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# AUSTRALIA

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# AUSTRALIA

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. *Summary of foreign investment policy including any recent policy changes.*

### General

Australia's foreign investment policy is comprised of the *Foreign Acquisitions and Takeovers Act 1975* (FATA) and various Ministerial policy statements on foreign investment.

### Notification

The types of proposals by **foreign interests** to invest in Australia which should be notified to the Government can be summarised as:

- acquisitions of **substantial interests** in existing Australian businesses with total assets over \$5 million (over \$3 million for rural businesses);
- establishment of new businesses involving a total investment of \$10 million or more;
- investments in the media irrespective of size;
- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of developed non-residential commercial buildings valued at \$5 million or more;
- acquisitions of urban real estate irrespective of size;
- acquisitions of residential real estate irrespective of size (certain specified categories are exempted by regulation under the FATA);
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at \$20 million or more, or account for more than 50% of the target company's global assets; and
- proposals where any doubt exists as to whether they are notifiable.

A **foreign interest** is briefly defined as:

- a natural person not ordinarily resident in Australia; and
- any corporation, business or trust in which there is a **substantial foreign interest** ie, in which a single foreigner (and any associates) has 15% or more of the ownership or in which several foreigners (and any associates) have 40% or more in aggregate of the ownership.

## **Examination by sector**

The FATA applies to most examinable proposals and provides penalties for non-compliance.

Restrictions apply for several sectors of the economy viz, Real Estate, Banking, Civil Aviation, Shipping, and the Media. The specific policy guidelines can be found in section B(1)(ii).

In relation to investments by foreign interests in other sectors (viz, Rural Properties, Agriculture, Forestry, Fishing, Resource Processing, Oil & Gas, Mining, Manufacturing, Non-Bank Financial Institutions, Insurance, Sharebroking, Tourism, Most Other Services) the policy is liberal. All proposals above certain thresholds need to be notified. Notification thresholds are: over \$3 million for purchases of rural businesses; over \$5 million for acquisitions of substantial interests in other existing businesses; \$10 million or more for the establishment of new businesses; and \$20 million or more for offshore takeovers. Proposals above the notification thresholds where the relevant total assets/total investment involved is less than \$50 million are not subject to detailed examination and are normally readily approved. The Government examines proposals to acquire existing businesses (with total assets of \$50 million or more) or establish new businesses (with a total investment of \$50 million or more) and raises no objections to those proposals unless they are contrary to the national interest. Investors can expect that approval will not be withheld from proposals on national interest grounds other than in unusual circumstances affecting Australia's vital interests and development. Offshore takeovers do not generally raise national interest issues.

### *2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.*

The Australian Government welcomes foreign investment. The Government recognises the substantial contribution foreign investment has made, and can continue to make, to the development of Australia's industries and resources. Capital from other countries supplements Australia's domestic savings and adds to the funds available for investment. It provides scope for rates of growth in economic activity and employment to be higher than otherwise. Foreign capital also provides access to new technology, management skills and overseas markets.

The policy is, therefore, to encourage foreign direct investment consistent with the needs of the Australian community, including the expansion of private investment, the development of internationally competitive and export-oriented industries and the creation of employment opportunities. The attitude to foreign investment is reflected in the substantial liberalisation of foreign investment policy in the last decade.

Administration of the policy is based on guidelines rather than inflexible rules; it is intended to be practical and non-discriminatory. Restrictions are applied in a few areas (for example, developed residential real estate) where the Government considers that the net benefits to the Australian community from foreign investment are smaller. In the majority of the industry sectors, however, smaller proposals are exempt and larger proposals are approved unless judged contrary to the national interest. Further details of Australia's foreign investment policy requirements are set out in the booklet "Australia's Foreign Investment Policy - A



Guide For Investors”, which can be obtained from the Foreign Investment Review Board (see Section B(1)(ii)(4) for contact details).

Investors can expect that approval will not be withheld from proposals on national interest grounds other than in unusual circumstances affecting Australia’s vital interests and development.

## **B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION**

### **1. Transparency**

#### *(i) Statutory (legislative) requirements*

*1. List and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

The FATA provides legislative backing for part of the Australian Government’s foreign investment policy. A copy of the Act appears in the policy booklet “Australia’s Foreign Investment Policy - A Guide For Investors”. Broadly stated, the Act empowers the Treasurer to examine proposals by foreign persons:

- (i) to acquire interests in Australian urban land regardless of value; and
- (ii) to take over Australian businesses having total assets valued at \$5 million or more (\$3 million or more in the case of rural properties).

The Act provides for the notification of proposals by the commercial parties involved and for the prohibition of certain types of proposals that, in the judgement of the Treasurer, are contrary to the national interest. Where proposals coming within the scope of the Act are implemented without prior notification to the Treasurer and are subsequently found by the Government to be contrary to the national interest, the Treasurer may order divestment.

Section 26 makes it compulsory for a foreign interest to notify a proposal to acquire a substantial shareholding (ie, 15% or more) of an Australian corporation, unless the total assets are below the \$5 million or \$3 million thresholds. Section 26A makes it compulsory for a foreign interest to notify a proposal to acquire an interest in Australian urban land. The section does not apply if the proposed acquisition is exempt under the *Foreign Acquisitions & Takeovers Regulations*. There are substantial penalties for non-compliance with the notification provisions of sections 26 and 26A.

Section 25 provides for the notification of other proposals that come within the scope of the Act but which are not subject to compulsory notification (for example, off-shore takeovers, takeovers of businesses by purchase of assets, or acquisitions of shareholdings in Australian companies that are less than substantial shareholdings).

Formal receipt of a notification of a proposal under sections 25, 26 or 26A (ie, notification on, or in accordance with, the forms prescribed in the *Foreign Takeovers (Notices) Regulations*) sets a deadline for a decision whereby, if the Treasurer does not take action

within 30 days and notify the parties of this action within a further 10 days, the Government loses the ability to either block the proposal or impose conditions on its approval. The normal 30 day examination period may be extended for up to a further 90 days by the issue of an interim order (sections 22 and 25(3)).

(ii) Investment Review and Approval

1. Details of proposals and sectors that are/are not (yes/no) subject to screening.
2. For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals	Guidelines/Conditions
merger (Yes)	See below.
acquisitions (Yes)	See below.
greenfield investment (Yes)	See below.
real estate/land (Yes)	See below.
joint venture (Yes)	See below.
other:-	See below.

The Government’s foreign investment policy encompasses both the FATA and other requirements set down by way of Ministerial statement. The types of proposals by **foreign interests** to invest in Australia which should be notified to the Government can be summarised as:

- acquisitions of **substantial interests** in existing Australian businesses with total assets over \$5 million (\$3 million for rural properties);
- takeovers of Australian companies and businesses (total assets over \$5 million) by means other than the acquisition of shares, viz:
  - by the purchase of assets or interests in assets;
  - by agreements in relation to board representation or by alteration of the articles of association or other constituent documents of a company; or
  - by arrangements for leasing, hiring, managing or otherwise participating in the profits of a business.
- plans to establish new businesses involving a total investment over \$10 million;
- investments in the media irrespective of size;

- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of non-residential commercial real estate valued over \$5 million;
- acquisitions of residential real estate irrespective of size (unless exempt under the regulations); and
- takeovers of offshore companies whose Australian subsidiaries or assets are valued over \$20 million or account for more than 50% of the target company's global assets.

A **foreign interest** is briefly defined as:

- a natural person not ordinarily resident in Australia; or
- any corporation, business or trust in which there is a **substantial foreign interest**, ie in which a single foreigner (and any associates) has 15% or more of the ownership or in which several foreigners (and any associates) have 40% or more in aggregate of the ownership.

Where it is uncertain whether a particular proposal is notifiable, investors should contact the Foreign Investment Review Board (see section B(1)(ii)(4) for contact details).

In most industry sectors (Rural Properties, Agriculture, Forestry, Fishing, Resource Processing, Oil & Gas, Mining, Manufacturing, Non-Bank Financial Institutions, Insurance, Sharebroking, Tourism (Hotels And Resorts), Most Other Services), the Government registers, but normally raises no objections to, proposals above the notification thresholds (ie \$3 million for purchases of rural properties, \$5 million for acquisitions of substantial interests in other existing businesses, \$10 million for the establishment of new businesses, \$20 million for offshore takeovers) where the relevant total assets/total investment fall below \$50 million.

The Government examines proposals to acquire existing businesses (with total assets over \$50 million) or establish new businesses (with a total investment over \$50 million) and raises no objections to those proposals unless they are contrary to the national interest. Australian participation is welcomed but is not a requirement. Offshore takeovers do not generally raise national interest issues.

Compulsory notification is required under the *Foreign Acquisitions and Takeovers Act 1975* for share purchases (in businesses over the relevant thresholds) and for all purchases of urban land, irrespective of value.

Sector	Guidelines/Conditions
telecommunications (Yes)	See below.
media (Yes)	See below.
transport (Yes)	See below (Civil Aviation and Shipping).
agriculture (Yes)	See below.
other: Real estate, Banking	See below.

## **1. COMMONWEALTH GOVERNMENT**

### **Real Estate**

Proposed acquisitions of **residential real estate** are exempt from examination in the case of Australian citizens living abroad and foreign nationals who are the holders of permanent visas or are holders, or entitled to hold, a “special category visa”.

Proposed acquisitions of both commercial and residential **real estate for development** (including vacant building allotments) are normally approved unless they are contrary to the national interest and on condition that continuous construction commences within 12 months of approval being granted.

Foreign interests are normally given approval to buy **vacant residential land** (on condition that continuous construction of a dwelling is commenced within 12 months) and to buy home units, townhouses etc **“off-the-plan”**, under construction or newly constructed but never occupied (the “off-the-plan” criterion only applies to new development projects or extensively refurbished commercial structures which have been converted to residential), on condition that no more than half of the units in any one development are sold to foreign interests.

Proposed acquisitions of residential property (both vacant land and existing dwellings) which are within the bounds of a resort that the Treasurer has designated as an **“Integrated Tourism Resort”** are exempt from examination.

All other proposals by foreign interests to acquire **developed residential real estate** are examinable and are not normally approved, except in the case of foreign companies buying for their senior executives resident in Australia and foreign nationals temporarily resident in Australia for more than 12 months buying for their own use as a principal residence (subject to the sale of the property when they cease to reside in Australia) and foreign nationals purchasing residential real estate as joint tenants with an Australian spouse.

Proposed acquisitions of **developed non-residential commercial real estate** are normally approved unless they are contrary to the national interest.

## **Banking**

Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *Banks (Shareholdings) Act 1972* and banking policy, including prudential requirements.

The Government will permit the issue of new banking authorities to foreign owned banks where the Reserve Bank is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply with Reserve Bank prudential supervision and arrangements. In addition, foreign owned banks will not be precluded from bidding for the smaller banks (if available for sale), ie, for banks other than the four majors.

## **Civil Aviation**

### *Domestic Services*

Foreign airlines flying to Australia can generally expect approval to acquire up to 25% of the equity in a domestic carrier individually or up to 40% in aggregate provided the proposal is not contrary to the national interest. In special circumstances the Government is prepared to consider foreign equity proposals in excess of these guidelines provided the proposal is not contrary to the national interest. All other foreign investors (including those which do not operate an airline service to Australia) may acquire up to 100% of a domestic carrier or establish a new aviation business unless judged contrary to the national interest.

### *International Services*

Foreign airlines can generally expect approval to acquire up to 25% of the equity in an Australian international carrier (other than Qantas) individually or up to 35% in aggregate provided the proposal is not contrary to the national interest. In the case of Qantas, total foreign ownership is restricted to a maximum of 49% in aggregate, with individual holdings limited to 25% and aggregate ownership by foreign airlines limited to 35%. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

## **Shipping**

The *Ship Registration Act 1981* requires that, for a ship to be registered in Australia, it must be majority Australian-owned (ie, owned by an Australian citizen, a body corporate established by or under law of the Commonwealth or of a State or Territory of Australia), unless the ship is designated chartered by an Australian operator.

## **Media**

All proposals to invest in the media sector irrespective of size are subject to prior approval under the Government's foreign investment policy.

### *Broadcasting*

Whilst proposals for a foreign person to acquire an interest in or establish a new broadcasting service would be subject to a case by case examination under foreign investment policy, the following criteria also must be satisfied. A broadcasting regulatory regime, enacted through the *Broadcasting Services Act 1992* (BSA), stipulates that:

- foreign interests in commercial television broadcasting services continue to be limited to a 15% company interest for individuals and a 20% company interest in aggregate. A foreign person may not be in a position to exercise control of a commercial television broadcasting licence. No more than 20% of directors may be foreign persons.
- for all subscription television broadcasting services licences, foreign interests are limited to a 20% company interest for an individual and a 35% company interest in aggregate.

There are no foreign ownership and control limits on commercial radio or on other broadcasting services under the BSA.

### *Newspapers*

Foreign investment in mass circulation national, metropolitan, suburban and provincial newspapers is restricted. All proposals by foreign interests to acquire an interest in or to establish a newspaper in Australia are subject to case-by-case examination other than for the exemption applying to portfolio investments in the Fairfax newspaper group - see below. The maximum permitted foreign interest direct investment involvement in national and metropolitan newspapers by a single shareholder is 25% and unrelated foreign interests are allowed to have (non-portfolio) shareholdings of up to five per cent ie, a maximum of 30%. In the case of the Fairfax newspaper group, individual portfolio shareholdings by foreign interests of less than 5% are permitted without prior approval. Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50% for non-portfolio shareholdings.

### **Telecommunications**

Only the Commonwealth of Australia may hold shares in Telstra Corporation Ltd and these shares cannot be transferred. There are also some constraints on the extent of foreign investment in Optus Communications Pty Ltd, Australia's second general telecommunications company. Australia's third licensed mobile carrier, Vodaphone Pty Ltd is currently 95% foreign owned. It is, however, a condition of the licence that, on or after 1 July 2003, foreign interests must hold less than 50% of Vodaphone's total issued shares.

## **2. STATE GOVERNMENTS**

### **New South Wales**

There are no industry sectors which are "restricted" sectors in the sense of being subject to prohibition, limitations, specific conditions or special screening arrangements imposed by the NSW Government or any local or regional authority in NSW. Nor do "performance requirements" apply which affect restricted or unrestricted sectors.

With regard to foreign investment laws or regulations tied to the export orientation of an investment proposal, there are no NSW statutes or regulations of this kind. Nonetheless, the NSW Government actively seeks to encourage foreign investment which is geared to export production.

There are no limitations on foreign land purchase and use in NSW apart from those which apply under provisions of the FATA described above.

## Northern Territory

Restrictions, and any associated performance requirements, are generally the same in the Northern Territory (NT) as in other states. However, a number of unique restrictions do exist that apply to all potential investors. These are:

- No landholder, either alone or together with associates, can own more than 13 000 sq kms without the consent of the Minister for Lands and Housing. For consent to be granted a proposal must be shown to be in the Territory's interest. This requirement is set out in Section 34 of the *Pastoral Lands Act*.
- Small areas of the NT are listed under the *Aboriginal Areas Protection Act* as sacred sites. The use of and access to these areas are generally restricted, however, in special circumstances the Minister for Lands and Housing may override such restrictions.

## Queensland

The Queensland Government welcomes foreign investment in all sectors of the State economy and is supportive of the Commonwealth Government's foreign investment guidelines. However, the Queensland Government seeks to consider other specific factors in particular industry sectors under certain circumstances. These restricted sectors include:

### *Mining and Resource Industries*

The Government has a preference for a minimum of 50% Australian equity and control. However, the Government is flexible in this approach with reference to economic benefit.

### *Manufacturing*

The Government has a preference for less than 100% foreign ownership, however this will be weighed against assessed economic benefit.

### *Urban Real Estate*

The Government would oppose proposals which it believed indicated an intention to participate in "land banking". Broadly, land banking is defined as the acquisition of undeveloped real estate without identifiable plans to commence an approved form of development within a reasonable period, say 12 months.

### *Rural Sector*

The Government opposes freehold acquisition of dedicated prime agricultural land for purposes other than primary production, unless it is demonstrated that foreign ownership will provide significant net offsetting benefits to the Queensland economy.

### *Tourism*

In assessing foreign investment proposals in the tourism sector, the Queensland Government will pay regard to:

- the impact of development on the local and regional communities;

- the potential of the foreign investor to make a positive contribution to the local tourism industry; and
- the level of foreign ownership and control within the local tourism industry. New tourism developments are encouraged but the Government has a preference for Australian participation.

The Government's Offshore Island Policy which is directed at preserving the unique status of these islands applies the following guidelines:

- Australian ownership should be maintained at a minimum of 50% unless otherwise approved by the relevant State Ministers;
- tenure to be on long term leasehold basis; and
- management to be in accordance with approved Commonwealth and Queensland Government island environmental management plans and other lawful requirements of the Queensland Department of Environment and Heritage.

The Queensland Government's limitations on the purchase of land by foreigners in the urban real estate, rural and tourism sectors has been addressed above. Foreigners who acquire freehold or leasehold interests in Queensland land must also notify the Registrar of Lands. In the case of a lease of freehold or a sub-lease of Crown leasehold where the term "including all options" does not exceed 25 years, such notification is not required.

### **South Australia**

There are no restrictions or prohibitions by State law or regulation to foreign investment in South Australia.

However, certain economic activities and business or professional occupations are subject to licensing requirements, which apply on a non-discriminatory basis to all applicants.

The State Government has in the past restricted, by legislation, the level of ownership any shareholder (whether foreign or otherwise) may have in companies operating in certain key sectors (particularly oil and gas) of the South Australian economy.

There is numerous legislation in the areas of consumer protection, employment, environmental planning and land management, and state taxes, which again are non-discriminatory and apply equally to all residents and/or activities within South Australia.

There are no limitations on foreign land purchase and use in South Australia apart from those which apply under the provisions of the FATA described above.

### **Tasmania**

Under the *Casino Company Control Act 1973*, foreign ownership of casinos in Tasmania is limited to a maximum of 38%.

There are no limitations on foreign land purchase and use in Tasmania apart from those which apply under the provisions of the FATA described above.



## **Victoria**

Any Victorian government owned services are closed to private investment (including foreign investment) unless the Government has publicly invited tenders. There are no restrictions on foreign companies or individuals wanting to invest in or provide Government services that are open to the tendering process. For example, there are no restrictions on foreign companies or individuals wanting to invest in, operate or establish private schools but like domestic investors they are only able to invest in areas of the public school system where tenders have been invited. In particular, tenders were invited to make submissions regarding ticketing machines for the public transport system because the expertise and capital to invest in this area was more likely to have come from overseas investors. Any proposals submitted as part of the tendering process must meet the tenders' criteria.

The only restrictions, that we are aware of, imposed by The Victorian State Government directly aimed at restricting investment by foreign companies is outlined in the *Gaming and Betting Act 1994*, section 53 and directly relates to investment into TABCORP Holdings Limited.

Restrictions state that an individual foreign investor, defined as a non resident, has a restriction of 2.5% of the voting shares; and the total foreign investment of the licence cannot exceed 40% of the total voting share.

Individuals are restricted to holding not more than 2.5% of the total number of voting shares, unless a certificate relating to the person's shareholding is in force. If such a certificate is in force, an individual may not purchase more than 5% of the total number of voting shares.

Although the Liquor Control Act has no provisions restricting foreign ownership, the Department of Consumer Affairs has advised that it is unlikely that a foreign corporation with no resident directors would be granted a licence by the Commission.

There are no limitations on foreign land purchase and use in Victoria apart from those which apply under the provisions of the FATA described above.

## **Western Australia**

There are two direct restriction imposed by the Western Australian State Government on foreign investment. Under the *Casino (Burswood Island) Agreement Act 1985*, foreign persons may only hold 40% of Burswood Property Trust units on issue unless an exemption to hold additional units is granted by the Minister for Racing and Gaming. Some exemptions have been granted since the establishment of the Trust. Under the Fisheries Act 1989, foreign ownership in rock lobster processing is limited to 20%; restrictions are placed on non-residents becoming directors or office bearers in corporations undertaking rock lobster processing.

The State Government does not directly prohibit or restrict foreign investment in any other sector of the Western Australian economy. However, access to electricity and water distribution and rail track networks operated by the State Energy Commission of Western Australia, the Water Authority of Western Australia and Westrail is regulated by the Government. This effectively prohibits or restricts foreign investment in these areas.

However, private investment (either foreign or local) in electricity supply or rail services which is of a stand alone nature (ie. the services are specific to a single user and not for the general community) is permitted.

Under the *Land Act 1983* and the *Transfer of Land Act*, prior authorisation is required from the Western Australian Government for the transfer of pastoral leases.

*3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

Copies of the relevant notification forms required to give notice under the *Foreign Acquisitions and Takeovers Act 1975* can be obtained from the Foreign Investment Review Board (see section B(1)(ii)(4) below for contact details). The information normally required by the Foreign Investment Review Board to enable foreign investment proposals to be processed is set out in “Australia’s Foreign Investment Policy - A Guide to Investors”.

*4. Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
Foreign Investment Review Board	<p><i>1. Postal Address:</i> Executive Member Foreign Investment Review Board C/- The Treasury CANBERRA ACT 2600 AUSTRALIA</p> <p><i>2. Fax:</i> (61 6) 263 2940</p> <p><i>3 Telephone:</i> <i>Investment and Debt Division, Treasury</i> Executive Member (61 6) 263 3755 General Inquiries (61 6) 263 3795</p>

*5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

The Foreign Investment Review Board seeks to ensure that proposals are dealt with quickly and efficiently. The time taken from the filing of a proposal to a decision varies, depending on the nature of the proposal and the contents of the submission. However, the majority of proposals are considered by the Board and decisions reached by the Government within thirty days of lodgement. While the legislation provides for a period of 30 days by which time a decision must be taken by the Treasurer, many proposals are completed before the expiry of 30 days. The average time taken to process all proposals submitted under the Government’s foreign investment policy in 1992-93 was 15 days.

*6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is required. Description of appeal processes and the average time for an appeal to be considered.*

There are no formal appeal procedures under the foreign investment legislation. However, it is always possible for foreign investors to resubmit a proposal previously considered inconsistent with policy for further consideration.

*7. Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

There is no formal “fast tracking” procedure, though foreign investors frequently request and receive expedited review.

*8. List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (addresses, and phone/fax numbers for these agencies).*

As stated in section B(1)(ii)(6) above, there are no formal appeal procedures under the foreign investment legislation. Any complaints regarding foreign investment are dealt with by the Foreign Investment Review Board. The address and relevant phone/fax number for the Board can be found in section B(1)(ii)(4) above.

*9. List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

The Foreign Investment Review Board is charged with monitoring compliance with the Government’s foreign investment policy. There are substantial penalties for a number of offences against particular sections of the *Foreign Acquisitions and Takeovers Act 1975* including non-compliance with the notification provisions of sections 26 and 26A . If the Government approves a proposal subject to conditions and the parties implement the proposal but do not comply with the conditions, they commit an offence (section 25(1C)). Failure to comply with an order made by the Treasurer is an offence (section 30) and provision of false or misleading information is also an offence (section 36A). The Treasurer may also make orders to block or unwind any schemes entered into for the sole or dominant purpose of avoiding the provisions of the Act (section 38A).

*10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime, and indicate the nature of these processes.*

The Government considers submissions from companies, industry bodies and individuals, both Australian and foreign, seeking changes to particular aspects of the Government's foreign investment policy. The Government, through the Foreign Investment Review Board, continually monitors community and business sector concerns about the policy and its impact and reviews the relevant parts of the policy, where appropriate. However, there is no formal process of consultation inviting public comment when changes are being considered to foreign investment policy. Relevant Government departments are consulted prior to proposed changes to foreign investment policy with implications for their area of policy responsibility.

*11. Where applicable, the role for sub national agencies in the approval process.*

State governments, usually through their Department of State Development (or similar), provide advice on request to the Foreign Investment Review Board concerning those foreign investment proposals relevant to their responsibilities. The Commonwealth Government has the legislative power in relation to foreign investment in Australia generally.

However, many States are involved in the operational phase of major investment projects by expediting project approvals by government departments and agencies, assisting with the negotiation of key project cost items (eg. energy costs), providing advice on availability of government services, etc.

## **2. Most favoured Nation Treatment / Non-discrimination between Source Economies**

*1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).*

Australia's foreign investment policy is applied on a non-discriminatory basis as to source country of investment funds.

*2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.*

There are no applicable international agreements which provide for MFN exceptions in relation to the administration of Australia's foreign investment policy.

### **3. National Treatment**

*1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).*

Australia's foreign investment policy, by its nature, discriminates between foreign investors and domestic investors. Australia is therefore unable to commit itself to the provision of national treatment. A list of the laws, regulations and policies which provide exceptions to national treatment has been provided in section B(1).

*2. Description of the nature and scope of any limitations on foreign firms' access to sources of finance.*

The Australian Securities Commission regulates the securities markets in Australia. The securities of foreign corporations (including bonds) must comply with the Corporations Law which has various requirements for the provision of a prospectus in relation to the offering of securities. The requirements are quite stringent.

However under the discretionary powers conferred on it, the Commission has provided relief from the prospectus provisions for foreign companies issuing securities in Australia. This relief takes two forms. Firstly, the Commission has issued a number of class instruments (Class Orders) pertaining to the conditions under which the Commission will grant relief from the prospectus provisions to foreign companies. In addition, the Commission has released a policy statement on relief granted to foreign corporations. The statement describes the rationale for the relief and explains in detail the conditions under which relief will be granted on the application to the Commission by a foreign corporation.

Foreign corporations wishing to raise funds in Australia by issuing securities are advised to make an application to the offices of the Australian Securities Commission.

### **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

There are no restrictions on the repatriation of capital and earnings by foreign investors related to foreign investment.

*2. Brief description of the foreign exchange regime.*

Exchange rates are determined on the basis of demand and supply conditions in the exchange market, but the Reserve Bank of Australia retains discretionary power to intervene in the foreign exchange market. There is no official exchange rate for the Australian dollar. There are no taxes or subsidies on purchases or sales of foreign exchange. Authorised foreign

exchange dealers may deal among themselves, with their customers, and with overseas counterparties at mutually negotiated rates in any currency.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions on the convertibility of currencies for the overseas transfer of funds.

## **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

There are three visa subclasses which facilitate the entry of non-resident staff of foreign firms: Subclass 413 Executive (overseas), Subclass 414 Specialist, and Subclass 456 Temporary Business Entry.

Subclass 413 Executive (overseas) facilitates the entry of senior management personnel to join established businesses in Australia. Executives coming for more than four months need to be sponsored by their intended employer in Australia. The level of the executive position determines what criteria need to be met for the sponsorship to be approved. For example, labour market requirements (ie showing no one is available locally) are a discretionary criterion which could be applied to the lower level executive positions.

Approved visa applicants in this subclass would normally receive an initial stay of 4 years (unless a shorter period was requested) with a multiple entry visa. There is no restriction on the number of further visas which can be issued to an executive to allow a stay beyond the initial four years, as long as the criteria continue to be met.

Subclass 414 Specialist facilitates the entry of people with trade, technical or professional skills who are needed by an Australian employer for a limited period. Specialists coming for more than four months must be sponsored by their intended employer in Australia. Before a visa application can be approved the employer will need to show that the position is a genuine vacancy, Australian levels of wages and conditions will apply, the position is full-time and the employer has a satisfactory training record.

In addition, the employer will need to show that there is no one available locally who is suitable for the position. Streamlined processing requirements apply to all cases where a stay of less than 12 months is involved.

Both subclasses 413 and 414 require visa applicants to obtain health clearances for stays of more than 12 months.

The Subclass 456 Temporary Business Entry (TBE) visa was introduced on 1 November 1995 and provides for short-term (3 months), multiple travel business entry for a period of 5 years or for the life of passport, whichever is the greater, up to a maximum of 10 years. It replaced the short- and long- term business visitor provisions (Classes 672 and 682) and is

geared to the business person who may need to travel at a moment's notice, at various times over an extended period and for reasons which might vary from one visit to another.

From 1 July 1996, Subclasses 413 and 414 will also be absorbed into a single subclass offering new streamlined arrangements for longer stay (ie more than three months) Temporary Business Entrants. The new subclass will facilitate the entry of all managerial, executive, specialist and trainee personnel, who are needed for periods of up to four years. Companies of good standing will be able to bring in key personnel much more quickly through streamlined sponsorship arrangements which provide for the waiving of labour market and skills testing, and much simpler and faster health assessment procedures.

The reforms of the temporary entry of key personnel reflect the Australian government's continuing commitment to integrate immigration policies with overall government policies for internationalisation and increasing business growth and competitiveness.

*2. List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

There is only one mandatory condition which applies to the main visa applicant in the executive (Subclass 413) and the specialist (Subclass 414) subclasses. Both subclasses apply the work condition that "the holder must not change employer or occupation in Australia without the permission in writing of the Secretary". This means the executive or specialist worker must have approval of the Department of Immigration and Ethnic Affairs before he or she can work for a new employer or indeed substantially change his or her primary duties for the existing employer.

There are no work restrictions on the dependants of executive or specialist workers. Dependants are free to take up any employment position while the main visa applicant continues to be employed in Australia and holds a visa which is in force.

The only restrictions that apply to Subclass 456 Temporary Business Entry are on the nature of work that may be undertaken by the applicant and that accompanying family members must be genuine visitors. The work restriction is based on a criterion that the activities which the holder engages in are not activities which could be done by an Australian permanent resident.

*3. Description of any regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

Australia has a system of industrial awards, set by independent tribunals in both the State and Federal jurisdictions, which specify minimum wages and conditions of employment. Approximately 80% of wage and salary earners are covered by industrial awards. In the Federal jurisdiction almost 3000 awards regulate wages and conditions - the twenty largest of these awards cover around 700,000 of the estimated three million federally covered employees.

Awards may be occupationally based and, consequently, may overlap between industry sectors; industry based; or enterprise based. Each award contains a range of minimum wages which relate to various occupational classifications and are based on skill and responsibility.

The Federal tribunal (known as the Australian Industrial Relations Commission (or AIRC)) has the power to set minimum wages for workers who are not covered by either a State or a Federal award and who have no access to a State arbitrator. However this can only be done on application from the employees concerned or a registered trade union representing them. This potentially covers the estimated 20% of the workforce which has no award coverage. The Commission may also issue orders for equal pay in support of claims made on the basis that men and women are doing work of the same value. The AIRC has not, as yet, exercised either of these powers.

The AIRC also has the power to hear unfair dismissal claims for Federally covered employees and for those State covered employees who do not have an adequate remedy under State laws. In those cases where agreement cannot be obtained, employees can apply to the Industrial Relations Court for an order granting compensation or reinstatement.

Federal legislation also provides a right to unpaid parental leave of up to 52 weeks for employees who have been with their employer for at least twelve months.

Unlike the Federal government, which is constrained by the Australian constitution in its power to set overall wages and conditions within its jurisdiction, State governments have always had this power, although they have not always exercised it. A recent example of a State government exercising its power to set minimum wages is in the State of Western Australia where the government has legislated to create a single overall minimum wage for all workers within its jurisdiction.

Since 1992, the Federal government has progressively introduced a much more decentralised industrial relations framework for federal award workers, which focuses on encouraging employers, employees and unions to negotiate more of their wages and conditions through enterprise bargains. Enterprise bargaining agreements must not disadvantage employees in relation to the award as a whole, but allow negotiation of above-award conditions to be conducted at the enterprise level. The role of the AIRC, in regard to the maintenance of minimum wages, is now mainly concerned with providing increases to minimum wages in awards for those workers who are genuinely unable to obtain increases at the enterprise level. Broadly similar trends towards decentralisation have occurred in all of the State jurisdictions in Australia.

#### *4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

Responsibility for industrial relations is shared between the Commonwealth and six State Governments. In each case, Australian domestic law does not discriminate between foreign and locally owned enterprises. Accordingly, a foreign firm employing Australian workers has exactly the same rights and obligations as any local firm in a similar situation.

Legal obligations vary in detail from one jurisdiction to another. Regulatory arrangements and the mechanisms available for resolving industrial conflict, however, are broadly similar.



Overlap between federal and State powers in relation to industrial matters means that workers and businesses are in many instances subject to a range of both federal and State laws. This gives rise to jurisdictional issues which frequently hinge on whether the union involved in a particular matter is formally registered in the federal or one of the State industrial relations systems. Both federal and State jurisdictions have placed a greatly increased emphasis on bargaining at the enterprise level.

In each jurisdiction legislation provides for the settlement of industrial disputes by way of third party arbitration as well as by direct negotiation and other informal means. As a general rule any industrial dispute may be brought before the relevant industrial tribunal at the behest of either party. In Victoria, however, a dispute between employers and workers not covered by the federal system may only be dealt with by that State's industrial tribunal if both parties agree.

Determinations made by industrial tribunals (frequently made in the form of "awards") create legally binding obligations on employers and employees. The terms of such awards and determinations are enforceable through the courts. Apart from their role in resolving specific disputes, industrial tribunals play an important part in determining minimum standards covering terms and conditions of employment in relation to matters such as wages, hours, superannuation entitlements and termination of employment.

Certain minimum conditions are prescribed in federal and State legislation. They include occupational superannuation, long service leave, public holidays, occupational health and safety, maternity leave and unpaid parental leave, equal employment opportunity, termination of employment, and conditions of public sector employment.

Federal and State laws thus complement conditions set down by industrial tribunals and contractual arrangements.

Industrial action has declined in frequency since the early 1980s. The Australian system seeks to encourage the resolution of industrial disputes through direct negotiation or by third party arbitration. The overwhelming majority of disputes are settled by such means and, increasingly, awards and determinations have established grievance handling procedures for resolving disputes at the enterprise level without the need for third party intervention.

At the federal level strikes and lock-outs are lawful in certain circumstances.

Unlawful industrial action may lead to: the imposition of penalties under federal and State industrial relations legislation; common law actions for damages, the invocation of essential services legislation (in those jurisdictions where such legislation exists); union deregistration, involving loss of right to exclusive membership coverage; suspension and/or cancellation of awards; imposition of penalties under grievance handling arrangements and other informal measures agreed to by the parties themselves; and/or informal sanctions imposed by industrial tribunals (such as refusal to hear or decide a matter until industrial action ceases).

Those affected by unlawful industrial action may seek redress both through the industrial tribunals and the courts.

The industrial tribunals play a significant role in bringing industrial action to an end and have the capacity to discipline unions and employers which fail to comply with accepted industrial

practice and specific principles set down by each tribunal to govern the exercise of its authority.

Injunctions restraining individuals and unions from continuing with industrial action are the most common form of relief sought through the courts, although in a relatively small number of cases damages have been awarded.

***Federal: Industrial Relations Act 1988***

The Act provides for Certified Agreements between employers and unions and Enterprise Flexibility Agreements between employers and their employees. Enterprise Flexibility Agreements provide limited rights for unions to be involved. The level of bargaining is primarily at the workplace or enterprise level although multi-employer agreements can also be made.

***State***

***New South Wales: Industrial Relations Act 1991***

The Act provides for Enterprise Agreements at the single enterprise level. There is no requirement for union involvement. One or more unions, however, may be party to agreements.

***Victoria: Employee Relations Act 1992***

The Act provides for Employment Agreements which may be individual or collective with one or more employers. There is no requirement for union involvement.

***Queensland: Industrial Relations Act 1990***

The Act provides for Certified Agreements and Enterprise Flexibility Agreements. The level of bargaining is primarily at the workplace or enterprise level although multi-employer agreements can also be made. Requirements for union involvement are similar to those provided for in the federal legislation.

***Western Australia: Industrial Relations Act 1979 or Workplace Agreements Act 1993***

Provision is made for Industrial Agreements under the *Industrial Relations Act* and Workplace Agreements under the *Workplace Agreements Act*. Industrial Agreements can be single or multi-employer agreements between employers and unions. Workplace Agreements cover single employers, are either individual or collective with one or more employees and are between employers and employees. Unions may be bound by a Workplace Agreement if they give certain undertakings and may act as bargaining agents for employees entering Workplace Agreements.

***South Australia: Industrial and Employee Relations Act 1994***

The Act provides for Enterprise Agreements at the enterprise level. Agreements are primarily made between an employer and their employees, however, a limited role for unions to be party to an agreement is available when authorised by the majority of employees.

***Tasmania: Industrial Relations Act 1984***

The Act provides for Enterprise Agreements at the single enterprise level. There is no requirement for union involvement but agreements may be made with one or more unions that represent employees.

## **6. Taxation**

*1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

### ***Corporate Income Tax Rates***

Generally speaking, resident companies are liable to tax on their total income from sources both within and outside Australia, whereas non-resident companies are liable only on their Australian income. Company income tax is applied at a flat rate of 36% (for most companies) on the amount remaining after deducting from assessable income all allowable deductions. It is also applied to real (after inflation) capital gains.

Australia has an imputation system for the taxation of dividends paid by resident companies which passes on to individual taxpayers credit for tax paid by the company. When dividends are distributed, the company tax paid on the income underlying the distribution is credited against the income tax payable by non-corporate shareholders. While excess credits can be used to offset other Australian income tax liabilities they cannot be refunded.

An income loss (capital loss) incurred in any income year can be carried forward for tax purposes and offset against income (capital gain) from future years until absorbed, provided a continuity of business or ownership test is satisfied. The loss may be transferred to another company provided there is 100% common ownership. There is no carry back of losses.

Accelerated depreciation rates apply to plant and equipment.

### ***Indirect Taxes***

The main indirect tax imposed by the Commonwealth Government is the wholesale sales tax (WST). WST is imposed upon the final wholesale sale of goods. Services are exempt from WST, as are many goods (including most inputs to goods production). The other main Commonwealth indirect tax is customs and excise duties; these are imposed on petroleum products, alcoholic beverages and tobacco.

Indirect taxes imposed by State governments include payroll taxes, taxes on certain financial transactions, and franchise fees imposed upon sellers of petroleum, alcohol and tobacco.

### ***Depreciation Arrangements***

Plant and equipment is eligible to be depreciated at rates which are accelerated beyond effective life rates. The accelerated rates are particularly generous for assets with long effective lives. Taxpayers may choose prime cost or diminishing value methods of depreciation, although once depreciation has been claimed for an asset under one method it must continue to be depreciated under that method. The rates applying to plant and

equipment acquired or commenced to be constructed after 26 February 1992 and the corresponding implied write-off lives are:

Effective Life Class	Depreciation Rate Prime cost	Depreciation Rate Diminishing Value	Implied Write-Off Life
Years	%	%	Years
Less than 3	100	100	1
3 to less than 5	40	60	2.5
5 to less than 6 <sup>2</sup> / <sub>3</sub>	27	40	3.75
6 <sup>2</sup> / <sub>3</sub> to less than 10	20	30	5
10 to less than 13	17	25	6
13 to less than 30	13	20	7.5
30 and over	7	10	15

Capital expenditure on the construction of industrial buildings is able to be written off at the rate of 4% per annum on a straight line basis. Other income producing buildings and structural improvements are eligible to be written off at 2½% per annum.

### ***Development Allowance***

The development allowance is a special short term program that offers certain large-scale projects with a capital cost of \$50 million or more an extra tax deduction of 10% of the capital cost of plant and equipment. It is additional to depreciation.

- To receive the allowance, projects must meet criteria designed to ensure that they are world competitive in respect of proposed work practices and that prices of significant production inputs will be economic and efficient.
- To be eligible for the development allowance, projects must commence by 30 June 1996 and the plant must be installed ready for use or first used for the production of assessable income no later than 30 June 2002. Applications for projects to receive the allowance must have been received by the Development Allowance Authority by the end of 1992.

Although the deadline for applications for the development allowance has passed, the provisions allow for investors to take over a project that has already been registered.

### ***Research and Development (R&D) Tax Concession***

A deduction of 150% is allowable for qualifying expenditure incurred on research and development activities carried on in Australia. A company's total research and development expenditure for the year must be greater than \$20,000 to qualify for the full concession.

The concessional deduction is available to companies, partnerships of companies and to public trading trusts. To be eligible for the concession, the company must be registered with the Industry Research and Development Board.

Certain research and development activities carried on outside Australia are eligible for the tax concession. The value of overseas research and development that qualifies for the

concession is limited to 10% of the value of the research and development associated with the project.

Expenditure on plant, including pilot plant, used exclusively for research and development is deductible at a rate of 150% over three years.

Syndicates can be formed to finance R&D expenditures. The expenditure threshold for syndicated research and development is \$500,000. Where research funded by a syndicate is undertaken on the basis that investors are not at risk, the allowable deduction is limited to 100% of that expenditure.

The concession may be denied to a syndicate if the Industry Research and Development Board considers a particular finance scheme to have been established to exploit the availability of the concession, or expenditure is incurred by a company to a government body or private sector tax exempt entity and the company is guaranteed a return on the expenditure.

### ***Offshore Banking Units (OBUs)***

Australia introduced a concessional tax regime in 1992 for financial institutions engaged in offshore banking to promote Australia as a regional financial centre. OBUs are taxed at 10% and interest paid to eligible borrowers is exempt from IWT.

Authorised banks, state banks and authorised foreign exchange dealers may seek authorisation from the Treasurer to register as OBUs. Many approved OBUs are subsidiaries of foreign banks.

OBUs may engage in a range of approved activities including borrowing and lending, providing certain types of guarantees, trading in certain assets, managing portfolios, financial advice and hedging operations. Fees earned by OBUs from gold borrowing and lending are exempt from IWT.

### ***Infrastructure Borrowings***

The taxation system provides for a category of non-assessable/non-deductible borrowings (referred to as infrastructure borrowings) to encourage genuine private sector investment in eligible publicly accessible private infrastructure located within Australia. A tax rebate of 36% may be taken as an alternative to the non-assessable income arrangement. The maximum term of the tax concession is 15 years.

Eligible infrastructure includes: air transport; seaports; electricity generation, transmission or distribution; gas pipelines; water supply; sewerage or wastewater treatment projects; and land transport.

### ***Pooled Development Funds***

For the 1994-95 income year and subsequent years, a concessional rate of 15% applies to Pooled Development Funds (PDFs) for income derived from investment in small and medium sized businesses. All other income derived by PDFs is subject to tax at a rate of 25%.

Dividends paid by PDFs are tax exempt or, if the dividend is franked, the shareholder may elect to be taxed on the dividend (grossed up by the imputation credit, in the case of an individual) and receive the imputation credit. Gains on the disposal of PDF shares are tax exempt. Dividends paid to non-residents are not subject to dividend withholding tax.

PDFs must be registered and comply with a number of restrictions on shareholdings and requirements such as management expertise and fund structure.

### ***Double Taxation Agreements (DTAs)***

Australia has an extensive network of double tax agreements. Agreements have been signed or are in process with all APEC member countries except Brunei and Hong Kong. Australia also has DTAs with all its major trade and investment partners beyond APEC, and has an ongoing negotiation program to update and extend its DTA network.

### ***Dividend Withholding Tax (DWT)***

Franked dividends (dividends paid out of profits subject to Australian company tax) are exempt from DWT. Unfranked dividends (dividends paid out of untaxed profits) payable to non-resident shareholders are subject to DWT of 30%, but this is reduced generally to 15% if a double taxation agreement exists between Australia and the shareholders' country of residence.

Certain foreign source dividends which flow through Australian holding companies to non-resident shareholders are also exempt from DWT.

### ***Interest Withholding Tax (IWT)***

IWT applies, in general, to interest derived in Australia and paid to non-residents, including where the interest is an outgoing of an Australian business. The amount of tax paid is 10% of the gross interest and the rate is generally unaffected by Australia's foreign tax treaties. It is the final Australian tax on the interest.

The two principal areas exempted from IWT include certain publicly issued or otherwise widely distributed debentures, and certain non-resident lenders exempt from income tax in Australia and in their home country. Other exemptions also apply.

### ***Royalty Withholding Tax (RWT)***

Royalty payments to non-residents are subject to RWT of 30%, but this is reduced generally to 10% if a double taxation agreement exists between Australia and the shareholders' country of residence.

### ***Thin Capitalisation***

Foreign controlled companies may be affected by Australia's thin capitalisation rules. These rules aim to prevent profits being shifted offshore in the form of interest payments and operate by placing limits on the amount of deductible interest costs allowed in respect of debt provided by a "foreign controller" or non-resident associates of foreign controllers. "Foreign controllers" are usually the overseas parent of an Australian subsidiary.

In effect, interest costs on debt from a foreign controller are only allowable if the debt does not exceed a foreign debt/equity ratio of 3:1 (or 6:1 in the case of financial institutions). The rules do not prevent debt funding by the foreign controller but merely deny interest deductions where the thin capitalisation ratios are exceeded.

In calculating the thin capitalisation ratio, “foreign debt” includes debt from the foreign controller but not from related resident parties. The rules differ slightly for branches of foreign banks.

### ***Transfer Pricing***

Australia’s transfer pricing rules require that companies adhere to the arm’s length principle (ALP) when setting prices on international transactions with related parties. The purpose of the rules is to prevent the shifting of profits offshore. Australia’s position on the ALP and acceptable methodologies is consistent with the 1995 Organisation for Economic Cooperation and Development (OECD) report *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.

In certain circumstances, taxpayers may wish to seek an Advance Pricing Agreement with the Australian Taxation Office to ensure greater certainty, minimise the possibility of future double taxation, and reduce ongoing compliance costs.

### ***Debt Creation Rule***

These rules aim to prevent related parties from using debt to finance the transfer of assets from one related party to another where the buyer and seller are at least 50% controlled by a non-resident or a related non-resident. The rules operate by denying the interest deductions on debt of this nature.

### ***Taxation of Australian Branches of Foreign Companies***

The Australian-source income of Australian branches of foreign companies is taxed no differently from other Australian businesses. There is no branch profits tax in Australia.

## **7. Performance Requirements**

*1. Brief description of any performance requirements that could impose limits on trade and investment and indicate any “Trade Related Investment Measures” (TRIMS).*

There are no performance requirements imposing limits on trade and investment or any TRIMS in Australia.

## 8. Capital Exports

*1. List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

A maximum of US\$100,000 can be exported out of Australia on a person. Any larger amounts must be transferred through the banking system.

*2. List and brief description of any regulations/institutional measures that limit technology exports.*

Regulations	Application and function
The Australian government controls the exportation of technologies from Australia under the Customs Act 1901 through the Customs (Prohibited Export) Regulations.	<p>Export controls cover a wide range of defence and related goods and technologies, including technology with both civil and military applications.</p> <p>Controls on the export of defence and related goods and dual-use goods are administered by the Commonwealth Department of Defence. Applications are considered on a case by case basis by this department taking into account strategic, foreign policy and economic factors as well as human rights concerns. Successful applicants are issued with export permits (valid from 6 to 12 months) and/or licences (valid from 12 to 24 months).</p>

## 9. Investor Behaviour

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

Special taxation considerations can arise in respect of proposals by foreign governments or other agencies to invest in Australia. The Government requires commercial investments in Australia by foreign governments or their agencies to be structured in a manner which enables all normal taxes and other charges to be levied and which prevents questions of sovereign immunity from arising.



## 10. Other measures

1. Briefly outline the competition policy regime.

### Competition Laws

Australia's primary competition laws are contained in the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983*. The laws consist of rules against certain types of anti-competitive conduct (the competitive conduct rules) and price oversight.

The competitive conduct rules contained in Part IV of the Trade Practices Act prohibit anti-competitive agreements including primary and secondary boycotts; the misuse of market power; exclusive dealing; resale price maintenance; and mergers which are likely to substantially lessen competition in a substantial market.

Most of the rules are subject to a competition test, ie the conduct is only prohibited if it substantially lessens competition in the relevant market. Some types of conduct (collusive price-fixing, third-line forcing, primary boycotts, and resale price maintenance) are subject to a *per se* prohibition (ie no competition test).

The Prices Surveillance Act establishes a price oversight regime administered by the Australian Competition and Consumer Commission (ACCC). Under the regime, there are three types of oversight - surveillance, monitoring and public inquiries. Surveillance acts to restrain or limit price increases. Surveillance is triggered by a Ministerial direction and is applied where there is a concern about prices in a significant market where competition is weak or ineffectual. Presently 28 firms in eight industry sectors in Australia are subject to declarations. Declared firms must notify the ACCC prior to increasing specified prices. Proposed price increases are generally objected to where they are not supported by higher production costs. The system largely relies on moral suasion, firms are not compelled to comply with the ACCC's objections. In the past, however, declared firms have on all occasions followed the (then Prices Surveillance Authority's) recommendations. The outcome of notifications are placed on the public register.

Under monitoring, the ACCC collects data on the prices, costs and profits in an industry or business and provides a report on its findings, as directed by the Commonwealth Minister. Monitoring is intended to provide information on the industry's performance and whether any other policy actions are required. The ACCC holds public hearings in relation to the level of prices for the supply of particular goods or services, as directed by the Commonwealth Minister. The prices of goods and services to be subject to the inquiry are not to be increased until the inquiry has been completed.

### The National Competition Policy

In April 1995 the Council of Australian Governments (COAG), consisting of the Commonwealth, State, Territory and local governments, agreed to a National Competition Policy. The policy is based on the recommendations in the Hilmer Report, which followed a comprehensive review of competition policy in Australia. It draws together various strands of microeconomic reform into a cohesive policy which extends beyond the competition laws in the Trade Practices Act, to principles and processes for future reform.

The National Competition Policy consists of six essential elements:

- universal application of the competitive conduct rules contained in the Trade Practices Act to all sectors of the Australian economy.
- the review of legislation which restricts competition to ensure that such restrictions are necessary to achieve the objects of the legislation and that there is a net benefit to the community as a whole as a result of the restriction.
- structural reform of public monopolies where a government has decided to introduce competition or undertake privatisation.
- enabling access to services provided by means of significant infrastructure facilities.
- price oversight of firms (including government businesses) with a high degree of market power.
- competitive neutrality principles which state that government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.

### **Competitive Conduct Rules**

#### *Extension of coverage*

The National Competition Policy provides for the competitive conduct rules in Part IV of the Trade Practices Act to be extended to all businesses operating in the Australian economy. That Act already applies to the vast majority of commercial transactions, but certain transactions involving unincorporated businesses and State and Territory Government businesses are outside the current coverage of that Act.

#### *Exemptions from the competitive conduct rules*

The National Competition Policy provides for the removal of many of the existing exemptions from the competitive conduct rules. There are now two types of exemptions:

- the authorisation/notification process set out in the Trade Practices Act; and
- legislative exemptions by the Commonwealth, States and Territories.

Authorisation is a process whereby the ACCC, upon application, grants immunity from legal proceedings for conduct that might otherwise breach the competitive conduct rules, where the conduct is likely to produce a net public benefit. Exclusive dealing conduct may also receive immunity from court action under a simple notification scheme until, and if, it is revoked by the ACCC, where it is of the opinion that there is no net public benefit from the conduct.

Legislative exemptions must comply with the legislation review principles (below).

## **Legislation Review**

The guiding principle in review is that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can *only* be achieved by restricting competition.

Each government has agreed to develop a timetable by June 1996 for the review and, where appropriate, reform of all existing legislation that restricts competition by the year 2000 to ensure compliance with the principle.

## **Structural Reform of Public Monopolies**

Each government has agreed to abide by various principles in the reform of public monopolies.

Before introducing competition into a sector traditionally supplied by a public monopoly, governments have agreed to remove from the public monopoly any responsibility for industry regulation, and to relocate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its rivals.

Also, before introducing competition into a market traditionally supplied by a public monopoly, and before privatising a public monopoly, governments will undertake a review into a range of matters, including the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly, the merits of separating potentially competitive elements of the public monopoly, and the community service obligations undertaken by the public monopoly.

## **National Access Regime**

The importance of access to certain key infrastructure facilities, such as electricity grids or gas pipelines, in encouraging competition in related markets, such as electricity generation or gas production, is recognised in the National Competition Policy.

### *Legislated access regime*

The *Competition Policy Reform Act 1995* inserts new Part IIIA into the Trade Practices Act which establishes a legal regime providing for third party access to a range of facilities. A single facility might provide a number of services, to which access may be essential for enhanced competition in some cases but not in others. For this reason, the legislation focuses on a service provided by means of a facility.

There are two mechanisms for the provision of third party access:

- (a) a potentially compulsory process, whereby the service is “declared” and then is the subject of arbitration by the ACCC if the parties cannot agree on any aspect of access; and

- (b) a voluntary process, whereby a service provider can offer the ACCC an undertaking which sets out the terms and conditions on which it will offer third party access.

The legislation does not set out the facilities which can be subject to the compulsory process. However, a number of factors must be satisfied in order for a service to be declared. For instance, the facility must be of national significance and it must be uneconomical for anyone to develop another facility to provide the service.

### **Price Oversight**

As noted above, at the Commonwealth level, there are three levels of price oversight (not control) - surveillance, monitoring and inquiries.

The policy permits the States and Territories to establish their own price oversight regimes for State/Territory-owned enterprises which have significant market power. The Commonwealth surveillance regime will only be applied to those enterprises with the agreement of the State/Territory concerned, or where the State/Territory regime is ineffective.

### **Competitive Neutrality**

Each government has agreed to abide by principles of competitive neutrality in respect of government businesses. The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.

In order to neutralise any net competitive advantage, the agreement sets out a number of measures to be applied to significant government businesses including corporatisation, imposition of full taxes (or tax equivalents), debt guarantee fees, and imposition of regulation on an equivalent basis to the private sector. In some instances, pricing principles can be used instead of these measures.

#### Administrative Arrangements

Overall responsibility for competition policy lies with the Treasurer. Various aspects of the national competition policy (ie enforcement of competitive conduct rules, access, and price oversight) are administered by a general regulator, the Australian Competition and Consumer Commission (ACCC). The National Competition Council (NCC) provides assistance under the access and price oversight regimes, and with other aspects of competition policy in accordance with requests from the Commonwealth and State and Territory governments.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

Intellectual property rights are protected in Australia by virtue of specific statutes, namely, the *Copyright Act 1968* (Copyright Act), the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Designs Act 1906*, the *Plant Breeder's Rights Act 1994* and the *Circuit Layouts Act 1989*.

Other legislation and common law rights are also available, in many instances, to protect intellectual property rights. Australia is a party to many of the international multilateral intellectual property conventions including the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Geneva Convention for the Protection of Producers of Phonograms against the Unauthorised Duplication of their Phonograms, the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, the Paris Convention for the Protection of Industrial Property and the Agreement on Trade Related Aspects of Intellectual Property Rights. The requirements of these conventions are met or exceeded by the Australian legislation referred to above.

As a result of Australian membership of these conventions and Australian laws, foreign holders of intellectual property rights in Australia are generally given the same protection as Australian nationals and residents.

For example, the Copyright Act provides copyright protection for original literary, dramatic, musical and artistic works for the life of the author plus fifty years. Copyright in audio-visual materials such as films, sound recordings, and radio and television broadcasts is also subject to protection under the Copyright Act, generally for fifty years. The copyright in the published edition of works is protected for twenty-five years. Anyone who does acts that are the exclusive right of the owner without permission will prima facie infringe copyright. Protection under the Copyright Act for foreign authors, producers and performers is based on the concept of national treatment to the extent of treaty obligations.

In all cases where there has been infringement of copyright the copyright owner is able to take action for infringement, for example, by seeking an injunction and/or damages. These remedies provide an effective means for copyright owners to enforce their copyrights within the framework provided in the civil provisions in the Copyright Act. There are also criminal provisions in the Copyright Act which provide sanctions in some circumstances, such as commercial piracy of copyright materials. The maximum penalties for commercial piracy are high - severe fines or imprisonment in some cases - and are considered adequate to prevent most significant copyright abuses which justify an application of the criminal law. Enforcement action by authorities is under review to ensure it is adequately and appropriately targeted.

There are also strong enforcement mechanisms in the other intellectual property statutes which owners of intellectual property rights successfully use.

In overall terms, intellectual property laws in Australia provide a high level of protection and enforcement for intellectual property materials, and as such would be conducive to further foreign investment in Australia.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

*1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

Not applicable.

2. *Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.

## **2. Settlement of Disputes**

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and provide addresses and telephone/fax numbers of these agencies.*

In general, for settlement of disputes associated with their investment in Australia, foreign investors would have access to the same courts and tribunals as domestic investors, provided that jurisdiction over the dispute could be established. In addition, they would have access to a range of alternative dispute resolution mechanisms, such as arbitration, mediation and conciliation, expert determination and appraisal and so on.

Agencies - State and Territory Supreme Courts; Federal Court of Australia

Alternative Dispute Resolution Agencies - There are a number of private sector organisations providing alternative dispute resolution services and facilities across Australia for both international and domestic dispute resolution. Further information on the facilities available can be obtained from Chambers of Commerce and Industry, and Law Societies in each State and Territory.

2. *Signatory or accession to the ICSID Convention*

Australia signed the ICSID Convention on 24 March 1975 and ratified it on 2 May 1991. The Convention entered into force for Australia on 1 June 1991 and is given effect under the *International Arbitration Act 1974 (Cth)*.

It is standard practice for Australia to include a clause in its bilateral investment protection agreements enabling disputes between a Contracting Party to the agreement and a national of the other party to be referred to ICSID for conciliation and arbitration under the ICSID Convention provided both Parties to the agreement are Contracting States under the ICSID Convention.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.

Program	Contact point
<p><b>Commonwealth Investment Programs:</b></p> <p>The Investment Promotion and Facilitation Program (IP&amp;F) was established in 1987 as the Investment Promotion Program to promote foreign investment in Australia's manufacturing and services sectors. In 1993 the functions of the Program were widened to take on responsibility for major projects facilitation and the attraction of regional headquarters to Australia. The Program is managed jointly by DIST and Austrade.</p> <p>The objectives of the Program are to:</p> <ul style="list-style-type: none"> <li>• promote, encourage and attract domestic and foreign investment in Australia;</li> <li>• identify and propose means to remove systemic and specific impediments to investment; and</li> <li>• enhance the coordination of activities concerning investment promotion, facilitation and removal of impediments, at Commonwealth, State and Territory levels.</li> </ul>	<p>Assistant Secretary Investment Promotion &amp; Facilitation Dept of Industry, Science and Tourism (DIST) 51 Allara Street CANBERRA ACT 2600 Telephone: (61 6) 276 1690 Fax: (61 6) 276 1213</p> <p>General Manager Investment Australia Austrade GPO Box 5301 SYDNEY NSW 2001 Telephone: (61 2) 390 2036 Fax: (61 2) 390 2713</p>
<p>All State and Territory Governments around Australia are actively involved in investment promotion. They have dedicated investment promotion personnel based domestically and most have representatives abroad who offer facilitation services to investors.</p>	<p><u>New South Wales</u> Executive Director International Business Group Dept of State Development Level 27, State Office Building 74-90 Phillip Street SYDNEY NSW 2000 Telephone: (61 2) 228 5023 Fax: (61 2) 228 5752</p> <p><u>Victoria</u> General Manager Promotion &amp; Strategy Implementation Dept of Business &amp; Employment PO Box 173</p>

	<p>EAST MELBOURNE VIC 3002  Telephone: (61 3) 9412 8311  Fax: (61 3) 9416 0542</p> <p><u>Queensland</u>  General Manager  Trade &amp; Investment Development  Dept of the Premier, Economic &amp;  Trade Development  PO Box 185  ALBERT ST QLD 4002  Telephone: (61 7) 224 8573  Fax: (61 7) 835 1002</p>
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2. *Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

Program (National/sub-national)	Nature of incentive
<p><b>Commonwealth Incentives:</b></p> <p>A range of Commonwealth organisations provide subsidies and financial assistance for investors. Generally speaking, the treatment of foreign investors is the same as that afforded to domestic investors.</p> <p>Australia has one of the lowest ratios of tax revenue to GDP in the OECD. The current company tax rate is 36%. Substantial accelerated depreciation is available for longer lived items of plant equipment. As well, some foreign source dividends passed through a resident company to a non-resident shareholder are exempt from tax, thereby removing a significant impediment to international companies transferring dividend income through Australia.</p>	<p>A tax concession is available for corporate R&amp;D expenditure which allows deductions of up to 150% of R&amp;D spending against company income. Companies also have access to grants and concessional loans for research and development or product development. The maximum grant or loan is 50% of project costs, and grants are provided on a competitive basis.</p> <p>In addition, export incentives in the form of the Export Market Development Grant Program and Duty Drawback Scheme, and assistance to companies for training employees are available.</p> <p>The Commonwealth's Feasibility Study Fund aims to encourage new investment in value-adding, advanced manufacturing and internationally traded services. Subject to eligibility criteria, funding support of up to \$50,000 is provided by the Commonwealth towards the cost of undertaking prefeasibility or feasibility studies.</p>
<p><b>State and Territory Incentives:</b></p> <p>Most State and Territory Governments offer incentives to</p>	<p>Some States offer specific assistance packages for the attraction of Regional Headquarters, which involve the reduction or removal of payroll taxes, land taxes</p>



<p>encourage new investments. The provision of financial assistance is not an automatic right, however. The level of assistance offered is assessed on a case-by-case basis and takes into account the economic benefits that will flow to the State/Territory from the new project.</p> <p>Projects will be assessed on the net benefits to the State/Territory including factors such as technology transfer and the development of priority sectors for that particular State or Territory.</p>	<p>and/or stamp duties.</p> <p>Australia's competitiveness as a regional financial centre has been enhanced by the recent decision of the majority of States and Territories to reduce their stamp duty on share transactions to 0.3%.</p> <p>Apart from arranging meetings and negotiating with other government authorities, most State and Territory Governments offer financial assistance in the following areas: rent free periods of accommodation assistance; exemption from payroll tax, stamp duty and municipal rates; plant and equipment removal costs; infrastructure development costs; key personnel removal costs; business plan and feasibility study costs; skills training; technology development; and training.</p>
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*3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

There is no "one-stop" facility as such as both the Commonwealth and the States and Territories have a significant role in investment promotion. However, the Commonwealth and States and Territories work closely together in the areas of promotion, servicing of investment enquiries and investment facilitation, with the aim of providing a coordinated approach to investment promotion.

## **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

*1. Agreements to which economy is a party including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

### **Friendship Commerce and Navigation Treaties**

Australia is a party to the Basic Treaty of Friendship and Co-operation with Japan, which is also known as the NARA treaty. This treaty, when read with the Protocol and the Agreed minutes, requires Australia, subject to specified exceptions, to treat Japanese companies in Australia no less favourably than those of any third country. Australia has also inherited certain provisions in Commerce and Navigation treaties concluded by Britain. An example is the Treaty of Commerce between the United Kingdom and the Czechoslovak Republic and Accompanying Declaration of 14 July 1923. Although the treaty does not apply to Australia in its entirety, under Articles 9 and 10 of the Treaty products and manufactured goods of self-governing dominions, colonies, possessions, protectorates and mandated territories enjoy, subject to certain reservations, Most Favoured Nation treatment on a reciprocity basis.

## **Bilateral Investment Treaties (Bilateral Investment Protection Agreements) (IPAs)**

Australia's IPAs in general contain common provisions which are intended to provide protection for foreign investments. Specific details of these provisions are described below.

### *Promotion and Protection of Investments*

Australia's standard IPA contains provisions intended to promote and protect investments. That is, in general Australia's IPAs require each Contracting Party to encourage and promote investments in its territory by nationals of the other Contracting Party. In addition, the standard IPA provides that a Contracting Party to the agreement must ensure that investments in its territory are accorded fair and equitable treatment and that they receive "protection" and "security".

### *MFN Treatment*

Australia's IPA provides for a Most Favoured Nation article in relation to foreign investment.

### *Right of Entry and Sojourn*

Australia's standard IPA does not confer an absolute right of entry and sojourn. The right to enter and sojourn is made subject to the laws and policies of the host State.

### *Transparency of Laws*

Each Contracting Party to Australia's standard IPA is required to make its laws relating to investment public and readily accessible.

### *Expropriation and Nationalisation*

Australia's standard IPA includes articles restricting the circumstances in which a Party to the agreement can expropriate or nationalise investments made by the nationals of the other Contracting Party. These provisions, in effect, require the payment of prompt, adequate and effective compensation for any such action.

### *Transfers*

It is usual for Australia's IPAs to contain an article which seeks to ensure that all funds relating to an investment, income derived from the investment, proceeds of any disinvestment and earnings of personnel, are transferable on request.

### *Dispute resolution*

Australia's standard IPA also incorporates clauses intended to facilitate, respectively, the settlement of disputes between the Contracting Parties, a Contracting Party and a national of the other Contracting Party or nationals of the two Contracting Parties.

Where there is a dispute between the Contracting Parties the IPA provides that the two must endeavour to resolve the dispute by prompt and friendly consultations and negotiations. If a dispute is not resolved by such means provision is made for it to be submitted for arbitration.

In the event of a dispute involving a Contracting Party and a national of the other Contracting Party the IPA again provides that the parties to the dispute must initially seek to resolve the dispute by consultations and negotiations. Should consultations and negotiations fail, provision is made for the dispute to be referred to arbitration, including, where appropriate, arbitration under the ICSID Convention.

Lastly, if an investment dispute between nationals of the two Contracting Parties arises the IPA provides, in effect, that the host State must accord the aggrieved national investor full access to its competent judicial or administrative bodies, permit nationals of the two Contracting Parties to select the means to settle the dispute (including arbitration conducted in a third country) and provide for the recognition and enforcement of any resulting judgements or awards.

Following is a list of countries with which Australia has entered into Investment Protection Agreements.

<b>Country</b>	<b>Description</b>	<b>Entry Into Force</b>
Argentina	Agreement on the Promotion and Protection of Investments, and Protocol	Yet to apply
China	Agreement on the Reciprocal Encouragement and Protection of Investments	11 July 1988
Czechoslovakia	Agreement on the Reciprocal Promotion and Protection of Investments	Yet to apply
Czech Republic	Agreement on the Reciprocal Promotion of Investments	29 June 1994
Hong Kong	Agreement for the Promotion and Protection of Investments	15 October 1993
Hungary	Agreement on the Reciprocal Promotion of Investments	10 May 1992
Indonesia	Agreement concerning the Promotion and Protection of Investments, and Exchange of Letters	29 July 1993
Laos	Agreement on the Reciprocal Promotion and Protection of Investments	8 April 1995
Papua New Guinea	Agreement for the Promotion and Protection of Investments	20 October 1991
Peru	Agreement on the Promotion and Protection of Investments, and Protocol	Yet to apply
Philippines	Agreement on the Promotion and Protection of Investments	8 December 1995
Poland	Agreement on the Reciprocal Promotion and	27 March 1992

	Protection of Investments	
Romania	Agreement on the Reciprocal Promotion and Protection of Investments	22 April 1994
Vietnam	Agreement on the Reciprocal Promotion and Protection of Investments	11 September 1991

### **Regional or sub regional Investment Treaties**

Australia is not a party to any Regional Agreements related to Investment. Australia is participating in the negotiation of the European Energy Charter which is expected to include provisions dealing with investment in the Energy Sector.

Australia is a party to the Organisation for Economic Cooperation and Development (OECD) Codes for the Liberalisation of Capital Movement and for the Liberalisation of Current Invisible Operations. However, Australia has lodged certain reservations on becoming a party to these Codes. For example the provisions on the inward movement of investments are accepted subject to Australian laws and policies. In addition, Australia has associated itself with the 1976 OECD Declaration on International Investment and Multinational Enterprises.

## **F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

### *1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).*

#### Foreign Investment in Australia

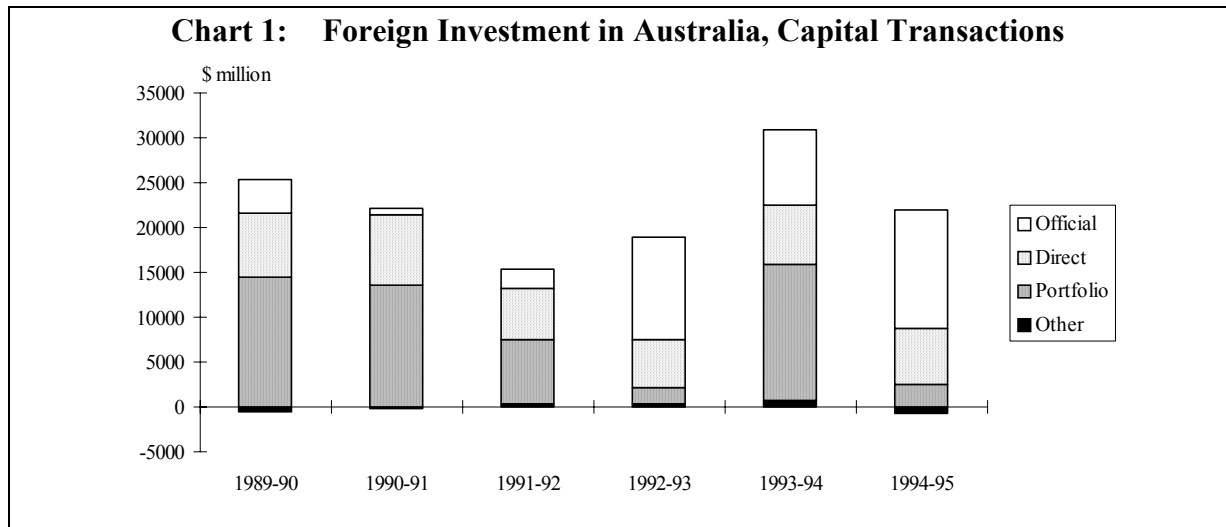
- Australia has traditionally been a net capital importer, drawing on foreign saving to help finance national investment expenditure, in the process sustaining a higher level of investment and growth than if reliance for financing had been solely on domestic sources.
- Foreign investment flows into Australia eased in 1994-95 following increases in the previous two years, which in turn followed three years of decline (Chart 1). The annual inflow of foreign investment has averaged just over \$22 billion in the past six years.
  - Foreign investment at the beginning of the 1990s was dominated by the inflow of portfolio investment, while official borrowing has been more prominent in the last three years. Foreign direct investment flows into Australia have been relatively stable since 1989-90, fluctuating between \$5 billion and \$8 billion.<sup>1</sup>

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<sup>1</sup> The official sector comprises the general government and the Reserve Bank sectors. The non-official sector comprises all other resident entities.

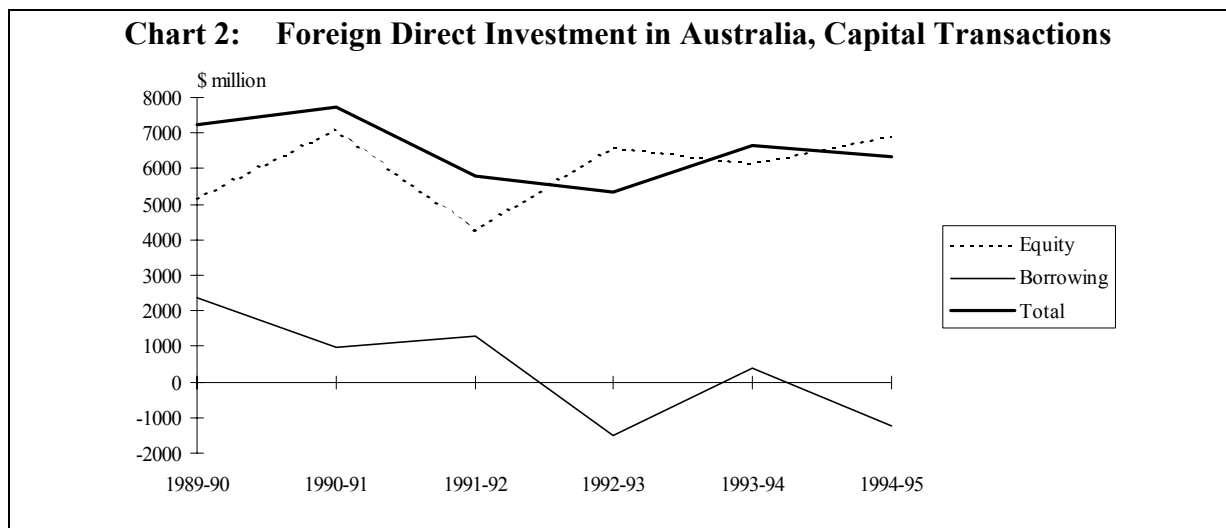
Within the non-official sector, a direct investment relationship is deemed to exist between a resident enterprise and a foreign individual or enterprise when one holds an equity interest (voting shares or other equivalent beneficial equity interest) in the other of at least 10%. Portfolio investment is defined as all foreign investment activity not classified as direct investment.

: The large flows of foreign investment into the official sector in recent years mainly reflect increased holdings by foreigners of State government debt. The level of foreign borrowing attributable to the States has risen from \$28 billion at the end of 1991-92 to \$48 billion at the end of 1994-95.



- Foreign direct investment flows into Australia in the recent years have been largely accounted for by foreign equity investment (Chart 2). In contrast, there has been a net outflow of direct foreign borrowing between 1990-91 and 1994-95.

The outflow of foreign borrowing is partly explained by the balance sheet adjustment process undertaken by the Australian corporate sector, in the aftermath of the high levels of borrowing in the late 1980s and the recession of the early 1990s.

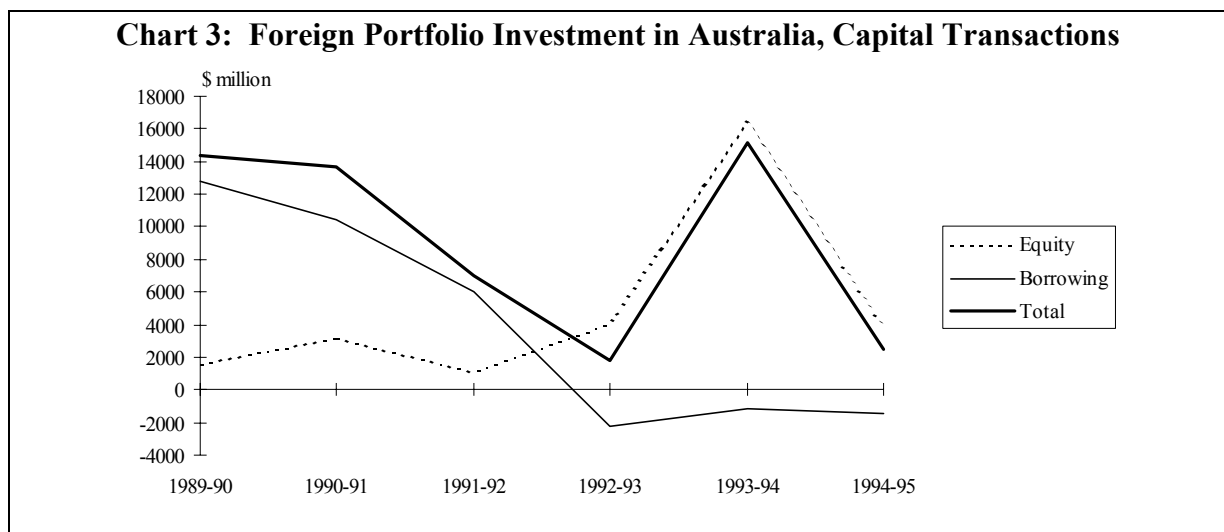


- Foreign portfolio investment flows into Australia have been volatile in recent years (Chart 3 below).

Historically, portfolio borrowing has been the largest source of foreign investment in Australia. However, the early 1990s witnessed a large turnaround

in portfolio borrowing, from substantial inflows to a small outflow in 1992-93, again in part reflecting the balance sheet adjustment process described above. This outflow has continued in more recent years.

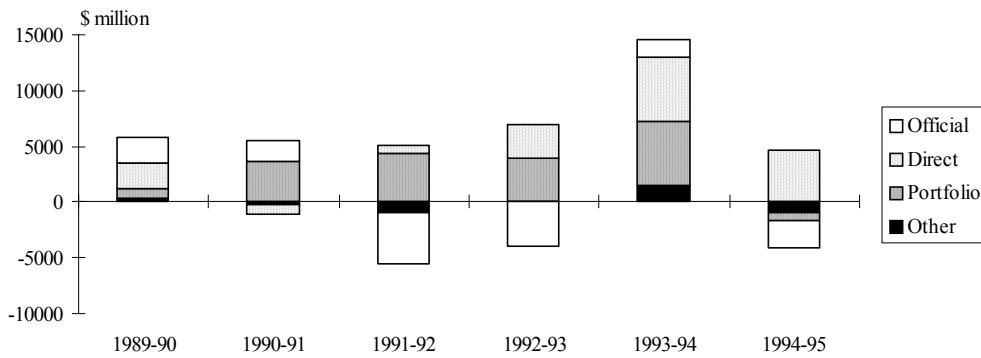
- Having fallen substantially in the two years to 1992-93, the inflow of portfolio equity investment increased four-fold in 1993-94, from \$4 billion to \$16 billion. With outflows of portfolio borrowing in the last three years, portfolio equity inflow has sustained total portfolio investment over the period.
  - The Australian Stock Exchange (ASE) reported that, over the course of 1993 and early 1994, purchases by foreign investors of shares on the Australian market reached record levels. The ASE cited solid corporate earnings growth and relatively low inflation (among OECD countries) in Australia as reasons for the high level of foreign activity.



### Australian Investment Abroad

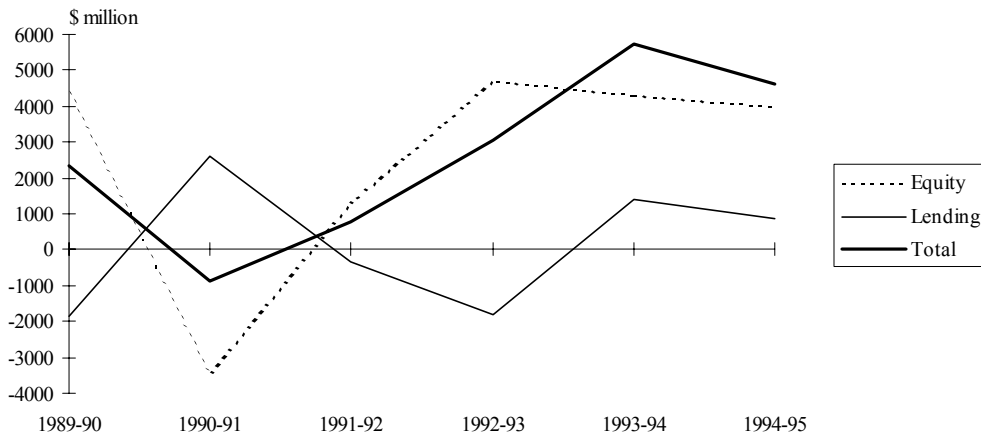
- Given the lumpiness of large overseas investments by major Australian companies, capital transactions for Australian investment abroad tend to be volatile, making it difficult to discern underlying trends. Nevertheless, aside from a large increase in 1993-94, outflows of Australian investment have been modest in recent years following moderate outflows at the turn of the decade (Chart 4). The average annual outflow of Australian investment abroad over the past six years was around \$4 ½ billion.
  - The main vehicle for Australian investment abroad in the first half of the 1990s was portfolio investment. This has resulted in the stock of Australian portfolio investment abroad rising from under 40% to 53% of total non-official Australian investment abroad.
- The weakness in the outflow of Australian investment since 1991-92 is mainly attributable to the official sector, reflecting the impact of net sales of foreign currency holdings by the Reserve Bank of Australia.

**Chart 4: Australian Investment Abroad, Capital Transactions**



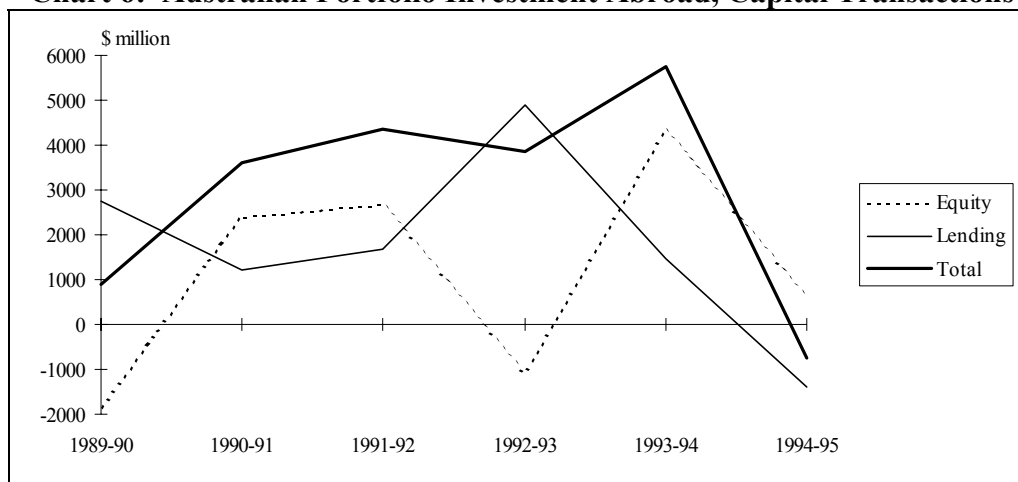
- Australian direct investment abroad in the 1990s has been influenced mainly by movements in direct equity investment abroad, which has accounted for the bulk of total direct investment outflows (Chart 5). Following weak (and sometimes negative) outflows in the early 1990s, coinciding with the recession, direct equity investment has recovered to strong levels in the past three years.

**Chart 5: Australian Direct Investment Abroad, Capital Transactions**



- Prior to a significant decline in 1994-95, outflows of Australian portfolio investment had been reasonably stable for most of the period since 1989-90 (Chart 6). However, the composition of Australian investment abroad has been volatile, with portfolio equity outflows and portfolio lending often moving in opposite directions.

**Chart 6: Australian Portfolio Investment Abroad, Capital Transactions**



2. List of the major countries/economies that are sources/receivers of FDI over recent years.

- OECD countries are the main source of foreign direct investment flows into Australia. Based on the five years to 1993-94, the major sources of foreign direct investment flows are the United States, Japan, the United Kingdom, New Zealand, Switzerland and the Netherlands (Table 1).

