR implementation is low. A number of systemic issues affecting the investment climate still need to be addressed. Among them are the following:

- Key administrative functions are not staffed and resourced commensurate with their importance. For example, the Ministry of Environment is seriously understaffed to properly implement the provisions of the Environmental Act, with only two persons responsible to oversee the EIA system. The Ministry of Mining is not equipped to cope with the rapid growth in investors' interest in Lesotho's diamond potential (Section 3). Investment promotion is delegated to only three staff within the Lesotho National Development Corporation (LNDC), an agency whose primary role is to develop and manage industrial estate and factory shells. Tourism promotion is also inadequately funded.
- Some policy objectives are targeted with inappropriate policy instruments. For instance, a heavy licensing regime, applying to virtually all economic activities, is utilized to implement foreign investment restrictions, control immigration and protect local business from competition. These objectives all go beyond the primary function of licensing – health and safety protection. The licensing bodies are drawing criticism for failure to achieve these goals.

  Land regulations are also used to implement immigration control and market protection objectives. As discussed in the implementation matrix, a new Land Act introduced in 2010 modernized the land regime in several ways. The policy objective of shielding the local market from the entry of small foreign business has also led to the introduction of a local partnership requirement of 20 per cent for foreign investors seeking to access direct lease title from the Government. This requirement is applied to all sectors and constitutes a deterrent to investment in a country where access to land remains a primary bottleneck in the investment environment. It is telling that no foreign investor to date has requested land title under the conditions set out in the new law. Meanwhile, the number of small foreign shops is increasing. The policy objective of protecting local small and medium-sized enterprises (SMEs) could be better achieved by introducing restrictions to FDI entry in an investment law.
- Non-manufacturing sectors face an increased bureaucratic and fiscal burden. A company wishing to set up a manufacturing business is offered faster business establishment and facilitation services, significantly lower corporate taxes (which are reduced to zero for export manufacturing) and easier access to foreign skills than a

company in any other sector of the economy. This is not only inconsistent with the stated economic diversification goal, but could also constitute a bias against national business, most of which takes place in services.

- A critical shortage of skills affects economic development. A paucity of basic entrepreneurial skills makes access to credit difficult and acts as an obstacle to the creation of business linkages in established industries. There are several programmes aimed at fostering entrepreneurship, but their effectiveness is reduced by a lack of coordination and interface with the market. At the same time, a serious technical skills shortage may negatively affect the development of promising sectors such as mining. Contrary to IPR recommendations, the current migration regime does not foster the entry of needed skills.
- Finally, investment policymaking lacks drive and coordination. As a result, though several policies and bills have been prepared, many remain at the draft stage for several years. This is the case with the Industrial Policy 2011–2013; the Micro, Small and Medium Enterprises Policy of 2011; the draft Competition Policy of 2007 and the Competition Bill of 2009. The absence of a functioning mechanism for public–private dialogue, which is representative of all private sector instances, adds to this problem. As noted in the implementation matrix, several competing initiatives have been launched, but their policy advocacy effectiveness is hampered by high levels of conflict.

