

CHAPTER 7

Conclusion and Recommendations

7.1 Introduction

Academic interest and inquiry of multinational enterprises is a relatively recent phenomenon, as the first serious attempts to understand this type of business enterprise were undertaken in the late 1950s and early 1960s. The comprehensive works of Coase (1937, 1960), Hymer (1960, 1968) and Knickerbocker (1973), among others alluded to market imperfections and the possible disruptive economic forces of multinational firms operating in developing and third world countries. Guided by the literature, regulatory measures were proposed and implemented in a number of countries.

Similarly, this dissertation was primarily concerned with deriving public policy solutions to economically related public problems. Specifically, one problem identified for closer examination and in-depth analysis was that of the positive as well as negative effects on the domestic population of foreign direct investment by multinational enterprises. The literature search of the study identified both positive and negative consequences from this type of investment on, among other, employment, technology transfer, balance of payments and environmental damage and resource depletion. In this regard, *inter-alia*, the foreign direct investment of multinational enterprises may either increase or decrease employment, restrict or facilitate technology transfer, improve or worsen the nations balance of payments, and possibly bypass responsibility for harming the environment and the peoples of the host state. These issues were

partially resolved in chapter 2 – A Survey of the Theory of Multinational Enterprises.

A second, and higher order problem also identified for study relates to the optimization of the positive aspects of the foreign direct investment of multinational enterprises for the benefit of the host country of such investment. The study proposed that one avenue by which such an optimization may take place is through an efficient, effective and well coordinated regulatory framework. Accordingly, the problem statement of the study is concerned with the fact that there is no single governmental body at any level of government that is charged with complete responsibility for policy-making and regulation of this type of investment in South Africa. This concern is warranted in light of the possibility of occurrence of the negative effects associated with multinational enterprises.

The development of a hypothesis brings the study closer to at least a partial solution of the problem statement as hypothesis testing represents a critical link between scientific research and its conclusions. Specifically, the hypothesis of the study is given by the null hypothesis, H_0 = There is a necessity to formalize a Government administrative structure for policy setting and implementation of multinational enterprise regulation in South Africa. The extent to which the hypothesis of the study may have been proved or disproved depended on first addressing the research question of the study. The research question being – Is there a need for foreign direct investment policies that apply exclusively to multinational enterprises? The research question was answered in the affirmative throughout the study and especially so in chapter 4 (Supra 4.3.1 f) in which it was demonstrated that weak or non-existent regulation of foreign direct investment is likely to leave a nation vulnerable to the negative externalities associated with this type of investment. The externalities examined in chapter 4 dealt with environmental and health damages caused by foreign corporations

that exercised certain legal principles to absent themselves from the jurisdictional reach of host countries.

The hypothesis, on the other hand, was not disproved in the sense that the evidence in chapter 5 concluded that the current regulatory framework can be strengthened through the appointment of a dedicated unit that is tasked with ensuring that the implementation of foreign direct investment policies takes place in an integrated and coordinated manner in the South African public sector. It was shown in chapter 5 that several departmental units and sub-units have some amount of regulatory authority over foreign investors, and without appropriate efforts at coordination of their activities, policy deficiencies such as pockets of no-mans land and overlapping may materialize.

Once the issues raised by the research question and the hypothesis had been established and dealt with, attention was then given to issues of organizing as a means to giving greater substance to what was implied by the results of the hypothesis testing. Organization theory was looked upon (in chapter 5 and more extensively so in chapter 6) to give guidance on assuring that the appropriate organizational dynamics are in place to optimize the effectiveness of foreign direct investment policies, and more specifically to optimize the potential benefits to the Government from inward foreign direct investment. Additionally, it was argued in chapter 5 that, although there is a body of foreign direct investment laws and policies, and these foreign direct investment policies effectively reflect the political ideology of the ruling party, there also exists significant scope for the integration and coordination of these regulatory efforts.

7.2 Summary and conclusions of each chapter

The objective set for the study was to design, develop, and/or propose an administrative structure (unit) for policy making, policy implementation, and

control of multinational enterprises where it could be shown that such an administrative unit is indeed needed. Each chapter of the dissertation contributed towards satisfying this objective by either demonstrating the need for the administrative unit in question, or by attempting to resolve the question of the optimal structural design of such a proposed unit. A synopsis of the conclusions of each chapter follows.

7.2.1 Chapter 1 – Introduction

Chapter 1 merely defined the nature and scope of the study in its entirety, and thus no conclusions were evolved for this chapter.