**Table 1: Foreign Direct Investment in Australia, Capital Transactions by Source**

	<u>1989-90</u>	<u>1990-91</u>	<u>1991-92</u>	<u>1992-93</u>	<u>1993-94</u>
United States	2229	1257	297	2560	1998
Japan	2341	2238	834	-587	540
United Kingdom	641	735	843	1277	630
New Zealand	273	1442	901	519	868
Switzerland	192	308	-67	652	234
Netherlands	185	-243	328	600	339
Other OECD	123	348	-94	524	529
Total OECD	5984	6085	3042	5545	5138
Total non-OECD	-128	81	1435	-1047	781
Other/unallocated	1378	1580	1330	860	719
Total	7234	7746	5807	5358	6638

- The bulk of Australian direct investment abroad in the five years to 1993-94 was directed to the United Kingdom, the United States and New Zealand (Table 2).

**Table 2: Australian Direct Investment Abroad, Capital Transactions by Destination (\$ million)**



	<u>1989-90</u>	<u>1990-91</u>	<u>1991-92</u>	<u>1992-93</u>	<u>1993-94</u>
United Kingdom	1568	2008	-1397	n.a.	3929
United States	234	95	1747	866	1263
New Zealand	1614	194	-809	1356	-365
Other OECD	146	768	723	n.a.	563
Total OECD	3562	3065	264	2751	5390
Total non-OECD	214	-3902	886	629	n.a.
Other/unallocated	-1428	-48	-364	-332	n.a.
Total	2348	-885	786	3048	5741

# BRUNEI DARUSSALAM

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# BRUNEI DARUSSALAM

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

Brunei Darussalam recognises the importance of foreign investment in accelerating the industrial development of an economy. Foreign direct investment is viewed as a tool to access new technology, foreign markets, as well as inflows of capital. Foreign direct investment is welcome in Brunei Darussalam and foreign investors are encouraged to form joint ventures with local entrepreneurs.

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

His Majesty the Sultan of Brunei Darussalam, in his speech, indicated the Brunei philosophy towards foreign investment:

“Brunei Darussalam is open to suggestion[s] from would-be investor[s] and does not restrict application[s] for any types of investment”.

For further details, please refer to the Brunei Darussalam Investment Guide.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### (i) Statutory (legislative) requirements

#### 1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Investment Incentive Act (Chapter 97)	<p>Investment Incentives Act (Chap 97 makes provision for encouraging the establishment and development of industrial and other economic enterprises, for economic expansion and incidental purposes. This Act provides tax relief for a company which is granted pioneer status.</p> <p>1. Pioneer Industry Companies awarded pioneer status are exempted from corporate tax, tax import of raw materials and capital goods for a period ranging from 2-5 years, depending on fixed capital expenditure with possible extension at the discretion of the relevant authorities.</p> <p>2. Expansion of Established Enterprise Enterprises which are given expansion certificates are given tax relief for a period between 3 to 5 years.</p> <p>3. Incentives for foreign leaders Approved foreign loans can be exempted from paying the 20 per cent withholding tax for interest paid to non-resident lenders.</p>
Companies Act (Chapter 39)	<p>The Companies Act is the main Act which provides for the incorporation and registration of companies in Brunei Darussalam. It provides for the conditions under which companies incorporated outside Brunei Darussalam may carry on business in Brunei Darussalam. The Act also controls the functioning of companies within Brunei Darussalam in related matters.</p> <p>Pursuant to section 138(2) of the Companies Act (Chap 39, two or not-less-than half of the number of directors (whichever is greater) shall be nationals of Brunei. Nationals of Brunei in this context do not include permanent residents.</p>
Business Name Act (Chapter 92)	<p>This Act provides for the registration of firms, individuals and corporations carrying on business under business names and not a company with limited liability. It further provides as to the names, styles, titles or designations under which business can be carried on and for purposes connected therewith.</p>
Miscellaneous Licences	<p>This Act provides for the licensing, regulation and control of certain commercial</p>

Act (Chapter 127)	places and activities and for incidental purposes. Miscellaneous licences are renewable annually.
Equity requirements	Brunei Darussalam is flexible towards foreign equity requirements. 100 per cent foreign equity can be considered for export-oriented industries with the exception of industries based on local resources, industries related to national food security and car dealerships whereby some level of local participation is required.
Land code (Chapter 40)	Foreign land ownership is not allowed in Brunei Darussalam except with prior approval in writing of His Majesty in Council.

*(ii) Investment Review and Approval*

1. *Details of proposals that are/are not (yes/no) subject to screening.*

2. *Details of guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

Proposals	Guidelines/Conditions
merger (Yes)	Mandatory if merger involves project already allocated in industrial site or agricultural land. Proposal needs to be submitted to the Ministry of Industry and Primary Resources for notification and approval. Companies must also notify the Registrar of Companies and Business name under the Ministry of Law for registration purposes.
acquisitions (Yes)	Mandatory if merger involves project already allocated in industrial site or agricultural land. Proposal need to be submitted to Ministry of Industry and Primary Resources for notification and approval. Companies must also notify the Registrar of Companies and Business name under the Ministry of Law for registration purposes.
greenfield investment (Yes)	If project needs assistance from the Government either in obtaining local resources or land project needs to be submitted to the Ministry of Industry for processing and screening which leads to His Majesty's approval/endorsement.
real estate/land (Yes)	Mandatory, the project proposal needs to be submitted to the Land Department, Ministry of Development for processing/screening.
joint venture (Yes)	If joint venture project needs assistance from the Government, either in obtaining local resources or land project, needs to be submitted to the Ministry of Industry for processing/screening which leads to His Majesty's approval/endorsement.

Sector	Guidelines/Conditions
agriculture (Yes)	Activities which are related to food security and those based on local resources must have some local participation and screening is mandatory for all applications.
manufacturing (Yes)	Screening is mandatory for all applications.
fisheries (Yes)	Screening is mandatory for all applications.
forestry (Yes)	Screening is mandatory for all applications.

other: Tourism (Yes)	Screening is mandatory for all applications.
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*3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

In addition to project proposals drafted using the guidelines for submitting a project proposal, project proponents are required to submit cashflows statements, management organisation charts and a bank statement or endorsement or letter of financial commitment. Cashflow statements should disclose the pattern of cash purchases and expenditure for a period not-less-than 5 years. The management organisation chart should indicate the reporting pattern and the nationality of the personnel proposed occupying the various management posts. These requirements are for project proposals in agriculture, manufacturing, fisheries and forestry sectors. Copies of the Guidelines for submitting project proposal can be obtained from the contacts listed in Section B(1)(ii)(4) below.

*4. Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
(Hj. Abdul Wahab bin Juned) Director of Brunei Industrial Development Authority	One Stop Agency Brunei Industrial Development Authority Ministry of Industry and Primary Resources Brunei Darussalam Telephone: (673 2) 381687 / 383067 Fax: (673 2) 382838

*5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

2 - 3 months.

*6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Brief description of appeal processes and the average time for an appeal to be considered.*

Agency	Address/telephone/fax
Brunei Industrial Development Authority	Brunei Industrial Development Authority Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan 1220 Brunei Darussalam Telephone: (673 2) 381687 / 383067 Fax: (673 2) 382838
Agriculture Department	Agricultural Department Ministry of Industry and Primary Resources Brunei Darussalam Telephone: (673 2) 380144 Fax: (673 2) 382226
Fisheries Department	Fisheries Department Ministry of Industry and Primary Resources Jalan Menteri Besar Brunei Darussalam Telephone: (673 2) 383412 / 383067 / 382068 Fax: (673 2) 382069

7. *Brief description of what conditions need to be met for an expedited review of a foreign investment proposal.*  
 There is no formal procedure for an expedited review of foreign investment. Generally submission with complete information will be processed much faster than those with incomplete information.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals.*

Agency	Address/telephone/fax	Type of Complaint
One Stop Agency	Brunei Industrial Development Authority Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan 1220 Brunei Darussalam Telephone: (673 2) 381687 / 383067 Fax: (673 2) 382838	

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

Agency	Address/telephone/fax	Functions
Brunei Industrial Development Authority	Brunei Industrial Development Authority Ministry of Industry and Primary Resources Brunei Darussalam Tel: (673 2) 381687 / 383067 Ext.2311 Fax: (673 2) 382838	Enforcement of terms and conditions of lease agreements pertaining to approved industrial activities, and building construction and renovation, collection of rentals and environmental management by tenants of industrial sites and complexes.
Agricultural Department	Agricultural Department Ministry of Industry and Primary Resources Brunei Darussalam Tel: (673 2) 380144 / 383145-7 Fax: (673 2) 382226	Activities which are related to food security and those based on local resources must have some level of local participation and screening is mandatory for all applications.
Fisheries	Fisheries Department Ministry of Industry and Primary Resources Brunei Darussalam Tel: (673 2) 242067-8 / 243412 Fax: (673 2) 242069	Issuing licences to trawlers and ensuring that no encroachment by fishermen given licenses to particular zones.
Forestry Department	Forestry Department Ministry of Industry and Primary Resources Brunei Darussalam Tel: (673 2) 222687 / 222450 Fax: (673 2) 241012	Issuing licences to sawmills.

Ministry of Law	Ministry of Law	Working closely with the above Department in bringing to trial errant tenant/investors not complying with terms and conditions of lease agreement.
Economic Development Board (EDB)	Economic Development Board, Ministry of Finance Brunei Darussalam Tel: (673 2) 240243	Administers the Investment Incentives Act (1995). The EDB is also empowered to issue licenses for car dealership activity and petrol stations including places for storage of inflammable materials.

*10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

Domestically, a high level forum on industrial and trade development namely, the Industrial and Trade Development Council has been established to encourage efficient communication between the government and the private sector.

*11. Where applicable, the role of sub-national agencies in the approval process.*

For project located outside of areas gazetted for industrial activities and given authority under the Ministry of Industries and Primary Resources prior approval may need to be obtained by the following department or committee for utilising the land.

Agency	Address/telephone/fax	Functions
Town and Country Planning Department (TCP)	Town and Country Planning Department (TCP) Ministry of Development Brunei Darussalam Telephone: (673 2) 282591 Fax: (673 2)383313	Zoning and Planning the nations land use.
Development Competent Control Authority (DCCA)	Town and Country Planning Department Ministry of Development Brunei Darussalam Telephone: (673 2)282591 Fax: (673 2)383313	Process and issue approval for developing land and building construction in designated locations under the authority of Town and Country Planning Department
Land Department	Land Department Ministry of Development Brunei Darussalam	Monitor the special terms of land use and approve the land utilisation, development and building construction under the authority of Land Dept. In addition, the Land Dept also determines the rate of estate rentals or tax.
Municipal	Municipal Ministry of Home Affairs Brunei Darussalam Tel: (673 2) 244151	Processes applications to develop land and building construction in areas under the authority of Municipal.

## 2. Most Favoured Nation Treatment/Non-discrimination between Source Economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sectors, threshold value or otherwise).
2. List and description of any international agreements to which your economy is a part which provides for a possible exception to MFN treatment.

## 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
Car dealership	50% equity must be owned by the local entrepreneurs

2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.

There are no restrictions on offshore financing and intercompany loans. Issuance of corporate bonds require prior approval of the Exchange Controller, the Ministry of Finance, Brunei Darussalam.

## 4. Repatriation and Convertibility

1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Brunei Darussalam does not restrict the repatriation of funds related to investments such as profits, dividends, royalties, loans payments and liquidation.

2. Brief description of the foreign exchange regime.

Exchange rates are determined by the Brunie Association of Banks. At present there exists a system of free interchangeability of Brunei and Singapore currencies. Under this arrangement, Brunei and Singapore undertake to accept each others currencies and exchange them, at par without charge, into their own currency.

3. Restrictions on the convertibility of currencies for the overseas transfer of funds.

## 5. Entry and Sojourn of Personnel

1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.

Malaysian, Singaporean and British nationals with the right of abode in the UK, are exempted from the requirement to obtain a visa for visits not exceeding 30 days. For nationals of the United States, requirements to obtain a visa may be waived for visits less than 90 days.

Visas are also waived for visits of 14 days for the nationals of Thailand, Indonesia, The Philippines, Japan, France, Switzerland, Republic of Korea, Canada, The Netherlands, Luxembourg, Belgium, Federal Republic of Germany, Sweden and the Republic of Maldives. Visas are required if the national of these countries intend to stay in Brunei Darussalam for longer than 14 days.

2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Restrictions	Description
All visitors wishing to take up employment must arrange with their employers to obtain employment passes.	Employment passes must be obtained prior to arrival. Spouses and Children under 18 years of age, of pass holders are required to obtain dependants' passes.
Work permit & identity cards	Employers are also required to submit work permit applications to the Immigration Department after they have



	<p>fulfilled the requirements of the Labor Department.</p> <p>Foreign nationals who stay in Brunei Darussalam for a period of more than 3 months are required to apply for identity cards which are issued by the same Department.</p>
Bringing in Spouses and Children	Only foreign professional, technical/managerial personnel with monthly incomes not less than \$1,500 and satisfy criteria such as living in their own accommodation can be considered for bringing in their spouses and family members.

*3. Description of regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

Brunei Darussalam does not have minimum wage laws. Wages are generally determined by market forces. Basic wage rate are as follows:

Unskilled workers	\$18.00 per day
Semi Skilled workers	\$20.00-23.00 per day
Skilled workers	\$25.00-53.00 per day

All employers are expected to train their employee and plans must be made to assure that locals acquire the skills and expertise required to assume positions at all technical and management levels.

*4. Summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

Law	Summary
Labour Act (Chapter 93)	An Act which generally deals with matters relating to labour. Namely, wages, contracts, employment of women, young persons and children, medical care, recruitment of workers and conditions of employment.

## **6. Taxation**

*1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

Taxation arrangements	Summary
Corporate taxation	Profits of a company considered as resident in Brunei Darussalam i.e. if the control and management of its business is exercised in Brunei Darussalam is subject to 30% corporate tax.
Treatment of dividend	Dividend accruing in, derived from, or received in Brunei Darussalam by a corporation is included in taxable income apart from dividends received from a corporation taxable in Brunei Darussalam which is taxable. No tax is deducted at source on dividend paid by a Brunei Darussalam's Corporation.
Allowable deductions	<p>All expenses wholly or exclusively incurred in the production of taxable income are allowable as deductions for tax purposes. These deductions include:</p> <ul style="list-style-type: none"> <li>• interest on borrowed money used in acquiring income;</li> <li>• rent on land and buildings used in the trade or businesses;</li> <li>• cost of repair of premises, plant and machinery;</li> <li>• bad debt and specific doubtful debt, with any subsequent recovery being treated as income when received; and</li> <li>• employer's contributions to approved pension or provident fund.</li> </ul>

Disallowable deduction	<p>Expenses not allowed as deduction for tax purposes:</p> <ul style="list-style-type: none"> <li>• expenses not wholly or exclusively incurred in acquiring income;</li> <li>• domestic private expenses;</li> <li>• any capital withdrawal or sum used as capital;</li> <li>• any capital used in improvements apart from replanting of plantation;</li> <li>• any sum recoverable under insurance or indemnity contract;</li> <li>• rent or repair expenses not incurred in the earning of income;</li> <li>• any income tax paid in Brunei Darussalam or in other countries;</li> <li>• payments to unapproved pension or provident fund; and</li> <li>• donations are not allowable but claimable if they are made to an approved institution.</li> </ul>
Allowance for capital expenditure	Depreciation is not an allowable expense and is replaced by capital allowances for qualifying expenditure. Tax payer is entitled to claim wear and tear allowance calculated in a specific way on capital expenditure on industrial building as well as machinery and plant.
Loss carry forward	Losses incurred by a company can be carried forward for six years to be offset against future income, and can be carried back one year. There is no requirement regarding the continuity of ownership of the company, and the loss is not restricted to the same trade.
Personal Taxation	Currently tax is not levied on income tax on individuals, partnerships and sole proprietors.
Foreign Tax relief	<p>A double taxation agreement exists with the United Kingdom. Tax credits are only available for resident companies.</p> <p>Unilateral relief may be obtained on income arising from Commonwealth Countries that provide reciprocal relief.</p>
Stamp Duty	Stamp duties are levied on a variety of documents. Stamp duty are either an advalorem duty or varies with the nature of the documents.
Withholding Taxes	Interest paid to non resident companies under a charge, debenture or in respect of a loan, is subject to withholding tax of 20%.
Estate Duty	Estate duty is levied on an estate of over B\$2 million at 3% flat rate for a person who died on or after 15th December 1988.
Import duties	Generally, basic foodstuffs and goods for industrial use are exempted from import duties subject to approval from the Controller of Customs.
Other taxes	There are no export, sales, payroll or manufacturing taxes.

## **7. Performance Requirements**

1. *Brief description of any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

Not practised.

## **8. Capital Exports**

1. *List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

Not applicable.

2. *List and brief description of regulations/institutional measures that limit technology exports.*

Not applicable.

## **9. Investor Behaviour**

1. *Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

## **10. Other Measures**

1. *Brief outline of the competition policy regime.*

2. *List and brief description of the current intellectual property laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

Trade Marks Act (Chapter 98), Merchandise Marks Act (Chapter 96), Invention Act (Chapter 72).

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

1. *List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Briefly summarise the application and function of these laws/regulations.*

2. *Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.

### **2. Settlement of Disputes**

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations, or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

Agency	Address/telephone/fax
Ministry of Laws	Ministry of Law Brunei Darussalam Telephone: (673 2) 244872 Fax: (673 2) 223100

2. *Signatory or accession to the ICSID Convention.*

## **D. INVESTMENT PROMOTION AND INCENTIVES**

1. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

2. *Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

3. Where applicable, if there is a one stop facility foreign investors, details of this service and contact point(s), including address, phone and fax number.

**E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

1. Agreements to which economy is a party including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Agreement	Provisions
Friendship Commerce and Navigation Treaties	
Bilateral Investment Treaties	
Regional or sub regional Investment Treaties 1. Agreement among the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, The Republic of Singapore, and The Kingdom of Thailand for the Promotion and Protection of Investments, Manila, 15 December 1987.	<p>1. Non-discrimination on the treatment of investment made by investors of contracting Party in the territory of any other contracting parties with treatment no less favourable than that granted to most-favoured-nation.</p> <p>2. Protection against expropriation Investment of national or companies of any contracting party should not be subject to expropriation, the Agreement provides for compensation amount to the market value of the investment affected.</p> <p>3. Repatriation Free transfer of any freely useable currency subject to its laws, rules and regulations.</p> <p>4. Dispute settlement Dispute among contracting parties or among investors or between investors and contracting party should first be settled amicably between parties to the dispute. Unsettled disputes shall be submitted to the AEM for resolution and finally to the Regional Centre for Arbitration in Kuala Lumpur for conciliation and arbitration.</p> <p>5. Avoidance of double taxation Taxation matters are governed by double taxation treaties between contracting parties and each country's domestic laws.</p>

**F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

Foreign direct investment in industrial projects has been unpredictable. It peaked in 1993 due to approval of major projects. The concentration of FDI has been in the manufacture of building material and garments and apparel sectors.

2. List of the major countries/economies that are sources/receivers of FDI over recent years.

Sources of FDI	Destination of FDI
Indonesia, Singapore, Malaysia, Australia	Not Applicable.

**CANADA**  
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# CANADA

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### *1. Summary of foreign investment policy including any recent policy changes.*

Historically, opportunities for investment in Canada have usually been greater than available savings from Canadians. Consequently, Canada has been a large importer of foreign capital. Foreign Direct Investment (FDI) is recognized as bringing with it technology transfers, international management expertise, production know-how and product innovation and market access. It is an important element in the creation and preservation of high-value-added jobs, and is the source of other benefits, such as tax revenue and retained earnings. Thus Canada has continued to pursue policy objectives domestically and internationally with a view to enhancing investment.

### *2. Summary of any significant public statement which most accurately describes and defines philosophies, policies, and attitudes toward foreign (inward and outward) investment.*

The attitude of the Government of Canada to foreign investment was clearly articulated almost ten years ago with the passage of the *Investment Canada Act* (ICA) in 1985, which replaced the more restrictive *Foreign Investment Review Act* (FIRA). The new attitudes represented a significant shift in government policy towards foreign investment.

Canada welcomes, and indeed actively seeks, foreign investment. The following pages provide information on Canada's foreign investment policy.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory (legislative) requirements*

##### *1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

Foreign investment in Canada is subject to multilateral obligations (e.g. through the Organisation for Economic Cooperation and Development (OECD) and the World Trade Organisation (WTO)) and, more recently, to obligations in regional and bilateral agreements (the North American Free Trade Agreement (NAFTA), and Foreign Investment Protection Agreements). If required, existing domestic legislation is amended to bring it into conformity with international obligations. Hence, examining Canadian foreign investment obligations as represented by Chapter 11 of the NAFTA, will provide a clear picture of commitments on foreign investment access and protection.

The only domestic law of general application with respect to foreign investment is the *Investment Canada Act*. Under the Act, the establishment of a new business in Canada by an investor making its first investment in Canada or the establishment of a new business by an existing investor where the new business is unrelated to any existing business in Canada is subject to a straightforward notification procedure, but is not generally subject to review. There are some exceptions to this, outlined in this section and the section on restricted sectors (see section B(1)(ii)(1) and B(1)(ii)(2)).

In addition to the *Investment Canada Act*, there are a number of federal and provincial laws applying to specific industry sectors. At the federal level, for example, there are the *Bank Act*, the *National Transportation Act*, and the *Broadcasting Act*. The *Canada Business Corporations Act* also provides for provisions related to management and equity in federally incorporated businesses.

#### *(ii) Investment Review and Approval*

##### *1. Details of proposals and sectors that are/are not (yes/no) subject to screening.*

##### *2. Details of guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

### Overview

#### (i) Review Required Only in Limited Circumstances

Recognizing the benefits that flow from international investment, the *Investment Canada Act* reflects Canada's policy of welcoming international investment and, indeed, of working to attract quality investment to all regions of Canada. At the same time, to assure net benefit to Canada at the individual transaction level, the *Investment Canada Act* contains provisions for the review of important acquisitions of control of Canadian businesses by foreign investors and the establishment of new businesses in industries related to Canada's national identity or cultural heritage. The *Investment Canada Act* requires that it be demonstrated that, on balance, there is net benefit to Canada from the proposed investment.

The Investment Canada Act specifies the factors to be taken into account, where relevant, when determining net benefit to Canada:

- the effect of the investment on the level and nature of economic activity in Canada;
- the degree and significance of participation by Canadians in the Canadian business;
- the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
- the effect of the investment on competition within an industry or industries in Canada;
- the compatibility of the investment with national industrial, economic and cultural policies and those of the provinces likely to be significantly affected by the investment; and
- the contribution of the investment to Canada's ability to compete in world markets.

Since the establishment of the review system under the Investment Canada Act no reviewable investment has been disallowed.

(ii) Notification Is Usually The Only Requirement

Foreign acquisitions of Canadian businesses with assets below the threshold and new businesses established by foreign investors which are not reviewable are subject only to the notification provisions of the Investment Canada Act. Notification entails the submission of a short filing which advises Industry Canada of the nature and size of the investment. A notification may be filed up to 30 days following the implementation of the investment.

**General Exemptions from the Investment Canada Act**

The Investment Canada Act contains a number of exemptions from the application of the Act: Securities Dealers; Venture Capitalists; Realization of Security (granted for a loan or other financial assistance); Financing (on the condition of divestiture within two years of acquisition); Corporate Reorganizations; Government Vendors; Tax-Exempt Vendors; Banks; Involuntary Acquisitions; Real Estate in a farming business; Insurance Company Portfolios.

**Screening requirements in particular sectors**

Proposals	Guidelines/Conditions
Merger/Acquisition (Yes - in specific limited circumstances)	<p>Where either the non-Canadian investor or vendor is ultimately controlled in a World Trade Organization (WTO) country, only the direct acquisition of control of a Canadian business that has assets equal to or greater than \$160 million is a reviewable transaction. This figure is adjusted annually to reflect economic growth in Canada.</p> <p>Where both the non-Canadian investor and vendor are ultimately controlled in a non-WTO country, the direct acquisition of control of a Canadian business that has assets greater than \$5 million is reviewable, and the indirect acquisition of control of a Canadian business with assets greater than \$50 million is reviewable. These review thresholds are fixed and are not adjusted.</p> <p>Acquisitions in which the Canadian business is in one of four other sectors (cultural industries, financial services, transportation services and uranium production) are subject to the lower thresholds regardless of nationality of the investor or vendor. Acquisitions in cultural industries (i.e., publication and distribution of books, magazines, videos, music recordings, etc.) below these thresholds and the establishment of new businesses in these cultural industries may be reviewable, if the Government so decides.</p> <p>Reviewable investments are allowed to proceed if they are likely to be of "net benefit" to Canada. Since the establishment of the review system under the Act, no reviewable investment has been disallowed.</p>
Greenfield investment (no)	Review not required.
Real Estate/land (no)	Review not required.

Joint Venture (no)	Review not required.
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General Restrictions	Guidelines/Conditions
Boards of Directors Issue, transfer, ownership of shares	<p>The Canada Business Corporations Act requires that a simple majority of the board of directors, or of a committee thereof, of a federally-incorporated corporation be resident Canadians. “Resident Canadian” means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the Canada Business Corporations Act Regulations, or a permanent resident as defined in the Immigration Act other than one who has been ordinarily resident in Canada for more than one year after he became eligible to apply for Canadian citizenship.</p> <p>The Canadian Business Corporations Act permits corporations to “constrain” the issue, transfer and ownership of shares in federally incorporated corporations. The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where such ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits.</p>

Sectoral Restrictions	Guidelines and Conditions
Agriculture	<p>Loans by the Farm Credit Corporation may be made only to:</p> <ul style="list-style-type: none"> <li>(a) individuals who are Canadian citizens or permanent residents;</li> <li>(b) farming corporations controlled by Canadian citizens or permanent residents; and</li> <li>(c) cooperative farm associations, all members of which are Canadian citizens or permanent residents.</li> </ul>
Business service industries	<p>Citizenship/residence requirements exist for a number of business service industries:</p> <ul style="list-style-type: none"> <li>• customs broker/brokerage;</li> <li>• duty free shop operator;</li> <li>• examiner of cultural property; and</li> <li>• some professions, i.e. lawyers.</li> </ul>
Culture	<p>Industry Canada may review both new businesses and acquisitions of any size in areas involving cultural heritage or national identity, with the purpose of ensuring that they are of net benefit to Canada, including a contribution to Canadian cultural objectives. The following sectors are included:</p> <ul style="list-style-type: none"> <li>(a) book publishing and distribution. Direct acquisition by non-residents of Canadian-controlled businesses is not normally allowed. Foreign investment in new businesses are considered favourably provided the investment is through a joint venture</li> </ul>



	<p>with Canadian control.</p> <p>(b) newspapers, magazines, periodicals. The net benefit test is applicable.</p> <p>(c) film distribution. Acquisition of Canadian-controlled distribution companies by non-Canadians is not permitted. However, foreign investment is permitted if it is through a joint venture with Canadian control. Foreign investment in a new business is allowed if it is directly linked to the importation and distribution of proprietary product.</p> <p>(d) sound recording industry. The net benefit test is applicable.</p> <p>(e) music publishing. The net benefit test is applicable.</p>
Energy - Uranium	<p>A minimum level of resident ownership in individual uranium mining properties of 51% at the stage of first production is required. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadian-controlled". While these limits apply to the control of production, foreign investment is encouraged in exploration and development.</p>
Financial services	<p>No one person (Canadian or foreign) may own more than 10% of any class of shares of a Schedule I bank. The Canadian government removed the limits on foreign ownership of federally-regulated financial institutions in December 1994. Foreign banks must incorporate subsidiaries in Canada to undertake the business of banking.</p>
Fisheries	<p>Fish processing companies which have more than 49% foreign ownership are not permitted to hold Canadian commercial fishing licenses. There is no limit on foreign ownership of fish processing companies that do not hold fishing licences.</p> <p>Foreign fishing vessels are prohibited from entering Canada's Exclusive Economic Zone except under authority of a licence or under treaty. Foreign vessels are those which are not "Canadian" as defined in legislation. The Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licenses.</p>
Broadcasting and Telecommunications	<p>Broadcasting and cable. Legislation requires that the Canadian broadcasting system be effectively owned and controlled by Canadians. Foreign ownership of any given broadcasting licensee as well as cable operations is limited to a maximum of 20%.</p> <p>(a) Broadcasting</p> <p>(b) Telecommunications common carriers</p> <p>All users of the radio spectrum are required to obtain a radio licence. In the case of individuals, the criteria for eligibility are Canadian citizenship or permanent residence. In the case of a corporation, the criteria for eligibility is based upon Canadian residence, and ownership or control.</p> <p>The policies governing the establishment and operation of Canadian telecommunications common carriers restricts foreign ownership to 20% (33 1/3 percent in the case of holding companies). There are no ownership restrictions for companies which provide telecommunications services on a resale basis, i.e. resale of leased common carrier facilities/value-added services.</p>

<p>Transportation</p> <p>(a) Air transport</p> <p>(b) Maritime transport</p>	<p>A person who proposes to operate a commercial air service (i.e. an air carrier) between two or more points in Canada must hold an operating certificate from the Minister of Transport and a licence from the National Transportation Agency. A licence will only be issued to a Canadian citizen, a permanent resident or a person or entity that is controlled in fact by Canadians and of which at least 75% of the voting interests are owned and controlled by Canadians.</p> <p>A person who proposes to operate a commercial air service to and from Canada must also hold an operating certificate and a licence, although there is no requirement to be Canadian or to operate Canadian aircraft. However, in the case of scheduled international services, a non-Canadian must be designated by a foreign government to operate an air service under the terms of an agreement or arrangement between that government and the Government of Canada and must hold a document issued by a foreign government that is equivalent to a Canadian licence.</p> <p>There is no restriction on the foreign ownership of Canadian companies in the maritime sector. However, the Coasting Trading Act reserves to Canadian flag ships the transportation of cargo and passengers between Canadian points as well as all other commercial marine activities in Canadian waters. Furthermore, it extends this reservation to the outer edge of the Canadian continental shelf for activities related to the exploration and exploitation of non-living natural resources. To register a vessel in Canada, the owner of that vessel must be:</p> <p>(a) a Canadian citizen or a citizen of a Commonwealth country; or</p> <p>(b) a corporation incorporated under the laws of, and having its principal place of business in, Canada or a Commonwealth country.</p>
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3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*  
Copies of the relevant documentation can be obtained from the contacts listed in section B(1)(ii)(4) below.

4. *Contact points to which applications should be made.*

Agency	Address/telephone/fax
Investment Review Directorate Industry Canada	5th Floor, East Tower 235 Queen St. Ottawa, Ontario K1A 0H5 Telephone: (1 613) 954 1887 Fax: (1 613) 996 2515
Legal Services Industry Canada	1st Floor, East Tower 235 Queen Street Ottawa, Ontario K1A 0H5 Telephone: (1 613) 992 2391 Fax: (1 613) 954 5356

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

To ensure a prompt review and decision, the Investment Canada Act sets certain time limits for the Agency and the Minister. Within 45 days after a complete application has been received, the investor must be notified that the Minister (a) is satisfied that the investment is likely to be of net benefit to Canada; or (b) is unable to complete the review, in which case a further 30 days will be necessary; for its completion (unless the applicant agrees to a longer period); or (c) is not satisfied that the investment is likely to be of net benefit to Canada.

If 45 days have elapsed from the completion date without such a notice, or if a further 30 days (or a number of further days agreed) have elapsed after notice that the Minister is unable to complete the review and no decision has been taken, then the Minister is deemed to be satisfied that the investment is likely to be of net benefit to Canada.

The average period of time in processing an investment application is about 40 days.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is required. Description of appeals processes and the average time for an appeal to be considered.*

When advised that the Minister is not satisfied that the investment is likely to be of net benefit to Canada, the applicant has the right to make representations and to submit undertakings within 30 days of the date of notice (or any other period that is agreed upon between the applicant and the Minister). On the expiration of the 30-day period (or agreed extension), the applicant must be notified forthwith that the Minister (a) is satisfied that the investment is likely to be of net benefit to Canada; or (b) confirms that the investment is unlikely to be of net benefit to Canada. In the latter case, the applicant may not proceed with the investment or, if the investment has already been implemented, must relinquish control of the Canadian business.

After these further representations, a decision by the Minister that he is not satisfied that an investment is likely to be of net benefit to Canada is not appealable. While an investor can always resubmit his application, this would not normally be done unless there were significant new factors or undertakings to be offered for consideration.

Agency	Address/telephone/fax
Investment Review Directorate Industry Canada	5th Floor, East Tower 235 Queen St. Ottawa, Ontario K1A 0H5 Telephone: (1 613) 954-1887 Fax: (1 613) 996-2515

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

See section B(1)(ii)(5) above for processing time.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals.*

See section B(1)(ii)(6) above under appeals (and section B(1)(ii)(4) for contact details).

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

Industry Canada monitors the performance of the investments that have been approved under its review system.

Experience shows that the vast majority meet or exceed objectives. In the few instances where objectives are not met, the department will meet with the foreign investor. If performance shortcomings are due to unavoidable factors (performance of the economy etc.) revised objectives can be negotiated.

The Investment Canada Act provides that where the Minister believes that a non-Canadian has acted contrary to the provisions of the Investment Canada Act, the Minister may send a demand requiring compliance. Where a non-Canadian fails to comply with such demand, the Minister may apply to a superior court for an order. These powers have not been exercised to date.

Provincial licensing agencies have their own monitoring and enforcement procedures with the ultimate penalty of suspension of the licence.

*10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

Regulations made under the Investment Canada Act are published in the Canada Gazette. Government of Canada policy is to allow for a public comment period with respect to new regulations. As a matter of practice, any significant regulatory changes are discussed with the industry sectors that would be affected by the changes and with the legal community that represents companies in the sectors.

The final form of regulations, after approval by Governor in Council, are made public through publication in the Canada Gazette.

*11. Where applicable, the role of sub-national agencies in the approval process.*

In conducting the review process, Industry Canada consults with any province directly affected by the investment.

Sub-national agencies also play an important role in soliciting greenfield investment and provide facilitation services in the implementation stage of such investments.

## **2. Most Favoured Nation Treatment/Non-discrimination between Source Economies**

*1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sectors, threshold value or otherwise).*

Foreign investments are accorded national treatment and MFN status in accordance with international agreements signed by Canada that cover investment (e.g., WTO, the NAFTA, bilateral protection agreements). These international agreements contain some derogations from these principles, which are clearly laid out in those agreements.

## **3. National Treatment**

*1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).*

Refer to section B(2).

*2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.*

There are no restrictions to foreign investors' access to Canadian sources of finance.

## **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

There are no restrictions.

*2. Brief description of the foreign exchange regime.*

There are no restrictions. Exchange rates are determined on the basis of supply and demand conditions in the exchange market.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions.

## **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

*2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

*3. Description of regulations relating to personnel management of foreign firms, eg minimum wage laws, minimum requirements for training or employment of local staff.*

*4. Summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

There are no special visa categories of general application provided for business purposes in serving an investment. An investor wishing to come to Canada for this purpose makes application for a "visitor visa". A "visitor" is a person who seeks to come to Canada for a temporary purpose (eg. servicing an investment).

Information on visitor visa requirements (including various country exemptions) and applications for visitor visas can be obtained at the nearest Canadian Embassy, High Commission or Consulate.

The North American Free Trade Agreement (NAFTA) deals with the issue of the crossborder movements of NAFTA nationals who wish to conduct business within the NAFTA territory. The agreement provides for temporary, quick, and unimpeded entry into either country for persons who qualify for general entry, who indicate the nature of their business in one of four categories: business visitors, traders and investors, professionals, and intra-company transferees and who indicate a specific business purpose for the visit. Canada has a business immigration program designed to attract experienced business people who will create jobs and contribute to economic development. There are three categories of business immigrants - entrepreneurs, investors, and self-employed persons.

## **6. Taxation**

*1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double tax agreements.*

Foreign investors carrying on business in Canada are subject to the same tax rules as other enterprises. Corporations resident in Canada are subject to corporate income taxes, which are generally imposed similarly regardless of whether the corporation is owned or controlled by Canadian or foreign investors -- resident corporations are taxed on the basis of their worldwide income. Foreign investors carrying on business through Canadian branches of non-resident corporations are taxed in Canada in respect of their income earned in Canada.

There are no special tax rules for foreign investment.

Canada has double taxation agreements in force with the following countries: Argentina, Australia, Austria, Bangladesh, Barbados, Belarus, Belgium, Brazil, Cameroon, People's Republic of China, Ivory Coast, Cyprus, Czech Republic, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Guyana, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Latvia, Luxembourg, Malaysia, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Romania, Russian Federation, Singapore, Slovakia, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United States of America, former USSR, Zambia, Zimbabwe.

## **7. Performance Requirements**

*1. Brief description of any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

## **8. Capital Exports**

*1. List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

*2. List and brief description of regulations/institutional measures that limit technology exports.*

There are no restrictions.

## **9. Investor Behaviour**

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

Foreign investors and domestic investors alike are expected to observe all laws, regulations and administrative policies that are in place in Canada.

## **10. Other measures**

*1. Brief outline of the competition policy regime*

Competition is essential for an efficient market economy. It encourages healthy rivalry, innovation and productivity. With competitive forces at work, consumers are provided with quality products, choice and best possible price. A competitive economy at home enhances a nation's competitiveness abroad.

Canada's principal laws aimed at the protection of competition are embodied in the federal Competition Act, R.S.C., 1985, c. C-34, as amended, which came into force on June 19, 1986, replacing the Combines Investigation Act which has antecedents dating from 1889. The Competition Act (the Act) is a law of general application which establishes basic principles for the conduct of business in Canada. The purpose of the Act is to maintain and encourage competition in Canada in order to:

- promote the efficiency and adaptability of the Canadian economy;
- expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada;

- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; and
- provide consumers with competitive prices and product choices.

Canada's competition legislation applies to all sectors of the economy. All business is subject to the Act, with the exception of selected activities specifically exempted such as collective bargaining, amateur sport or regulated industries subject to other legislation. Section 2.1 of the Act expressly provides that the Act is binding on Crown corporations in respect of commercial activities engaged in by such corporations in competition with other persons.

The Competition Bureau (the Bureau) of Industry Canada is the branch of the federal government that carries out the enforcement and administration of the Act under the supervision and authority of the Director of Investigation and Research (the Director). The Director is an independent law enforcement official responsible for the administration and enforcement of the Act. He is appointed by, and serves at the pleasure of, Cabinet with a mandate to promote competition in Canada.

Competition law in Canada consists of both criminal offenses and civil reviewable matters. Criminal charges are prosecuted before the various courts of criminal jurisdiction in each province. The Federal Court of Canada, which includes the Trial Division and the Federal Court of Appeal, also has jurisdiction with regard to indictable offenses. The Director initiates legal proceedings in non-criminal reviewable matters by filing an application with the Competition Tribunal. The Director is also responsible for giving competition policy advice to government and for statutory representations before regulatory boards.

The Bureau has four enforcement branches organized along functional lines: mergers, civil matters, criminal matters, and marketing practices. The enforcement branches are primarily responsible for investigative work and litigation support for cases that proceed before the Tribunal or the courts. The Bureau also has an Economic and International affairs directorate which provides economic policy analysis, economic support for enforcement matters and coordinates relations, in both policy and transactional matters, with competition enforcement authorities in other countries. The Bureau also has a Compliance and Operations Directorate that is responsible for the coordination of compliance initiatives with the business and legal communities and the public at large, as well as for coordinating management functions within the Bureau.

The Competition Tribunal is a quasi-judicial tribunal which operates at arms length of the Director. Whereas the Director's role is investigatory, the Tribunal's is exclusively adjudicative. It was created in 1986 with a view to developing special expertise in competition matters. The Tribunal consists of judges of the Federal Court, Trial Division, as well as lay members. It sits in panels comprised of both judicial and lay members, with only judicial members deciding questions of law. The Tribunal's structure has been upheld as respecting the Constitutional right to a hearing by an independent and impartial tribunal.

The Tribunal may issue orders designed to remedy the effects of non-criminal or civil conduct in question. The Tribunal may also issue orders with the consent of the Director and the persons in respect of whom the order is sought.

The Competition Tribunal Act provides that any affected person may apply for leave to intervene in proceedings before the Tribunal to make representations relevant to those proceedings. This Act also provides rights of intervention before the Tribunal to provincial attorneys general. The Director also initiates legal proceedings in merger matters by filing an application with the Tribunal. However, parties to a proposed merger are encouraged to approach the Director early in the process to determine if there are potential competition concerns, and if there are concerns, to determine whether they can be resolved without resorting to litigation. Leave may be sought to appeal to the Supreme Court of Canada. Private litigants may sue for actual damages resulting from conduct contrary to the criminal provisions of the Act or a breach of a Tribunal or Court order made pursuant to the Act.

## *2. List and brief description of the current intellectual property laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

Intellectual property is a broad term that covers rights to proprietary knowledge, know-how and ideas, technologies and processes, trademarks and designs, works of art, and scientific discoveries. Intellectual property in Canada is protected by six items of federal legislation governing rights to inventions (Patent Act); trademarks (Trademarks Act); literary, dramatic, musical or artistic works (Copyright Act); industrial design (Industrial Design Act); plant breeding (Canadian Plant Breeders Rights Act); and integrated circuits (Integrated Circuit Topography Act). These Acts are administered by the Canadian Intellectual Property Office (CIPO) of the Department of Industry except for the Patent Breeders Rights Act, which is administered by Agriculture and Agri-food Canada.

Canada has traditionally supported effective intellectual property protection and has continued to strengthen intellectual property laws and their administration. In general terms Canada's objectives have been to ensure adequate protection for owners of intellectual property, including effective dispute settlement mechanisms.

Canada recognizes the importance of intellectual property to the Canadian economy and is committed to adequate intellectual property laws throughout the world. This is reflected in Canada's active participation in the work of the World Intellectual Property Organization (WIPO). Canada has adhered to the following conventions:

- (a) Paris Convention for the Protection of Industrial Property;
- (b) Berne Convention for the Protection of Literary and Artistic Works;
- (c) Universal Copyright Convention; and
- (d) Patent Cooperation Treaty.

Canada was an active participant in intellectual property fora at the TRIPs negotiations during the Uruguay Round; the development of treaties on patent law harmonization; the revision of the Paris convention; the WIPO dispute settlement treaty; and expert policy reviews in key areas such as patent and trademark law harmonization.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

*1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Both at the federal and provincial levels, there exists legislation which gives authority to expropriate for public purpose in accordance with the rule of law, subject to compensation. In all circumstances, a fair and equitable legal process is available to the expropriated party for the determination of compensation.

Authorities first attempt to reach agreement on appropriate compensation, failing which the action is subject to the judicial process. Compensation is based on fair market value. Valuation criteria are determined by the courts and can include such things as asset value, going concern value, and other criteria.

### **2. Settlement of Disputes**

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations, or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

Foreign and national investors have equal access to legal procedures in Canada. In addition, under the NAFTA and a number of bilateral investment agreements, foreign investors can appeal to international arbitration mechanisms.

Canada is a party to the Convention on the Recognition and Enforcement of the Foreign Arbitral Awards (the "New York Convention") done at New York June 10, 1958. It entered into force for Canada on May 12, 1986. The British Columbia International Arbitration Centre (Vancouver, B.C.) and the Quebec National and International Commercial Arbitration Centre (Montreal, Que) offer services to that many be accessed by foreign investors.

*2. Signatory or accession to the ICSID Convention.*

While Canada has not signed or acceded to the ICSID Convention, Canada provides for use of the ICSID Additional Facility Rules and the Arbitration Rules of UNCITRAL in its bilateral investment protection agreements and in the NAFTA.

## **D. INVESTMENT PROMOTION AND INCENTIVES**

*1. Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

*2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers*

*3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

A number of federal government incentive programs are available to Canadian and non-Canadian businesses. There are no specific federal incentives provided to foreign investors.

Information on government programs and services, (including incentive programs) can be obtained by contacting any Canadian Embassy/High Commission or by contacting the International FaxLink System, an

automated fax delivery system used to order publications from outside of Canada. Call from a [touch-tone] fax machine at (1 613) 944-6500. A master index of documents available via FaxLink International may be ordered from the system.

Information on investment policies, programs and services designed to facilitate foreign investment, and on investment opportunities in Canada, is also available on the Internet at the following sites.

Foreign Affairs and International Trade <http://www.dfait-maeci.gc.ca>  
 Industry Canada <http://strategis.ic.gc.ca>

## E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY

*1. Agreements to which economy is a party including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

International Agreement	Major Provisions
Foreign Investment Protection Agreements (FIPAs). Canada has agreements with the following countries; USSR (applies to Russia, Kazakhstan and others), Poland, Czechoslovakia (applies to Czech Republic and Slovakia), Uruguay, Hungary, Argentina, Ukraine, Latvia, Trinidad and Tobago, Philippines, South Africa.	The FIPA is a bilateral agreement designed primarily to protect Canadian foreign investment abroad. The model FIPA, which is largely based on the NAFTA investment provisions, includes provisions on Most-Favoured-Nation (MFN) Treatment, national treatment (both with some exceptions), compensation in the case of expropriation, freedom to transfer funds in a convertible currency, and dispute settlement in the case of a breach of the FIPA's obligations.
North American Free Trade Agreement (NAFTA)	<p>The NAFTA retained, for Canada, the negotiated balance of obligations contained in the Canada-U.S. FTA. In addition, it allowed for a number of significant improvements ranging from a broader definition of investment to the introduction of new provisions and procedures that should contribute to making North American trade and investment more open and secure.</p> <p>One of the most useful developments in the NAFTA is the use of detailed country annexes to achieve full transparency with respect to country-specific commitments and exceptions to general obligations. The NAFTA contains annexes specifying exceptions and commitments at the federal government level and each country will specify exceptions for state and provincial measures within two years. Exceptions may not be made more restrictive and, if liberalized, may not subsequently be made more restrictive. A few sectors, such as basic telecommunications, social services and maritime services, are not subject to this constraint. The annexes facilitate an understanding of individual country sectoral restrictions. This is a significant advance in international investment agreements.</p> <p>The NAFTA removes significant investment barriers, ensures basic protection for NAFTA investors and provides a mechanism for the settlement of disputes between such investors and a NAFTA country.</p> <p>The specific NAFTA provisions related to investment can be summarized as follows:</p> <ul style="list-style-type: none"> <li>• NAFTA applies national treatment and most-favoured nation concept to investments. NAFTA investments have a right to treatment no less favourable than the best treatment offered by the government in question to similar investments, regardless of nationality;</li> <li>• all businesses located in North America will get the full benefits of the investment provisions. For instance, non-North American firms making a "home-base" in Canada</li> </ul>



	<p>will be treated as Canadian firms should they expand into other parts of North America;</p> <ul style="list-style-type: none"> <li>• NAFTA ensures foreign investors locating anywhere in North America are on an equal footing in terms of security of access for exports to North American countries;</li> <li>• NAFTA provides protection for all types of investment including minority as well as majority or controlling interest in a business and investment in stocks, bonds or real estate;</li> <li>• NAFTA adds to the list of prohibited performance requirements, specifically prohibiting the use of technology transfer requirements, domestic sourcing, linking domestic market access to export performance, and “exclusive supplier” requirements;</li> <li>• Mexico will eliminate review of new foreign investment in most sectors and will remove investment restrictions in dozens of sectors including autos, mining, agriculture, fishing, financial services, transportation and most manufacturing;</li> <li>• Canada retains its investment review of direct acquisitions. The preferential review threshold under the FTA will be extended to Mexican investors;</li> <li>• investment from NAFTA countries may be expropriated only for public purposes, on a non-discriminatory basis, subject to due process and fair market value must be paid promptly;</li> <li>• certain disputes between an investor from a NAFTA country and a NAFTA government may be settled, at the investor’s option, by binding international arbitration;</li> <li>• foreign investment may be restricted for existing state enterprises or government assets that are privatized; and</li> <li>• local currency may be converted into foreign currency for investment transactions and freely transferred into and out of the country.</li> </ul>
<p>OECD Codes on Investment (OECD Codes of Liberalization of Capital Movements and of Current Invisible Transactions and the OECD National Treatment Instrument (NTI).</p>	<p>While these instruments do not have the same origin and scope, taken together they cover all direct investment transactions, whether by non-resident enterprises or by established enterprises under foreign control. The two fundamental norms are the right of establishment and national treatment after establishment. The Codes have the legal status of OECD Council Decisions binding on all member countries. The NTI expresses only a policy commitment.</p>
<p>World Trade Organization Agreements (TRIMS, GATS)</p>	<p>The Trade-Related Investment Measures (TRIMs) Agreement prohibits a representative list of TRIMs (or performance requirements) which are in violation of GATT Articles III and XI. TRIMs in violation of the agreement must be listed by member countries and then phased out. .</p> <p>The General Agreement on Trade in Services (GATS) establishes a comprehensive framework of multilaterally-agreed rules and disciplines on government measures affecting trade in services. The agreement applies to all trade in services and to</p>

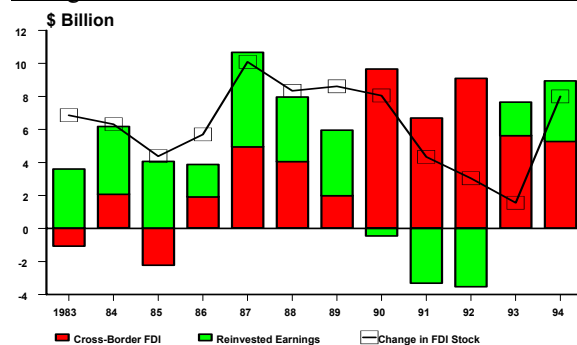
all levels of government. A substantial package of commitments in the area of professional and business services provide secure and improved access to service suppliers and providers in new and established markets under conditions which are transparent and, to a large extent, guarantees a level of treatment, within foreign markets, equal to that currently enjoyed by domestic services firms.

Canada is currently participating in negotiations in the OECD for a Multilateral Agreement on Investment (MAI) and is participating in discussions of investment issues within the Free Trade Agreement of the Americas (FTAA) process.

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

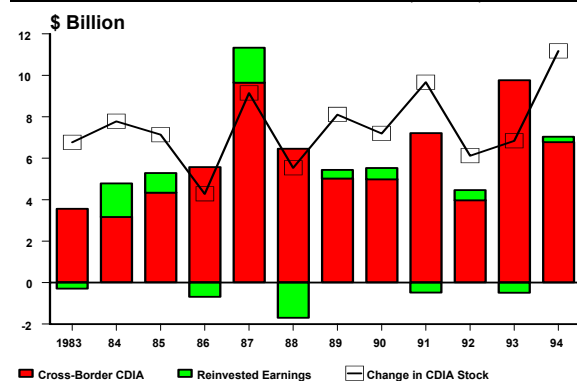
1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

### Foreign Direct Investment - Cross Border Flows and Reinvested Earnings



- Canada attracts sizable amounts of FDI. Between 1983 and 1994, the stock (book value) of FDI in Canada more than doubled from \$73 billion to \$148 billion.
- New investment (cross-border flows) accounted for 58% of the increase while 30% came from reinvested (retained) earnings. The balance was due to valuation adjustments.
- Recent data indicate foreign multinationals invested a massive \$15.4 billion in Canada. About half the total was financed from profits earned and reinvested in Canada.

### Canadian Direct Investment Abroad (CDIA) - Cross Border Flows and Reinvested Earnings



- Canadian multinationals are active participants in “globalization”. From 1983 to 1994, CDIA stock grew at more than twice the pace of FDI stock in Canada.
- The \$80 billion increase in CDIA (to \$115 billion) caused CDIA stock to rise from 53% to 77% of FDI stock (1992).
- In 1990, CDIA was higher than FDI in four of eight major industries: finance and insurance (associated with the international deregulation of this industry); transportation services and communications; metallic minerals and metal products; electrical products.

2. *List of the major countries/economies that are source/receivers of FDI over recent years.*

Sources of FDI	1994 % of Total	Destination of FDI	1994 % of Total
United States	64.8	United States	54.0
United Kingdom	12.6	United Kingdom	9.5
Japan	3.9	Ireland	2.5
Germany	3.5	Japan	2.4
France	3.0	Bermuda	2.1

# CHILE

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# CHILE

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. *Summary of foreign investment policy including any recent policy changes.*

The legal treatment of foreign investment has its basis in the Chilean Constitution. The Constitution embodies the basic elements that shape the Chilean economy. The great stability of the Chilean Constitution is fostered by the fact that any change to the Constitution is subject to strict parliamentary procedures in both chambers of Congress (Senate and Chamber of Deputies) and, in certain cases, to ratification by a plebiscite. The Chilean State Constitution, in article 19, refers to the economic public order and the economic liberty principles and property rights, from which the foreign investment policy-setting framework in Chile derives.

Foreign investment has been a fundamental factor in the recent growth of the Chilean economy. Due to the increased economic and political stability resulting from the return to democracy in 1990, the country has attracted an increasing flow of foreign investment.

Foreign investment has played a fundamental role in the modernization and growth of our economy during the past few years. In the period 1988 to 1995, the total amount of foreign direct investment (FDI) through Decree Law 600 has been:

1988	US\$845.3 million
1989	US\$969.7 million
1990	US\$1,319.9 million
1991	US\$980.6 million
1992	US\$995.6 million
1993	US\$1,725.4 million
1994	US\$2,517.9 million
1995	US\$3,021.4 million

### 2. *Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.*

The monthly Foreign Investment Report contains public statements on investment. In particular, pages 19-21 of Chile, Foreign Investment Report, July 1994; and pages 34-36 of Chile, Foreign Investment Report, December 1994 describe and define accurately the policies and attitudes of Chile toward foreign investment.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory (legislative) requirements*

##### 1. *List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

###### Foreign Investment Statute Decree Law 600 of 1974

In the last few years, Decree Law 600 has been the investment regime most utilized by foreign investors, mainly because of the safety that it provides to investors and the simplicity of its procedure. No investment applications below US\$25,000 are allowed under Decree Law 600 but this does not mean a requirement of materialization. In general terms, the following steps take place when an investment process is carried out under these provisions:

A. If investor is a corporation or any juridical entity:

- (i) to present an application to the Foreign Investment Committee. Specifically, the application is a blank form that contains relatively detailed data on the investor, the project and the capital.
- (ii) the application must be submitted jointly with both the investor's procuration to his representative duly registered, in effect and legalized, and the investor's incorporation charter duly registered, in effect and legalized.

(iii) once the latter is done, relevant information about the investor entity must be presented.

B. If it is an individual:

- (i) at the moment the application is presented, the foreign investor should certify his foreign nationality.
- (ii) if the person is Chilean, the investor shall prove his residence and domicile abroad through a consular certificate.

In both cases (A and B), the Committee could ask for more information if it considers it necessary.

C. If there is no requirement of further information, the Committee gives its approval. Investments which amount to less than US\$5 million are approved by the Executive Vice-President of the Committee with

the confirmation of the President of the Committee; those greater than that amount are approved within approximately 30 to 40 days.

- D. Once the investment is approved, the parties may state a date on which the contract will be signed. The contract shall stipulate the period of time within which the foreign investor is to bring such capital into the country. Such period shall not exceed eight years for mining investments and three years for other investments. Nevertheless, the Committee may, by unanimous agreement in the case of mining investments, extend the period up to 12 years when prior exploration is required.

#### *Characteristics of the Decree Law 600*

##### I. Whom the foreign investor can be

- foreign States;
- international Organizations created under Public International Law;
- foreign individuals and juridical entities;
  - individuals shall prove their nationality through an officially certified document (usually passport). The nationality of juridical entities, which can have any structure, shall be demonstrated by a legalized, registered and officially translated certificate of its inclusion in the registry of commerce in its own country, and by copy of the corporation charter;
- Chilean people with foreign residence.

##### II. The company receiving the investment

The company which receives the foreign investment can be constituted 100% by foreign capital or be part local capital part foreign capital; in this case it is a joint-venture contract. Furthermore, the company can be formed 100% by Chilean capital. In any case, the receiving company must be constituted in Chile.

The investor that wishes to get associated with a company which already exists can do so through:

- the assignment of rights;
- the acquisition of shares; or
- the raising of equity.

If the association has not been constituted and the parties need to incorporate a stock corporation, at the moment the corporation charter is subscribed, at least one third of the initial equity must be paid. This implies that the investor must bring no less than that amount at that moment into the country, to be sure that it will be subject to Decree Law 600 provisions. Another usual way is the establishment of foreign stock corporation agencies.

##### III. Foreign investors' rights

###### (a) The right to subscribe a foreign investment contract with the Chilean State

It should be noted that the subscription of a contract is indicative of a wish to invest in Chile, it is an investor's right. They can choose not to submit their investment to Decree Law 600 and can eventually opt for other ways to enter their investment in Chile. In that case, the person will not qualify as a "foreign investor" and will have no access to the facilities provided by that status.

The contract is executed by public deed and it is subscribed, on the one hand, by the Executive Vice President of the Foreign Investment Committee on behalf of the Chilean State who authorizes the investment prior to agreement of the President of the Committee and, on the other hand, by the person contributing the foreign capital, called "foreign investor". In certain cases, investment over US\$5 million, or related with sectors or activities operated by the State, or those made in public utilities, or those made in mass communication media or those made by a foreign State or by an International Organization, the Ministry of Economy acts directly on behalf of the Chilean State.

Specifically, the contract contains the following: the investor's and its agent's identification (if there is an agent) as well as that of the receiving company and of its legal representative; amount of the investment and the terms under which the investment shall be brought into the country. The other clauses are related to the application of local legislation in force to the respective activity; kind of capital (currency, capital goods, etc.); investors' rights and submission to Chilean Courts of Justice.

It is important to emphasize the juridical nature of this contract. Almost all doctrines have classified the Decree Law 600 contract among the contract law category. In summary, this means that the parties cannot unilaterally change the rights and obligations issuing from its clauses and are not subject to the subsequent passage of new laws.

Thus, protected by clear, stable rules and legally binding contracts, foreign investors are safeguarded from arbitrary changes in government policies or legal interpretations.

Therefore, the Chilean State as a party to the contract, cannot modify the legal regime established in it, even by law. For the foreign investor's investment, this implies juridical stability, guaranteed by the Chilean State or, in other words, a property right upon the rights that arise from the foreign investment contract which are, therefore, protected by N 24 of Article 19 of the Political Constitution.

- (b) The right to transfer the capital as well as the net profits abroad through the formal exchange market<sup>1</sup>
- (i) The first part of Article 4 of Decree Law 600 reads as follows:  
“Foreign investors shall be entitled to transfer abroad their capital and any net profits generated thereby. Remittances of capital may be made once one year has elapsed since the date of entry. Capital increases paid with profits eligible for remittance abroad may be remitted with no time restrictions once tax obligations have been fulfilled. Remittances of profits shall not be subject to any time restrictions.”

In summary, the remaining part of this article states:

- the applicable exchange rate shall be the one most favorable obtained by the investor in the formal exchange market.
- the access to formal market for remittance of capital or profits shall require a certificate issued from the Vice President of the Foreign Investment Committee who has a 10 day term to approve or reject it<sup>2</sup>.
- the currency to withdraw the capital can only be obtained through the selling of either shares or equity rights and also through the total or partial liquidation of the company which has been purchased or incorporated to the investment.

However, capitals brought under these provisions (Decree Law 600) must stay in the country at least for one year. This is a restrictive term applied only to the capital, net profits do not have this restriction, so they can be freely remitted abroad at any time after paying the correspondent taxes.

(ii) Right to access to the formal exchange market

To foreign investors, this right consists in the possibility of access to this market to purchase or sell the needed currency related to the investment. The exchange rate shall be the most favorable one the investor can obtain into this market.

Co-existing with the formal market is the parallel one, perfectly legal, regulated by free market. All people have access to it, except if the operation must be done through the formal market (the Central Bank regulates this aspect).

(iii) Rights related to taxation

Taxation as a general matter and the aspects specifically related to foreign investment are treated in point N 6. Decree Law 600 states an optional special tax regime for those investments that are subject to this regulation. The foreign investors have the right to opt for a fixed total income tax rate of 42% for a term of 10 years beginning with the initial activities instead of the normal tax rates.

IV. Methods through which the capital can be brought into the country

1. Freely convertible foreign currency, which must be sold in the formal market as mentioned.
2. Tangible assets in any form or condition, which should be brought and valued under provisions generally applicable to imports, not subject to foreign exchange coverage. This means that payment through the formal market does not exist because the local or foreign importer does not pay for the assets that are brought into the country.
3. Technology in its various forms, provided it qualifies as capital, which shall be valued by the Foreign Investment Committee. This is the way used the least to bring capital into Chile.
4. Credits associated with foreign investment. The general provisions which regulate this kind of credits as well as rates of interest, fees, taxes etc., are determined and authorized by the Central Bank. The Foreign Investment Committee has established a minimum debt equity ratio for those applications that consider associated credits and equity. The required ratio is that a minimum of 30% of the authorized investment must be brought in as capital contribution (equity) and a maximum of 70% may be brought in as credits associated to the authorized investment.

Number 1, II, Letter D of Chapter XIV of the Foreign Exchange Regulations Compendium of the Central Bank of Chile, stipulates that regulations about external credits of Chapter XIV, are applicable to associated credits Decree Law 600 mechanism as a consequence of it, associated credits under Decree Law 600 modality are subject to a 30% mandatory non-interest bearing deposit with the Central Bank of Chile for a period of one year.

5. Capitalization of foreign loans and debts in freely convertible currency, provided such contracts have been duly authorized. A previous agreement from the Central Bank Committee and a resolution from the Foreign Investment Committee are required, with those requirements the respective contract may be modified.
6. Capitalization of profits qualifying for remittance abroad. The profits must fulfill every tax obligation before requiring its capitalization, as if they were remitted abroad. Once capitalized, those amounts may be withdraw as if they were profits, without term conditions.

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1 In the formal exchange market only banks and some financial institutions operate.

2 In practice, this certificate delays no more than 48 hours if it is duly requested.

Capital can be repatriated after the completion of one calendar year from its internment. Profits can be transferred any time, without any limitation at all as to the amount of the transfer, following the payment of the respective Chilean taxes. Decree Law 600 is the instrument used by most of foreign investors to invest in Chile.

The Foreign Investment Statute, Decree Law 600 of 1974, created the Foreign Investment Committee. The Foreign Investment Committee of Chile is the body that should authorize the inflow of foreign capital following a simple and rapid procedure.

The Foreign Investment Committee of Chile is formed by four Ministers of State (Economy, Finance, Foreign Affairs and Planning) and the President of the Central Bank. The Minister of Economy is the President of the Committee. The Committee counts with an Executive Vice-presidency to execute its policies. The Executive Vice-presidency, among its other duties, registers the flow of foreign investments that enters the country, administers the Statute of Foreign Investment (Decree Law 600), develops the means to simplify the work of the investor, and also participating in promotional activities, sharing this duty with the Foreign Affairs Ministry. Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile.

Chapter XIV of the Compendium only applies to capital entered and registered through the Central Bank of Chile as foreign currency and to foreign loans.

A certificate of backing is issued by the Bank. The repatriation of the capital and the profits is subject to the terms and conditions that are in force at the moment of converting the capital into local currency. The capital can be repatriated after one year and there is no restriction for the remittance of profits.

The Law of the Central Bank enables this institution to regulate, by general means, the inflow and outflow of foreign currency, stating which operations must be executed through the formal exchange market.

Under these provisions, investors may enter no less than US\$10,000 or the equivalent in free convertible currency, representing either foreign loans or capital.

The basic difference between Chapter XIV and Decree Law 600 is that, under Chapter XIV, there is no contract to sign and, therefore, investors cannot apply for the tax invariability regime which is offered under Decree Law 600. Besides, under Central Bank provisions, investors can only bring foreign currency into Chile and cannot demand the advantages offered by Article 11 bis of Decree Law 600 (investments no less than US\$50 million) In the case of capital investments, a simple registration of the investment amount in the Central Bank is required, this can be done through a commercial bank before selling that proves the registration.

The capital remittance can be accomplished only after one year, starting with the sale of the currency in the formal market. After the year, investors must present the certificate for the remittance authorization. Net profits, that is after taxes, shall be remitted abroad.

If investors bring foreign loans, besides the registration, some documents related to the credit (credit contract, bill etc.) will be needed by the Central Bank for their authorization. In addition, a schedule of interest remittance must be presented to this institution.

Foreign loans, capital allotted to take deposits and investments, brought to Chile through the Chapter XIV mechanism are subject to a 30% mandatory non interest bearing deposit with the Central Bank of Chile. The deposit must be expressed in US dollars and must be kept for one year.

The deposit may be substituted by a payment to the Central Bank of an amount equivalent to an interest on that deposit.

Capitals brought into Chile through Chapter XIV mechanism to pay the capital of a forming company or to pay a capital raise of an existing company, are exempted of the 30% deposit requirement.

#### Law 18.657 about Foreign Investment Capital Fund.

This mechanism, which entered into force in September 29, 1987, enables financial resources from sources outside the national territory to be captured through the assignment of participation quotas. The remittance of contributed capital abroad shall not be carried out prior to 5 years counting from the date the contribution had been entered.

All amounts remitted that do not correspond to capital originally invested, earned by the investments of the fund, shall be subject to the flat 10% income tax.

#### (ii) Investment Review And Approval

- 1. Details of any proposals and sectors that are/are not (yes/no) subject to screening.*
  - 2. Details of guidelines/conditions that apply for screening (e.g. mandatory or voluntary notification, only required if foreign equity (in excess of 10%). Details of any special conditions that apply to individual sectors.*
- In accordance with Decree Law 600, Foreign Investment Statute, any investor that desires to enjoy the benefits of contract must submit a foreign investment application to the Foreign Investment Committee.

The Committee sets forth policies and procedures concerning foreign investment and has authority to approve or reject investment applications submitted. According to the provisions established in the regulations, to



approve all investment applications for a total of more than US\$5 million or its equivalent in other currencies, a Committee agreement is required.

The Foreign Investment Committee, through its Executive Vice-presidency, is empowered to request all kinds of information from foreign investors whenever it deems necessary to do so. The operative functions connected with recording and processing procedures of investment applications, are executed by the Executive Vice-presidency. This authority is empowered to authorize, prior approval of its Chairman, investments for less than US\$5 million.

*3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

The main document is the Decree Law 600 Foreign Investment Application. Additional documentation required is indicated in section B(7). Copies of the relevant documentation can be obtained from the contacts listed in section B (1)(ii)(4) below.

*4. Contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts.*

Agency	Address/telephone/fax
<u>Decree Law 600 application</u>  Foreign Investment Committee	Teatinos 120, 10 Floor, Santiago, Chile. Telephone: (562) 698 4254, (562) 698 3705 Fax: (562) 698 9476
<u>Chapter XIV application</u>  Central Bank of Chile, External Financing Management Department.  It is necessary to recall that the applicant should submit his application to any commercial bank which will deal with it before the Central Bank.	Huerfanos 1175, 8 Floor  Telephone: (562) 670 2270 Fax: (562) 698 5866

*5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

The average period for Decree Law 600 applications, from the formal submission of all relevant/required documentation to final approval/rejection is about 30 to 40 days. For Chapter XIV mechanism it is about one week.

*6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeal processes and the average time for an appeal to be considered.*

There is no formal appeal procedure in Decree Law 600. Differences between the applicants and the Committee are resolved through discussions or by the submission of additional information by the applicants.

The same principle applies for a Chapter XIV application.

Although foreigners are entitled to a protection appeal before the Judiciary Power in cases where they considered that constitutional guarantees have been violated, it is important to recall that the Political Constitution of Chile grants to any person in Chile several rights among them the right to develop economic activities and the non discriminatory treatment by Government Authorities. The protection of these and others guarantees is made through the Protection Appeal, special recourse that must be presented before the Judiciary Power. This appeal could be submitted by foreigners or Chileans with no distinction.

*7. Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

Decree Law 600 Foreign Investment Application

The application should be presented by the investor or its legal representative, duly signed before a notary with two copies, including the documents described below.

Application forms are available at the offices of the Executive Vice-presidency, Teatinos 120, 10th Floor, Santiago (see section B(1)(ii)(4) above for further contact details).

The application specifies the investor and its legal representative. It includes a brief description of the project, including the amounts, terms, forms of capital contributions and tax treatment.

The Executive Vice-presidency on receiving the application assigns the investor a number and from that date the investor is authorized to enter the investment and specifically currency into Chile through the Formal Exchange Market. Tangible goods may also be included in the application, however in order to be able to enter the goods the investment contract has to be signed previously.

Once the application is approved, the investor or its legal representative will receive a draft of the foreign investment contract to be signed with the State of Chile. This will be recorded in a public deed which contains all the rights and obligations indicated in Decree Law 600 which has the character of **contract law**. This contract can only be modified by agreement of both parties.

The procedures from the presentation of the application through the signing of the respective contract, take approximately 30 to 40 days.

The investor may, at any time, request the modification of the contract, whether to increase the investment, change the purpose or assign the contract rights to another foreign investor.

#### Document Which Should Be Submitted With The Decree Law 600 Foreign Investment Application

The documents depend on the legal nature of the investor.

#### **If it is a legal entity, the following must be attached:**

- notarized copy of the Articles of Incorporation, By Laws or equivalent documentation.
  - If these are in a language other than Spanish or English, they should be accompanied by an official translation into Spanish.
- a certificate of registration and/or incorporation duly legalized and notarized. If this is in a language other than Spanish, an official translation should be presented.
- copy of the public deed granting power of attorney to the legal representative, it must be written in Spanish.

#### **If the investor is a natural person, the following must be attached:**

- document which substantiates nationality (notarized copy of passport).
- if acting through a representative, a copy of the public deed granting power of attorney, in Spanish.

#### Chapter XIV Application

The application should be submitted to the Central Bank of Chile through a commercial bank or foreign exchange house. The foreign investor should complete an application available at banks and foreign exchange house. In the application, the foreign investor should identify himself, the recipient enterprise of the investment or the person or entity that receives the investment including tax identification number, currency of the investment, investment amount, destination of the investment.

The application will be registered by the Central Bank of Chile and will issue a certificate that allows access to Formal Exchange Market, for remittance of profits and capital.

#### *8. List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies)*

Considering the non-discrimination principle that inspires the Chilean foreign investment regime, foreign investors should address complaints related to their economic activities in Chile to the same agencies that decide about complaints of local investors.

Nevertheless, article 10 of Decree Law 600 states that in the event legal provisions are issued which the holders of foreign investments or the enterprises in whose capital the foreign investment has an interest should consider to be discriminatory, they may request that the discrimination be eliminated, provided not more than one year has elapsed since the provisions were issued. The Foreign Investment Committee shall, within no more than 60 days after the date of presentation of the request, issue a decision rejecting the request or taking the appropriate administrative measures to eliminate the discrimination, or requiring the competent authorities to take such measures if they are beyond the powers of the Committee.

If the Committee fails to issue a timely decision, or issues a decision rejecting the request, or if it is not possible to eliminate the discrimination administratively, the holders of the foreign investment or the enterprises in whose capital they hold an interest may resort to the ordinary justice system for a ruling on whether discrimination exists or not, and, in the affirmative case, that general legislation should apply.

This mechanism is applicable to investments made through Decree Law 600, Foreign Investment Statute.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

Considering the non-discrimination principle, compliance of law and regulations by foreign investors is in the hands of the same authorities that control local investors' activities. The compliance of Decree Law 600 regulations is on the hands of the Foreign Investment Committee and for Chapter XIV investments in the hands of the Central Bank of Chile.

Nevertheless, all mining projects, excluding coal and oil projects, are under the competence of COCHILCO, Comisión Chilena del Cobre (Chilean Copper Commission). This Commission has the legal duty of monitoring compliance of foreign investment contracts on mining area. COCHILCO was created by virtue of Decree Law 1349 of 1976 and the final text was enacted by Decree N° 1 published on the Official Gazette, April 28, 1987.

Agency	Address/telephone/fax
Comisión Chilena del Cobre, COCHILCO (Chilean Copper Commission)	Agustinas 1164, 4 Floor Santiago Chile Telephone: (562) 672 6219 Fax: (562) 672 3584
Superintendencia de Valores y Seguros (Superintendency of Securities and Insurance)  Article 4 Law 18.657 on Foreign Investment Capital Fund, stipulates that the Fund and the management corporation of the Fund shall be subject to the supervision of the Superintendency of Securities and Insurance concerning its operations and to the investment of resources inside the country.	Teatinos 120, 1Floor Santiago Chile Telephone: (562) 696 2194 Fax: (562) 698 7425

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

Chile encourages potential investors to comment on existing Foreign Investment regulations. Such comments can be forwarded to Teatinos or Huerfanos (see contact details in Section B (1)(ii)(4)).

11. *Where applicable, the role for sub national agencies in the approval process.*

Agency	Address/telephone/fax
Comisión Chilena del Cobre, COCHILCO (Chilean Copper Commission)	Agustinas 1161, 4 Floor Santiago Chile Telephone: (562) 672 6219 Fax: (562) 672 3584

## Functions

Foreign investment applications Decree Law 600, oriented to mining projects, require a favorable report from of COCHILCO.

The Commission should inform and advice to the Foreign Investment Committee and evaluate foreign investment applications oriented to exploration, exploitation, production or trade of copper, by-products of copper and mining substances, independent if they are metallic or non metallic. The Commission does not intervene on investment related with coal and oil.

COCHILCO was created by virtue of Decree Law 1349 of 1976 and the final text was enacted by Decree N 1 published on the Official Gazette, April 28, 1987.

## 2. Most Favoured Nation Treatment/Non-Discrimination Between Source Economies

1. *List and description of the scope of any exceptions to most favored nation treatment in relation to the establishment, expansion and operation of foreign investment (e.g. limits in terms of sector, threshold value or otherwise).*

In the Chilean Foreign Investment Legal Regime, there are no exceptions to most favored nation treatment principle in relation to the establishment, expansion and operation of foreign investment.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

The bilateral investment treaties signed with Venezuela, Argentina, Spain, France, Norway, Italy, Denmark, Malaysia and People's Republic of China, all in force, stipulate possible exceptions to MFN treatment. These treaties establish that MFN clause will have no effect in respect to any advantage accorded to investors of a third state by the other contracting party based on an existing or future customs or economic union or free trade agreement to which either of the contracting parties is or becomes party. Neither shall such treatment relate to any advantage which either contracting party accords to investors of a third state by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation.

Chile has signed free trade agreements with Mexico, Colombia, Venezuela and Ecuador.

### 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (e.g. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

The Constitution grants national treatment to national and foreign investors. Article 9 of the Foreign Investment Statute establishes that foreign investment, and those enterprises participating in such investment, are subject to the common legal regulation applicable to national investment, and no direct or indirect discrimination may be applied to such enterprises.

The State of Chile, and its bodies, grant the foreign investor an equal treatment, or no less favorable than that granted to national investors. For the adequate protection of this right, the Decree Law 600 stipulates that legal or regulatory provisions applicable to the major part of a certain productive activity that exclude foreign investment, are considered to be discriminatory. Likewise, regulations that establish treatments of exception for sectors or areas to which foreign investment has no access, are discriminatory.

Some exceptions to the principle of non-discrimination existing in the Chilean Law, are:

Sector	Nature of Exception (e.g. prohibition, limitation special conditions and special screening)
Local Financing	Limitation on access to local financing: Article 11, Decree Law 600 stipulates that rules may be established to limit the access of foreign investors to local financing. However, this exception is only applicable to investments made through Decree Law 600 mechanism. At this moment, there is no application of it.
Maritime transport- Cabotage-Internal transportation	<p>Decree Law N 3059 on activities of National Merchant Navy, states that cabotage is reserved to Chilean ships. Cabotage means transport of passengers or freight through maritime waters, rivers or lakes between two harbors inside the national territory and between these and facilities located in the territorial sea or in the economic exclusive zone.</p> <p>Coastal trade, ocean, river or lacustrian cargo and passenger trade between locations in the national territory, and between these and naval devices installed in territorial sea or in the exclusive economic area, is reserved to Chilean shipping companies, except when it deals with cargo volumes over 900 tons, and after a public bidding has been held.</p> <p>Nevertheless, when the volume of the cargo is equal to or less than 900 tons and there are no vessels available under the Chilean flag, the maritime authority shall authorize shipments in foreign merchant vessels; and likewise, when dealing with exclusive transportation of passengers.</p> <p>The local appropriate Maritime Authority may exclude one or more foreign merchant vessels from the coasting trade when, according to his judgment, there are reasons to act accordingly.</p> <p>The transportation of empty containers does not constitute coastal trade for the effects of the cargo reserve considered. (Law 18.899, article 47, interprets article 3 of Executive Decree 3059).</p> <p>The transportation of empty containers may only be performed by foreign shipowners when an identical authority exists for Chilean shipping companies in the</p>

	<p>countries of the nationality and domicile of the respective shipowner or vessel operator. If, because of nationality and/or domicile, a shipowner or operator is connected to a group of countries with a common shipping policy, it will be necessary, as well, that Chilean shipping companies be empowered to carry empty containers in and between countries of the appropriate groups.</p> <p>For the effects of ocean freights to and from Chile, the principle of reciprocity applies, in accordance with provisions in article 4 of Executive Decree 3059.</p> <p>For the effects of applying this law, it should be understood by “Chilean Shipping Owner” Chilean natural or legal entities that comply with the following requirements:</p> <p>(1) Legal entities or communities that comply with those requirements provided in article 11 of Executive Decree 2222 of 1978:</p> <p>(a) The company that owns the vessel should have its legal residence and real and effective headquarters in Chile; the chairman, manager and the majority of its Directors or administrators must be Chilean; and the majority of its equity should belong to Chilean natural or legal entities.</p> <p>(b) Owners’ Community where the majority of its members are Chilean, who are domiciled and reside in Chile; their administrators must be Chilean, and the majority of the Community rights must belong to natural persons or legal entities.</p> <p>Legal entity partners of a company owning vessels or a member of a community owner of same, shall be considered to be Chilean when they comply with the above requirements and 75% of their capital is owned by Chilean citizens.</p> <p>(c) Special vessels belonging to natural persons or legal entities domiciled in the country, may be registered in Chile, provided that they have their business headquarters in Chile, or that carry out in the country a permanent industrial activity or profession.</p> <p>(2) Is dedicated to ocean transportation.</p> <p>(3) Is the owner or leases merchant vessels under Chilean registry and flag. In this respect, article 6 of Executive Decree 3059 refers to foreign hired vessels considered to be Chilean.</p>
Fishery activities	<p>Limitation on ownership of fishing ships and on development of fishing and aquicultural activities. The Fishery and Aquiculture Law N°18.892, published on December 23, 1989, states that most of the capital of companies owners of fishing ships, must be Chileans. However, by virtue of the international reciprocity principle the proportion could be different in those cases where the country of the nationality of the foreign company grants more favorable treatment to Chilean companies.</p> <p>Article 115 of the General Fishing Law, prohibits fishing extraction activities in internal waters, territorial sea or exclusive economic area, to vessels operating under a foreign flag, except if they have been specially authorized to perform research fishing.</p> <p><u>Non-Industrial Fishing:</u></p> <p>Area exclusively reserved for non-industrial fishing: 5 mile strip of territorial sea and internal waters must be registered in the National Registry of non-industrial Fishermen. For this purpose, it is required to be a natural person or legal entity (constituted exclusively by natural persons who are non-industrial fishermen) and Chilean citizens or foreigners with definitive residence.</p> <p><u>Industrial Extractive Fishing Activity:</u></p> <p>General access system in territorial sea, except areas reserved for non-industrial</p>

	<p>fishing, and in the exclusive economic area. The above does not include fisheries declared to be under a full exploitation, recovery or incipient development system. Fishing vessels must be registered in Chile according to the Law of Navigation. Fishing authorization for each vessel must be requested to the authority. Such authorization, under no circumstances, may be transferred, hired or constitute rights in favor of third parties.</p> <ul style="list-style-type: none"> <li>• Natural person applicant: Chilean or foreigner with definite residence.</li> <li>• Legal entity applicant: legally established in Chile. If there is a share of foreign capital, proof of the authorization for the investment must be exhibited. In case of a fishing authorization for a legal entity with foreign contribution, the vessel must be registered in the entity's name.</li> </ul> <p>The final clause of article 43 provides that Chilean fishing vessels with a national crew of at least 85%, and which perform extraction fishing activities exclusively in high seas or presential sea (beyond the exclusive economic area), are exempted to pay the fishing license.</p> <p>To perform industrial fishing activities it is necessary for vessels to be duly registered. The Law of Navigation, in the final clause of article 11, stipulates the principle of international reciprocity:</p> <p style="padding-left: 40px;">Legal entities that own fishing vessels must be established with a majority of Chilean capital. Nevertheless, by applying the principle of international reciprocity, the maritime authority, prior certificate issued by the Ministry of Foreign Relations may, under equivalent conditions, release of such requirement those fishing companies established in Chile with a majority share of foreign capital.</p> <p><u>Aquaculture:</u></p> <p>The following may only be aquaculture concessionaires or holders of an authorization to perform aquicultural activities:</p> <ul style="list-style-type: none"> <li>• Chilean or foreign natural persons with definite residence.</li> <li>• Chilean legal entities established according to Chilean law. If there is a contribution of foreign capital, proof of the authorization for the investment must be exhibited.</li> <li>• aquaculture concession assignments must be previously authorized by the Ministry of National Defense.</li> </ul>
Aerial Transport Services	<p>Article 1 of Decree Law 2564 states that aerial services can be supplied by national or foreign companies. Article 2 of Decree Law 2564 states that the aforementioned principle will operate if the state of the nationality of the foreign aerial company grants the same right to Chilean aerial companies. The inspiring principle of the Chilean law in this subject is the principle of international reciprocity. Law 18916, Aeronautical Code, stipulates freedom of circulation within the national territory for all Chilean airships, subject only to restrictions imposed by law. Circulation of foreign civil airships are subject to Chilean law and treaties where Chile is part thereof.</p> <p>The Aeronautical Code determines what kind of vessels may be registered in Chile:</p> <ol style="list-style-type: none"> <li>(1) airships belonging to Chilean natural persons;</li> <li>(2) airships belonging to Chilean legal entities: those established in Chile in accordance with Chilean laws, with main offices and real and effective headquarters in Chile; the chairman, manager and majority of directors or administrators must be Chilean, and the majority of their equity should belong to Chilean natural persons or legal entities;</li> <li>(3) airships belonging to communities, provided that the majority of the community rights belongs to Chilean natural persons or legal entities that</li> </ol>

	<p>meet the requirements provided in the preceding number; and</p> <p>(4) the aeronautic authority may register in Chile airships of foreign natural persons or legal entities, provided that they hold or perform in the country some permanent job, profession or industry, and also those operated, in any form, by Chilean air transport companies.</p>
Media	<p>Limitation on broadcasting grants. Law N 18.838, National Television Council Law and Law 18168. General telecommunication Law, state that television and radio broadcasting grants will be approved only with respect to Chileans older than 21 years old and legal entities formed under the Chilean law and established in Chile. Their chairmen, directors, managers administrators and legal representatives, must be Chilean.</p>
Media Press News Agency	<p>Limitations on ownership and management. Law 16643 on Advertising Abuses, stipulates that owners of any newspaper, magazine or periodic writing, whose editorial address is located in Chile, or national news agency, must be Chilean with domicile and residence in Chile.</p> <p>If such owner or concessionaire is a corporation or community, it will be considered to be Chilean provided that 85% of its equity or community rights belong to Chilean natural persons or legal entities. Legal entities that are partners or form part of the proprietary community or corporation, require also that 85% of its capital be held by Chileans. The Director, and those who replace him, must be Chilean and be domiciled and reside in the country. The nationality requirement will not apply to technical or scientific magazines, publications edited in foreign languages and international magazines printed in Chile and distributed in the country and abroad, even if their editorial address is in Chile. Neither will it will apply to foreign Missions accredited in Chile.</p> <p>To begin operations, newspapers, magazines and periodic writings, must submit a written declaration to the Director of the National Library or to the Division of Social Communication of the Government.</p>
Insurance Services	<p>Reserved to Chileans. Executive Decree 251 on insurance companies, corporations and stock exchange, states that business of insuring and reinsuring risks on a policy basis, may only be performed in Chile by national insurance and reinsurance corporations. Notwithstanding the above, any natural person or legal entity may freely contract abroad all kinds of insurance, except those that are compulsory according to law.</p>
Acquisition of frontier or border land.	<p>Decree Law N 1939 states that only Chilean individuals or legal entities can obtain, through rent or by any other title, property within fiscal territories situated at a distance of up to 10 kilometers measured from the border, (Article 6). On the other hand, Article 7 of the same Decree prohibits, for reasons of the national interest, the acquisition of the ownership of landed property situated on the frontier zones, by the citizens of the bordering countries where similar prohibitions or restrictions apply to Chilean citizens. This last aspect, was modified through Law N 19.256 of 1993, which empowers the President of the Republic to exempt, through the Supreme Decree based on reasons of national interest, to expressly nominated citizens of the bordering countries affected by this prohibition and authorize said persons to acquire or transfer the ownership of property or other rights to determined properties situated on the frontier zones.</p> <p>Fiscal real estate located up to a distance of 10 km from the frontier, can only be acquired in property, leasing or in any other manner by Chilean natural or legal entities.</p> <p>The same rule applies to fiscal real estate located up to 5 km from the coast. This case admits an exception: these rights may be awarded to foreigners domiciled in Chile, prior favorable report issued by the Naval Undersecretary of the Ministry of National Defense.</p> <p>In no way may fiscal shore land, within a strip 80 metres from the line of highest</p>

	<p>tide of the shore coast, which is only susceptible to administrations acts of the Ministry of National Defense, be transferred. Law 18.524 amended article 6 of Executive Decree 1939: authorizes fiscal shores to be transferred to natural Chilean persons in regions X and XI, prior report issued by Naval Headquarters.</p> <p>Law 19.072, inserts clause 5 of article 6 of Executive Decree 1939: exceptionally, through an Executive Decree, and prior report issued by Naval Headquarters, fiscal shore land within an 80 metre strip may be transferred to Chilean legal entities for non-profitable purposes, whose objective is to spread and cultivate letters or arts. To tax or transfer such land, totally or partially, is forbidden.</p> <p>Forestry reserves, National Parks and fiscal grounds whose occupation and work in any way compromises its ecological balance, may only be used or granted for use to State organizations or legal entities of private law, for non-commercial purposes (corporations and foundations exclusively), to preserve and protect the environment.</p> <p>Frontier real estate, for reasons of national interest, may not be acquired (ownership, other real rights, possession or tenancy) by native citizens of bordering countries. This prohibition extends to legal companies or entities with headquarters in the bordering country or if 20% or more of its capital belongs to citizens of the same country or in whose effective control it may be found.</p> <p>Exception: In reason of national interest, a well-founded authorization from the President of the Republic is required through an Executive Decree. This authorization expressly and nominatively exempts native citizens of a bordering country, either for acquiring or transferring ownership and other real rights, or possession or tenancy of said real estate.</p>
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*2. Description of the nature and scope of any limitations on foreign firms' access to sources of finance.*

Article 11 Decree Law 600, states the faculty to limit the access of foreign investors to local financing. However, this exception is not applied today but the State maintains the faculty to enact limitations in this subject. The application of this measure is on the hands of the Central Bank of Chile.