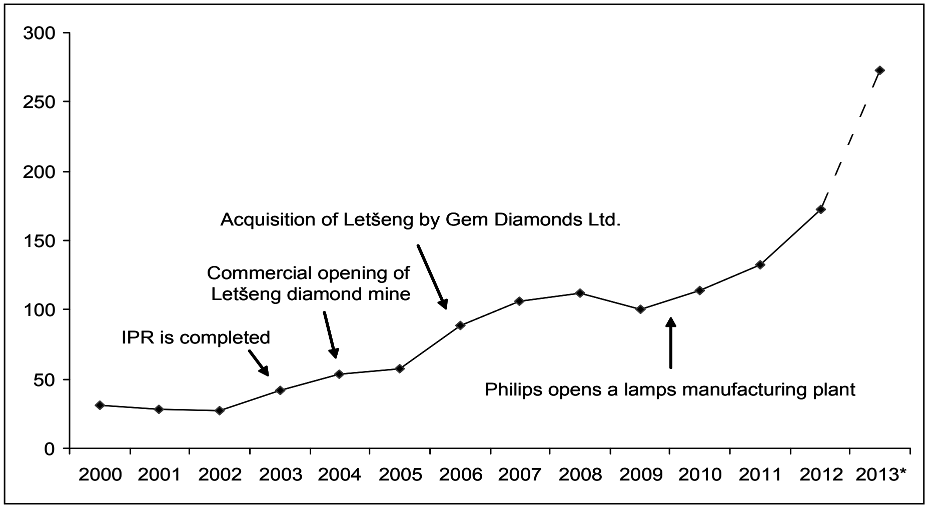
3. Trends in foreign direct investment

Until 2003, when the IPR of Lesotho was completed, FDI inflows to the country had never exceeded $50 million. Since then, however, inflows have been consistently on the rise, with the exception of 2009. They exceeded $170 million in 2012, and are projected to peak at $273 million in 2013 (International Monetary Fund (IMF), 2013).

In the absence of official data on the distribution of FDI by sector or country of origin, it is difficult to provide an accurate analysis of key FDI trends in Lesotho. What is certain, however, is that mining has played a key role in the upturn. Since Letšeng Diamonds entered into commercial production in 2004, its mine has produced 4 of the world's top 20 rough diamonds. Its diamonds are the highest valued in the world, and the company, owned by Gem Diamonds Limited (70 per cent) and the Government of Lesotho (30 per cent), is embarking on a $200 million expansion plan to become the fourth-largest diamond mining company worldwide. This has pulled in other investors and at least four companies (from Canada, South Africa and the United Kingdom of Great Britain and Northern Ireland) have discovered commercial deposits.

FDI inflows to Lesotho, 2000–2013

(Million dollars)



Source: UNCTAD and IMF.
Note: * = IMF estimate.

Outside mining, one notable investment is the opening in 2009 of a manufacturing plant by Philips South Africa, aimed at producing energy-saving fluorescent lights for the Southern African market, including recycling.

The recent increase in FDI inflows is reflected in Lesotho's comparative FDI attraction performance. Lesotho is still underperforming compared with many of its competitors in the region and within Africa, both in terms of absolute and per capita FDI inflows attraction. However, the performance gap is closing. Compared with the Southern African Development Community (SADC) as a region, for instance, Lesotho now attracts more FDI inflows per capita, and as a percentage of gross fixed capital formation (GFCF). The opposite was true in the early 2000s.

Comparative FDI flows to Lesotho and selected comparator countries, 2001–2012

(Dollars and percentages)

Country	Absolute performance				Relative performance							
	FDI inflows			FDI stock	FDI inflows						FDI stock	
	Millions of dollars				Per capita (dollars)			As a percentage of GFCF			Per capita (Dollars)	Percentage of GDP
	Average 2001–2005	Average 2006–2010	Average 2011–2012	2012	Average 2001–2005	Average 2006–2010	Average 2011–2012	Average 2001–2005	Average 2006–2010	Average 2011–2012	2012	2012
Lesotho	**42**	**69**	**152**	**839**	**23.1**	**41.9**	**69.0**	**14.6**	**15.6**	**16.0**	**378**	**35.5**
Botswana	304	607	353	1 318	172.0	348.3	173.1	15.2	19.6	7.4	642	7.3
Burkina Faso	20	150	41	431	1.6	10.5	2.4	3.2	9.9	1.6	25	4.2
Burundi	0	1	2	9	0.0	0.1	0.2	0.1	0.6	0.4	1	0.4
Mauritius	24	301	317	2 944	19.7	234.9	242.0	1.9	14.3	11.9	2 241	25.6
Namibia	254	621	587	3 491	128.1	294.0	251.2	27.2	29.6	17.0	1 476	28.1
Rwanda	10	76	133	743	1.1	7.8	11.9	3.3	8.4	8.9	66	10.3
South Africa	3 306	4 154	5 288	138 964	70.7	87.0	104.6	13.9	6.6	7.0	2 739	35.6
Swaziland	17	93	91	958	16.5	87.1	75.5	7.7	26.8	24.4	785	24.2
LDCs	7 997	16 143	23 573	185 463	11.2	19.6	27.5	17.9	16.8	14.7	216	25.2
Landlocked LDCs *	1 892	4 319	5 863	45 344	7.4	14.8	19.0	16.2	15.0	13.8	145	23.8
SADC	6 845	10 096	11 474	196 176	34.1	42.3	43.9	19.4	11.1	8.7	741	30.0