7.2.2 Chapter 2 – A Survey of the Theory of Multinational Enterprises

The findings of theoretical and empirical research on the effects of inward foreign direct investment on host governments are an important and instructive tool for policy makers to take account of in determining the nature and extent to which multinational enterprises should be regulated. From the review of the literature it was concluded that the effects of the presence of foreign multinational enterprises in the host country can be observed through changes in among other, employment, balance of payments, and the competitiveness of domestic firms. With respect to the direction of change observed in each of these factors, consensus in the literature does not exist.

7.2.3 Chapter 3 – Historical Perspective of South Africa's Investment Climate

The two key conclusions teased out of chapter 3 are that firstly, agriculture, mining and manufacturing are the three largest sectors of the South African economy in terms of contribution to GDP and are thus considered the most relevant in terms of defining the contextual economic environment within which

foreign direct investment takes place; And secondly, the deterministic element that runs through every aspect of development and investment in South Africa's recent past is the system of racial discrimination and segregation known as apartheid.

Although apartheid no longer exists, it has left behind a significant legacy that represents hindrances in many sectors of the economy that are only presently being resolved. As an example of apartheid's legacy, it can be noted that the agricultural sector of the economy has shifted from first to third place in terms of share of GDP in contemporary times. The once thriving agricultural sector benefited white land-owners and farmers at the expense of black farmers under the system of apartheid. As apartheid was an expensive system to maintain, there appears to be evidence that the productivity of agriculture was reduced as a direct result of the apartheid system.

7.2.4 Chapter 4 – Global Foundations for Establishing a Need for the Regulation of Multinational Enterprises

With respect to foreign direct investment in South Africa, the court case of *Lubbe v. Cape Plc.* offers lessons to be learnt (not just for South Africa) on the issue of regulating multinational enterprises. *Cape Plc.*, an asbestos mining multinational enterprise, effectively put itself out of the jurisdictional reach of the South African legal system when it abandoned its South African mining operations in 1979 after allegedly causing asbestos related illnesses to employees and community members living in the vicinity of *Cape Plc.* mining operations. It was demonstrated in chapter 4 that this legal case, in particular, exposed some of the weaknesses in the South African system of regulating foreign investment.

7.2.5 Chapter 5 – Critical Review and Analysis of Existing Policies on Foreign Direct Investment in South Africa

It was shown in chapter 5 that South African public policy vis-à-vis foreign direct investment is formulated from a liberal approach that encourages (rather than restricts) this type of investment. The work of this chapter and the dissertation as a whole did not seek to argue against this liberal approach, nor did it seek to support it. Instead, the approach of the study was to take a neutral stance on the issues and allow the research findings to suggest the degree of liberalization to be afforded to foreign investors. The main focus of the study, however, was based on determining the most optimal organizational structure(s) to be used in managing pre-existing policies on foreign direct investment. One of the key findings of chapter 5 is that, although there appears to be a high level of consistency across the South African public sector in what is being articulated as the government's policy toward foreign investors, there are issues of integration and coordination that need to be addressed. As an example, the powers and functions of the Minister of Minerals and Energy, and those of the Minister of Environmental Affairs and Tourism overlap in certain critical areas of control over investors (both domestic and foreign). Although it is possible to fulfill this coordination function at the executive level through cabinet committee processes, it was further argued in chapter 5 that this task would be better handled by a small governmental unit dedicated to all matters of policy formulation, regulation and monitoring of foreign investment. Further suggestions as to the organizational dynamics of this proposed unit were also explored in this chapter.

7.2.6 Chapter 6 – Rationalization of Foreign Direct Investment Policy Structures in the South African Government

The work of chapter 6 argued, based on what was demonstrated in chapter 5 and in the literature on organizing and rationalization, that there is scope for the rationalization of foreign direct investment policy structures in the South African public sector.

7.3 Recommendations

Chapter 3 argued that although an extensive amount of foreign investment capital was lost to the disinvestments campaign of the 1980s, the extent and pace at which foreign investment has returned to South Africa in the post-apartheid era is one of the defining issues in determining the Government's policy approach to foreign investment. There is also the issue of the low domestic savings and investment rates that was discussed in chapter 2 (Supra. Sect. 2.5.4) and chapter 5 (Supra. Sect. 5.7), that serve as a motivator for the Government's policy of attracting greater amounts of foreign direct investment into the country.

With respect to the Government's approach to foreign direct investment policy, and in spite of the Government's ideological stance, it is recommended that a balance must be found between too liberal an approach that may allow for abuses of the state by multinational enterprises, and too restrictive a stance that may tend to stem the flow of much needed inward investment capital.