**4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriations of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Article 4 of the Decree Law 600, Foreign Investment Statute, provides that the capital repatriation should be made after one year of permanency in Chile. This term is counted from the day which the capital is invested in Chile. There is no restriction about remittance of profits paying the correspondent taxes.

Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile, states that capital can be repatriated after one year of permanency in Chile and there is no restriction about remittance of profits, paying the correspondent taxes.

Article 14, letter B of the Law 18.657, published in the Official Gazette of September 26, 1987, stipulates that the capital interned through this law could be repatriated after 5 years of permanency in Chile. This term runs from the day that the capital was entered to Chile. There is no restriction about profits remittances paying the correspondent taxes.

*2. Brief description of the foreign exchange regime.*

In accordance with Chilean foreign exchange legislation, and as a general rule, foreign currency may be freely traded.

Although there is no official fixed exchange rate, the Central Bank unilaterally establishes an exchange rate at which all transactions in which the Bank participates must be executed. The Central Bank is an independent and autonomous entity. There are two legal exchange markets, one is the Formal Market, basically formed by banking institutions and the Informal Market, which comprises everyone else.

All and any individuals and legal entities may enter into and perform foreign exchange transactions, this idea seems to contradict the nature of an exchange control system. The application of the Chilean exchange control system consists of numerous regulations enacted by the Central Bank, all of which form exceptions or restrictions to dealings in foreign currency.

The Central Bank may impose restrictions or limitations on foreign exchange transactions through them the Central Bank controls the extent of the formal market and imposes the obligation to liquidate and sells holdings of foreign currency.



The Central Bank is empowered to request that certain transactions be executed only through the Formal Market, such is the case of those related to foreign loans, capital flows and profits remittances. The Central Bank may also determine that certain operations be subject to the prior approval of the bank.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions on the convertibility of currencies for the overseas transfer of funds.

Although, Chapter II Title I of the Foreign Exchange Compendium of the Central Bank of Chile, stipulates that exchange of foreign currency for investments in Chile must be done through the Formal Exchange Market.

## **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

Short and long term contracts for foreign personnel require compliance with certain special procedures. Besides a valid passport, a health certificate, a certificate issued by the local police and a contract visa are required. Applicants interested in obtaining a resident on contract visa should apply to the Chilean Consulate in the applicant's country. However, this kind of visa can also be obtained in Chile. It is granted to foreigners and their families for up to a two year period, renewable in Chile. The employer must be domiciled in Chile. The contract must contain a special clause whereby the employer undertakes to pay the return fares for the foreigner. Temporary entry is defined in the Chilean legislation as a stay less than 90 days, without the intention of immigration or of participation in the labor market. Visas for temporary entry are simple to obtain and the information for it is available in Chilean Consulates abroad. For periods of more than 90 days and when the presence of a person is justified in the country, that person will get a renewable temporary residence for one year. Justified reasons for the law are being an entrepreneur, an investor, or a trader with interests in Chile. The Labor Code provides that a local company must employ at least 85% Chilean personnel. For this calculation, technicians who cannot be replaced by Chilean personnel are excluded, as well as foreigners resident for more than five years and those married to Chileans.

*2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

See section B(5)(4) below.

*3. Description of regulations relating to personnel management of foreign firms, e.g. minimum wage laws, minimum requirements for training or employment of local staff.*

See section B(5)(4) below.

*4. List and summary of domestic labor laws which apply to foreign firms in the context of labor disputes/relations.*

### **The Labor Code**

The Labor Code contains the main regulations about labor relations.

In general, foreigners working in Chile are subject to the same laws as Chilean employees. Notwithstanding the above, the Chilean nationality is demanded for chairmen, managers and the majority of directors or administrators in the following legal regulations: Decree Law 3059 on Merchant Navy; Law 18.838 on the National Council of Television; Law 16.643 on Advertising Abuses; and Law 18.916, Aeronautic Code.

Likewise, the Navigation Law sets forth that in order to hoist the national flag, the Captain, Officers and crew of the vessel must be Chilean.

On the other hand, the Labor Code demands that at least 85% of workers working for the same employer, must be Chilean. Companies employing less than 25 workers are exempted from this regulation.

There are no restrictions to remit remuneration abroad. In Chapter XVII of the Compendium of Rules and Regulations governing Foreign Exchange Transactions of the Central Bank of Chile, procedures for paying remuneration in foreign currency are set forth (not compulsory).

Under Chilean Law, the legal minimum age to start working is 18 years, and the age for retirement is 60 for women and 65 for men.

In Chile, there are two kinds of work contract: the individual contract and the collective contract. The individual contract is carried out between the employer and the employees through which the latter commits to render a continuous service, subject to a schedule and under the supervision of and subordinated to the employer. On the other hand, the employer is obliged to pay an agreed upon amount for the services received. This contract must exist in writing within 15 consecutive days after the agreement has taken place, otherwise the employer faces a fine.

There are three broad types of individual contracts:

(a) Indefinite contract

This contract has no expiration date and grants certain benefits to the employee such as permanence and stability in the workplace, due mainly to the existence of specific legal causes for dismissal and the compensation thereof in case of non-compliance.

(b) Fixed tenure contract

The labor relationship has a predetermined duration. This duration may not exceed one year, unless extended for one more year in the case of managers or professionals with a University degree. There are, however, certain legal provisions that allow these contracts to automatically be deemed indefinite (i.e. two successive renewals).

(c) Contract for specific work or service

The duration of this contract is linked to the amount of time necessary to complete the specific work or service agreed upon in the contract.

The collective contract stems from the possibility of collective negotiation to which employees are legally entitled and are defined by law as that carried out between one or more with one or more unions or employees that decide to negotiate collectively, or combinations thereof, with the purpose of establishing even working and compensation conditions for a determined period of time. Collective contracts must exist in writing and cannot have a duration of less than two years. Furthermore, the law establishes the minimum topics they must contain. In addition, the employees may negotiate collective agreements to complement the collective contracts. These agreements are not subject to special procedures and do not grant the prerogatives of formal collective negotiation.

The work contract can be terminated due to the following causes:

- by mutual consent;
- by resignation of the employee.
- by death of the of the employee.
- by expiration of the duration of the contract.
- by completion of the work or service for which the employee was hired.
- by act of God or *force majeure*.
- necessity of the company.

The latter cause must be communicated to the employee with 30 days notice, unless the employee receives an amount equal to his latest income. If the contract has been in effect for more than one year, the employer must pay the equivalent of the latest salary for each year of service and fraction over 6 months. However, the parties involved may agree on a different amount of severance payment in the work contract.

On the other hand, the law states certain causes by virtue of which the work contract may be terminated without the right of severance payment (i.e. serious nonfulfillment by the employee of the obligations imposed by the contract).

It has been established that salary is composed of all compensation in money and additional produce measurable in terms of money and additional produce measurable in terms of money that the employee receives from the employer as established in the work contract. It must be paid in Chilean currency, in cash, unless otherwise stipulated, and with the convened periodicity which must-not exceed-one month.

Foreigners may receive their payment on foreign currency, but it must be authorized by the Central Bank. The law states a minimum monthly wage which is currently Chilean pesos \$58,900 which is approximately US\$147.

The amount of the company's net income distributed to the employees is considered to be a part of the payment.

For these purposes, the employer may choose between the following alternatives:

- distribute 30% of net income;
- pay, regardless, 25% of total payroll for the fiscal year, with a cap for each employee.

Concerning the holidays, every worker who has been working for one year has the right to 15 workable days of holidays fully paid by the employer. This period can be joint with another one, after that these periods are lost. Money compensations for holiday periods are expressly forbidden by the law, unless the case of the termination of the respective work contract. However, the parties may agree to anticipate the holidays even before the employee reaches a year of work.

**Law N 19.069 on Labor Unions**

There is no previous authorization necessary to form a labor union: it must only comply with the law and with its statutes. All employees have the right to form or join a labor union. These unions may be within a company, inter-company or for independent workers. Labor unions may, in turn form federations, confederations and "centrals" (union of confederations). Union leaders and delegates have privileges from the date of their election until 6 months after the expiration of the period.

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Taxes can only be created by law. The Chilean tax system may be separated into taxes related to foreign trade, which are supervised by the National Customs Service (the Service) and, on the other hand, internal taxes which are supervised by the Internal Taxes Service (Servicio de Impuestos Internos, hereinafter SII). With regard to the former, the Service can only verify if exported goods actually correspond to those declared in the respective documents. Concerning imports the service collects the respective customs duties.

Only imports are subject to these duties which are generally “ad-valorem” and are calculated as a percentage of the custom value of the goods that are being brought into the country. At present, the uniform rate of these duties is 11%. However, imports coming from countries which have free trade agreements with Chile have a different treatment. An example: ALADI countries’ (Latin-American Association for Integration) imports pay a reduced duty<sup>3</sup>.

### I. Internal taxation

Comprises several taxes, the most important of which are:

#### (a) Income tax

Under this concept, the law (Decree Law 824) establishes different kinds of taxes:

- first Category Tax which affect capital income, business, agriculture, mining and transport.
- second Category Tax which affect individual’s work income.
- global Complementary Tax, hereinafter GCT, which affects all individual’s income from any source.
- additional Tax which affect incomes of persons or entities who are not domiciled in Chile. It is a withholding tax of 35%

Limited Liability Companies and corporations are subject to a 15% First Category Tax rate applied on accrued taxable income according to the provisions of the Income Tax Law<sup>4</sup>.

The profits withdrawn or distributed to partners are subject to the GCT which has a scaled rate from 5% to 50%, in the case of individuals who have their domicile in Chile. The profits remitted abroad are subject to a 35% Additional Tax rate (case of foreign investors).

Premiums to foreign insurance companies that insure assets that are permanently in Chile are subject to a 20% Additional tax rate. In the case of reinsurance premiums the rate is 2%

The taxpayer subject to either Additional or GCT is entitled to a credit equivalent to the First Category tax rate paid on the income withdrawn, distributed or remitted abroad. This credit must be added back in order to compute the taxable basis of the respective tax.

Independently to the Additional tax, interest paid for foreign loans brought into the country associated to investments (under either Decree Law 600 or Chapter XIV) are subject to a 4% rate, when the loan comes from a financial institution which is registered in the Central Bank, in all other cases the rate is 35%.

#### (b) Value Added Tax

Decree Law 1606 regulates the Value Added Tax (VAT) which has a flat 18% rate in Chile. Purchases of movable goods located in Chile and exceptionally purchases of real estate are subject to VAT. Payments for services rendered in Chile or abroad are also subject to this tax.

Imports (customary or not), contributions to companies done by seller, some withdrawals of movable goods, the letting of movable goods, insurance premiums, etc. are similar to burden transactions.

Taxpayers are customary sellers and customary service renders. The tax mechanism is the following:

Each seller charges his sales with the referred rate which is considered a debt to pay, but he owns a credit equivalent to the tax value paid considering all his purchases subject to VAT. Therefore, the system works on a compensation basis between all sales and purchases subject to VAT. The taxpayer shall declare every month which are his debts (tax added to his sales) and his credits (tax paid for his purchases).

Actual taxpayers are, therefore, final consumers of either goods or services, because they don’t sell goods or services. Imports of capital goods, brought into the country as foreign investment under Decree Law 600, are not subject to VAT, whenever these goods are not included in a list made by the Ministry of Economy. Investors as well as receiving companies are subject to this exemption.

Exporters may recover the VAT paid for exported goods and, they also may recover the VAT paid for imports or purchases of goods assigned to export activities.

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<sup>3</sup> Importers have the possibility to pay their custom duties in a deferred way, if they import capital goods and fulfill other legal requirements.

<sup>4</sup> To determine the taxable income, the tax law states a procedure consisting in making certain additions and deductions on the total income, as, for instance, to deduct the direct cost of goods and services necessary to generate the income.

(c) Real Estate Tax

Real estate is subject to this 2% tax, calculated on an appraisal made by the National Treasury. Agricultural properties and certain low value non agricultural real estate are not subject to this surtax.

This tax must be paid in four parts each quarter of the year and originates a credit against the First Category Tax by the respective company.

(d) Stamp Tax

All documents within which are contained of money loans operations (including foreign loans) are subject to this tax.

The tax varies from 0,1% to 1,2% according to the term agreed in the respective operation. This rate is calculated considering the amount involved in the operation.

To longer terms correspond a higher rate, demand documents have a fix rate.

In the case of foreign loans, the tax payment must be made at the moment of the subscription of the respective contract. Loans granted from abroad by multilateral financial institutions are exempted from this tax.

II. Taxation on foreign investment

First of all, investors may opt to pay their taxes in accordance with the Chilean common tax system described above (35% tax), with the risk involved of possible alterations of its provisions.

The other possibility is the special tax invariability regime provided exclusively by Decree Law 600. This special system is not available in other alternatives, as Chapter XIV. If investors choose one of these two ways, they shall pay their taxes under the provisions of the common system.

Under the invariability tax regime, investors are entitled to agree in their respective contracts to a fixed overall income tax rate of 42% on their accrued taxable income for a term of 10 years beginning with the commencement of activities.

For purposes of DL 600, “commencement of activities” shall be understood to be the starting-up of the operation corresponding to the project financed with the foreign investment, once business-related income is generated, if the activity carried out consists of a new project; or where applicable, the calendar month following the admission into the country of any part of the investment, in the case of investments in activities under way.

The foreign investor may waive these rights at any time and become subject to the general tax regime. The waiver of the fixed rates is irrevocable and, once made, the taxpayer cannot return to fixed rates in the future.

Related to other kinds of taxes, under Decree Law 600, the holders of foreign investments shall be entitled to have in their respective contracts stipulate the invariability, for the time it takes to make the agreed investment, of the VAT regime (sales and services regime tax) and the tariff regime in force on the date of contract signing and applicable to imports of some capital goods not produced in the country. The same invariability shall apply to the enterprises receiving the investment.

The term “... the time it takes to make the agreed investment ...” shall be understood in accordance with the term stipulated in the respective contract, that is, three, eight or twelve years, as applicable.

*INVESTMENTS OVER US\$50 million*

In these cases, there are some differences in the invariability tax regime, the most important are:

- the 10 years terms of tax invariability may be extended up to 20 years from the starting-up of the project.
- the investor is entitled to maintain accounting records in foreign currency under the SII provisions.
- the contracts may include provisions on maintaining invariable, throughout the time period applicable (ten to twenty years), of the legal rules and resolutions or circulars issued by the SII and in effect on the contract signing date, with respect to the depreciation of assets, deferral of losses, and organization and start-up expenses.

## 7. Performance Requirements

1. *Brief description of performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

There are no major performance requirements in the Chilean legal framework that impose limits on trade and investment.

Although, Article 13 of Law N 18.838 about National Television Council, faculty the Council to establish as general requisite that up to 40% of the transmissions must be Chilean productions.

Law N 16.624 about Mining Copper Activities, stipulates that cooper productive entities that produce more that 75.000 tons yearly of blister cooper, must establish a local reserve that benefits local manufacturing entities.

## 8. Capital Exports

1. *List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

About repatriation of investments made in Chile, see answer contained in section B°(4)(1) above.

For Chilean Investments abroad, Chapter XII A and B, Foreign Exchange Compendium, Central Bank of Chile are applicable.

Chapter XII A, stipulates that investors may acquire foreign currency in the Formal Exchange Market and invest abroad. The investment abroad must be destined to form a legal entity, to acquire rights on an existing company or to open branches outside of Chile. The mechanism of Chapter XII consists basically on a petition submitted to the Central Bank of Chile, providing information about identification of the investor, recipient legal entity of the investment, activities of the recipient legal entity, amount of the investment, origins of the funds, statement that no tax obligation is pending or the amount of taxes due by the investor.

With this information, the Central Bank rejects or approves the petition. In the case of approval the investor has the legal obligation to return profits and to return capital when the recipient company of the investment is terminated, also investors have the legal obligation to inform and certify to the Central Bank that the investment authorized was made.

Chapter XII B, stipulates that investments made with foreign currency acquired in the Informal Exchange Market for forming legal entities abroad, acquiring rights on existing foreign legal entities or opening branches abroad, must be notified in writing to the Central Bank within 120 days counted from the day of the remittance of the funds abroad.

*2. List and brief description of any regulation/institutional measures that limit technology exports.*

There are no regulations or institutional measures that limit technology exports in Chile.

## **9. Investor Behaviour**

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

Chile has no concern about observance of specific laws, regulations or guidelines by foreign investors. Although, foreign investors cannot develop economic activities contrary to law, morals, public order or national security.

## **10. Other Measures**

*1. Brief outline of the competition policy regime.*

The Chilean competition policy regime seeks to promote free competition towards the defense of consumers interests and to stimulate economic development.

There is no price control in Chile.

On the field of monopolies and antitrust, rules Decree Law N° 211 of December 1973, which declares against the law any act or agreement oriented to restrict free competition inside of the country made through price fixing arrangements, quotas of production, activities oriented to restrict production, transport or distribution or market areas. It is also forbidden to interfere with free competition through contracts, negotiations or agreements oriented to reduce or stop production or through exclusive agencies for distribution of specific articles manufactured by different industries.

The law states that imprisonment and fines may be applicable in those cases where a violation is proved. There are formal procedures and pre-established commission to deal with these matters and also exists the possibility to consult in advance if a transaction could result in a monopoly. Free competition policy applies to local and foreigners investors with no discrimination.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment*

Regulations about patents, trademarks and industrial model rights are regulated through Law N°19.039, published in the Official Gazette January 25, 1991 and it is known as Industrial Property Law. Copyrights are guaranteed under Law N 17.336 of October 2, 1970.

### A- Patents

An industrial patent may be granted for the exclusive right to exploit it for a sole period of 15 years. Patents for inventions already patented abroad are granted only for the equivalent of the term remaining in the country in which they were first granting.

Some specific items may not be patented, for instance:

- beverages and food;
- financial or commercial systems;
- use of advantages derived from natural resources;
- new applications for articles and objects already known;
- foreign inventions that have been known previously to the public in any country of the world, although unknown in Chile;
- inventions already used or revealed in publications;
- scientific principles without any known practical application; and
- inventions that are against law or morality.

### B- Trademarks

The registration of a trademark, national or foreign, grants ownership for ten years renewable for consecutive ten year periods. The items granted are classified and trademarks must be registered in each applicable group of items listed.

#### C- Industrial Models

The registration of an industrial model ensures absolute ownership for up to 10 years. The protection of industrial models produces effects only respect of manufactured products within the country that have not been offered for sale more than 1 year before their registration.

Industrial property rights may be transferred through a public deed.

Chile signed the International Convention for the Protection of Industrial Property (The Paris Convention). The Paris Convention came into force in Chile September 30, 1991.

#### D- Copyrights

Law N 17.336 amended by Law N 18.443, published October 17, 1985, protects copyrights of Chilean and foreign authors domiciled in Chile. The protection is granted to authors for life period and extend it for 50 years after their deaths to their heirs.

Foreigners not domiciled in Chile are favored by all international conventions subscribed and ratified by Chile.

Chile ratified the Universal Convention on Author's Rights in July 1977.

### **C. INVESTMENT PROTECTION**

#### **1. Expropriation and Compensation**

*1. List of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

Laws/Regulations	Application And Function
Political Constitution of the Republic of Chile, 1980	Through a provision included in article 19 N 23 and 24 of the Chilean Constitution, property is protected in full and in an absolute manner. The only causes that may be invoked to carry out an expropriation, are of a constitutional nature, and these are: public use and national interest. In both cases, a law to authorize this is required. The expropriated party has the right to legal review of the expropriation before the courts of justice and always has the right to indemnification for the harm caused by expropriation. The indemnification is established by mutual agreement between the State and the expropriated party if no agreement is reached between the parties, the indemnity is determined by the courts of justice; A report must be previously submitted by experts, and it should correspond to the total value of the property and must be paid in advance and cash down. Material possession of the expropriated property will take place following total payment of the indemnification. In case of disagreement, the judge may suspend possession of the expropriated party. The Chilean Constitution expressly guarantees the ownership of corporeal and incorporeal property and also protects in number 25 of article 19, Intellectual and Industrial Property.
Law about Expropriatory Procedures, Decree Law N° 2186.	This law regulates all the aspects related with expropriatory procedures, indemnification, immediately effects of expropriation, determination of indemnification, indemnification payment.

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.* There have not been relevant expropriations during the last five years in Chile.

#### **2. Settlement of Disputes**

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

Foreign investors have access in Chile to the same legal remedies as local investors, and there are no special remedies in this regard. In Chile the main dispute settlement mechanisms are:

- (a) Judiciary Litigation, where the competent authority is the Judiciary Power.
- (b) Arbitral Procedures, in these cases the judge is a private arbitrator appointed by the parties in conflict or by the Judiciary Power. The material enforcement of the sentence is on the hands of the Judiciary Power. These

procedures are applicable to certain matters specially those related with legal controversies about corporate issues.

The constitutional rights are protected by a special recourse named Protection Appeal. This appeal protect the enforcement of constitutional guarantees with no distinction between foreigners and Chileans. The competent authority to decide about it is the Judiciary Power.

Article 9 of the Foreign Investment Statute, stipulates that foreign investment, and those enterprises participating in such investment, are subject to the common legal regulation applicable to national investment, and no direct or indirect discrimination may be applied to such enterprises.

If there is a discriminatory situation with respect to a foreign investor or recipient company of foreign investment made through Decree Law 600 mechanism, they can submit a complaint in accordance with the procedure established in article 10 Decree Law 600.

The decision about the complaint is in the hands of the Foreign Investment Committee.

The State of Chile, and its bodies, grant the foreign investor an equal treatment, or no less favorable than that granted to national investors. For the adequate protection of this right, the legal code stipulates that legal or regulatory provisions applicable to the major part of a certain productive activity that exclude foreign investment, are considered to be discriminatory. Likewise, regulations that establish treatments of exception for sectors or areas to which foreign investment has no access, are discriminatory.

Foreign investors Decree Law 600 mechanism and recipient enterprises of these investments, may use this recourse.

Agency	Address/Telephone/Fax
Foreign Investment Committee	Teatinos 120, 10th Floor, Santiago de Chile Telephone: (562) 698 4254 Fax: (562) 698 9476

## 2. Signatory or accession to the ICSID Convention.

Chile signed the ICSID Convention on January 25, 1991. The deposit of the signed instrument was on September 24, 1991. The ICSID Convention came in force in Chile on January 9, 1992, date of publication in the Official Gazette.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of investment promotion programs offered at both the national and sub-national level (e.g. tax incentives, grants) provide to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

See section D(2) below.

2. *Brief description of any fiscal, financial tax or other incentives offered at both the national and subnational level (e.g. tax incentives, grants) provided to foreign investors. A summary of these programs including the nature of incentives offered and contact points(s) for these schemes, including address and telephone/fax numbers.*

Chilean Economic Policy generally does not provide major incentives to foreign or domestic investment.

Notwithstanding the above, foreign investors and receiving companies can enjoy the tax concession of VAT (Value Added Tax: 18%) for capital goods that form part of a foreign investment project, formally agreed to with the State, as provided in Decree Law 600. These goods must be included on a list that is to be established by decree and issued by the Ministry of Economy.

Nevertheless, investors (national or foreigners) may use any of the following incentives:

- (a) in forestry activities, state premium equivalent to 75% of the forestry area shown in the management plan, and in the case of classified dunes, preferably with forestry capability, prior stabilization work will also be subject to a premium; and for land classified preferably for forestry, exemption of land tax;
- (b) promote industries that are to be established in certain extreme areas of the country with exemption of income tax, value added tax and a bonus for labor; and
- (c) receiving companies that carry out export activities, may access some custom type benefits (Drawback and other Custom Duties, Deferred Payment of Custom Duties and Fiscal Credit for Capital Goods and Recovery of Value Added Tax).

3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.

Agency	Address/Telephone/Fax
Foreign Investment Committee	Teatinos 120, 10th Floor, Santiago de Chile Telephone: (562) 698 4254 Facsimile (562) 698 9476

## E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY.

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement ( details only provided for those agreements that have entered into force).

### Friendship commerce and navigation treaties

Chile has signed several Agreements of Understanding and Collective Statements, which are equivalent to friendship, commerce and navigation treaties.

Basically, these agreements contains expressions of intentions towards future treaties.

### Bilateral investment treaties

#### In force:

Argentina, Denmark, France, Italy, Malaysia, Norway, People's Republic of China, Spain and Venezuela

#### Approved by congress:

Belgium, Bolivia, Brazil, Croatia, Ecuador, Finland and Sweden

#### Signed agreements:

Cuba, Czech Republic, Germany, Hungary, Paraguay, Philippines, Poland, Portugal, Romania, Switzerland, Ukraine, United Kingdom and Uruguay.

#### Under negotiation:

Australia, El Salvador, Greece, Korea, New Zealand, Peru, Russian Federation, Singapore, The Netherlands and Turkey

The most relevant aspects of these agreements are:

- the option of changing to resorting to international arbitration in case of differences between an and the recipient country of the investment;
- the right of ownership and the free transfer of capital and profits in accordance with the legal regime of each country is guaranteed;
- certain fundamental principles for the protection of foreign investments, like that of non-discrimination and change to most favored nation are consecrated;
- the principle of subrogation in benefit of the entities which have insured the investor is included; and
- future investments and also those made prior to the treaty are protected, but in the latter case, in reference to controversies arising, after the agreement goes in effect.

### Regional or sub regional investment treaties

Not applicable.

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward)

### Inward investment

In the last years, foreign investment into Chile, has experienced a permanent increase, this is the result of political and legal stability plus safety business environment and qualified human resources. In the last years, the mining sector has been the principal recipient sector of foreign investment flows. Mining sector success is the result of legal safety and comparative advantages as high degree of education of mining workers. Also, services and industry has experienced in the last years considerable growth as foreign investment recipient sectors, due to an open economy and well educated labor force.

### Outward investment



During the last years, the Chilean Investments abroad have increased considerably reaching about US\$ 2,743 millions in 1996. Chilean investments abroad are concentrated in Latin America and specifically in Argentina and Peru. The main economic sectors recipients of Chilean investment are Industry, Energy and Services.

2. *List of the major countries/economies that are sources/receivers of FDI over recent years.*

Sources of FDI

Foreign investment materialized in Chile comes from 60 countries. Major countries with change to FDI investment through Decree Law 600, for the period 1974-1995 are:

United States	US\$6,212.2 m.
Canada	US\$2,084,6 m.
England	US\$894.9 m.
Spain	US\$790.5 m.
Finland	US\$794.8 m.
Australia	US\$581.6 m.
Japan	US\$512.1 m.
South Africa	US\$460.8 m.
New Zealand	US\$411.3 m.

Other APEC economies

People's Republic of China	US\$52.2 m.
Papua New Guinea	US\$44.1 m.
Mexico	US\$28.1 m.
Hong Kong	US\$20.7 m.
Korea	US\$7.5 m.
Singapore	US\$4.3 m.
Malaysia	US\$3.3 m.
Chinese Taipei	US\$0.6 m.

Destination FDI

Relevant countries receiving Chilean investments up to 1996 are:

Argentina	US\$1,098.9 m.
Panama	US\$300.2 m.
Peru	US\$246.5 m.
Cayman Islands	US\$223.6 m.
Brazil	US\$175.9 m.
Channel Islands	US\$141.1 m.
British Virgin Islands	US\$118.4 m.
Bolivia	US\$104.8 m.
Colombia	US\$59.6 m.
England	US\$57.3 m.
United States	US\$48.8 m.
Mexico	US\$13.0 m.

People's Republic of China	US\$2.5 m.
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Chilean capital has been invested in at least in 30 countries around the world.

# PEOPLE'S REPUBLIC OF CHINA

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# PEOPLE'S REPUBLIC OF CHINA

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

As a developing country, China considers it of great importance for the economic development to absorb foreign investment and introduce advanced foreign technology and scientific management methods. On the basis of the remarkable achievements made in absorbing foreign investment, China will improve its introduction of foreign investment to a new higher stage under the guideline of utilising foreign investment actively, rationally and effectively.

According to the Ninth-Five-Year (1996-2000) State Economic Development Program, China, at the same time of further expanding the absorption of foreign investment, will pay more attention to guiding rationally the direction of foreign investment and improving the structure of foreign-funded enterprises. For this purpose, in 1995, the Chinese government promulgated "Provisional Regulations on the Guidelines of Foreign Investment" and "Catalogue of Projects in which Foreign Investment are Encouraged", which have increased the transparency of state industrial policies and encouraged foreign investors to invest in agriculture, infrastructure, backbone industry, industry with high and new technology, as well as medium and low-grade residence projects.

Furthermore, China will gradually grant national treatment to foreign-funded enterprises. With a view to further create a favourable environment for the equal competition between foreign-funded enterprises and domestic ones, gradually abolish the different treatment between foreigners and domestic residents in terms of hotel fare standard, transportation and tourism charges. Meanwhile, China has unified the tax system and personal income tax system for foreign-funded and domestic enterprises, adjusted the domestic enterprises income tax rate to 33%, which is the same as that of foreign-funded enterprises.

Starting from April 1, 1996, under the precondition of reducing the overall tariff level from 35.9% to 23%, the import of equipment and raw materials by newly-approved foreign-funded enterprises shall be subject to taxation in accordance with relevant rules and regulations. As for foreign-funded enterprises set up with approval granted prior to that date, the exemption of import tariffs and value added taxes as provided in the previous rules and regulations shall continue to be enjoyed.

The Chinese government also encourages foreign investors to invest in midwestern areas, and encourages foreign-funded enterprises to transfer the labour-intensive and energy-explored projects from coastal areas to inland areas.

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

The Ninth Five-Year Plan for National Economic and Social Development.

The Long-Term Development Programme to 2010.

According to the Plan and Programme, China will further its open-door policy and establish and unified and standardised system of foreign trade and economic relations which meets the requirements of socialist market economy and international general rules and practice. China will absorb foreign investment in an active, rational and effective way; grant national treatment to foreign-funded enterprises gradually; encourage foreign investors to invest in key economic construction projects and technology renovation of existing enterprises; control foreign-funded enterprises according to law; and protect the lawful fights and interests of both foreign and Chinese investors.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### (i) Statutory (legislative) requirements

##### 1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
At present, the major laws and regulations of the P.R.China concerning foreign investment are as follows: <ul style="list-style-type: none"><li>• Law of the People's Republic of China</li></ul>	The legislation framework of the PRC concerning foreign direct investment has basically taken shape since the Law of P.R.China on Chinese-Foreign Equity Joint Ventures was enacted and implemented in 1979. According to the existing laws, foreign invested enterprises in China fall under 3 categories: Chinese-foreign equity joint ventures, Chinese-

<p>on Chinese-Foreign Equity Joint Ventures and its implementing regulations;</p> <ul style="list-style-type: none"> <li>• Law of the People’s Republic of China on Chinese-Foreign Cooperative Joint Ventures and its implementing rules;</li> <li>• Law of the People’s Republic of China on Wholly Foreign-owned Enterprises and its implementing regulations;</li> <li>• Income Tax Law of the People’s Republic of China Concerning Enterprises with Foreign Investment and Foreign Enterprises and its implementing regulations;</li> <li>• Provisional Regulations on Terms of Operation for Chinese-Foreign Equity Joint Ventures;</li> <li>• Provisions for the Contribution of Capital by Parties to Chinese-Foreign Equity Joint Ventures;</li> <li>• Provisional Regulations on the Ratio of the Registered Capital to the Total Amount of Investment of Chinese-Foreign Equity Joint Ventures;</li> <li>• Regulations of the State Council on Encouraging Foreign Investment;</li> <li>• Regulations of the People’s Republic of China on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises;</li> <li>• Regulations of the People’s Republic of China on Labor Management in Chinese-Foreign Equity Joint Ventures; and</li> <li>• Measures of People’s Republic of China on Control over and Taxation for Import and Export Commodities of Enterprises with Foreign Investment.</li> </ul>	<p>foreign cooperative joint ventures and wholly foreign-owned enterprises.</p> <p>Chinese-foreign equity joint ventures, which are jointly established within China by foreign individuals, enterprises or other economic organizations on one side and enterprises or other economic organizations in the PRC on the other. According to the provisions of the Law of P.R.China on Chinese-Foreign Equity Joint Ventures, joint ventures shall take the form of a limited liability company and the proportion of investment contributed by the foreign participants to the registered capital of a venture shall not be less than 25%. All parties to a joint venture shall share the profits, risks and losses of that joint venture in proportion to their contributions to the registered capital. Each party to a joint venture may contribute cash, capital goods and other materials, as well as industrial properties, know-how and land use rights as its investment in the venture. The highest authority in a joint venture is the board of directors. Members of the board shall be appointed by the parties concerned while the chairman and vice chairman of the board shall be selected through consultation or be elected by the board members.</p> <p>Chinese-foreign cooperative joint ventures are also termed as Chinese-foreign contractual joint ventures. Parties to such a venture shall agree in their cooperative venture contract on the conditions for investment, the ratio of the distribution, the sharing of risks, the form of operations and management and the ownership of the assets at the time of the termination of the venture. A cooperative joint venture may take the form of a limited liability company or an economic entity without having legal person status. Parties to the cooperative venture may not share risks and profits in proportion to their contribution to the total investment. The form of contribution, the amount of investment and the rights and responsibilities of all parties to the cooperative venture shall be specifically laid out in the contract. The profits as well as rights and liabilities of the parties, shall be treated in accordance with the provisions of the contract. Cooperative joint ventures are more flexible than equity joint ventures.</p> <p>Wholly foreign-owned enterprises are established within the territory of the PRC and involve capital investment solely made by foreign investors. The term “wholly foreign-owned enterprise” does not cover branches of foreign enterprises established within the territory of the PRC. The establishment of a wholly foreign-owned enterprise must be beneficial to the development of the Chinese national economy. It shall meet one of the requirements: using advanced technologies and equipment, or a large proportion of its production being for export.</p>
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*(ii) Investment Review and Approval*

1. *Details of proposals and sectors that are/are not (yes/no) subject to screening.*

2. *For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

Proposals	Guidelines/Conditions
merger (yes)	Regarded as a re-established corporation.
acquisitions (yes)	Subject to confirmation of domestic assets administration departments and assessment by relevant state department.
greenfield investment (yes)	Encouraged by the government.
real estate/land (yes)	Luxurious real estate projects are restrained and land transfer formalities are needed.
joint venture (yes)	In accordance with the “Provisional Regulations on the Guidelines of Foreign Investment”.

Sector	Guidelines/Conditions
telecommunications (yes)	The operation of telecommunication network has not yet been opened to foreign investment. Foreign investment in main telecommunication products is restrained and should comply with the unified state plan.
media (yes)	Foreign investment is restrained in the fields of finance, insurance, futures, legal consulting agency etc.
transport (yes)	Investment in transport infrastructure is encouraged, auto transport allowed, sea transport and air transport restrained.  (a) Agreed by the relevant industrial departments and then submitted for approval by Ministry of Foreign Trade & Economic Cooperation (MOFTEC).  (b) Limit on the proportion of foreign investment: for sea transport, foreign investment proportion less than 49% of the total, for air transport, foreign investment proportion less than 35%.
agriculture (yes)	Encouraged by the government, especially explorative agriculture.

3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval process.*

According to the laws and regulations concerning foreign invested enterprises, the following documents are required to be submitted for screening when foreign-funded enterprises are set up:

- project proposals, feasibility study report, contract, articles of association, business registration certificate, list of candidates for board members.

Copies of the relevant documentation can be obtained from the contacts listed in Section B(1)(ii)(4) below.

4. *Contact point(s) to which applications should be made.*

The Chinese government adopts the system of reviewing and approving the proposals one by one.

Agency	Address/telephone/fax
<p>Agencies in charge of applications are: the Ministry of Foreign Trade and Economic Cooperation(MOFTEC), provincial and municipal commissions of foreign trade and economic relations.</p> <p>Agencies that assist investors to go through the review and approval formalities are: Foreign Investment Service Center, Consulting company, and Law firms.</p>	<p>Address of MOFTEC: No. 2, Dog Change An Street, Beijing, 100731, China</p> <p>Telephone: (86 10) 6519 7304 (86 10) 6519 7839 Fax: (86 10) 6519 7322</p>

*5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

According to the Chinese laws, MOFTEC and its authorized agencies should decide approval or disapproval within three months upon submission.

*6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeal processes and the average time for an appeal to be considered.*

MOFTEC and its authorized agencies--local commissions of foreign trade and economic relations are responsible for dealing with appeals. Investors should first appeal to the original approval agency. If fails, they may appeal to an agency at a higher level or MOFTEC according to the Regulations on Administrative Reconsideration (see section B (1)(ii)(4) for contact details).

*7. Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

There are no provisions concerning conditions that need to be met for an expedited review of a foreign investment proposal.

*8. List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies).*

MOFTEC and local commissions of foreign trade and economic relations will consider complaints of foreign investors (see section B (1)(ii)(4) for contact details). If complaints involve other government agencies, MOFTEC or local MOFTEC will consult with relevant agency to deal with complaints together. Associations of enterprises with foreign investment in provinces and cities have also provided a lot of assistance in dealing with complaints and problems of foreign investors.

*9. List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

MOFTEC and provincial and municipal foreign trade and economic commissions are entitled to the responsibilities of administering foreign investment and supervising law enforcement (see section B (1)(ii)(4) for contact details).

*10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

MOFTEC and provincial and municipal foreign trade and economic commissions and other law and regulation making departments often hold meetings or seminars to collect opinions from foreign investors.

*11. Where applicable, the role for sub national agencies in the approval process.*

Agency	Address/telephone/fax	Functions
Provincial and municipal commissions of foreign trade and economic relations.	<p>eg. Beijing Municipal Foreign Economic Relations and Trade Commission.</p> <p>Contact: Wu Weihua</p>	In charge of the initial examination of a project and the submission to the higher level of authority.

	<p>Address: No. 190 Chao Nei Da Jie, Beijing, 100010, China Telephone: (86 10) 6523 6688-2020 Fax: (86 10) 6513 0181</p>	
Regional environmental protection administration departments	<p>eg. Beijing Environmental Bureau</p> <p>Contact: Zheng Jiang</p> <p>Address 14, Chegongshuang Xi Lu, Haidian District Beijing, 100044 Telephone: (86 10) 6841 3817 Fax: (86 10) 6841 3836</p>	In charge of project examination from the viewpoint of environmental protection
Regional land administration departments	<p>eg. Beijing House and Land Administration Bureau</p> <p>Contact: Liu Jianguo</p> <p>Address 1, Nanwnazi Hutong, Nanheyuan Da Jie, Dongcheng District Beijing, 100006 Telephone: (86 10) 6512 4104 Fax: (86 10) 6512 4104</p>	In charge of the examination and approval of land purchase.
Regional city-planning administration departments.	<p>eg. Beijing City-planning Administration Bureau</p> <p>Contact: Sun Chunlong</p> <p>Address: 60, Nanlishi Lu, Xicheng District, Beijing, 100045 Telephone: (86 10) 6852 2994 Fax: (86 10) 6853 2672</p>	In charge of project examination from the viewpoint of city-planning.
Regional domestic assets administration departments	<p>eg. Beijing Domestic Assets Administration Bureau</p> <p>Contact: Zuo Weihua</p> <p>Address: 4, Block 2, Shuang Yu Shu Nanli, Haidian District, Beijing, 100086 Telephone: (86 10) 6217 0718 (86 10) 6217 0738 Fax: (86 10) 6217 0741</p>	In charge of the recognition of the assets appraisal of the Chinese partner's assets contribution in way of domestic assets.



## 2. Most Favoured Nation Treatment / Non-discrimination between Source Economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).

There is no discrimination between Source Economies in relation to the establishment, expansion and operation of foreign investment according to Chinese law.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

In Agreements for the Promotion and Protection of Investment between China and other countries, there is an exception to MFN treatment resulting from:

- Any arrangement for the establishment of customs union, free trade area, economic union, or on agreements on the avoidance of double taxation, or for facilitating frontier trade.

## 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

According to Provisional Regulations of Guidance of Foreign Investment, foreign investment projects in the following areas are restricted:

- using technology that has already been developed in the PRC or introduced into the PRC, for which the existing production capacity in the relevant field can already satisfy domestic demand;
- falling under the experimenting industries of the State for absorption of foreign investment or under the monopoly industries by the State;
- for exploring and exploiting rare or valuable mineral resources;
- falling under the industries subject to the overall arrangement and planning of the State; and
- falling under other items stipulated as restricted by the State law and regulations.

Foreign investment projects are prohibited in following circumstances:

- jeopardizing national security or social and public interest;
- polluting environment, destroying natural resources or causing harm to public health;
- occupying large amount of farmland and against the protection and exploitation of land resource, or harming the security and effectiveness of military appliances;
- manufacturing products with peculiar craft or technology which China owns; and
- other projects stipulated as prohibited by the State laws and regulations.

Laws or policies pertaining to the restricted sectors for foreign investment are, besides the above-mentioned Guidance, mainly the Law of P.R.C on Chinese-Foreign Equity Joint Ventures and its implementing regulations and the Law of P.R.C. on Wholly Foreign-Owned Enterprises.

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
Construction and operation of urban subways and light rails Public berths Construction and operation of civil airports Construction and running of hydra-electric power stations with a generating capacity of over 250,000 kw Construction and operation of nuclear power stations Complete cars Complete motorcycles Complete light vehicles Motors on vehicle and motorcycles Air transportation	State-owned assets taking holding or dominant shares in enterprises.
Construction and operation of local railways as well as bridges, tunnels and ferries related Processing and exporting of raw wood	The establishment of wholly foreign-owned enterprises is

Fishing for aquatic products in the near sea or inland water Exploitation of cooking coal Processing of copper, exploitation of tungsten, tin, antimony and other non-ferrous metals Mining and smelting of rare earth Water transportation Vehicle transportation cross the boarder Printing Inspection of import and export commodities Tourism Real estate Foreign and domestic trade Services: accounting, auditing, legal consultation and brokerages, agent service (shipping, freight transport, futures, marketing and advertisement, etc.) education and translation service.	forbidden.
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*2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.*

Enterprises with foreign investment can obtain financing through the following channels: loans from both domestic and international financial institutions; enterprises limited by shares with foreign investment can issue stock both at home and abroad with the approval of the appropriate authorities in the PRC.

As an independent legal entity, an enterprise with foreign investment is not restricted to acquire loans from abroad, but required to make a file with the State Administration of Exchange Control or its branches.

Enterprises with foreign investment are forbidden to acquire loans from non-financial institutions.

**4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Enterprises with foreign investment are required to keep the balance of their foreign exchange income and expenditures by themselves according to the regulations related to foreign investment, ie. Regulations of the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint ventures and the Regulations for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises.

*2. Brief description of the foreign exchange regime.*

The State exercises centralized control and management of foreign exchange. The State Administration of Exchange Control and its branches is the authority in charge of foreign exchange administration of the State. Banks designated by the State Administration of Exchange Control may handle foreign exchange business. RMB is freely convertible to foreign exchange on current account subject to certain conditions.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

Review and approval by relevant agencies are required for convertibility of currencies for the overseas transfer of funds under certain circumstances.

The Regulations on Exchange Control of the People's Republic of China stipulates that purchase of foreign exchange for current account transactions by institutions in China shall be done with the designated foreign exchange banks, in accordance with the regulations issued by the State Council on selling and purchasing foreign exchange, upon the presentation of valid document and commercial bills. Accordingly, remittance of profits, dividends and interests of foreign investors needs no approval by the State Administration of Foreign Exchange Control as long as an agreement and related materials of proof on profits distribution by the board of directors is presented.

An institution within the territory which makes overseas investment, before applying the competent examination and approval authority, shall be checked on the origin of foreign exchange capital by the exchange control administration. After the approval, it shall deal with overseas remittance procedures according to regulations of the State Council on the administration of foreign exchange for overseas investment.

## **5. Entry and Sojourn of Personnel**

### *1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

Foreigners, who enter into, pass through and reside in China, must gain the approval by responsible department of the Chinese government, and go through the procedures concerning entry, transit, residence according to the “Administration Law of the People’s Republic of China on Foreigners’ Entry and Departure”.

In accordance with reasons of foreigner’s application for entry, the relevant department of the Chinese government will issue him or her the corresponding visa with letter of F, L, G, C, X (those with F, L, G, C visas are not allowed to get a job in China for the reason that they don’t get residence certificates).

### *2. List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

If a foreign technical or administrative personnel wants to enter China and get a job, or if an enterprises wants to employ a foreigner, it must make application for employment approval for the foreigner according to relevant provisions in “Administrative Provisions on Foreigner’s Employment In China” and obtains the approval by labour administration departments and the “Employment Approval Credentials of Foreigners”, then it can employ the foreigner. Foreigners who come to China to get a job, should handle professional visas with the “Employment Credentials for Foreigners” issued by labour administration departments, and can get a job legally in Chinese territory by obtaining the “Employment Certificate for Foreigners” and “Residence Certificate” after the entry.

Foreign-funded enterprises do not need the examination and approval for employment of foreigners conducted by sectorial administration departments. They can make direct application to issuing offices of the labour administration departments with contracts, articles of association, certificates of approval and business licenses for issuance of credentials. Accompanying family members of foreigners with professional visas should not be employed in China except for special circumstances, under which the employment procedures of the family members can be undertaken by employing enterprises according to the procedures of examination and approval in the “Administrative Provisions on Foreigner’s Employment in China”.

### *3. Description of regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

Labour laws and rules applying to foreign-funded enterprises mainly include “Labour Law of People’s Republic of China” and its related rules and regulations, as well as Labour Administrative Provisions on Foreign-funded enterprises.

According to its production and management characteristics, foreign-funded enterprises can determine the organization establishment and payroll by themselves, and decide the time, quantity and means of employing staffs by themselves. With approval by labour administration department, they can employ staff members transregionally, including employing personnel with special technical ability, senior technicians and senior administrators from abroad who are not available in China. Employment of child labour under 16 years old is strictly prohibited.

Foreign-funded enterprises can fire, without interference by any unit or individual, staff members who are proved not qualified after the probation and training period, or have seriously infringed rules and regulations of the enterprise, or have caused great losses to the enterprise because of serious dereliction of duty, or have infringed state laws and have to take relevant criminal responsibilities. Enterprises can fire redundant personnel according to the law after changes of production technology. However, employees should not be fired by enterprises in the following cases:

- in time of receiving treatment, recuperating from injury at work or suffering from occupational diseases; in time of receiving treatment in hospital for illness or injury out of work; in time of pregnancy, giving birth or nursing for female employees.
- under usual conditions: if an enterprise fires any employee due to internal reasons it must pay a certain amount of compensation according to the working time of the employee in the enterprise.

Foreign-funded enterprises should sign labour contracts with their employees under the principles of equality and voluntarism and reaching consensus through consultation. Labour contracts shall be identified by the labour administration departments with signature. In case a labour dispute happens, parties concerned can make an application for arbitration to local labour arbitration departments. If any party refuses to accept the award, a legal proceeding may be taken to court.

Foreign funded enterprises must make social insurance of endowment, medical treatment, unemployment, injury at work, bearing and so on for their employees. Enterprises and employees must pay full basic endowment insurance fee to designated social insurance organizations in time according to rules issued by local governments. Enterprises should pay unemployment insurance fee to unemployment insurance organizations of

the labour administration departments according to the proportion stipulated by the local governments. Meanwhile, enterprises must set aside fund, housing subsidiary fund according to stipulations.

Working conditions in foreign-funded enterprises must meet the China's working safety and health standards, the enterprises production equipment and facilities must be fitted out with protective outfits and facilities for safety and health.

Foreign-funded enterprises should carry out the state working system of 8 hours a day and less than 40 hours a week and should not prolong working time. Higher payments shall be made for work done in prolonged working time or on holidays or vacations according to the relevant state stipulations.

Workers in foreign-funded enterprises enjoy resting day, holiday, home-visiting leave, wedding days, mourning days and female workers' nursing days, as stipulated by the State. Worker who have worked continuously over one year can enjoy yearly holiday with salary.

*4. List and provide a summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

Law	Summary
Labour Law of the People's Republic of China (Chapter 10)	Where disputes arise between employer and employee, the parties may settle them through negotiation or apply for mediation, arbitration, or bring a law suit. After labor disputes arise, the parties may apply to labor disputes mediation committee within their own unit for mediation. If mediation fails and one party asks for arbitration, the party may apply to labor disputes arbitration committee for arbitration. Whoever does not agree with arbitration decision may bring a law suit to a people's court.
Opinions on Some Issues on Implementation of Labour Law of the People's Republic of China.	Where disputes arise from signing a collective labor contract and the parties fail to settle through negotiation, the local people's government may organize the parties concerned and settle by coordination.
Provisions of the People's Republic of China on Settlement of Labour Disputes in Enterprises.	Where the parties fail to settle disputes arising from implementation of a collective labour contract by way of coordination, they may apply to labor disputes arbitration committee for arbitration. If they do not accept the arbitration decision, they may bring a law suit to the people's court.
Regulations on Labour Management of Foreign-funded Enterprises.	

**6. Taxation**

*1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

Taxation arrangements	Summary
<b>Value-added tax, consumption tax, business tax</b>	As declared by Decree No.18 of the chairman of PRC on December 29, 1993, the provisional regulations on the value-added tax, consumption tax and business tax promulgated by the State Council on December 13, 1993, apply to enterprises with foreign investment and foreign enterprises from January 1, 1994, and the "Regulations on consolidated Industrial and Commercial Tax" promulgated by the National People's Congress on September 11, 1958 are abolished simultaneously.
<b>Value-added Tax</b>	According to "the Provisional Regulations of the PRC on Value-added Tax" promulgated by the State Council on December 13, 1994, value-added tax is levied over the sales of goods, provision of processing, repairs and replacement services, and the importation of goods within the territory of the PRC. For sales or importation of goods, there are two tax rates. One is 13%, applicable to 19 items of goods which are specified in the Regulations, for example, grain, cooking oil, running water, natural gas, books magazines, fertilizer, etc. The other is 17%, applicable to all the rest of goods. For

	provision of processing, repairs and replacement services, the rate is also 17%.
<b>Consumption Tax</b>	According to “the Provisional Regulation of the PRC on Consumption Tax” promulgated by the State council on December 13, 1993, consumption tax is levied over the production, sub-contracting for processing and the importation of consumer goods as certain items of tobacco, alcoholic drinks and alcohol, cosmetic, skin-care and hair-care projects, precious jewellery and precious jade and stones, firecrackers and fireworks, gasoline, diesel oil, motor vehicle tyros, motorcycles, and motor cars. The computation of tax payable for consumption tax shall follow either the rate on value or the amount on volume method. One of the purposes of consumption tax is to adjust the tax rate for cigarette and alcohol was originally 60-70%. The value added tax for these two items now is only 17%. So by collection of consumption tax, the tax burden for cigarette and alcohol basically remains unchanged.
<b>Business Tax</b>	According to “the Provisional Regulations on Business Tax” promulgated by the State Council on December 13, 1993, business tax is levied on the provision of services such as communications and transportation, construction, finance and insurance, posts and telecommunications, culture and sports, entertainment, servicing, and the transfer of intangible assets or the sale of immovable property within the territory of the PRC. For taxpayers providing taxable service transferring intangible assets or selling immovable property, the tax payable is computed according to the turnover and the prescribed tax rates. At present, 9 tax lines are installed with tax rates ranging from 3 to 20%.
<b>Enterprise income tax</b>	<p>Enterprise income tax is levied in accordance with “The Income Tax Law Concerning Foreign-Invested Enterprises”. The income of foreign invested enterprises and foreign enterprises derived from the production, business and other sources of the organizations and sites established within the territory of the PRC must be levied 30% as their enterprise income tax. In addition, a local surtax of 10% of the assessed income tax shall also be levied.</p> <p>In the case that a foreign enterprise is not established in the PRC but receives profits(dividends), interest, rentals, franchise royalties and other income derived in the territory of the PRC, or even if it has such establishments, but the above-mentioned income is not necessarily derived from such establishments, 20% of the enterprise income tax shall be levied. If there is a taxation agreement between the PRC and the country of origin of the said foreign enterprise, the tax shall be levied in accordance with the tax rate limit and relative regulations stipulated in the taxation agreement.</p>
<b>Individual income tax</b>	<p>The individual income tax on foreign nationals working in the PRC is levied in accordance with “The Individual Tax Law”.</p> <p>When levying individual income tax on income from wages and salaries, a monthly deduction of 800 RMB Yuan shall be made. That part of monthly income in excess of 800 RMB Yuan shall be taxed at progressive rates in seven tiers. Monthly income of 800 RMB Yuan and less shall be exempted from tax; that part of monthly income from 801 to 1,500 RMB Yuan shall be taxed at 5%; from 1,501 Yuan to 3,000 RMB Yuan, 10%; from 3,001 Yuan to 6,000 RMB Yuan, 20%; from 6,001 Yuan to 9,000 RMB Yuan, 30%; from 9,001 to 12,000 RMB Yuan, 40%. However, since 1987, the above-mentioned taxable individual income has been enjoying a 50% individual income tax reduction.</p> <p>For income from compensation for personal services, royalties or lease of property, a deduction of 800 RMB Yuan shall be allowed for expenses if the amount in a single payment is less than 4,000 RMB Yuan; for single payments</p>

	<p>in excess of 4,000 RMB Yuan, a deduction of 20% shall be allowed and the balance after deduction shall be taxed by 20%.</p> <p>Individual income taxes of 20% will be levied on interest, dividends, bonuses and other kinds of income on each payment.</p>
<b>House property tax</b>	<p>House property tax is levied in accordance with “The Provisional Regulations on Urban Real Estate Tax”. In the People’s Republic of China, house property tax shall be levied on the housing property owned by foreign-invested enterprises, foreign enterprises, foreign nationals, overseas Chinese, compatriots from Hong Kong, Macao and Chinese Taipei at a rate of 1.2% on an annual basis according to standard house price or at a rate of 18% in line with the rental of housing property.</p>
<b>Vehicle and vessel license tax</b>	<p>In accordance with “The Provisional Regulations on Vehicle and Vessel License Tax”, a license tax shall be levied on foreign-invested enterprises, foreign enterprises, foreign nationals, overseas Chinese, and compatriots from Hong Kong, Macao and Chinese Taipei who own motor-driven vehicles or vessels in China. The tax on passenger vehicles varies from 20 to 320 RMB Yuan per year per unit depending on the models. Tax on cargo vehicles and vessels varies from 0.6 to 4.4 RMB Yuan per ton on annual basis depending on the difference of tonnage. The tax on non-motor-driven vehicles, if levied, depends on the type, from 1.2 to 32 RMB Yuan per year.</p>
<b>Other taxes</b>	<p>In addition, foreign investment enterprises are subject to land appreciation tax, resource tax, stamp tax, and slaughter tax. By the end of 1995, China has concluded Agreements for Avoidance of Double Taxation with 47 countries.</p>

## 7. Performance Requirements

1. *Brief description any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

Local contents requirements for some industries are included in government policies, eg. automobile.

## 8. Capital Exports

1. *List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

Regulations	Application and function
<p>In Bilateral Investment Protection Agreements between China and other countries, it is provided that the proceeds accruing from the total or partial liquidation of any investment made by a foreign investor are allowed to be transferred abroad in accordance with the laws and regulations of the host country.</p>	<p>Chinese enterprises are allowed to make overseas investment subject to approval by relevant authorities.</p>

2. *List and brief description of any regulations/institutional measures that limit technology exports.*

Export of technology by a Chinese enterprise is allowed except for some traditional and peculiar technology and military technology.

## 9. Investor Behaviour

1. *Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

The observance of law by foreign investors is stressed in both the Chinese Constitution and most of laws and regulations related to foreign investment. Article 18 of the Constitution states that foreign enterprises, or other foreign economic organizations and the Chinese-foreign equity joint ventures within the territory of China must

observe the law of the People's Republic of China, and their lawful rights and interests shall be protected by the law of the PRC.

Article 2 of the Law on Chinese-Foreign Equity Joint Venture also stipulates that all the activities of a Joint venture shall follow the laws, decrees and related regulations of the PRC.

## **10. Other measures**

### *1. Brief outline of the competition policy regime.*

There is no single administrative agency in charge of competition policy particularly in China, but many agencies are involved in competition matters, such as the State Planning Commission, the State Economy and Trade Commission, the Ministry of Foreign Trade and Economic Cooperation, the State Administration for Industry and Commerce.

In September, 1993, the Law for Countering Unfair Competition was adopted and promulgated by the Standing Committee of the National People's Congress. The aim of the Law is to promote the healthy development of the socialist market economy, encourage and protect fair competition, and defend the rights and interests of operators and consumers. The Law has one chapter which lists all the acts of unfair competition, one chapter about the control and inspection of unfair competition acts by the concerned authorities, and one chapter about legal responsibility of operators who violate laws and regulations.

### *2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

The intellectual property protection has increasingly being more and more important for the developments of science, technology and the social economy. Since 1980s China has done a tremendous amount of effective work, and established a relatively comprehensive legal system. Except formulating laws and regulations, China has also been participating in activities organized by the relevant international organizations aimed at strengthening international exchange and cooperation in this field.

#### 1. China's laws and regulations concerning IPR protection and the relevant international treaties and conventions

In 1980, China became a member state of WIPO.

In 1983, the Trademark Law of PRC, which marks the beginning of the systematic establishment of China's modern legal system of the IPR protection, came into force.

In 1984, the Patent Law of PRC came into force.

In 1985, China became a member state of the Paris Convention For the Protection of Industrial Protection of Industrial Property.

In 1986, the General Principles of the Civil Law of the PRC became effective. In this legislation, IPR as a whole were clearly defined in China's basic civil law for the first time as the civil rights of citizens and legal persons. The law affirms citizens' and legal persons' right of authorship (copyright).

In 1989, the WIPO adopted the Treaty on Intellectual Property in Respect of Integrated Circuit, China was among the first signatory states.

In 1989, China became a member state of Madrid Agreement for the International Registration of Trademark.

In 1991, the Copyright Law of PRC became effective. The Copyright Law of the PRC protects the copyright and other legitimate rights and interests of the authors of literary, artistic and scientific works. China is one of the countries that have explicitly listed computer software as the object of protection by copyright laws. The State Council has, moreover, promulgated the Regulations on the Protection of Computer Software as a necessary adjunct to the Copyright Law.

In 1992, China became a member state of Bern Convention for the Protection of Literary and Artistic works and the Universal copyright Convention.

In 1992, the National People's Congress adopted an amendment to the Patent law which included important revisions and made it in line with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The revised Patent Law expands the scope of patent protection; an invention patent's duration is extended from 15 years from the date of application to 20 years; the duration of utility model patent and of exterior design patents is extended from 5 years from the date of application to 10 years; the protection of patent rights has been further strengthened. To extend the protection of a patented process to include products directly predicated by that process, the Law clearly stipulates that the importation of patented products requires the permission of the patent holder; conditions for imposing compulsory patent licenses were restipulated.

In 1992, the State Council promulgated the Regulations on the Implementation of the International Copyright Treaty, providing specific regulations on protecting foreign authors' copyrights in accordance with the international levels of protection.

In 1993, China became a member state of the Convention for the Protection of Produces of Phonogram Against Unauthorised Duplication.

In 1993, China revised both its Trademark Law and the Rules for its implementation to expand the range of trademarks protected. All these regulations are consistent with the requirements of TRIPS.

In 1993, the Supplementary Regulations on Punishing Criminal Counterfeiting of Registered Trademarks were promulgated to further intensify punishment for such counterfeiting and other infringements.

In 1993, the Law on Combating Unfair Competition PRC came into force.

In 1994, China became a member state of the Patent Cooperation Treaty. The Patent Office of China is the agency dealing with cases involving the Treaty and performing international patent searches and preliminary examinations in China.

## 2. The law enforcement system for IPR in China

China has established a comprehensive judicature and administrative mechanism for enforcement:

- (a) Any citizen, legal person or organization whose rights and interests are infringed may bring a lawsuit to the people's court and receive practical and effective judicial protection. The higher people's courts in provinces and cities have established IPR courts.

A People's Court is empowered to order the infringer to bear civil responsibility for the infringement.

Furthermore, it is empowered to confiscate the infringer's illegal gains and/or adjudge the infringer to criminal detention or a fine. If the infringement of IPR constitutes a crime, the infringer's criminal responsibility is investigated and dealt with according to law.

When a people's court tries a case arising from IPR involving foreign nationals, it will handle the case in accordance with Chinese laws, relevant international conventions to which China is a party and the principle of equity and reciprocity.

- (b) Administrative channels for IPR protection in China.

In addition to judicature in accordance with international practices, China's system provides administrative channels for the protection of intellectual property rights.

According to IPR laws and regulations, patent offices were established by various ministries and departments under the State Council, or by local governments. The State Copyright Administration and local copyright administrative organs were also established. Trademark administration calls for unified registration of trademarks by the various local governments. Trademark administrative departments have been established at the central, provincial, city and country levels.

Recently China has further strengthened its efforts on the enforcement of IPR Protection and cracking down on infringement of IPR.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

*1. List of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

Laws/Regulations	Application and function
The Law of the PRC on Chinese-Foreign Equity Joint Ventures, the Law of the PRC on Chinese-Foreign Cooperative Joint Ventures and the Law of the PRC on Wholly Foreign-Owned Enterprises.	They have stipulations such as the State will not nationalize or expropriate any enterprises with foreign investment; only under special circumstances, for the requirement of social and public interests, enterprises with foreign investment may be expropriated in accordance with legal procedures, and appropriate compensation shall be provided.
China has signed Bilateral Investment Protection Agreement with more than 70 countries.	All the Agreements have the provisions about expropriation, stipulating that investment of nationals or companies of either contracting party shall not be expropriated, nationalized or subjected to measures having effect equivalent to expropriation, or nationalization, in the territory of the other contracting party except for a public interests, under legal procedure, on the bases of non-discrimination and against reasonable compensation.

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.



## **2. Settlement of Disputes**

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

There are a number of means foreign investors are able to utilise. They are arbitration, conciliation and litigation.

### **(a) Arbitration**

The Arbitration law of P.R.China was promulgated on August 31, 1994. According to the law, the principle of voluntary is followed and a written arbitration agreement is required. A court does not accept an action initiated by one disputing party if they have concluded an arbitration agreement. Arbitration is conducted independent of any intervention by administrative agencies, social organizations or individuals. The single ruling system is applied in arbitration. The Law has special provisions on foreign related arbitration that applies to all arbitration of disputes arising from foreign economic, trade, transportation or maritime matters.

There are two international arbitration commissions in China which handle international commercial and maritime disputes, namely China International Economic and Trade Arbitration Commission (CIETAC) and China Maritime Arbitration Commission (CMAC).

### **(b) Conciliation**

Conciliation in China falls into five categories, ie. People's conciliation, Administrative Conciliation, Court Conciliation, Conciliation by Intentional Conciliation Centre and Conciliation by International Arbitration Commissions. The last three categories may involve foreign investors.

#### **Court Conciliation**

The Chinese court does not hear a case for which the parties apply for conciliation only, but often conciliates cases during court proceedings. This is one of the important characteristics of Chinese litigation procedure, known as the "combination of litigation with conciliation". The Chinese Civil Procedure Law provides that in conducting civil proceedings, the courts shall carry out conciliation on the principle of voluntariness of the parties. If conciliation fails, the court shall make a judgment timely. When a settlement agreement is reached upon by the parties through conciliation, a Conciliation Statement shall be made and issued by the court. Such Conciliation Statement has the same legal effect as a court judgment. If one party refuses to execute the Conciliation Statement, the other party may apply to the court for compulsory enforcement.

#### **Conciliation by International Conciliation Centre**

Beijing Conciliation Centre which was set up in 1987 to conciliate international commercial and maritime disputes is the sole international conciliation Centre in China. Applications for conciliation may be submitted either to the Center or to the CIETAC and CMAC. Parties must reach an agreement for conciliation in writing before they apply to the Centre for conciliation.

#### **Conciliation by International Arbitration commissions**

CIETAC and CMAC handle international commercial and maritime conciliation cases in addition to arbitration cases. If the parties refer their dispute to CIETAC or CMAC for conciliation, the case will be conciliated by Secretary General or Deputy secretary General of CITAC or CMAC. Should the conciliation proceedings end without results, the same conciliators are allowed to be appointed as arbitrators in the subsequent arbitration proceedings conducted by CIETAC or CMAC.

### **(c) Litigation**

Foreigners, stateless persons or foreign organizations enjoy the same rights and obligations as Chinese citizens, organizations when sue or be sued in a people's court. An intermediate people's court has jurisdiction as courts of first instance over the cases with foreign factors. A people's court does not handle a case for which the disputing parties have concluded an arbitration agreement.

### **(d) Convention on the Settlement of Investment Disputes Between States and Nationals of Other States**

The Convention was signed and approved by the Government of China in July 1992. If there is any dispute concerning the amount of the compensation from nationalization or expropriation between foreign investors and the Chinese Government, the investors may bring the case to the ICSID for resolution.

### **(e) Bilateral Investment Promotion and Protection Agreements (BIPPA)**

Since 1982, the first BIPPA was signed between China and Sweden, China has concluded more than 70 BIPPAs with other countries. All the BIPPAs have provisions for settlement of disputes between one country and investor of another country. Investors are encouraged to first settlement of disputes through conciliation or negotiation. If disputes cannot be settled within a certain period of time, the investor may choose one or both the following means for resolutions.

- (i) To file complaint with and seek relief from the competent administrative authority or agency of the host country.
- (ii) To file suit with the competent court of law of the host country.

If the dispute relates to the amount of compensation and any other disputes agreed upon by both contracting parties, the dispute may be submitted to ICSID or an ad hoc arbitration tribunal.

(f) The Regulations on Administrative Reconsideration

The aim of these regulations is to safeguard and supervise administrative agencies in exercising their functions and powers, prevent and correct any malfeasant or improper specific administrative act, and protect the lawful rights and interests of citizens, legal persons and other organizations.

According to Article 55 of these Regulations, foreigners, stateless persons, or foreign organizations enjoy the same rights and obligations as Chinese citizens, legal persons when engaged in administrative reconsideration. So if a foreign investor, company considers that a specific administrative act of an administrative agency has infringed upon its lawful rights and interests and it refuses to do such administrative acts, it may file an application to the competent administrative agency for reconsideration.

Agency	Address/telephone/fax
China International Economic and Trade Arbitration Committee	6, East Beisanhuan Road, Beijing, 100028, China. Telephone: (86 10) 6466 4433 Fax: (86 10) 6467 7335

2. *Signatory or accession to the ICSID Convention.*

China acceded to the ICSID Convention in 1992.

**D. INVESTMENT PROMOTION AND INCENTIVES**

1. *Brief description of investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

Investment incentives including tax and facilities are within the scope stipulated by the state laws and regulations. Many provinces and municipalities, in accordance with state laws, make their own investment incentives in order to provide the investors with more facilities and to improve the investment environment. It is hard to provide all the addresses and telephone numbers of the provinces and municipalities.

At a central level, the relevant department is Foreign Investment Bureau of MOFTEC.

Contact: Hu Jingyan

Address: 2, Dong Chang An Ave., Beijing, 100731

Telephone: (86 10) 6519 7397

Fax: (86 10) 6519 7322

2. *Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

- (1) Any productive enterprise with foreign investment scheduled to operate for a period of not less than 10 years shall, from the year beginning to make profit, be exempted from income tax in the first and the second years and allowed a 50% reduction from the third to the fifth year.
- (2) The productive enterprises established by foreign investors in China's open coastal economic areas can enjoy a preferential tax rate of 15%.
- (3) Machinery, equipment, spare parts, components imported for manufacturing product sold abroad are exempted from import duties and value-added tax.
- (4) A reasonable amount of catalytic agents, grinding materials and fuel consumed in production which are imported by the foreign-funded enterprise in order to perform the product export contract and are directly used in processing export products shall be exempted from import duties and value-added tax.
- (5) Products produced by the foreign-funded enterprise for export, except those commodities which are restricted for export or except there are separate provisions of the State, are exempted from export duties.

3. *Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

One stop facility is available in some local governments:

eg. Shenzhen Municipal Foreign Investment Office	Shanghai Foreign Investment Commission
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7/F, 2nd, Government Building, No.8, Shangbu Road, Central, Shenzhen, China Telephone: (86 755) 222 3211 ext-3835 Fax: (86 755) 224 3760	R.M. 1602, 55 Lou Shan Guan Road, New Town Mansion, Shanghai, 200335, China Telephone: (86 21) 62 755 386 Fax: (86 21) 62 754 200.
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## E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY

1. *Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

Agreement	Provisions
Friendship Commerce and Navigation Treaties	
<p>Bilateral Investment Treaties</p> <p>By 1995, China has signed Bilateral Investment Treaties with ten APEC members. They are Thailand, Singapore, Australia, Japan, Malaysia, Indonesia, Chile, New Zealand, the Republic of Korea and the Philippines.</p>	<p>The basic contents of the agreements are stated below.</p> <p>A contracting party shall grant MFN treatment to the investors from another contracting party.</p> <p>No contracting party shall take measures of expropriation, nationalization or other measures having the equivalent effects against investors of the other party unless the measures are for public purposes and reasonable compensation is indiscriminately granted in accordance with legal procedures.</p> <p>The two contracting parties shall guarantee the free transfer of capital and profit of investors from each other's country according to the respective laws and regulations.</p> <p>Disputes between the two contracting parties in connection with the interpretation and application of the agreement shall be settled through friendly consultations or through an ad hoc international arbitration tribunal. Disputes between investors of one contracting party and the other contracting party can be settled through the ad hoc international tribunal. However disputes are limited to those relating to the amount of compensation resulting from expropriation.</p>
<p>Regional or sub regional Investment Treaties</p> <p>The people's Republic of China became a party to the Convention on the settlement Investment Disputes Between States and Nationals of Other States on July 1, 1992.</p>	

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. *Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).*

China began to make overseas investments and run enterprises abroad in 1979. Over the past 16 years, China's overseas enterprises have witnessed steady growth and achieved positive results. By the end of 1994, Chinese enterprises had established 1,763 non-trade enterprises with total contractual value of US\$3.69 billion from Chinese and foreign parties, of which US\$1.69 billion represents Chinese investment, accounting for 45.7% of the total investment.

With the continuous improvement of an investment environment, quality of foreign investment utilization has been constantly raised, while at the same time the volume of foreign investment utilization has been steadily increasing. In 1995, 37,126 foreign investment projects were approved, a drop of 21.82% from the previous year. With the contractual foreign investment volume reaching US\$90.288 billion, up 10.91% over the previous year, and the actually utilized volume standing at US\$37.736 billion, up 11.69% over the previous

year. By the end of 1995, an accumulation of 258,903 foreign investment projects had been approved in China, with an actually utilized value of US\$133,372 billion. China is now among the largest recipients of foreign direct investment in the developing world.

In 1995, foreign investment was characterized by the following elements:

- (1) industrial structure of foreign investment was improved. Areas where the state encourages foreign investment became major attractions for foreign investors, such as basic industries, infrastructure, energy, transportation, and large and medium-sized capital and technology-intensive projects. Projects restricted by the state has decreased.
- (2) scale of foreign investment projects was expanded and quality upgraded. Average contractual foreign investment volume for each project rose up to US\$2.45 million from US\$1.77 million in 1994.
- (3) investment made in China by big internationally renowned multi-national corporations continued to increase.

Reform and opening to the outside world is China's basic policy. Over the past decade and more, its implementation has assisted foreign commodities, capital, technology and services in finding approaches to the Chinese market.

In future, adhering to the principle of utilising foreign investment in an active, rational and effective manner and based upon fair tax burdens and equitable competition for both domestic and foreign-funded enterprises, China will further improve laws and regulations concerning foreign investment utilization, and earnestly rectify the investment environment so as to bring China's utilization of foreign investment to a new height.

Along with the establishment and improvement of the socialist market economic system and the overall improvement of our investment environment, foreign investors devoted to the long-term development in China will have plenty of scope for their talent in the future.

*2. Major countries/economies that are sources/receivers of FDI over recent years.*

Sources FDI	Destination FDI
Hong Kong, Taiwan, Japan, USA, Singapore.	Hong Kong, Russia, Thailand, Singapore, Malaysia, Canada, Australia.

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# HONG KONG

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

The Hong Kong Government firmly believes in, and practises, a free market economy and free trade policy. It sees its responsibility as one of creating a favourable environment for business and investment, but leaving market forces to be the determinant of all commercial decisions. It, therefore, provides no artificial sector-specific incentives to encourage investment in particular areas. But what the Hong Kong Government does is:

- it keeps taxes low and predictable, so as to encourage the creation of wealth and attract investors;
- it invests heavily in our human and physical infrastructure so that there is an adequate supply of well qualified personnel and infrastructural support for economic activities;
- it offers a level-playing field to all investors, whether they are domestic or overseas, and to all types of investment;
- it maintains high transparency of laws and regulations; and
- it maintains an impartial legal and judicial systems under which private ownership rights are guaranteed and protected.

In short, the Hong Kong Government adopts a “minimum intervention but maximum support” policy towards foreign investment. This policy has been consistent over the years and served Hong Kong well. The fruits of this policy can be seen in the rapid development of Hong Kong’s economy, as indicated by an average annual growth of 6.5% in our GDP in the period from 1985 to 1995, the third highest per capita income (at US\$23,200 at the end of 1995 in Asia, and the 8th largest trading entity in the world. Our policy and practice of economic freedom has received wide recognition. The Heritage Foundation has rated Hong Kong as the place with the most economic freedom in the world for two successive years since 1994.

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

The Hong Kong Government values the contributions made by foreign investors to the economy. In his policy address to the Hong Kong Legislative Council in October 1992, the Governor stated the Government’s determination to maintain Hong Kong as “the most business-friendly location in Asia”.

The value of foreign investors are summarised in the Director-General of Industry’s address to the Dutch Business Association in Hong Kong in December 1992, in which he said that “Hong Kong is a cosmopolitan society and its leading position as an international trading, financial and manufacturing centre owes much to the participation of foreign investors in its economic development”.

Hong Kong pursues a free market economic policy based on a philosophy of maximum support for business and minimum interference with market forces. Accordingly, the economy of Hong Kong is not managed on the basis of a so called “national development plan” but the Hong Kong Government seeks to maintain a business friendly environment by ensuring free and fair business competition and maintaining a favourable investment climate by providing *inter alia* a level playing field for local and foreign investors. The following statements from senior officials are relevant:

The Governor’s policy address to the Hong Kong Legislative Council in October 1992 :

“We must continue to generate the economic success that has made Hong Kong one of the wonders of the world : our approach to business will remain one of minimum interference and maximum support.”

The Secretary for Trade and Industry’s speech to the Hong Kong Legislative Council in May 1992 :

“The Government believes that its policies have contributed to an economic environment in which manufacturing industries have the best possible chance of success. The principles behind these policies have been those that have underpinned our free market economy : minimum intervention, but maximum support and encouragement .....

..... Minimum intervention means that we let businessmen, not civil servants, make business decisions; that we do not protect or subsidize industries which are unable to survive through free competition; and that we do not provide discriminatory incentives, such as taxbreaks. Given Hong Kong’s simple tax system and low tax rates, tax concessions or tax holidays would, in any case, be unlikely to be effective in encouraging overseas manufacturers to establish themselves here. Moreover, experience has shown that investors prefer a simple, stable low tax structure to short-term incentives .....

..... Maximum support means that we seek to ensure the best possible infrastructure is available to enable industries to survive, that we identify constraints to growth and suggest ways of building on strengths and overcoming weaknesses; and that we provide the services needed to promote industrial development through productivity growth, quality improvement and product innovation.”

The Director-General of Industry's speech at the Annual General Meeting's Luncheon of the Hong Kong Electronic Industries Association Ltd. in August 1995 :

"I would like to speak today about Hong Kong's industrial development policy. Against the restructuring of our economy that has taken place in the last decade and a half, the Government remains convinced that the best industrial development policy for Hong Kong is one that reflects its basic economic philosophy, namely that the market is the best means of determining the most efficient allocation of the factors of production : land, labour and capital. Under this policy, the Government is committed to doing many things, including creating and maintaining an environment which enables manufacturing to function efficiently and provides services that assist manufacturing industries to remain competitive through productivity growth, quality improvement and product innovation. However, the Government is also committed to not picking winners or saving losers, not seeking to determine the pace and direction of manufacturing development, not seeking to ensure a minimum level of employment in manufacturing industries or a minimum level of contribution from manufacturing to the gross domestic product.

The Government's industrial development policy is firmly grounded in reality and is driven by three considerations. First, Hong Kong's openness and the complete exposure of our industries to international competition ..... Second, we believe that business decisions are best left to businessmen..... Third, we consider that a government should confine its role to providing what the market is unable to or not good at providing ....."