Source: UNCTAD, *World Investment Report 2013*.
Note: * = excluding South Sudan (no data available for this country)

4. IPR implementation matrix

What	Why	How	Status	Findings
I. Adopt an FDI policy and introduce a modern FDI law	Lesotho is open to FDI and foreign investors are treated well. However, the legal regime for FDI is weak, and its policy is unwritten. Bilateral investment treaties have been concluded with the United Kingdom (1981) and Germany (1985). Lesotho's investment diversification efforts would benefit from a well-articulated foreign investment policy and the introduction of a modern foreign investment law as the centrepiece of such a policy.	**I.1** Introduce an FDI policy clarifying the Government's approach on matters of interest to investors.		No FDI policy or law has been introduced. Vision 2020 of 2004 and the National Strategic Development Plan of 2012 have both since called for the creation of "one single overarching investment policy offering both domestic and foreign investors clarity about obligations and opportunities". In 2012, the Government requested UNCTAD to assist in the preparation of an FDI policy and law.
		I.2 Introduce a modern foreign investment law that: ▪ Articulates a legal basis for the current good practice in the treatment and protection of investors; ▪ Permits FDI without the need for prior approval in all but a "negative list" of sensitive business activities; ▪ Defines the criteria and procedures required to introduce a business activity in the "negative list" and allows for exceptions when considered beneficial by an ad hoc body; ▪ Provides for a body to promote and facilitate investment.		In the absence of an FDI law, the key instruments regulating company establishment and operation are as follows: ▪ The Companies Act of 2011, which simplified the registration formalities providing standard articles of incorporations, improving shareholder protection and reducing the time cost for company incorporation (including electronic name search, simultaneous receipt of tax identification number and memoranda of association not requiring lawyers). The Act requires companies incorporated outside of Lesotho to register as "external companies" (branches) within 10 days of opening a business in Lesotho; ▪ The Companies Regulations of 2012, regulating the process of incorporation of a private company and the business classification codes; ▪ The Trading Enterprises Order of 1993, as amended in 1996, and the Trading Enterprises Regulations of 1999, as amended in 2011. These require a licence for most business activities. Licences in manufacturing are regulated by the Industrial Licensing Act of 1996. Through licensing regulations, many activities, particularly as operated by SMEs in services, are reserved for domestic companies (section IV.2). The Financial Institutions Act of 2012 sets the licensing criteria for local and foreign banks; ▪ The Land Act of 2010, which enables foreign investors to lease land for commercial and industrial purposes under certain conditions (section IV.3). The definitions of "foreign company" contained in the above instruments are neither uniform nor consistent with international practice.

Status: Not implemented partially implemented Substantially implemented Implemented

What	Why	How	Status	Findings
I. Adopt an FDI policy and introduce a modern FDI law		**I.3** Expand the network of bilateral investment treaties with countries targeted for FDI.		A new bilateral investment treaty (2004) with Switzerland entered into force in 2010. In 2008, Lesotho ratified the SADC Protocol on Finance and Investment, which provides all investors, including non-members of SADC, a number of treatment and protection guarantees. The Protocol entered into force in 2010.
II. Upgrade FDI promotion to international best practice	Lesotho needs to strengthen its FDI promotion capabilities, currently affected by budget and mandate issues. This can best be done if the investment promotion agency is given greater autonomy, a full investment promotion mandate and a separate budget with adequate financial and human resources for promotion and targeting.	**II.1** Assign FDI promotion and after-care functions to an autonomous investment promotion agency and separate from other functions (provision of land or buildings).		Investment promotion is still the remit of LNDC, which also retains industrial estate and factory-shell development and management functions, domestic investment promotion, as well as the management of one of the two Government-funded partial credit guarantee schemes. Only three staff within LNDC are assigned to FDI promotion. Since the rental of factory shells at subsidized rates is a primary source of revenue (section III.2), LNDC's investment promotion activities are primarily geared towards manufacturing. Tourism promotion is the responsibility of the Lesotho Tourism Development Corporation, established in 2003, but not yet adequately funded. Investment facilitation functions have been transferred to OBFC.
		II.2 Provide the investment promotion agency with adequate funding, based on the average for such agencies in other LDCs, ($285,000 in 2007).		LNDC receives no budgetary support from the Government. It generates its own earnings, mainly from industrial estates and factory shells. In 2009–2010 the Corporation's authorized share capital was M250 million. Fully paid-up share capital was M128 million, comprising M128 million ordinary shares of M1 each (LNDC Annual Report 2009/2010). OBFC does not have a budget per se. It works under a cost-sharing arrangement through which the different parties to the memorandum of understanding make differing contributions.
		II.3 Carry out targeted promotion campaigns with the involvement of existing investors.		The limited resources assigned to investment promotion are utilized primarily for the organization of promotional missions and participation in investment forums. LNDC, however, plans to start one-on-one promotional activity targeted at investors from South Africa.