It was demonstrated in the dissertation, through the empirical case approach, that *Lubbe v. Cape Plc.* sets an important legal precedence for South African foreign direct investment law and policy. Comparing *Lubbe v. Cape Plc.* with *Gisondi v. Cape Plc.* demonstrated that South African claimants have little

support or international legal standing to successfully bring a case for damages against foreign multinational enterprises, where such multinational enterprises are no longer domiciled in the Republic of South Africa. Given the facts of *Lubbe v. Cape Plc.*, it is recommended that the Government look to Article 2 of the Brussels Convention as a model for bilateral, regional or even international dispute resolution in cases involving multinational enterprises.

It was shown in chapter 5 that The Minerals and Petroleum Resources Development Bill (Notice 541 of 2002) and the National Environmental Management Act of 1998 (Act 107 of 1998) both empower their respective ministers to expropriate land and/or impose remedial costs for damages from investors (foreign or domestic). Without the duty on the part of both ministers to inform and cooperate with each other, duplication, gray areas and loopholes in the legislative framework are exposed. It is recommended that a coordinating body be created that will be solely responsible for all aspects of law that have important implications for multinational enterprise investors. Through such a coordinating body, all parties involved in specific aspects of law and policy relating directly or indirectly to multinational enterprises will be able to stay abreast of what is going on elsewhere in the public domain, that may affect or be affected by their decisions.

Given that the hypothesis of the dissertation is: *Ho = There is a necessity to formalize a government administrative structure for policy setting and implementation of multinational enterprise regulation in South Africa*; and given that the null hypothesis was not disproved, Chapter 6 of the dissertation begs the question of the most appropriate structure for the proposed unit specified in the hypothesis. A general precept of the physical sciences is that form follows function, or alternatively, in the language of public administration, strategy informs structure. Conclusions as to the form that the organizational unit that is being proposed should take are drawn largely from organization theory with

specific reference thereunder to rationalization and cost benefit analysis. Based on the arguments put forward in the dissertation, it is recommended that a small specialized unit of experts be organized into an organizational structure that is part of the public service but independent of any other governmental department or unit. The unit should work to provide support to other government agencies in the areas of research, advice and coordination services. In order to operate most effectively, this unit should encompass aspects of both classical as well as neo-classical organization theory. As the environment within which such an organizational unit operates can be expected to be relatively stable over time, and the work of the unit highly specialized, it is envisioned that decision making in the unit will be more centralized than decentralized.

7.4 Issues for Further Study

The current study sought to determine the need for an organizational unit that is fully responsible for the coordination of all aspects of foreign direct investment and multinational enterprise policy. The study also sought to determine what this organization will look like in very general terms. The ending point of the study suggests for further study the detailed design of such an organization in more specific terms – such as the number of people to be employed, a determination of the knowledge and skills needed, the remuneration scales to be applied, communication channels etc. This would amount to a multidisciplinary study for one well versed in human resources management, economics and public policy.

7.5 Conclusion

Cleaver (1997) cautions that “...*Free markets embody no mechanism that is responsive to all the needs of the planet. Informed regulation is therefore essential to ensure sustainable development*”. In a free-market system (as exists in South Africa) minimal government interference in the affairs of private business enterprises is expected to lead to the greatest possible levels of economic efficiency. Further, although government’s role in private markets should ideally be kept to the minimum, there still remains a duty on the part of government to ensure that certain market conditions exist within which the free market system can operate relatively unimpeded. These market related regulatory responsibilities of government include among other, ensuring that private markets are free of oligopolistic price fixing collusion and the “unfair business practices” of monopolists.

With respect to government regulation, multinational enterprises pose a more complex set of problems than do their domestic counterparts. This is due to the fact that multinational enterprises are incorporated under the laws of one country whilst having the flexibility to establish subsidiary or branch operations in other countries. This being the case it will not always be possible to regulate, to the full extent of the law, those multinational foreign businesses that choose to leave the jurisdictional boundaries of the host country. This scenario has played itself out in *Lubbe vs. Cape Plc.* (Supra 4.3.1 (d)) in which the asbestos mining and supply company, Cape Plc abandoned it’s South African mining operations and sought legal protection in the UK courts from South African litigants who suffered health damages as a result of Cape Plc operations. The current study examined *Lubbe vs. Cape Plc* and recommended that the Brussels Convention stood as a model from which to frame and resolve future similar incidents.

Although equally important, in the current study policy issues were secondary to administrative issues concerned with rationalization and finding the organizational dynamics most suited to addressing foreign direct investment policies in South Africa. The major concern addressed by the study in this regard is the fact that there currently exists no unit of government in South Africa that is tasked solely with overseeing and coordinating policies that relate to the foreign direct investment of multinational enterprises. Establishing the need for and the development of such a governmental unit has been the primary concern of the current study as well as being the basis upon which issues for further research were proposed.