The Director-General of Industry's speech at the Symposium on the Hong Kong Science Park in December 1995 :

"..... Our policy is very clear and that is, short of directly intervening in the market, we will provide maximum support for Hong Kong's manufacturing industry to move into higher tech, higher value-added production. There are basically three ways to promote technology-based industrial development : first, through the nurturing of indigenous, technology-based businesses, secondly, through promoting technology transfer by multinationals which are industry leaders; and thirdly, a more recent development, through regional co-operation. We have provided conditions conducive to the development of indigenous technology-based businesses, through providing a good general physical infrastructure, a business-friendly environment and a sophisticated skills and education infrastructure. We have also, through our investment promotion programme, attracted many multinationals which are industry leaders to operate in Hong Kong, and this has spawned a rich cluster of supporting or linkage industries. In recent years, we have provided additional incentives for local industry support organisations and companies to undertake more applied research and development (R&D), either on their own or in collaboration with researchers in China, through the introduction of the Industrial Support Fund, the Applied R&D Scheme and the Co-operative Applied R&D Scheme. All these efforts have contributed to the technological upgrading of our manufacturing industry. However, given the pace of today's technological development, we will have to take giant steps forward in closing the technological gap in certain areas."

In his policy address to the Hong Kong Legislative Council in October 1994, the governor stated the Government's commitment to supporting business to secure Hong Kong's success well into the next century, in which he said that:

"the Government can also promote Hong Kong's future economic success through practical programmes to encourage initiative and investment. As the Policy Commitments demonstrate, the Government will continue to make a substantial contribution to enhancing our business environment. Let me give you some examples.

- We will provide new incentives to upgrade technology standards in manufacturing. These measures include plans to provide, by 1996, 70 hectares of land for industries which cannot use multi-storey buildings, as well as more space for new technology-based businesses.
- We will expand Hong Kong's capacity for advanced research. This year, the University and Polytechnic Grants Committee has allocated \$260 million for research projects, 67% more than last year. Next year, we will provide \$50 million to establish an Applied Research Centre which will promote joint projects with China's leading research institutes.
- We will continue to upgrade the transport infrastructure. We plan to spend about \$30 billion over the next five years on creating the modern road system which we need.
- We will further simplify our immigration procedures to speed up the processing of visa applications and approvals. Anything which facilitates travel facilitates business.
- We will reduce the paperwork in our foreign trade. From 1996, the new Community Electronic Trading Service will enable businesses to complete key import and export procedures by computer."

The Secretary for Trade and Industry reaffirmed this commitment in his address to the Hong Kong Legislative Council in November 1995. He said:

“we are not apologetic at all about our policy of minimum intervention and maximum support. It is our firm conviction that the Government’s role should be confined basically to maintaining macro-economic stability, creating an environment that is the most business-friendly in the world, providing education and training for our workforce and building up the physical infrastructure required to support economic activities. We believe, wholeheartedly, that the Government should not attempt to direct or manage the economy at the macro level or to second guess markets and entrepreneurs at the micro level. This is because our entrepreneurs make better business decisions than civil servants. Indeed the very success of our economic way of life is to trust the markets and to let competition take command. In short, Adam Smith’s “invisible hand” of the market is much to be preferred to the dead hand of government interference.

In addition to maintaining a favourable climate for business and economic development, the Government has invested in projects which are specifically targeted at supporting industrial upgrading.

- We have three industrial estates catering to companies which are able to bring new or better technologies or products to Hong Kong and which cannot operate in multi-storey buildings. We are looking into the need for a fourth industrial estate.
- The Hong Kong Productivity Council with its network of subsidiary companies provides a wide range of services to help manufacturers upgrade their productivity and technology.
- The Industrial Technology Centre was opened this year providing accommodation, support and services to new technology-based businesses. We will look into the possibility of setting up a second industrial technology centre.
- A fund of \$200 million has been allocated for applied research and development.
- On top of that, we have also set up an industrial support fund for the purpose of providing financial assistance for projects seeking to upgrade the technological skills of and to facilitate technology transfer to the manufacturing industry. In its first two years, \$180 million was injected into the Fund in 1994-95 and \$210 million in 1995-96; and subject to the approval of the Finance Committee, \$250 million will be made available in 1996-97.
- The Industry Department’s inward investment programme is designed to attract overseas investors who can bring useful and relevant technologies to Hong Kong.”

References:

1. The Governor’s policy address to the Hong Kong Legislative Council in October 1992.
2. An abstract from the Secretary for Trade and Industry’s speech to the Hong Kong Legislative Council in May 1992.
3. The Director-General of Industry’s address to the Dutch Business Association in Hong Kong in December 1992.
4. The Governor’s policy address to the Hong Kong Legislative Council in October 1994.
5. The Director-General of Industry’s speech at the Annual General Meeting’s Luncheon of the Hong Kong Electronic Industries Association Ltd. in August 1995.
6. The Secretary for Trade and Industry’s speech to the Hong Kong Legislative Council in November 1995.
7. The Director-General’s speech at the Symposium on the Hong Kong Science Park in December 1995.

## **B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION**

### **1. Transparency**

#### *(i) Statutory (legislative) requirements*

##### *1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

Hong Kong has an open and free investment regime. It offers a level playing field for foreign and local investors with the principles of fairness, equity, reasonableness and non-discrimination being vigilantly applied and observed. The body of laws in Hong Kong enshrines the spirit of free and fair economic competition and there is no special legislation/regulation/administrative guidelines regulating foreign investment.



*(ii) Investment Review and Approval*

1. *Details of proposals and sectors that are/are not subject to screening.*

2. *For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

Hong Kong does not have specific approval procedures for admission of foreign investment. There are neither screening nor notification of foreign equity.

3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentatin that is required for review or approval processes*

Not applicable.

4. *Contact point(s) to which applications should be made.*

Not applicable.

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

Not applicable.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal. Description of processes and the average time for an appeal to be considered.*

Not applicable.

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

Not applicable.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies).*

Not applicable.

9. *List agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Provide addresses and phone/fax numbers for these agencies.*

Not applicable.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime*

Not applicable.

11. *Where applicable, the role for sub national agencies in the approval process.*

Not applicable.

**2. Most Favoured Nation Treatment / Non-discrimination between Source Economies**

1. *List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).*

This is not applicable to Hong Kong as it offers a level-playing field to all investors regardless of their nationalities.

2. *List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.*

Hong Kong had previously taken an MFN exemption in the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) regarding banking applications. However, Hong Kong has now withdrawn this MFN exemption and has also made consequential amendment to its legislation to the effect that Hong Kong will not apply the reciprocity criteria in respect of banking applications from other WTO members.

### 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
Broadcasting	<p>In the broadcasting sector, the ownership of commercial and subscription television companies by “unqualified persons” (essentially persons not ordinarily resident in Hong Kong) is not restricted, but the voting control such persons may exercise on a poll at a general meeting of the television company is limited. As regards sound broadcasting companies, the existing system limits the aggregate amount of voting shares in these companies in which “unqualified persons” may have an interest to 49% of the total number of voting shares.</p>
Banking	<p>Hong Kong has a three-tier banking system under which authorised institutions (i.e. deposit-taking institutions) are classified into licensed banks, restricted licence banks, and deposit-taking companies. The entry requirements for the restricted licence banks and the deposit-taking companies are broadly the same for both local and foreign applicants. The authorization criteria for the licensed banks are different between local and overseas applicants. However, the different requirements are introduced on prudential ground in order to ensure the soundness and viability of the banking system and to maintain an adequate protection for the interests of depositors. Once licensed, all authorised institutions, whether local or foreign owned, are subject to the same supervisory regime.</p> <p>Under existing authorization criteria, applications for a new full banking licence from banks incorporated outside Hong Kong may be granted for branches only. Such banks may maintain offices to which customers have access for the purpose of banking business and/or for the arranging or entering into of any other financial transactions in only one building (“Office” includes automatic teller machines or similar terminal devices). Such banks may also maintain no more than two additional offices (other than an automatic teller machine or similar device) to which customers and others have access for the purpose of any other type of business in a separate building or buildings. Such offices may consist of not more than one regional office and one back office.</p> <p>Banks incorporated overseas may apply for a licence to operate a restricted licence bank or a deposit-taking company. Such restricted licence banks may maintain offices to which customers have access for the purpose of the taking of deposits and/or the arranging or entering into of any other financial transactions in only one building (“Office” includes automatic teller machines or similar terminal devices). Such banks may also maintain no more than two automatic teller machines or similar device to which customers and other type of business in a separate building or buildings. Such offices may consist of not more than one regional office and one back office.</p> <p>Banks incorporated overseas may also set up representative offices in Hong Kong, but such offices are prohibited from taking deposits or from undertaking banking business generally.</p> <p>Institutions authorized under the Banking Ordinance must appoint a chief executive and not less than one alternative chief executive, each of whom is subject to a residence requirement in Hong Kong.</p>

2. Description of nature and scope of any limitations on foreign firms’ access to sources of finance.

There are no limitations on foreign firms’ access to sources of finance in Hong Kong.

#### 4. Repatriation and Convertibility

1. *List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

There are no regulations which restrict the repatriation of funds related to foreign investment in Hong Kong.

2. *Brief description of the foreign exchange regime.*

The linked exchange rate system has been adopted in Hong Kong since October 1983. This is basically a currency board system where banknotes are issued and redeemed against a foreign currency. In the case of Hong Kong, Certificates of Indebtedness (CIs) issued by the Exchange Fund, which the note-issuing banks are required to hold as cover for the issue of Hong Kong dollar notes, are issued and redeemed against payments in US dollars at a fixed exchange rate of HK\$7.80 to US\$1. In practice, therefore, any increase in note circulation is matched by a US dollar payment to the Exchange Fund, and any decrease in note circulation is matched by a US dollar payment from the Exchange Fund. In the foreign exchange market, the exchange rate of the Hong Kong dollar continues to be determined by forces of supply and demand. Against the fixed exchange rate for the issue and redemption of CIs, the market exchange rate stays close to the rate of HK\$7.80 to US\$1.

3. *Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions on the convertibility of currencies for the overseas transfer of funds in Hong Kong.

#### 5. Entry and Sojourn of Personnel

1. *Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

On visa requirements for foreigners entering Hong Kong for employment, we do not differentiate foreign firms from local firms as long as the applicant can meet our established criteria. Generally speaking, foreigners seeking employment in Hong Kong must possess special skills, knowledge, or experience of value to and not readily available in Hong Kong. They must have local sponsors, whose business activities are beneficial to Hong Kong's economy and are financially sound.

2. *List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
Under the existing immigration law, foreigners require visas to work in Hong Kong.	Applications for visas to work in Hong Kong are considered in accordance with the criteria mentioned in section B(5)(1).  Nationals of the APEC member states may visit Hong Kong either visa-free or under visit visa/permits. During their sojourn, visitors are permitted to conduct legitimate business activities such as business negotiations and signing contracts.  Immediate family members of foreigners who are on employment status are normally allowed to join them for residence in Hong Kong subject to all other immigration requirements being met.

3. *Description of any regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

Hong Kong's labour legislation applies to both local and foreign firms without discrimination.

Provisions for the settlement of labour disputes are contained in the Labour Relations Ordinance (Chapter 55 of the Laws of Hong Kong). In case of a strike or other forms of industrial conflict, the Labour Department will offer its conciliation service to the parties concerned and help them to reach an amicable settlement.

Participation in conciliation procedures, under the auspices of the Commissioner for Labour, is voluntary. The Governor-in-Council has power under this Ordinance to refer a labour dispute to arbitration with the consent of the parties or to a board of inquiry or to take any other action as the circumstances of the dispute may warrant.

There is no legislative prohibition of strikes in Hong Kong. Employees have the freedom or liberty to strike.

Limited statutory immunities are given to registered trade unions and striking employees under the Trade Unions Ordinance (Chapter 332). However, an employee may be treated under common law as being in breach of his contract of employment and may be subject to disciplinary proceedings or dismissal.

The Employment Ordinance (Chapter 57) gives an employee the right to become a member or an officer of a registered trade union and to take part in trade union activities outside his working hours or within working

hours with his employer's consent. Contravention of any provisions in the Employment Ordinance in connection with the anti-union discrimination constitutes a criminal offence and is liable on conviction to a fine of HK\$100,000 (about US\$12,820).

In Hong Kong, employees have the freedom or liberty to strike. However, an employee who goes on strike may be treated at common law as being in breach of his contract of employment and may be subject to disciplinary proceedings or dismissal. In case of strike, the Labour Department will immediately offer its conciliation service to the parties concerned and assist the parties in reaching an amicable settlement.

*4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

Law	Summary
Labour Relations Ordinance (Cap. 55)	This ordinance embodies a set of procedures for settling labour disputes, including conciliation, arbitration, board of inquiry and other actions as necessary.
Employment Ordinance (Cap. 57)	This is the main piece of legislation in Hong Kong governing conditions of employment. It provides for a comprehensive set of employment standards such as rest days, holiday with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, termination of employment contract and protection against anti-union discrimination.
Trade Unions Ordinance (Cap. 332)	This ordinance makes provisions for the registration of trade unions, and provides for other matters ancillary to the better administration of trade unions such as application of funds, making of rules and rights and liabilities of trade unions.
Protection of Wages on Insolvency Ordinance (Cap. 380)	This ordinance provides for the establishment of the Protection of Wages on Insolvency Fund and a board to administer it. Under the ordinance, employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply to the Fund for ex gratia payments.
Minor Employment Claims Adjudication Board Ordinance (Cap. 453)	This ordinance establishes the Minor Employment Claims Adjudication Board within the Labour Department to adjudicate minor employment claims when settlement cannot be achieved through conciliation. At present the Board is empowered to adjudicate employment claims not exceeding 5 claimants per case with claims not more than \$5,000 per claimant.
Employees' Compensation Ordinance (Cap. 282)	This ordinance establishes a no-fault, non-contributory employee compensation system in which individual employers are liable to pay compensation for work-related accidents or prescribed occupational diseases. It requires all employers to take out a minimum amount of insurance to cover their employee compensation liabilities which may arise out of the ordinance and at common law.

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Hong Kong operates a territorial basis of taxation under which taxes are only imposed on profits or income with a Hong Kong source. The Hong Kong Inland Revenue Ordinance (IRO) imposes three separate taxes, namely, profits tax, salaries tax and property tax.

Taxation arrangements	Summary
Profits Tax	<p>Profits tax is charged on profits arising in, or derived from, Hong Kong from a trade, profession or business carried on in Hong Kong. Profits tax is charged on corporations at the rate of 16.5% and on persons other than corporations at the standard rate of 15%. There is no withholding tax on dividends paid by corporations and dividends received from corporations are exempt from profits tax.</p> <p>There are no taxes on capital gains. Interest received by individuals and corporations, other than financial institutions, who carry on a trade, profession or business is generally chargeable to profits tax if it is derived from Hong Kong. Special rules apply in relation to the taxation of financial institutions.</p> <p>Generous allowances are available in respect of capital expenditure incurred on the construction of industrial and commercial buildings and structures and on the provision of plant and machinery for the purpose of producing chargeable profits.</p>
Salaries Tax	<p>Salaries tax is charged on income arising in or derived from Hong Kong from any office or employment, including income derived from services rendered in Hong Kong and any pension. Tax payable is calculated on a sliding scale which progresses from 2% to 20%. However, no one pays a rate higher than 15% of their total income.</p>
Property Tax	<p>The owner of land and/or buildings in Hong Kong is charged property tax at the standard rate of 15% on rentals received less an allowance of 20% for repairs and maintenance. However, an owner which is a corporation and which pays profits tax on rental income received may be exempted from property tax.</p>
Double taxation agreements	<p>Except for a restricted double taxation agreement with the United States in respect of shipping profits, Hong Kong does not have any double taxation agreements with other countries.</p>

## 7. Performance Requirements

1. Brief description of performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).

There are no performance requirements imposing limits on trade and investment or any TRIMS in Hong Kong.

## 8. Capital Exports

1. List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

There are no regulations/institutional measures that limit capital exports or the outflow of foreign investment in Hong Kong.

2. List and brief description of any regulations/institutional measures that limit technology exports.

There are no regulations/institutional measures that limit technology exports from Hong Kong.

## **9. Investor Behaviour**

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

There is a minimum of restriction regarding foreign investment.

## **10. Other measures**

*1. Brief outline the competition policy regime.*

The Hong Kong Government is fully committed to the promotion of free trade and competition which is the best guarantee of economic efficiency, low prices and consumer protection. Hong Kong's totally open economy, which exposes its traders and producers to acute international competition, is a good illustration of this policy. This policy has served Hong Kong well: Hong Kong ranked third in the World Competitiveness Report 1995 which was published by the International Institute for Management Development and the World Economic Forum in Switzerland.

The Government subscribes to the basic economic philosophy of minimum Government intervention in market forces, which is the best formula for enhancing competition and efficiency on the one hand and keeping costs and prices down on the other. However, where necessary, the Government will use appropriate and pragmatic measures to rectify any unfair business practices, safeguard competition and protect consumer interests.

The Government recognises that there are circumstances where free competition may not be practicable or may not be the best solution. It includes, among others, circumstances where:

- a very high level of investment is required;
- there is a need for prudential supervision; or
- there is a need to protect the long-term interest of consumers.

In such cases, through various arrangements, the Government has achieved a reasonable balance between a justified monopolistic or oligopolistic situation on the one hand and the benefits of quality services and fair prices on the other.

In respect of the sectors in the economy which are subject to Government controls, a key imperative in the formulation of such controls is the promotion of competition and protection of consumer interests. These controls are reviewed and revised from time to time to identify areas for possible improvement and to meet the needs of changing circumstances. Instead of providing a system of controls across the board, the Government has taken a sector-specific approach to promote greater competition in certain business sectors. The deregulation or liberalisation in the field of telecommunications is a notable example.

To discourage unfair, deceptive or misleading business practices the Government has put in place a package of legislation including the Trade Descriptions Ordinance, the Control of Exemption Clauses Ordinance, the Unconscionable Contracts Ordinance, the Supply of Services (Implied Terms) Ordinance and the Sales of Goods (Amendment) Ordinance. A Consumer Legal Action Fund under the Consumer Council was established in November 1994 to assist consumers individually or collectively to take legal action against unscrupulous traders. Additional resources have been allocated to the Consumer Council to establish a Trade Practices Division to examine business practices which may prevent, restrict or distort competition with a view to tendering advice to the Government on measures to promote healthy competition.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

### **Protection of Intellectual Property (IP) in Hong Kong**

Hong Kong provides for the effective protection of intellectual property.

Protection depends on three main contributory and interconnected factors. These are:

- the laws relating to intellectual property and their administrative systems as supported by the judicial system;
- the enforcement through the judicial system by the owner of his intellectual property rights supported as appropriate by criminal sanctions; and
- the promotion of awareness in the community at large of the importance of IP rights and their protection.

#### **Legal Framework**

The laws relating to intellectual property create a framework which enables a person to exploit and protect his rights.

- The specific intellectual property laws and administrative systems such as the laws relating to patents, copyright and trade marks;
- The common law rights such as those relating to passing off and trade secrets.
- The judicial system as a whole which provides for the common law rights and the method of protection and enforcement.

#### **Enforcement of Intellectual Property (IP) rights**

IP rights in Hong Kong are primarily civil rights and the prime responsibility for their protection and enforcement rests with the owner of these rights.

The owner can use the framework provided by the statutes and the courts to pursue this end.

To complement civil action by the owners there are also criminal sanctions against the manufacture and distribution of pirated works and counterfeit goods.

### **Promotion of Intellectual Property (IP)**

The Hong Kong Government recognising the importance of intellectual property and its growing impact on world trade. It set up the Intellectual Property Department (IPD) in 1990.

### **Protection of Intellectual Property (IP) in Hong Kong**

Hong Kong has a long history of protecting intellectual property.

There has been in Hong Kong a system of registration of trade marks used on goods for over 120 years. The first Trade Mark Law was enacted in 1873. The first trade mark was registered in January 1874.

Copyright has been protected here since 1912 and our current Patents Ordinance was first enacted in 1932.

### **Role of the Intellectual Property Department (IPD)**

The main goal of the Intellectual Property Department is to ensure that Hong Kong has an intellectual Property regime which is equal to its status as an international trading and financial centre and which encourages creativity. To achieve this goal Hong Kong must:

- maintain its existing IP laws;
- maintain cost effective, responsive registration systems;
- modernise and implement changes to take note of international trends and new technology and to provide localised laws where necessary; and
- promote the knowledge and use of intellectual property in Hong Kong.

### **Patents**

There is no original grant of patent in Hong Kong. The Registration of Patents Ordinance provides for the registration in Hong Kong of United Kingdom patents and European patents designating the United Kingdom. Application for Registration in Hong Kong can be made at any time within 5 years of the grant of the patent in the United Kingdom and can be effected by supplying certified copies of the relevant patent documents.

Once the patent is registered, the owner of the patent has the same rights as if the patent had been granted in the United Kingdom with an extension to Hong Kong.

There is no protection without registration.

The Patent remains in force so long as it is in force in the United Kingdom.

Hong Kong has for over 60 years provided protection for inventions to the same extent as the United Kingdom including protection for pharmaceuticals.

### **Proposals for change**

The Patents Steering Committee proposed major reforms to give Hong Kong an independent cost effective patent system which is well respected and is in line with international standards and takes account of the needs of all the users of the system.

The report recommended that Hong Kong should have:

- its own independent patent system;
- a system of grant of petty patents to protect inventions with a short term commercial life; and
- improved access to technical information.

HK will have its own comprehensive Patents Ordinance and the existing Patents Registry will be expanded.

- Hong Kong's patent law would provide for the grant of an independent patent in Hong Kong based on the registration of patents granted by the:
  - the United Kingdom Patent Office;
  - the European Patent Office in respect of patents designated the United Kingdom; and
  - the Chinese Patent Office.
- Hong Kong's patent law will provide that the registered patent once granted in Hong Kong will be a Hong Kong patent independent of the "parent" patent.
- It will be enforced here by the Hong Kong courts irrespective of what happens in any other jurisdiction and again according to Hong Kong's law. Thus infringement, revocation and other types of action would take place in Hong Kong based on Hong Kong Law.

The provision for registration of these three types of patents will take effect from the commencement of the new law and will continue after 1st July 1997.

### **Proposals for the new Patent legislation**

Comprehensive patent legislation has been prepared. Introduction into LegCo is planned for the current session.

### **Copyright & Registered designs**

Copyright has been protected in Hong Kong since 1912 dependent on United Kingdom legislation. Copyright is currently protected in Hong Kong under the United Kingdom Copyright Act 1956 as extended to Hong Kong and the Copyright Ordinance.

Under the United Kingdom Designs Protection Ordinance, designs registered in the United Kingdom under the Registered Designs Act 1949 are also protected in Hong Kong.

### **The Law Reform Commission Report**

The Law Reform Commission issued its comprehensive report on the law relating to copyright and designs in 1994.

The main objective of the copyright reform exercise is to provide an up-to-date modernised copyright law in line with international standards which discontinues the present dependence on UK legislation and ensures continuity with Hong Kong's existing copyright regime.

It was recommended that in the main Hong Kong's Copyright law should be modelled on the provisions of the United Kingdom Copyright Design and Patent Act 1988.

Proposals for new copyright legislation basically follow these recommendations subject to modifications in some areas to reflect changes in technology, international trends or to suit Hong Kong's needs.

It is proposed to introduce a Copyright Bill into LegCo in 1996.

As far as registered designs are concerned the Commission recommends that Hong Kong should have its own legislation and administrative system for the protection of registered designs.

It is proposed to base this legislation in the main on the recommendations of the Law Reform Commission subject to modifications to reflect international trends.

IPD is currently drafting legislation which is planned to introduce to LegCo in 1996.

Preparations are also in hand for the setting up of the Design Registry. This will be part of the IPD.

### **Trade marks**

A trade mark does not have to be registered for the owner to be able to protect it. Thus a person who has developed his trade mark can protect it either:

- by way of the registration system; or
- by a passing off action; or
- by using both.

The Trade Marks Ordinance provides a framework for the system of registration.

The consultation document issued by the Intellectual Property Department took note of international initiatives to reform Trade Mark Law and procedures and to harmonise standards.

Drafting of the legislation is in hand. It is proposed to introduce this to LegCo in this session.

### **Layout Designs (Topographies) of Integrated Circuits**

The Layout Design (Topography) of Integrated Circuits Ordinance came into operation in March 1994.

The Ordinance in essence gives to the qualified owner of a layout design, which is original, the right to reproduce and commercially exploit that design.

The term is 10 years and there is no requirement for registration.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

*1. List of and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

This is not applicable to Hong Kong as there are no special regulations governing deprivation and compensation of foreign investment in Hong Kong.

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.

### **2. Settlement of Disputes**

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List agencies responsible for dispute settlement and provide addresses and telephone/fax numbers of these agencies.*

In Hong Kong, there are a variety of ways of resolving disputes. These include negotiation, conciliation and mediation, arbitration and litigation. Hong Kong has a well developed system of courts which have jurisdiction in civil matters.

Agency	Address/telephone/fax
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The Supreme Court - its jurisdiction is unlimited in civil matters.	38 Queensway, Hong Kong Telephone: (852) 2869 0869 Fax: (852) 2869 0640
The District Court - its jurisdiction is limited to disputes involving a monetary value of up to HK\$120,000.	6th Floor, Wanchai Tower, 12 Harbour Road, Hong Kong. Telephone: (852) 2582 4271 Fax: (852) 2824 1641
The Small Claims Tribunal - it hears minor civil claims up to a limit of HK\$15,000.	4th Floor, Wanchai Tower, 12 Harbour Road, Hong Kong. Telephone: (852) 2582 4084 Fax: (852) 2587 9139
The Lands Tribunal - it has a specialised role with jurisdiction in matters of rating and valuation, and in assessing compensation when land is resumed by the government or reduced in value by development.	5th Floor, Wanchai Tower, 12 Harbour Road, Hong Kong. Telephone: (852) 2582 4283 Fax: (852) 2588 1578
In addition to the principal courts/tribunals of civil jurisdiction, arbitration has also been a popular method of dispute resolution in Hong Kong.  The Hong Kong International Arbitration Centre, established in 1985, is available to assist parties to choose the best available option to resolve disputes. The Centre also provides a full set of support services for arbitration and mediation of disputes.	38th Floor, Two Exchange Square, 8 Connaught Place, Hong Kong. Telephone: (852) 2525 2381 Fax: (852) 2524 2171

2. *Signatory or accession to the ICSID Convention.*

The Convention on the Settlement of Investment Disputes between States and Nationals of other States, which establishes the ICSID, is applicable in Hong Kong.

**D. INVESTMENT PROMOTION AND INCENTIVES**

1. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

This is not applicable as Hong Kong does not provide any direct incentives to foreign investors.

2. *Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*  
Not applicable.

3. *Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

Agency	Address/telephone/fax
Through the Industry Department's investment promotion programme, the Hong Kong Government seeks to attract overseas investments in Hong Kong's manufacturing and manufacturing-related industries. The aim is to encourage technology transfer to enhance productivity, quality and diversification of	<u>Hong Kong</u> One-Stop Unit Industry Department, 14th Floor, Ocean Centre, 5 Canton Road, Kowloon, Hong Kong. Telephone: (852) 2737 2434

<p>Hong Kong's manufacturing industries.</p> <p>The investment promotion programme is organised by a network of seven industrial promotion units (IPUs) attached to Hong Kong Government's Economic and Trade Offices in Tokyo, New York, San Francisco, London, Brussels, Toronto and Sydney and by the "One Stop Unit" of the Hong Kong Government Industry Department (HKOSU). Most of the Industrial Promotion Project Officers are qualified engineers with extensive industrial experience and marketing skills.</p> <p>For investment opportunities in Hong Kong, a potential investor can approach the One Stop Unit in Hong Kong or the overseas industrial promotion units.</p>	<p>Fax : (852) 2730 4633</p> <p><u>Tokyo</u>  Hong Kong Economic and Trade Office,  Industrial Promotion Unit,  7th Floor,  Nishi-Azabu Mitsui Building,  Minato : 4-17-30,  Nishi-Azabu,  Tokyo, Japan.  Telephone: (81 3) 3498 8806  Fax : (81 3) 3498 8815</p> <p><u>New York</u>  Hong Kong Economic and Trade Office,  Industrial Promotion Unit,  British Consulate General,  680 Fifth Avenue,  22nd Floor,  New York, NY 10019,  U.S.A.  Telephone: (1 212) 265 7232  Fax : (1 212) 974 3209</p>
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<p>The kinds of assistance the “One Stop Unit” offers to overseas investors include:</p> <ul style="list-style-type: none"> <li>• facilitate the preparation of investment plans and feasibility studies by providing quick and specific information on developments in particular manufacturing sectors, availability and cost of industrial land and premises, human resources, relevant laws and regulations, sources of finance, etc.;</li> <li>• introduce potential investors to the relevant organisations and facilitate their communications with government departments in seeking necessary approval in connection with the setting up of manufacturing operations. The Unit maintains close and direct links with over 30 Government departments, trade and industrial organisations, and public utilities companies;</li> <li>• receive, advise and guide incoming investment appraisal missions organised by trade and industrial organisations as well as individual investors. It organises tailor-made programmes for visiting investors to receive in depth briefings, inspect industrial sites and premises, visit developmental support agencies and to meet with bankers, local industrialists and relevant Government officials;</li> <li>• facilitate joint venture and technology transfer projects by matching overseas investors with interested local manufacturers; and</li> <li>• provide an “after-sales” service to investors already established in Hong Kong and assist in any expansion plans or re-investment projects.</li> </ul>	<p><u>San Francisco</u>  Hong Kong Economic and Trade Office,  Industrial Promotion Unit,  British Consulate General,  222 Kearny Street, Suite 402,  San Francisco, CA 94108,  U.S.A.  Telephone: (1 415) 397 2215  Fax : (1 415) 421 0646</p> <p><u>London</u>  Hong Kong Government Office,  Industrial Promotion Unit,  6 Grafton Street,  London W1X 3LB,  England.  Telephone: (44 171) 499 9821  Fax : (44 171) 495 5033</p> <p><u>Brussels</u>  Hong Kong Economic and Trade Office,  Industrial Promotion Unit,  Avenue de Tervuren 188A,  1150 Brussels,  Belgium.  Telephone: (32 2) 775 00 88  Fax : (32 2) 770 09 80</p> <p><u>Toronto</u>  Hong Kong Economic and Trade Office,  Industrial Promotion Unit,  174 St. George Street,  Toronto,  Ontario M5R 2M7,  Canada.  Telephone: (1 416) 924 5544  Fax : (1 416) 924 3599</p> <p><u>Australia</u>  Hong Kong Economic and Trade Office,  Industrial Promotion Unit,  80 Druiitt Street,  Sydney NSW 2000,  Australia  Telephone: (61 2) 283 3222  Fax : (61 2) 283 3818</p>
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## **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

*1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement.*

### **Friendship Commerce and Navigation Treaties**

Not applicable.

### **Bilateral Investment Treaties**

Hong Kong Government signed nine Investment Promotion and Protection Agreements (IPPAs) with Australia, Denmark, France, Germany, Italy, the Netherlands, New Zealand, Sweden and Switzerland.

The IPPAs generally contain the following major undertakings on a reciprocal basis :

- investors of the other party shall not generally be subjected to treatment less favourable than that which it accords to its own investors or investors of another country;
- compensation shall be provided on the basis of the principle above to investors of the other party whose investments suffer losses owing to non-commercial risks;
- investments of investors of the other party shall not be expropriated except lawfully, for a genuine public purpose and against proper compensation;
- the free transfer of investments and returns by investors of the other party shall be guaranteed; and
- arbitration arrangements under internationally accepted rules shall be available to deal with investment disputes which cannot be settled by bilateral consultation or negotiation within a given period.

#### **Regional or sub regional Investment Treaties**

Not applicable.

### **F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

*1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).*

#### **Inward Investment**

The Hong Kong Government does not compile statistics on overall inward and outward investment flows. The absence in Hong Kong of both foreign exchange controls and special approval/notification requirements does not render it a practicable task for investments to be tracked down so that information at the point of investment might be collected.

The Hong Kong Government's Industry Department however conducts annual surveys on a voluntary basis of foreign investments in Hong Kong's manufacturing industries. The value of external investment in Hong Kong's manufacturing industries has increased steadily over the past five years. The 1995 survey identified 424 companies with investment from overseas. The total value of external investment at original cost at the end of 1994 was US\$5.7 billion, 8% higher than in 1993, and 2 times as high as the value in 1986. Japan continued to be the leading source country of external investment, contributing 34% of the total value of investment. The United States of America (27%) was the second largest investor, followed by China (10%) and United Kingdom (7%).

Apart from the Industry Department's annual surveys, it is possible to obtain some indications of foreign investments in Hong Kong by reference to statistics published by the authorities of the source countries. According to the U.S. Department of Commerce's statistics, cumulative U.S. direct investment (on a historical cost basis) in Hong Kong has increased steadily over the past five years, from US\$6.1 billion in 1990 to US\$12.0 billion in 1994. Hong Kong, in terms of the cumulative value of direct investment at historical cost, remains the third most important U.S. investment destination in Asia and the Pacific, after Japan and Australia. According to statistics from the Japanese Ministry of Finance, cumulative Japanese direct investment in Hong Kong has been on the increase and reached US\$14.3 billion by the end of September 1995. This was the third highest amount of cumulative Japanese direct investment in Asia and the Pacific, after Australia and Indonesia.

#### **Outward Investment**

For the same reasons with the inward investment, there is no original data on outward investment from Hong Kong. It is, however, believed that Hong Kong is a major source of investment for many Asian economies. According to statistics published by the recipient countries, Hong Kong is the largest external investor in China; second largest in Indonesia; third largest in Taiwan, Thailand, Vietnam and the Philippines; and fourth largest in Singapore.

*2. List of major countries/economies that are sources/receivers of FDI over recent years.*

Sources FDI	Destination FDI
Japan, US, China and the UK	China, Taiwan and most ASEAN countries

# INDONESIA

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# INDONESIA

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

Foreign Direct Investment (FDI) in Indonesia is governed primarily by Foreign Investment Law No.1 of 1967 as amended by Law No.11 of 1970. Legally it is still able to accommodate the various deregulatory policies and measures that have been and will continue to be adopted by the government. To implement this Investment Law, the Indonesian Government issued an extremely important deregulation package on FDI, that is, Government Regulation No. 20 of 1994 concerning share ownership in the foreign investment company, and the implementation of this regulation through the decree of Minister for Investment/Chairman of Investment Coordinating Board (BKPM) No. 15 of 1994.

Essentially, the new foreign investment rule permits foreign parties to own 100% of the issued capital of a new established Indonesian company. In some areas, classified as particularly important to the people of Indonesia, the foreign parties could own 95% of the issued capital.

There is no longer any requirement that foreign shareholder should be in a minority position at some time in the future. There is a requirement that within 15 years from the commencement of commercial operation, a 100% foreign shareholder shall sell at least a nominal percentage to an Indonesian citizen and/or Indonesian entity. A company which is initially 95% foreign owned is not the subject of any divestment requirement.

The minimum amount of capital required to be invested in a foreign investment company in Indonesia is no longer prescribed. The new regulation provides that the amount of capital to be invested is decided by the investing parties themselves.

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

The President of the Republic of Indonesia, on many occasions related to economic affairs, has always stated that to maintain and speed-up the momentum of national development, the deregulation of policies and measures and simplification of investment procedures should be continued and implemented in order to enhance and improve the productivity and efficiency of economic sectors. Besides that, due to the need of Indonesian economic development, the presence of FDI should be encouraged to support economic development.

The Minister for Investment/Chairman of BKPM stated that Indonesia always welcome and encourage foreign investment inflow to Indonesia or other types of investment such as portfolio investment, subcontractor, etc.

Accordingly, the Minister expressed that the Indonesian Government should take any measures to create an attractive and conducive investment climate and should implement any new measures with transparency and consistency.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### (i) Statutory (legislative) requirements

##### 1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
(a) Act No.1 of 1967 on Foreign Direct Investment as amended by Act No.11 of 1970	<ol style="list-style-type: none"> <li>1. A foreign investment enterprise is a legal entity organized under Indonesian Law and has its domicile in Indonesia.</li> <li>2. The owner of the enterprise has full authority to appoint the management of the enterprise in which his capital is invested.</li> <li>3. A foreign investment enterprise is required to meet their needs for manpower with Indonesian citizens.</li> <li>4. A foreign investment enterprise is allowed to bring and employ foreign managerial and expert personnel in positions which cannot yet be filled by Indonesian citizens.</li> <li>5. A foreign investment enterprise is required to conduct and provide regular and systematic training and educational facilities in Indonesia and/or abroad for</li> </ol>

	<p>Indonesian citizens with the aim of gradually replacing foreign employees with Indonesians.</p> <p>6. The permit for a foreign investment enterprise shall specify the duration of its validity which shall not exceed 30 years.</p> <p>7. A foreign investment enterprise is granted the right in the original currency of the invested capital, at the prevailing exchange rate, to transfer for:</p> <ul style="list-style-type: none"> <li>(a) company profits,</li> <li>(b) proceeds from the sale of shares,</li> <li>(c) compensation in case of nationalization and repatriation of remaining invested capital in case of liquidation,</li> <li>(d) principal loan, interest, royalty fee and license fee, and</li> <li>(e) expenses of expatriate.</li> </ul>
(b) Act No.7 of 1983 on Income Tax as amended by Act No.10 of 1994	<p>Although the tax holiday and investment allowance had been revoked, tax rates have been simplified and lowered substantially. The income tax system in Indonesia is progressive and applied both to individual and corporations. The amount of tax payable is determined through the self assessment method.</p>
(c) Act No.1 of 1995 on Limited Liability Company (Perseroan Terbatas)	<ol style="list-style-type: none"> <li>1. Limited company should be established by at least 2 (two) parties.</li> <li>2. The corporate components are the General Shareholders' Meeting, the Directors, and the Commissioners. The General Shareholders' Meeting has the highest power in the company and retains all powers that are not delegated to the Directors or the Commissioners.</li> <li>3. Members of the Directors and the Commissioners are appointed by the General Shareholders' Meeting for certain period.</li> <li>4. One or more companies may merge (and become one) with another existing company and form a new company.</li> <li>5. The merger or consolidation can be only carried out if the program for consolidation or merger is approved by the General Shareholders' Meeting of the respective companies.</li> </ol>
(d) Government Regulation No. 20 of 1994.	<ol style="list-style-type: none"> <li>1. A foreign direct investment company may be established as a joint venture undertaking between a foreign and an Indonesian partner. A foreign and an Indonesian partner may be represented by legal entity as well as individual person. There is no requirement on minimal amount of investment (equity plus loan). The amount is left to the parties concerned to determine, based on the economy of scale and business considerations.</li> <li>2. A foreign investment company in infrastructure projects such as sea ports, generation, transmission and distribution of electricity for public use, telecommunications, shipping, airlines, drinking water supply, public railways, and nuclear electric power generation should be established by way of joint venture between foreign and Indonesian partner and the share of Indonesian partner should be at least 5% of the total issued capital on the out-set of the company.</li> <li>3. A foreign investment company may be established as a straight investment which means that 100% of the shares is owned by foreign citizen and/or entities.</li> </ol>

	<p>However, it is required that no later than 15 years since the commencement of commercial operation, some of the company's shares should be sold to Indonesian citizen and/or business entities, through direct placement and/or indirectly through domestic capital market.</p> <p>4. A foreign investment company which has commenced commercial operation, may apply for expansion of the existing production capacity, to produce additional products of the same/or different kind of the current ones, by investing additional capital in the production facilities.</p> <p>5. A foreign investment company which has commenced commercial operation, a foreign legal entity and/or foreign citizen may purchase the shares of the existing domestic company through direct placement and/or the domestic capital market, provided that the field of investment is open for foreign investment.</p>
(e) Minister for Investment/Chairman of BKPM Decree No.15 of 1994.	The decree is an implementation guideline of the Government Regulation Number 20 of 1994 stated that the foreign enterprise, straight investment company and/or foreign citizen may purchase the existing domestic company including the existing foreign investment company which has the form of a limited liability company under Indonesian Law. The shares of Indonesian party in the existing domestic company shall be at least 5% of the total issued capital of the company.
(f) Presidential Decree No.31 of 1995 concerning List of Sectors that are Closed for Investment.	<p>The list consists of:</p> <p>(a) 8 sectors are closed for investment activity which the entire capital is owned by a foreign citizen and/or foreign legal entity;</p> <p>(b) 6 sectors are closed for investment activity where foreign citizen and/or foreign legal entity participate in company's capital ownership;</p> <p>(c) 9 sectors are closed for investment activity except if it can fulfill certain conditions;</p> <p>(d) 11 sectors are absolutely closed for investment activity; and</p> <p>(e) 37 sectors are reserved for small scale industries/business operation or small scale industries/business operation cooperating with medium or large size enterprises.</p> <p>These sectors are listed in the table below.</p>

#### **List Of Sectors Closed For Investment**

(a) Sectors Closed for Investment with Share Ownership Entirely (100%) Is Owned by Foreign Citizens or Entities

(\*) Joint venture with local partner is possible.

1. Construction and Operation of Seaport
2. Generation, Transmission and Distribution of Electric Power for the Public
3. Telecommunication
4. Shipping
5. Air Transportation
6. Construction and Operation of Potable Water Supply
7. Railway Construction
8. Nuclear Power Generation



(b) Sectors Closed for Investment In Which A Part of Share Ownership is Owned by Foreign Citizens or Entities  
(\* ) Even joint-venture with local partner is not possible.

1. Taxi/Bus Transportation
2. Local Shipping
3. Retail Trade and the like
4. Domestic Trade Support Services
5. Private Television Broadcasting and Radio Broadcasting Services
6. Operation of Cinema

(c) Sectors Closed for Investment Except Where it Can Fulfill Certain Conditions

1. Powdered milk/condensed milk except integrated with dairy cattle raising
2. Sawmill except in East Timor and Irian Jaya provinces
3. Plywood (raw) except in East Timor and Irian Jaya provinces
4. Printing of valuable paper except for state printing enterprise (Perum PERURI):
  - (i) postage stamps
  - (ii) duty stamps
  - (iii) commercial paper of bank indonesia
  - (iv) passports
  - (v) stamped postages
5. Manufacture of ethyl grade except for the technical grade
6. Explosive materials and the like, except for state owned enterprise (PT DAHANA (pesero) and PT MULTI NITROTAMA KIMIA)
7. Aircraft except in cooperation with PT.IPTN
  - (i) jet or propeller engine for transportation
  - (ii) helicopter
  - (iii) aircraft engine: piston combustion engines, turbo jets, turbo propeller, other turbo gas, ram jet, pulse jet and turbo fans
  - (iv) aircraft equipment and accessories: aircraft/helicopter propeller and landing equipment
8. Liquor and alcoholic beverages: new projects and expansion projects should be located in Bonded Zone or Export Oriented Production Entrepot
9. Fireworks: new projects and expansion projects should be located in Bonded Zone or Export Oriented Production Entrepot

(d) Sectors Absolutely Closed for Investment

1. Contractors or Forest Logging
2. Casino / Gambling
3. Utilisation and Cultivation of Sponges
4. Finished/Semi-Finished Mangrove Wood Processing
5. Plantation and Processing Marijuana and the like
6. Veneer Manufacturing
7. Manufacture of Penta Chlorophenol, Dichloro Diphenyl Trichloro Ethane (DDT) Dieldrin, Chlorodane
8. Pulp Industries using Sulphite process
9. Soda-Chloroine Electrolysis using Mercury process
10. Manufacture of Chloro Fluoro Carbon (CFC/Freon)
11. Manufacture of Cyclamate and Saccharine

(e) Sectors Reserved for Small-Scale Industry Which Could be in Cooperation with Medium or Large-Scale Industry

1. Non pedigree chicken breeding
2. Dairy cow breeding
3. Shrimp larva culture
4. Mackerel, flying fish, a sea-fish (caranx) fishing
5. Shrimp catching
6. Aqua culture of eel, escargot, crocodile, frog, sidat
7. Coral fish catching such as sea bass, ribbon fish, grouper, sea perch and the like

8. Catching of squid, jelly fish, sea, cucumber and the like, and the catching of the ornamental fresh water fish and/or ocean fish
9. The plantation of clove, pepper, melinjo, cinnamon, candlenut, vanilla, kapulage, nutmeg, siwalen, sugar palm and leaf (lontar)
10. Medical Herbs except ginger
11. Pickled/sweetened fruits and vegetables
12. Salted dried fish and the like
13. Smoked fish and the like
14. Various flours from grains:
  - (i) Rice flours
  - (ii) Peanut flours
  - (iii) Cassava flours
15. Brown Sugar
16. Fermented soybean paste (tauco)
17. Soybean sauce
18. Fermented soybean (tempe)
19. Soybean curd
20. Fish and shrimp paste
21. Traditional cakes
22. Other cakes:
  - (i) Snacks of nuts (roasted peanuts with crust, salted peanuts, large white beans, roasted peanuts with garlic)
  - (ii) Salted/preserved eggs
  - (iii) Bean chip
  - (iv) Crispiers
  - (v) Chips
- 23 Yarn spinning except for integrated silk textile industry:
  - (i) The production of cocoon
  - (ii) Silk yarn (filament)
  - (iii) Fiber decoration
24. Improved yarn by manual means
  - (i) Bleaching
  - (ii) Dyeing
  - (iii) Motive yarn/tie dyeing
25. Fabric printing and finishing, by manual means, except integrated with upstream industry
26. Hand-made batiks
27. Weaving:
  - (i) ATBM (non mechanical) weaving
  - (ii) Traditional weaving (gedogan)
28. Knitting, by manual means
29. Traditional hat/cap
30. Lime and lime products:
  - (i) Quicklime
  - (ii) Hydrated lime
  - (iii) Slaked lime
  - (iv) Products made from lime
31. Clay ceramic goods for household uses:
  - (i) Unglazed household appliances
  - (ii) Unglazed household ornaments
  - (iii) Unglazed various types of flowerpots
32. Agricultural tools:
  - (i) Hoe
  - (ii) Shovels
  - (iii) Plows
  - (iv) Harrows
  - (v) Rakes
  - (vi) Crowbars
  - (vii) Handsticks
  - (viii) Scraper

<ul style="list-style-type: none"> <li>(ix) Reaping</li> <li>(x) Stewed knife</li> <li>(xi) Sprinkle</li> <li>(xii) Hand sprayer</li> <li>(xiii) Manual paddy threshers</li> <li>(xiv) Manual maize threshers</li> <li>(xv) Manual hullers</li> </ul> <p>33. Hand tools:</p> <ul style="list-style-type: none"> <li>(i) Chisels</li> <li>(ii) Hammer (small type)</li> <li>(iii) Wood planes</li> <li>(iv) Trowels</li> </ul> <p>34. Hand cutters:</p> <ul style="list-style-type: none"> <li>(i) Chopping knife</li> <li>(ii) Axes</li> </ul> <p>35. Traditional Indonesian musical instruments</p> <p>36. Handicrafts not elsewhere classified:</p> <ul style="list-style-type: none"> <li>(i) Handicrafts made from basic materials of plant</li> <li>(ii) Handicrafts made from basic materials of animal</li> <li>(ii) Artificial flowered and decoratives</li> </ul> <p>37. Raw rattan processing</p>
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*(ii) Investment Review and Approval*

1. Details of any proposals and sectors that are/are not (yes/no) subject to screening.

2. For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals	Guidelines/Conditions
merger (Yes)	The field of business concerned is open for foreign direct investment.  The companies have been already in commercial production.
acquisitions (Yes)	The field of business concerned is open for foreign direct investment.
greenfield investment (Yes)	Submitting the application form Model I/PMA with complete data/information required to the Investment Coordinating Board.  Evaluation or assessment of application will be conducted and confirmed against the criteria and prerequisites.  Investment location is preferable in industrial estate where the industrial estate is available in the Regency concerned.
real estate/land (Yes)	For single house construction, the ratio between small, medium and luxury houses are 6 : 3 : 1.  For flats, condominiums and apartments, the size of units is left to the investor to determine.
joint venture (Yes)	For the infrastructure projects such as sea ports, generation, transmission and distribution of electricity for public use, telecommunications, shipping, airlines, drinking water supplies, public railways, and nuclear electric power, the share of Indonesian partner(s) in a joint venture company should be at least 5% of the total

	<p>issued capital on the out-set of the company.</p> <p>The other sectors, the foreign investor could own 100% the shares starting from the establishment of the company until 15 years after the commencement of commercial production, or from a joint venture company in which the amount of shares of Indonesian partner(s) and foreign partner(s) is decided fully by themselves.</p>
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Sector	Guidelines/Conditions
telecommunications (Yes)	Basic telecommunication services should cooperate with state owned company (PT.Telkom and/or PT.Indosat), in the form of joint venture or joint operation or management contract. In case of joint venture, the foreign partner has already conducted business in the basic telecommunication services.
media (Yes)	Based on prevailing laws and regulations, foreign direct investment is not allowed to enter mass media activities.
transport (Yes)	<p>1. Taxi/bus operation is reserved only for domestic enterprise.</p> <p>2. Domestic and international shipping:</p> <ul style="list-style-type: none"> <li>• it is compulsory to own at least one ship with the minimum weighing of 2.500 DWT; and</li> <li>• the parties are foreign shipping enterprises and domestic shipping enterprises.</li> </ul> <p>3. Ferry operation is reserved only for domestic enterprise.</p>
agriculture (Yes)	<p>1. The application of fishery catching should be attached with coordinates of the catching area which issued by Directorate General of Fishery, Department of Agriculture.</p> <p>2. Only joint venture company could hold a “Land Right Cultivation (HGU)”.</p>
other: - Mining (Yes)	Foreign direct investment must be in cooperation with the government in the form of a “contract of work”. In coal mining, cooperation in the form of “coal mining cooperation agreement”.
- Electricity (Yes)	Before submitting the application Model I/PMA to BKPM, investor should negotiate technical aspects with the Directorate General of Electricity and Energy Development with address : Jl. H.R. Rasuna Said Blok X-2 Kav.07-08, Kuningan, Jakarta 12960, Indonesia.
- Toll Road (Yes)	<p>Investor should negotiate technical aspects with state owned company, PT.Jasa Marga with address : Kantor Pusat Tol Plaza, Taman Mini Indonesia Indah, Jl. Tol Jagorawi, Jakarta 13350, Indonesia. Based on the negotiation with PT. Jasa Marga, investor submits the application Model I/PMA to BKPM.</p> <p>Toll road construction and management should be in cooperation with PT.Jasa Marga, be in the form of joint venture, or BOO (Built, Operate and Own), or BOT (Built, Own and Transfer).</p>

3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval process.*

Copies of the relevant documentation can be obtained from the contact points specified in section B (1)(ii)(4) below.

4. *Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
The Investment Coordinating Board of Indonesia (BKPM)	Jl.Gatot Subroto No.44 Jakarta 12190 Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA Fax: (62 21) 525 4945

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

If the application is submitted in the complete form and data, the whole process will be completed between 4 to 6 weeks.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeal processes and the average time for an appeal to be considered.*

Agency	Address/telephone/fax
The Investment Coordinating Board of Indonesia (BKPM)	Jl.Gatot Subroto No.44 Jakarta 12190 Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA Fax: (62 21) 525 4945

To apply for the modification of an approved investment, investor are required to fill out the corresponding forms of applications. The average time for an appeal to be considered is 2-4 weeks.

7. *Description of the conditions that need to be met for an expedited review of a foreign investment proposal.*

For a new project, investor shall fill-out the application Model I/PMA and fullfill the documents and information required as follows:

- (a) Details of Indonesian participant:
  - (1) A record of the Articles of Association of the company (Akta Notaris) for Limited Company (PT), State's enterprises (BUMN/BUMD), CV or Fa.
  - (2) A record of Basic Rules of The Organization which has been Approved for Cooperation (koperasi).
  - (3) A copy of identification Card for Individual.
  - (4) A copy of The Tax Registration Code Number (NPWP).
- (b) Details of Foreign Participant:
 

A record of the Articles of Association of the company with English or Indonesian translation.
- (c) Details of the activity:
  - (1) A flowchart of the production process, its explanation and kind of raw materials/supporting materials for manufacturing industry.
  - (2) Explanation of business activities of the services sector investment.
- (d) Arrangement of joint venture agreement with English or Indonesian translation, signed by all of the joint venture participants.
- (e) Letter of Power of Attorney if the request has not been asked by the shareholders themselves.

8. List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (addresses, and phone/fax numbers for these agencies).

Agency	Address/telephone/fax	Type of Complaint
Investment Coordinating Board, attn.: Deputy Chairman for Guidance and Implementation Control.	Jl. Gatot Subroto No.44 Jakarta 12190 Indonesia Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA Fax: (62 21) 525 4945	Problems arising from the change in Government policy/regulation.  Problems of investment implementation.  Problems with technical / sectoral department.  External problems of the enterprise.

9. List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.

Agency	Address/telephone/fax	Functions
Investment Coordinating Board, attn.: Deputy Chairman for Guidance and Implementation Control.	Jl.Gatot Subroto No.44 Jakarta 12190 Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex : 62654 BKPM IA Fax:: (62 21) 525 4945	1. To conduct monitoring, guidance and controlling of investment mplementation.  2. To provide services on problems faced in the investment implementation as well as provide alternative solutions.

10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.

Before releasing new deregulation measures, the Government always try to collect all opinions and comments, views and information from many sources, including:

- articles and issues which are published in mass media.
- exchange of views with the business society: Indonesia Chambers of Commerce and Industry, foreign business associations, etc.
- comment or opinion from private sector, be it at seminars, business meetings or through the mail.
- dialogue with Parliament.
- reports on Indonesian economic development issued by International organizations, such as World Bank, Asian Development Bank, ESCAP, UNCTAD, etc.

All comments views and suggestions will be adopted by the Government as input for policy formulation.

11. Where applicable, the role for sub national agencies in the approval process.

Agency	Address/telephone/fax	Functions
Kantor Pertanahan Kabupaten/ Kotamadya (The Regional Land Affair)	Regional Land Affair Office in Regency concerned.	Issue the location permit.
Dinas Pekerjaan Umum Kabupaten/Kotamadya (The Regional Public Work)	Office of Regent / Mayor concerned.	Issue Building Construction Permit (IMB).
Sekretaris Wilayah Dati II (The	Office of Regent / Mayor concerned.	Issue Nuisance Act Permit

Regency Secretary)		(UUG/HO).
Badan Koordinasi Penanaman Modal Daerah/BKPMMD (Regional Investment Coordinating Board)	Capital city of province concerned. The complete address list of Regional Investment Agencies (BKPMMD) (see below).	Issue Working Permit for Foreign Expatriate.

The Address List of Regional Investment Agencies (BKPMMD)

No.	BKPMMD	Office Address	Telp./Telex/Fax
1.	Special Territory of Jakarta	Lt.12 Blok G Jl. Medan Merdeka Selatan 8-9, Jakarta Pusat	Telp.(021) 3453838 Telex 44242 Fax.(021) 3842169
2.	West Java	Jl.Sumatera No.50 Bandung	Telp.(022) 437369 Telex 28210 Fax.(022) 437081
3.	Central Java	Jl.Soeripranoto 1 Semarang 50141	Telp.(024) 547438 Telex 22201 Fax.(024) 518383
4.	Special Territory of Yogyakarta	Jl.Tentara Rakyat Mataram No. 12 Yogyakarta	Telp.(0274) 513969 Telex 25160 Fax.(0274)563367
5.	East Java	Jl.Jagir Wonokromo No.352, Surabaya	Telp.(031) 818676 Telex 31365 Fax.(031) 812363
6.	Special Territory of Aceh	Jl.Jend A. Yani 37 Banda Aceh 23122	Telp.(0651) 23170 Telex 54132 Fax.(0651) 23171
7.	North Sumatera	Jl.P.Diponegoro 11-A, Medan	Telp.(061) 551230 Telex 51400 Fax.(061) 551230
8.	Riau	Jl.Gajah Mada No.200 Lt.III Pekanbaru	Telp.(0761) 33738 Telex 56210 Fax.(0761) 33616
9.	West Sumatera	Jl. S. Parman 2258 Padang	Telp.(0751) 51432 Telex 55188 Fax.(0751) 51938
10.	Jambi	d.a.Kantor Guber-nur Tk.I Jambi, Jl.Jend.Ahmad Yani Jambi	Telp.(0741) 60451 Telex 27301 Fax.(0741) 60450
11.	Lampung	Jl. J. Sudirman 29 Bandar Lampung	Telp.(0721) 61430 Telex 26130 Fax.(0721) 266184
12.	South Sumatera	Jl.Aerobik No.4 Eks.Kampus POM IX, Palembang	Telp.(0711) 356489 Telex 27427 Fax.(0711) 367659
13.	Bengkulu	Jl.Pembangunan No.1, Padang Harapan, Bengkulu	Telp.(0736) 21802 Telex 27384 Fax.(0736) 21802
14.	West Kalimantan	Jl.St.Syahrir No.17 Pontianak	Telp.(0561) 32821 Telex 29153 Fax.(0561) 32821
15.	South Kalimantan	Jl.DI Panjaitan 31 Banjarmasin	Telp.(0511) 59073 Telex 39181 Fax.(0511) 59074
16.	East Kalimantan	Jl.Basuki Rahmat Samarinda 75117	Telp.(0541) 43235 Telex 38178 Fax.(0541) 36446

17.	Central Kalimantan	Jl.S.Parman No.21 Palangkaraya 73112	Telp.(0514) 21571 Telex 39377 Fax.(0514) 34115
18.	North Sulawesi	Jl.Martadinata No.11, Menado 207	Telp.(0431) 63284 Telex 74195 Fax.(0431) 63284
19.	Central Sulawesi	Jl.Pramuka No.23 Palu	Telp.(0451) 21807 Telex 75135 Fax.(0451) 24325
20.	Southeast Sulawesi	d.a. Kantor Guber-nur Sulawesi Tenggara Jl.H.A.Silondae 8, Kendari	Telp.(0401) 21494 Telex 75135 Fax.(0401) 23267
21.	South Sulawesi	Jl.A.Yani No.11 Ujung Pandang	Telp.(0411) 320371 Telex 71236 Fax.(0411) 316042
22.	Bali	Jl.Raya Sanur 180 Denpasar	Telp.(0361) 237991 Telex 35117 Fax.(0361) 236037
23.	West Nusa Tenggara	Jl.Udayana No.4 Mataram	Telp.(0364) 22632 Telex 35431 Fax.(0364) 34926
24.	East Nusa Tenggara	Gedung DPRD Jl.Raya El Tari, Kupang	Telp.(0391) 33080 Telex 35431 Fax.(0391) 33213
25.	Maluku	Jl.Raya Pattimura 1 Ambon	Telp. (0911) 42151 Telex 73100 Fax.(0911) 54413
26.	Irian Jaya	Jl.Sam Ratulangi 32 Jayapura	Telp.(0967) 21600 Telex 76210 Fax.(0967) 33600
27.	East Timor	Gedung Formento Lt.11 Jl.Don Aleixo Contre, Real - Dilli	Telp.(0390) 21010 Telex 35562 Fax.(0391) 21752
28.	Batam Industrial Development Authority	Sekupang, Batam	Telp.(0778) 322222 Telex 58115 Fax.(0778) 322019/ 322537

## 2. Most Favoured Nation Treatment / Non-discrimination between Source Economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).

The Indonesian Government adopts "Most Favoured Nations/MFN" treatment where Indonesia is opened for all foreign investors who want to invest in Indonesia regardless of their original country, unless otherwise stipulated.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

Not applicable.

## 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
(a) Infrastructure such as seaports, generation, transmission and distribution of electricity for public use,	Foreign investment company in these sectors should be in the joint venture form which at least 5% of the



telecommunication, shipping, airlines, drinking water supply, public railways, and nuclear electric power (Government Regulation No. 20, 1994)	shares should be owned by an Indonesian partner.
(b) Taxi/bus, local shipping, retail trade, domestic trade supporting services, media, operation of cinema. (Presidential Decree No.31 of 1995)	Reserved only for domestic enterprises.

2. *Brief description of the nature and scope of any limitations on foreign firms' access to sources of finance, eg. are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.*

There is no limitation for FDI company to access sources of investment fund. Private sector's offshore-loan is not needed to report to the government as long as there is no government involvement.

#### 4. Repatriation and Convertibility

1. *List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Not applicable

2. *Brief description of the foreign exchange regime.*

Indonesia has already adopted a free foreign exchange regime.

3. *Restrictions on the convertibility of currencies for the overseas transfer of funds.*

Not applicable

#### 5. Entry and Sojourn of Personnel

1. *Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

A visa for the members of the board of directors will be issued as long as they are still appointed and entrusted by the shareholders for the position. The duration of the foreign expatriate to work in Indonesia is subject to Government regulation, based on expertise and the availability of an Indonesian expatriate to replace the position. The visa extension for a foreign expatriate is based on the extension of a working permit issued by the Regional Investment Coordinating Board concerned. The extension of the visa will be issued by the immigration office.

2. *List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
Presidential Decree No.75 of 1995 concerning Expatriate Utilization	Indonesia still need expatriates but limited to certain expertise/occupation which cannot be occupied by an Indonesian. Directors can be fulfilled by foreign citizens, except for Personnel Director. Commissioners can be fulfilled by foreign citizens as long as the whole or part of the company's shares are owned by foreign investor.

3. *Description of any regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

Law No.1 of 1967 on Foreign Direct Investment stated that a foreign investment enterprise is required to meet their needs for manpower with Indonesian citizens, but allowed to bring and employ foreign managers and experts in positions which can not yet be filled by Indonesian citizens. Foreign investment company is required to conduct and provide regular and systematic training and educational facilities in Indonesia and/or abroad for Indonesian citizens with the aim of gradually replacing foreign employees by Indonesians. Regional minimum wage is decided by Government from time to time, based on the minimal physical need of labor.

4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

Law	Summary
Act. No. 22 of 1957 on Labour Disputes Settlement	<p>In case of labour disputes, labour union shall discuss his intention to the employer. If the discussions fail to bring about agreement, the case should be submitted to the Regional Committee of Dispute Settlements in accordance with the procedure laid down to decide the settlement of labour disputes. The committee consists of the representative of labor union, the representative of management and official from Manpower Ministry.</p> <p>In case of large disputes which can effect national stability, the decision should be made by National Committee on the office of Ministerial Manpower.</p>

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

### Income Tax

Income tax in Indonesia is progressive and applied to both individuals and enterprises. A self-assessment method is used to compute the tax.

The tax rates are as follows:

Taxable income	Tax rate
Income up to Rp. 25 million	10%
Income between Rp. 25-50 million	15%
Income over Rp. 50 million	30%

### Losses

The government provides a loss carried forward facility for a period of 5 years.

### Depreciation and Amortization Rates

#### Depreciation

Depreciation cost on assets is deductible from the income before tax. Depreciable assets are grouped into four categories on the useful life of the asset. Investors may choose either the straight line method (for periods of less than 20 years) or the fast declining balance method (except for buildings).

Depreciation rate is determined according to the useful life and utilization such as:

Physical Asset	Useful Life (years)	Method of Calculation	
		Straight Line (%)	Declining Balance (%)
<b>I. Non Building</b>			
Group 1	4	25	50
Group 2	8	12.5	25
Group 3	16	6.25	12.5
Group 4	20	5	10
<b>II. Building</b>			
Permanent	20	5	
Non-Permanent	10	10	

#### Amortization

Non Physical Asset	Useful Life (years)	Method of Calculation	
		Straight Line (%)	Declining Balance (%)
Group 1	4	25	50
Group 2	8	12.5	25
Group 3	16	6.25	12.5
Group 4	20	5	10

### **Value Added Tax and Sales Tax on Luxury Goods**

In normal cases, 10% Value Added Tax (VAT) is applied to imports, manufactured goods and most services. In addition, there is also sales tax on luxury goods ranging from 10% to 35%, whenever applicable.

### **Withholding Tax**

Payments of dividends, interest, royalties and technical and management fees for services performed in Indonesia to Indonesian and non-Indonesian residents are subject to withholding tax. The withholding tax rate varies depending on whether it is paid to a resident or non-resident as follows:

- (i) payments to Indonesian resident, the rate is 15%, except for technical and management services where the rate is 9%; and
- (ii) payments to non-Indonesian residents 20%.

### **Land and Building Tax**

Land and building tax is payable annually on land, buildings and permanent structures. The effective rates are nominal, typically not more than 0.1% of the value of the property.

### **Double Taxation Avoidance Agreements**

To avoid incidental double taxation on certain income such as profits, dividends, interest, fees and royalties, Indonesia has signed agreements (tax treaties) with the following countries:

- |              |                  |                              |
|--------------|------------------|------------------------------|
| 1. Australia | 12. Italy        | 23. Singapore                |
| 2. Austria   | 13. Japan        | 24. South Korea              |
| 3. Belgium   | 14. Luxembourg   | 25. Sri Lanka                |
| 4. Bulgaria  | 15. Malaysia     | 26. Sweden                   |
| 5. Canada    | 16. Netherlands  | 27. Switzerland              |
| 6. Denmark   | 17. New Zealand  | 28. Chinese Taipei           |
| 7. Finland   | 18. Norway       | 29. Thailand                 |
| 8. France    | 19. Pakistan     | 30. Tunisia                  |
| 9. Germany   | 20. Philippines  | 31. United Kingdom           |
| 10. Hungary  | 21. Poland       | 32. United States of America |
| 11. India    | 22. Saudi Arabia |                              |

Withholding tax rates applied to residents of these countries signing tax treaty with Indonesia, may be reduced based on the provisions of the particular tax treaty.

## **7. Performance Requirements**

1. *Brief description of any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMs).*

### Automotive Industry

To support and encourage the development of the automotive industry in Indonesia, the Government of Indonesia provides an incentive of differentiated import duty rates. In this case, the enterprises are allowed to enjoy certain incentives in the form of lower import duty rates for parts and/or components of motor vehicles, depending upon the percentage of local content. The import duty applied is set out in Article 2 and 3 of the Decree No.

223/KMK.01/1995 dated 23 May 1995 of the Minister of Finance regarding the Relief of Import Duty on Import of Certain Parts and Components of Motor Vehicles for the Purpose of Assembling and/or Manufacturing of Motor Vehicles.

### Soyabean cake

In the framework of assuring the supply of the soyabean cake for cattle feed industries in Indonesia and the absorption of domestically produced soyabean cake, the Indonesian Government has stipulated the ratio between imported soyabean cake and the absorption of soyabean cake of domestic production. The ratio between the use of domestically produced soyabean cake and imported soyabean cake is set at 2 (two) weight units to 8 (eight) weight units. The above mentioned ratio is applied to all cattle feed processing industries recognized as IP (Importer Producers) who are allowed to import and produce soyabean cake.

## 8. Capital Exports

1. List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Not applicable.

2. List and brief description of any regulations/institutional measures that limit technology exports.

Not applicable.

## 9. Investor Behaviour

1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

(a) Law No.2 of 1982 on Basic Provisions for Management of the Environment.

- The investment activities should protect and preserve the environment. Environment regulations are applied consistently to domestic and foreign investment.

(b) Law No.1 of 1967 on Foreign Direct Investment.

- Foreign investment companies are required to conduct and/or provide regular and educational facilities in Indonesia and/or abroad for Indonesian manpower with the aim of gradually replacing foreign expatriates with Indonesians.
- Foreign investment companies are obliged to manage and control their companies in accordance with the principles of good business administration without harming the interests of the state.

## 10. Other measures

1. Brief outline of the competition policy regime.

Indonesia does not have a codified competition law. However, provisions prohibiting unfair competition in business activities are laid down in various laws such as criminal code, civil code, trade mark law, capital market law, small business law, etc.

Indonesian law contains several provisions which affect competition in the economy and provide the necessary precedents for the enactment of a more comprehensive competition law in the future. Through these provisions the Government has begun to express its concern over unfair trade practices and, to demonstrate its determination, to ensure a competitive economic environment in which all economic actors are provided with the same opportunities to compete.

### Criminal Law

Existing Indonesian law takes steps to protect consumers and businesses from the effects of certain types of unfair competition. Article 382 of the Criminal Code prohibits businesses from profiting unfairly from actions that mislead consumers. Under the terms of the law, anyone who, for the purpose of “gaining, conducting or expanding” the results of trade, undertakes to do so by engaging in “unfair actions” that mislead the public shall be considered guilty of “unfair competition” if such acts harm competitors<sup>1</sup>. Persons found guilty of violating these provisions are subject to criminal sanctions (although the amount of the fine is no longer a significant sanction). Additionally, if a court determines that an individual is guilty of violating Articles 382 of the Criminal Code, the party injured by the unfair competition is entitled, under 1365 of the Civil Code, to compensation for his or her losses<sup>2</sup>

### Intellectual Property Laws

A discussion of competition law and policy in Indonesia affects intellectual property laws in at least two ways:

- (a) as a matter of “fair competition” or prohibiting “unfair trade practices”, a country’s intellectual property laws are intended to ensure a measure of consumer protection from counterfeit products that may be of inferior quality to that produced by the holder of the intellectual property right.
- (b) as a form of legally permissible monopoly, rights created under intellectual property laws are at least superficially contrary to the anti-monopoly aspects of competition laws. On closer analysis, however, it is clear that a “monopoly” afforded by intellectual property law does not (unless linked with abusive licensing methods or other anti-competitive measures) confer an economically damaging monopoly power, because alternative products may continue to be available. Moreover, both intellectual property and competition laws should have a common national goal: to promote innovation and encourage the efficient use of resources.

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<sup>1</sup> Article 382 of the Criminal Code reads: “Those who, with the aim of gaining, conducting or expanding results of trade or their own respective companies or companies of other persons, undertake unfair actions for misleading the public or certain persons, shall be liable, due to unfair competition, to imprisonment for one year and four months.....or to a fine of thirteen thousand five hundred rupiah at the most, if such actions can cause damage to the competitors of such persons or the competitors of such other persons”.

<sup>2</sup> Article 1365 of the Civil Code reads: “Each act violating the law and causing loss to other persons, shall obligate persons causing such loss by their fault to compensate for such loss.”

With respect to the first issue - the protection of intellectual property rights generally - Indonesia has introduced a series of measures to strengthen its legal framework. Indonesia has adopted a Patent Law 1989<sup>3</sup> which took effect in 1991 and replaced ministerial regulation that had been adopted since 1953. The Patent Law provides for a fourteen year initial term that can be extended for two additional years. A patent is subject to compulsory licensing if it is not used within three years of the grant date and is declared void if not used within four years of such a date. Moreover, patent transfers and licences must not contain provisions that are harmful to the Indonesian economy or that unduly hamper the ability of Indonesian citizens to learn the patented technology.

Indonesia's basic Copyright Law<sup>4</sup> was adopted in 1982 after its early colonial copyright regime had been widely recognized as ineffective. The basic law was amended in 1987 in order to strengthen the law by, for example, extending the copyright term to fifty years, adding categories to the list of protected products and increasing criminal sanctions for violators.

The Trademark Law<sup>5</sup>, originally adopted in 1961, was substantially revised in 1992 in response to numerous complaints by holders of international marks. The changes were intended to provide greater protection for well-known foreign and Indonesian marks and to prohibit the use of deceptively similar marks. A trademark has an initial ten-year term, which may be extended indefinitely, as long as it is being used for the goods or service set forth in the registration certificate. While foreigners are required to apply for trademark protection through a proxy, rights established in other countries are recognized if the Indonesian application is submitted within a certain period, following the application in such other countries.

On behalf of the Indonesian Government, the Minister of Trade signed the Marrakesh Agreement establishing the World Trade Organisation (WTO) and its annexes on 15 April 1994. Legislation incorporating the Marrakesh Agreements into Indonesian law was adopted by Parliament in October 1994<sup>6</sup>.

Pursuant to obligations under the Agreement of Trade-related Aspects of Intellectual Property Rights (TRIPs), one of the Uruguay Round Agreements, Indonesia has begun considering action on those features of its laws that are at variance with the TRIPs Agreement. Not only are modifications to the Patent, Copyright and Trademark Laws necessary to accomplish this but the current lack of protection in several areas also has to be addressed. The Government is reviewing all three major intellectual property laws and has begun work on laws or regulations relating to the protection of integrated circuits, trade secrets and industrial designs.

With respect to the second issue set forth above, the monopoly or superficially anti-competitive aspects of intellectual property laws, it should be noted that Indonesia has attempted to reduce any such consequences with its requirements for compulsory licensing, use of technology and technology transfer. Moreover, under Article 40 of the TRIPs Agreement, member countries are expressly permitted to specify in their national legislation certain licensing conditions that "may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition". In certain circumstances, therefore, member countries may limit any negative non-competition elements arising in the case of strict enforcement of intellectual property rights if this is required under a national competition law.

#### New Company Law

Indonesia's laws affecting competition in the economy were significantly strengthened with the adoption on 7 March 1995 of Law No. 1 of 1995. This law, which primarily sets out the country's rules governing the creation and operation of companies, contains an express legislative statement<sup>7</sup> that promotes fair competition among businesses and prohibits monopolistic business combinations if they result from mergers, consolidations and other acquisitions. Under Article 104 of the law, mergers and acquisitions of companies in Indonesia must observe "the interests of the public and fair competition in business"<sup>8</sup>. The elucidation of the law (which is adopted as part of the law and given the same binding legal force) goes even further in the protection of competition and interprets the article as prohibiting mergers, consolidations and acquisitions that create a monopoly if there is a "loss to the public"<sup>9</sup>. Whether a monopolist has been created and whether there has been a resulting loss to the public are to be determined by an investigation conducted at the request of the Attorney-General<sup>10</sup>. If a request is considered reasonable by the Chairman of the District Court, then investigation will be conducted by experts appointed by the court<sup>11</sup>. This law is

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<sup>3</sup> Law No.6 of 1989.

<sup>4</sup> Law No. 6 of 1982; and Law No. 7 of 1987.

<sup>5</sup> Law No. 21 of 1961; and Law No. 19 of 1992.

<sup>6</sup> Law No. 7 of 1994.

<sup>7</sup> The 1984 Law on Industry and the 1995 Law on Small Business contain similar references.

<sup>8</sup> Law No. 1 of 1995, Article 194 (1) b.

<sup>9</sup> Elucidation, Law No. 1 of 1995, Article 104, Paragraph (1).

<sup>10</sup> Law No. 1 of 1995, Article 110(3)(c).

<sup>11</sup> Ibid, Article 111(2) and (3).

significant in that Indonesia has now clearly put in place a legal framework for the regulation of mergers with the intent of guarding against the negative impact of monopolies. The law calls for an investigation into the effects of business combinations on the public and economy as a whole. While the law is not comprehensive, and is silent on the legal ramifications of a finding by the investigatory commission that a merger with negative competition effects has occurred, it is a step in the incremental process of creating a political as well as economic environment that is conducive to competition law.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

Indonesia has trade mark, copyright and patent laws which are compatible with international standards:

- (a) Act No.6 of 1984 on patents. Technology invention would be protected by this act. Criteria of protection is new, inventive and can be implemented in industry. A patent application is submitted in Indonesian language to Government Patent Office, with the appropriate fee decided by the Minister of Justice. The patent is valid for 14 years from the received date of patent application. Renewal can be applied for two years, once only.
- (b) Act No.6 of 1982 on copyright as amended by Act No.7 of 1987. This right protects writings, music, show, broadcast, maps, lectures, cinematographs, choreographs, works of art, speeches, records of sound, photographs, computer software and translations. Criteria for getting the copyright is that it must be original and not yet published in Indonesia, or foreign copyrights of concerned foreign country which has bilateral / multilateral copyright agreement with Indonesia. A copyright application is submitted in Indonesian language with sample of creation to the Minister of Justice, with the appropriate fee decided by Minister of Justice. The copyright is valid for:
  - 50 years from the date of the death of author: for writing, works of arts, music and choreography.
  - 50 years from the date of the copyright notification: for show, broadcast, lectures, speeches, records of sound, maps, translation and cinematography.
  - 25 years from the date of the copyright notification: for photographs and computer programs.
- (c) Act No.19 of 1992 on trade marks. The trade mark protects words, names, symbols, alphabets, number, color or combinations. The criteria for obtaining the trade mark are unique and not against the common rules. A trade mark application is submitted in Indonesian language to Government Trade Mark Office, with the appropriate fee decided by Minister of Justice. The trade mark is valid for 10 years from the date the trade mark application is received. A renewal can be applied for the same duration.

**C. INVESTMENT PROTECTION**

**1. Expropriation and Compensation**

*1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

Laws/Regulations	Application and function
Law No.1 of 1967 on Foreign Direct Investment	<p>(a) The Indonesian Government guarantees that there is no nationalization undertaken by the government except declared by law and for the public interest and national security reason.</p> <p>(b) Compensation</p> <ul style="list-style-type: none"> <li>• The government has the obligation to provide compensation, the amount, type and method of payment of which shall have been agreed upon both parties, in accordance with valid principles of international law.</li> <li>• If no agreement can be reached between the two parties, arbitration shall take place which shall binding on both parties.</li> <li>• The arbitration board shall consist of three persons, one appointed by the government, one by the owner of the capital, and a third person as chairman selected jointly by the government and the owner of the capital.</li> <li>• The Government guarantees for the transfer of compensation.</li> </ul>

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*  
Not applicable.

## 2. Settlement of Disputes

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and provide addresses and telephone/fax numbers of these agencies.*

Indonesia participates in the convention of the Settlement of Investment Dispute between state and nationals of other states. Consequently, disputes that may arise from foreign investment can be referred to the International Centre for Settlement of Investment Dispute in Washington D.C.

Disputes or problems related to laws, regulations and procedures can be referred to Deputi Bidang Pengendalian Pelaksanaan, BKPM (Deputy Chairman for Guidance and Implementation Control, Investment Coordinating Board) and Peradilan Tata Usaha Negara (Court of State's Administration).

Disputes between shareholders/investors can be referred to Badan Arbitrase Nasional Indonesia/BANI (Indonesian National Arbitration Board) and Pengadilan Negeri (Court).

Agency	Address/telephone/fax
Investment Coordinating Board, attn.: Deputy Chairman for Guidance and Implementation Control.	Jl. Gatot Subroto No.44 Jakarta 12190 - Indonesia Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA Fax: (62 21) 525 4945
Badan Arbitrasi Nasional Indonesia/BANI (Indonesian National Arbitration Board)	d/a. Kamar Dagang dan Industri Indonesia (KADIN), Gedung Chandra Lt. 5 Jl. M.H.Thamrin No.20 Jakarta, Indonesia Telephone: (62 21) 310 3529, (62 21) 334 596 Fax: (62 21) 334 596

2. *Signatory or accession to the ICSID Convention?*

Yes, Indonesia participates in the convention of the settlement of Investment Dispute between state and nationals of other states (ICSID).

## D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

Program	Nature of incentive	Contact point
National	<p>All investment projects approved by BKPM, in the framework of Foreign Direct Investment (PMA) as well as domestic investment (PMDN) are granted the following facilities:</p> <ul style="list-style-type: none"> <li>• Exemption/relief from import duty and levies:               <ol style="list-style-type: none"> <li>1. On the importation of capital goods namely machinery, equipment, spareparts and auxiliary equipments.</li> <li>2. On the importation of raw materials for the purpose of two years full production.</li> </ol> </li> <li>• Exemption from Transfer of Ownership Fee for ship registration deed / certification made for the</li> </ul>	<p>Investment Coordinating Board, attention:</p> <ol style="list-style-type: none"> <li>1. Deputy Chairman for Evaluation and Permits of Industrial Sector, or</li> <li>2. Deputy Chairman for Evaluation and Permits of Non Industrial Sector</li> </ol> <p>Jl. Gatot Subroto No. 44 Jakarta 12190 Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA</p>

	<p>first time in Indonesia, but no more than two years after commencing commercial operation.</p> <p><u>Some incentives are provided for exporting manufacturers.</u></p> <ul style="list-style-type: none"> <li>• Restitution (drawback) of import duty and import surcharge on the importation of goods and materials needed to manufacture the exported finished products.</li> <li>• The company can import raw materials required regardless of the availability of comparable domestic products.</li> <li>• Investment activities located in eastern part of Indonesia and at least 65% of production for export, are allowed to use freely foreign expatriate regardless the availability of local manpower.</li> </ul>	Fax: (62 21) 525 4945
Regional	Some regional governments offer some additional incentives to investors by providing a reduction on regional levies or retribution fee.	Regional Investment Coordinating Board (BKPM) concerned.



2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.