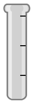
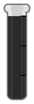
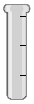
Status: Not implemented partially implemented Substantially implemented Implemented

What	Why	How	Status	Findings
II. Upgrade FDI promotion to international best practice		**II.4** Provide a genuine one-stop shop for investors, facilitating all necessary permits in a short period.		OBFC was set up in 2009. It comprises of officials from the Lesotho Revenue Authority, MTICM, the Ministry of Labour and Employment and the Ministry of Home Affairs. OBFC offers the following services: traders and manufacturing licences, export and import permits and rebates, work permits, residence permits, company registration, tax registration and clearances, utilities payment, tariff investigations and trade remedies. OBFC plans to also issue tourism licences once the required information technology infrastructure is completed. The new Companies Act of 2011 (section I.2) and the opening of OBFC have significantly streamlined the process for setting up a business, which now takes 3 days, down from 40 before the reforms. OBFC aims to further lower the required time to one day, which will be possible once a law on electronic transactions is adopted.
		II.5 Establish a Government–private sector consultative mechanism.		Several private sector representative bodies exist, and at least three different attempts to establish a public–private dialogue platform are in place, housed under different ministries. Their effectiveness in advocating investment climate reforms is hampered by high levels of conflict both between and within private sector organizations.
III. Improve the investment framework	The tax regime for business in sectors other than manufacturing is not competitive, discouraging diversification. A shortage of developed industrial sites hinders new investment, and the provision of factory shell at subsidized rates by LNDC is a disincentive to private sector participation in factory shell development and management.	**III.1 Taxation:** ▪ Remove the bias in corporate taxation against non-manufacturing and lower profit and withholding taxes in other sectors; ▪ Introduce universal and faster tax depreciation coverage; ▪ Consider accelerated depreciation up to 100 per cent for upstream investment in textiles; ▪ Implement a full value added tax (VAT) system.		The general corporate income tax rate was lowered from 35–25 per cent and a full VAT system was introduced. Agriculture attracts a lower corporate income tax of 10 per cent. Manufacturing companies are subject to a 10 per cent corporate income tax rate if they sell their products within the Southern African Customs Union (SACU), or 0 per cent if they export outside SACU. Withholding tax on dividends paid to non-residents is 25 per cent generally, and 0 per cent in manufacturing (domestic dividends are exempt from tax). Interest, royalties and management fees attract 25 per cent generally and 15 per cent in manufacturing. No changes have taken place in respect to tax depreciation, with modest rates varying from 5–25 per cent. No simplified or special regime exists for SMEs, although registration for VAT is only required above an annual turnover of M850,000 ($87,000). VAT is payable at the uniform rate of 14 per cent of the value of the goods or services supplied or imported. If a VAT credit balance is due to an excess of input tax, a registered business may apply for a refund at the end of each tax period or on a quarterly basis. Lesotho has signed two new double taxation treaties with Germany and Mauritius, adding to those concluded with the United Kingdom and South Africa.

Status: Not implemented   partially implemented   Substantially implemented   Implemented