Program (National/sub-national)	Nature of incentive	Contact point																																												
National	<ul style="list-style-type: none"> <li>• For all investment projects, all expenses for:               <ul style="list-style-type: none"> <li>– research and development (R&amp;D) activities conducted in Indonesia;</li> <li>– scholarship, education and training;</li> <li>– waste management facilities, will be counted as a cost and deducted to gross income.</li> </ul> </li> <li>• <u>For investment activities in certain priority sector and/or certain area could have incentives:</u></li> <li>• Loss carried forward within 8 -10 years.</li> <li>• Depreciation rate for the depreciable assets:               <table border="0" style="margin-left: 20px; width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Physical</u></th> <th style="text-align: left;"><u>Useful</u></th> <th colspan="2" style="text-align: left;"><u>Method of Calculation</u></th> </tr> <tr> <th style="text-align: left;"><u>AssetLife</u></th> <th style="text-align: left;"><u>Straight</u></th> <th style="text-align: left;"><u>Declining</u></th> <th style="text-align: left;"><u>(Years)</u></th> </tr> <tr> <th style="text-align: left;"><u>Line</u></th> <th colspan="3"></th> </tr> </thead> <tbody> <tr> <td colspan="4"><u>Non Building</u></td> </tr> <tr> <td>a. Group I</td> <td>4</td> <td>25%</td> <td>50%</td> </tr> <tr> <td>b. Group II</td> <td>8</td> <td>12.5%</td> <td>25%</td> </tr> <tr> <td>c. Group III</td> <td>16</td> <td>6.25%</td> <td>12.5%</td> </tr> <tr> <td>d. Group IV</td> <td>20</td> <td>5%</td> <td>10%</td> </tr> <tr> <td colspan="4"><u>Building</u></td> </tr> <tr> <td>a. Permanent</td> <td>20</td> <td>5%</td> <td></td> </tr> <tr> <td>b. Non-permanent</td> <td>10</td> <td>10%</td> <td></td> </tr> </tbody> </table> </li> <li>• Investment activities located in eastern part of Indonesia are granted with special incentive i.e. 50% reduction of land and building tax (PBB) for 8 years.</li> <li>• <u>Special incentives for investment activities located in Bonded Zone and Export Processing Entrepots (EPTE):</u></li> <li>• Exemption from import duty, import surcharge, excise, income tax of Article 22, Value Added Tax and Sales Tax on Luxury Goods on the importation of capital goods and equipment including raw materials for the production process.</li> <li>• Allowed to divert their products, amounting to 1/4 of their export (in terms of volume) to the Indonesian customs area, through normal import procedure including payment</li> </ul>	<u>Physical</u>	<u>Useful</u>	<u>Method of Calculation</u>		<u>AssetLife</u>	<u>Straight</u>	<u>Declining</u>	<u>(Years)</u>	<u>Line</u>				<u>Non Building</u>				a. Group I	4	25%	50%	b. Group II	8	12.5%	25%	c. Group III	16	6.25%	12.5%	d. Group IV	20	5%	10%	<u>Building</u>				a. Permanent	20	5%		b. Non-permanent	10	10%		<p>Investment Coordinating Board, attention:</p> <ol style="list-style-type: none"> <li>1. Deputy Chairman for Evaluation and Permits of Industrial Sector, or,</li> <li>2. Deputy Chairman for Evaluation and Permits of Non Industrial Sector.</li> </ol> <p>Jl. Gatot Subroto No. 44 Jakarta 12190 Telp: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA Fax: (62 21) 525 4945</p>
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	<p>of customs duties.</p> <ul style="list-style-type: none"> <li>• Allowed to sell scrap or waste to Indonesian custom area as long as it contains at the highest tolerance of 5% of the amount of the material used in the production process.</li> <li>• Allowed to lend their own machineries and equipments to their subcontractors located outside bonded zones or having no EPTE status, for no longer than two years, in order to further process their own products.</li> <li>• The exemption of Value Added Tax on Luxurious goods on the delivery of products for further processing from bonded zones or EPTE companies to their subcontractors outside the bonded zones and EPTE companies or the other way around as well as among companies in these areas.</li> </ul> <p><input type="checkbox"/> Transaction of goods from a producer located outside bonded zones and EPTE to company having EPTE status and/or located in bonded zones for further processing is provided the same fiscal facilities with exported goods.</p>	
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3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.

Agency	Address/telephone/fax
Investment Coordinating Board, attention.: 1. Deputy Chairman for Evaluation and Permits of Industrial Sector, or, 2. Deputy Chairman for Evaluation and Permit of Non Industrial Sector.	Jl.Gatot Subroto No.44 Jakarta 12190 Telephone: (62 21) 525 2008, (62 21) 525 4981 Telex: 62654 BKPM IA Fax: (62 21) 525 4945

#### **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Agreement	Provisions
<i>Friendship Commerce and Navigation Treaties</i>  Indonesia has concluded bilateral agreement on trade / commerce and navigation with a number of countries.	The key provisions on the bilateral and regional agreement on investment guarantees are, among others:  - Promotion and protection of investment

<p><i>Regional or sub regional Investment Treaties</i></p> <p>Indonesia has concluded regional agreement within ASEAN countries.</p> <p><i>Bilateral Investment Treaties</i></p> <p>Indonesia has concluded bilateral agreement concerning investment guarantees with several countries, among others Singapore, Chinese-Taipei, Republic of Korea, Australia and Malaysia.</p>	<ul style="list-style-type: none"> <li>- Most Favoured Nation Provision</li> <li>- Compensation for losses</li> <li>- Expropriation</li> <li>- Transfer of investment and returns</li> <li>- Subrogation</li> <li>- Transparency of laws</li> <li>- Settlement of disputes</li> </ul>
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## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

### 1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

Since the Foreign Investment Law was enacted in 1967, until the end of December 1995 foreign investment approvals has reached a total value of US \$41.5 billion with the number of 3,939 projects. The Government of Indonesia has no doubt that the deregulation measures have produced a positive impact on the inflows of investment in Indonesia both domestic and foreign. The foreign investment approvals in the past five years increased tremendously as follows:

Years	Project	Value (US \$ billion)
1991	376	8.8
1992	305	10.3
1993	329	8.1
1994	449	23.7
1995	799	39.9

Since Indonesia adopts a free foreign exchange regime, there is no regulation to ask the investor to report their activities abroad. Indonesian Government believes that many Indonesian enterprises have already invested their capital in many countries.

### 2. List of the major countries/economies that are sources/receivers of FDI over recent years.

The ten leading foreign investing countries in Indonesia are (Period of 1967 until December 31, 1995):

<u>Country</u>	<u>Investment value (US \$ million)</u>	<u>%</u>
Japan	27,110.9	19.16
United Kingdom	20,720.2	14.64
Hong Kong	16,364.5	11.56
Singapore	15,027.5	10.62
USA	11,513.6	8.14
Netherlands	8,624.4	6.09
Chinese-Taipei	8,159.1	5.77
South Korea	6,532.7	4.62
Australia	5,895.0	4.17
Germany	4,968.4	3.51

### Destination FDI

Based on several information, outflow of Indonesian investment has already been existed in many countries, among others : Malaysia, Republic of China, Thailand, Australia, Singapore, USA, Philippines, Hong Kong, India, Vietnam, Myanmar, United Kingdom, France, the Netherlands, and Tunisia.

**JAPAN**  
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# JAPAN

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

As mutual dependence has increased among national economies in recent years, cross-border direct investment has attracted much attention from various areas of the world. International direct investment will contribute to the development of a well-balanced world economy by stimulating open economic activities in and among nations around the world, and thereby contribute as well to peaceful and cooperative international relations. In order for direct investment to have a beneficial impact on the international economy, emphasis should be placed on private enterprise's own initiative. For this purpose, we also believe that each country should make the utmost efforts to minimize restrictions and ensure fair and equitable access to each other's markets based on the principle of national treatment, in accordance with international rules as represented by the Organisation for Economic Cooperation and Development (OECD) agreements on international direct investment. The Japanese Government considers it important to help foster an open international environment for cross-border direct investment, mainly through multilateral consultations at OECD and the World Trade Organisation (WTO). In particular, the Government of Japan acknowledges that increasing inward foreign direct investment (FDI) is important. This is because, in addition to the role of FDI in the world economy and a huge imbalance between inward and outward FDI, we have recently been focusing on the contribution of inward FDI to structural reform of the Japanese economy, such as enhancement of Japanese economic vitalization, creation of new business, reduction of the disparities between international and domestic prices, import expansion, through introduction of new technology, management know-how and various kinds of competition among domestic and foreign firms. Also, it will benefit Japanese consumers, creating a supply of less expensive and better goods and services as well as greater selection. Moreover, it further opens Japan's economy, society, and culture. Therefore, we are promoting various measures to increase the inward FDI, as will be mentioned in section D. In order to publicize the Japanese Government's effort to promote FDI, the Japan Investment Council, whose members are Cabinet ministers, has issued the statement (see section A(2) for details).

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

Refer to the statement of the Japan Investment Council, "Toward the Promotion of Foreign Direct Investment in Japan".

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### (i) Statutory (legislative) requirements

#### 1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Foreign Exchange and Foreign Trade Control Law (the Foreign Exchange Law) (No. 228, Dec. 1, 1949)  Cabinet Order concerning Direct Domestic Investments, etc. (Cabinet Order No. 261, Oct. 11, 1980)  Ordinance concerning Direct Domestic Investment, etc. (Ordinance No.1, Nov. 20, 1980)  Public Notice. Notification (No. 1, Mar. 7, 1994)	Investment in Japan by foreign investors is treated as "Direct Domestic Investment, etc." under the Foreign Exchange Law (except for "portfolio investment") and is subject, in general, to ex post facto report or, in certain cases, prior notification to the Minister of Finance and the competent Minister(s) in charge of the industry concerned in order to determine if an inquiry is necessary from a viewpoint of national security, any material adverse influence on the national economy, reciprocity and so on.

*(ii) Investment Review and Approval*

1. *Details of proposals and sectors that are/are not (yes/no) subject to screening.*

2. *For each proposal, details of guidelines/conditions that apply for screening (e.g. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors are provided.*

Proposals	Guidelines/Conditions
merger	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.
acquisitions	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.
greenfield investment	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.
real estate/land (No)	The Foreign Exchange Law requires prior notification of acquisition by a non-resident of any real property existing in Japan or rights related thereto only when it is acquired for the purpose of commercial activity. This prior notification is by no means review or screening.
joint venture	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.

<p>other:-</p> <p>When “foreign investors” make “Direct Domestic Investment, etc.”, prior notification or ex post facto report is required. The definitions of these terms under the Foreign Exchange Law are contained in the right-hand box.</p> <p>For further details, please refer to the Foreign Exchange Law.</p>	<p>(1) Foreign Investors are:</p> <ul style="list-style-type: none"> <li>(a) non-resident individuals,</li> <li>(b) companies or entities established under foreign laws,</li> <li>(c) domestic companies in which shareholdings by (a) or (b) amount to 50% or more of the company’s outstanding capital, and</li> <li>(d) domestic companies or entities in which either a majority of officers or officers having power of representative are non-resident individuals.</li> </ul> <p>(2) Direct Domestic Investments, etc. refer to:</p> <ul style="list-style-type: none"> <li>(a) acquisition of 10% or more of the total shares of a domestic company listed on the Tokyo Stock Exchange or over-the-counter (“listed domestic company”),</li> <li>(b) acquisition of the shares of an “unlisted domestic company”,</li> <li>(c) transfer of shares of an “unlisted domestic company” from a non-resident to foreign investors (where the shares were acquired by the non-resident when he was a resident),</li> <li>(d) consent to a substantial change in the corporate objectives while holding one-third or more of the total shares,</li> <li>(e) establishing a branch, factory, or other business office and substantially changing these objectives,</li> <li>(f) medium and long term loans (more than 5 years) which amount to 100 million yen or more (or loans for not more than 5 years which amount to 200 million yen or more),</li> <li>(g) medium and long term bonds which amount to 100 million yen or more (or bonds for not more than 5 years which amount to 200 million yen or more), and</li> <li>(h) acquisition of capital certificates issued by a legal entity established under an ad hoc law.</li> </ul>
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Sector	Guidelines/Conditions
	<p>The Foreign Exchange Law basically requires an ex post facto report within 15 days after these investments are made, except for cases related to the following sectors:</p> <ul style="list-style-type: none"> <li>(a) those which may conceivably be classified as related to national security, public order, or public safety (e.g. aircraft, arms, explosives, nuclear energy, space, electricity utility, gas utility, vaccines, security guard services, telecommunications, and broadcasting); and</li> <li>(b) those which are exempt from the OECD Capital Liberalization Code (e.g. agriculture, forestry, fishery, mining, petroleum, leather,</li> </ul>

	maritime transport and air transport). Those making domestic direct investments in the above sectors are requested to make prior notification. Moreover, from a viewpoint of reciprocity, those sectors not listed in the regulation of the Foreign Exchange Law also require prior notification.
telecommunications (yes)	According to (a) in the box immediately above.
media (yes)	According to (a) in the box above.
transport (yes) (air and marine transport )	According to (b) in the box above.
agriculture (yes)	According to (b) in the box above.
other:	
- mining (yes)	According to (b) in the box above.
- oil industry (yes)	According to (a) in the box above.
- leather/leather products manufacturing (yes)	According to (b) in the box above.
- forestry (yes)	According to (b) in the box above.
- fishery (yes)	According to (b) in the box above.

*3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

Forms required under the terms of the Foreign Exchange Law. Copies of the relevant documentation can be obtained from the contacts listed in Section B(1)(ii)(4) below.

*4. Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
The Bank of Japan (Inward Direct Investment Section, International Investment Division, International Department)	Address: 2-1-1, Hongoku-cho Nihonbashi, Chuo-ku, Tokyo 103 Japan Telephone: (81 3) 3279 1111

*5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

As mentioned in section B(1)(ii)(2), it is expected that an ex post facto report is sufficient in most cases. Regarding prior notification, about two weeks after the formal submission, the Bank of Japan, which is authorized to perform this task by the Japanese Government, accepts the investment unless an inquiry is necessary. In the case of suspension or modification, it takes five months at the longest.

*6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal. Description of processes and the average time for an appeal to be considered.*

If a demurral by an investor is filed against or a reinvestigation is submitted to a competent minister, the minister must grant such an investor the opportunity for a public hearing.



Agency	Address/telephone/fax
Ministry of Finance (International Capital Division, International Finance Bureau)  Ministry(s) in charge of the industry concerned.	Address: 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Japan Telephone: (81 3) 3581 3792 Fax: (81 3) 5251 2141

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*  
No special conditions apply.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies).*

Agency	Address/telephone/fax	Type of Complaint
The Secretariat of OTO (the Office of the Trade and Investment Ombudsman, Coordination Bureau, Economic Planning Agency)	Address: 3-1-1, Kasumigaseki, Chiyoda-ku, Tokyo 103 Japan Telephone: (81 3) 3581 0261 (ext.5253) (81 3) 3581 5469 (Direct) Fax: (81 3) 3581 9897	Complaints concerning market opening problems, including procedures of import of goods and service, direct investments to Japan, and government procurement.

9. *List agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Provide addresses and phone/fax numbers for these agencies.*

No special law/regulation deals only with foreign investment other than the Foreign Exchange Law (see section B(1)(ii)(1)).

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime*

The Japan Investment Council, whose member are Cabinet ministers, was founded by Cabinet decision. The Council, including its expert subcommittee, is comprised of foreigners and prominent experts, bringing to light foreign criticism and requests concerning Japan's investment environment, striving to incorporate these into actual policy.

In the case of suspending or modifying a prior notification of "Direct domestic investment" (as mentioned earlier in section B, the Ministry of Finance and the competent Minister(s) in charge of the industry concerned must hear the opinions of the "Committee on Foreign Exchange and Other Transactions" under the Foreign Exchange Law.

11. *Where applicable, the role for sub national agencies in the approval process*

No sub-national agency is involved in the approval process under the Foreign Exchange Law regarding "Foreign Direct Investment."

## **2. Most Favoured Nation Treatment / Non-discrimination between Source Economies**

1. *List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).*

(1) Foreign Exchange Law

No exception to MFN treatment regarding establishment, expansion and operation of foreign investment other than the reciprocity principle which is mentioned earlier in section B.

(2) Other laws such as the followings stipulate possible exceptions to MFN treatment.

(a) Banking and Securities Business

The establishment of branches or subsidiaries of foreign banks or foreign securities houses requires authorization and is subject to reciprocity considerations under certain conditions. Where reciprocity criteria are satisfied, establishment is permitted on the basis of equivalent treatment with domestic enterprises.

(b) International Freight Forwarding Services

An operation permit or governmental registration for international freight forwarding services is granted only to those firms of countries in which Japanese firms are eligible for such permit or qualified for such registration.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

Not applicable.

**3. National Treatment**

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Apart from the regulations written in the Foreign Exchange Law (mentioned in section (B)(1), certain other laws, such as the following, restrict FDI in Japan.

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
Telecommunications	<p>A license to conduct telecommunications business through the establishment of telecommunication circuit facilities, except for the international telecommunications business between specific fixed points via relaying satellite radio stations, shall not be granted to:</p> <ul style="list-style-type: none"> <li>(a) a person who is not a Japanese citizen;</li> <li>(b) a foreign government or its representatives;</li> <li>(c) a foreign juridical person or association; and</li> <li>(d) a juridical person or association which is represented by any of the above persons, or a third or more of whose voting rights are controlled by a foreigner.</li> </ul> <p>Foreign participation in the share capital of Nippon Telegraph and Telephone corporation (NTT) and the Kokusai Denshin Denwa Kabushiki Kaisha (KDD) is allowed to less than one-fifth.</p> <p>A license for a radio station used for telecommunications business, except for the international telecommunications business between specific fixed points via relaying satellite radio stations, shall not be granted to:</p> <ul style="list-style-type: none"> <li>(a) a person who is not a Japanese citizen;</li> <li>(b) a foreign government or its representatives;</li> <li>(c) a foreign juridical person or association; and</li> <li>(d) a juridical person or association which is represented by any of the above persons, or a third or more of whose voting rights are held by a foreigner.</li> </ul>
Broadcasting	<p>Foreigners or foreign-controlled enterprises (where any of the officers executing the business is a foreigner, or 20% or more of whose voting rights in aggregate are owned by foreigners) are not granted:</p>

	<p>(a) licenses for broadcasting stations including AM, FM or television broadcasting stations; and</p> <p>(b) approvals as program-supplying broadcasters.</p> <p>Foreigners or foreign-controlled enterprises (where any of the officers executing the business is a foreigner, or one third or more of whose voting rights in aggregate are owned by foreigners) are not granted:</p> <p>(a) licenses for broadcasting stations of domestic facility-supplying broadcasting;</p> <p>(b) licenses for broadcasting stations used for relay broadcasting to eliminate interference with reception; and</p> <p>(c) permission for the installation of cable television broadcasting facilities.</p> <p>Remarks: The term “foreigner” shall be taken to mean:</p> <p>(a) any person who does not have Japanese nationality;</p> <p>(b) any foreign government or its representative; and</p> <p>(c) any foreign juridical person or association.</p>
Air Transport	<p>A license to operate an air transport business shall not be granted to:</p> <p>(a) a person who is not a Japanese citizen;</p> <p>(b) a foreign government or its representatives;</p> <p>(c) a foreign juridical person or association; and</p> <p>(d) a juridical person or association which is represented by any of the above persons, or a third or more of whose officers are such persons, or a third or more of whose voting rights are controlled by foreigners. Cabotage is reserved to national airlines.</p>
Maritime Transport	<p>Transport of goods and passengers between Japanese ports is reserved to Japanese ships. Foreign ownership of Japanese ships can only occur through an enterprise incorporated in Japan in accordance with Ship Law.</p>
Mining	<p>No one other than the Japanese people or the Japanese juridical person shall become a mining right owner: provided that this shall not apply when otherwise provided for by Treaty.</p> <p>Japan has no performance requirement nor regulation tied in any way to the export orientation of an investment proposal under the Foreign Exchange Law.</p>
Insurance	<p>Foreign insurers are required in all cases to lodge an initial deposit for the establishment of branches which is essentially equivalent to the share capital required of domestic companies. Initial deposits may be required of national insurers in some cases.</p>

2. *Description of nature and scope of any limitations on foreign firms' access to sources of finance.*  
National Treatment is given to financing for foreign firms which have been established in Japan.

#### 4. Repatriation and Convertibility

1. *List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Japan has no restriction on repatriation of such funds.

2. *Brief description of the foreign exchange regime.*

Foreign exchange is available through authorized foreign exchange banks. There is no distinction between a domestic firm and a foreign firm.

3. *Restrictions on the convertibility of currencies for the overseas transfer of funds.*

Not applicable.

#### 5. Entry and Sojourn of Personnel

1. *Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

Japan has a visa category called “employment or working” for foreign nationals who will stay in Japan with the status of residence, “Investor/Business Manager.” There are two ways to get the visa. One is to go through the visa application at the nearest Japanese consular office with all necessary documents. The other is to get a certificate of eligibility for the status of residence, “Investor/Business Manager” at a local immigration office in Japan through the applicant’s representative before getting the visa and apply for the visa with it. Generally speaking, the latter is more popular among applicants.

The status of residence, “Investor/Business Manager” includes operation and/or management of international trade, investment and other related activities. An applicant for the status must meet the following criteria:

- (a) the facilities or offices are located in Japan;
- (b) at least two full-time employees are engaged in the relevant business activities; and
- (c) in case the applicant is to be employed for the management of international trade or other related activities in Japan, he must have at least three years’ experience in the operation/management of business (including academic terms to study relevant courses on business at graduate school) and must receive no less in salary than Japanese would receive for comparable work.

The duration of the status of the investor/business manager is decided among the options of three years, one year and six months, depending on the intended length of stay, the business record of the company concerned, the professional career of the person concerned and others. The duration decided at the time of entry into Japan can be extended at the applicant’s nearest local immigration office in Japan.

There are no regulations or guidelines requiring a minimum number of local staff to be included in an investment proposal and/or operation of an investment. However, in some exceptional areas, such as mining and fisheries, any foreign individual or legal entity may not be able to enjoy mining or fishing rights.

2. *List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
Immigration Control and Refugee Recognition Act  Criteria provided for by the Ministry of Justice Ordinance	Status of Residence: (1) - (7)  (1) Investor  The office is located in Japan with at least 2 full-time employees of Japanese nationals (including Permanent Residents, etc.).  (2) Business Manager  (a) At least 3 years’ experience (including any period of study at a graduate school).  (b) No less in salary than a Japanese would receive for comparable work.  (3) Engineer

	<p>(a) Based on a contract with organizations in Japan.</p> <p>(b) The applicant must have graduated from or completed college or acquired an equivalent education or at least 10 years' experience (including any period spent in study).</p> <p>(c) No less in salary than a Japanese would receive for comparable work.</p> <p>(4) Specialist in Humanities</p> <p>(a) Based on a contract with organizations in Japan.</p> <p>(b) The applicant must have graduated from or completed college or acquired an equivalent education or at least 10 years' experience (including any period spent in study).</p> <p>(c) No less in salary than a Japanese would receive for comparable work.</p> <p>(5) International Services</p> <p>(a) Based on a contract with organizations in Japan.</p> <p>(b) To engage in translation, interpretation, or other similar work.</p> <p>(c) At least 3 years' experience in a relevant job, except in cases when the applicant engaging in translation, interpretation, or instruction in language has graduated from college.</p> <p>(d) A salary of at least 250,000 yen per month.</p> <p>(6) Intra-company Transfer</p> <p>(a) The applicant has been employed at the office abroad for at least 1 year immediately prior to the transfer to Japan.</p> <p>(b) The period of work in Japan does not exceed 5 years.</p> <p>(c) In case an applicant engages in a job in natural science or knowledge in humanities, no less a salary than a Japanese would receive for comparable work.</p> <p>(d) In case an applicant engages in a job requiring specific ways of thought or sensitivity based on experience with foreign culture, a salary of at least 250,000 yen per month.</p> <p>(7) Dependent</p> <p>A dependent (a spouse and/or unmarried child(ren) supported by the applicant) of those mentioned above.</p>
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3. Description of any regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.

(1) Labour Standards Law

This law provides the minimum standards of working conditions, such as wage and working hours, which each employer should guarantee. The purpose of this law is to make employers fulfill the standards by means of penal regulations and inspection.

## (2) Minimum Wages Law

This law provides the minimum wage which each employer should pay. The purpose of this law is to stabilize the workers' living, raise the quality of labour force and secure the fair competition among undertakings by improving the working conditions.

\* These two laws are applied to Japanese and foreign firms indiscriminately.

### 4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

Law	Summary
Trade Union Law	<p>On the ground of Article 28 of the Constitution of Japan, which guarantees workers "Three Rights of Labor"(including the right to strike), the Trade Union Law prescribes that all proper actions of trade unions, including proper strikes are given criminal immunities (Article 1), civil immunities (Article 8) and the protection of the system against unfair labor practices (Article 7).</p> <p>In addition no employer may discharge or give discriminatory treatment to a worker for the reason of having performed proper acts of a trade union (Trade Union Law Article 7).</p>
Labour Relations Adjustment Law	<p>In order to promote fair adjustment in the labor-management relationship and to prevent or settle labor disputes, the Labor Relations Adjustment Law has been established. It rules on adjustment procedures of labor disputes such as conciliation, mediation and arbitration, and the limitation and prohibition of labor disputes in certain cases.</p>

## 6. Taxation

### 1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Taxation arrangements	Summary
<p>Taxes on corporate income consist of corporate tax (national tax), corporate inhabitant tax (prefectural and municipal tax) and corporate enterprise tax (prefectural tax). While corporate tax and corporate inhabitant tax are not deductible for corporate tax purposes, corporate enterprise tax is deductible.</p> <p>A foreign company setting up a Japanese branch and doing business is subject to tax on all income from Japanese sources.</p>	<p>Corporate tax rates-- 37.5%</p> <p>Consumption tax rates-- 3% (5% since April 1997)</p> <p>Withholding tax rates-- 20%(or 15%) on dividends or interest</p> <p>Double taxation agreements---Japan has 42 Income Tax Conventions, under which the above-mentioned withholding tax is mostly reduced.</p>

## 7. Performance Requirements

### 1. Brief description of performance requirements that could impose limits on trade and investment and indicate any TRIMS.

Not applicable.

## 8. Capital Exports

### 1. List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Regulations	Application and function
Prior notification required for outward foreign direct investment.	Investors who intend outward foreign direct investment have to give prior notification which will be examined by authorities. In practice, investors may carry out such investment as long as they submit this

	notification.
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2. List and brief description of any regulations/institutional measures that limit technology exports.

Regulations	Application and function
Foreign Exchange Control Order	<p>The Government of Japan examines the transfer of specific technology to specific destinations from the viewpoint of maintaining international peace and security.</p> <p>The law contains a governmental order: the Foreign Exchange Control Order. This governmental order include lists of controlled technologies.</p>

## 9. Investor Behaviour

1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

The Government of Japan has compiled guidelines on “Activities Expected of Japanese Firms Operating Abroad (10 items)” for Japanese firms on actively harmonizing with and contributing to the communities of investment recipient countries, and has disseminated them to the parties concerned.

## 10. Other measures

1. Brief outline the competition policy regime.

Japan’s competition policy is implemented with the vigorous enforcement of the Act Concerning the Prohibition of Private Monopoly and Maintenance of Fair Trade (the Anti-monopoly Act) as its core. Japan’s Anti-monopoly Act and competition policy are aimed at maintaining and promoting fair and free competition. The Anti-monopoly Act contains three basic prohibitions: namely, private monopolization, unreasonable restraint of trade, and unfair trade practices. The Fair Trade Commission is established as an administrative organ to implement the Anti-monopoly Act.

2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

(a) Industrial Property

Japan protects technology, designs and trademarks under four industrial property laws: the Patent Law, Utility Model Law, Design Law and Trademark Law. Further, Japan protects designs and well-known trademarks which have the good will through the Unfair Competition Prevention Law.

Japan is a member of the major intellectual property agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Convention Establishing the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of Deposit of Microorganisms for the Purposes of Patent Procedure.

Foreign holders are generally given the same protection as Japanese holders under these laws.

(b) Copyright

The Copyright Law was revised in 1970. In addition, Japan concluded to the Convention Establishing the WIPO in 1975, the Paris Act of the Berne Convention in 1975, the Paris Act of the Universal Copyright Convention in 1977, the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms (Phonogram Convention) in 1978, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) in 1989 and the TRIPS Agreement in 1994.

Thus, foreigners’ copyrights and related rights are generally protected in the same way as those of Japanese.

(c) Layout-designs (topographies) of integrated circuits

The Law concerning the Semiconductor Integrated Layout was established in 1985 in order to protect originally created circuit layouts of semiconductor integrated circuits. The same protection applies to foreigners as well as Japanese under the law.

(d) Trade Secret

Japan permits claims for damages and the right to request an injunction against the act of unfair acquisition, using or disclosing of trade secrets through the Unfair Competition Prevention Law. This Law gives the same protection to foreigners as Japanese.

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

1. List of and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.

Laws/Regulations	Application and function
Land Expropriation Act	The purposes of this law are to provide for the necessary conditions, procedures and effects concerning the expropriation and use of land, etc., needed for projects which benefit the public, and for compensation, etc., for the losses resulting thereof, to effect coordination between the promotion of public benefit and the private property, and thereby to make a contribution to the proper and reasonable utilization of the country's land. Of course this law is applied to Japanese and foreigners indiscriminately.

2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

### 2. Settlement of Disputes

1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List agencies responsible for dispute settlement and provide addresses and telephone/fax numbers of these agencies.

Foreign investors may file against the competent minister(see section B(1)(ii)(6)).

Agency	Address/telephone/fax
Ministry of Finance (International Capital Division, International Finance Bureau)	Address: 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Japan Telephone: (81 3) 3581 3792 Fax: (81 3) 5251 2141
The Ministry(s) in charge of the industry concerned	

2. Signatory or accession to the ICSID Convention.

Yes. The Government of Japan signed the ICSID Convention in 1965.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.

\*Finance and tax incentives will be described in section D(2).

Program	Nature of incentive	Contact point
1. The Japan Investment Council	The outline of the council was given in section B(10).	- Office for Market Access Improvement, Coordination Bureau, Economic Planning Agency:  3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Telephone: (81 3) 3581 9576



		<p>Fax: (81 3) 3581 9897</p> <p>- International Business Affairs Division, Industrial Policy Bureau, Ministry of International Trade and Industry:</p> <p>1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Telephone: (81 3) 3501 6623 Fax: (81 3) 3501 3638</p>
<p>2. Japan External Trade Organization (JETRO) Activities to Promote Foreign Direct Investment in Japan</p>	<p>(a) Invitation Program (Invest in Japan Program) :</p> <p>JETRO invites private sector companies from abroad each year, providing information on the investment climate in Japan, as well as providing support for specific investment approaches by arranging private business discussions.</p> <p>(b) Investment Advisor Project:</p> <p>JETRO headquarters and overseas offices, which have investment advisors on staff and retain advisors on staff and also retain outside advisors, give advice related to investment in Japan.</p> <p>(c) Senior Investment Advisor Dispatching Program:</p> <p>Senior Investment Advisors are dispatched abroad in order to provide continued support to foreign investors identified by the above advisors, and to identify other potential investors.</p> <p>(d) Symposiums to promote foreign investment in Japan:</p> <p>JETRO dispatches investment promotion missions of specialists in foreign investment in Japan abroad, and provides interested companies with information on the investment climate in Japan.</p>	<p>Investment Promotion Division, Information Service Department, Japan External Trade Organization (JETRO)</p> <p>2-2-5 Toranomon, Minato-ku, Tokyo 100 Telephone: (81 3) 3582 5571 Fax: (81 3) 3585 3628</p>

2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers

Program (National/sub-national)	Nature of incentive	Contact point
(1) Support Programs for a "Designated Inward Investor" based on the	(1) A Designated Inward Investor(*) could take the following incentives.	International Business Affairs Division, Industrial Policy Bureau, Ministry of International Trade and

<p>Import and Inward Investment Law</p>	<p>(a) Tax incentives</p> <p>Extension of carry-over period for operating losses incurred within the first five years of business from 5 to 10 years.</p> <p>(b) Loan Guarantees by the Industrial Structure Improvement Fund</p> <p>Loan guarantees on up to 95% of the liability of business funds borrowed.</p> <p>(* ) The conditions for being a “Designated Inward Investor” are as follows:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a branch or a subsidiary with at least one-third foreign equity (including 100% foreign equity);</li> <li><input type="checkbox"/> a company which has been operating for less than 5 years since its establishment; and</li> <li><input type="checkbox"/> a company engaged in manufacturing, wholesaling, retailing, or servicing sector in Japan.</li> </ul>	<p>Industry</p> <p>1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100  Telephone: (81 3) 3501 6623  Fax: (81 3) 3501 3638</p>
<p>(2) Loan program for the promotion of foreign direct investment in Japan by the Japan Development Bank, the North East Finance Corporation of Japan and the Okinawa Development Finance Public Corporation</p>	<p>(2) Definition of project cost purchase of land / machinery / equipment, construction / purchase of buildings.</p> <p>Eligible projects are:</p> <ul style="list-style-type: none"> <li>(a) direct investment projects by foreign companies and foreign affiliates (non-Japanese capital is 50% or more).</li> <li>(b) projects to establish office buildings in which the main tenants are non-Japanese businesses.</li> <li>(c) projects involving infrastructure for foreign direct investment in Japan.</li> </ul> <p>Maximum loan amount is 50% of the project cost (40% in the case of (c)).</p>	<p>(2) (a) International Department, Japan Development Bank</p> <p>Saigon Bldg., 1-9-1 Otemachi, Chiyoda-ku, Tokyo 100  Telephone: (81 3) 3244 1787, 88, 89  Fax: (81 3) 3245 1938</p> <p>(b) North East Finance Corporation of Japan</p> <p>Koko Bldg., 1-9-3 Otemachi, Chiyoda-ku, Tokyo 100  Telephone: (81 3) 3270 1652  Fax: (81 3) 3277 1955</p> <p>(c) Okinawa Development Finance Public Corporation</p> <p>Daito Bldg., 3-7-1 Kasumigaseki, Chiyoda-ku, Tokyo 100  Telephone: (81 3) 3581 3243  Fax: (81 3) 5511 8233</p>
<p>(3) Program of Providing the Specific Facilities to Promote Foreign Investment Exchange based on the</p>	<p>(3) Types of facilities:</p> <p>Facilities for international training in which the employees of foreign</p>	<p>(3) International Business Affairs Division, Industrial Policy Bureau, Ministry of International Trade and Industry</p>

Private Participation Promotion Law	<p>enterprises will be able to study the Japanese language, society and economy.</p> <p>Facilities to support foreign business participation by providing rental incubator offices for their initial operation in Japan, and conference facilities, etc., for international use.</p> <p>Assistance measures:</p> <p>(a) subsidy of up to 5% of all construction costs.</p> <p>(b) investment and financing from the Japan Development Bank and so on.</p> <p>(c) special tax measures.</p> <p>(d) loan guarantees under the Industrial Structure Improvement Fund.</p>	<p>1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Telephone: (81 3) 3501 6623 Fax: (81 3) 3501 3638</p>
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3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.

Agency	Address/telephone/fax
<p>Foreign Investment in Japan Development Corporation (FIND)</p> <p><i>Market entry services:</i> FIND provides information for companies taking their first step toward establishing bases in Japan.</p> <p><i>Consulting services:</i> FIND offers consulting services when foreign enterprises and foreign affiliates need expert services and individual and detailed consultation.</p> <p><i>Training and seminar services:</i> FIND conducts training sessions, seminars and symposia to train the staff needed to handle the activities of foreign enterprises and affiliates, and provides up-to-date business information and related measures.</p>	<p>Address: Akasaka Twin Towers 2F, 2-17-22 Akasaka, Minato-ku, Tokyo 107 Telephone: (81 3) 3224 1203 Fax: (81 3) 3224 9871</p>

## E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement.

Agreement	Provisions
<p>Friendship, Commerce and Navigation Treaties</p> <p>Japan has concluded this kind of treaty with 47 countries including some of APEC member economies: Australia, Canada, Indonesia, Korea, Malaysia, Mexico, New Zealand, Philippines, Thailand and USA.</p>	<p>Generally Friendship, Commerce and Navigation treaties deal with a wide array of bilateral consular and commercial, as well as investment issues.</p> <p>Each treaty, except the treaty with the United States, includes provisions stipulating most favoured nation treatment with respect to business activity by nationals</p>

	and companies of each Party. The treaty with the United States includes a provision stipulating national treatment with respect to business activity by nationals and companies of each Party.
Bilateral Investment Treaties  Japan has concluded Bilateral Investment Treaties with Egypt, Sri Lanka, China and Turkey.	Each treaty includes provisions which stipulate that the most favoured nation treatment be accorded to nationals and companies of each Party in respect of the matters relating to the admission of investment. The four treaties also include provisions which stipulate that the most favoured nation treatment and national treatment be accorded to nationals and companies of each party in respect of investments, returns and business activities in connection with the investment.
Regional or Sub-Regional Investment Treaties	Not applicable.

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

### 1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

#### (1) Inward FDI

After peaking at \$4.3 billion in FY 1991, the reported inward FDI based on the Foreign Exchange Law showed a declining tendency, but in FY 1994 rebounded to \$4.2 billion. On an amount basis, the FDI is substantially at its highest level in view of the cutoff measures that took effect in FY 1992. In terms of number of projects, emphasis in investment is shifting to the non-manufacturing sector due to the high potential for sales in Japan.

#### (2) Outward FDI

Japanese FDI abroad peaked at \$67.5 billion due to the progress of the yen after the Plaza Accord. After it decreased to \$34.1 billion in FY 1992, it slightly increased to \$41.1 billion because of further appreciation of the yen.

### 2. List of major countries/economies that are sources/receivers of FDI over recent years.

Sources FDI	Destination FDI
(1) United States: 40.4%	(1) United States: 41.9%
(2) Japan (affiliates of foreign businesses): 10.9%	(2) United Kingdom: 7.3%
(3) Netherlands: 8.2%	(3) Australia: 5.2%
(Cumulative, 1950-1994)	(Cumulative, 1950-1994)

# KOREA

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# KOREA

## A. BACKGROUND OF FOREIGN DIRECT INVESTMENT REGIME

### 1. *Brief description of foreign investment policy including any recent policy changes.*

#### (1) Basic direction of foreign direct investment policy

The basic direction of the Korean Government's foreign direct investment policy is to improve its international competitiveness and its economy by securing investment resources, increasing employment, and introducing high technologies and business know-how. In addition, its aim is to provide to foreign companies protection equal to that given to domestic companies and to open domestic markets wider to foreign investment so that free competition can take hold in Korea through market opening.

Therefore, the policy of the Korean Government is to promote foreign investment by giving investment incentives to high-tech businesses and to improve the investment climate. Its policy is also to protect the rights necessary for the foreign company to conduct its business in Korea. Foreigners can thus expect equal treatment except cases specifically stipulated in the law.

The Government has stepped up its efforts to liberalise the foreign direct investment regime since the inception of the new administration in 1993. Recent liberalisation measures are as follows:

#### (2) Evolution of Korea's foreign investment regime

##### *Five-Year Foreign Investment Liberalisation Plan (June 1993)*

This plan was introduced to open up 210 businesses, 132 of which was newly liberalised and 78 that was further liberalised from July 1993 to January 1997. This will boost the overall foreign investment liberalisation ratio to 93.4% in 1997 from 85.1% in 1993.

##### *Simplification of investment procedures (Mar. 1994)*

Landmark simplifications have been made in foreign investment procedures through the revision of the Foreign Capital Inducement Act:

- (a) Delegation of notification acceptance related tasks to foreign exchange banks for the convenience of applicants;
- (b) Reduction of processing period for acceptance of notifications to within 3 hours; for approval of foreign investment applications, 5 or 15 days;
- (c) Simplification of documents required to be submitted;
- (d) Enhancement of transparency through minimisation of criteria for denial of notification acceptances.

##### *The Foreign Direct Investment Environment Improvement Plan (Sep. 1995)*

This plan differs from previous plans in that it is designed to improve the current system so that it is consistent with the international investment standards such as the OECD code of liberalisation.

This plan aims to reduce and simplify relevant regulations for procedures such as post-screening by taking factors such as national treatment into account.

##### *Five-Year Liberalisation Plan for Foreign Direct Investment (Nov. 1995)*

The 1995 Five-Year FDI Liberalisation Plan will be implemented in order to open up 57 of the 105 businesses (including 51 businesses that are partially liberalised) that are restricted in the current Five-Year Foreign Investment Liberalisation Plan by January 1 1997.

As a result, a total of 152 businesses will be newly liberalised or be subjected to increases in their scope of liberalisation between 1996 and 2000 including those businesses eligible for liberalisation under the current Five-Year Foreign Investment Liberalisation Plan.

Out of those 152 businesses, the liberalisation of 128 businesses will take place particularly in 1996 and 1997.

### 2. *Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.*

Mr Woong-Bae Rha, Deputy Prime Minister and Minister of Finance and Economy hosted a meeting with the distinguished members of the foreign business community on January 25, 1996. The following is a brief summary of his address on the government's liberalisation policy:

- the Korean economy has grown by 9.3%, 4.7% rise in the inflation rate, and a per capita income of approximately US\$10 thousand;
- the aim of the Korean government's globalisation policy is to increase its competitiveness by inducing more competition domestically as well as internationally;
- the Korean government will remove obstacles and restrictions that hinder investment through streamlining financial and taxation incentive systems, and allowing the operation of friendly M&A; and
- a more concrete policy direction will take the form of systematic transformation of the Foreign Capital Inducement Act and the related regulations into legal system based on foreign investment promotion.

For further details, please refer to:

1. 1995 Five Year Liberalisation Plan for Foreign Direct Investment (Nov. 1995)
2. Foreign Direct Investment Environment Improvement Plan (Sep. 1995)

## **B. REGULATORY FRAMEWORK AND THE FACILITATION OF INVESTMENT**

The Basic law governing foreign direct investment is the “*Foreign Capital Inducement Act*”, which is accompanied by Presidential Decrees and Working Rules (*Regulations on Foreign Investment*) which specify the matters delegated by the Act and the matters necessary for the enforcement of the Act.

### **1. Transparency**

#### (i) Statutory Requirements

1. *List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

“Foreign direct investment” is defined in the foreign Capital Inducement Act as subscribing to or holding stock or shares by a foreigner in an enterprise run by a juridical person of the Republic of Korea or a national of the Republic of Korea in accordance with the Act.

Out of a total of 1,148 business categories, 1,043 categories are subject to notification, 49 to approval, and the remaining 56 categories are fully restricted for foreign investment as of January 1, 1996.

#### **Notification (1,043 businesses)**

In the event that a foreign investor intends to invest in Korea, he shall need to notify the foreign exchange banks in advance.

#### **Approval (49 businesses)**

If the investment project falls under the categories of business subject to approval, foreign investors shall need to obtain an approval of the competent minister.

The business categories subject to approval are stipulated and listed in the Presidential Decree of the Act and *Regulation on Foreign Investment*.

The foreign investment ratio is allowed to 100%, except in the case where the foreign investment ratio is restricted under individual laws.

#### *Proxy*

In the event that a non-resident intends to submit a notification or an approval application, he shall designate a resident as a proxy in accordance with Article 10 of the Foreign Capital Inducement Act.

#### (ii) Investment Review and Approval

1. *Details of proposals and sectors that are/are not (yes/no) subject to screening.*

2. *Details of guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

### **Proposals**

#### (1) Merger (YES)

There are no set regulations governing merger activities. However, as it involves making changes to the content of notification acceptance or the approval, in the event that a foreign invested enterprise desires to merge with another company, it must receive an acceptance of the notification for changes thereof. In such a case, the merged firm must be one that is allowed for foreign investment. However, mergers or acquisition of the Korean companies by foreign investors are not allowed.

#### (2) Acquisition (YES)

Acquisition is allowed with the approval of the competent authority but only if the acquiring and acquired firm is a foreign invested company; it is not allowed however if the firm subject to the takeover is a domestic company.

#### (3) Greenfield Investment/Joint Venture (YES)

Greenfield Investment and Joint Venture are treated in the same manner. Accordingly, an investor, who desires to operate a business which is subject to notification, should receive a notification acceptance as described above.

#### (4) Real Estate/Land (YES)

Foreigners and foreign invested companies can acquire real estate within the scope of their business in Korea.

### **Sectors**

Businesses that are not listed are allowed for foreign investment.

Listed Businesses Under the Liberalisation Plan by Year ‘97~2000





communication (5 businesses)	<ul style="list-style-type: none"> <li>• General domestic freight transport</li> <li>• General local freight transport</li> <li>• Airplane rental with operator</li> </ul>	} } } Full liberalisation } } }	} } Partial liberalisation } <ul style="list-style-type: none"> <li>• Allowed for foreign equity ratios of less than 50%</li> </ul>
Financial intermediation and Insurance (8 businesses)	<ul style="list-style-type: none"> <li>• Granting of consumer credit cards and their funds</li> <li>• Other general financial intermediation n.e.c.</li> <li>• Title guarantee insurance</li> <li>• Accident insurance</li> <li>• Insurance against loss</li> <li>• Life insurance-reinsurance</li> <li>• Non Life insurance-reinsurance</li> <li>• Life insurance</li> </ul>	} } } Full liberalisation } } } } } } <ul style="list-style-type: none"> <li>• Allowed if the foreign equity ratio does exceed 49%</li> </ul>	
Other community social and personal service activities (3 businesses)	<ul style="list-style-type: none"> <li>• Museum, gallery and science hall operation</li> <li>• Other recreational activities n.e.c.</li> <li>• Astrological services</li> </ul>	} } Full liberalisation } }	
Total	40 businesses		

[Businesses to be Liberalized by Jan. 1, 1998]

Sectors	Businesses	Liberalisation plan	At present
Manufacturing (2 businesses)	<ul style="list-style-type: none"> <li>• Manufacture of starches and starch products</li> <li>• Commercial printing by stencil paper plates and other similar plates</li> </ul>	<ul style="list-style-type: none"> <li>• Allowed except for sweet potato starch manufacturing</li> <li>• Full liberalisation</li> </ul>	<ul style="list-style-type: none"> <li>• Joint ventures with existing companies required</li> </ul>
Transport, storage and communication (3 businesses)	<ul style="list-style-type: none"> <li>• Wired telegraph and telephone</li> <li>• Wireless telegraph and telephone</li> <li>• Telecommunications n.e.c.</li> </ul>	} } Allowed in accordance } with further WTO } negotiations } }	<ul style="list-style-type: none"> <li>• Partial liberalisation</li> </ul>
Finance intermediation and Insurance (3 business)	<ul style="list-style-type: none"> <li>• Insurance appraisal</li> <li>• Activities auxiliary to insurance and pension funding n.e.c.</li> <li>• Insurance agent and broker</li> </ul>	} } Full liberalisation } } }	<ul style="list-style-type: none"> <li>• Partial liberalisation</li> </ul>

Real estate, renting and business activities (4 businesses)	<ul style="list-style-type: none"> <li>Rental of residential building</li> <li>Rental of non-residential building</li> <li>Subdividing of residential building</li> <li>Subdividing of non-residential building</li> </ul>	<ul style="list-style-type: none"> <li>Allowed if the foreign equity ratio does not exceed 50%</li> </ul>	
Total	12 businesses		

[Businesses to be Liberalised by Jan. 1, 1999]

Sectors	Businesses	Liberalisation plan	At present
Manufacturing (5 businesses)	<ul style="list-style-type: none"> <li>Manufacture of Sojoo</li> <li>Manufacture of refined petroleum products*</li> <li>Manufacture of lubrication oils and greases*</li> <li>Reprocessing of fractionation in petroleum refinery n.e.c.*</li> <li>Manufacture of explosives and pyrotechnic products</li> </ul>	<ul style="list-style-type: none"> <li>} Full liberalisation</li> <li>} Allowed for foreign equity ratios of less than 50%</li> </ul>	<ul style="list-style-type: none"> <li>Joint ventures with the relevant license holders required</li> <li>} Partial liberalisation</li> </ul>
Wholesale and Retail (1 business)	<ul style="list-style-type: none"> <li>Oil service stations</li> </ul>	<ul style="list-style-type: none"> <li>Full liberalisation</li> </ul>	
Transport Storage and Communication (2 businesses)	<ul style="list-style-type: none"> <li>Urban bus passenger transport</li> <li>Deep sea foreign freight transport</li> </ul>	<ul style="list-style-type: none"> <li>} Full liberalisation</li> </ul>	<ul style="list-style-type: none"> <li>Partial liberalisation</li> </ul>
Business activities (1 business)	<ul style="list-style-type: none"> <li>Guarding and other protective activities</li> </ul>	<ul style="list-style-type: none"> <li>Full liberalisation of protection activities</li> </ul>	
Total	9 businesses		

Note: Asterisk indicates businesses that will be liberalised by the end of 1999.

[Businesses to be Liberalised by Jan. 1, 2000]

Sectors	Businesses	Liberalisation plan	At present
Farming and fishing (1 business)	<ul style="list-style-type: none"> <li>Cattle farming</li> </ul>	<ul style="list-style-type: none"> <li>Allowed for foreign equity ratios of less than 50%</li> </ul>	
Transport (2 businesses)	<ul style="list-style-type: none"> <li>Scheduled air-transport</li> <li>Non-scheduled air transport</li> </ul>	<ul style="list-style-type: none"> <li>Allowed if the foreign equity ratio does not exceed 50%</li> </ul>	<ul style="list-style-type: none"> <li>Allowed if the foreign equity ratio does not exceed 20%</li> </ul>
Total	3 businesses		

List of Restricted Businesses After the Year 2000

	Businesses
Completely restricted (29 businesses)	Growing of Cereal Grains, Inshore Fishing, Coastal Fishing, Sea Fishing n.e.c., Manufacture of Tobacco Products, Publishing of Newspapers, Publishing of Periodicals, Collection, Purification and Distribution of Water, Wholesale of Meats, Retail Sale of Arts and Antiques, Supporting Air Transport Activities n.e.c., Mutual Credit Financial Intermediation, Other Credit Granting n.e.c., Stable-Fund Management Companies, Medical Care Insurance, Workman's Accident Compensation Insurance and Other Social Security Insurance, Commodity Exchanges, Rental of Real Estate n.e.c., Land Development, Legal Representation, Legal Document Services, Legal Services n.e.c., Personnel Supply Services, Investigation, Radio Broadcasting, Television Broadcasting, News Agency Activities, Horse Racing Track and Similar Stadium Operation, Gambling.
Partially liberalised businesses (41) that are allowed with an approval	Farming of Cattle, Fish Farms-Sea, Seeding and Hatching of Aquatic Animals & Plants, Manufacture of Biological Products, Manufacture of Explosive and Pyrotechnic Products, Distilling of Ethyl Alcohol, Husking of Cereal, Manufacture of Starches and Starch Products, Publishing of Books, Brochures, Musical Books and Other Publications, Opset Printing, Electric Power Generation, Wholesale of Seed, Retail Sale of Grain, Coastal Water Passenger Transport, Coastal Water Freight Transport, Sea and Coastal Water Transport n.e.c., Scheduled Air Transport, Non-Scheduled Air Transport, Air Freight and Land Freight Handling, Ground Management of Airplanes, Wire Telegraph and Telephone, Wireless Telegraph and Telephone, Telecommunications n.e.c., Domestic Banking, Investment Companies and Investment Trust, Trusts and Trust Companies, Other Financial Intermediation, Securities Dealing Activities, Other Activities Auxiliary to Financial Intermediation n.e.c., Life Insurance, Rental of Residential Building, Rental of Non-Residential Building, Subdividing Residential Building, Subdividing Non-Residential Building, Employment Agency Services, Guard and other Protective Activities, Credit Rating Services, Vocational Training School, Preliminary Training Course, Golf Course Operation, Wire Broadcasting.

3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.

Copies of the relevant documentation (the notification application form) can be obtained from the contacts listed in section B(1)(ii)(4). According to Article 10 of the Foreign Capital Inducement Act, a non-resident should designate a resident as a proxy and the submitted documents should be in Korean.

4. Contact points to which applications should be made.

(1) Notification is handled by any of the 69 head offices of Foreign Exchange Banks comprising of 29 domestic banks and 40 Foreign banks having branch office in Seoul.

[Domestic Banks]	
1. Korea Development Bank	16. Hana Bank
2. Industrial Bank of Korea	17. Boram Bank
3. Citizens National Bank	18. Peace Bank of Korea
4. Korea Housing Bank	19. Taegu Bank
5. Cho Heung Bank	20. Pusan Bank
6. Commercial Bank of Korea	21. Chung Chong Bank
7. Korea First Bank	22. Kwang Ju Bank
8. Hanil Bank	23. Che Ju Bank
9. Bank of Seoul	24. Kyung Ki Bank
10. Korea Exchange Bank	25. Chung Buk Bank
11. Shin Ilan Bank	26. Kang Won Bank
12. KorAm Bank	27. Kyong Nam Bank
13. Dong Hwa Bank	28. Jeon Buk Bank
14. Dong Nam Bank	29. Korea Long Term Credit Bank
15. Dac Dong Bank	

[Foreign Banks with Branch Office in Seoul]	
1. Citi Bank, N.A.	22. Yamaguchi Bank
2. Bank of America	23. Banque Indosuez
3. The First National Bank of Chicago	24. Credit Lyonnais
4. Chemical Bank	25. Banque Parjibas
5. Bankers Trust Company	26. Societe Generale
6. First National Bank of Boston	27. Standard Chartered Bank
7. Bank of Hawaii	28. Barclays Bank
8. Bank of New York	29. Royal Bank of Canada
9. The Bank of Tokyo	30. National Bank of Canada
10. Dai-Ichi Kangyo Bank	31. Internationale Nedelanden Bank
11. The Sakura Bank	32. Australia and New Zealand Banking Group
12. Sumitomo Bank	33. National Australia Bank
13. The Fuji Bank	34. The Development Bank of Singapore
14. The Sanwa Bank	35. Deutsche Bank
15. The Mitsubishi Bank	36. HongKong and Shanghai Banking
16. The Daiwa Bank	37. Bank of China
17. The Asahi Bank	38. Arab Bank
18. Long-Term Credit Bank of Japan	39. Banque National de Paris
19. Mitsubishi Trust and Banking	40. The Chase Manhattan Bank
20. Yasuda Trust & Banking	
21. The Tokai Bank	

(2) Applications for approval are handled by the competent Ministries.

Competent ministries in charge of foreign investment post-screening process

Ministry	Telephone No. (fax)	Address
Ministry of Health and Welfare	82-2-503-6233 (82-2-504-6418)	1, Chungang dong, Kwachon, Kyungki Province
Ministry of Trade, Industry and Energy	82-2-500-2568 (82-2-503 9438)	“
Ministry of Construction and Transportation	82-2-504-9065 (82-2-503-7304)	“
Ministry of Agriculture, Forestry and Fisheries	82-2-503 7294 (82-2507-2095)	“
Ministry of Culture and Sports	82-2722-8413 (82-2-733-2322)	82-1, Chongro-ku, Sejongro
Ministry of Education	82-2-722-8413 (82-2-733-2322)	77-6, Chongro ku, Sejongro
Ministry of Information and Communication	82-2-750-2313 (82-2-750-2317)	116, 1-ka, Shinmunro, Chongro-ku
The Korea Maritime and Port Administration	82-2-744-4731 (82-2-765-2475)	112-2, Incdong, Chongro-ku
The National Police Agency	82-2-313-0701 (82-2-313-0702)	209, Mijodong, Seodaemunku
The Office of National Fisheries Administration	82-2-753-5026 (82-2-753-8331)	541, 5-ga, Namdaemunro, Chong-ku

“**Comprehensive Assistance Center for Foreign Investment**” is the general authority for matters related to foreign investment.

- This Center provides a comprehensive assistance on every respect of investment from foreign investment notification acceptance or approval to the start of factory operation.

Address	3rd Fl., Industrial Bank of Korea 50 Ulchiro 2-Ka Chung-Ku, Seoul, Republic of Korea
Telephone	82-2-319-7314/6

Fax	82-2-319-7318
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5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

The processing time for notification is 3 hours and 5 or 15 days for approval applications. In cases where there is no response within 3 hours, the notification is automatically considered as being accepted.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeals processes and the average time for an appeal to be considered.*

If application for notification acceptance of approval is not accepted, the investor can make an appeal to the competent Ministry within 3 months. If the appeal is rejected, the investor can institute a law suit against the Korean government.

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

There is no such special system for an expedited review process; notification is accepted within 3 hours and approval system which is applied to the investment in restricted businesses will be replaced by notification system. (As of Jan. 1997.)

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals.*

The Comprehensive Assistance Center for Foreign Investment is the competent authority where foreign investors can raise complaints or grievances.

- The address, phone and fax numbers of the center is described above. Investors can also raise complaints and grievances to the International Investment Division of the Ministry of Finance & Economy.

Address	1, Chungang-dong Kwachon, Kyung-gi Province, Republic of Korea
Phone	82-2-503-9149, 9152
Fax	82-2-503-9076

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

The post screening agency is the authority which allowed the investment concerned. More specifically, the post screening agencies are the 69 Foreign Exchange Banks where notifications are accepted and the competent Ministries where the investments are approved.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

The Korean government has accelerated its efforts toward liberalisation of foreign investment since the early 1990s.

And with the rapid growing importance of international investment, the Korean government is now focusing its efforts toward improving the investment regime and its climate, as well as promoting and inducing foreign investment.

- The current Foreign Capital Inducement Act will be transformed into a legal investment promotion system.
- The Korean Government, it its aim to improve the general investment climate, will make efforts for industrial peace, fair wage increase correspondent to productivity, construction of Social Overhead Capital (SOC), etc.

11. *Where applicable, the role of sub-national agencies in the approval process.*

As described above, notification acceptance is entrusted to 69 Foreign Exchange Banks and the “Comprehensive Assistance Center for Foreign Investment” provides various services from notification acceptance or approval up to the start of factory operation.

Investment Promotion Offices in each local government handle foreign investment relevant applications such as factory establishment. Local Governments are also entrusted to allow foreigners’ acquisition of real estate.

### Contact Points of Local Governments

	Tel. Number	Fax Number	Address
Seoul	82-2-750-8351	82-2-733-7905	31, 1-ka, Taepyungro, Chung-ku, Seoul, Korea
Pusan	82-51-460-2081	82-51-460-3029	20, Kaekyo dong 2-ka, Youngdong-ku, PuSan, Korea
Taegu	82-53-429-2482	82-53-429-2484	1, DongIn dong, Chung-ku, TaeGu, Korea
Inchon	82-32-426-4154	82-32-437-5279	San 50, Guwol dong, Namdong-ku, InChon, Korea
Kwangju	82-62-224-4652	82-62-225-8839	505-900, Kerim-dong, Dong-ku, KwangJu, Korea
Teachon	82-42-250-2081~2	82-42-222-0262	499-1, Kaehung 2dong, chun-ku, Dacchon, Korea
Kyungki	82-331-253-4745	82-331-253-7405	1,-3-ka, Maesanro, Suwon, KyongKi Province, Korea
Kangwon	82-361-57-6443	82-361-55-3311	15, Bongidong, Chunchon, KangWon Province, Korea
Chungbuk	82-431-220-3227	82-431-220-3229	89 Munhwadong, ChungJu, ChungBuk Province, Korea
Chungnam	82-42-251-2171~2	82-42-255-9104	32, Sunhwa-dong, Chung-ku, TaeChon, Korea
Chonbok	82-652-80-3225	82-652-232-9970	1, 4-ka, Chungang-dong, ChunJu ChomBuk Province, Korea
Chonnam	82-62-224-2282	82-62-228-4117	13, Kwangsan-dong, Dong ku, KwangJu, Korea
Kyungbok	82-53-950-2174	82-53-943-2304	1443-5, Sankyok-dong, Buk ku, TaeGu, Korea
Kyungnam	82-551-70-2081	82-551-79-2079	1, Sarim-dong, Changwon, Kyungnam Province, Korea
Cheju	82-64-40-1681	82-64-47-4993	312-2 Yon-dong, Cheju, Cheju Province, Korea

## 2. Most Favoured Nation Treatment and Non-discrimination between Source Economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sectors, threshold value or otherwise).

There is no discrimination between source economies. All of the relevant laws, regulations, and administrative guidelines are stipulated in the “Regulations on foreign Investment” in a transparent manner and there is no policy or agreements which may cause discrimination between source economies.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

Not applicable.

## 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Unless otherwise provided in the laws, foreign investors and foreign invested companies are accorded equal treatment as the nationals or corporations of the Republic of Korea.

2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.

Foreign invested companies may obtain the necessary funds from Korean financial institutions without any discrimination from domestic companies.

### **Finance in General**

Short-term working capital is mainly supplied through commercial paper discounts, overdrafts and partial loans by commercial banks, such as nationwide banks, regional banks and some specialised banks. In particular,

commercial paper discounts are means to lend funds to corporations by transforming inter-corporate credit into bank loans, provided that financial institutions discount or purchase bills issued by the general commercial business trading. This is the main method used by corporations for financing of short-term working capital because of the more simplified procedures than bank loans and the convenience of raising funds.

Investment and finance companies along with merchant banks supply short-term funds through corporate bill discounts, that are sold to general investors after underwriting of corporate bills without guarantees. They also deal in the factoring business, which involves the purchasing and managing of receivables, bill guarantees and brokerage activities.

In the meantime, Korea Development Bank (KDB), Korea Long Term Credit Bank (KLTCB) and other specialised banks, such as the Industrial Bank of Korea, take charge of long-term fund supplies for facility investment. KDB supplies various development funds with low interest rates, such as technology development funds which support development of new products and new technology, machinery localisation funds, planned shipbuilding funds and facility automation funds. Complying with financial support to reinforce competitiveness of the manufacturing sector, KLTCB operates medium and long-term Korean won-based loans for purchasers of Korean-made machinery in order to increase demand for Korean-made machinery.

#### *(1) Loan for Trade*

##### *Loan Eligibility*

Exporters can borrow money at a generally available commercial rate. To obtain these loans, borrowers must provide documents supporting export transactions (L/C, D/P D/A or foreign currency denominated contract, etc.) Through the use of loans, trade financing is broken down into raw material import funds which support raw material imports for re-export, raw materials from domestic producers for export through local L/Cs, and production funds which provide funds needed to manufacture or process raw material or end products for export.

##### *Loan conditions and units*

As for loan periods, the allowed period is 90 days in the case of performance based loans and the allowed period is 180 days in the case of L/C based loans. All loan rates are approximately 10.25%. As for loan units, small and medium-size companies can receive 660 won against the US dollar in production funds; non-conglomerate related large-size companies can receive 360 won. Small and medium-size companies can receive 520 won against the US dollar in raw material import funds; non-conglomerate related large-size companies can receive 300 won. Raw material purchasing funds for small and medium-size companies stands at 760 won against the US dollar, and that for non-conglomerate related large-size companies is 440 won.

#### *(2) Security backing system*

This system is intended to ensure sufficient capital flows by guaranteeing the companies' reliability for those that do not have an adequate level of security. This system is comprised of payment guarantees by banks, the Korea Credit Guarantee Fund, and credit guarantees by the Korea Technology Credit Guarantee Fund.

##### *Payment guarantees by banks*

###### *Types of payment guarantees*

**Loan guarantees:** These are one year guarantees that are necessary to obtain loans from financial institutions such as banks, insurance companies, and investment finance companies.

**Corporate bond guarantees:** These are guarantees that are required to guarantee the redemption of the principal and interest on corporate bonds.

**Others:** Others include guarantees for the fulfilment of contracts, guarantees for tariff security, and guarantees for facility loan security.

###### *Limit of payment guarantees*

The Banking Act stipulates that the total amount of payment guarantees should not exceed 20 times the company's capital, and the guarantee amount per person should not exceed 40% of the capital of the financial institution.

**Guarantee fee:** Less than 1.5% p.a. of the amount of security

##### *Credit guarantees of Korea Credit Guarantee Fund*

The Korea Credit Guarantee Fund is intended to ensure sufficient flow of capital for companies and to reduce the risk on the part of creditors who trade credit with other economic sources by guaranteeing the fulfilment of obligations of companies which do not have sufficient security.

The types of credit guarantee funds are loan guarantees, guarantees for payments, guarantees for facility contract loans (these are provided to banks and non-bank financial institutions); guarantees for corporate bond guarantees; guarantees for bills, guarantees for fulfilment (these are guarantees on the basis of intercompany credit); and guarantees for tax payment.

##### **Guarantee fee**

For small and medium-sized companies: 1% of the amount of guarantee p.a.

For companies other than small and medium-sized companies: 1.5% of the amount of guarantee p.a.

### *Technology credit guarantees*

Technology credit guarantees are intended to promote technological development and to ensure sufficient flow of capital for companies that do not have sufficient security by guaranteeing their reliability when they require loans to finance development of new technologies or commercialisation of newly developed technologies.

The types of technology credit guarantees are technology credit guarantees and general credit guarantees offered by the Technology Credit Guarantee Fund. The Technology Credit Guarantee Fund accounts for 99% of the total amount of credit guarantees for small and medium-sized companies.

#### *(3) Offshore (Spot) financing*

Offshore financing is allowed with a prior validation of a foreign exchange bank.

#### *Usage*

Offshore financing is allowed for the usage of overseas direct investment and overseas business management as well as others permitted under Foreign Exchange Management Regulations.

#### *Limit*

None

Offshore financing is scheduled to full liberalisation in 1996.

#### *(4) Inter-company loan*

Inter-company loan between a foreign invested company and its parent company or another company abroad is available through a short-term foreign borrowing or a commercial loan.

##### *(a) Short-term Foreign Borrowing*

Foreign invested companies, those are approved for tax exemption for high-tech business areas, can take out short-term foreign borrowings with maturities of under 3 years within the maximum of 100% of their investment amount. Foreign companies in the general manufacturing sector can also borrow short-term foreign funds within 50% of their investment amount.

It requires validation from the president of the designated foreign exchange bank.

#### *Usage*

- Purchase of capital goods and raw materials
- Early redemption of domestic loans

#### *Limit*

- High-tech business area: 100% of investment amount  
(If foreign equity ratio is 1/3 or more)
- High-tech business area: 75% of investment amount  
(If foreign equity ratio is less than 1/3)
- General manufacturing sector: 50% of investment amount

##### *(b) Commercial loan*

Commercial loans are defined as overseas borrowings, exceeding US\$1 million and having a maturity of more over 3 years. Commercial loans are allowed with an approval from the Minister of Finance and Economy.

#### *Qualification*

Commercial loans are available for “small and medium sized manufacturing enterprises”, “firms engaged in SOC projects and foreign-invested companies with high-technology.

#### *Usage*

- Purchase of capital goods (facility)

#### *Limit*

Within annual total ceiling ('96: US\$3 billion)

Commercial loans will be liberalised during 1996~1997 for small and medium sized manufactory enterprises; for other firms, commercial loan will be allowed within certain limits.

#### *(5) Overseas issuance of securities denominated in foreign currency*

Domestic capital market securities denominated in foreign currency can be issued by resident private-sector enterprises on a foreign market without prior approval (but subject to a prior notification requirement) when the following requirements, provided by the so-called Foreign Exchange Management Regulations are met;

- (i) the issuer has to be one of the following entities:
  - a foreign exchange bank;
  - a state-owned enterprise, including public-sector utilities;
  - a municipality;
  - an “internationally recognised quality” company (ie. a company having at least a BBB or equivalent rating from an internationally known credit rating agency);
  - a company belonging to a “high technology” industry; or
  - a firm which has (or will have within 3 years from the date of the envisaged securities issue) paid-in capital of more than 10 billion Won or equity capital of more than 20 billion Won, positive net



profit over the last 3 years on a cumulative basis and no negative effect on the intentional creditworthiness of the country.

- (ii) the proceeds of the issue have to be used for:
  - the financing of off-shore banking transactions (as far as domestic authorised foreign exchange banks are concerned);
  - the purchase of capital goods (if the issuing enterprise falls under the category of an “internationally recognised quality” company) and new technologies related to the activity of the issuing enterprise;
  - the purchase of parts for capital goods to be exported on a deferred-payment basis of 3 years or more;
  - the carrying out of a permitted investment or business (including market development) abroad;
  - early redemption of foreign loans;
  - or any other purposes recognised by the Ministry of Finance and Economy.
- (iii) foreign ownership through the issuance of foreign-currency-denominated securities cannot exceed 50% of the total number of shares issued by the enterprise. This provision is aimed at maintaining Korean control over Korean companies. (The specific individual and total ceilings set for foreign portfolio equity investment continue to apply.)

In addition, the Ministry of Finance and Economy has the right to block a transaction meeting all the above qualifications within 7 days following the date of notification, if it is deemed necessary in regard of the effect of the transaction concerned on financial markets and domestic industries.

Finally, the Korean authorities impose quantitative ceilings on the total amount of securities which can be issued abroad each year. They have explained that these annual ceilings are flexibly applied and that they could be raised and possibly exceeded in the course of the year depending on economic developments.

#### **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Overseas remittance and repatriation are guaranteed by Article 4 of the Foreign Capital Inducement Act and Article 5 of its accompanying Enforcement Decree.

*Foreign Capital Inducement Act, Article 4*

The overseas remittance of dividend profits accruing from the stock or shares acquired by a foreign investor, sales proceeds of the stock or shares, principal, interest and fees to be paid under a loan contract or a public loan agreement, and licensing fees to be paid under a technology inducement contract shall be guaranteed in accordance with the contents of the approval, acceptance of the notification or the agreement as of the remittance.

*Foreign Capital Inducement Act Enforcement Decree, Article 5*

When a foreign investor, borrower or licensee of technology intends to make overseas remittances in accordance with Article 4 of the Act, he shall receive confirmation of such overseas remittances from the president of a foreign exchange bank.

*2. Brief description of the foreign exchange regime*

The principal organisations for foreign exchange control are the Ministry of Finance and Economy (MOFE) and the Board of Foreign Exchange Deliberation which was set up by the MOFE. The Bank of Korea (BOK) and foreign currency exchange banks have been entrusted by the Minister of Finance and Economy to manage the foreign exchange system.

(1) Applications of Foreign Exchange Control

- Foreign currency and foreign exchange transaction activities in Korea
- Transactions, payments and receipts between Korea and foreign nations
- Transactions or payments can be made in Korean won currency
- Activities conducted abroad by residents of Korea and their legal representatives
- Transactions and dealings conducted by overseas branches
- Other related activities

(2) Currency designation

The foreign Exchange Control Act designates acceptable foreign currencies in the payment or receipt of foreign transactions. While the currencies of the countries which have agreed to fulfill obligations set forth in Article 8 of the IMF Agreement, the Hong Kong dollar, the European Currency Unit (ECU) and the People’s Republic of

China's Yuan are the designated currencies for receipts; all foreign currencies can be designated as payment currencies.

(3) Exchange rates

Korea adopted a market-average exchange rate system in March 1990. The US dollar exchange rate is determined by using a weighted average of the buying and selling transaction volumes of foreign exchange banks from the day before as its standard average. Announced daily, this exchange rate acts as the basic rate in determining the buying and selling rates between foreign exchange banks and those for the customers of foreign exchange banks.

The daily buying and selling exchange rate of other currencies besides the US dollar is determined by applying the buying and selling won/USD exchange rate and the US dollar buying and selling rate for each currency in the global foreign currency market.

3. *Restrictions on the convertibility of currencies for the overseas transfer of funds.*

(1) Payment and receipt system

*Payments and receipts*

The Korean government has enumerated items to be restricted from payments and receipts of current transactions on a "negative list" of the Regulations on Foreign Exchange Control. The permission of the Minister of Finance and Economy or the Governor of the BOK as well as the confirmation of the presidents of foreign exchange banks are needed.

Once the required authorisation is received in the payment stage, the activity is exempt from needing separate permission during the transaction activity stage.

However, if payment does not follow the usual decision process and does not go through foreign exchange banks, it will need to receive a separate authorisation.

In the case of approved transactions with no relation to payments, up to US\$5 thousand is permitted. However, in the case of approved transactions, such as the remittance of dividends and withdrawal of investment principle, payment and receipt do not require any authorisation, except from foreign exchange banks.

*Export and import payment methods*

Foreigners and Korean nationals who wish to carry Korean won currency, foreign currencies or securities in and out of the country must, in principle, receive permission.

Korean nationals who wish to carry in or out less than the equivalent of US\$100 thousand in foreign or won currency (including commemorative coinage) for the purpose of money collecting, vending machine testing, foreign exhibition use or offering for sale to collectors must receive confirmation from foreign exchange banks. Those carrying in or out amounts exceeding the equivalent of 3 million won for other purposes must receive permission from the Governor of the BOK.

Those foreigners who enter the country carrying foreign currencies in excess of US\$10 thousand for travel expenses must register with the tax office. They are able to leave the country carrying any amount within the amount registered upon arrival. Permission is not required when carrying less than 3 million won in won currency. However, because the Korean won is not accepted overseas, it must be converted to a foreign currency at an overseas branch or subsidiary of a Korean foreign exchange bank.

In addition, permission is not required when carrying in or out shareholdings from direct foreign investment and gains on international securities.

(2) Capital and service transactions

*Capital transactions*

The foreign exchange control system was changed from the general-prohibition-and-exceptional-approval system to general-liberalisation-and-exceptional-restriction system in September 1992. The Korean government is pushing ahead with the liberalisation of capital transactions because of their immense impact on the real economy and financial transactions. Regarding capital transactions, however, regulatory control is imposed in principle, while only specific capital transactions have been selected for deregulation.

*Capital transactions subject to approval*

Capital transactions related to bank deposits and trust agreements.

Capital transaction related to the contract of suretyship for loan or debt.

Capital transactions related to the sale of the means of foreign payment, bonds, sales, or service contracts.

*Capital transactions subject to notification*

Those which the Minister of Finance and Economy authorises among the capital transactions corresponding to overseas direct investment.

Those which the Minister of Finance and Economy authorises among the bonds issued or floated by a resident of the Republic of Korea.

Other transactions or acts designated by the Minister of Finance and Economy pursuant to a Presidential Decree.

*Transactions that are subject to neither notification nor approval*

Buying or selling of the means of foreign payment by exchange houses within the scope authorised by the Minister of Finance and Economy.

Buying or selling of the means of foreign payment by post offices within the scope authorised by the Minister of Finance and Economy.

Foreign investment and loan contracts which have been approved or notified pursuant to the Foreign Capital Inducement Act.

Those which the Minister of Finance and Economy authorises among the acquisition of bonds by non-residents from residents.

Those which the Minister of finance and Economy recognises among transaction or acts by a designated foreign exchange agency.

*Service transactions*

Considering the impact service transactions have on the balance of payments and domestic industries, in principle, service transactions have been liberalised with regulatory control applying.

Service transactions, except for overseas construction and service operations, offered by Korean nationals to foreigners are not regulated. Service transactions offered by foreigners must be authorised by the president of the foreign exchange bank when the payment is made, according to the details and the amount involved.

- Revised Foreign Exchange Management Act will be implemented on June 1, 1996.

## **5. Entry and Sojourn of Personnel**

The entry and departure procedures of the Republic of Korea are similar to that of many other countries in the world. Many convenient measures are provided especially to those who work for foreign invested companies.

### *1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

#### (1) Entry and Departure

##### *Passport*

Foreigners who wish to enter Korea must hold a valid passport. Citizens of countries that have no diplomatic relations with Korea and stateless persons who reside in those countries can enter Korea with an Entry Permit for Foreigners issued by a Korean embassy or consulate in lieu of a passport.

##### *Visa*

When foreigners wish to enter Korea, they must apply, in principle, for a visa from a Korean embassy or consulate. However, the following foreigners can enter Korea without an entry visa.

- Those who enter Korea with a valid re-entry permit.
- Citizens of countries that concluded a visa exemption agreement with Korea.
- Those allowed to enter Korea without a visa for the purpose of international friendship and tourism.
- Those who have an Entry Permit of Foreigners.

##### *Visa exemption*

Citizens of countries that concluded a visa exemption agreement with Korea are allowed to enter Korea without a visa. The content of the agreement differs slightly from country to country. In general, visa exemption under the agreement applies to short-term visitors who enter Korea not for the purpose of work or profit making but for the purpose of touring and visiting for less than three months.

### **Countries with which Korea has signed visa exemption agreements**

(As of December 31, 1995)

Total	Types of Passports	Countries and exception Period	
65 Countries	Diplomatic, official (10 countries)	The Philippines (unlimited) Iran (3 months, Diplomatic: During their term of office) Ecuador (Diplomatic: Unlimited, Official: 3 months) Paraguay (90 days), Uruguay (90 days) Mongolio (30 days), Romania (90 days) Benin (90 days), Venezuela (30 days) Brazil (90 days)	
	Diplomatic, Official, Ordinary	30 days	Tunisia

	(54 countries)	(1 country)	
		60 days (3 countries)	Lesotho, Italy, Portugal
		3 months (50 countries)	Greece, Austria, Thailand, Switzerland, Liechtenstein, Peru, Malta, Costa Rica, Colombia, Singapore, Dominican Republic, Liberia, Pakistan, Bangladesh, Ireland, France, Grenada, St Vincent and the Grenadines, Haiti, St Lucia, St Kitts-Nevis, Hungary, Commonwealth of Dominica, Morocco, Jamaica, Sweden, Denmark, Norway, UK, The Netherlands, Belgium, Iceland, Luxembourg, Germany, Spain, Finland, Surinam, New Zealand, Malaysia, Bahamas, Barbados, Trinidad Tobago, Antigua Barbuda, Turkey, Israel, Bulgaria, Slovak, Czech, Poland, Nicaragua.
	Ordinary (1 country)	3 months (1 country)	Mexico

*Entry without a Visa*

All foreigners are allowed to enter Korea without a visa for less than 15 days for the purpose of tour or transit. However, such a policy does not apply to citizens of countries with which Korea has no diplomatic relations, stateless persons or citizens of countries specially designated by the Korean Minister of Justice. Canadian citizens are allowed to enter Korea for 6 months without a visa on the basis of reciprocity.

*Visa status*

Foreigners are allowed to carry out certain activities in Korea according to their visa status. It is shown on the visa stamp. During their stay in Korea, foreigners should conduct activities in compliance with their visa status, and the duration of their stay is decided accordingly.

*Certificate for Confirmation of Visa Issuance*

In order to simplify the visa issuance procedure and shorten the time for the visa issuance, Korea adopted a system to issue a Certificate for confirmation of Visa Issuance at the request of an invitor in Korea, before the foreign invitee applies for a visa at an embassy or consulate outside of Korea.

To receive the Certificate for confirmation of Visa Issuance, the invitor must apply for it at the immigration office in his area.

Submitting the visa application form attached to the Certificate for confirmation of Visa Issuance to a Korean embassy or consulate, foreigners can immediately receive a visa. Currently, the system applies to almost all LONG TERM STAY VISAS (duration of stay exceeds 91 days) and citizens of countries specially designated by the Korean Minister of Justice. It is expected to enlarge the scope of beneficiaries of the system.

*2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Professionals who work in the field of management of foreign invested companies and their families are given special consideration in visa issuance and period of sojourn.

In most cases, a long-term stay visa (duration of stay exceeds 91 days) is issued with the approval of the Minister of Justice. But the head of diplomatic or consular offices can issue a visa for the stay of less than one year to those in the management of foreign invested companies and their families.

Foreigners who wish to receive a visa to work at a foreign invested company should attach the following documents to a visa application form and submit them to a Korean embassy or consulate.

Dispatch order or a document that certifies he or she is working for the company (eg, Resume).

A copy of the foreign investment approval or registration (certificate) of the invested company.

An attested copy of a register or a copy of the business registration (certificate)  
(eg, References (Notarised))

When employees of a foreign invested company wish to stay longer than the original duration of their stay, they should submit an application form for a visa extension with references and work certificate to the Comprehensive Assistance Center for Foreign Investment at the Ministry of Finance and Economy.

3. *Description of regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

In regard to minimum wage, no difference exists with Korean companies. The Ministry of Labor fixes the minimum wage every year and is indiscriminatorily applied to all nationals and foreign companies. Nor is there any kind of regulation of minimum requirements for training or employment of local staff.

**Current minimum wage (Sep. '95-Aug. '96)**

**(\$1-760 Won)**

per hour: 1,275 Won (\$1.70)

per day: 10,200 Won (\$13.40)

4. *Summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

(1) Labor relations

In the three years following 1987, the Korean economy experienced extreme cases of labor disputes. In the short amount of time since this period, it seems as though a mature relationship has been formed for both Korean workers and employers from this worthwhile experience. Korean labor and management have come to the realisation that they need to make the utmost effort to put into practice concessions and compromises achieved through open dialogue for joint development. Korean labor-management relations have continued to present a stable appearance since 1990.

With the passing of one year since the inauguration of the civilian government, the "trouble free first year" in 1994 is gradually spreading through the labor and management of individual businesses.

**Trend of labor dispute occurrences**

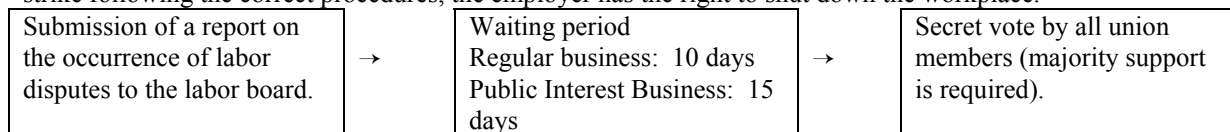
Year	1988	1989	1990	1991	1992	1993	1994	1995
Times	1,973	1,616	322	234	235	143	121	88

Source: Ministry of Labor

(2) Labor unions and procedures for resolving labor disputes

Although labor unions experienced a sharp increase in numbers from 1987 through the end of 1990, they have shown a continued declining trend since 1991. As of December 1994, 1.66 million workers were registered as members in 7,025 labor unions. The Labor Union Act provides for 1) the free establishment and democratic management of labor unions 2) the autonomous collective bargaining and signing of collective agreements, 3) the legal validity of the effective and period of agreements, and 4) the relief and restriction of unfair labor practices by employers.

In order for labor unions to have their disputes recognised as being legitimate, they need to not only justify their goals and means of action, but also follow the proper legal procedures shown below. If a labor union goes on strike following the correct procedures, the employer has the right to shut down the workplace.



The Labor Relations Commission is a public institution that handles labor disputes and judges in cases of wrongful dismissal and unfair labor practices. It has local Labor Relations Commission in 13 regions, which supervise labor affairs on the provincial and municipal level. the Central Labor Relations Commission presides over and mediates important labor disputes and those involving more than two cities or provinces.

When labor disputes occur, labor or management must submit a report on the dispute in question. The dispute is resolved through the mediation and judgment of a neutral party.

When the Labor Relations commission deems that certain disputes arising in a public interest related business can have a significant negative impact on the lives of the general public or be detrimental to the nation's economy, it has the authority to intervene in order to facilitate a resolution. If the Labor Relations Commission decides to intervene, labor unions are expected to discontinue their activities. Any objections to decisions made by the Labor Relations Commission should be brought up in court through an administrative litigation case against the board.

(3) Information on labor-management relations in foreign invested companies

The Ministry of Labor provides administrative support in order to help foreign invested companies easily adjust to the unfamiliar local environment of labor management relations. The Labor Policy Bureau of the Ministry of Labor has set up a consultation center for taking care of difficulties faced by international joint ventures and foreign companies, who may be faced with insurmountable labor-management relations' problems. Locally, the Labor Supervisory Department in Regional Labor Offices operates Labor Supervisory Boards which conduct various consultations and offer administrative guidance exclusively to foreign companies.

The adjustment of foreign invested companies is further facilitated through the distribution of public relations materials which discuss Korean labor-management relations trends and information. The Ministry of Labor publishes and distributes the "Labor law of Korea", "Labor administration" booklets, "Industrial Relations in Korea" which explain the history of labour union and system of labor, management relations in Korea. The Korean Labor Research Institute distributes "Labor in Korea", an English publication which provides general overview information on labor-management relations.

Moreover, the Ministry of Labor is actively providing support in solving problems between labor and management in foreign companies by helping to bridge cultural gaps. In order to ease possible tensions that may arise in foreign companies, the Ministry of Labor is giving foreign employers a helping hand in understanding Korean culture. At the same time, they also provide programs which are designed to help Korean labourers understand foreign companies in the development of the Korean economy.

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double tax agreements.

– National Tax

Direct tax: Income tax, corporate tax, excessive land profit tax, inheritance tax, gift tax, assets revaluation tax and excess profit tax.

Indirect tax: Value-added tax, special excise tax, liquor tax, telephone tax, stamp and securities transaction tax.

Others: Customs duties, education tax, transportation tax and special tax for rural development.

– Local Tax

Provincial tax: Acquisition tax, registration tax, race tax, license tax, city planning tax, community facility tax and regional development tax.

City and county tax: Inhabitant tax, property tax, automobile tax, farmland tax, butchery tax, tobacco consumption tax, aggregate land tax, city planning tax and workshop tax.

(1) Corporate tax

### Corporate tax rate for general corporations (including non-profit ones)

Tax base	Corporate	Inhabitant	Total
100 million and under	16%	10%	17.6%
Exceeding 100 million	28%	10%	30.8%

Note: 1. Inhabitant tax: The amount of the calculated corporate tax becomes the tax base for which the inhabitant tax rate is applied to.

2. Non-listed corporations are imposed an additional tax on 15% of their excess accumulated earnings.

3. Two per cent of earnings exceeding 500 million won is levied as a special tax for rural development.

Domestic corporations which have their head office or main office in Korea shall state and pay corporate tax on their worldwide income (domestic and foreign withholding income tax). Foreign corporations which have their head office or main office overseas shall state and pay corporate tax that has accrued in Korea (domestic source income).

All corporations shall not have to pay the corporate tax on income that has accrued from transferring land or any assets, but must pay the special additional tax on capital gains tax accrued from transferring land or other assets.

When the fiscal year ends, corporations shall settle all accounts within 60 days and submit a written statement on the settlement at a recognised tax office and pay the tax at a nearby bank or post office within 30 days of the settlement date.

Corporations whose business period exceeds 6 months shall set 6 months from the date of business commencement as their interim tax prepayment period to settle their interim prepayment tax, and state and pay taxes within 2 months of the expiration date of the interim prepayment period.

In cases where the amount of corporate tax exceeds 10 million won, instalment payments are possible within 30 days of the payment expiration date (within 45 days for small and medium-sized companies) as mentioned below.

- Tax under 20 million won: amount exceeding 10 million
- Tax exceeding 20 million won: amount under 50%

(2) *Income Tax*

Residents and non-residents have different standards of paying income tax. Residents shall state and pay income tax on their worldwide income (domestic and foreign withholding income tax) and non-residents, on their income from domestic sources.

The Korean tax system, in principle, is a global tax system which includes interest income, dividend profit, real estate income, business income, labor income and others and applies a progressive tax rate. However, to ease the burden for companies when income tax, which is raised on a long term basis, has to be paid within one year, retirement income and timber income are not treated as global income but are subject to separate categorisation. Capital gains are classified as non-labor income, and thus a heavy tax is imposed on them. The tax rate is applied according to the type of transferred asset, retention period, margin, registration and other considerations.

The taxation period is calculated according to the calendar year (Jan.1-Dec.31), and income tax shall be stated and paid by May 31 of the following year in which income is accrued.

**\*Income tax rate**

Tax Base	Tax Rate (%)
Under 10 million won	10
10 million - 40 million won	20
40 million - 80 million won	30
80 million won -	40

**Tax reduction or exemption**

Classification	Exempted Amount
Basic exemption or reduction	1,000,000 won
Spouse exemption or reduction	1,000,000 won
Exemption for dependents (per person)	1,000,000 won
Exemption for handicapped (per person)	500,000 won
Exemption for female householder	500,000 won
Exemption for Senior citizen	500,000 won
Exemption for labor income	500,000 won
	Under 4 million won : 100%
	Over 4 million won : 30%
	(within 8 million won)

Income tax, in principle, is imposed on each family member. Nevertheless, tax imposition on asset income (interest, dividend and real income) shall be imposed on each household as a whole.

**Scope of tax imposition and taxpayers**

Domestic Transaction	Import
- supply of goods and services (Goods) All tangible and intangible assets that have property value (services) Provisions of services and use of property, facilities and rights	- Import of goods head of customs office imposes tax

**Tax base**

- Ordinary Businessmen : For goods and services they supply (excluding value-added tax)
- Businessmen eligible for special taxation : Food goods and services they supply.

**Calculation of tax amount**

$$\text{Tax} \times \text{Tax rate} = \text{Tax Amount}$$

Classification	Tax Base	Tax Rate
Ordinary taxpayers	Sales (excluding value-added tax)	10%

Taxpayers eligible for special taxation	Sales	* 2% (annual sales of less than 48 million won) * 3.5% (Those who carry on a business in which transactions are made through a proxy, agent, intermediary, consignee or contractor and whose annual sales are less than 12 million won)
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#### **Tax reduction or exemption on VAT**

\* Significance : Tax amount on the purchasing price borne at the previous stage is absorbed in the next cost and transferred to the counterpart. Only the tax amount on one's own value-added production is exempted.

- Scope of eligibility
  - Goods or services catering to the basic necessities of poor people.
  - Goods or services related to national health, education or welfare.
  - Goods or services related to culture.
  - Goods or services related to the elements of production.

#### **(4) Agreements on the prevention of double taxation**

##### **Countries signed agreements on the prevention of double taxation with Korea**

Countries that have enforced agreement with Korea (45)

Japan (70.10.29)	Thailand (77.10.12)	Germany (78.5.4)	UK (78.5.13)
Denmark (79.1.7)	Belgium (79.9.19)	USA (79.10.20)	Canada (80.12.19)
France (81.2.1)	Singapore (81.2.11)	Netherlands (81.4.17)	Swiss (81.4.22)
Finland (81.12.23)	Sweden (82.9.9)	Malaysia (83.1.2)	New Zealand (83.4.22)
Australia (84.1.1)	Norway (84.3.1)	Bangladesh (84.8.22)	Turkey (84.3.27)
Sri Lanka (86.6.20)	India (86.3.31)	Philippines (86.11.9)	Luxembourg (86.12.26)
Pakistan (87.10.20)	Austria (87.12.1)	Indonesia (89.5.3)	Tunisia (89.11.25)
Hungary (90.4.1)	Brazil (91.11.21)	Eire (91.12.27)	Poland (92.2.21)
Italy (92.7.14)	Mongolia (93.6.6)	Egypt (94.2.6)	Vietnam (94.9.9)
Peoples Republic of China (94.9.28)		Rumania (94.10.6)	Spain (94.1.21)
Mexico (95.2.11)	Fiji (95.2.17)	Czech (95.3.3)	Bulgaria (95.6.22)
Russia (95.8.24)	Republic of South Africa (96.1.7)		

Countries that have signed the agreements with Korea (3)

Slovak (92.4.27)	Greece (95.3.20)	Portugal (96.1.26)
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Countries that have initialled the agreement with Korea (5)

Morocco (78.3.16)	Nigeria (88.10.13)	Malta (93.7.16)
Kuwait (94.3.11)	Papua New Guinea (96.1.10)	

Total : 53 countries

#### **7. Performance Requirements**

1. Description of any performance requirements that could impose limits on trade and investment and indicate any TRIMS.

Since the abolition of the performance requirement on foreign investment in 1989, there has not been any performance requirement such as export obligation or local contents that are inconsistent with the WTO TRIMS Agreement.



## 8. Capital Exports

2. *List regulation/institutional measures that limit capital exports or the out flows of foreign investment.*

The “Korea’s ODI Liberalisation Plan” announced in October of 1995, brought about drastic simplification of government clearance procedures, as well as deregulation of businesses.

Out of 1,148 categories of businesses, all businesses are allowed for outward direct investment except for three businesses including the rental of real estate, sale in parcels of real estate and the construction and operation of gold courses.

- Amount not exceeding 10 million US dollars: Validation by a foreign exchange bank (more than 98% of total cases)
- Amount in the range between 10 million and 50 million US dollars : Notification Acceptance from the Bank of Korea
- Amount exceeding 50 million US dollars : Permission from the Bank of Korea

3. *Brief description of any regulations/institutional measures that limit technology exports*

There is no regulations, guidelines or measures of any sort that restrict or limit technology exports.

## 9. Investor Behaviour

1. *An indication of any law, regulation or administrative guideline/policy, of which the observance by foreign investor is of particular concern to the member economy.*

None.

## 10. Other Measures

1. *Brief outline of the competition policy regime.*

(1) The Fair Trade Commission

(i) Overview

The Korea Fair Trade Commission (KFTC) was organised in 1981 pursuant to the Fair Trade Act.

The Fair Trade Commission is responsible for enforcing the Fair Trade Act, the Fair Subcontract transactions Act and the Standardised Contract Act, all of which aim to encourage fair and free competition. The ultimate goal of the Acts is to stimulate creative business activities, protect consumers, and promote a balanced development of the national economy.

The KFTC is composed of seven commissioners including a chairman, a vice chairman, three standing commissioners and two non-standing commissioners.

The chairman and vice-chairman of the KFTC are appointed by the president; other commissioners are also appointed by the president but based on the recommendation of the chairman of the KFTC.

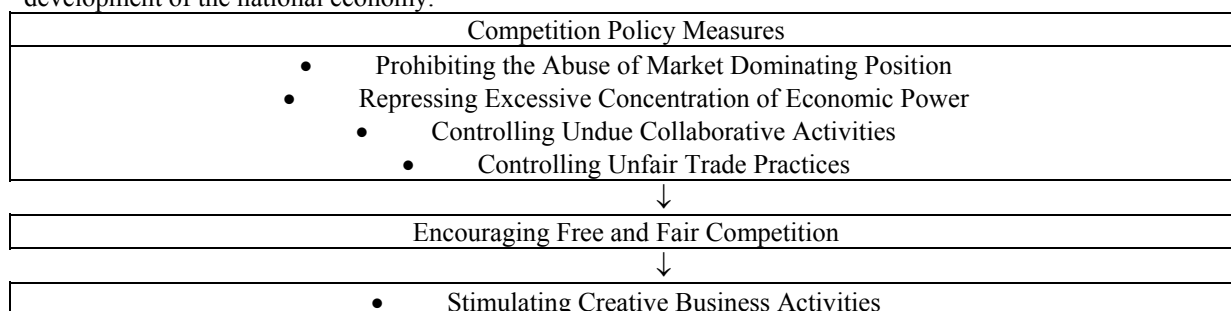
(ii) Functions

The following matters are under the jurisdiction of the Commission :

- Matters concerning control over abusive activities of the market-dominating position;
- Matters concerning the restriction of anti-competitive mergers and the repression of excessive concentration of economic power;
- Matters concerning control over unfair trade practices by companies and trade associations;
- Matters concerning international cooperation and the restriction of unfair international contracts;
- Review of Standardised Contracts;
- Review of proposed laws and regulations which may adversely affect fair competition prior to their enactments.

(2) The legal framework of the Competition Law

The competition policy aims to encourage free and fair competition by prohibiting abuses of market dominating positions, excessive concentration of economic power, undue collaborative activities and unfair trade practices. Ultimately, the policy stimulates creative business activities, protects consumers and promotes a balanced development of the national economy.



- |   |
|---|
| <ul style="list-style-type: none"> <li>• Protecting Consumers</li> <li>• Promoting Balanced Economic Development</li> </ul> |
|---|

(i) The Fair Trade Act

The main features of the original Act were to prohibit the abuse of market-dominating position, the creation and strengthening of monopolistic market structures through merger and acquisition, the unfair trade practices such as resale price maintenance, the anti-competitive cartels, and the anti-competitive practices by trade associations. The original Act also stipulated that the central administrative agencies are obliged to hold consultations with the KFTC prior to making or amending anti-competitive rules and regulations under their authorities.

(ii) The Fair Subcontract Transactions Act

The Act was promulgated on December 31, 1984 in order to improve and strengthen the previous Notification of Unfair Subcontracts. The ultimate goal of this Act was to regulate unfair trade practices of prime contractors. The Act was intended to secure an equal footing for both the prime contractors and subcontractors by strengthening the leverage of the subcontractors, but not to protect subcontractors unilaterally and excessively. The Act applied to the manufacturing and construction industries.

(iii) The Standardised Contract Act

The KFTC also has jurisdiction over the endorsement of the Standardised Contract Act. In February 1993, the jurisdiction over the Act was transferred from Bureau of Price Policy under the EPB to the KFTC. The Act was further amended in December 1993 to empower the KFTC to issue corrective orders. The Standardised Contract Act is designed to protect the general public from unfair contracts which may be attributed to sheer ignorance, indifference, information asymmetry, or disproportionate bargaining power resulting from abuse of superior positions.

The Standardised Contract Act covers such unfair contracts as those containing stipulations unilaterally determined to the advantage of the party in the dominant position. For example, tenants renting apartments are required to sign a contract whose detailed terms are predetermined by the landowner.

The Act declares that unfair stipulations which violate the principle of good faith and sincerity are null and void. The following stipulations are deemed unfair; (a) those which put the customer at a disadvantage; (b) those which place a limit on the compensation for damages that the companies are to make to the customers, or transfer the burden that the companies are to bear onto the customers without due reason; and (c) those which restrict customers' rights to break off the contract.

*2. A brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

(1) Strengthened regulations against violations

In February 1993, the Korean government established the headquarters for the Joint Investigation of Intellectual Property Rights Violations. The headquarters organises a consultation committee with related organisations, and holds quarterly meetings. Local joint investigation teams were also organised to enforce the regulations. The Korean government conducted intensive crackdowns on the illegal copy of software, videos and phonographic records. A reserve fund was set aside specifically for these activities. Measures were taken to pass a severe sentence, within the provisions of the current laws, on the violations. The enforcement of the regulations were even more effectual as an additional investigation on tax evasion by the violators and the collection of the tax were carried out concurrently.

The Korean government has clearly shown its strong determination to eradicate violations of intellectual property rights. It will continue to enforce regulations until all violators are rooted out. As for the protection of software against large conglomerates, a new measure to strengthen regulations is expected to be mapped out as the government and the lawyers for the right holders cooperate with each other.

(2) Improvement of systems

Since 1993, the protection of intellectual property rights has been upgraded to an international level. This is due in part to the legislation, revision and enforcement of laws related to intellectual property rights. The major laws are related to copyrights, computer software protection, customs, design, semiconductor chip protection, and unfair competition prevention. The details of the laws mentioned above are as follows.

Under the copyright law, the maximum fine was increased to 30 million won, ten times the previous level of 3 million won. Together with the fine, an imprisonment of less than three years can be sentenced. The scope of violators has been enlarged to include those who possess reproduced items to distribute, knowing they are illegally copied. The standard of protection complies with the international level : under the law, the copyright of a database is explicitly protected, an exclusive lending right was introduced, and compensation must be paid when articles are printed in textbooks. The protection period of right to those who perform the content of the

work was lengthened from 20 years to 50 years. Under an agreement with the United States, reproduction and sales of phonographic records originally produced before 1987, which had been allowed under the previous copyright law, were banned beginning September 1993 after setting a five-month period to allow for their disposition.

The computer program protection law fines its violators a maximum of 30 million won. This is ten times higher than the old fine. Imprisonment for less than three years can also be sentenced along with the fine. The scope of protection was enlarged so that those who use computer programs knowing they are illegal reproductions are considered violators of the law. An exclusive lending right has also been introduced.

The customs laws was revised, enabling customs officers to regulate the export and import of products that violate copyright and trademark rights. Even before the revised law took effect in January 1994, the Office of Customs Administration set up a system of inspecting the entry of footwear and compact discs and reporting illegal products to prosecutors in April 1993. With this measure, the number of violation cases in the area of footwear and compact discs has dramatically decreased.

The industrial design law was revised in December 1993. Under the revision, the design right holding period was lengthened from eight years to ten years. In addition, a law providing legal protection related to the arrangement and layout-design of semiconductor integrated circuits was enacted in December 1992 and entered into effect in September 1993.

### (3) Recent Changes

In 1995, the Korean Government amended the Intellectual Property related Laws as follows:

- Patent Law: Expanding the subjects of Patent Law, introduction of early application system, extension of the term of protection;
- Utility Model Law: Introduction of application system;
- Industrial Design Law: Introduction of application system;
- Trademark Law: Introduction of colour trademark; and
- Copyright Law: Protection for foreigners' works phonogram acquired before October 1, 1987.

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

*1. List of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Briefly summarise the application and function of these laws/regulations.*

Compensation for expropriation: The purpose of expropriation, range of public purpose, and procedures and compensation for expropriation are stipulated concretely in the Land Expropriation Act (for a general expropriation) and the Special Act for Acquisition and Compensation for Losses and from Land for Public Use.

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment*

Not applicable.

### 2. Settlement of Disputes

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and provide addresses and telephone/fax numbers of these agencies.*

According to bilateral investment agreements contracted between Korea and other country, most foreign investors can submit the disputes to the CSID.

*2. Signatory or accession to the ICSID convention*

Korea has signed the agreement to join the ICSID convention.

## **D. INVESTMENT PROMOTION AND INCENTIVES**

1. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg tax incentives, grants) provided to foreign investors. Provide a summary of these programs including the nature of incentives offered and provide contact point(s) for accessing these schemes, including address and telephone/fax numbers.*
2. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and provide contact point(s) for these schemes, including address and telephone/fax number.*
3. *Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

Korea's investment incentives mainly depend on national level tax incentives.

### **(1) Tax Incentives**

*(i) Tax support system for foreign invested companies*

#### **Types and methods of tax support**

The Foreign Capital Inducement Act has stipulated a wide range of tax support systems that can facilitate the transfer of advanced technology and the introduction of foreign capital. The following are the benefits that foreign companies receive:

Support for foreign invested companies

- Exemption or reduction of income tax and corporate tax
- Exemption or reduction of acquisition tax, property tax and aggregate land tax
- Exemption or reduction of custom duty, special surtax and value added tax when introducing capital goods

Support for foreign investors

- Exemption or reduction of income tax and corporate tax on dividend profits

Support for people transferring advanced technology

- Exemption or reduction of income tax and corporate tax for providing technology.

Support for lender of public loans

- Exemption or reduction of tax and public charges on loan interest

Support for foreign technical service providers related to public loans

- Exemption or reduction of income tax and corporate tax for providing services (technology)

#### **Scope of business eligibility**

- Businesses accompanied by highly advanced technology
- Businesses which are located in the Free Export Zones in accordance with the Free Export Zone Establishment Law

#### **Method of exemption or reduction**

According to the Foreign Capital Inducement Act, corporate tax is exempted only for income incurred by approved businesses. Exemption for income incurred by liquidation, land, special surtax on transfer on transfer, additional tax and non-approved income is excluded from the benefit.

#### **Application for tax exemption or reduction**

Foreign invested companies applying for tax exemption must submit an application to the Minister of Finance and Economy. Companies who fail to apply for tax exemption will not receive the benefit. The application shall be submitted before the end of the tax year for income tax and corporate tax in which the date of business commencement is included.

#### **Decision of tax exemption or reduction**

The Minister of Finance and Economy shall decide whether to grant tax exemption or reduction within 60 days of the application via consultation with the relevant Minister, Minister of Home Affairs and Minister of Trade, Industry and Energy.

*(ii) Content of tax assistance*

Exemption of income tax for foreign invested companies shall be granted in proportion to the foreign investment ratio within the company's stock or shares. In this case the corporate tax on the income from the company shall be 100% exempted for five years beginning from the year in which the company starts to make a profit.

- (a) Tax system for companies has been revised.
  - In step with the current international economic trend of liberalisation and globalisation, the corporate tax rate has been reduced from 32% to 30% and the depreciation and tax accounting systems have been improved.
- (b) Promote reinvestment of profit by revamping the excess accumulated earnings tax system.

- In the case of larger-sized unlisted companies (including domestic companies having net worth of over 10 billion won), a 15% tax rate is levied on the excess accumulated earnings (if the excess accumulated earnings are used for reinvestment, taxes does not have to be paid)
- (c) Tax exemption of reduction of privileges including those for corporate and income taxes has been expanded for businesses using strategic high technologies. Also, providing the same tax benefits to companies within the Seoul metropolitan area has been granted.
- (d) Improvements in administrative services.
  - A division will be set up within the National Tax Tribunal for tax-related cases of Foreign Invested Enterprises (FIEs).
  - Transparency of tax administration will be enhanced by avoiding taxation based on estimation.
  - For potentially contentious areas such as determinations about permanent establishment, clear taxation principles in line with the international norms will be prepared.
  - Taxation information materials will be available to FIEs in English.
  - An FIE assistance desk will be set up within the National Tax Administration, the Regional District Offices, and other tax offices.

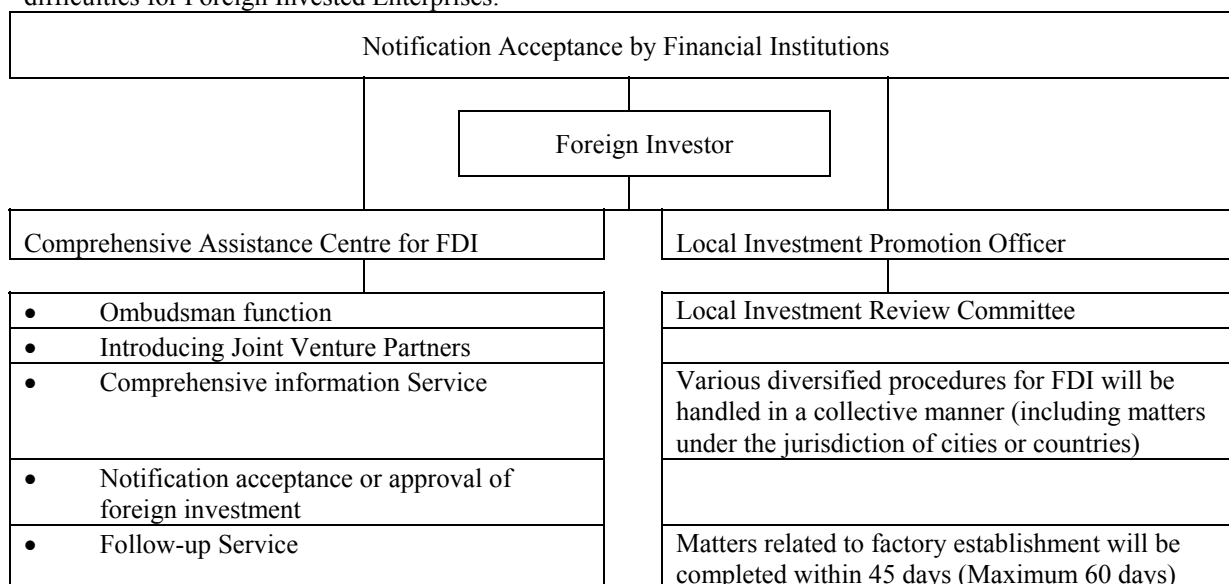
**(2) Industrial Parks Exclusively for Foreign Invested Enterprises**

Two Foreign Invested Enterprise Industrial Parks have been established in Kwangju and Chunan, each covering an area of 660 thousand m<sup>2</sup>. This plan has been implemented to release the burden placed on manufacturing industries due to the high cost for factory site.

	Kwangju	Chunan
Size	660,000 <sup>2</sup>	493,000m <sup>2</sup>
Sale	330,000 <sup>2</sup>	188,000m <sup>2</sup>
Rent (10 year)	330,000 <sup>2</sup>	305,000m <sup>2</sup>
Availability	95.6.16	Latter half of 1996
Price		
Sale	86,515 Won/m <sup>2</sup>	155,000 Won/m <sup>2</sup>
Rent	40 Won/m <sup>2</sup>	1452 Won/m <sup>2</sup>

**One-Stop Service**

By establishing “One-Stop Service System”, foreign investors can complete all procedures related to foreign direct investment in one place and will be gladly provided of investment related information and resolution of difficulties for Foreign Invested Enterprises.



The “Comprehensive Assistance Centre for Foreign Investment” provides one stop service for foreign direct investment. Investment Promotion Offices have been also established in major cities and provinces to provide one-stop services.

Address	3rd Floor, Industrial Bank of Korea, 50 Ulchiro 2-Ka Chung-Ku, Seoul, Republic of Korea
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Telephone	82-2-319-7314-6
Fax	82-2-319-7318

### E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY

Korea has signed bilateral “agreement on investment promotion and protection” with 47 countries. But Korea has not yet signed any “friendship commerce and navigation treaties”, nor any multilateral investment agreements as a party.

Countries signed investment protection agreements with Korea

Countries that have enforced the agreement with Korea (33)	
Germany (15 January 1967)	Russia (10 July 1990)
Tunisia (28 May 1975)	Austria (1 November 1991)
Switzerland (7 April 1971)	Italy (26 June 1992)
Netherlands (1 June 1975)	Uzbekistan (20 November 1992)
Belgium & Luxembourg (3 September 1976)	China (4 December 1992)
France (4 November 1976)	Paraguay (6 August 1993)
UK (4 March 1976)	Vietnam (4 September 1993)
Sri Lanka (15 July 1980)	Lithuania (9 November 1993)
Senegal (2 September 1985)	Indonesia (10 March 1994)
Denmark (2 June 1988)	Peru (20 April 1994)
Bangladesh (6 October 1988)	Spain (19 July 1994)
Hungary (1 January 1989)	Turkey (4 June 1994)
Malaysia (31 March 1989)	Romania (30 December 1994)
Thailand (29 September 1989)	Cze Republic (16 March 1995)
Poland (2 February 1990)	Tajikistan (13 August 1995)
Pakistan (15 April 1990)	Greece (4 November)
Mongolia (30 April 1991)	
Countries that have signed the agreements with Korea (10)	
Zaire (19 July 1990)	Portugal (3 May 1995)
Finland (21 October 1993)	The Rep of South Africa (7 July 1995)
Philippines (7 April 1994)	Sweden (30 August 1995)
Argentina (17 May 1994)	Egypt (18 March 1996)
India (26 February 1996)	Brazil (1 September 1995)
Countries that have initialled the agreement with Korea (6)	
Congo (12 October 1993)	Ukraine (29 November 1995)
Nigeria (26 April 1995)	Laos (15 March 1996)
Total: 49 Countries	

### F. ASSESSMENT OF RECENT TREND IN FOREIGN INVESTMENT

#### 1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward)

In the early 1990s, increasing labor disputes and rapid wage hikes slowed down the foreign direct investment inflow. However, due to the Korean government’s efforts toward liberalisation and improvement of foreign direct investment regime and climate, the recent trend of foreign direct investment inflow shows a steady increase as from 1994. In fact, the year of 1995 recorded the highest amount of foreign direct investment ever. Outward direct investment shows similar trend with foreign direct investment, but the amount and rate of increase are higher than that of foreign direct investment.

(Mil US\$)

	1991	1992	1993	1994	1995
FDI (increase, %)	1,396 (74.1)	894 (>35.9)	1,044 (16.8)	1,316 (26.1)	1,941 (47.4)
ODI (increase, %)	1,511 (>6.2)	1,210 (>19.9)	1,876 (55.0)	3,587 (91.2)	4,913 (37.0)

2. List of major countries/economies that are sources/receivers of FDI over recent years.

In terms of the foreign investment amount, investment by USA, Japan and EU, and in particular, the Netherlands recorded the highest level of foreign investment, similarly, China, USA, and Indonesia, attained the highest level of outward direct investment.

Major Countries in Foreign Direct Investment

(mil. US\$)

	1991	1992	1993	1994	1995	Total
USA (portion, %)	296 (21.2)	379 (42.4)	341 (32.7)	311 (23.6)	645 (33.2)	4,215 (29.1)
Japan	226 (16.2)	155 (17.3)	286 (27.4)	428 (32.5)	418 (21.5)	5,311 (36.7)
EU	824 (59.0)	282 (31.5)	307 (29.4)	406 (30.8)	475 (24.5)	3,526 (24.4)
Netherlands	599 (42.9)	44 (4.9)	131 (12.5)	67 (5.1)	170 (8.7)	1,215 (8.4)

Major Countries in Outward Direct Investment

(mil. US\$)

	1991	1992	1993	1994	1995	Total
USA (portion, %)	400 (26.5)	244 (20.2)	416 (22.2)	723 (20.1)	1,415 (28.8)	4,548 (25.7)
China	85 (5.6)	222 (18.4)	622 (33.2)	820 (22.8)	1,231 (25.0)	3,048
Indonesia	198 (13.1)	67 (5.3)	63 (3.6)	66 (1.8)	362 (7.4)	1,570 (8.8)
EU	90 (5.9)	144 (11.9)	194 (10.3)	388 (10.8)	397 (8.1)	1,492 (8.4)

# MALAYSIA

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# MALAYSIA

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. *Summary of foreign investment policy including any recent policy changes.*
2. *Summary of significant public statement which most accurately describes and defines philosophies, policies and attitudes towards foreign (inward and outward) investment.*

Malaysia has always maintained a liberal foreign investment regime, in view of the fact that it recognises the contribution of foreign direct investment (FDI) to industrial economic performance and international competitiveness. FDI is sought not only as a source of capital funds and foreign exchange, but more importantly, as a means of securing the much needed industrial technology, managerial expertise, and marketing know how and network to achieve higher levels of growth, employment, productivity and export performance. Malaysia has promoted both FDI and domestic investment (DI) in the manufacturing sector as a source of economic growth. Over the years, various policies and measures were introduced to promote investment in the sector. Among these are liberal policies which allow 100% foreign equity ownership in export-oriented projects. The liberal policies, practical strategies and dynamic promotional efforts on FDI were successful in attracting a large number of export-oriented projects into the manufacturing sector. These export-oriented projects, together with the large number of capital-intensive projects received in recent years, account for the high levels of FDI in the sector.

FDI has contributed significantly to the economic development of the country not only in terms of GDP growth, but also in terms of structural changes that have transformed Malaysia from basically a primary producer to an industrialised economy.

In the early 1960s, foreign investors were largely involved in developing import-substitution industries such as food, beverages and tobacco, printing and publishing, building materials, chemicals and plastics. In the late sixties, as the limited domestic market placed constraints on continued rapid industrial development, and with the increasing number of school leavers entering the labour market, the country was faced with a growing unemployment problem.

To overcome these problems, the development of export-oriented and labour-intensive industries were encouraged. The 1970s saw an influx of foreign investments primarily in the electrical, electronics and textile industries, utilising Malaysia's abundant labour, free zone and other facilities. This launched Malaysia into an era of export-orientation. In the late 1980s, following the further liberalisation of foreign investment policies, provision of attractive incentives/facilities, intensification of promotional efforts and favourable external factors, (of which the increasing production costs in Japan and the Asian newly industrialised economies (NIEs) was a major push factor), FDI flows into the manufacturing sector increased significantly.

In the 1990s, the investment and industrial policies will be geared towards encouraging capital and technology intensive industries. Towards this end, projects which embody high technology, high value-added and skill intensity which create industrial linkages and which have greater export ability, will be promoted. Focus will also be given to the development of specific industry clusters.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory (legislative) requirements*

1. *List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

Citation	Summary
Industrial Co-ordination Act, 1975	Provides for the coordination and orderly development of manufacturing activities.
Promotion of Investments Act, 1986	Provides for the incentives system for manufacturing, agriculture, tourism and hotel projects.
Companies Act, 1965	Provides guidelines and registration procedures for all companies conducting businesses in Malaysia.
Income Tax Act, 1967	Contains tax law and incentives for some sectors.

Free Zones Act, 1990	To enable operations in the zones to enjoy minimum customs, control and formalities in their import of raw materials, parts, machinery and equipment as well as in the export of their finished goods.
Exchange Control Act, 1953	To provide for the recording monitoring and supervision of payments to non-residents, and also to protect the country's foreign exchange position should the need arise.

Note: (1) There is no legislation specific to foreign investors.

(2) An investment guidebook entitled "Malaysia-Investment In the Manufacturing Sector: Policies, Incentives and Facilities" can be obtained from the Malaysian Industrial Development Authority (MIDA) (for contact details see section B(1)(ii)(4) below).

*(ii) Investment Review and Approval*

1. Details of proposals and sectors that are/are not subject to screening.

2. Details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of special conditions that apply to individual sectors.

**Guidelines on Foreign Investments**

**Manufacturing**

The Malaysian Government welcomes foreign investment, especially in the manufacturing sector.

The guidelines on foreign equity participation in greenfield investment in the manufacturing sector are as follows:

- for projects exporting 80% or more of total production, foreign equity ownership of up to 100% will be allowed. No equity condition will be imposed;
- for projects exporting between 51% to 79% of production, foreign equity ownership of up to 79% will be allowed depending on factors such as the level of export, level of technology, spin-off effects, size of investment, location, value-added and the utilisation of local raw materials and components;
- for projects exporting between 20% to 50% of production, foreign equity ownership of between 30% to 51% will be allowed depending upon similar factors as mentioned;
- for projects exporting less than 20% of production, foreign equity ownership will be allowed up to a maximum of 30%;
- for high-technology projects or projects manufacturing priority products for the domestic market, foreign equity ownership of up to 100% may be allowed; and
- for projects which involve the extraction or mining and processing of mineral ores, foreign equity ownership of up to 100% will be allowed depending on factors such as the level of investments, technology and risk, availability of Malaysian expertise, degree of integration and level of value-added involved in the projects.

The above guidelines do not apply to industrial sectors which are subject to specific joint-venture equity policies, where foreign equity ownership is allowed to maximum levels of 30-60%. These are industries which mainly produce supporting parts/components. They include industries which produce plastic packaging materials; plastic compound/masterbatch; plastic injection moulded components and parts for the electrical, electronics and telecommunications industry, paper packaging products, metal fabrication and foundry products. The objective of the policy is to enhance Malaysian participation in these sectors.

**Acquisitions, Mergers and Take-Overs**

The acquisition of assets, mergers or take-overs by foreign or Malaysian interests are governed by the Foreign Investment Committee (FIC) Guidelines.

- (a) Against the existing pattern of ownership, the proposed acquisition of assets or any interests, mergers or take-overs should result directly or indirectly in a more balanced Malaysian participation in ownership and control.
- (b) The proposed acquisition of assets or any interests, mergers or take-overs should lead directly or indirectly to net economic benefits in relation to such matters as the extent of Malaysian participation, particularly bumiputera participation, ownership and management, income distribution, growth, employment, exports, quality, range of products and services, economic diversification processing and upgrading of local raw materials, training efficiency, and research and development.
- (c) The proposed acquisition of assets or any interests, mergers or take-overs of companies and businesses should not have adverse consequences in terms of national policies in such matters as defence, environmental protection or regional development.

- (d) The onus of proving that the proposed acquisition of assets or any interests, mergers or take-overs of companies and businesses is not against the objectives of the National Development Policy is on the acquiring parties concerned.

The guidelines will be applied to the following:

- (a) any proposed acquisition by foreign interests of any substantial fixed assets in Malaysia;
- (b) any proposed acquisition of assets or any interests, mergers and take-overs of companies and businesses in Malaysia by any means, which will result in ownership or control passing to foreign interests;
- (c) any proposed acquisition of 15% or more of the voting power by any one foreign interest or associated group, or by foreign interests in the aggregate of 30% or more of the voting power of a Malaysian company or business;
- (d) control of Malaysian companies and businesses through any form of joint-venture agreement and technical assistance agreement or other arrangements;
- (e) any merger or take-over of any company or business in Malaysia whether by Malaysia or foreign interests; and
- (f) any other proposed acquisition of assets or interests exceeding in value of \$5 million whether by Malaysia or foreign interests.

3. *How to obtaining applications/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

Copies of the relevant documentation can be obtained from the contact points listed in section B (1)(ii)(4) below.

4. *Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
Director-General Malaysian Industrial Development Authority (MIDA)	G, 3-6,9, 11 Floors, Wisma Damansara Jalan Semantan, 50720 Kuala Lumpur. Telephone: (60 3) 255 3633 Fax: (60 3) 255 7970
Secretary-General Ministry of Finance	Blok 9, Government Complex Jalan Duta 50022 Kuala Lumpur. Telephone: (60 3) 258 2000 Fax: (60 3) 255 6254
Secretary Foreign Investment Committee (FIC)	Economic Planning Unit Prime Ministers Department Jalan Dato' Onn, 50502 Kuala Lumpur Telephone: (60 3) 230 0133 Fax: (60 3) 291 4258
Registrar of Companies	16-20th Floor, KUWASA Building Jalan Raja Laut 50350 Kuala Lumpur. Telephone: (60 3) 293 3733 Fax: (60 3) 291 1157
Director General Royal Customs & Excise Department	4th. Floor, Blok 11, Government Complex Jalan Duta 50596 Kuala Lumpur. Telephone: (60 3) 254 9088 Fax: (60 3) 254 2709
Director-General	5th. Floor, Block B (North)

Labour Department Ministry of Human Resources	Damansara Town Centre 50537 Kuala Lumpur. Telephone: (60 3) 255 9111 Fax: (60 3) 255 4700
Secretary-General Ministry of International Trade and Industry (MITI)	15th. Floor, Block 10, Government Complex Jalan Duta 50622 Kuala Lumpur. Telephone: (60 3) 651 6022 Fax: (60 3) 651 0827
Director-General Industrial Relations Dept. Ministry of Human Resources	Level 7, Block B (South) Damansara Town Centre Damansara Heights 50532 Kuala Lumpur. Telephone: (60 3) 255 7222 Fax: (60 3) 253 3809
Director-General Trade Union Affairs Department Ministry of Human Resources	Level 5, Block B (South) Damansara Town Centre 50532 Kuala Lumpur. Telephone: (60 3) 255 7222 Fax: (60 3) 255 4700
Director-General Department of Inland Revenue	15th. Floor, Block 11 Government Office Complex Jalan Duta 50600 Kuala Lumpur. Telephone: (60 3) 254 7055 Fax: (60 3) 254 3798

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

Approvals for Manufacturing Licence or Incentives usually require 8 weeks from date of application.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Brief description of appeal processes and the average time for an appeal to be considered.*

Ministries/Agencies are listed section B (1)(ii)(4) above.

7. *Brief description of what conditions need to be met for an expedited review of a foreign investment proposal.*

To ensure expeditious review, all applications should provide complete information as required.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (and addresses and phone/fax numbers for these agencies).*

Complaints/appeals should be submitted to the relevant organisations as indicated in section B(1)(ii)(4) above.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

Agencies responsible are as indicated in section B (1)(ii)(4) above.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

Comments/proposals can be submitted directly to the relevant Ministries or agencies or through the various Chambers of Commerce, Federation of Malaysian Manufacturers, Business Councils, etc.

11. *Where applicable, the role for sub national agencies in the approval process.*

Approval for industrial land is under the jurisdiction of the state governments. Enquiries can be submitted through MIDA.

## **2. Most Favoured Nation Treatment / Non-discrimination between Source Economies**

1. *List and description of the scope of any exceptions to mostfavoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).*

There are generally no exceptions to MFN treatment in relation to the establishment, expansion and operation of foreign investment.

2. *List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.*

Not applicable.

## **3. National Treatment**

1. *List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).*

Under the Industrial Coordination Act, 1975, all manufacturing companies in Malaysia with shareholders' funds of RM2.5 million or more or engaging 75 or more full-time employees are required to apply for a manufacturing licence from the Ministry of International Trade and Industry. The manufacturing licence issued will usually contain specific conditions, eg. requirements relating to equity and technical agreement, so as to ensure that the manufacturing operations carried out are consistent with the national economic and social objectives of the country. There is no export performance requirement on foreign investors. However export performance as proposed by the foreign investor in undertaking a manufacturing project will determine the level of foreign equity participation that can be allowed.

The guidelines on foreign equity participation in Malaysia are as follows:

- for projects exporting 80% or more of total production, foreign equity ownership of up to 100% will be allowed. No equity condition will be imposed.
- for projects exporting between 51% to 79% of production, foreign equity ownership of up to 79% will be allowed depending on factors such as the level of export, level of technology, spin-off effects, size of investment, location, value added and the utilisation of local raw materials and components;
- for projects exporting between 20% to 50% of production, foreign equity ownership of between 30% to 51% will be allowed depending upon similar factors as mentioned;
- for projects exporting less than 20% of production, foreign equity ownership will be allowed up to a maximum of 30%;
- however, for high-technology projects or projects manufacturing priority products for the domestic market, foreign equity ownership of up to 100% may be allowed; and
- for projects which involve the extraction or mining and processing of mineral ores, foreign equity ownership of up to 100% will be allowed depending on factors such as the level of investments, technology and risk, availability of Malaysian expertise, degree of integration and level of value-added involved in the projects.

The above guidelines do not apply to industries which are subject to specific joint-venture equity policies where foreign equity ownership is allowed to maximum levels of 30-60%. These industries mainly produce supporting parts/components. They include industries which produce plastic packaging materials; plastic compound/masterbatch; plastic injection moulded components and parts for the electrical, electronics and telecommunications industry; paper packaging products, metal fabrication; and foundry products. The objective of the policy is to enhance Malaysian participation in these sectors.

Most industries are open to private sector participation. Historically, public utilities and certain public services such as telecommunications, railway transportation and postal services have been government owned. However, an active program of privatisation has been underway since 1986.

Manufacturing licences require companies to obtain prior approval from the Ministry of International Trade and Industry before entering into any agreement in the form of joint venture, management and technical assistance, know-how, licence, patent and trade mark and turnkey projects which involve foreign partners. Appraisal is made of the necessity of the service, as well as terms and conditions and royalty/technical fees, to ensure that Malaysians are not subjected to unjustifiable and unfair restrictions and that the agreement will not be prejudicial to national interest.

2. *Brief description of the nature and scope of any limitations on foreign firms' access to sources of finance.*

#### **Domestic Borrowing by Non-Resident Controlled Companies Operating in Malaysia**

Non-resident controlled companies (NRCCs) operating in Malaysia do not face difficulties in obtaining domestic credit facilities to finance their business in Malaysia.

Specific exchange control approval is required only for loans exceeding and aggregate of RM10 million, for any purpose. Permission is readily given for such loans in order to encourage economic growth and investment in the country. NRCCs can also obtain any amount of forward exchange contracts, guarantee facilities and short-term trade financing facilities where the tenure of credit is not more than 12 months. These facilities are not regarded as part of the RM 10 million credit limit. However, foreign investors are expected to be adequately capitalised and bring in a reasonable amount of funds of their own. As a general rule, NRCCs which borrow in excess of RM10 million in Malaysia are required to ensure that their domestic borrowings do not exceed their capital funds by more than three times. This is to ensure that NRCCs bring in sufficient amount of their own funds to finance projects in Malaysia as a long-term proposition, and not merely as a venture for quick profits without any long-term commitment to the economy. Irrespective of the amount of domestic borrowing, at least 60% of the short-term trade financing facilities and 60% of other types of credit facilities obtained from the banking institutions (licensed banks, licensed merchant banks and licensed finance companies) should be allocated to Malaysian-owned banking institutions. The above rules are, however, implemented pragmatically and flexibly to ensure that NRCCs have ready access to banking facilities at competitive price to meet their financial requirements.

Non-residents who have valid work permits are also permitted to obtain domestic borrowing to finance up to 60% of the purchase price or the construction cost of one residential property in Malaysia for their own accommodation. Malaysians with permanent resident status abroad are permitted to obtain one residential property loan if they do not individually or jointly own any other residential property in Malaysia. Applications from non-residents to obtain domestic financing for pure property acquisition and property development purposes are usually not approved. They are encouraged to bring in their own funds from abroad to finance such purposes.

#### **Foreign Currency Credit Facilities and Ringgit Credit Facilities from Non-residents**

Residents are freely allowed to obtain credit facilities in foreign currency up to the equivalent of RM5 million in aggregate from the licensed banks, licensed merchant banks and non-residents. In addition, residents may obtain from licensed banks and licensed merchant banks any amount of short-term foreign currency trade financing facilities with a tenure not exceeding 12 months and guarantee facilities in foreign currency. Guarantee facilities in Ringgit or foreign currency may also be obtained from the Licensed Offshore Banks in Labuan IOFC or from non-residents who are individuals, or shareholders, related or associate companies which are not financial institutions. These credit facilities are not included in the computation of an equivalent of RM5 million limit on foreign currency credit facilities.

Permission is given readily for all foreign loans raised on reasonable terms to finance productive activity in Malaysia, especially projects which generate sufficient income in foreign exchange to service all the external debt so created.

Borrowing in ringgit from non-residents in general requires the prior permission of the Controller. Residents are only allowed to obtain credit facilities in ringgit up to an aggregate amount of RM50,000 from any non-residents individual. In line with the Central Bank's policy not to internationalise the ringgit, offshore borrowing in ringgit is not encouraged.

#### **4. Repatriation and Convertibility**

1. *List and description of regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

See section B (4)(3) below?

2. *Brief description of the foreign exchange regime.*

#### **Exchange Control Policy**

Exchange control is administered by Bank Negara Malaysia (Central Bank) in accordance with the provisions of the Exchange Control Act, 1953.

The present exchange control regime in Malaysia is liberal and applies uniformly to transactions with all countries, except Israel, Serbia and Montenegro against which special restrictive rules apply. The main Exchange Control rules, which are of direct relevance to foreign investors, are as outlined in section B (4)(3) below.

### *3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

#### **Direct and Portfolio Investment**

No permission is required from the Controller of Foreign Exchange (hereinafter referred to as "the Controller") for a non-resident to undertake direct or portfolio investment in Malaysia.

#### **Remittances Abroad**

Payments to countries outside Malaysia may be made in any foreign currency other than the currencies of Israel, Serbia and Montenegro.

Payments by a resident (an individual who is a citizen of Malaysia and stays permanently in Malaysia, or who has a Malaysian permanent resident status; or a body registered in Malaysia) to a non-resident for any purpose, including the repatriation of capital, profits and dividends, fees, royalties and proceeds from the sale of assets in Malaysia by foreign investors, are freely permitted. Residents are only required to complete a simple statistical form for remittances of more than RM50,000 or its equivalent in foreign currency in each case. The authorised dealers can effect such payments, irrespective of the amount. However, to ensure that domestic credit is utilised to finance productive investment in Malaysia, prior approval of the Controller is required for payments to be made to non-residents for the purpose of investing in foreign securities or immovable property overseas, or for extending credit to or placement of deposits with non-residents in the event the remitters have obtained domestic credit facilities. The use of domestic borrowing to finance speculative or portfolio investments abroad is generally not encouraged. Residents who have not obtained any domestic borrowing are freely permitted to extend loans to non-residents or invest their funds overseas, particularly, in projects with economic linkages to Malaysia.

#### **Export Proceeds**

Export proceeds are required to be repatriated in accordance with the timing of payments specified in the sales contract, which must not exceed six months from the date of export in any case. Exporters are allowed to retain a portion of their foreign currency export proceeds in a foreign currency account maintained with any one of the Designated Banks (licensed commercial banks which are permitted to open foreign currency accounts for qualified residents) in Malaysia, up to an overnight balance of between US\$1 million and US\$5 million, depending on the amount of their export receipts. For the purpose of statistical information, exports are required to be reported to the Central Bank, but the paperwork involved is kept to a minimum. Exporters have to complete a simple form only for each shipment exceeding RM100,000 free-on-board, as well as submit to the Controller a quarterly statement to certify the receipt of the export proceeds.

#### **Inter-Company Account**

No permission is required from the Controller for a company in Malaysia to maintain inter-company accounts with associated companies, branches or other companies outside Malaysia, provided monthly returns as specified by the Controller are submitted to the Controller and the following are excluded from the inter-company accounts:

- (a) proceeds from exports of Malaysian goods; and
- (b) proceeds from loans extended to Malaysian companies.

Companies can apply to the Controller to offset the export proceeds through inter-company accounts against payables to overseas companies for the supply of raw materials. The companies allowed to offset their export proceeds need only to repatriate to Malaysia the value added in the form of services performed by them. The companies which have been given permission to maintain offsetting arrangements are required to observe certain procedures in reporting and lodging monthly returns to enable the Controller to monitor their export proceeds which are repatriated to Malaysia in the prescribed manner.

## **5. Entry and Sojourn of Personnel**

### *1. Permits/entry visa requirements for non-resident staff of foreign firms and the nature of the entry restriction.*

#### **Passport Requirements**

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry into Malaysia.

Those who are in possession of passports which are not recognised by Malaysia must apply for a document in lieu of a passport and visa which is issued by Malaysian missions abroad.

#### **Visa Requirements**

Commonwealth citizens (except India, Bangladesh, Pakistan and Sri Lanka), British protected persons or citizens of the Republic of Ireland and citizens of Switzerland, Netherlands, San Marino and Liechtenstein do not need a visa to enter Malaysia.

Citizens of Austria, Belgium, Denmark, Finland, Germany, Iceland, Japan, Republic of Korea, Luxembourg, Norway, Sweden, Tunisia, Italy, France and U.S.A. do not require a visa for a visit not exceeding three months.

Citizens of ASEAN countries, Argentina, Czechoslovakia, Hungary, Poland and South Africa do not need a visa for a visit not exceeding one month.

Citizens of Afghanistan, Albania, Bulgaria, Commonwealth of Independent States, Iran, Iraq, Libya, Romania, Syria and South Yemen do not need a visa for a visit no exceeding two weeks.

Citizens of North Korea, Cuba, Socialist Republic of Vietnam, the People's Republic of China and holders of Hong Kong Certificate of Identity are allowed to enter Malaysia subject to their application for a visa being approved.

### **Application For Visas**

Application for visas for the purpose of entry into Malaysia should be made at the nearest Malaysian mission abroad. In countries where Malaysian missions have not been established, applications should be made to the nearest British High Commission or Embassy.

### **Entry Into Malaysia**

#### **(a) Passes To Be Obtained At Point Of Entry**

A visit pass for the purpose of a social or tourist visit or business may be issued at the point of entry if the visitor can satisfy the immigration authority at the point of entry that he has a valid passport and visa (wherever applicable).

The type of passes issued are as follows:

##### **(i) Visit Pass (Social or Tourist)**

Visit passes (Social or tourist) issued solely for the purpose of a social or tourist visit. A person who has been issued with a social or tourist visit pass is not permitted to take up employment, business or professional work while in Malaysia.

##### **(ii) Visit Pass (Business)**

Visit passes (Business) are issued to foreign visitors who enter Malaysia for purposes of conducting business negotiation or inspection of business houses. These passes cannot be used for the purposes of employment or for supervising the installation of new machinery or the construction of a factory.

##### **(iii) Conversion of Passes**

Foreign visitors, except those from the Republic of Singapore, who have entered Malaysia on social or tourist visit passes may apply to the Immigration Department for converting their social or tourist passes into business visit passes. This ruling is designed to assist foreign visitors who wish to undertake business activities.

All applications for converting social or tourist visit passes into business passes must be submitted to the Immigration Department with a letter of recommendation from the Ministry of International Trade and Industry.

#### **(b) Passes To Be Obtained Upon Arrival In Malaysia**

Other than applications for entry for the purpose of tourist, social or business visits, all applications for passes of the types mentioned below must be made upon arrival in the country.

All such applications must have sponsorship in Malaysia. The sponsors must agree to be responsible for the maintenance and repatriation of the visitors from Malaysia if it should become necessary.

The types of passes issued are as follows:

##### **(i) Visit Pass (Temporary Employment)**

This is issued to persons who enter the country to take up temporary employment.

##### **(ii) Employment Pass**

This is issued to any person who enters the country to take up a contract of employment which comes a salary of not less *than* RML200 per month.

##### **(iii) Visit Pass (Professional)**

This is issued to artists performing in any show business.

##### **(iv) Dependent's Pass**

This is issued to the wife and children of any person who has been issued with an Employment Pass. This pass is not issued to the wife and children of a person who enters the country on any pass other than an Employment Pass. The wife and children of any person who enters the country on a Visit Pass (Temporary Employment or Professional) will be issued a Visit Pass (Social).

##### **(v) Student's Pass**

This is issued to any person who enters the country for the purpose of taking up studies in any approved educational institution.

#### **2. List and brief description of restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.**

It is the Government's policy to see that Malaysians are eventually trained and employed at all levels of employment. Notwithstanding this, foreign companies are allowed to bring the required personnel in areas where there is a shortage of trained Malaysians to do the job. In addition to this, foreign companies are also allowed certain "key posts" to be permanently filled by foreigners.



Companies should make every effort to train more Malaysians so that the employment pattern at all levels of the organisation will reflect the multi-racial composition of the country.

#### **Guidelines On Employment Of Expatriate Personnel**

Any company with foreign paid-up capital of US\$2 million and above will automatically be allowed five expatriate posts including key posts. Additional expatriate posts will be given when necessary upon request.

Any company with foreign paid-up capital of less than US\$2 million will be considered for expatriate posts on the basis of the following:

- (i) key posts can be considered where the foreign paid-up capital is at least RM500,000. This figure is only a guideline and the number of key posts allowed depends on the merits of each case.
- (ii) for executive posts which require professional qualifications and practical experience, expatriates may be employed up to a maximum period of 10 years subject to the condition that Malaysians are trained to eventually take over the posts.
- (iii) for non-executive posts which require technical skills and experience, expatriates may be employed up to maximum period of five years subject to the condition that Malaysians are trained to eventually take over the posts.

Other conditions relating to expatriate employment are as follows:

- (i) an expatriate officer who is transferred from one post to another post within the same company is not required to obtain a new employment pass. His original employment pass will be amended to reflect the change in post.
- (ii) a new expatriate officer replacing another expatriate officer is required to obtain a fresh employment pass.
- (iii) all employment passes are valid for the period of time as approved for the post. However, for key posts holders, the employment passes will be given on a 5-year renewable basis.
- (iv) all holders of employment passes will be issued with multiple entry visas valid for the corresponding period that the employment pass is valid.

#### **Applications For Expatriate Posts**

Applications for expatriate posts (including key posts, executive and non-executive posts) can be submitted to the Malaysian Industrial Development Authority (MIDA) at the same time as the company's application for approval of its projects.

The above procedure applies to expatriate personnel required by the following:

- (i) all companies which propose to establish new projects.
- (ii) all existing companies which propose to manufacture additional products (diversification of products).
- (iii) all existing companies which propose to expand their production capacities (expansion of projects).

In the event that an applicant is unable to submit his requirements of expatriate personnel at the time of the submission of his application for approval of his project, he may submit his expatriate personnel requirements at a later stage.

*3. Description of regulations relating to personnel management offoreignfirms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

#### **Employment Act, 1955**

The Employment Act, 1955 is the principal legislation regulating the terms and conditions of employment. Among other things it sets out the minimum conditions of employment which include:

- (i) a contract of service engaging a person may be written or oral, expressed or implied, specifying the period of notice required to terminate it.
- (ii) wages earned must be paid not later than the seventh day after the last day of any wage period.
- (iii) female workers are not permitted to work in any industrial or agricultural undertakings between the hours of ten in the evening and five in the morning. An application can however be made to waive the restriction.
- (iv) ten paid gazetted public holidays in any one calendar year.
- (v) eight days of paid annual leave for employees with less than two years of service, 12 days of paid annual leave for those employees with two or more years of service but less than five years of service, and 16 days for those with over five years of service.
- (vi) fourteen to 22 days sick leave in a year depending on length of service and where hospitalisation is necessary, up to an aggregate of 60 days sick leave in each year.
- (ix) payment of maternity allowance for female employees on maternity leave for 60 days at the ordinary rate of pay subject to a minimum rate of RM6.00 per day.

#### **Employees Provident Fund (EPF)**

The Employees Provident Fund Act, 1951 provides for a compulsory contributory provident fund which is payable to employees in full on reaching the age of 55 years. All employers and employees are required to contribute to the Fund at the rates of 12% and 10% respectively of the employees' monthly wages.

Among the categories of employees precluded from compulsory contributions are:

- (i) expatriates; and
- (ii) domestic servants - persons who are employed to work in or connected with work in a private dwelling house including a valet, gardener, and who are paid from the private account of the employers.

However, expatriate employees, domestic servants and self employed persons can opt to contribute to the Fund.

#### **Employees' Social Security Act, 1969**

The Social Security Organisation (SOCSO) administers the Employment Injury Insurance Scheme and the Invalidity Pension Scheme, as provided for under the Employees' Social Security Act, 1969.

All establishments, including factories, employing workers earning wages not exceeding RM2,000 a month, are required to insure their workers under the two social security schemes.

The Employment Injury Insurance Scheme provides employees with coverage in the event of any disablement or death due to employment injury by way of cash benefits and medical care. The contribution is borne solely by the employer and is about 1.25% of the wages of an employee.

The Invalidity Pension Scheme provides a 24-hour coverage to employees against invalidity and death due to any cause before the age of 55 years. The total contribution is about 1% of the wage of an employee and is shared by the employer and the employee equally.

#### **Employment Of Foreign Workers**

The policy on the employment of foreign workers will only be valid for five years (1992-1996). The employment of foreign workers are allowed in:

- (i) the manufacturing and construction sector;
- (ii) the agricultural/estate sector; and
- (iii) the service sector (domestic servants, hotel industry, trainers and instructors).

The employment of these workers will be based on the merit of each case and subject to conditions that will be determined from time to time. This policy applies only to foreign workers belonging to the skilled, semi-skilled and unskilled categories and not expatriates under the management, professional and technical/supervisory categories.

An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed. An employer must provide evidence of having:

- (a) advertised the vacancies for recruitment purposes;
- (b) contacted Employment Offices under the Ministry of Human Resources and, where applicable, village headmen; and
- (c) obtained confirmation letters from Employment Offices and/or village headman to confirm insufficient supply of workers.

To ensure that employers will employ foreign labour only when necessary, an annual levy on foreign workers will be imposed. The rates of levy on various categories of workers for the manufacturing sector are as follows:

<u>Category of Workers</u>	<u>Levy Per Year (RM)</u>
(i) General Worker	840
(ii) Semi-skilled Worker	1200
(iii) Skilled Worker	1800
(iv) Technical Personnel	2400
(v) Professionals	3600
(vi) Middle Management	3600
(vii) Upper Management	4800

However, expatriates, officers and foreign workers are exempted from the payment of the levy if they pay income tax.

#### **Labour Costs**

There is no national minimum wage law applicable to the manufacturing sector in Malaysia. Basic wage rates vary from locations and from industrial sectors.

Salary rates and fringe benefits offered for management and executive level personnel vary according to the industry and employment policies. In addition to salaries most companies also provide fringe benefits such as free medical treatment, personal accident and life insurance coverage, free or subsidised transport, annual bonus, retirement benefits and enhanced contributions to the Employees Provident Fund.

*4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

**Trade Unions**

In line with the Government policy to encourage the growth of responsible trade unions, the Trade Union Act, 1959 and Trade Union Regulations, 1959 have been enacted.

Under this legislation:

- (i) trade unions should confine their membership to employees within a particular trade, occupation or industry.
- (ii) all trade unions must be registered.
- (iii) a union cannot organise a strike without first obtaining the consent by secret ballot of at least 2/3 of its total members.
- (iv) all unions are inspected regularly to ensure compliance with the laws.

**Industrial Relations Act, 1967**

The Industrial Relations Act, 1967 provides for the regulation of relations between employers and workmen and their trade unions, and the prevention and settlement of trade disputes. Some of the main features of the Act are:

- (i) protection of the legitimate rights of employers and workmen and their trade unions;
- (ii) exclusion of workmen in managerial, executive, confidential or security capacities from the scope of recognition of trade unions, the majority of whose membership are not employed in any of these capacities;
- (iii) procedure relating to submissions of claims for recognition and scope of representation of trade unions and collective bargaining;
- (iv) non-inclusion in unions' proposals for collective bargaining on matters relating to promotion, transfer, recruitment, retrenchment, dismissal, reinstatement, and allocation of duties and prohibition of strikes over any of these matters;
- (v) emphasis on direct negotiation between employers and workmen and their trade unions to settle their differences and provision for speedy and just settlement of trade disputes by conciliation or arbitration when direct negotiation falls;
- (vi) provision for the Minister of Human Resources to interview and to refer at any stage any trade dispute to the Industrial Court for arbitration;
- (vii) prohibition of strikes and lock-outs after a trade dispute has been referred to the Industrial Court, and on any matter covered by a collective agreement or by an award of the Industrial Court; and
- (viii) protection of pioneer industries during the initial years of their establishment against any unreasonable demands from a trade union because trade unions cannot demand better terms of employment than those stipulated under the Employment Act, 1955.

**Relations In Non-unionised Establishments**

The normal practice for dispute settlement in a non-unionised establishment is for the employee to try and obtain redress from his supervisor, foreman or employer directly. A complaint can be lodged by the employee with the Ministry of Human Resources which will conduct an investigation.

**6. Taxation**

*1. List and brief summary of all taxation arrangements affecting foreign investment including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

Generally, all incomes of companies and individuals are liable to tax. Apart from income tax, there are real property gains tax, sales tax and service tax. Sales tax and service tax are applicable to selected goods and services only as determined by the Ministry of Finance. Income tax is payable for a year of assessment which is the calendar year by reference to income of the immediate preceding year. Where a company adopts an accounting period different from the calendar year, the basis period for the business is the 12 months accounting period preceding the year of assessment.

**Source of Income Liable to Tax**

The following sources of income are liable to income tax:

- (a) gains and profits from trade, professional and business;
- (b) gains and profits from an employment;
- (c) dividends, interest or discounts;
- (d) rents, royalties or premiums;
- (e) pensions, annuities or other periodic payments; and
- (f) other gains or profits of an income nature not mentioned above.

Chargeable income is arrived at after adjusting for expenses incurred wholly and exclusively in the production of the income. Specific provisions or reserves for anticipated losses or contingent liabilities are not tax

deductible. No deduction for book depreciation is allowed although capital allowances are granted. Unabsorbed losses may be carried forward indefinitely for set off against future income.

#### **Company Tax**

A company, whether resident or not, is assessable on income accruing in or derived from Malaysia. Certain income derived from elsewhere received by a resident company is also taxable. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia. Control and management are considered to be the place where meetings of the Board of Directors are held.

A tax rate of 30% is applicable to both resident and non-resident companies.

In the case of a company carrying on petroleum explorations, the applicable tax rate is 40%.

#### **Personal Income Tax**

All individuals are liable to tax on income accruing or derived from Malaysia. An individual's resident status is determined by reference to the duration of stay in the country.

#### **Resident Individuals**

A resident individual is taxed on his total income at graduated rates from 2 to 30% after the deduction of personal reliefs. However, individuals with chargeable income of less than RM2,500 is exempted from paying tax.

Tax is payable on income derived from Malaysia according to the nature of the income on the following basis:

Special classes of income	
- use of moveable property	10%
- technical advice, assistance or services	
- installation services on the supply of plant, machinery etc.	
- personal services associated with the use of intangible property	
Use or alienation of intangible property	10%
Services of a public entertainer	10%
Interest	15%
Other types of income	32%

Normally, a non-resident individual is not entitled to any relief.

A short-term visitor to Malaysia enjoys tax exemption in respect of his income from an employment exercised in Malaysia when his presence does not exceed 60 days in a calendar year. This exemption is not available to public entertainers unless his income is paid out of public funds of a foreign government.

#### **Real Property Gains Tax**

Capital gains are generally not subject to tax in Malaysia. Real Property Gains Tax is charged on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such land as well as the disposal of shares in real property companies. The following are the rates of tax for companies and individuals:

Disposal within 2 years	30%
Disposal in the 3rd year	20%
Disposal in the 4th year	15%
Disposal in the 5th year	5%
Disposal in the 6th year and thereafter	
- Company	5%
- Individual	NIL

A non-citizen or non-permanent resident will be levied at flat rate of 30% irrespective of the holding period of the assets.

#### **Sales Tax**

Certain imported and locally manufactured goods are liable to sales and service tax ranging from 5% to 10% either at the time of importation or at the time the goods are sold by the local manufacturers.

#### **Withholding Tax**

Withholding tax is imposed on payments to non-residents in respect of the following:

Royalties, payments for know-how and specified services, payments for use of moveable property	10%
Interest	15%
Contract services	20%

### Double Taxation Agreements

Double taxation agreements provide for the avoidance of incidence of double taxation on international income, such as business profits, dividends, interests and royalties, that are derived in one country and remitted to another country. This, therefore, removes the “tax barrier” to international trade and investment. The agreements also provide for the exchange of information on relevant income, and this is useful to prevent evasion of taxes on income.

Under double taxation agreements, business profits are taxed only in the country in which the enterprise is situated. Where the enterprise carries on business through a permanent establishment situated in the other contracting country, tax is levied in the other country on so much of the profits as is attributable to or derived by the permanent establishment in the country where the permanent establishment is situated.

Under most double taxation agreements, profits from shipping and air transport operations in international traffic are taxed only in the country where the management and control of the enterprise is exercised.

In most double taxation agreements which Malaysia has entered into, countries of residence accord tax sparing credit. A tax sparing credit is a credit given if no tax or a lower rate of tax is paid in the host country. In case of dividends paid by companies exempted from tax under the Promotion of Investments Act 1986, the recipients are also exempted from Malaysian income tax on such dividends. If the recipients are also taxed in their country of residence on the dividends, then the country of residence will give credits as if Malaysian tax has been paid.

Under most of the agreements, interests on approved loans, approved industrial or technical royalties derived from Malaysia by residents of other countries, having agreement with Malaysia, are exempted from tax in Malaysia. However, there is a provision for credit to be given by the country of residence for the tax spared by Malaysia in respect of such interests, royalties and income exempt from tax in Malaysia under the Promotion of Investments Act 1986.

To date, 43 countries have double taxation agreements with Malaysia, namely:

	<u>Country</u>	<u>Date of Signing Agreement</u>
1.	Singapore	26.12.1968 6.7.1973 (Supplementary Agreement)
2.	Japan	30.1.1970
3.	Sweden	21.11.1970
4.	Denmark	4.12.1970
5.	Norway	23.12.1970
6.	Sri Lanka	16.9.1972
7.	United Kingdom	30.3.1973
8.	Belgium	24.10.1973
9.	Switzerland	30.12.1974
10.	France	24.4.1975 31.1.1975 (Protocol)
11.	New Zealand	19.3.1976
12.	Canada	16.10.1976
13.	India	25.10.1976
14.	Federal Republic of Germany <sup>1</sup>	8.4.1977
15.	Poland	19.9.77
16.	Australia	20.8.1980
17.	Thailand	29.3.1982
18.	Republic of Korea	20.4.1982
19.	Philippines	27.4.1982
20.	Pakistan	29.5.1982
21.	Romania	26.11.1982
22.	Bangladesh	19.4.1983
23.	Italy	28.1.1984

<sup>1</sup> Germany since 3.10.1990

24.	Finland	28.3.1984
25.	German Democratic Republic	29.1.1985
26.	People's Republic of China	23.11.1985
27.	Russia (The Former Union of Soviet Socialist Republics)	31.7.1987
28.	Netherlands	7.3.1988
29.	United States of America	18.4.1989
30.	Hungary	24.5.1989
31.	Austria	20.9.1989
32.	Yugoslavia	30.9.1989
33.	Indonesia	12.9.1991
34.	Mauritius	23.8.1992
35.	Islamic Republic of Iran	10.11.1992
36.	Papua New Guinea	20.5.1993
37.	Saudi Arabia	18.7.1993
38.	Sudan	7.10.1993
39.	Republic of Albania	24.1.1994
40.	Zimbabwe	28.4.1994
41.	Turkey	27.9.1994
42.	Jordan	1.10.1994
43.	Mongolia	27.7.1995

## **7. Performance Requirements**

*1. Brief description of performance requirements that countries impose limits on trade and investment and indicate any TRIMS.*

### **Local Content Policy**

Malaysia does not have any laws or regulations regarding local content requirements applying to domestic production. The Government encourages the use of local materials in manufacturing and, in this regard, local content is one of the factors taken into account in the granting of investment incentives e.g. Pioneer Status and Investment Tax Allowance. Incentive can still be granted without it. However, a local materials content policy exist for the automotive industry to encourage the automotive assembly industry to increase the level of local content and to achieve upgrading of engineering and technical skills in the domestic component parts industry with a view to achieving international competitiveness.

## **8. Capital Exports**

*1. List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

There are generally no restrictions on outward investment. The government encourages outward investment especially in areas where Malaysian businesses have the comparative advantage in skill and know-how and in areas that would bring about economic benefits to Malaysia.

*2. List and brief description of regulations/institutional measures that limit technology exports.*

Not applicable.

## **9. Investor Behaviour**

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

## **10. Other measures**

*1. Brief outline the competition policy regime.*

Malaysia is in the process of drafting a legislation on competition policy.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

### **Intellectual Property Protection**

*Patents Act 1983*

Patent protection in Malaysia is governed by the Patents Act 1983 and the Patents Regulations 1986. It gives protection to inventions which may relate to a product or a process. An invention is patentable if it is new, involves an inventive step and is industrially applicable.

The period for patent protection is 15 years from the date of grant. The proprietor of the patent has the right to exploit the patented invention, to assign and to conclude licence contracts. There are certain limited circumstances, which are consistent with international norms, where compulsory licensing, subject to payment of royalties, is issued. Where there is infringement, the plaintiff may recover damages and obtain injunction to prevent further infringements.

The Patents Act conforms with the requirement of the Paris Convention of which Malaysia is a party as of 1 January 1989. The classification of patent application used in Malaysia is in accordance with the International Patent Classification.

The Act was amended in 1993, among others, to introduce modified substantive examination (usage of search report from foreign granted patent for local patent examination).

#### *Trade Marks Act 1976*

Trade mark protection in Malaysia is governed by the Trade Marks Act 1976 and the Trade Marks Regulations 1983. The Act, modelled along the Acts of some of the developed countries, provides effective and adequate protection for registered trade marks in this country. If a trade mark is registered, no person or enterprise other than its owner or authorised users may use it, otherwise infringement actions can be taken against them. The protection of a trade mark is not limited in time, provided its registration is periodically renewed and its use continues. The Act does not discriminate in the rights conferred under the Act to locals or foreigners.

The Act was amended in 1993, among others, to include protection of “service marks” and other provisions in line with the international norms and practices in the registration of trade marks.

#### *Copyright Act 1987*

Copyright protection in Malaysia is governed by the Copyright Act 1987. The Act provides for a comprehensive protection of copyright. It outlines the nature of works eligible for copyright (which include computer software), the scope of protection and the manner in which the protection is accorded. The duration of the copyright protection has been increased from 25 years to 50 years under this Act. The Act also provides for civil as well as criminal sanctions. An unique feature of the Act is the inclusion of provisions for enforcing the Act which include the power to enter premises suspected of having infringing copies and contrivances, and the appointment of a special team of officers to enforce the Act. Foreign works are also protected if they are made in Malaysia or published in Malaysia within 30 days of their first publication in the country of origin.

The Act accords similar protection to national and foreign works and conforms with the requirement of the Berne Convention of which Malaysia is a member as of 1 October 1990.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

*1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

#### **Investment Guarantee Agreements**

The purpose of the Investment Guarantee Agreements (IGAs) is to ensure against non-commercial risks such as expropriation, nationalisation and to allow for remittances of capital and repatriation of capital. For a developing country such as Malaysia, it is hoped that the IGAs will help to quicken the pace of industrialisation by encouraging the inflows of foreign capital. It is generally considered that the IGAs, which prevent arbitrary action on the part of a recipient country, will generate confidence in foreign investors.

#### **Coverage**

The IGA normally covers the following:

- (a) a guarantee that there shall be no expropriation or nationalisation except for a public purpose and with prompt and adequate compensation.
- (b) a permission to remit or repatriate in any convertible currency profits or capital on investment.

#### **Beneficiaries**

Under most IGAs, the beneficiaries would be:

- (a) nationals or citizens according to the laws of each contracting party; and
- (b) companies which are incorporated in either contracting party, substantially owned by, and whose management and control are vested in the nationals of each contracting party.

#### **Arbitration**

Under the IGAs, two forms of disputes may arise. Firstly, disputes on the interpretation or the application of the agreement itself and secondly, disputes in connection with the investments in the contracting countries.

- (a) In most of the IGAs that Malaysia has signed, it is provided for that disputes on the interpretation or application of the agreement shall be settled by consultations through diplomatic channels with the view towards arriving at an amicable solution. Where a dispute fails to be settled in the above manner, it will be submitted to an arbitration board or an arbitration tribunal for settlement. Where the above measures failed to resolve the dispute, it would be referred to the International Court of Justice.
- (b) Disputes in connection with the investment between the national or company (investor) and the host country shall first be settled by making use of local administrative and judicial facilities. If the above means failed to settle the issue, then it should be submitted for reconciliation or arbitration to the International Centre for Settlement of Investment Disputes, which is established under the auspices of the International Bank for Reconstruction and Development (IBRD).

### **Regional Centre for Arbitration**

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC) - an inter governmental organisation in cooperation with and with the assistance of the Government of Malaysia.

The Centre is intended to serve the Asian and the Pacific region. It is a non-profit organisation and has been established with the objective of providing a system for the settlement of disputes for the benefit of parties engaged in trade and commerce and investments with and within the region.

### **Status of Investment Guarantee Agreements**

Malaysia has signed IGAs with the following:

<u>Country</u>	<u>Date of Signing Agreement</u>
1. United States of America	21.4.1959 (amended on 24.6.1965)
2. Federal Republic of Germany <sup>2</sup>	22.12.1960 (amended on 5.11.1965)
3. Canada	1.10.1971
4. Netherlands	14.8.1972
5. France	24.4.1975
6. Switzerland	1.3.1978
7. Sweden	3.3.1979
8. Belgo-Luxembourg	22.11.1979
9. United Kingdom	21.5.1981
10. Sri Lanka	16.4.1982
11. Romania	26.11.1982
12. Norway	6.11.1984
13. Austria	12.4.1985
14. Finland	15.4.1985
15. Organisation of Islamic Conference (OIC)	30.9.1987
16. Kuwait	2.11.1987
17. Association of South-East Asian Nations (ASEAN)	15.12.1987
18. Italy	4.1.1988
19. Republic of Korea	11.4.1988
20. People's Republic of China	21.11.1988
21. United Arab Emirates	11.10.1991
22. Denmark	6.1.1992
23. Socialist Republic of Vietnam	21.1.1992
24. Papua New Guinea	27.10.1992
25. Republic of China	11.11.1992
26. Lao People's Democratic Republic	8.12.1992
27. Taiwan	18.2.1993
28. Republic of Hungary	19.2.1993
29. Republic of Poland	21.4.1993
30. Republic of Indonesia	22.1.1994
31. Republic of Albania	24.1.1994
32. Republic of Zimbabwe	30.4.1994
33. Turkmenistan	30.5.1995
34. Republic of Namibia	12.8.1994
35. Kingdom of Cambodia	17.8.1994

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<sup>2</sup> Germany since 3.10.1990



36.	The Argentina Republic	6.9.1994
37.	Jordan	2.10. 1994
38.	Republic of Bangladesh	12.10.1994
39.	Republic of Croatia	16.12.1994
40.	Bosnia-Herzegovena	16.12.1994
41.	Spain	4.4.1995
42.	Pakistan	7.7.1995
43.	Kyrgyz Republic	20.7.1995
44.	Mongolia	27.7.1995
45.	Oriental Republic of Uruguay	9.8.1995

2. *Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.

## 2. Settlement of Disputes

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

See section C (1) above.

2. *Signatory or accession to the ICSID Convention.*

Yes. Signed on 22 October 1965. Ratified on 8 August 1966.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of investment promotion programs offered at both the national and subnational level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

See section D (2) below. Applications for incentives should be submitted to MIDA.

2. *Brief description of fiscal, financial, tax or other incentives offered at both the national and subnational level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

Incentives on inward investment are as follows:

### Pioneer status

Corporations in the manufacturing, agricultural, hotel, tourist, or other industrial or commercial sectors that participate in a promoted activity or produce promoted products under the Promotion of Investments Act, 1986 may be granted pioneer status incentive. The incentive is given by way of an abatement of 70% of the statutory income for five years. The remaining 30% of the statutory income will be taxed at the prevailing corporate tax rate. The income abated are exempt from tax and will be available for distribution as tax-free dividends.

In the following cases, the general rule of tax abatement and period of incentive is varied:

- a corporation carrying out a project of national and strategic importance involving heavy capital investment and high technology will be granted full income tax exemption for 10 years.
- a high technology company engaging in a promoted activity or in the production of a promoted product in areas of new and emerging technologies will be fully exempt from tax on its profits for a period of 5 years; and
- corporations with projects eligible for pioneer status which are located in the Eastern Corridor states of Peninsular Malaysia and in Sabah and Sarawak will be granted an abatement of 85% of their statutory income for 5 years.

### Investment tax allowance

A corporation may be granted investment tax allowance (ITA) of 60% of capital expenditure incurred on a factory or plant and machinery used for the purposes of an approved manufacturing, agricultural, hotel, tourist or other industrial or commercial activity (other than one granted pioneer status). ITA is granted on capital expenditure incurred for a period of five years; for an integrated agricultural activity, ITA of five years may be granted to the agricultural activity and of five years to the processing activity.

The amount of investment tax allowance to be utilized for each year of assessment is restricted to a maximum of 70% of the statutory income, while the balance of 30% is taxed at the prevailing corporate tax rate.

Unused allowances may be carried forward indefinitely for set-off against future profits of the business. Dividends paid out of exempt profits are not liable to tax in the hands of shareholders.

The ITA incentive is enhanced for the following types of project:

- a corporation carrying out a project of national and strategic importance may be granted ITA for 5 years at a rate of 100% (as an alternative to pioneer status of 10 years) and would be able to utilise the amount of ITA granted for set off against its profit without restriction;
- a high technology company may be granted ITA at the rate of 60% on qualifying capital expenditure incurred within 5 years and the amount of ITA would be available for full setoff against its statutory income; and
- a company granted ITA in respect of a project located in the Eastern Corridor states of Peninsular Malaysia and Sabah or Sarawak would be granted ITA at a rate of 80% and the amount of ITA which could be utilised for each year would be restricted to a maximum of 85% of the statutory income.

#### **Industrial adjustment allowance**

A manufacturing corporation that undertakes an approved industrial adjustment program may be granted an industrial adjustment allowance (IAA) of up to 100% of capital expenditure on factory, plant and machinery incurred within a period of five years.

Industrial adjustment means any activity undertaken to restructure by reorganisation, reconstruction or amalgamation with a view to strengthening industrial self-sufficiency, improving industrial technology, increasing productivity, and enhancing the efficient use of natural resources and the efficient management of manpower.

Currently, existing corporations in operation before December 31, 1990 and engaged in certain subsectors of the wood-based, textile and machinery and engineering industries are eligible for IAA. The IAA rates vary from 60% to 100%, depending on the activity and type of industry undertaken by such corporations. The amount of profits equal to the IAA is exempt from tax and may be distributed to shareholders as tax-exempt dividends.

#### **Reinvestment allowance**

A corporation that embarks on a program to expand, modernise or diversify its existing manufacturing or processing business is entitled to a reinvestment allowance of 60% of capital expenditure incurred on a factory or plant and machinery used for the expansion, modernisation or diversification activity. The allowance will be abated from the statutory income. The utilisation of the allowance for each year will be restricted up to 70% of statutory income. The balance of statutory income will be taxed at the prevailing rate. Any unabsorbed allowance will be allowed to be carried forward until it is fully utilised. Companies that reinvest in the Eastern Corridor of Peninsular Malaysia and Sabah or Sarawak will be allowed to utilise the allowance fully to set off against the statutory income for the year.

#### **Venture capital company**

Gains derived by an approved venture capital company from the disposal of shares in a venture company are exempt from tax. Such exempt gains are available for distribution to shareholders as tax-exempt dividends. The loss arising from the disposal of shares in a venture company or on liquidation of a venture company is deductible against other income of the venture capital company and any unutilized losses are available to be carried forward to subsequent years: A venture company is a Malaysian company that is involved in high-risk ventures or new technology in relation to a product or activity that enhances the economic or technological development of Malaysia.

#### **Operational headquarters company**

An operational headquarters company (OHQ) that provides qualifying services to its offices and related companies outside Malaysia may be granted approved OHQ status.

The income derived by an approved OHQ from the provision of qualifying services is taxed at the reduced rate of 10% for a period of five to ten years. The income after tax may be distributed to shareholders as tax-exempt dividends

#### **Research and development (R&D)**

Companies which provide research and development services to third parties are eligible for pioneer status with full exemption of its profits for a period of 5 years. As an alternative, such companies may be granted ITA at the rate of 100% of qualifying capital expenditure incurred within a period of 10 years. The ITA incentive may also be granted to companies undertaking research and development for its group companies.

Companies undertaking in-house research and development projects would be eligible for ITA at the rate of 50% of the qualifying capital expenditure incurred within a period of 10 years.

Double deduction is granted for expenses incurred on approved research and development projects as well as for cash contributions made to approved research and development companies.

Buildings used for approved research and development activities qualify for industrial building allowance at the normal rate.

#### **Training**

A company which provides technical and vocational training in Malaysia may be granted ITA of 100% of qualifying capital expenditure incurred within a period of 10 years and the maximum amount of ITA which could be utilised each year is restricted to 70% of profits.

There is a double deduction for approved training expenditure incurred on the training of employees under an approved training program.