What	Why	How	Status	Findings
III. Improve the investment framework	The land regime is problematic for business. Foreign investors can only sub-lease land, subject to ministerial approval and title, and mortgage registration procedures are cumbersome.	**III.2 Factory shells:** Introduce a level playing field in the development and management of industrial estates to encourage the participation of private investors.		The shortage of factory shells remains a severe bottleneck to FDI attraction and diversification. Several investors withdraw their investment projects each year for failure to obtain the necessary land or factory shells. LNDC has not divested from the development and management of factory shells, which are provided to foreign investors at a subsidized monthly rents. The National Strategic Development Plan recognizes the shortfall of space for potential investors and concurs that private firms cannot invest in factory shells since they are unable to secure land and/or compete with public subsidies (section 5.1.5). The Government is currently considering several options. These include allocation of resources from the capital budget for the provision of industrial infrastructure and allowing FDI in factory shells, within the confines of designated industrial zones.
		III.3 Land law: ▪ Permit foreign investors to lease land directly from the Government and extend lease period to 60 years; ▪ Retain the ministerial power to allocate new lease titles to land but replace the official approval of title transfer with a simple registration requirement; ▪ Adopt zoning and property tax tools to address land allocation and speculation issues.		The Land Act of 2010 decreased discrimination against women and non-Basotho citizens in the access to land, increased title security and supported the use of land as collateral for credit. Lease duration was extended to 60 years for commercial or light industrial purposes and 90 years in agriculture. The Act streamlined land title transactions by replacing ministerial consent with the consent by the Commissioner of Lands, an administrative step. Title transfers are currently approved in 21 days, down from one to two years before the Act. Finally, the Act created the Land Administration Authority, tasked with the administration of the leasehold tenure system, title registration, surveys and mapping. With the support of the Millennium Challenge Corporation, the Land Administration Authority is carrying out systematic regularization of land titles, focused on urban areas. Some 13,000 titles have already been registered out of a total of 55,000 scheduled for registration. According to the Authority, land transactions and mortgage lending have doubled since early 2011. Notwithstanding its achievements, the new Land Act has failed to improve access to land for foreign investors, which remains one of the key bottlenecks to investment. It has allowed foreign companies to lease land directly from the Government, but only upon satisfying a local partnership requirement of 20 per cent and after obtaining the consent of two government ministers. Contrary to international practice, the Act defines any company in which at least one shareholder or one director is a foreign national, as a foreign company. Land is also defined to include improvements thereon, making it impossible to split land and buildings into separate companies to get around the above limitations.

Status: Not implemented   partially implemented   Substantially implemented   Implemented

What	Why	How	Status	Findings
III. Improve the investment framework				The key policy concern behind the local partnership requirement is to prevent access to land by foreign SMEs. However, the regime has been easily circumvented through the use of front companies. At the same time, however, no application for lease title by a foreign investor has been received by the Land Administration Authority under the new Act.
	No competition law or authorities exist; dominant positions are unregulated.	**III.4 Competition:** Introduce a competition policy and authority.		With UNCTAD's assistance, the authorities have been working to complete a competition policy and bill for a number of years. The draft Competition Policy was completed in 2007, the Competition Bill in 2009. It is not clear when they will be adopted.
	Foreign exchange controls penalize exporters.	**III.5 Foreign exchange:** Introduce foreign currency accounts for exporters.		Residents may hold foreign exchange accounts.
	Most manufacturing and several services activities require yearly licences to operate, adding unnecessary risk and red tape to investment.	**III.6 Licences:** Abolish industrial licences and limit trading licences to ensure that they do not duplicate other regulations.		Most business activities require a licence. The licensing regime is utilized to restrict the entry of FDI in a list of activities typically carried out by SMEs, such as grocery stores, hairdressers or cafés. The list has not changed since 1999. With the introduction of OBFC, however, the licensing process for certain activities has improved. For instance, the application form for an industrial licence was reduced from 16 pages to 2, and the Pioneer Industries Board of MTICM convenes whenever necessary, rather than once a month. An industrial licensing bill before Parliament is expected to further streamline licensing for manufacturing activities by replacing Board approval with approval by the Director of Industry at MTICM. In tourism and mining, licences are issued by the respective line ministries. The Private Sector Competitiveness and Economic Diversification Project, co-funded by MTICM and the World Bank, aims to replace the current trading licensing regime with a standard registration regime whereby only activities posing health or security concerns would undergo pre-inspection. This would shift the regulatory focus on improving ex post inspections, in line with international practice.