### **Shipping**

Tax-resident corporations and individuals carrying on shipping business are exempt from tax on income derived from the operation of Malaysian ships. Dividend distributions of a company qualifying for the above incentive are exempt from tax in the hands of the shareholders.

### **Labuan - an international offshore financial centre**

Labuan, which is a federal territory of Malaysia, was established in October 1990 as an international offshore financial centre to provide for the development of offshore activities in the areas of offshore banking and insurance, trust and fund management, offshore investment holding and licensing companies, and other offshore activities carried on by multinational companies. Shipping and petroleum activities are not included in the list of promoted activities.

The following are highlights of what Labuan offers to encourage offshore activities:

- income from offshore trading activities is taxed at the rate of 3% of net profits, as reflected in the audited accounts, or a fixed sum of RM20,000, upon election;
- income from offshore nontrading activities is exempt from tax;
- offshore banking or insurance business carried on through a branch of a Malaysian incorporated bank or insurance company and non-offshore activities carried on by an offshore company are subject to normal Malaysian tax and are not eligible for the tax concession;
- there are no tax concessions given to individuals other than an exemption of 50% of the income from employment for expatriates employed in a managerial capacity in Labuan by offshore companies;
- a Labuan company is exempted from stamp duty in respect of instruments made in connection with an offshore business activity; and
- Trust companies providing legal, accounting, financial, or secretarial services are eligible for a 50% exemption of income from tax for six years;

Persons carrying on specific construction projects in Labuan are eligible for a 50% exemption of income from tax.

### **Deduction for export expenses**

A corporation is entitled to double deduction for expenditure incurred on the promotion of exports, such as overseas advertising, free samples, export market research, participation in trade exhibitions, preparation of tenders, travel expenses, and maintenance of overseas sales office.

### **Export credit refinancing facility**

The ECR facility is aimed at promoting the export of goods by providing credit facilities to exporters of eligible goods manufactured in Malaysia. Eligible exports which have at least 20% of domestic value added and 30% of local raw materials will be eligible for ECR refinancing for a maximum period of 6 months at a competitive interest rate of 6% per annum (effective 7.6.1995).

### **Tariff protection/Import restriction**

Tariff protection can be considered for deserving infant industries which can supply a major portion of the domestic market. Tariff protection would be granted based on the degree of utilisation of domestic raw materials, level of local value added and level of technology of the industry. Tariff protection granted will be reviewed periodically.

### **Free zones and licensed manufacturing warehouses**

Free Zones (FZs) previously known as Free Trade Zones, are categorized into Free Industrial Zones (FIZs) and Free Commercial Zones (FCZs).

FIZs are areas designed for export orientated manufacturing establishments so as to enable them to enjoy minimum customs control and formalities in the import of raw materials, parts, machinery and equipment.

FCZs are areas specifically designed for establishments engaging in trading, breaking bulk, grading, repacking, relabelling and transit. Within a FCZ, goods are allowed to be imported without customs duties provided the processed goods after the activities of breaking bulk, grading, repacking and relabelling are ultimately exported.

Where the establishment of a particular industry in an FIZ is not practical, the government has allowed for the setting up of Licensed Manufacturing Warehouses which provide similar facilities as those available in a FIZ.

3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.

Agency	Address/telephone/fax
Malaysian Industrial Development Authority (MIDA)	G,3-6,9, 11 Floors, Wisma Damansara, Jalan Semantan, 50720 Kuala Lumpur Telephone: (60 3) 255 3633 Fax: (60 3) 255 7970

MIDA is the one-stop agency for foreign investors. Investors need only to approach MIDA to obtain most of the approvals required at the Federal level in respect of manufacturing, and for the granting of tax incentives in respect manufacturing, R&D, integrated agriculture, hotels and tourist projects. The main functions of MIDA are to receive, process and convey decisions on the following:

- (a) applications for Manufacturing Licences under the Industrial Coordination Act 1975.
- (b) applications for tax incentives under the Promotion of Investments Act 1986 and Income Tax Act 1967.
- (c) applications for expatriate posts and extension of business visit pass relating to manufacturing.
- (d) applications for tariff protection.
- (e) applications for exemption from import duty on raw materials, component and parts, machinery and equipment.
- (f) approvals of technology transfer agreements.
- (g) requests for verification or amendment of tariff codes.

Contact details of senior officials from various ministries and department and relevant corporations, to assist foreign investors, can be obtained from MIDA's Advisory Services Centre.

#### **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Bilateral Investment Treaties	See answer to Section C. Investment Protection.
Regional Investment Treaties	Asean Agreement for the Promotion and Protection of Investments Investment Guarantee Agreement with the Organisation of Islamic Conference (OIC)

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. Overview of recent trends in foreign investment over recent years (both inward and outward).
2. List of the major countries/economies that are sources/receivers of FDI.

### Inward Investment

#### **Approved Inward Manufacturing Projects (1990-1995)**

		1990	1991*	1992	1993	1994	1995
Number		906	973	874	686	870	894
Potential		169,764	179,408	106,041	94,592	136,487	117,482
Proposed Called-up Capital	(R.Mmil.)	9,676.1	9,679.0	8,662.6	4,851.4	7,788.6	6,523.7
Malaysian Equity	(R.Mmil.)	3,451.1	3,605.6	2,808.3	2,408.1	3,678.7	3,330.9
- Bumiputera Equity#	(R.Mmil.)	1,593.3	1,490.2	810.5	1,059.5	1,436.9	1,548.0
- Public Corporations	(R.Mmil.)	335.4	869.2	1,022.3	34.7	582.8	67.1
- Non-Bumiputera Equity	(R.Mmil.)	1,522.4	1,246.2	975.5	1,313.9	1,659.0	1,715.8
- Foreign Equity	(R.Mmil.)	6,228.0	6,073.4	5,854.3	2,443.3	4,109.9	3,192.8
Loan	(R.Mmil.)	18,489.0	21,139.4	19,112.5	8,901.3	15,162.7	14,341.5
- Local	(R.Mmil.)	7,087.9	10,157.5	7,194.7	5,057.4	7,933.5	8,390.7
- Foreign**	(R.Mmil.)	11,401.1	10,981.9	11,917.8	3,843.9	7,229.2	5,950.8
Total Proposed Capital Investment	(R.Mmil.)	28,168.1	30,818.4	27,775.1	13,752.7	22,951.3	20,865.2
- Local	(R.Mmil.)	10,539.0	13,763.1	10,003.0	7,465.5	11,612.2	11,721.6
- Foreign@	(R.Mmil.)	17,629.1	17,055.3	17,772.1	6,287.2	11,339.1	9,143.6

\* Figures from 1991 include expansions/diversification projects granted automatic approvals.

# Bumiputera equity includes equity subscribed by Trust agencies and Bumiputera institutions/individuals.

\*\* Loan attributed to foreign interest is apportioned from the total loan according to the percentage of the foreign share in the equity of each project.

@ Foreign investment = Foreign equity + loan attributed to foreign interest.

US\$1 = RM2.55

1995 figures are provisional.

Source: MIDA

FDI into Malaysia in the manufacturing sector remained high in 1995 with total foreign proposed capital investment of RM9,143.6 million.

The top five sources of FDI in manufacturing projects approved in 1995 are Japan, Taiwan, USA, Singapore and the Republic of Korea. Investment from these 5 countries totalled RM6,953.2 million, 76% of the total foreign investment approved in 1995.

Industries that received high levels of FDI were the electrical and electronics products industry, chemical and chemical products industry, non-metallic mineral products industry and wood and wood products industry.

In 1995, a total of 39 projects each with proposed capital investment of above RM100 million was approved.

Total investment in these projects amounted to 56.3% (RM 11,756.4 million) of the proposed total capital investment. Of this, 45.2% was proposed foreign investment.

### **Outward (reverse) Investment**

Outward investment by Malaysian residents abroad includes portfolio and equity investment, investment for the setting up and expansion of businesses, including joint-ventures and takeovers, real estate investment and long-term loans, including suppliers credit and other loans by residents (excluding banks) to non-residents. Outward investment was not given much attention until in recent years when the Malaysian economy began to experience robust growth. The higher income and profits accompanying the strong economic performance have encouraged Malaysia investors to venture into business and investment opportunities abroad.

The flow of Malaysian investment overseas is captured by the Central Bank's Cash Balance of Payments Reporting System. However the data do not reflect the total flow of investment overseas as it only captures the outflow (or inflow) of more than RM50,000.

The flow of Malaysian investment abroad increased from RM440 million to RM740 million during the period 1980-90, growing moderately at an average rate of 6% per annum. However, it more than tripled during the 1990-94 period, rising from RM1.4 billion in 1990 to RM4.6 billion in 1994. This represents an annual increase of 44.4% over the five-year period. For the first half of 1995, a total of RM2.7 billion has already been recorded as Malaysian investment abroad.

As a result of this rapid increase, gross overseas investment during the first half of the 1990s doubled that of the decade of the 1980s. Accompanying this rapid increase is a notable shift in the destination of investments.

While the concentration of overseas investment is still in five major countries (Hong Kong, Singapore,

Australia, the United States and the United Kingdom), the proportion of investments to these countries dropped from as high as 90% in the 1980s to 75% in the 1990s. Increasingly, gross overseas investments have been flowing to the developing countries particularly in the Asia-Pacific countries of China, Vietnam, Indonesia, Philippines as well as to India.

The Government encourages outward investment, especially in areas where Malaysian businesses have the comparative advantages in skill and know-how, such as resource-based manufacturing and the processing of agricultural products. Towards this end, the Government had provided various incentives. These include the exemption from tax on all income remitted into the country by Malaysian companies investing overseas and the provision of the overseas investment guarantee programme. In addition, the Government encourages the participation of Malaysian investors in investment promotion missions.

The recent turn of events, signifying political and economic reforms in several countries such as China, Vietnam, India and Sri Lanka, have transformed their investment climate into a more favourable one. As such, prospects are bright for Malaysian investors to expand their investments and businesses there.

# MEXICO

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# MEXICO

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

#### General

Mexico is now in the process of establishing the pattern of a new era of social progress and economic growth. At the center of the process there is a comprehensive policy aimed towards modernization of the economy through the application of sound principles that recognize the vital roles to be played by international trade and the private sector in the achievement of a consistent and productive development.

Mexico has taken definitive measures to make the most of its human and natural resources, capitalize its strategic geographic position: a 3,300 kilometer border with the United States; coastlines facing the Pacific and the Atlantic oceans; the gateway to all of Latin America.

#### Macroeconomic elements

- During the last decade Mexico has implemented several economic reforms in order to abandon the import substitution model with protected markets, restrictions to foreign investment and a large public sector.
- By opening and stabilizing its economy, liberalizing its investment regulations, and structuring a climate for private investment that assures enterprises a solid and supportive environment in which to operate, Mexico aims to win the confidence of foreign investors.
- December 1994 represented a pause to the abovementioned economic improvements since the country fell into a financial crisis originated by the devaluation of the peso. This crisis has not modified Mexico's commitment to open markets and stable macroeconomic policies, and encouragement of its integration to the world economy.
- In order to respond to the crisis in the short term, the Mexican government instrumented a programme in order to reduce the excessive reliance on short-term debt, shrink the current account deficit, stabilize the exchange rate and restrain the inflation rate.
- Since the mid-1980's, Mexico has undertaken several measures to increase capital flows to the country as a means to obtain non-debt finance.
- The long term strategy to face the financial crisis calls for exports to be the engine of growth. Such strategy is based in the attraction of foreign productive capitals and in the maintenance of the exchange rate at competitive levels.

#### Foreign Investment Policy

- Prior to the mid-1980's, foreign direct investment (FDI) played a relatively small role in Mexico's total external financing.
- As a result of its long-standing restrictive foreign investment policy, Mexico had a very low share of FDI.
- In May 1989, in order to support trade liberalization and complement domestic saving, the Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment were issued, which provided greater certainty by establishing clear investment rules for classified activities. The Regulations also included the "automatic procedure" in which prior approval of the National Commission of Foreign Investment (NCFI) was not required for Investments under 100 million dollars in manufacturing plants outside the three largest metropolitan areas. In addition, the 1989 Regulations allowed foreign investors to participate in the Mexican stock market through a neutral investment mechanism.
- Foreign direct investment grew rapidly after 1989, stimulated additionally by a 3.5% GDP growth in the 1989-1992 period, the macroeconomic environment and the prospect of the North American Free Trade Agreement (NAFTA).
- The former Administration's estimates on foreign investment inflows were USD 24 billion to be accumulated over a six year term. Nevertheless, in this period of time the accounted FDI reached an amount close to 51 billion, exceeding by 111.3% the expected amount. This reflected an investor's growing confidence in Mexico.
- In recent years, companies with FDI have become an important source of hard currency for Mexico and continue to be a factor for increasing trade. Mexico's policy is that of an open economy. In order to enhance economic development, policies concerning FDI are mainly directed towards the following basic objectives:
  - creation of more and better remunerated jobs;
  - allowance for the participation of fresh capital into the economy;
  - allowance for higher quality of domestic production through increased competition;



- transfer of technology and training of human resources;
- assistance to encourage international competitiveness;
- promotion and increase of non-oil exports; and
- contribution to the economy and social programs through the payment of taxes.

2. *Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.*

The National Plan of Development 1995-2000, states that the strategy related to economic growth, will be based on:

- (a) growth of productive factors, by means of investment; and
- (b) increasing the productivity of these factors.

Investment constitutes the link between savings, economic growth and employment. Mexico will assure the liberalization of trade and will subscribe new trade agreements with other countries, so that the access of our products to more dynamic economies will be guaranteed. The challenge is to make inflows a support instrument for our development and avoid the risks derived of an excessive dependence of short-term capital. For this purpose we will search for:

- stability conditions in the financial and economic evolution.
- stability on the exchange rate and a short term financially balance of the current account in the balance of payments
- stable and attractive real income of investment in Mexico.
- FDI will receive the same treatment as domestic investment.
- orientate foreign resources towards productive direct investment.
- promote the conditions that encourage longer terms for the financial capture.
- provide legal security and certainty to productive direct investment (foreign and domestic).

## **B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION**

### **1. Transparency**

#### *(i) Statutory (legislative) requirements*

##### *1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

- In December 1993, Mexico adopted a new Foreign Investment Law (“FIL”).
- The FIL liberalized several activities with specific regulations; today, foreign investment may participate in the expansion of investment, the creation of new lines of products and the establishment of new fields of economic activities.
- Likewise, the FIL bars all performance requirements that may distort international trade and are related to the establishment, operation or expansion of an investment.
- Thus, the FIL came to extend to all foreign investors, the commitments of liberalization and of no imposition of performance requirements, undertaken by Mexico under the NAFTA.
- Further, the new legal framework removes the restriction for Mexican companies without a foreigners’ exclusion clause to acquire real estate within the restricted zone for non-residential purposes. Foreign individuals and foreign corporations may acquire real estate located within the restricted zone through a trust for 50 years after which duration may be extended.
- The neutral investment mechanism allows Mexican companies to issue shares with no voting rights or with limited corporate rights, which grant their holders only pecuniary rights or limited corporate rights. Such participation is not computed to determine the foreign investment percentage in the capital stock of Mexican corporations.
- Under the current legislation, FDI is welcomed in almost all sectors of the economy. Of the 754 activities listed in the Catalogue of Economic and Productive Activities, approximately 697 are 100% open to foreign participation; 28 allow up to 49% FDI; 12 permit FDI up to 100% with prior approval of the NCFI; and, only 17 activities are prohibited to foreign ownership or control.
- Concerning infrastructure investment, a favourable resolution of the NCFI is required in order to hold more than 49% of the capital stock in construction, building and installation of public works. However, as of January 1st, 1999, foreign investment may participate up to 100% in the capital stock of Mexican corporations engaged in said activities, without requiring such resolution.

As of August 1995, the following activities have been liberalized:

- under the FIL, the railroad industry was classified as an activity reserved to the State. The Regulatory Law of the Railroad Services was published in the Official Gazette on May 12, 1995. Said Law

derogated the abovementioned disposition in order to allow private investment to participate in the railroad sector. In this regard, favourable resolution by the NCFI will be required for foreign investment to participate in a percentage greater than 49%.

- under the FIL, the satellite communications sector was also classified as an activity reserved to the State. The Federal Law on Satellite Communication was published in the Official Gazette on June 7, 1995. Article 12 thereof provides that foreign investment in the satellite communications sector may participate up to 49%. In cellular telephony foreign investment may participate up to 100%.
- the Law to Regulate Financial Corporations, the Credit Institutions Law and the Stock Exchange Law, were amended on February 15, 1995. Foreign investment coming from countries with which Mexico has an agreement on the subject, may now participate up to 49% in the following activities: holding companies for financial groups; commercial (multiple) banking, credit institutions; securities brokerage firms; and securities market specialists. Prior to those amendments, the FIL allowed foreign investment to participate in those activities only up to 30%.
- on May 11, 1995 the Decree that Amends and Adds several provisions of the Regulatory Law of Article 27 of the Mexican Constitution regarding Petroleum was enacted. Under Article 4 of such Decree, private investment may participate in the sectors of transport, storage and gas distribution. Likewise, the private sector may build, operate and own pipelines, installations and equipment for the use or the exploitation of gas.

Mexico is strengthening its efforts to attract more business partnerships and direct investment in capital goods, new factories, communications and transportation infrastructure, through the continuation of the privatization process.

In general, all Mexican laws have to be observed by foreign companies.

*(ii) Investment Review and Approval*

1. *Details of proposals and sectors that are/are not (yes/no) subject to screening.*

2. *For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

Proposals	Guidelines/Conditions
merger (No)	The merger itself has no restriction, nevertheless, if the activity of the latter corporation is subject to screening, the required conditions shall be respected.
acquisitions (Yes)	Foreign Investment Law (FIL) in article 9 provides that favourable resolution from the NCFI is required for foreign investment to acquire assets or shares in Mexican companies, regardless of the activity they engage in only whose total asset value, at the time of acquisition, exceeds the amount established annually by said Commission, and provide said acquisition implies that the direct or indirect participation of foreign investment in the capital of the companies in question exceeds 49% thereof.
greenfield investment (No)	
real estate/land (Yes)	Mexican companies with an exclusion of foreigners clause or which has executed the agreement to which said provision refers, may acquire ownership of real estate in Mexico.
joint venture (No)	

Sector	Guidelines/Conditions
telecommunications(Yes)	Under the FIL, the satellite communications sector was also classified as an activity reserved to the State. The Federal Law on Telecommunications was published in the Official Gazette on June 7, 1995. Article 12 thereof provides that foreign investment in the satellite communications sector may participate up to 49%. Only on cellular telephony foreign investment may participate up to 100%.
media (Yes)	According to Federal Law on Telecommunications maximum percentage on foreign investment can only rise to 49%.
transport (Yes)	FIL in its article 6 reserves exclusively to mexicans or to Mexican companies with an exclusion of foreigners clause several activities including National surface transportation of passengers, tourism and freight, excluding messenger and package delivery service. Also, Transitional Article Six establishes that international land transportation of passengers, tourism and freight between points within the territory of Mexico and administration services of bus stations for passengers and auxiliary services are reserved exclusively to Mexicans or Mexican companies with an exclusion of foreigners clause. However, foreign investment may participate in the above activities pursuant to the following provisions: <ul style="list-style-type: none"> <li>I. beginning on December 18, 1995, in up to 49% of the capital of mexican companies;</li> <li>II. beginning on January 1, 2001, in up to 51% of the capital of mexican companies; and</li> <li>III. beginning on January 1, 2004, up to 100% of the capital of mexican companies without need of obtaining favourable resolution from the Commission.</li> </ul>
agriculture (No)	

3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

**Guide for the constitution and registration of a Mexican corporation with foreign investment or the establishment of branches in Mexico**

**I. Automatic Procedure or via the National Commission of Foreign Investment**

**(a) Automatic Procedure**

In accordance with article 4 of the Foreign Investment Law (FIL), foreign investors may participate in any proportion in those activities not regulated thereby, without the need of a favourable resolution of the Commission nor authorization by the Ministry of Commerce and Industrial Development.

**(b) National Commission of Foreign Investment (NCFI)**

1. **Procedure:** Apply for an authorization in order to invest in the country, for the projects that cannot be implemented through the automatic procedure and intend to accomplish the activities or acquisitions subject to specific regulation pursuant to articles 8, 9 and ninth of the Transitorial Articles of the FIL.
2. **Requirements:** General information. Exhibition of a questionnaire (NCFI).
3. **Resolution:** 45 business days.

**II. Secretariat of Interior (SI)**

1. **Procedure:** Apply for authorization in order to demonstrate the legal stay in the country and to appear before a Notary.
2. **Requirements:** Non-Immigrant Visitant Form or business immigrant. Passport in force.

General information.

3. **Resolution:** 4 business days.

### III. Secretariat of Foreign Relations (SFR)

1. **Procedure:** A permit from the SFR is required for the creation of companies.
2. **Requirements.** Present a SR-1 form, mentioning three different names for the corporation.
3. **Resolution:** 3 business days.
4. **Cost:** Article 25, paragraph I and IX of the Federal Duties Law.

### IV. Notary Public

1. **Procedure:** protocolizing the Articles of Incorporation.
2. **Requirements:** Present the applicable authorization to demonstrate the corporation's representatives legal stay in the country.  
Authorization for the creation of companies.  
Official letter of authorization from the NCFI in case favorable resolution was required.  
Establish the general operation rules of the new company.
3. **Resolution:** 5 to 10 business days.

Note: the role of the Notary Public in the establishment of a corporation is essential, because of its legal authority to attest documents.

### V. Secretariat of Finance and Public Credit

1. **Procedure:** Registration of the company before the Treasury Office.
2. **Requirements:** Present : HRFC-1 Form.  
Register of the account system that would be used by the company.  
Copy of the Articles of Incorporation.
3. **Resolution:** 1 business day.

### VI. Public Registry of Property and Commerce

1. **Procedure:** Registration of the Articles of Incorporation.
2. **Requirements:** Present the authorization for the establishment of the company (SFR).
3. **Resolution:** 8 to 10 business days.

### VII. Ministry of Commerce and Industrial Development

1. **Procedure:** Inscription before the National Registry of Foreign Investment.
2. **Requirements:** Articles of Incorporation.  
Authorization for the legal stay of the investor in the country.  
RNIE-340-001, 002,003 and 004 Form, as required.
3. **Resolution:** 1 business day.

### VIII. Others

**IMSS** (Social Security), **INFONAVIT** (Housing Institution), **SAR** (Retirement Pensions Fund), **INDEUR** (National Institute of Urban Development), **SEDESOL** (Secretariat of Social Development), **SS** (Health Secretariat).

Those are the main steps that have to be accomplished for the establishment of a corporation in Mexico. However, it is important to contact a lawfirm, specialized in the field of corporate law, since they are the experts in this field. They would handle the establishment procedures from the first step, the correspondent permits of the Foreign Relations Secretariat, as well as all subsequent requirements that can arise during the operation of the corporation (labor issues, tax issues, special permits, etc.).

The relevant documents required are:

- Authorization by the National Commission of Foreign Investment (NCFI);
- General Data Questionnaire (code CNIE-01 and CNIE-02);
- Questionnaire to request resolution of the NCFI/Authorization by SECOFI (Ministry of Commerce and Industrial Promotion) (code CNIE-03 to 09);
- Registry or Modification of Data provided to the National Registry of Foreign Investment (NRFI);
- General Data Questionnaire (code 340-001):
  - SHCP-5 Format with payment stamp;
- First Section (Foreign legal or natural person) and Second Section (Mexican company with foreign investment):
  - Questionnaire (code 340-002);
  - Questionnaire (code 340-003);
- Third Section (Trust organized by foreigners):
  - Questionnaire (code 340-004) In a 40 labour days term, counting from the date in which the registration was requested or 60 labour days counting from the date in which the information was provided;

- Cancellation of registry before the NRFI:
  - General Data Questionnaire (code 340-001);
  - Cancellation Questionnaire (code 340-006);
- Annual actualization of Economic information of mexican corporations with foreign investment:
  - General Data Questionnaire (code 340-001);
  - Economic information Questionnaire (code 340-005).

4. *Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
Directorate General for Foreign Investment National Registry of Foreign Investment Control Department or Investment Facility	Av. Insurgentes Sur No. 1940 PB Col. Florida C.P. 01030  Delegación Alvaro Obregón México D.F. Telephone: (52 5) 229 6100 ext 3530 Fax: (52 5) 229 6507
Directorate General for Foreign Investment National Commission of Foreign Investment Project Evaluation or Investment Facility	Av. Insurgentes Sur No. 1940 PB Col. Florida C.P. 01030  Delegación Alvaro Obregón México D.F. Telephone: (52 5) 229 6100 ext. 3551, 3552 Fax: (52 5) 229 6507
SECOFI's Federal delegations or subdelegations.	

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

(A) Establishing Foreign Corporations

According to FIL, Article seventeen, any application to obtain an authorization for establishing a foreign corporation in Mexico must be approved by the Ministry of Commerce and Industrial Promotion within 15 business days following the date of its filing.

(B) Neutral Investment Applications

FIL doesn't establish an average period for neutral investment filings.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal. Description of appeal processes and the average time for an appeal to be considered.*

Agency	Address/telephone/fax
Ministry of Commerce and Industrial Promotion Directorate General of Foreign Investment Legal Directorate	Insurgentes Sur 1940, eighth floor.  Telephone: (52 5) 229 6100 ext. 3505 Fax: (52 5) 229 6507

Elaborate a script to be presented before the Directorate General of Foreign Investment, soliciting an appeal attended by the Undersecretary of International Commercial Negotiations. The appeal process should not be longer than four months.

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

(a) **Establishing Foreign Corporations**

Elaborate a script to be presented before the Legal Directorate, including general information about the project, By Laws copy, power of representative or attorney and incorporation agreement. All documents must be legalized by the corresponding Mexican Consul or Apostille, according to the Hague Convention of 1961.

(b) **Neutral Investment Applications**

Elaborate a script to be presented before the Legal Directorate, including general information about the project, specifically required percentage of neutral investment and limited corporative rights that this new shares of stock will bring to shareholders.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies).*

Agency	Address/telephone/fax	Type of Complaint
Ministry of Commerce and Industrial Development.  Directorate General of Foreign Investment	Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030  Delegación Alvaro Obregón México D.F. Telephone: (52 5) 229 6100 ext 3505 Fax: (52 5) 229 6507	Any type of complaint

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Provide addresses and phone/fax numbers for these agencies.*

Agency	Address/telephone/fax	Functions
Directorate General for Foreign Investment  Directorate for the NCFI	Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030  Delegación Alvaro Obregón México D.F. Telephone: (52 5) 229 6100 ext. 3505 Fax: (52 5) 229 6507	The General Directorate for Foreign Investment is in charge of the coordination, evaluation, authorization and screening of projects involving FDI.  The Directorate for the NCFI and Juridical Affairs has the following functions:  (a) emmision of administrative resolutions;  (b) screen and verify compliance with legal provisions, impose sanctions; and  (c) provide information regarding the interpretation and application regarding the legal framework for foreign investment.

General Directorate for Foreign Investment	Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030	The Directorate for the NRFI has the following functions:
Directorate for the NRFI	Delegación Alvaro Obregón México D.F. Telephone: (52 5) 229 6100 ext. 3509 and 3510 Fax: (52 5) 229 6507	<p>(a) authorize the registry of foreign corporations;</p> <p>(b) issue registry forms;</p> <p>(c) make studies and statistical informs regarding the presence and behaviour of foreign investment in our country; and</p> <p>(d) impose sanctions.</p>

*10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

As of August 1995, the following activities have been liberalized:

- under the FIL, the railroad industry was classified as an activity reserved to the State. The Regulatory Law of the Railroad Services was published in the Official Gazette on May 12, 1995. Said Law derogated the abovementioned disposition in order to allow private investment to participate in the railroad sector. In this regard, favourable resolution by the NCFI will be required for foreign investment to participate in a percentage greater than 49%.
- under the FIL, the satellite communications sector was also classified as an activity reserved to the State. The Federal Law on Satellite Communication was published in the Official Gazette on June 7, 1995. Article 12 thereof provides that foreign investment in the satellite communications sector may participate up to 49%. In cellular telephony foreign investment may participate up to 100%.
- the Law to Regulate Financial Corporations, the Credit Institutions Law and the Stock Exchange Law, were amended on February 15, 1995. Foreign investment coming from countries with which Mexico has an agreement on the subject, may now participate up to 49% in the following activities: holding companies for financial groups; commercial (multiple) banking, credit institutions; securities brokerage firms; and securities market specialists. Prior to those amendments, the FIL allowed foreign investment to participate in those activities only up to 30%.
- on May 11, 1995 the Decree that Amends and Adds several provisions of the Regulatory Law of Article 27 of the Mexican Constitution regarding Petroleum was enacted. Under Article 4 of such Decree, private investment may participate in the sectors of transport, storage and gas distribution. Likewise, the private sector may build, operate and own pipelines, installations and equipment for the use or the exploitation of gas.

*11. Where applicable, the role for sub national agencies in the approval process.*

Documents mentioned in section B(1)(ii)(3) can also be presented at SECOFI's federal delegations and subdelegations. These agencies can issue registry forms and receive the documentation regarding approval. However, the resolution /approval process only takes place at the Directorate General for Foreign Investment.

**2. Most Favoured Nation Treatment / Non-discrimination between Source Economies**

*1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).*

Mexico only grants most favoured nation treatment to those countries with which we have a treaty that establishes such treatment, such as:

**NAFTA**

***Reservations for Existing Measures and Liberalization Commitments***

**Sector:** Fishing

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Investment: With respect to an enterprise established or to be established in the territory of Mexico performing coastal fishing, fresh water fishing and fishing in the Exclusive Economic Zone, investors of another Party or their investments may only own, directly or indirectly, up to 49 percent of the ownership interest in such an enterprise.

With respect to an enterprise established or to be established in the territory of Mexico performing fishing on the high seas, prior approval of the NCFI is required for investors of another Party or their investments to own, directly or indirectly, more than 49% of the ownership interest in such an enterprise.

**Phase-Out:** None

**Sector:** Professional, Technical and Specialized Services

**Sub-Sector:** Professional Services

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Except as provided for in this reservation, only lawyers licensed in Mexico may have an ownership interest in a law firm established in the territory of Mexico.

Lawyers licensed in a Canadian province that permits partnerships between those lawyers and lawyers licensed in Mexico will be permitted to form partnerships with lawyers licensed in Mexico.

The number of lawyers licensed in Canada serving as partners, and their ownership interest in the partnership, may not exceed the number of lawyers licensed in Mexico serving as partners, and their ownership interest in the partnership. A lawyer licensed in Canada may not practice or advise on Mexican law.

**Phase-Out:** None

**Sector:** Transportation

**Sub-Sector:** Water Transportation

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Investment: Prior approval of the NCFI Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than the 49% of the ownership interest in an enterprise established or to be established in the territory of Mexico operating foreign-flagged vessels providing international maritime transport services.

**Phase-Out:** None

**Reservation for Future Measures**

**Sector:** Communications

**Sub-Sector:** Entertainment Services (Broadcasting and Multipoint Distribution Systems (MDS))

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Cross-Border Services and Investment: Mexico reserves the right to adopt or maintain any measures relating to investment in, or provision of, broadcasting, multipoint distribution systems, uninterrupted music and high-definition television services. This reservation does not apply to measures relating to the production, sale or licensing of radio or television programming.

**Sector:** Communications

**Sub-Sector:** Telecommunications

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Cross-Border Services and Investment: Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, air traffic control, aeronautical meteorology, aeronautical telecommunications, and other telecommunications services relating to air navigation services.

**Sector:** Communications

**Sub-Sector:** Telecommunications Transport Networks

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Cross-Border Services and Investment: Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, telecommunications transport networks and telecommunications transport services. Telecommunications transport networks include the facilities to provide telecommunications transport services such as local basic telephone services, long-distance telephone services (national and international), rural telephone services, cellular telephone services, telephone booth services, satellite services, trucking, paging, mobile telephony, maritime telecommunications services, air telephone, telex, and data transmission services. <<telecommunications transport services typically involve the real time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, whether or not such services are offered to the public generally.

**Sector:** Professional, Technical and Specialized Services

**Sub-Sector:** Professional Services

**Type of Reservation:** Most-Favored-Nation Treatment (Article 1103)

**Description:** Cross-Border Services and Investment: Subject to Schedule of Mexico Annex VI, Mexico reserves the right to adopt or maintain any measure relating to the provision of legal services and foreign legal consultancy services by persons of the United States.

**Activities Reserved to the State**

Please refer to Annex III of the NAFTA.

**Exceptions from Most-Favored-Nation Treatment**



Mexico takes an exception to Article 1103 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of the NAFTA.

For international agreements in force or signed after the date of entry into force of the NAFTA, Mexico takes an exception to Article 1103 for treatment accorded under those agreements involving:

- (a) aviation;
- (b) fisheries;
- (c) maritime matters, including salvage; or
- (d) telecommunications transport networks and telecommunications transport services (this exception does not apply to measures covered by Chapter Thirteen (Telecommunications) or to the production, sale, or licensing of radio or television programming).

With respect to state measures not yet set out in Annex I pursuant Article 1108(2), Mexico takes an exception to Article 1103 for international agreements signed within two years of the date of entry into force of the NAFTA. For greater certainty, Article 1103 does not apply to any current or future foreign aid programs to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the Organisation for Economic Cooperation and Development (OECD) Agreement on Export Credits.

*2. Identification and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.*

North America Free Trade Agreement (NAFTA), Group of the Three ( Colombia, Venezuela and Mexico) Free Trade Agreement, Bolivia-Mexico Free Trade Agreement, Economic Cooperation Agreement Chile-Mexico, Costa Rica-Mexico Free Trade Agreement.

### 3. National Treatment

1. List and description of any sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
<p>Foreign Investment Law Of The United Mexican States</p> <p><b>Article 5</b></p> <p>I. Petroleum and other hydrocarbons;</p> <p>II. Basic petrochemicals;</p> <p>III. Electricity;</p> <p>IV. Generation of nuclear energy;</p> <p>V. Radioactive minerals;</p> <p>VI. Telegraph;</p> <p>VII. Radiotelegraph;</p> <p>VIII. Mail;</p> <p>IX. Issue of currency; and</p> <p>X. Minting of coins;</p> <p>XI. Control, supervision and oversight of ports, airports, and heliports; and,</p> <p>XII. Such others as are expressly stated in the applicable legal provisions.</p>	<p>The functions determined by the laws in the following strategic areas are reserved exclusively to the State.</p>
<p><b>Article 6</b></p> <p>I. National surface transportation of passengers, tourism, and freight, excluding messenger and package delivery service;</p> <p>II. Retail trade in gasoline and liquid petroleum gas;</p> <p>III. Radio broadcasting service and other radio and television services different from cable television;</p> <p>IV. Credit unions;</p> <p>V. Development banking institutions, pursuant to the provisions of the law on the subject; and</p> <p>VI. Supply of professional and technical services expressly set forth in the applicable legal provisions.</p>	<p>These economic activities and corporations are reserved exclusively to Mexicans or to Mexican companies with an Exclusion of Foreigners Clause.</p> <p>Foreign investment may not participate in the listed activities and corporations in this article directly or through trusts, agreements, corporate or shareholder pacts, pyramid schemes, or any other mechanism that grants it any control or equity participation whatsoever, except as provided by title Fifth.</p>

*2. Description of nature and scope of any limitations on foreign firms' access to sources of finance, eg. are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.*

In broad terms, Mexican law does not distinguish between domestic and foreign companies with regard to limitations on sources of finance; as long as foreign companies operate through a permanent establishment or a fixed base in Mexico (or a subsidiary in the case of financial services), they are generally treated as resident corporations.

With regard to offshore financing, there are no general limitations, since the country does not maintain foreign exchange controls. Specific sectors, such as the financial sector, have their own particular regulations. Banks, for instance, are limited in the amount of foreign currency financing they can acquire.

Both foreign and domestic companies can issue securities in the Mexican Stock Market, as long as they comply with the conditions and regulations set forth in the Securities Law (Ley del Mercado de Valores).

Inter-company loans between related parties are regulated by the Federal Income Tax Law, particularly with regard to transfer pricing. Special laws also apply to the financial sector. Securities firms, for instance, have limitations regarding their source of financing.

#### **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

There are no restrictions on remittances abroad of profits, royalties, dividends, and interest paid on loans, or capital repatriation of funds related to foreign investment.

*2. Brief description of the foreign exchange regime.*

Exchange rates policy will continue to be implemented under the floating regime introduced at the end of December 1994. Bank of Mexico will intervene in the market, in order to avoid excessive daily fluctuations of the exchange rates.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions on the convertibility of currencies for the overseas transfer of funds.

#### **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

To facilitate the residence of foreign investors, officers and technicians in Mexico, the authorities in Mexican consulates abroad are authorized to issue the corresponding visas.

The most usual visas are for "business visitor", "investor visitor" and "professional visitor". The characteristics of each visa are as follows:

##### **A. Business Visitor**

Purpose: To help foreigners to identify investment opportunities and to make direct investments.

Conditions: Letter of invitation issued by trade chambers, public agencies, companies, or financial institutions, and to produce evidence, by bank letter, of no less than 7,600 pesos as monthly income.

Term: Up to one year: It can be renewed indefinitely for equal term periods.

##### **B. Investor Visitors**

Purpose: To help foreigners to supervise their direct investments.

Conditions: To produce evidence of registration with the National Foreign Investment Registry, or documentation confirming an investment for a minimum 393,000 pesos.

Term: Up to one year. It can be renewed indefinitely for equal term periods.

##### **C. Professional Visitors**

Purpose: To help in the practice of a remunerated activity of a company.

Conditions: The application for the corresponding officer or technician to enter the country must be submitted by the company interested in hiring those services.

Term: Up to one year. It can be renewed up to four times for equal term periods.

2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Restrictions	Description
Article 7 of the Federal Labor Law	<p>“in every enterprise or establishment, the employer shall employ at least 90% Mexican workers”.</p> <p>In the categories of technicians and professionals, the workers shall be Mexicans, except where there are none in a particular speciality, in which case the employer may employ foreign workers, in a proportion that does not exceed ten per cent of those of the speciality. The employer and the foreign workers shall be obliged to train the Mexican workers in such speciality. Doctors working for enterprises shall be Mexicans.</p> <p>Directors, Managers and General managers are excepted from this Article.</p>
Mexican Constitution, Article 25. Cooperative Societies General Law, Title I Chapter I, Title II, Chapter II.	<p>There are nationality restrictions for every sector. No more than 10 per cent of the members of a cooperative society of Mexican production may be foreigners. Foreigners may not have direction or general management posts in such enterprises.</p> <p><u>For fire arms:</u> Foreigners may not designate or be designated members of the board of directors or occupy top direction posts of such enterprises.</p>
Religious Associations and Public Cult Law, Title II, Chapters I, II.	<p><u>For religious services:</u> The representatives of religious associations must be Mexican nationals.</p>
Foreign Investment Law; Title I; Chapter III, Civil Aviation Law; Chapter I, III, IV and IX; among others.	<p><u>For aerial transportation:</u> The president, at least two thirds of the board of directors and two thirds of top direction posts of such enterprises shall be Mexican nationals.</p>

3. Description of any regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.

The Labor Legislation provides a maximum 48 hour work week. Day shifts are eight hour long, while night shifts are seven hours long. However, workers usually work between 40 and 45 hours per week.

There is a possibility to work overtime for two or three times the normal hourly wages per hour, depending of the corresponding number of hours. Double wages are paid for nine hours per week (three hours per day three times per week) and any additional overtime is paid three times the normal hourly wages. Triple pay is also provided for work on the seven legal holidays.

After one year of continuous work, workers have the right to six working days of paid vacation which is increased every year up to a maximum 22 days. During the vacation period, workers will be paid an extra minimum 25% of their normal wages as a vacation premium.

When firing workers, the company must compensate them by paying three months wages plus 20 days per year of work with the company.

In dealing with voluntary resignations, the company is only liable for a portion of the vacation premium and the corresponding Christmas bonus. However, if the employee has worked for over 15 years continuously, the severance settlement will be increased by 12 days of the last monthly wages paid, for each year of work with the company.

Worker's incomes are established according to agreements regulated by the Federal Labour Law. The most common agreements are: the Collective Labour Contract whose clauses are agreed upon between the union and the company and the Individual Labour Contract, where these process take place between worker and the employer.

Wages are reviewed every year based on the official target of inflation and the worker's productivity growth. The resulting level cannot, by Law, be lower than the minimum wage.

The mandatory social benefits are the contributions made to the social security system, the housing fund and the retirement savings system, as well as paid vacations, the vacation premium and the year-end bonus. In the case of a worker with one-year seniority these benefits account on average for a cost of 29% of the wages paid.

4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

Law	Summary
Labour Federal Law	Applies to national and foreign firms in the context of labour disputes/relations.

## 6. Taxation

1. List and summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Please note that the information hereby provided is intended to serve only as a guide for those interested in investing in Mexico. For the actual payment of taxes, interested parties should seek the proper accounting and legal advice and/or consult the appropriate authorities and/or legislation.

The following summary of the Mexican Tax System pertains only to Federal Taxes. State and local authorities do not levy income taxes, but only taxes on salaries and real property.

### Mexican Taxation

Since 1984 the Mexican Tax System has undergone a substantial transformation. The current income tax system recognizes the effects of inflation and generally avoids double taxation of income. In broad terms, profits are only taxed once at the corporate level; distribution of after-tax profits to shareholders is virtually tax-free.

#### **A.- Regulatory Framework**

**Laws & Regulations.-** The Fiscal Code (Código Fiscal de la Federación) establishes the rights and obligations of taxpayers, the power of fiscal authorities, as well as all matters related to tax penalties, collection and litigation. The income Tax Law (Ley del Impuesto sobre la Renta) regulates federal income taxes. Other taxes, such as the value added tax and the asset tax, have their own specific regulations.

**Enforcement.-** The Ministry of Finance (Secretaría de Hacienda y Crédito Público) is currently the governmental agency in charge of applying, interpreting and enforcing income tax laws.

#### **B.- Definitions of Taxpayers**

##### **Residents**

(a) Individuals: Mexican residents must report all their worldwide income, regardless of their nationality, but are granted a foreign tax credit on foreign source income. Individuals that reside in Mexico for more than 183 days in a calendar year may be considered residents. Income is taxed at graduated rates with a maximum rate of 35%.

(b) Corporations: Foreign entities with a permanent establishment or a fixed base in Mexico are treated as resident corporations. Resident corporations are taxed on their worldwide income, but can reduce double taxation on foreign source income through the use of foreign tax credits; tax treaties further reduce double taxation. The current corporate income tax rate is a 34% flat rate.

##### **Non-residents**

Non-residents are taxed only on Mexican source income. Rates vary depending on the source of income, and are also affected by tax treaty provisions. Taxes are generally collected on a withholding basis.

Taxation arrangements	Summary
<b>C.- Corporate Income Taxes</b>	Resident corporations, most partnerships and certain individuals engaged in business are taxed on their income at the 34% corporate tax rate.
<b>Taxable income</b>	Defined as gross income less allowable deductions. Adjustments are made for inflationary gains or losses and for any loss carried forward from previous years.

<b>Inflationary gain or loss / Interest</b>	In general terms, the taxpayer is required to make a monthly inflationary adjustment (through the use of the National Consumer Price Index-national CPI) of all liabilities and monetary assets in order to determine “real” interest expense as well as “real” interest income. The inflationary component of liabilities is subtracted from interest expense accrued for the month. If the result is positive, the net result is allocated to interest expense, and if negative, it is allocated to income as inflationary gain. The same process is applied to interest income in order to determine inflationary loss and/or interest income. In essence, only “real” interest expenses (above the rate of inflation) are deductible and only “real” interest income is taxable.
<b>Deductions</b>	Cost of Goods- Inventory method is not used, and taxpayers are allowed to deduct all inventory purchases.  Bad Debts- Only deductible when they can be proven to be uncollectible.  Depreciation- Only allowed on a straight-line basis. Depreciation basis can be indexed using the national CPI. One-time lump-sum deductions are permitted in certain cases.
<b>Loss Carryforward</b>	Net Operating Losses incurred in any given fiscal year may be carried forward 5 years (10 years starting in 1996). Net operating losses can be adjusted for inflation using the national CPI. Carrybacks are not allowed.
<b>Capital Gains</b>	Normally treated as ordinary income and are taxed at the ordinary 34% corporate flat rate. Special provisions apply to the calculation of the cost of stocks. The basis of fixed assets, including real estate, machinery and equipment is adjusted for inflation using the national CPI.
<b>Group Taxation</b>	Mexican holding companies may elect to file a consolidated income tax return with respect to companies in which they own more than 50% of the stock.
<b>Branch Income</b>	Branches and/or permanent establishments of foreign corporations are treated for tax purposes, in general terms, as resident corporations. They are allowed certain home-office deductions and remittances of after-tax profits are not taxed.
<b>Avoidance of Double Taxation</b>	Mexico uses an integrated tax system that exempts dividends from taxation at the shareholder level. Corporations must calculate a “net taxable income account” (NTIA), which consists of the cumulative annual net taxable income, adjusted for a number of items. This account is also adjusted for inflation. Dividends paid from this account, including intercompany dividends, are not taxed at the shareholder level. Dividends not paid from this account are taxed at the corporate level at a 34% gross rate.
<b>Fiscal Year</b>	Taxpayers are required to use the calendar year as their fiscal year.
<b>Accrual vs Cash Basis</b>	Income is generally recognized on an accrual basis.

<b>Tax Returns</b>	<p>Taxpayers are required to make a monthly (or quarterly, depending on the amount of the previous year's earnings or the type of taxpayer) advance income tax payment on the 17th day of each month, generally calculated on the basis of the taxable profit to gross income ratio of the previous year. Taxpayers must file an annual income tax return within three months of the end of the fiscal year.</p>
<b>D.- Indirect and Other Taxes</b> <b>- Asset Tax</b>	<p>This tax works as an alternative minimum income tax and is levied at the rate of 1.8% of the average value of the taxpayer's business assets. This tax supplements the income tax, and is only paid when the assessed asset tax is greater than the income tax; the income tax is credited against the asset tax.</p>
<b>- Value Added Tax</b>	<p>A non-cumulative tax payable at the general rate of 15% on the sale of goods, the rendering of services, leases and the importation of goods and services. The value added tax (VAT) paid by taxpayers on purchases is credited against VAT charged on sales. Activities such as the sale of land, residential construction, residential leases, banking services and medical services are exempt. 0% rate applies generally to exports, medicines and basic foodstuffs, and allows taxpayers to earn a credit on VAT paid on purchases. A 10% rate applies to certain activities carried out by residents of the border zones.</p>
<b>E.- Employee related Payments &amp; Contributions</b> <b>- Profit Sharing</b>	<p>Businesses with employees are required by law to distribute 10% of taxable income (adjusted by eliminating inflation related gains/losses and by adding tax-free dividend income) to employees. Special rules apply to a number of specific businesses.</p>
<b>- Social Security</b>	<p>Employers must contribute approximately 17.5% of employees' salaries (up to a maximum of 10 or 25 times the minimum wage in effect in Mexico City) as premiums for health and maternity insurance, disability, old age, unemployment and other benefits. The employee must also contribute around 5.2% of his salary. Reform of the Social Security Law, effective in 1997, will affect these payments. A portion of the premiums will be deposited, together with housing fund contributions and retirement savings, in a new individual retirement account.</p>
<b>- Housing Fund</b>	<p>Employers must contribute 5% of employees' wages (up to a maximum of 10 times the minimum wage in effect in the area of employment) to an individual employee bank account. Funds may be withdrawn for specified housing benefits.</p>
<b>- Retirement Savings</b>	<p>Employers are required to deposit 2% of employee's wages (up to a maximum of 25 times the minimum wage in effect in Mexico City) in an individual employee bank account.</p>

<p><b>F.- Withholding Taxes &amp; Double Taxation Agreements</b> (please also refer to the table below)</p>	<p><u>List of some of the most common withholding taxes on payments to non-residents:</u></p> <p>Income tax must be withheld from payments to non-residents (both corporations and individuals) by resident corporations and individuals. The withholding rate applies to gross income, with no deductions (taxpayers may, in some instances, elect the option to be taxed on net income, particularly with regard to the sale of real estate). The following list, unless otherwise stated, does not consider withholding tax rates negotiated under tax treaty provisions:</p>
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	Withholding tax rate
Wages, salaries and other remuneration for services rendered in Mexico paid by a Mexican employer	Graduated scale of 0%, 15% or 30% depending on the amount.
Dividends	0% if paid from net taxable income account.
Sale of shares of Mexican companies, financial derivative transactions	20% or 0% if transaction is done through the Mexican Stock Exchange.
<p>Interest:</p> <ul style="list-style-type: none"> <li>• paid to foreign government financial entities, foreign banks and other duly registered entities;</li> <li>• on publicly traded securities, such as bonds and debentures;</li> <li>• paid to duly registered tax exempt pension and retirement plans;</li> <li>• financial leases;</li> <li>• other type of interest.</li> </ul>	<p>15% or 4.9% if country has a tax treaty currently in force.</p> <p>15% or 4.9% if country has a tax treaty currently in force.</p> <p>0%</p> <p>15%</p> <p>35%</p>
<p>Royalties:</p> <ul style="list-style-type: none"> <li>• authors' royalties for scientific, artistic or literary work; technical assistance and transfer of technology;</li> <li>• use of trademarks, patents, commercial names and advertising.</li> </ul>	<p>15%</p> <p>35% or 15% if technical assistance is provided.</p>



Leases:	
• leasing of condominiums or timeshares;	35%
• leasing of other real property;	21%
• leasing of containers and railroad cars, ships and airplanes operated under a federal transportation concession;	5%
• leasing of scientific, commercial or industrial equipment;	15%
• leasing of other personal property.	21%
Sale of real property located in Mexico	20%
Debt for Equity swaps	20%

## 7. Performance Requirements

1. *Description of performance requirements that could impose limits on trade and investment and any Trade Related Investment Measures (TRIMs).*

Under the current Foreign Investment Law no performance requirements are imposed.

On March 31, 1995, the notification of some legal instruments, authorized by the World Trade Organisation (WTO) was made. This notification only covers TRIMs related to the automotive industry and autotransport vehicles.

### Automotive Industry

The Automotive Decree entered into force on June 15th, 1990. According to the Decree, “automotive industry” refers to a group of enterprises that covers the terminal and autoparts industries. The obtained benefit consists of complementing the offer of certain vehicle enterprise in the domestic market, through the import of new vehicles.

The Decree does not have a clause setting its gradual reduction or elimination. However, NAFTA establishes that Mexico can maintain the dispositions of the Automotive Decree and its Rules of Application, that are not compatible with the Agreement, until January 1, 2004.

### Autotransport Vehicles

According to the Decree with dispositions for autotransport vehicles (entered into force on January 1, 1994), “manufacturer of autotransport vehicles” is an enterprise operating in Mexico, constituted or organized under the Mexican legislation and in compliance with the other three requirements. The obtained benefit consists of complementing the offer of autotransport vehicles of certain enterprise in the domestic market, through the import of such vehicles.

These provisions expire on December 31, 1998.

## 8. Capital Exports

1. *List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

In Mexico there are no exchange rate controls and no limitations with regard to the export of capital, repatriation of profits or any type of remittances in foreign currency.

2. *List and brief description of any regulations/institutional measures that limit technology exports.*

There are no such regulations.

## 9. Investor Behaviour

1. *Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

Every Mexican law has to be observed by foreign investors, specifically the Foreign Investment Law.

## **10. Other Measures**

### *1. Brief outline of the competition policy regime.*

#### **Competition laws of general application**

The Federal Law on Economic Competition (FLEC) was enacted on June 23, 1993 creating at the same time the Federal Competition Commission, as the agency in charge of enforcing the law. The principal objective of this new antitrust statute is to protect the process of competition in the Mexican market, and enhance economic efficiency.

#### **Principal Provisions of the Statute**

The Federal Competition Commission was designed to function as an autonomous and decentralized administrative body of the executive branch within the Mexican Secretariat of Commerce (Secretaria de Comercio y Fomento Industrial). The President of the republic appoints a panel of five commissioners, including the president, to form a plenary session with decisions made by majority vote. The Commission is empowered to:

- (1) conduct investigations of competition violations initiated at the request of interested parties or by the Commission itself;
- (2) issue administrative rulings and assess penalties for such violations (and for contempt of the Commission);
- (3) render advisory opinions regarding competition policy questions; and
- (4) participate in the negotiation of international agreements regarding competition policy.

This antitrust statute consists of 39 articles that establishes economic and legal regulations for all economic agents in Mexico. This includes all government agencies or entities, individuals, private companies, state owned companies or companies with government participation, associations, professional organizations, trusts and the like. Article 1 and 3 of the (FLEC) state the general application of Mexico's antitrust policy:

Article 1: This law regulates Article 28 of the Constitution regarding economic competition, monopolies and free market participation. Its observance is binding in the entire Republic and applies to all sectors of economic activity.

Article 3: All economic agents are subject to the provisions of this law, whether they are individuals or corporations, agencies or entities of the federal, state, municipal public administration, associations, professional groups, trusts or any other form of participation in economic activities.

#### **Restrictive Agreements**

The fourth paragraph of Article 28 of the Federal Constitution reserves several areas of economic activity, considered to be "strategic areas" for the state. Under the new FLEC, these particular areas are not considered to be monopolies. Nevertheless, any state enterprise is subject to FLEC outside of the strategic sectors.

Article 28 of the Constitution: The functions of the state which manage exclusively strategic areas shall not constitute monopolies. These include: the coinage of money; mail, telegraphs, radiotelegraphs and satellite communications; the issuance of paper money by one single bank controlled by the Federal Government; petroleum and other hydrocarbons, basic petrochemicals; radioactive minerals and the production of nuclear energy; electricity; railroads and activities expressly set forth in the laws issued by the Congress of the Union. The State shall have the organizations and enterprises it requires for the efficient management of strategic areas it is in charge of and for the activities which are a priority, where according to the law, it participates by itself or with the social and private sectors.

#### **Dominant positions/monopolies**

The FLEC prohibits all absolute monopolistic practices, referred to as "per se" practices. According to the law, agreements among competitors to fix prices or quality, rig public bidding, divide distribution of goods or services, or allocate market shares violates article 9 of the statute, regardless of the size of the agent involved, or the characteristics of the market.

#### **Relative Monopolistic Practices**

Relative Monopolistic Practices are evaluated under a rule of reason approach to determine whether they have pro or anti-competitive effects in the market. The principal relative practices considered in the FLEC are the following:

1. Vertical Market Division;
2. Vertical Price Maintenance;
3. Tied Sales;

4. Exclusive Dealing;
5. Refusal to Deal; and
6. Others with similar consequences in the market.

According to the FLEC, in order to determine whether a given practice is illegal or not, the Commission must first define the relevant market and determine whether agents carrying out the practice have “substantial power” in the relevant market.

**Merger control**

The laws approach is basically preventative. There is a pre-merger notification procedure to aid the Commission in detecting uncompetitive mergers. This procedure gives a maximum period for investigation and deliberation of 45 days. The FLEC establishes in Article 20 that the Commission must be notified of all “concentrations” involving firms under the following conditions:

1. If the value of a single transaction or series of transactions amounts to over 12 million times the minimum general wage prevailing in the Federal District (\$US54.69 million);
2. If a single transaction or series of transactions implies accumulation of 35% or more of the assets or shares of an economic agent, whose assets or sales amount to more than 12 million times the minimal general wage prevailing in the Federal District (\$US54.69 million); or
3. If two or more economic agents take part in the transaction, and their assets or annual income volume of sales, jointly or separately, total more than 48 million times the minimum general wage prevailing in the Federal District (\$US219.45 million), and such transaction implies an additional accumulation of assets or capital stock in excess of 4.8 million times the minimum general wage prevailing in the Federal District (\$US21.94 million).”

**2. Exclusions**

“Strategic areas” found in Article 28 of the Constitution represent the only exclusions for the FLEC. The list of categories given in the questionnaire are covered by the FLEC, unless noted below.

Article 5: Associations of workers formed in accordance with relevant legislation to protect their interests do not constitute monopolies.

Privileges granted to authors and artists for the production of their work for a determinable period of time and those granted to inventors and individuals perfecting an improvement for the exclusive use of their inventions do not constitute monopolies.

Article 6: Associations or cooperatives that sell their products directly abroad do not constitute monopolies provided that:

- (a) The products are the principal source of wealth produced in the region, or are not of dire need;
- (b) They are neither sold nor distributed in Mexico;
- (c) Membership is voluntary and members are free to join or resign;
- (d) Permits or authorizations issued by agencies or entities of the Federal Public Administration, are neither granted nor distributed by such associations or cooperatives; and
- (e) In each case, incorporation is authorized by the legislature that corresponds to their corporate domicile.

Electricity: The Mexican Constitution states that the generation, transmission and distribution of electricity are “strategic areas” reserved for the state. This exclusivity, however refers only to electricity for public consumption; the Constitution allows for the private provision of electricity for a company’s own use. Currently, the law clearly defines the frontiers of private and public service is allowing for private investment in electricity generation. Specifically, the regulatory changes exclude generation for self-consumption, co-generation, and independent power production from the concept of “public service.” As a result, private parties are now permitted to produce electricity for their own use and by allowing them to sell power to The Federal Electricity Commission (publicly owned electric utility) they reduce the government agency’s investment costs and encourage expansion of our infrastructure. Private parties can also export and import electricity for their own use, and may have access to public electricity sources under some circumstances.

Ocean Shipping, including ancillary services like harbor towage, stevedores, etc.: The recently approved Federal Law on Ports (1991) allows for the complete operation of a port by a private corporation as well as the privatization of the associated infrastructure. The new law on ports along with the newly enacted law on Maritime Transportation, now serve as the basic regulatory framework for a wide-ranging program to privatize

the nation's ports, a process that has already begun with the privatization of dredging operations, and is slated to move forward with additional divestiture of port infrastructure.

### **3. Partial Exclusions**

There are no partial exclusions within the statute of the FLEC. All economic agents are subject to equal coverage under the auspices of the law. However, there are several exceptions of state discretionary proceedings in which the government designates the distribution of state commodities and grants concessions. Article 7 allows for the Mexican Secretariat of Commerce to fix prices of goods and services, by previous authorization of The Federal Executive Branch in particular industries when necessary for the economic good of the domestic economy. In addition, this article establishes: "The Federal Consumer Protection Agency, under the supervision of the Mexican Secretariat of Commerce, will be responsible for the verification, surveillance and penalization of the maximum prices determined pursuant to this article, in accordance with the Federal Consumer Protection Act."

Labor unions, privileges granted to authors and artists, and export associations or cooperatives, could also be considered as partial exclusions for the purposes of this questionnaire.

### **4. Special Rules**

Crisis/depression cartels, rationalization cartels: The FLEC does not propose any special rules for cartels that include "depression", "ecological", "sanitation" or any other versions. The constitutional text does not recognize any exceptions in reference to cartels.

### **5. Persons connected with the Mexican State**

All economic agents are subject to Constitutional decree and the antitrust statutes with the exception of "strategic areas" and areas mentioned in articles 5 and 6 of the FLEC. In addition, the Constitution establishes specific laws concerning state regulations in articles 117 and 118.

Article 117. The states may not, in any case:

1. Make an alliance, treaty or coalition with another state, or with any foreign power;
2. Deleted;
3. Coin money, issue paper money, stamps, or stamped paper;
4. Levy duties on persons or goods passing through their territories;
5. Prohibit or levy duties directly or indirectly, upon the entrance into or exit from their territories of any domestic or foreign goods;
6. Tax the circulation of domestic or foreign goods by imposts or duties, the exaction of which is made by local customhouses, requiring inspection or registration of packages or documentation to accompany the goods;
7. Enact or maintain in force fiscal laws or provisions that relate to differences in duties or requirements by reasons of the origin of domestic or foreign goods, whether this difference is established because of similar production in the locality or because among similar production there is a different place of origin;
8. Issue bonds of public debt payable in foreign currency or outside the national territory; contract loans directly or indirectly with the governments of other nations, or contract obligations in favor of foreign companies or individuals, when the bonds or securities are payable to bearer or are transferable by endorsement;
9. States and municipalities may not negotiate loans except for the execution of works intended to produce directly an increase in their own revenues, and
10. Levy duties on the production, storage, or sale of leaf tobacco in a manner distinct from or with quotas greater than those authorized by the Congress of the Union.

Article 118:

States shall not, without consent from the Congressional Union, establish ship tonnage dues or any other port charges, or levy imports or taxes on imports or exports.

The FLEC is responsible for regulating and developing articles 117 and 118 of the Constitution, and for the application of Mexican Antitrust Laws:

Article 14 of the FLEC: Pursuant to Article 117, Section V, of the Political Constitution of the United Mexican States, acts performed by the state authorities motivated directly or indirectly to prohibit the entry or exit of goods or services from state territory, of domestic or foreign origin, shall have no legal force or effect.

Article 15 of the FLEC: The Commission may investigate ex-officio or at the request of an interested party, whether the acts referred to in the preceding article develop and, in such case, declare their existence. The

declaration shall be published in the Official Gazette of the Federation and may be contested by the state authority before the Supreme Court of Justice of the Nation.

#### **6. Persons connected with foreign states or the European Union**

According to the FLEC there are no special exclusions for:

- (a) foreign public authorities;
- (b) foreign publicly-owned enterprises;
- (c) persons acting under the compulsion, encouragement or authorization of foreign states or the European Union;
- (d) persons granted monopoly; and
- (e) persons soliciting or agreeing to solicit action by foreign states.

All individuals are subject to the FLEC.

#### **7. Small and Medium Sized Enterprises and economically insignificant activities**

The FLEC makes no distinctions between small and medium sized enterprises as opposed to large enterprises.

#### **8. Intra-firm agreements and practices**

The FLEC does not contain exclusions or special rules applicable to agreements made between parts of a single enterprise or group, or to practices which are internal to a single enterprise or group. These agreements are analyzed under the same merger control guidelines indicated in question 1.

#### **9. Import and Export Related Activities**

The Constitution and Article 6 of the ECL regulates and defines associations and cooperatives that sell their products directly abroad. However, the above mentioned are not defined as “export cartels”.

#### **10. Restriction of remedies and policies of non-enforcement**

In relation to illicit concentrations and monopolistic practices, the Federal Competition Commission can impose the following sanctions (Article 35):

- I. Order of suspension, correction or elimination of the practice or concentration in question;
- II. Order of partial or total deconcentration of what has been improperly concentrated, regardless of the fine that may be applicable in such cases;
- III. Fine of up to seven thousand five hundred times the minimum general wage prevailing in the Federal District for having made false statements or for having submitted false information to the Commission, regardless of any criminal liability to which the responsible party may be subject;
- IV. Fine of up to 375 thousand times the minimum general wage prevailing in the Federal District for having engaged in an absolute monopolistic practice;
- V. Fine of up to 225 thousand times the minimum general wage prevailing in the Federal District for having engaged in a relative monopolistic practice; and of up to 100 thousand times the minimum general wage prevailing in the Federal District regarding the provision contained in section VII of article 10 hereof;
- VI. Fine of up to 225 thousand times the minimum general wage prevailing in the Federal District for participating in a concentration prohibited by the Law; and a fine of up to 100 thousand times the minimum general wage prevailing in the Federal District for failing to notify a concentration to the Commission, when obliged by the law; and
- VII. Fine of up to seven thousand five hundred times the minimum general wage prevailing in the Federal District to individuals or corporations who engage directly in monopolistic practices or illicit concentrations.

In case of a repeated offense, an additional fine of twice the initial amount may be imposed.

According to Article 38 of the FLEC:

The economic agents that prove during the antitrust proceedings that they have sustained economic damages and loss as a result of a monopolistic practice or illicit concentration, may file a legal claim to obtain compensation for damages and loss. In such case, the court may take into consideration the damage and loss as estimated by the Federal Competition Commission. No judicial or administrative action based on this law will proceed, unless established herein.

#### **11. Regional Competition Laws**

There are no state laws that regulate competition regarding a regional context. The FLEC presides over the entire federation of Mexican States.

#### **12. Other factors with the practical effect of limiting the scope of application of the competition laws**

Under the Constitution any monopolistic practices or concentrations existing before the new law was established, shall not be investigated retroactively. However, if such monopolistic practices continue to have anticompetitive effects after June 22, 1993, they can be investigated and penalized by the Federal Competition Commission.

2. List and brief description of the current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

### **I. Industrial Property Laws List**

1. Industrial Property Law of 1991, as amended in 1994. (Published in the Official Journal on August 2, 1994, effective October 1st, 1994).
2. Regulations under the Industrial Property Law, of 1994. (Published in the Official Journal on November 23, 1994).
3. Customs Law, of 1995. (Published in the Official Journal on December 15, 1995)

### **II. Industrial Property Law**

The Law on Promotion and Protection of Industrial Property (as amended on August 1994), which entered into effect on October 1st, 1994. The Regulations of this Law were enacted on November 23, 1994, repealing the Regulations under the Law of Inventions and Marks of 1988. Some of the most important objectives of the reforms contained in the Law are the following:

- (a) to harmonize the Mexican Law in accordance with the provisions established under the Intellectual Property Chapter (17) of the NAFTA, the Trade Related Intellectual Property Rights Agreement (TRIPS) and the annex to the Agreement establishing the WTO; and
- (b) to consolidate the Mexican Institute of Industrial Property (MIIP) as the administrative authority to prosecute and to grant industrial property rights and to prevent or to sanction infringements.

#### ***Protection Provisions***

These reforms contain numerous elements that substantially improve the Mexican Law, among the highlights are the following:

- inventions that do not refer to: essential biological processor for the production, reproduction and propagation of plants and animals; biological and genetic material as found in nature; animal breeds; human body and alive parts forming it and vegetable varieties, shall be patentable.
- the disclosure of an invention will not constitute a loss of its novelty, when within 12 months prior to the filing date of the patent applications or, if such is the case, of the recognized priority, the inventor or his assignee had made the invention known.
- absolute novelty will be a requirement for granting a utility model or an industrial design.
- definition of when a trademark is well-known in Mexico- when a determined sector of the commercial circles of the country knows the mark as a consequence of the commercial activities developed in Mexico or abroad, as well as the knowledge of existence of the mark in the territory, as a result of the promotion or advertising of the same.
- a trademark registration will lapse when the mark had not been used during three consecutive years previous to the filing date of an administrative declaration of lapsing, unless there is a justified reason.
- as a trade secret is considered all information of industrial or commercial application that is kept confidential by any individual or company, which signifies obtaining or maintaining competitive or economic advantage in the execution of economic activities in front of third parties.
- it shall not be considered as falling into the public domain or as being disclosed by provision of law, all information being furnished to any authority by any person who possesses it as a trade secret, when the same is furnished with the view to obtain licenses, permits, authorizations, registration or any other acts of authority.

#### ***Enforcement provisions***

In regard to the enforcement of industrial property rights, provisions allowing the authority to adopt effective action to be taken against any act of infringement, including expeditious remedies to prevent them and remedies to deter further violations to such rights were included.

- In the administrative declaration proceedings in regard to the violation of any of the rights protected by the Law, the Mexican Institute of Industrial Property may order the withdraw from circulation or to prohibit that circulation regarding goods infringing industrial property rights; immediately forbid the commercialization or use of products infringing any right; to order the seizing or securing of goods; to order the presumptive infringer the suspension or the ceasing of the acts that constitute an infringement to the provisions of the Law; and, to order or postpone the renderance of the service or the closing of the commercial establishment, when the measures mentioned before, are not sufficient to prevent or impede the infringement to the rights protected by the Law.
- In order to determine the practice of the measures referred to in the preceding paragraph, the Institute shall require that the affected person grants sufficient bond to respond of the damages and prejudices that could be caused to the person against whom the measure had been requested, and to furnish the necessary information for the identification of the goods, services or commercial establishments through which or where the infringement to the rights of industrial property is committed.

- When the subject matter of the patent is a process for the creation of a product, in the proceeding for the administrative declaration of an infringement, the presumptive infringer must prove that the product was manufactured under a different process when the product obtained by the patented process is new and there is a significant probability that the product had been manufactured through the patented process and the owner of the patent had not been able, even though having tried, to establish the process really used.
- The reparation of material damages or injury or the compensation for damages and prejudices caused by the infringement of rights granted by the Law, in no case shall be less than forty percent of the price of sale to the public of each product or of the price furnishing of the services implying an infringement or any or some of the industrial property rights.

The Mexican Institute of Industrial Property has faculties to grant and/or to substantiate the procedures of rejection, nullity, expiration and cancellation of industrial property rights; to carry out the investigation of supposed administrative infringements, to order and practice visits of inspection; to request information and data; to order and execute the provisional measures to prevent or to cause ceasing the violation of industrial property rights; and to impose the corresponding administrative sanctions in industrial property matters. Also, the Institute may act as an arbitrator, when the parties accept it in a private dispute.

#### ***Enforcement Provisions at the Border***

In 1995, a Customs Law was promulgated. This Law incorporates provisions to ensure enforcement of intellectual property rights at the border. Particularly, Articles 144 to 150 incorporate the provisions established on NAFTA, from which the most important measure is to enable a right holder, who has valid grounds for suspecting that the importation of a counterfeit trademark may take place, to file an application before the authorities, for suspension by customs administration of the free circulation of such goods.

Thus, the industrial property system and the enforcement measures established by the Law facilitates and promotes investments and technology transfer from foreign countries.

### **C. INVESTMENT PROTECTION**

#### **1. Expropriation and Compensation**

*1. List and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

Laws/Regulations	Application and function
Constitution	Constitutional or legal causes that permit the expropriation or limitation of the property: Article 27, second paragraph of the Constitution points out:  “Expropriations will only proceed by public utility cause and through compensation”.
Expropriation Law	The amount of compensation is calculated in the following manner:  I.- According to the Expropriation Law: the value of the expropriated property will be equivalent to the fixed commercial value, which may not be less than the fiscal value that figures at the census or collecting offices, nevertheless, the affected person may claim the fixed value reoccurring to the judicial instance.  The amount of the compensation shall be covered by the State when the expropriated thing passes under its ownership.  The term for the payment of compensation shall not exceed one year from the declaration of expropriation. The payment shall be done in national currency, or it could be agreed to realize it in kind.  II.- Notwithstanding what is provided for in the Expropriation Law, it is possible that in international agreements which Mexico is part of, or widely accepted arbitral agreements celebrated, expropriation may be ruled by different mechanisms.

2. *Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.

## 2. Settlement of Disputes

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

A foreign investor shall have access to the same process to recourse of national investors. There only exist special recourse for foreign investors in the Section for Disputes Settlement within the Free Trade Agreements which Mexico is part of.

Mexico is part of the following Arbitration Conventions:

- New York Convention;
- UNCITRAL; and
- Panama Convention.

2. *Signatory or accession to the ICSID Convention?*

Mexico is not member of ICSID.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

Program	Nature of incentive	Contact point
Mexico has promoted foreign direct investment in its territory through the use of clear rules that channel foreign capital into the country's productive activities, and through the negotiation of international agreements which grant more juridical security to the investors of the member States.	Transparency  Juridical security to foreign investors.	SECOFI  Directorate General for Foreign Investment.
The Mexican government has initiated a more liberal policy: new sectors of the Mexican economy have been recently opened to national and foreign private investors (electricity, gas, communications, railroad and financial services, amongst others); bilateral investment treaties are currently being negotiated with the governments of our major investment-exporting countries, and new instruments for investment protection are being analyzed to be implemented in the short term.	Liberalization	SECOFI  Directorate General for Foreign Investment.
Our membership to the OECD, as well as the disciplines contained in NAFTA guarantee the application of the highest international standards on a long-term basis.	Bilateral Investment Treaties.  Highest international investment standards.	SECOFI  Directorate General for Foreign Investment.



<p>Mexico has three programs for product manufacture and export that benefit national and foreign investors, such as:</p> <p>Decree for the Promotion and Operation of the Maquiladora for Export Industry; (In-Bond Industry)</p> <p>Decree for the Promotion and Operation of Highly Exporting Enterprises (“ALTEX”), and</p> <p>Decree that establishes Programs for the Temporary Importation to manufacture export goods, (“PITEX”).</p>	<p>These programs in grant facilities for the temporary importation free of duties for goods and equipment utilized for the production of export goods, and in the immediate devolution of the Aggregate Value Tax.</p>	<p>SECOFI</p> <p>Directorate General for Foreign Trade Services.</p>
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2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.

See response under section D (1).

There are special incentives, such as accelerated depreciation schedule, for certain type of investments, but these apply equally to domestic and foreign investors. Certain activities such as publishing, agriculture, livestock, fishing and forestry have special income tax reductions.

SECOFI has implemented a series of programs with incentives to promote the export of manufactured goods.

Export incentives apply to both domestic and foreign firms, and include both tax and non-tax incentives.

At the regional level, some states grant property tax reductions to new industries.

Programs to promote national and foreign investment:

Program (National/sub-national)	Nature of incentive
<p>PITEX.- Program for Temporary Importation to Manufacture Export Goods.</p>	<p>The benefits provided under the PITEX Decree are:</p> <ol style="list-style-type: none"> <li data-bbox="635 1218 1412 1375">(1) The exporters that directly or indirectly destine to the international market at least 10% of their total sales or 500 thousand U.S. dollars per year, or the equivalent amount in another currency, may temporarily import duty-free, the following goods : <ul style="list-style-type: none"> <li data-bbox="708 1406 1412 1563">– Raw materials, inputs, containers, packing material, combustible products, lubricants, auxiliary materials, parts, and other goods that are used to produce export goods. Such goods may remain in the country for 1 year, with a possible 1 year extension.</li> </ul> </li> <li data-bbox="635 1594 1412 1653">(2) Exemption of the obligation to guarantee tax payments related to imports under the Program.</li> <li data-bbox="635 1684 1412 1742">(3) Percentages of loss and waste with regard to combustible products are 100% deductible.</li> </ol>

<p>ALTEX.- Program for Highly Exporting Enterprises,</p>	<p>The benefits provided under the ALTEX Program are:</p> <ol style="list-style-type: none"> <li>(1) The term of the program for enterprises that have complied with the requirements is permanent, therefore the need of further bureaucratic proceedings is avoided. Companies pending satisfaction of the requirements, may operate under the Program for a term of 1 year, provided they agree to comply with such requirements within that period of time.</li> <li>(2) Companies under the program receive the benefits of the simplified system of customs dispatch, which translates on less bureaucratic export proceedings.</li> <li>(3) With regard to the applicable value added tax, companies receive the benefits of the Immediate Devolution Program for highly exporting contributors.</li> <li>(4) Specific financial support from the Banco Nacional de Comercio Exterior is available for the abovementioned enterprises.</li> </ol> <p>It is about an export constancy for the devolution of import taxes to those considered indirect exporters.</p> <p>This is a promotion Program for Exports, in which maquiladoras import to Mexico, in a temporary and duty free manner, machinery, equipment, parts, raw material and other components that are used in the assembly or manufacture of semi-finished or finished products.</p> <p>The relevant contacts for these programs are SECOFI and the General Directorate for Foreign Trade Services.</p>
<p>Import Duty DRAW-BACK. In-Bond (MAQUILADORA) Industry.</p>	

3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.  
There is no "one stop facility".

**E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Agreement	Provisions
Friendship Commerce and Navigation Treaties	Not applicable



## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

2. List of the major countries/economies that are sources/receivers of FDI over recent years.

### AUTHORISED AND REGISTERED FOREIGN INVESTMENT

(Millions of dollars)

Concept	1993	1994	1995 <sup>p/</sup>
<b>Composition of Foreign Investment (Annual Flows)</b>	15,617.0	12,110.1	3,533.8
<b>Direct</b>	4,900.7	8,026.2	3,721.5
National Commission of Foreign Investment	1,964.8	6,994.4	81.9
National Registry of Foreign Investment	2,935.9	1,031.8	3,639.6
Stock Market	10,716.3	4,083.9	-187.7
<b>Historic Accumulated FDI (balance to end of period)</b>			
<i>By economic destiny:</i>	42,374.8	50,401.0	54,122.5
Transformation Industry	23,278.7	26,482.7	27,381.8
Services	14,350.6	18,517.1	20,853.4
Extraction Industry	578.3	590.6	603.3
Trade	3,958.2	4,593.9	5,066.3
Land and Cattle	208.7	216.7	217.7
<i>By country of origin:</i>	42,374.8	50,401.0	54,122.5
United States of America	26,621.1	30,625.6	31,970.7
Great Britain	2,603.9	3,703.4	3,722.8
Germany	2,236.8	2,611.7	2,690.3
Japan	1,689.6	2,389.5	2,403.2
Switzerland	1,831.8	1,884.7	1,881.2
France	1,592.3	1,655.5	1,680.9
Spain	836.2	988.0	1,001.2
Sweden	368.1	385.2	386.1
Canada	653.8	817.3	1,338.0
Holland	684.6	1,070.3	1,611.1
Italy	66.5	80.8	81.6
Others	3,190.1	4,189.0	5,355.3
<b>FDI Currency Flow</b>			
Inflows <sup>1/</sup>	4,230.0	5,126.0	-595.0
Outflows <sup>2/</sup>	7,542.0	8,905.0	482.0
	3,312.0	3,779.0	1,077.0

p/ Preliminary amounts up to February. For the concept of Currency flows, amounts up to March.

1/ Comprises new investments, accounts between corporations, short and long term liabilities, and royalties and other foreign collections.

2/ Includes accounts between corporations, foreign corporations acquisitions, remitted profits, interest and royalties and other payments.

# NEW ZEALAND

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# NEW ZEALAND

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

A key aspect of the New Zealand Government's growth strategy is the development of strong international linkages; this includes both outward and inward investment. New Zealand has a very welcoming and open attitude towards inward foreign direct investment (FDI) which is frequently reiterated in public statements by Government ministers and officials. New Zealand welcomes and encourages foreign investment from all countries without discrimination. This is reflected in its liberal foreign investment policy regime.

With regard to outward investment, there are no impediments at all to prevent companies investing offshore. As New Zealand is a net capital importer with on-going requirements for capital, the Government is more active in promoting inward rather than outward investment.

No national plan has been established or priorities set which condition the environment for foreign investment in particular sectors or regions. It is at the discretion of the individual investor as to where to invest.

The Ministry of Forestry and the New Zealand Tourism Board are active in promoting foreign investment into their respective sectors, including the production of promotional sectoral material.

The Government's foreign investment policies are administered by the Overseas Investment Commission ("OIC") which acts under powers delegated from the Minister of Finance. The OIC administers the Overseas Investment Regulations 1995. It deals with all non-land applications and applications involving land which is less than ten hectares and not sensitive under delegated authority. All other land applications are referred to the Ministers of Finance and Lands for their joint consideration. The Reserve Bank of New Zealand provides the secretariat for the OIC.

A non-New Zealand entity is described in the regulations as being an "overseas person". An "overseas person" is:

- a company formed overseas and any of its subsidiaries;
- any individual who is not a citizen of, nor ordinarily resident in, New Zealand;
- a New Zealand company with 25% or more of its share or voting power held by overseas persons;
- a trust where 25% or more of:
  - the trustees are overseas persons; or
  - the persons having power to appoint the trustees are overseas persons; or
  - the trust property is held for the benefit of overseas persons;
- a partnership or joint venture containing 25% or more overseas persons or where overseas persons control 25% or more of the voting power;
- a unit trust where the manager or trustee is an overseas person or where overseas persons hold 25% or more of the beneficial interests; and
- any other entity owned or controlled more than 25% by overseas persons.

An overseas person must obtain the consent of the OIC to:

- establish a new business where the total expenditure to be incurred in setting up the business exceeds \$10 million;
- acquire 25% or more of the ownership or control of a New Zealand company where the consideration for the transfer or the value of the offeree's assets (as set out in the latest accounts) exceeds \$10 million;
- increase the proportion of ownership or control of a New Zealand company where:
  - the consideration for an acquisition of the securities exceeds \$10 million, or the value of the offeree's assets exceed \$10 million;
  - the total value of all the securities issued or allotted exceeds \$10 million, or the consideration payable on a new issue or allotment exceeds \$10 million; unless the total overseas shareholding is less than 25%;
- acquisition of the assets of an existing business where the consideration for the acquisition exceeds \$10 million;
- acquisition of any land or any estate or interest in land regardless of the land's value;
- acquisition of securities in any person that owns or controls any land or any estate or interest in land, regardless of the dollar value involved, that will result in:
  - the land owning person being owned or controlled by overseas persons;
  - the overseas person acquiring 25% or more of the ownership or control of the land owning person or increase their ownership or control if the overseas person already has 25% or more ownership or control.

The 25% threshold as it relates to overseas persons is not an indication of preferred levels of investment; it is merely a trigger point for OIC involvement.

*2. Summary of significant public statements which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.*

Excerpt from "New Zealand Investment Booklet 1996":

The New Zealand Government welcomes new business and investment in New Zealand from our many international business friends.

New Zealand is an excellent country in which to do business. The economic reforms of recent years have created a climate for sustained low-inflation growth. The economy shows marked gains in efficiency and competitiveness and is now into its third year of growth. Overseas will continue to play a key role in economic development.

New Zealand is one of the best performing Western economies. The 1994-95 fiscal year saw the continuation of impressive achievements:

- a fiscal surplus;
- public debt reduction;
- inflation maintained below 2 percent over the last three years; and
- sustained economic growth.

Our regulatory environment has been systematically reviewed to lower costs and remove impediments to business. We have no controls on the movement of funds, profits or capital from New Zealand. We have reformed our labour laws and introduced a new industry skills training strategy to provide a sound basis for business in the 21st century. We are committed to maintaining an open, internationally competitive economy.

Over the last 150 years, foreign investment and international trade have been key ingredients in the growth of internationally competitive agriculture, food processing, manufacturing and resource based industries in New Zealand. More recently, foreign investment has contributed significantly to the growth of the service sector. With opportunities for new ventures arising throughout the economy, New Zealand is attracting investment from traditional sources like Australia, Britain and the United States and, increasingly, from new sources in Asia.