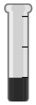
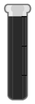
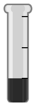
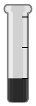
Status:  Not implemented  partially implemented  Substantially implemented  Implemented

What	Why	How	Status	Findings
III. Improve the investment framework		**III.7 Environment:** Improve environmental management and institute incentives and penalties to minimize toxic effluence from industrial activity.		The new Environment Act was passed in 2008, introducing a modern environmental impact assessment (EIA) system, at least in principle. Obtaining an EIA is time-consuming and can take up to one year. There are no guidelines on qualifications of consultants that prepare EIA reports; resources at the Department of Environment are scarce (only two staff working on EIAs) and obtaining appropriate connection to sewage facilities is a frequent problem. Treatment of toxic effluence from textile activities remains problematic. The Private Sector Competitiveness and Economic Diversification Project aims to improve the EIA process by introducing risk-based permitting, and the Government has set up the National Committee on Waste Management to tackle toxic effluence.
	Potential exists, particularly in diamonds but the legislation is not up to standards (no distinction between artisanal and large-scale mining, no right-to-mining licence further to exploration and no right to sell minerals on a free commercial basis).	**III.8 Mining:** Reform the legal regime for mining.		The Mining and Minerals Act of 2005 replaced the Mining Code of 1967. The Act modernized the mining regime and introduced a distinction between small and large-scale mining. Under the Act, prospecting licences are approved by the Mining Board and issued by the minister. The recommendation powers of the king and chiefs have been repealed. Contrary to best practice, however, there is no obligation to consult communities affected by prospecting and mining. There are insufficient safeguards of rights to develop and operate a mine once all statutory conditions have been fulfilled. The Government can also acquire not less than 20 per cent shareholding in the proposed mine but nothing is said about the terms of the equity (free, paid, or carried). Royalties are set at 10 per cent on diamonds and 3 per cent on all other minerals. The diamond royalties appear low and for other minerals the 3 per cent rate is low for precious metals. However, the overall fiscal package of corporation tax and government equity needs to be taken into account. Finally, no implementing regulations to the Act have been adopted as yet. The National Strategic Development Plan calls for the development of a consolidated mining policy and a review of the legal framework based on best international practices, including the development of a mining tax code. It also stresses the need to improve authorization systems for exploration and extraction and to properly evaluate technical, social and environmental factors. In this regard, the UNDP office in Lesotho is starting a technical assistance project aimed at strengthening the legal regime for mining, and the IMF office in Lesotho will assist in revising the fiscal regime.

Status: Not implemented partially implemented Substantially implemented Implemented

What	Why	How	Status	Findings
IV. Address skills deficiencies	Paucity of entrepreneurship and of much-needed business skills limits the extent to which FDI can take root strongly in the local economy, and the country can attract FDI in more complex activities and functions and reap spillover benefits from foreign presence.	**IV.1** Establish a refundable levy system linked to skills formation and training by firms and draw on the levy to create industry-funded and run institutions to meet specific skills needs.		Skills shortage remains a problem. In mining, for instance, renewed investor interest is meeting critical shortages across the full spectrum of skills required by the industry (e.g. welders, electricians, engineers).
		IV.2 Set up, as a priority, a training institution for the apparel and textile industry.		Two skills centres were established as part of the Private Sector Competitiveness and Economic Diversification Project, which started operating in 2008 and 2009. Managed by a combination of industry and Government representatives, by the end of 2012 the two centres had trained 1,574 workers of which 1,162 had been placed in industry. Despite various efforts, financial sustainability remained a challenge, and it was decided to proceed with a public–private partnership arrangement, which started in January 2013. The project is currently in the process of procuring incubation equipment for the centres.
		IV.3 Redesign the work and residence permit to: ▪ Issue joint work and residence permits and extend duration; ▪ Preserve and strengthen pre-screening of foreign workers in sectors on the FDI negative list; ▪ Fast-track access to foreign skills for genuine investors in target sectors (key workers scheme).		The work and residence permit regime has not changed. However, work permits are now issued for a two-year period, and accessing foreign skills in manufacturing is now easier, as OBFC has delegated authority to issue work and residence permits to firms in the manufacturing industry. In other sectors, the work permitting process, based on a labour market test and an understudy programme, continues to be long and burdensome (e.g. the recommendation of four different offices within the Ministry of Labour and Employment is required before the minister issues a work permit). The Lesotho authorities themselves are unsatisfied with the results of the current regime, and the National Strategic Development Plan stresses that “the process for obtaining work and residence permits needs to be improved to avoid delaying entry of the necessary foreign expertise”.

Status: Not implemented partially implemented Substantially implemented Implemented

What	Why	How		Findings
IV. Address skills deficiencies		**IV.4** Strengthen entrepreneurship-training schemes, and target them at activities that can supply services, parts and components and subcontracting to foreign affiliates.		Since the completion of the IPR, there has been a proliferation of entrepreneurship-training schemes and programmes aimed at fostering entrepreneurship and assisting individuals and SMEs in formulating a business plan or interfacing with the public administration. It is reported that five different Government agencies run at least one – and up to three – such programmes. According to several interviewees, the atomization and lack of coordination are responsible for the low impact of the programmes.
V. Secure access to new markets and extend trade preferences	As an LDC in sub-Saharan Africa, Lesotho enjoys privileged access to major markets (AGOA, the European Union, SACU). The IPR recommended several measures to take better advantage of these conditions, while providing time for policymakers to take pro-competitiveness measures.	**V.1** Negotiate with the United States to extend AGOA privileges.		The third-country fabric provision of AGOA, which was due to expire in September 2012, was extended until 2015. Activity has significantly contracted as a result of the uncertainty surrounding the extension. The overall AGOA system is now due to end in 2015.
		V.2 Negotiate for AGOA-like trade privileges with the European Union.		An interim economic partnership agreement with the European Union was concluded in 2007. It was signed by Botswana, Lesotho, Swaziland and Mozambique in June 2009. The interim agreement includes the elimination of duties/quotas for imports to the European Union from these countries as well as the elimination of duties/quotas on European Union exports to Lesotho. The agreement makes it possible for all participating countries to re-introduce duties/quotas to help safeguard local economies. It also includes a commitment of all interim partners – except Namibia – to conclude an economic partnership agreement to cover services and investments. The interim agreement has not been ratified yet pending the negotiations on a comprehensive regional economic partnership agreement.
		V.3 Explore, together with South Africa, a better tracking system for exporters to comply with rules-of-origin requirements.		Regional integration in transport has not been achieved, although it has been planned for some time under the SACU Memorandum of Understanding of 1990 and the SADC Protocol on Transport, Communications and Meteorology 1996. Customs procedures and laws need modernization, and no customs single window exists. However, Lesotho is in the process of adopting ASYCUDA, which is expected to improve customs services and processing time.

Status: Not implemented partially implemented Substantially implemented Implemented

5. Conclusions and the way forward

Many of the IPR recommendations endorsed by the Government of Lesotho in 2003, which aimed at improving the investment attractiveness of the country and the benefits of FDI, have remained unanswered, or only partially implemented. Most of them remain valid and their implementation urgent, given the context of increased competitiveness pressure deriving from the scheduled termination of AGOA-related trade preferences.

Lesotho's ability to compete depends to a large extent on its ability to improve the investment climate and to promote national and foreign investment. In this regard, the lack of a national investment policy and of institutional mechanisms to drive and coordinate investment policy reforms weigh heavily on the country's future.

However, in line with the IPR recommendation, the Government's 2012 National Strategic Development Plan called for a single overarching investment policy that would provide clarity to both domestic and foreign investors about investment obligations and opportunities. In response to a recent request of the Government of Lesotho, UNCTAD has assisted the authorities in the formulation of a national investment policy. The document compiles for the first time the current policies and practice of the Government in dealing with national and foreign investors and fills a key gap in the current regulatory framework for investment. The Government has indicated that its adoption is a priority.

In addition, based on the findings of this report, UNCTAD has presented to the Government of Lesotho a number of recommendations aimed at strengthening the investment climate, increasing investment attraction within and beyond manufacturing and reducing the economy's dependence on trade preferences. The recommendations are part of a comprehensive technical assistance programme launched in partnership with the United Nations Development Programme office of Lesotho under the aegis of the United Nations "Delivering as one" initiative. They were discussed by policymakers from the Government and development partners at a high-level workshop held in Maseru on 8 November 2013. The resultant discussions will be further taken up by the Government for presentation to the Cabinet.

The recommendations address three themes for Government action: (a) Lesotho's ability to compete, including actions to strengthen workforce skills, local entrepreneurship, competition, infrastructure and business facilitation; (b) its ability to safeguard essential national interests, including in the area of national and international investment policymaking, environmental protection and mining; (c) the country's ability to promote investment. An additional theme is improved investment leadership, which is required to carry out the reforms.

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