The Government's policy is to provide an investor friendly, business friendly, low cost, low inflation environment for business growth. We are committed to policies that will ensure continued economic development. We welcome your partnership with our private sector in an internationally competitive New Zealand economy built upon enterprise, innovation and excellence.

Rt Hon J B Bolger  
Prime Minister

Copy of a Letter of 21 December 1995 from the Minister of Finance and the Minister of Lands to the Chairman of the OIC.

**Office of the  
MINISTER OF FINANCE**

21 December 1995

Chairman  
Overseas Investment Commission  
PO Box 2498  
WELLINGTON

Dear Mr Stannard

**Overseas Investment Policy, Delegation and Criteria**

- 1 The Minister of Lands and the Minister of Finance have decided a number of matters relating to the Government's general policy approach to overseas investment and to what decisions under the legislation should be delegated to the Overseas Investment Commission and its staff as from the commencement date of the new legislation of 15 January 1996.

**General Policy Approach**

- 2 The Government's welcoming policy on foreign direct investment recognises that the inflow of such investment normally provides a net benefit to the New Zealand economy. Section 9(2) of the Overseas Investment Act 1973 requires the Overseas Investment Commission to "comply with the general policy of the Government ... transmitted in writing ... by ... the Minister and the Minister of Lands." We wish to convey the following general policy of the Government in relation to the functions of the Commission:
  - a The Government's policy of welcoming foreign direct investment is to continue.
  - b The general policy approach is to continue to be based on the premise that proposals from overseas investors should be approved unless good reason exists, in terms of the legislative criteria, to decline an application.
  - c The existing approach of interpreting the criteria applications must meet in a way which facilitates rather than hinders investment should continue.

*Parliament House  
Wellington, New Zealand  
Telephone 4719 - 991 Fax 4733 - 587*



**Delegation**

- 3 The Minister of Finance hereby delegates to the Overseas Investment Commission and its staff the power to determine applications under Part II of the Overseas Investment Regulations 1995.
- 4 Both Ministers hereby delegate to the Overseas Investment Commission and its staff, in relation to Part III of the Regulations:
- a their powers to determine land applications involving land of less than 10 hectares which do not involve sensitive land (being land in the Schedule of the Act involving islands, foreshores, lakes, reserves and historic areas) where the cost of the land is less than \$1 million.
  - b their powers to determine land applications which are part of a purchasing programme previously approved in principle by them under the new Regulations or which has previously been approved under the Overseas Investment Regulations 1985 or the Land Settlement Promotion and Land Acquisition Act 1952 where each acquisition is consistent with any conditions established for the programme.
- 5 We also delegate the following related matters:
- a our powers under Regulation 12 to specify information and particulars to be supplied by applicants;
  - b our powers in Regulations 14 and 16 in respect of applications that have been delegated;
  - c our powers in Regulation 16 in respect of adding entities to or deleting entities from the Schedules to the Overseas Investment Exemption Notice 1995;
  - d our powers in Regulation 17 in respect of any matter delegated;
  - e our powers in Section 15 of the Act in respect of applications that have been delegated;
  - f in each case where the power has been delegated, the power of delegation under section 16 of the Act.

**Criteria**

- 6 In considering any applications under delegation the Commission must take into account the matters provided for in section 14A of the Overseas Investment Act 1973.

Rt Hon W F Birch  
Minister of Finance

Denis Marshall  
Minister of Lands

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### (i) Statutory (legislative) requirements

1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Overseas Investment Act 1973	Establishes the OIC, sets up the administrative structure, outlines the functions and powers of the Commission. The OIC is the Government appointed agency responsible for administering New Zealand's foreign investment policy.
Overseas Investment Regulations 1995	Defines the circumstances in which a foreign entity needs to gain the approval of the OIC prior to making an investment in New Zealand.
The Fisheries Amendment Act No.34, 1986	Contains provisions to restrict the purchase of New Zealand fishing quota by foreign entities.

#### (ii) Investment Review and Approval

1. Details of proposals and sectors that are/are not (yes/no) subject to screening.

2. For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals	Guidelines/conditions
Merger: non-land (Yes)	The OIC reviews the acquisition of securities in a New Zealand company by an "overseas person" where the acquisition results in the "overseas person" acquiring 25% or more ownership or control and where the consideration for the acquisition or the gross assets of the offer exceed \$10 million.
Acquisitions: non-land (Yes)	The OIC reviews investment by an "overseas person" in the acquisition of property used in carrying on a business in New Zealand where the consideration payable exceeds \$10 million.
Greenfield investment: non-land (Yes)	The OIC reviews investment by an "overseas person" in a new business where the total expenditure to be incurred in setting up the business exceeds \$10 million.
Real estate/land (Yes)	The OIC reviews investments by an "overseas person" where they: <ol style="list-style-type: none"> <li>1. acquire any land or estate or interest in land regardless of the land's value or the consideration payable;</li> <li>2. acquire securities in any entity that owns or controls any land or any estate or interest in land, regardless of the dollar value involved, that will result in: <ul style="list-style-type: none"> <li>– the land owning person being owned or controlled by overseas persons;</li> <li>– the overseas person acquiring 25% or more of the ownership or control of the land owning person or increase their ownership or control if the overseas person already has 25% or more ownership or control.</li> </ul> </li> </ol>

	<p>Land is defined as:</p> <ol style="list-style-type: none"> <li>1. any land (regardless of zoning) over 5 hectares or worth more than \$10 million;</li> <li>2. certain sensitive land over 0.4 hectares (eg. islands, historic or heritage areas, the foreshore or lakes).</li> </ol>
Joint venture: non-land (Yes)	The OIC reviews investments by joint ventures where an “overseas person” has 25% or more ownership and control and the expenditure to be incurred in establishing the business or the gross assets exceed \$10 million.

Sector	Guidelines/Conditions
Telecommunications (Yes)	No single foreign investor may hold more than 49.9% of the total voting share in Telecom Corporation of New Zealand Ltd without the approval of the crown, the “kiwi share” holder.
Media (No)	
Transport (Yes)	The maximum allowable level of foreign investment in Air New Zealand Ltd is 35%.
Agriculture (No)	
Other: - fisheries (Yes)	Under section 28z of the Fisheries Amendment Act 1986, fishing quota may not be allocated to overseas persons or companies with overseas control, unless the Director-General of the Ministry of Agriculture and Fisheries grants an exemption.
- Public monopolies under the management of state owned enterprises (Yes)	Postal service.

*3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

The OIC does not use application or approval forms. Application is made by letter. The Commission produces a “guide” which sets out the information required by the Commission in order for it to consider an application. Investments by foreigners that require the consent of the OIC are assessed on a case by case basis in terms of the criteria as set out in section 14(A) of the Overseas Investment Act 1973. For example, the development of new export markets or increased market access is one of the economic benefit criteria. The general policy approach is based on the premise that proposals should be approved unless good reason exists in terms of the legislative criteria to decline an application. All 1866 applications to the OIC over the six calendar years 1990 - 1995 have been approved.

The OIC assesses investments in all sectors. The domestic private sector has neither a formal or informal role in screening. The investment is determined on its own benefits.

The Overseas Investment Commission “Criteria for Overseas Investment” and a description of land requiring consent under the Overseas Investment Regulations 1995 appear below.

**CRITERIA FOR CONSENT**

The principal Act is hereby amended by inserting, after section 14 (as substituted by section 7 of this Act), the following section:

"A.(1) Where, pursuant to this Act or regulations made under this Act, the approval, consent or permission of the Minister or the Minister and the Minister of Lands, as the case may be, is required to an overseas person undertaking an overseas investment, the Minister or the Minister and the Minister of Lands shall grant that approval, consent, or permission only if satisfied that:

"(a) The overseas person has, or, where the overseas person is not an individual, the individuals exercising control over the overseas person have, business experience and acumen relevant to that overseas investment; and

"(b) The overseas person has demonstrated financial commitment to the overseas investment; and

"(c) Every person who will have not less than a 25 per cent beneficial interest in the overseas investment is, or, where the overseas person is not an individual, the individuals exercising control over the overseas persons are, of good character and no such person is a person of the kind referred to in section 7 (1) of the Immigration Act 1987; and

"(d) Where the application for such approval, consent, or permission relates to the ownership or acquisition of, or control over,-

"(i) Land or any estate or interest in land in New Zealand; or

"(ii) Securities or rights or interests in securities of any company or body corporate that owns or controls directly or indirectly any land or any estate or interest in land in New Zealand,- the overseas investment would be in the national interest.

"(2) For the purposes of subsection (1)(d) of this section, the Minister and the Minister of Lands shall have regard only to the following matters:

"(a) Whether the overseas investment will or is likely to result in-

"(i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or

"(ii) The introduction into New Zealand of new technology or business skills; or

"(iii) The development of new export markets of increased export market access for New Zealand exporters; or

"(iv) Added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or

"(v) The introduction into New Zealand or additional investment for development purposes; or

"(vi) Increased processing in New Zealand or New Zealand's primary products:

"(b) Where land is currently being used for agricultural purposes,-

"(i) Whether experimental or research work will be carried out on the land;

"(ii) The proposed use of the land by the applicant:

"(iii) If the overseas person is an individual, whether the overseas person intends to farm the land for his or her own use and benefit and is capable of doing so:

"(c) Whether the overseas person or, if the overseas person is not an individual, any individual who exercises control over the overseas person, intends to reside permanently in New Zealand:

"(d) Such other matters as may be prescribed:<sup>1</sup>

"(e) Such other matters as the Minister and the Minister of Lands, having regard to the circumstances of the particular overseas investment, think fit".

## **LAND AS DEFINED IN THE FIRST SCHEDULE OF THE OVERSEAS INVESTMENT REGULATIONS 1995**

### **Land over 5 hectares**

Any land that, together with any associated land, exceeds 5 hectares in area.

### **Islands**

Any land that is, or forms part of, an island (other than an island listed below)

Any land that, together with any associated land, exceeds 0.4 hectares in area and that forms part of the following is: Arapawa Island, Best Island, Great Barrier Island, Great Mercury Island, Jackett Island, Kawau, Island, Matakana Island, Mayor Island, Motiti Island, Motuhua Island, Rakino Island, Rangiwaea, Island,

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<sup>1</sup> No other matters have been prescribed.

Slipper Island, Stewart Island, Waiheke Island, Whanganui Island, any land that is, or that forms part of, any island of the Chatham Islands.

### **Foreshores, lakes and reserves**

Any land that, together with any associated land, that exceeds 0.4 hectares in area and that includes or adjoins -

- (a) The foreshore; or
- (b) Any lake the bed of which exceeds 8 hectares in area; or
- (c) Any land that exceeds 0.4 hectares in area and is:
  - (i) provided as a reserve
  - (ii) held for a conservation purpose
  - (iii) deemed a heritage or historic area

### **Other land**

Any land, other than land specified above if the consideration for the land exceeds \$10,000,000.

**Associated land** means any land that is contiguous or adjacent to the land being acquired or, where that land forms part of an island, any land on the same island in which any estate or interest is owned or controlled by that overseas person or any overseas person.

#### *4. Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
The Secretary Overseas Investment Commission	PO Box 2498, Wellington. Telephone: (64 4) 471 3838 Fax: (64 4) 471 3655

#### *5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

The average period of time involved in processing an investment application is ten working days or less.

#### *6. Agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal. Description of appeal processes and the average time for an appeal to be considered.*

The decisions of the Commission may be appealed through the High Court.

Agency	Address/telephone/fax
High Court Of New Zealand  There are High Court Registries in the following cities and towns: Auckland, Blenheim, Christchurch, Dunedin, Gisborne, Greymouth, Hamilton, Invercargill, Masterton, Napier, Nelson, New Plymouth, Palmerston North, Rotorua, Tauranga, Timaru, Wanganui, Wellington, Whangarei.	Contact the nearest High Court.

#### *7. Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

At the Commission's discretion an application may be expedited if it can be shown that an urgent decision is required. The Commission endeavours to meet all reasonable requests in respect to application deadlines. Please note that it is difficult to expedite applications that require the joint approval of the Ministers of Finance and Lands. As a general rule, decisions are made within 10 working days of receipt of an application.

#### *8. List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals.*

Not applicable.

9. List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.

Agency	Address/telephone/fax	Functions
Overseas Investment Commission	PO Box 2498 Wellington Telephone: (64 4) 471 3838 Fax: (64 4) 471 3655	Post consent monitoring

10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.

In recent years successive governments have tended to continue the basic policies of their predecessors. Recent changes to the regime have essentially been effected through modification of the existing legislative and regulatory framework. The creation of new legislation or the amendment of existing legislation is carried out subject to the usual constitutional, consultative and political processes. Significant changes to the foreign investment regime would normally be at the instigation of the Minister of Finance (who is the minister responsible for foreign investment).

An opportunity would be available for public comment if the Overseas Investment Act were amended or revoked. As is the practice in New Zealand, law changes are published in "The Gazette".

11. Where applicable, the role for sub national agencies in the approval process.

Regulation of foreign direct investment is applied only at the level of the national government.

## 2. Most favoured nation treatment / non-discrimination between source economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).

Not applicable.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

Not applicable.

## 3. National treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of exception (eg. prohibition, limitation, special conditions and special screening)
Financial Reporting Act	Non-exempt companies must comply with certain financial reporting standards. Overseas companies are non-exempt, along with issuers, companies with subsidiary companies, companies that are subsidiaries, companies with assets over \$450,000 and companies with an annual turnover of over \$1 million.
Sectors that have special conditions are detailed in section B(1)(ii)(2).	

2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.

Domestic capital markets are open to non-residents and there are no restrictions against offshore financing, inter-company loans, or insurance of corporate bonds other than normal securities market legislation and taxation requirements.

#### **4. Repatriation and convertibility**

1. *List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Not applicable.

2. *Briefly description of the foreign exchange regime.*

The New Zealand dollar has floated freely since March 1985. There has been no intervention since this date.

3. *Restrictions on the convertibility of currencies for the overseas transfer of funds.*

Not applicable.

#### **5. Entry and sojourn of personnel**

1. *Permits/entry visa requirements for non-resident staff of foreign firms and the nature of the entry restriction.*

##### **Work Visa/Permit requirements**

Everyone wishing to undertake employment in New Zealand needs a work visa which enables a person to enter or re-enter New Zealand for single or multiple journeys. A work visa is an endorsement in your passport. On entry into New Zealand if you have a work visa you may be granted a work permit. A work permit is also an endorsement in your passport which allows you to work in New Zealand unless exempted from the requirement. It will include the expiry date of the permit and any conditions of the permit. The conditions may include the type of employment, the employer's name and location in New Zealand where you may work.

##### **Exemptions**

You do not need a visa or permit to work in New Zealand if you are:

- a New Zealand citizen or a New Zealand Resident Permit holder; or
- an Australian citizen or an Australian resident who holds a current Australian resident returning visa; or
- a Business visitor who will stay no more than three months in any one year and will only discuss and negotiate business arrangements; or
- there may be other exemptions. Applicants should contact their local immigration office for full details.

##### **Who may apply for a work visa or permit?**

- If you hold an offer of employment for which you are qualified and no New Zealand person is available to undertake that employment you may apply for a work visa or permit; or
- if you meet the requirements of any of the special categories or exchanged the Government has approved.

If you entered New Zealand on a work visa you may apply for a work permit. The maximum normal stay is three years from the date you first arrived in New Zealand.

If you arrive as a visitor you may be granted a work permit only for the period of employment offered, up to a maximum of nine months from the date of your arrival in New Zealand.

##### **Secondment of executive staff of multinational companies**

If you are being seconded to New Zealand under this category you may apply for a work visa/permit for short or long term secondments up to a maximum of three years. An offer of employment is required and no check is made to see if suitable New Zealanders are available.

##### **Requirements on applicants for work visas/permits**

All applicants must have sufficient funds for maintenance and accommodation, a guarantee of maintenance and accommodation by their employer or be sponsored by a relative or friend in New Zealand. Sponsors must be either New Zealand citizens or resident permit holders with no conditions attached to their permits.

2. *List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

See answer to section B(5)(1) above.

3. *Description of regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

##### **All firms operating in New Zealand both domestic and foreign operate within the same legal and economic framework.**

Under that framework the Employment Contracts Act 1991 gives employers, employees and their representatives the freedom to negotiate terms and conditions of employment directly relevant to their particular circumstances, subject to certain statutory minima. Employees also have the right under the Act to decide whether they wish to belong to a union (or other employee organisations) and if so, which one.



The freedoms provided by the Employment Contracts Act have been underpinned by clear statutory protection for employees. These protections are provided by both the Employment Contracts Act and a range of supporting legislation. The protections are generally known collectively as the minimum code, and guarantee all employees:

- I. access to personal grievance procedures in the event that an employee believes they have been unjustifiably dismissed; subject to unjustifiable action by their employer which disadvantages them in their job or work conditions; suffered discrimination; been sexually harassed; or, subjected to duress relating to their membership or non-membership of an employee's organisation (Employment Contracts Act 1991);
- II. access to dispute procedures to resolve disputes over the interpretation, application, or operation of an employment contract (Employment Contracts Act 1991);
- III. three weeks annual leave after twelve months of service (Holidays Act 1981);
- IV. eleven statutory holidays per year if the holiday falls on a day on which the employee would otherwise have worked (Holidays Act 1983);
- V. five days special leave for sickness or bereavement or domestic reasons after six months of service for the next 12 months (Holidays Act 1983);
- VI. a minimum wage for adult employees (aged 20 years or more) of \$6.375 per hour, \$51 for an eight hour day, or \$225 for a 40 hour week. A minimum youth wage (for 16-19 year olds) of \$3.825 per hour, \$30.60 for an eight hour day, or \$153 for a 40 hour week (Minimum Wage Regulations 1996 made pursuant to the Minimum Wage Act 1983);<sup>2</sup>
- VII. protection from deductions from wages without the written consent of the employee (Wages Protection Act 1983);
- VIII. equal pay for men and women doing the same or substantially similar work (Equal Pay Act 1972);
- IX. unpaid parental leave of up to twelve months on the birth or adoption of a child (Parental Leave and Employment Protection Act 1987);
- X. the right to enforce an employment contract through the Employment Tribunal (Employment Contracts Act 1991);
- XI. redress from the Employment Tribunal if the employment rights provided by their contract or legislation are found to have been breached (Employment Contracts Act 1991);
- XII. access to the Employment Court to have either part or all of their employment contract set aside if they believe that their employment contract contains harsh and oppressive conditions or was obtained in a harsh and oppressive manner (Employment Contracts Act 1991);
- XIII. the right to be represented in matters relating to their employment (Employment Contracts Act 1991); and
- XIV. the right to belong or not to belong to an employee's organisation (Employment Contracts Act 1991).

Information about these provisions is made available to the public through a national free phone inquiry service (the Industrial Relations Info-line), and through a range of publications issued free of charge by the Industrial Relations Service on request. The Labour Inspectorate of the Department of Labour has the power to investigate alleged breaches and enforce the rights and obligations set out in the Holidays Act 1983 and the Equal Pay Act 1972. Employees can also enforce their rights in this respect.

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The requirements of the Minimum Wage Act 1983 do not apply to:

- trainees undergoing industry training in order to become qualified in certain specified occupations which essentially relate to those occupations which previously required apprenticeship training. These occupations are specified in the Minimum Wage (Training in the Nature of Apprenticeship) Regulations 1992 (SR 1992/920);
- full-time university students employed during holidays to obtain practical experience related to their studies;
- persons undergoing certain training in some professions which are specified in legislation; or
- holders of under-rate worker permits.

People who receive on-the-job training or other kinds of training not specified by either the Minimum Wage Act 1983 or regulations made under the Minimum Wage Act are, therefore, covered by the Act.

#### *4. List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

##### **Law**

The domestic labour laws relating to labour disputes/relations are contained in the Employment Contracts Act 1991. As noted above all firms operating in New Zealand operate within the same legal and economic framework.

##### **Summary**

A strike is lawful if it relates to the negotiation of a collective contract or health and safety issues. A strike is unlawful during the term of a collective contract, or in relation to personal grievances, disputes about the interpretation, application or operation of a collective contract, freedom of association or whether a collective contract will bind more than one employer. Where a strike is not lawful, an employer can apply for an injunction to stop a strike or prevent a threatened strike. In addition, an employer can seek a compliance order to ensure the terms of an injunction are complied with. An employer may also apply for an award of damages along with, or in addition to, applying for an injunction.

Firms can obtain this protection by applying to the Employment Court. The Employment Court, which was established along with the Employment Tribunal under the Employment Contracts Act, has sole jurisdiction over all remedies in relation to unlawful strikes.

The Employment Contracts Act also requires that all employment contracts must contain effective procedures for the settlement of disputes about the interpretation, application or operation of the contract(s) and effective procedures for dealing with personal grievances. As noted above, this ensures that all parties have access to disputes and personal grievance procedures. The Act contains standard procedures which are included in any contract which does not provide effective alternative disputes or personal grievance procedures. If the dispute or personal grievance is not resolved by discussion between the parties, the parties are able to access the Employment Tribunal, which may provide mediation and/or adjudication assistance in resolving the dispute or personal grievance.

#### **6. Taxation**

##### *1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

Non-residents can engage in a wide range of economic activities in New Zealand, directly or indirectly, through various mechanisms including companies, partnerships and trusts. Non-residents are subject to New Zealand tax on all New Zealand sourced income. Tax rates on non-residents range from 1.34% to 33%.

##### **Equity Investment**

There are two distinct layers of New Zealand tax that can be imposed on the income that non-residents derive from equity invested in a New Zealand company:

- The New Zealand company pays 33% company tax on the profit made by the company; and
- Non-resident withholding tax (NRWT) is applied to any dividends distributed offshore to the non-resident.

Dividends paid by a company, unlike interest, are not deductible in determining its tax liability. Therefore, the income that non-residents derive from equity investments in New Zealand can be subject to both the rate of company tax when that income is derived by a New Zealand company in which they have invested and the rate of NRWT when that income is distributed in the form of dividends.

A New Zealand resident shareholder in a New Zealand company receives credit for company tax through the imputation system. For non-resident shareholders, relief for double taxation is provided through the foreign investor tax credit described below.

##### *NRWT on dividends*

The rate of NRWT applying to dividend income is 30%, except where the non-resident resides in a country with which New Zealand has negotiated a double tax agreement (DTA). The usual rate of NRWT on dividends set by DTAs is 15%. Additionally, the NRWT rate on payment of fully-imputed dividends is 15% regardless of whether a DTA applies.

The amount of NRWT on dividends is reduced, however, by credits for foreign dividend withholding payments levied on foreign sourced dividends derived by New Zealand resident companies.

##### *Foreign investor tax credit*

The foreign investor tax credit (FITC) regime provides a credit of company tax to New Zealand companies with non-resident shareholders. The credit is calculated as 67/120 of the imputation credits attached to the dividends paid to non-resident shareholders. The credit is paid to companies, which are required to pass it on to non-resident shareholders through the payment of a supplementary dividend. The supplementary dividend is also subject to NRWT.

With the FITC, the maximum total New Zealand tax (combining company tax and NRWT) on non-resident equity investment in New Zealand is 33%, the same as the standard New Zealand company tax rate.

#### *Taxation of income from “direct” investment*

Non-residents can engage in direct investment in New Zealand either through a branch (that is, an unincorporated “fixed establishment”) or a New Zealand subsidiary.

Non-residents may establish a branch of their business operations in New Zealand. For example, a non-resident individual can operate a branch factory in New Zealand. Similarly, a non-resident company can establish an office in New Zealand to administer its operations here. A New Zealand branch of a non-resident company is taxed at 33% of its New Zealand-sourced income. There is no additional tax for repatriation of branch profits. Non-resident investment may also take place by the establishment by a foreign company of a subsidiary in New Zealand. New Zealand tax law does not “look through” a company to its shareholders to determine where a company is resident. A subsidiary of a non-resident company is treated as a New Zealand resident and taxed by New Zealand on its world-wide income if:

- the subsidiary company is incorporated in New Zealand; or
- it has its head office in New Zealand; or
- it has its centre of management in New Zealand; or
- control of the company by its directors is exercised in New Zealand.

In addition, interest or dividends paid from a New Zealand resident subsidiary to its offshore parent would generally be New Zealand sourced income derived by the parent and subject to the tax treatment discussed in this section.

#### **Debt Investment**

Generally, interest income derived by a non-resident from debt investment in New Zealand will be deemed to have a New Zealand source and therefore be subject to NRWT in cases where a non-resident<sup>3</sup>:

- lends money in New Zealand;
- lends money outside of New Zealand to a resident, except where the resident uses the money for the purposes of a business carried on outside New Zealand through a fixed establishment outside New Zealand; or
- lends money outside of New Zealand to a non-resident, if the money is used for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand.

The rate of NRWT applying to such interest income is 15%,<sup>4</sup> except:

- where the non-resident resides in a country with which New Zealand has negotiated a DTA. Most of New Zealand’s DTAs restrict, to 10% of the gross amount of the interest,<sup>5</sup> the rate of NRWT that New Zealand can apply to the interest income earned by a non-resident; or
- where the borrower is an “approved issuer” for the purposes of the Approved Issuer Levy (AIL) regime under Part VIB of the Stamp and Cheque Duties Act 1971. If the borrower is an approved issuer and is not associated with the lender, the rate of NRWT is reduced to zero.

An approved issuer must pay a levy of 2% of any interest that is paid to unassociated persons. This levy can be deducted when calculating the borrower’s New Zealand taxable income, so that the effective cost of the levy to a taxable borrower is 1.34% of the interest paid.

When a non-resident lends money to a New Zealand company engaging in a business activity that generates assessable income, interest paid on that debt can generally be deducted by the borrower in determining a New Zealand income tax liability.

Deductibility means that the interest income of the non-resident investor making a loan to a New Zealand company is not subject to the company tax as well as NRWT. Rather, the total New Zealand impost applying to such interest income is the rate of AIL payable by borrower, or the rate of NRWT imposed on that interest income.

#### **Summary**

For non-resident investors, total New Zealand tax rates range from 1.34% to 33%. For treaty investors, some examples of imposts on non-resident investment in New Zealand are:

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<sup>3</sup> NRWT does not apply to interest derived by a non-resident who is engaged in business in New Zealand through a fixed establishment. Such interest income is subject to ordinary income tax.

<sup>4</sup> However, NRWT is a final tax only when the borrower and the lender are not associated. If they are associated, NRWT represents a minimum tax subject to DTA restrictions. The remainder of the discussion assumes that the borrower and the lender are not associated.

<sup>5</sup> Most DTAs provide for 10% NRWT on interest, except those with India, Canada, Malaysia, the Philippines and Singapore, which provide for 15% NRWT on interest and the Japanese DTA, which does not cover interest, so the statutory 15% rate applies.

- equity investment is taxed at 33%;
- portfolio (less than 25% (non-company) or 50% (company)) debt investment is subject to an effective impost of approximately 1% when AIL applies; and
- direct debt investment is taxed at approximately 10% (DTA investor) or 15% (non-DTA investor).

The table below summarises the New Zealand tax treatment of foreign investment in New Zealand companies.

### Double Tax Agreements

New Zealand has double tax agreements (DTAs) with 24 countries. They generally provide that the minimum rate of withholding tax on dividends is 15% of the gross amount of the dividend, and on interest and royalties the maximum rate is generally 10% of the gross amount of the payments. A non-resident from a country with which New Zealand has a DTA is taxed on business profits only if it has a permanent establishment in New Zealand.

### Goods And Services Tax

Goods and Services Tax (GST) is a broadly based consumption tax on goods and services supplied in New Zealand and is chargeable by registered persons on taxable supplies at the rate of 12.5%. Registered persons are able to deduct input tax in calculating GST payable. GST applies to all goods and services supplied in New Zealand other than exempt financial transactions and domestic housing and rental accommodation. Exports of goods and certain services are zero-rated.

<b>Taxation of Company Distributions for a Treaty Investor</b>			
<b>CASH FLOW</b>	<b>DEBT</b>		<b>EQUITY</b>
	<b>Portfolio</b>	<b>Direct</b>	
<b>Income</b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>Company Tax</b>	<b>0<sup>6</sup></b>	<b>0<sup>4</sup></b>	<b>-21<sup>7</sup></b>
<b>Distribution</b>	<b>100</b>	<b>100</b>	<b>79</b>
<b>AIL/NRWT</b>	<b>-1<sup>8</sup></b>	<b>-10<sup>9</sup></b>	<b>-12<sup>10</sup></b>
<b>Net Received</b>	<b>99</b>	<b>90</b>	<b>67</b>
<b>Effective Tax Rate</b>	<b>1%</b>	<b>10%</b>	<b>33%</b>

## 7. Performance requirements

1. Brief description of performance requirements that could impose limits on trade and investment and indicate any TRIMS.

There are no specific performance requirements under Overseas Investment Regulations, although the Commission does request more detailed information for investment applications involving a “specified business”. The criteria used are the same however. The Commission is able to impose conditions on any consent given. Conditions normally imposed:

- (1) an expiry date of twelve months after which the consent will lapse if the investment has not taken place; and
- (2) an activities restriction on any new investment.

## 8. Capital exports

1. List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Not applicable.

<sup>6</sup> Because interest is deductible in determining company tax, there is no net tax imposed on profits distributed as interest.

<sup>7</sup> 33% company tax less FITC credit which amounts to approximately 12% of distributed profits.

<sup>8</sup> 2% AIL less effect from 0.66% company tax deduction for net 1.34% effective cost of AIL.

<sup>9</sup> Presumes 10% NRWT rate on interest applies under a DTA as a final tax. AIL not available on distribution to direct investor (associated person). When the 10% NRWT is not a final tax, the effective rate on debt supplied by direct investors may exceed 10%.

<sup>10</sup> 15% NRWT on the dividend and supplementary dividend which together amount to \$79 in this example.

2. *List and brief description of regulations/institutional measures that limit technology exports.*

### **Regulations**

The Customs Act 1966 and Export Prohibition Regulations 1953.

### **Application and function**

Permits may be needed to export goods of a strategic nature that have both military and non-military purposes, eg. sensors and lasers, nuclear materials and certain lethal microorganisms. The purpose of these controls is to limit the spread of weapons.

## **9. Investor behaviour**

1. *Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

Not applicable.

## **10. Other measures**

1. *Brief outline of the competition policy regime.*

Competition policy in New Zealand derives from the Government's overall economic objective for the economy. That objective is to establish, implement and monitor legislative frameworks for the fair and efficient conduct of business and the operation of markets, which rewards innovation, promotes efficiency and enhances investor confidence.

The Government's approach for achieving this objective is to rely on market processes and competition where possible. Thus, as a general rule, the Government avoids statutory and regulatory barriers to entry and does not intervene in detailed decisions regarding production, investment and resource allocation.

In order to protect the process of competition from conduct that does not support these overall efficiency aims, New Zealand has a modern prohibition-model competition law, the Commerce Act 1986.

2. *List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

New Zealand has a comprehensive system of protection for intellectual property rights both through legislation - patents, trade marks, industrial designs, plant variety rights and copyright (which includes related rights) and through the common law. In addition, competition and fair trading legislation provides additional protection for intellectual property rights.

Enforcement of intellectual property rights is undertaken primarily by:

- intellectual property rights holders enforcing their rights, through the courts if necessary.
- customs action in respect of imported goods which may be infringing the intellectual property rights of another party or where goods are counterfeit.

In addition, there can be action by the government to maintain the integrity of the intellectual property rights system, for example, where there is a claim of registration or grant of an intellectual property right when in fact none exists.

Foreign interest in investment is likely to be encouraged by some recent developments in respect of New Zealand's system of intellectual property rights protection:

- in 1994 new copyright, layout designs, and geographical indications legislation was passed. The new Copyright Act reflects a comprehensive reform of the legislation in this area as well as meeting TRIPS Agreement obligations. Amendments were also made to other legislation including that on patents and trade marks to meet TRIPS Agreement obligations.
- comprehensive reviews of the patents, designs and trade marks legislation are also under way and are likely to lead to major changes in the system of protection for intellectual property rights in New Zealand. The proposed changes are designed to further encourage investment, innovation and research and development.
- some changes to the Plant Variety Rights Act are also planned in order to broaden and enhance the PVR system including changes necessary to enable New Zealand to ratify the 1991 Revision to the International Convention for the Protection of New Varieties of Plant.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and compensation**

1. *List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

### **Laws/regulations**

None except the provisions in the Investment Protection and Promotion Agreements with China and Hong Kong.

**Application and function**

See section E(1).

2. *Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

Not applicable.

**2. Settlement of disputes**

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.*

**There are a variety of dispute settlement procedures available in New Zealand, all of which are available equally to New Zealanders and non-New Zealanders.** Investors and potential investors can appeal decisions of the OIC to the High Court. They can also seek judicial review of Ministers’ decisions and have access to non-litigious methods of dispute resolution.

In New Zealand, statutory arbitration procedures are contained in the Arbitration Act 1908. The common law is also relevant in several respects. Provision for the arbitration and mediation of disputes has also been made in the Employment Contracts Act 1991 and the Resource Management Act 1991.

There are several other private dispute resolution organisations now active in New Zealand such as LEADR (Lawyers Engaged in Alternative Dispute Resolution) and the Arbitrators’ and Mediators’ Institute of New Zealand. Both organisations can provide lists of available mediators.

Agency	Address/telephone/fax
<p>The High Court can be contacted through the Department for Courts in many localities in New Zealand.</p> <p>The Executive Director The Arbitrators’ and Mediators’ Institute of New Zealand Inc</p> <p>LEADR New Zealand Chapter Office</p>	<p>16 Palmer Street PO Box 1477 Wellington Telephone: (64 4) 385 4178 Fax: (64 4) 385 7224</p> <p>PO Box 4329 Shortland Street Auckland Telephone: (64 9) 357 9019 Fax: (64 9) 357 9099</p>

2. *Signatory or accession to the ICSID convention.*

Yes. New Zealand is a signatory to the ICSID convention.

**D. INVESTMENT PROMOTION AND INCENTIVES**

1. *Brief description of investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

The New Zealand Government promotes foreign direct investment primarily through two bodies; the Ministry of Foreign and Trade (MFAT), and the Government’s trade promotion agency, the New Zealand Trade Development Board (Tradenz).

Other Government agencies, such as the Tourism Board and the Ministry of Forestry, are also active in promoting foreign investment in their respective sectors.

*Generic Investment Promotion*

MFAT is responsible for generic promotion of New Zealand as a destination for foreign investment. Resources are available from New Zealand’s overseas posts and from MFAT.

Contact details are:

Ministry of Foreign Affairs and Trade  
Economic Division  
Private Bag 18 901  
Wellington  
Telephone: (64 4) 494 8500  
Fax: (64 4) 499 8518

The Ministry of Forestry provides forestry investment information for individuals and companies wishing to invest in the New Zealand forest industry (growing and processing). The Ministry of Forestry also participates at international events and provides guidance to international investors.

Contact details are:

Ministry of Forestry Investment Unit  
100 Symonds St  
CPO Box 39  
Auckland  
Telephone: (64 9) 303 3269  
Fax: (64 9) 303 2558

#### *Investor referral service*

Tradenz's investment services include an investor "help desk", provision of information on business sectors in New Zealand, investment procedures and a comprehensive catalogue of investment opportunities. The help desk also provides a referral system which will introduce individual investors to investment professionals and local economic development agencies in New Zealand best able to facilitate this interest. These services may be accessed directly through any New Zealand diplomatic mission or Tradenz regional office.

Contact details are:

Tradenz Investment Services  
PO Box 10341  
Wellington  
New Zealand  
Ph: (64 4) 499 2244  
Fax: (64 4) 473 3193  
Or nearest New Zealand diplomatic post.

#### *Assistance to small businesses*

Business Development Boards help small to medium sized enterprises (SMEs) gain access to the skills and information they need to compete effectively. The Programme provides:

- access to various types of information to help SMEs take better business decisions.
- An assessment of a business's managerial strengths and weaknesses by a management consultant. Cost part subsidised.
- referral to relevant providers of management education.
- a grant scheme to allow SMEs to test the new management skills.
- initiatives to educate and recognise SMEs in business best practice and quality management principles.

Contact details are:

Business Development Group  
Business Policy and Programmes Division  
Ministry of Commerce  
PO Box 1473  
Wellington  
Fax: (64 4) 473 4638  
Or the Business Development Board in the New Zealand locality concerned.

2. Brief description of fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.

Program (national/sub-national)	Nature of incentive	Contact point
East Coast Rescue Programme	Grants are available on a case by case basis for landowners in the Gisborne District Council region to plant forest on eroding and erodable land. There is no distinction between New Zealanders and non-New Zealanders.	Randolph Hambling PO Box 2122 Gisborne  Phone: (64 6) 867 3158 Fax: (64 4) 867 9843
The New Zealand Government does not underwrite private sector risk or offer any other fiscal incentives to overseas investors.		

3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.  
Not applicable.

#### **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Agreement	Provisions
A Trade and Investment Framework Agreement with the USA;  New Zealand is party to the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, and is a party to the TRIMS agreement as part of the package of the Uruguay Round negotiations.	
Friendship commerce and navigation treaties	None.
Bilateral investment treaties  - an Investment Protection and Promotion Agreement with China;  - an Investment Protection and Promotion Agreement with Hong Kong;	(a) <i>Transparency</i> : If the domestic investment regime in the partner country is not transparent, or New Zealand's regime is not perceived as such by investors, then investment capital will not flow readily between the two markets. Provisions for notification of changes to the investment regime and early consultation on investment disputes have therefore been included in the model agreement.  (b) <i>Repatriation</i> : A key objective is to ensure that investors are permitted to repatriate the capital and returns from any offshore investments.  (c) <i>Expropriation</i> : The objective contained in the model agreement is twofold: to ensure that investments are not subjected to unjustified expropriation by the foreign government and to



	<p>ensure that proper compensation is paid.</p> <p>(d) <i>Disputes settlement</i>: The model agreement seeks to ensure that investment disputes are dealt with in a fair and judicious manner which is convenient for all parties, and that progressive steps towards dispute settlement are defined.</p> <p>(e) <i>Appropriate safeguards</i>: Under the terms of the model agreement each contracting party is able to apply prohibitions or restrictions of any kind or take any other action for the reasons of national security, public health or the prevention of disease and pests in animals and plants.</p>
Regional or sub regional investment treaties	None.

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

### 1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

Historically, inflows of investment capital have exceeded outflows from New Zealanders. This trend has continued in recent years.

The Department of Statistics (Statistics New Zealand) collects data on inward and outward investment as part of its Balance of Payments series.

The latest available statistics (31 March 1994) show that levels of foreign investment in New Zealand increased to \$89.4 billion, mainly due to an increase in direct investment. The level of direct investment has more than doubled since 1990, totalling \$33.6 billion at 31 March 1994.

Net FDI was \$4.4 billion in the year to March 1994, approximately the same as the previous year. In 1993 and 1994 net FDI flows were 5.8% and 5.5% of GDP respectively. Net DIA in 1994 was \$3.7 billion, compared with disinvestment of \$2.1 billion in 1993.

Between 1989 and 1994 FDI averaged 3.7% of GDP and DIA averaged 1.9% of GDP. During this period, FDI and DIA in New Zealand were respectively second and seventh highest among OECD countries as a percentage of GDP.

Net foreign portfolio investment (FPI) was \$5.6 billion in 1994, an increase of \$4.6 billion on net foreign portfolio inflows of \$1.1 billion in 1993. This increase largely reflects foreign purchases of domestic securities issued by the official sector as part of the ongoing refinancing of government debt. New Zealand portfolio investment abroad (PIA) increased by \$0.6 billion to \$0.7 billion in 1994.

**Table 1: Net Foreign Investment in New Zealand and New Zealand Investment Abroad**  
(\$NZ million)

	<b>FDI</b>	<b>DIA</b>	<b>FPI*</b>	<b>PIA *</b>
<b>1984/85</b>	456	349		
<b>1985/86</b>	745	166		
<b>1986/87</b>	402	949		
<b>1987/88</b>	238	938		
<b>1988/89</b>	725	226		
<b>1989/90</b>	2824	3961	158	89
<b>1990/91</b>	2932	2546	577	219
<b>1991/92</b>	2026	728	-396	82
<b>1992/93</b>	4405	-2093	1087	3
<b>1993/94</b>	4449	3702	5645	653

Source: statistics New Zealand balance of payments statistics (March years)

\*Series begins in 1990

*2. List of the major countries/economies that are sources/receivers of FDI over recent years.*

<b>Sources FDI</b>		<b>Destination FDI</b>	
Net FDI Inflows to New Zealand 1990-1994 in percentage terms:		Net FDI Outflows from New Zealand 1990-1994 in percentage terms:	
Australia:	33.5%	Netherlands:	33.8%
North America	29.6%	Australia	30.5%
Asia (except Japan)	13.1%	Cook Islands	17.2%
United Kingdom	12.5%	United Kingdom	8.6%
Japan	3.2%	Cayman Islands	7.8%
		Netherlands Antilles	7.1%

# THE REPUBLIC OF THE PHILIPPINES

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# THE REPUBLIC OF THE PHILIPPINES

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. *Summary of foreign investment policy including any recent policy changes.*
2. *Summary of significant public statements which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.*

The State shall pursue an independent foreign policy. In its relations with other States the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right of self-determination.

Under the Foreign Investments Act of 1991 as amended by R.A. 8179, the State made it a policy to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments including their political subdivision, in activities which significantly contribute to national industrialization and socioeconomic development to the extent that foreign investment be allowed in such activity by the Constitution and relevant laws. Foreign investments shall be encouraged in enterprises that significantly expand livelihood and employment opportunities for Filipinos; enhance economic value of farm products; promote the welfare of Filipino consumers; expand the scope, quality and volume of exports and their access to foreign markets; and/or transfer relevant technologies in agriculture, industry and support services. Foreign investments shall be welcome as a supplement to Filipino capital and technology in those enterprises serving mainly the domestic market.

As a general rule, there are no restrictions on extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as 100% equity except in areas included in the negative list. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Filipino participation in their businesses by taking in Filipinos, generating more employment for the economy and enhancing skills of Filipino workers.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory (legislative) requirements*

1. *List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

Citation	Summary
1. The Omnibus Investments Code of 1987 (Executive Order No. 226)	Provides the rules by which foreign investments in the Philippines may avail of incentives.
2. The Foreign Investment Act of 1991 (Republic Act No. 7042) as amended by R.A. 8179	Governs the entry of foreign investments without incentives decreasing the minimum paid-in equity from Five Hundred Thousand dollars (US\$500,000.00) to Two Hundred Thousand dollars (US\$200,000).
3. Bases Conversion and Development Act of 1992 (Republic Act No. 7227)	Provides for incentives to enterprises located within the Subic Bay Freeport Zone.
4. The Special Economic Zone Act of 1995 (Republic Act No. 7916)	Provides for incentives to enterprises located within the Special Economic Zones.
5. Export Development Act of 1994 (Republic Act No. 7844)	Provides for incentives to enterprises in export business.
6. Investor's Lease Act (Republic Act 7652)	Allows qualifying foreign investors to lease private lands for an initial period of up to 50 years renewable for up to 25 additional years.
7. Republic Act 7721	Eased the restrictions on the entry and operations of foreign banks.

8. Amendment of the Build-operate-transfer law (R.A. 7718, 1994)	Allows variations of scheme, eases restrictions on government financing and the setting of tolls and charges, and increases the opportunity for wholly foreign-owned corporations to undertake a project.
9. Republic Act No. 7888	Allows the President of the Philippines to suspend the nationality requirements under the Omnibus investments Code in the case of equity investments by multilateral financial institutions such as the International Finance Corporation and the Asian Development bank.

*(ii) Investment Review and Approval*

1. Details of proposals and sectors that are/are not (yes/no) subject to screening.

2. For each proposal, details of guidelines/conditions that apply for screening (e.g. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals	Guidelines/Conditions
merger (Yes)	Compliance with the Corporation Code requirements.
acquisition (Yes)	Compliance with the Corporation Code requirements particularly Sec. 40 of said Code and subject to restrictions in foreign equity in the Constitution.
greenfield investment (Yes)	Compliance with the Corporation Code requirements.
real estate/land (Yes)	Foreign Equity up to 40% only.
joint venture (No)	Unless the parties form a partnership or corporation.
other: - management contracts (Yes)	Compliance with the Corporation Code requirements particularly Sec. 44 of said Code.

Sector	Guidelines/Conditions
telecommunications(Yes)	Foreign Equity up to 40% only.
media (Yes)	No Foreign Equity.
transport (Yes)	Foreign Equity up to 40% only
agriculture (Yes)	Foreign Equity up to 40% only on public land. No limitation if private land is used.
other: - mining (Yes)	Subject to the provisions of the Revised Mining Act of 1995.
- infrastructure (Yes)	Subject to the provisions of P.D. 1594 and BOT Law.

3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

1. S.E.C. Form No. F-100 (for new corporations with more than 40% Foreign Equity).
2. S.E.C. Form No. F-103 ( for a branch office of a foreign corporation).
3. BOI registration form.
4. PEZA registration form.

Copies of the relevant documentation can be obtained from the contacts listed in Section B(1)(ii)(4) below.

4. *Contact point(s) to which application should be made.*

Agency	Address/telephone/fax
1. Board of Investments (BOI) Contact Person - Dir. Efren V. Leano	Industry and Investment Bldg. 385 Sen. Gil J. Puyat Ave. Makati City Telephone: (63 2) 895 5602;895 8370 Fax: (63 2) 895 3521
2. One Stop Action Center (OSAC) Contact Person - Dir. Eloisa A. Lim Lina E. Batallones	Board of Investments Telephone: (63 2) 896 7884; 895 7342 or 896 7342
3. Securities and Exchange Commission (SEC) Contact Persons - Dir. Elnora Adviento - Legal Dept, Atty. Benito Cataran	SEC Building E. de los Santos Ave. Mandaluyong City Telephone: (63 2) 780 931 Fax: (63 2) 793 072
4. Philippine Export Zone Authority (PEZA) Contact Person - Mike Manalo - Manager	4th Floor, Legaspi Towers 300 corner Vito Cruz St. and Roxas Blvd., Manila Telephone: (63 2) 521 0546 Fax: (63 2) 521 0419
5. Bases Conversion Development Authority Contact Person - Pres. Victor Lim	2nd Floor, Rufino Building Ayala Avenue, Makati City Telephone: (63 2) 813 5380 Fax: (63 2) 813 5425
6. Bureau of Internal Revenue (BIR) Contact Person - Regional Dir. Antonio Ortega Revenue Region VIII, Makati	Atrium Building Makati City Telephone: (63 2) 811 4448 Fax: (63 2) 811 4390
7. Bangko Sentral ng Pilipinas (BP) Contact Person - Dir. F. Enrico R. Alfiler Foreign Exchange Department	A. Mabini Street, Ermita Manila Telephone: (63 2) 815 1729
8. Social Security System (SSS) Contact Person - Administrator Renato C. Valencia	SSS Bldg., East Avenue, Diliman Quezon City Telephone: (63 2) 920-6401

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

Under the 1987 Omnibus Investment Code, the BOI will render its decision within 20 working days after official acceptance of the application. Less than P5,000,000.00 production cost and exporter, seven (7) days processing of application.

Under the Foreign Investment Act, within fifteen (15) working days from official acceptance of an application, the SEC in cases of corporations or BTRCP in cases of sole proprietorships, shall act on the same.

In case of EPZA, the processing and evaluation of an application by the appropriate department usually takes about two weeks and the decision on the project is made during the monthly meeting of the board.

The SEC is a government agency responsible for the registration, licensing, regulation and supervision of all corporations and partnerships organized in the Philippines, including foreign corporations licensed to engage in business or to establish branch offices in the Philippines. The processing of the papers and the approval thereof should take fifteen (15) working days from official acceptance of the application.

- Ordinary partnership/corporation - two (2) days.
- Those with more than 40% foreign equity - ten (10) days.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or modification of the proposal. Description of appeal processes and the average time for an appeal to be considered.*

Agency	Address/telephone/fax
There is no formal appeal required, just conference with the examiner or processing lawyer at the Securities And Exchange Commission, Corporate and Legal Department	SEC Bldg., EDSA, Mandaluyong City Telephone: (63 2) 793 072 Fax: (63 2) 701 319

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*  
All the required documents must be submitted.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contracted for appeals (provide addresses, and phone/fax numbers for these agencies).*

Agency	Address/telephone/fax	Type of Complaint
Securities & Exchange Commission (SEC)  Corporate and Legal Department	SEC Bldg., EDSA, Mandaluyong City Telephone: (63 2) 793 072 Fax: (63 2) 701 372	Violation of RA 7042 (Foreign Investments Act).
Bureau Of Trade Regulation And Consumer Protection	361 Sen. Gil Puyat Avenue, Makati City Telephone: (63 2) 817 5280 Fax: (63 2) 810 9363	Violation of consumer protection of sole proprietorships.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

Agency	Address/telephone/fax	Functions
1. Board of Investments	Industry & Investments Building 385 Gil J. Puyat Ave., Makati City Telephone: (63 2) 897 6682 Fax: (63 2) 895 3521	Implementation of the Omnibus Investment Code (E.O. 226)
2. Bureau of Trade regulation and Consumer Protection (BTRCP)	361 Sen. Gil Puyat Ave., Makati City	
3. Securities and Exchange Commission	SEC Bldg., EDSA, Mandaluyong City Telephone: (63 2) 772 324; 790 931 to 39 loc. 246 250	Implementation of the Foreign Investments Act of 1991 (R.A. 7042)

	Fax: (63 2) 701 372	
3. Philippine Economic Zone Authority		Implementation of the Philippine Economic Zone Authority (R.A. 7916)
4. Subic Bay Metropolitan Authority		Implementation of the Bases Conversion and Development Act of 1992 (R.A. 7227)
5. Export Development Council		Implementation of the Export Development Act (R.A. 7844)

10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.

11. Where applicable the role sub national agencies in the approval process.

Agency	Address/telephone/fax	Functions

## 2. Most favored Nation Treatment/Non-discrimination between Source Economies

1. List and description of the scope of any exceptions to most favored nation treatment in relation to the establishment, expansion and operation of foreign investment (e.g. limits in terms of sector, threshold value or otherwise).

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

## 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (e.g. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.

### I. Project Financing Through Foreign Borrowings

The government prefers foreign equity investments over foreign borrowings. As a matter of policy, all borrowings must have the prior approval of the Central Bank. Otherwise, prepayment of principal and remittance of interest may not be effected through authorized agent banks.

However, the following loans may be granted without prior approval of the Bangko Sentral ng Pilipinas.

- Loans of private sector from FCDUs/offshore sources irrespective of maturity to be serviced using foreign exchange purchased from outside of the banking system.
- Short-term (with maturity not exceeding one year) loans of financial institutions, both public and private, for normal interbank transactions.
- Short-term loans of the private sector in the form of export advances from buyers abroad.
- Short-term loans of the following private sector borrowers from FCDUs.



- Community and service exporters - provided these loans are used to finance export-related import costs of goods and services as well as peso cost requirements.  
Service exporters shall refer to Philippine residents engaged or proposing to engage in rendering technical, professional or other services which are paid for in foreign exchange.
- Producers/manufacturers, including oil companies and public utility concerns - provided the loans are used to finance import costs of goods and services necessary in the production of goods by the borrower concerned.
- Short-term loans of private sector exporters/importers from participating creditor banks under the Revolving Trade Facility (RTF) Agreement, provided that:
  - the loans are not covered by a guarantee from a government financial institution/corporation;
  - the loans shall be exclusively used to finance specific trade transactions in an amount equivalent to the import bills to be liquidated and/or in the case of export financing transactions, to the borrower's pre-export financing requirements;
  - the advice or notification on the loans to be obtained together with the pertinent documents cited have been submitted to the Bangko Sentral at least five (5) days prior to drawdown date;
  - drawdown and registration requirements shall be complied with; and
  - any assignment of the loan by the creditor concerned shall require prior Bangko Sentral approval.

In line with the socio-economic development plan, projects considered priority for foreign financing shall include export-oriented projects, BOI-registered projects, those listed in the Annual Priorities Plan (APP) and other projects which may be declared priority by the National Economic Development Authority or by Congress.

In general foreign loans shall be used to finance the foreign exchange requirements and up to 50% of the local cost component of eligible projects.

## II. Domestic Borrowings

All business enterprises with more than 40% foreign equity (otherwise referred to as foreign-owned companies for this purpose) are required to obtain from the Inter-Agency Committee (IAC) on Domestic Borrowings of Foreign Firms a certificate of authority before it can secure domestic loans from financial institution. (The IAC is a body composed of representatives from the Bangko Sentral ng Pilipinas, the Board of Investments, The National Economic and Development Authority and the Department of Finance, assigned to administer to implement the policies, rules and regulations on domestic borrowings of foreign firms).

### *Debt to equity ratio requirements*

Foreign owned companies or foreign firms availing of domestic borrowings are required to maintain the following debt to equity ratios depending on their classification:

Group A- 60:40 debt to equity ratio:

- (a) firms registered under the Omnibus Investments Code;
- (b) firms registered with the Export Processing Zone Authority;
- (c) Bangko Sentral certified export oriented firms;
- (d) firms entitled to incentives under other laws or Presidential Decrees;
- (e) vital industries as defined by certain laws; and
- (f) firms registered under the Export Development Act.

Group B - 55:45 debt to equity ratio:

Firms engaged in manufacturing activities, other than above.

Group C - 50:50 to equity ratio:

Firms engaged in non-manufacturing activities.

The BOI, however, has issued a directive that all project proposals must comply with the 75:25 debt to equity ratio before any enterprise is registered for incentives under E.O. 226. The ratio should not, however, be confused with the ratio required for purposes of obtaining peso borrowings.

A foreign firm can borrow from a private individual or private non-financial institution but these borrowings shall be counted in computing the firms debt to equity ratio.

Foreign firms must stay within the prescribed ratio at all times. The debt to equity ratio must be maintained by the foreign firm as long as it has outstanding peso borrowing or for as long as it has an outstanding valid certification.

If the company can prove that it has taken steps to increase its equity and that funds are already in the country, the Committee may consider such funds as part of equity.

Moreover, the Committee may likewise give said companies reasonable time within which to meet the required ratio or adopt such alternative measures as the Committee may prescribed. The Committee shall ensure the gradual improvements of the firm's ratio through an annual build-up program.

#### **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits dividends, royalties, loan payments and liquidation.*

Under present liberalization rules, foreign exchange, as a general rule, may be freely sold and purchased outside the banking system.

The banks may sell foreign exchange to residents for any nontrade purpose without need of prior approval of the Bangko Sentral ng Pilipinas (BSP). However, as a rule, payment through the banking system of obligations that are foreign loan or foreign investment-related shall be allowed provided BSP approval and/or registration of the loan and the investment is shown.

Earnings, profits, and dividends accruing to non-residents, and earned on foreign investments may be remitted in full through the banking system, net of taxes, in the currency in which the investment was originally made if such foreign investments had been registered with the BSP.

All invisible (non trade) payments such as, but not limited to, royalties, technical service fees, and film rentals may be remitted through the banking system provided the pertinent registration requirement are complied with. Foreign loans can be serviced with foreign exchange purchased from the banking system if the loans have been registered with BSP.

Remittance of payments due to nonresidents is not subject to any restriction provided that the foreign exchange is not sourced from the banking system.

Remittance through the banking system, as a general rule, will be subject to registration and/or notification requirements.

The entire amount of the foreign investments may be repatriated through the banking system if such foreign investments have been registered with the BSP.

*2. Brief description of foreign exchange regime.*

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

Market fundamentals were generally allowed to determine the level exchange rate even in the face of the surge in foreign exchange inflows in 1994. However, substantial BSP intervention was required to ensure stable and moderate adjustments in the exchange rate. Direct market intervention was complemented by a two-pronged approach to manage the net inflow of foreign exchange i.e., stimulate greater foreign exchange outflows from and moderate foreign exchange inflows into the banking system. The first prong involved the stimulation of greater foreign exchange outflows, through the following: 1) lifting of the restriction on repatriation of foreign investments under the debt-to-equity conversion program as well as the remittance of dividends, profits, and earnings which accrued thereon; 2) encouragement of Philippine borrowers to prepay their foreign obligations by Philippine borrowers whose final maturities fall within the next 1- 2 years; 3) encouragement of domestic investments in Philippine International bond issues by residents, whether banks/financial institutions or otherwise; 4) increase in the ceiling on outward investments from US\$1 million to US\$3 million and further to US\$6 million per investor per year; and 5) strong support for the accelerated phase down of the forward cover to oil companies which was approved by the President on November 8, 1994, among others.

The other prong of the BSP strategy involved the modernization of the inflow of foreign exchange into the country through the following: 1) imposition of prior approval requirement on all forward transactions with non-residents; 2) reduction in the reserve requirements against deposit and deposit substitute liabilities of banks and non-banks to 17%; 3) removal of the restriction on automatic conversion into pesos of a certain portion of foreign loans; 4) limitation of foreign loan approvals including FCDU loans to those earmarked for foreign exchange costs only excluding the direct and indirect exporters as well as public sector borrowers; and 5) reduction in the allowable oversold foreign exchange position limit of commercial from 15% of unimpaired capital by November 18, 1994.

Furthermore, the BSP supported the initiative of the Bankers Association of the Philippines (BAP) to establish a “volatility band” within which the exchange rate could move in a given day. Under the mechanism, which took effect during the latter part of 1994, the exchange rate of the previous day’s afternoon transactions at the PDS.

#### **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

Any alien, except nationals coming from North Korea and Cambodia and such other countries that may be classified restricted in the future and who meets the following qualifications may be issued the Special Investors Resident Visa (SIRV):

- he/she had not been convicted of a crime involving moral turpitude;
- he/she had not been afflicted with any loathsome, dangerous or contagious disease;
- he/she had not been institutionalized for any mental disorder or disability; and

- he/she is willing and able to invest the amount of at least US\$75,000 in the Philippines. The holder of the special visa has the privilege to reside in the Philippines for as long as his/her investment exists. He shall be entitled to import his used household goods and personal effects tax and duty-free as an alien coming to settle in the Philippines for the first time under Sec. 105(h) of the Tariff and Customs Code of the Philippines. Further, the investor's spouse and unmarried children under 21 years of age who are joining him in the Philippines may be issued the same visa.

Pre-arranged employment Visa under Sec. 9(g) under the Immigration Law.

- Employment in any executive or managerial position.

International Treaty Investors Visa under Se. 9(d) under the Immigration Law.

- Investment of at least P300,000.00. Only Germans, Japanese and Americans are parties to this treaty.

Off-Shore Banking Units allow foreigners to be employed as executives in their respective units.

Enterprises registered under E.O. 226 are granted incentives to employ foreign nationals as supervisory, technical, or advisory position. Majority foreign owned registered enterprises may employ foreign nationals as President, treasurer and general managers.

Art. 59 of E.O. 226, foreign nationals are issued visas for executives of area Headquarters of Multinational Companies.

2. *List and description of any restrictions of law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
1. Registered enterprise under the Board of Investments may employ foreign nationals for a period not exceeding five years from its registration, extendible for limited periods at the discretion of the board.	Supervisory, technical, or advisory positions.
2. Majority foreign-owned BOI-registered enterprise may employ foreign nationals beyond the period of five years.	President, treasurer and general manager positions
3. Subic Bay Freeport enterprises may employ foreign nationals upon prior approval of the Subic Bay Metropolitan Authority for a period of five years extendible from year to year.	Any position.
4. Foreign nationals entering into coal operating contracts and service with the government for exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals.	Any position.
5. Foreign nationals under the Corporation Code may be employed as member of the Board of Directors.	By election to the Board.

3. *Description of any regulations relating to personnel management of foreign firms, e.g. minimum wage laws, minimum requirements for training or employment of local staff.*

The Wage Rationalization Act (Republic Act 6727, effective July 1989) created regional tripartite wage and productivity boards to determine and fix minimum wage rates on the regional, provincial and industry levels. Foreign technicians may be admitted into the Philippines with a pre-arranged employment visa if the skills they possess are not available in the country. The foreign technicians are required to have at least two understudies to be trained in relation to their respective assignments.

RA 6715, in particular, aims to bolster protection for workers; strengthen their rights to organize, strike and conduct collective bargaining; promote voluntary modes of dispute settlement; and reorganize the National Labor Relation Commission (NLRC, which has jurisdiction over cases involving employer-employee relations) in order to professionalize its ranks and bring its services closer to disputing parties.

4. List and provide a summary of domestic labor laws which apply to foreign firms in the context of labor disputes/relations.

Law	Summary
1. Labor Code of the Philippines (Presidential decree 442)	Consolidation of all labor-related legislation. The latest major amendments to the code are Republic Act (RA) 6715 (New Labor Relations law, effective march 1989); RA 6725 (Act Strengthening Prohibition on Discrimination against Women, effective May 1989); and RA 6727 (Wage rationalization Act, effective July 1989)

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Taxation arrangements	Summary
<b>1. Individual Resident Foreigners</b>	Income derived from all sources (Philippines and Foreign) are taxed from 1-35% on gross compensation income (arising from an employer-employee relationship); and net on non-compensation (business and other) income.  20% on royalties, prizes, winning (final tax).  20% on interest on bank deposit, and on substitute arrangements (final tax).  5% capital gains tax on sale of realty (final tax).
<b>2. Foreigners engaged in trade or business in the Philippines</b>	Income derived from Philippine sources are taxed from 1-35% on gross compensation income and net on non-compensation income.  30% is imposed on royalties, interest and dividends, etc.
<b>3. Foreigners not engaged in trade or business in the Philippines</b>	Income derived from Philippine sources are taxed a flat rate of 30% on gross Philippine income.
<b>4. Foreign Corporations engaged in trade or business in the Philippines</b>	Income derived from Philippine sources are taxed a flat rate of 35% on net income.
<b>5. Foreign Corporations not engaged in trade or business in the Philippines</b>	Income derived from Philippines sources are taxed a flat rate of 35% on gross income.  Interest income on foreign loans earned is subject to a 20% tax.
<b>6. Nonresident foreign cinematographic film owners, lessors, or distributors</b>	Taxed at the rate of 25% on gross income.
<b>7. Foreign international carriers</b>	Taxed at the rate of 2.5% of their gross Philippine Billings.
<b>8. Foreign Mutual Life Insurance companies</b>	Taxed at the rate of 10% of their gross investment income derived from sources within the Philippines.

## 7. Performance Requirements

1. *Brief description of performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

A. Local content requirement under the Car Development Program (CDP), Commercial Vehicle Development Program (CVDP), and Motorcycle Development Program (MDP).

The local content requirement under the motor vehicle development programs is aimed to develop a viable automotive parts and components manufacturing sector. Participants of the CDP, CVDP, and MDP are required to qualify/comply with the local content requirements for them to stay in the program. From a shopping list of locally produced automotive parts and components, the automotive part to import or source locally in order to meet the required local content.

B. Foreign exchange requirement for the importation of components/sub-assemblies for assembly of motor vehicles under the Car Development Program, Commercial Vehicle Development Program and the Motorcycle Development Program.

Aside from local content, the automotive assemblers are required to earn foreign exchange earnings through the exports of automotive parts and components before they can import CKDs/SKDs. To ensure foreign exchange credits, the assemblers encourage their foreign suppliers to locate in the country.

## 8. Capital Exports

1. *List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

Regulations	Application and function

## 9. Investor Behaviour

1. *Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

## 10. Other measures

1. *Brief outline of the competition policy regime.*

The State shall regulate or prohibit monopolies when public interest so requires. No combination in restraint of trade or unfair competition shall be allowed.

2. *List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

The government grants protection from infringement on duly registered patents, trademarks, copyrights, tradenames, and other proprietary rights which have been registered with the appropriate government agencies. The Philippines had in place appropriate legal infrastructure for Intellectual Property Rights (IPR) Protection even before it became independent in 1946. The following are Philippine laws and regulations on IPR protection:

- R.A. 165 (Philippine Patent Law, as amended);
- R.A. 166 (Philippine Trademark Law, as amended);
- P.D. 49 (Philippine Copyright Law);
- P.D. 1987 (Decree Creating the Videogram Regulatory Board);
- P.D. 1203 (Philippine Reprinting Law);
- P.D. 1988 (Amending PD 49 with regard to the penalties of some copyright infringements);
- E.O. 913 (Strengthening the Rule making and Adjudicatory Powers of the Minister of trade and Industry in order to further protect consumers); and
- E.O. 60 (issued on February 26, 1993, Creating of the Presidential Inter-Agency Committee on Intellectual property Rights).

The Philippines is a signatory to the Paris Union for the protection of Industrial Property and is a member of the World Intellectual Property Organization. Further, the Philippines is also a signatory of the following conventions: Berne Convention for the protection of Performers, Producers of Phonograms and Broadcasting Organizations.

A foreign national may apply for a Philippine patent provided he is a citizen of a country that grants by law substantially similar privileges to citizens of the Philippines.

The creation of the Department of Trade and Industry (DTI) Task Force on piracy and Conterfeiting has greatly helped in the enforcement aspect of intellectual property rights. The Task Force which is composed of several government agencies conducts raids and confiscation of illegal tapes receiving commendation from the Motion Picture Experters Association of America (MPEAA).

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

*1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

The Philippines guarantees foreign investment against expropriation except for public use or in the interest of national welfare and upon payment of just compensation.

In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate at the time of remittance.

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

### 2. Settlement of Disputes

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for disputes settlement and addresses and telephone/fax numbers of these agencies.*

- (a) voluntary arbitration
- (b) compulsory arbitration
- (c) administrative adjudication
- (d) litigation

Agency	Address/telephone/fax

*2. Signatory and accession to the ICSID Convention*

## D. INVESTMENTS PROMOTION AND INCENTIVES

*1. Brief description of investment promotion programs offered at both the national and sub-national level (e.g. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for assessing these schemes, including address and telephone/fax numbers.*

*2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (e.g. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

### **Incentives Offered Under The Omnibus Investments Code Of 1987**

#### Fiscal Incentives

#### 1. Income Tax Holiday.

Newly registered pioneer projects are fully exempt from income taxes for six years from the start of commercial operations and non-pioneer firms for four years from the start of commercial operations. The exemption period may be extended for another year each of the following cases:

- the project used indigenous raw materials;
- the project meets the BOI prescribed ratio of capital equipment to number of workers;

- the net foreign exchange savings or earnings amount to at least US\$500,000 annually during the first three years of the project's commercial operations.

Projects locating in less developed areas (LDA) shall be entitled to the incentive for six years. Expansion projects of domestic-oriented industries are not entitled to the income tax holiday incentive.

2. Tax Credit On Domestic Capital Equipment.

Firms registered on or before December 31, 1994 shall be entitled to tax credit equivalent to 100% of the taxes and duties that would have been waived had the capital equipment and accompanying spare parts been imported until December 31, 1997, provided that those firms located outside NCR shall enjoy said tax credit until December 31, 1999.

Firms registered after December 31, 1994 shall be entitled to tax credit on the duty portion equivalent to the difference between the 3% minimum duty and the actual duty rate provided under the Tariff and Customs Code, as amended.

3. Tax And Duty Free Importation Of Capital Equipment.

Firms registered on or before December 31, 1994 shall be entitled to tax and duty free importation of capital equipment and accompanying spare parts until December 31, 1997, however those firms located outside NCR shall be entitled to the incentive until December 31, 1999.

Firms registered after December 31, 1994 shall be subject to 10% VAT upon implementation of Republic Act No. 7716, the expanded VAT Law and 3% duty.

4. Additional Deduction For Labor Expense.

For the first five years from registration, a registered enterprise shall be allowed an additional deduction from taxable income of 50% of the wages corresponding to the increment in the number of the direct labor for skilled and unskilled workers if the project meets the prescribed ration of capital equipment to number of workers set by the board. This additional deduction shall be doubled if the activity is located in a LDA.

5. Tax And Duty Free Importation Of Breeding Stocks And Genetic Materials For Ten Years From Registration Or Commercial Operation For Agricultural Producers.

6. Tax Credit On Domestic Breeding Stocks And Genetic Materials Under The Same Condition As In Number 5.

7. Simplification Of Customs Procedures For The Importation Of Equipment, Spare Parts, Raw Materials And Supplies And Exports Of Processed Products.

8. Unrestricted Use Of Consigned Equipment Provided A Re-Export Bond Is Posted.

9. Employment Of Foreign Nationals.

This may be allowed in supervisory, technical or advisory positions for five years from registration. the president, general manager and treasurer of foreign owned registered enterprises or their equivalent shall not be subject to the foregoing limitations.

10. Tax Credit For Taxes And Duties Paid On Raw Materials, Supplies And Semi-Manufactured Products Used In The Manufacture Of Export Products And Forming Part Thereof.

11. Access To Bonded Manufacturing/Trading Warehouse System. Registered Export-Oriented Enterprises May Have Access To Bonded Warehousing Systems.

12. Exemption From Wharfage Dues And Any Export Tax, Duty, Impost And Fees.

New enterprises registered under the 1995 IPP will be given a five year period to avail of the exemption from wharfage dues and any export tax, impost and fees. Expansion and existing projects are not entitled to this incentive.

13. Tax And Duty Exemption Of Imported Spare Parts And Supplies For Export Producers With Customs Bonded Warehouse Exporting At Least 70% Of The Production.

**Incentives Offered Under The Special Economic Zone Act Of 1995**

1. Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
2. Tax credit for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994.
3. Exemption from taxes under the National Internal Revenue Code but in lieu of paying taxes, 5% of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government.

**Incentives Offered Under The Export Development Act Of 1994**

1. Exemption From PD 1853 Or The Advance Payment Of Customs Duties.
2. Duty-Free Importation Of Machinery And Equipment And Accompanying Spare Parts Until December 31, 1997.
3. Tax Credit For Imported Inputs And Raw Materials Primarily Used For The Production And Packages Of Export Goods Which Are Not Readily Available Locally Until December 31, 1999.
4. Tax Credit For Increase In Current Year's Export Revenues.
  - First 5% increase in annual export revenue over the previous year a credit of 2.5% to be applied on incremental export revenue converted to pesos.
  - Next 5% increase would be entitled a credit of 5%.
  - Next 5% increase would be entitled a credit of 7.5%.
  - In excess of 15% would be entitled a credit of 10%.
5. Tax Credit For Use Or Import-Substitution Of Non-Traditional Products.
  - Tax credit equivalent to 25% of duties until December 31, 1997.
6. Claims For Tax Credits.
  - Imported inputs, raw materials and capital equipment.
  - Increase in current year's export revenues.
  - Import-substitution.

**Incentives Offered Under The Bases Conversion And Development Act Of 1992**

Exempted from all national and local taxes but in lieu of paying taxes a final tax of 5% of gross income earned



3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.

The One-Stop Action Center houses in one place representatives from all the government agencies that an investor will have to deal with when making an investment. The Center guarantees that applications will be processed within 20 days. If processing is not through in 20 days, the application is considered automatically approved.

Agency	Address/telephone/fax
1. One-Stop Action Center (OSAC) Board of Investments Contact Person - Dir. Eloisa A. Lim Lina E. Batallones	Industry and Investment Bldg. 385 Sen. Gil J. Puyat Avenue, Makati City Telephone: (63 2) 895 5602; 895 8370 or 895 3521
2. One-Stop Export Documentation Center International Trade Center Complex	Roxas Blvd. cor. Sen. Gil Puyat Ave., Pasay City Telephone: (63 2) 834 1344 to 49 Loc. 125
3. One-Stop Import Processing Center Bureau of Import Services (BIS)	349 Sen. Gil Puyat Ave., Makati City Telephone: (63 2) 818 9111
4. One-Stop Shop Tax Credit Center Department of Finance (DOF)	Roxas Blvd., Multi-Purpose Bldg, Bangko Sentral ng Pilipinas Telephone: (63 2) 526 2293
5. One-Stop Action Garments Export Assistance Center Garments and Textile Export Board (GTEB) Contact Person - Erlinda F. Segundera	357 Sen. Gil Puyat Ave., New Solid Bldg. Makati City Telephone: (63 2) 817 4323

#### E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Agreement	Provisions
<b>Friendship Commerce and Navigation Treaties</b>  “Treaty of Amity, Commerce and Navigation between the Republic of the Philippines and Japan”	Both parties desire to maintain and strengthen amicable relations existing between the two countries on a mutually advantageous basis.
<b>Bilateral Investment Treaties</b>  Philippines - People’s Republic of China  Philippines - Chinese Taipei  Philippines - Thailand  Philippines - Australia  Philippines - Canada  Philippines - Republic of Korea	(a) General provision which encourages investments in either economy by investors of the other economy through the creation of favorable conditions of investments for the purpose of fostering economic development in both economies.  (b) Most-Favored-Nation (MFN) Treatment states that investors of their economy shall be accorded treatment no less favorable than that accorded to investors of any third State.  (c) Expropriation - if investors of either economy suffer losses in the other economy due to national emergency, revolution, revolt or similar events, the host economy

	<p>shall accord treatment to that economy no less favorable than its accords to investments of any third State.</p> <p>(d) Transfer of Investments - This provision guarantees the free transfer of investments and returns held in the territory of one contracting economy to the other economy.</p> <p>(e) Subrogation.</p>
<b>Regional or sub regional Investment Treaties</b>	Not applicable.

## **F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

### *1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).*

#### **INWARD FOREIGN INVESTMENT**

Total foreign investments registered with the Bangko Sentral ng Pilipinas (BSP) for 1993 reached an all-time high of \$1,869.1 million showing an increase of \$814.0 million or 77.1% compared to its year-ago level (Please see Table below). The total amount constitutes both investments in listed/government securities and direct equity investments in local enterprises amounting to \$1,491.4 million and \$377.7 million respectively.

Registered foreign equity investments, arising from debt-to-equity conversions amounted to \$131.0 million for the same year. The expansion arose mainly from investments in listed/government securities which doubled the \$727.1 million registered during the same period a year earlier. The bullish stock market activity that resulted in the favorable increase in prices of stocks particularly during the last quarter, largely contributed to the robust growth of foreign investment in securities. The United States remained the leading investor country accounting for 33.6% of total investments in securities, while Hong Kong and the United Kingdom placed second and third, respectively. The bulk of these investments were channeled mostly to the manufacturing sector accounting for a 56.0% share total investments. Investments in finance also increased significantly by \$252.8 million from the \$45.6 million registered a year ago.

The decisive government action in providing investment incentives and improving the business environment through deregulation and privatization attracted significant number of foreign investors that accounted for the upsurge in direct foreign equity investments which rose by 15.2% or \$49.7 million from the level registered a year earlier. The United Kingdom ranked first among the list of equity investors in the country reaching \$153.2 million. Classified by industry, the bulk of foreign direct investments was channelled to the manufacturing sector.

For the year 1994, foreign investments registered with the Bangko Sentral ng Pilipinas (BSP) recorded a hefty increase of \$2,242 million to reach \$4,111 million. Of this total, direct equity investments accounted for \$882 million or 21.5%, while investments in listed shares of stocks/government securities totalled \$3,229 million or 78.5%. Investment remittances from the United Kingdom and Hong Kong contributed the bulk of the \$1,738 million expansion in registered portfolio investments. The year 1994, likewise, saw substantial increases in foreign portfolio investment remittances from Singapore, U.S.A. and Luxembourg. The more stable economic conditions in the Philippines drew positive responses from foreign investors who subscribed heavily to several issues of initial public offerings (IPOs) during the year. This developed following the implementation of various fiscal and structural reforms to sustain growth and development.

Foreign equity investments grew by \$504 million or 133.5% with the sale of certain public sector assets to foreign investors. Netherlands topped the list of investors, accounting for 62.1% of the total equity investments mainly in petroleum production. Classified by industry, the manufacturing/industrial sector remained to be the most preferred sector absorbing 77.2% of total equity investments.

From January to July 1995, meanwhile, inward foreign equity investments registered with the Bangko Sentral ng Pilipinas has reached \$2,773 million. Of this total, direct equity investments accounted for \$392.98 or 14% , while portfolio investments totalled \$2,380 million or 86%. United Kingdom, Hongkong, U.S.A., Japan and Singapore were the top sources of foreign portfolio investments for the said period. Classified by industry, 29% of the total foreign equity investment went to the manufacturing sector, 24% went to the public utility sector and 23% went to financial institutions sector.

2. List the major countries/economies that are sources/receivers of FDI over recent years.

Sources FDI	Destination FDI
<p><b>1992 (\$M)</b>                      <b>1993 (\$M)</b></p> <p>Hongkong [234.33]              U.S.A. [537.17]</p> <p>U.S.A. [221.61]      United Kingdom [497.49]</p> <p>U.K. [200.84]              Hongkong [385.38]</p> <p>Japan [154.43]              Luxembourg [198.74]</p> <p>Luxembourg [54.22]      Singapore [65.29]</p> <p>Singapore [47.03]              Japan [46.21]</p> <p>South Korea [13.14]      Netherlands [13.51]</p> <p>Netherlands [5.25]      South Korea [3.52]</p> <p><b>1994 (\$M)</b>                      <b>1995 (\$M)*</b></p> <p>U.K. [957.38]                      U.K. [963.36]</p> <p>Hongkong [866.95]      Hongkong [567.97]</p> <p>U.S.A. [716.97]              U.S.A [519.75]</p> <p>Netherlands [547.77]      Japan [207.48]</p> <p>Singapore [275.95]      Singapore [140.07]</p> <p>Luxembourg [198.74] Luxembourg [126.98]</p> <p>Japan [69.79]              Netherlands [ 38.43]</p> <p>South Korea [6.15]              Australia [ 34.42]</p> <p>* January - July 1995</p>	<p>* Cannot be traced by the Bangko Sentral ng Pilipinas</p>

**REFERENCES:**

1. National Internal Revenue Code
2. R. A. 7227 Bases Conversion Act
3. E.O. 226 Omnibus Investments Code
4. Comparative Investments Incentives
5. Published jointly by. DEG - Deutsche Investitions - und Entwicklungsgesellschaft mbH and Sycip Gorres Velayo & Co.
6. R. A. 7042 Foreign Investment Act
7. R. A. 7916 Philippine Economic Zone Authority Law
8. Corporation Law
9. R. A. 7844 Export Development Act
10. R. A. 7918 An Act Amending Art. 39, Title III of E.O. No. 226 as amended
11. Primer On Special Investor's Resident Visa
12. P. D. 442 Labor Code of the Philippines
13. R. A. 7652 Investor's Lease Act

# PAPUA NEW GUINEA

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# PAPUA NEW GUINEA

## A. BACKGROUND ON FOREIGN INVESTMENT REGIME

### *1. Summary of foreign investment policy including any recent policy changes.*

Papua New Guinea has always placed a high priority on the development of mining and petroleum projects even though this sector is relatively well developed. A major portion of foreign direct investment (FDI) is generated as a result of increased investment in this highly capital intensive sector. Whilst the importance of a constant flow of FDI cannot be emphasised enough, the Government also recognises the need to promote investment in the non-mining sector and as such initiated major reforms in 1994 to pursue this objective. The reforms in totality will provide the basis on which a competitive and transparent business environment can be sustained. Ultimately, the desired effect of creating higher levels of growth, employment, increased domestic resource utilisation, skills transfer, export volume expansion, increased ownership of investment by citizens and import substitution measures, may be realised.

Papua New Guinea's push towards increased FDI lies in its ability to maximise the potential benefits that may be derived from its natural wealth. Every attempt is being made to steer investors in the direction of manufacturing industries with a very strong emphasis placed on down stream processing of domestically available renewable resources. This direction is further highlighted by the Government's desire to attract industries which are largely labour intensive. Such an initiative would enable sectors such as agriculture to realise their full potential as a major revenue source and employment generator. These attempts, however, are not enforced by specific legislation which will prevent or force investors into any particular area and, as such, genuine proposals are very welcome.

As part of the Government's on going efforts to promote development of new industries outside of the minerals sector, Papua New Guinea offers a number of attractive incentives. Incentives for export promotion, new industries, capital investment and other tax based incentives are readily available for the potential investor. The Investment Promotion Authority in association with various organisations is conducting a major review of the existing investment incentives framework to streamline procedural and administrative functions and most importantly instil consistency and transparency. Papua New Guinea recognises the need to be more competitive in attracting FDI and, as such, the incentives being offered will be revised so as to meet the demands of existing foreign market trends and behaviours. On a related issue, Papua New Guinea's Companies' Act has been revised and a final submission of the amendments has been prepared for tabling at the National Parliament for enactment. In light of the many changes taking place globally, the relevant amendments to the Companies' Act will allow Papua New Guinea to be responsive to the ever changing internationally accepted business practices. Whilst Papua New Guinea's foreign investment guidelines remain adjunct to the macro-economic reforms, the simultaneous implementation of micro-economic reforms is enabling an expansive facilitation of private enterprise development. In that context, the Government is committed to a privatisation policy that will ultimately see Government involvement in commercial activities farmed out to the private sector. Therefore, the objectives of these major reforms as outlined in the foreign investment guidelines will hope to achieve more economic self-sufficiency by the year 2000.

### *2. Summary of any significant public statement which most accurately described and defines philosophies, policies, and attitudes toward foreign (inward and outward) investment.*

#### **State of the Economy Address; 1 March 1996**

by: Deputy Prime Minister and Minister for Finance

"...On the general economic growth, the Government forecasts a strong 20 per cent growth in 1996 in the mining and petroleum sector and through new projects including Lihir and other public investments and a 4 per cent growth in the non mining and petroleum sector.

Mr Haiveta said the Government anticipated the annual interest rate to fall by 6 per cent by the end of this year from around 12 per cent in 1995.

Mr Haiveta said all the current pressures must be accommodated without increasing the planned level of expenditure in 1996.

On the long term structural reform, Mr Haiveta said the Government was committed to the Structural Adjustment Program (SAP).

Mr Haiveta said the Government would introduce further policy reforms this year including:

- further deregulation in important micro-economic fields such as transport, communication and commodity marketing;
- further significant removal of price controls;

- a further opening of the economy to foreign investment, including reforming the investment incentives regime, revamping the Investment Promotion Authority and removing remaining items of the reserve list;
- continuing reforms to industry policy, particularly the removal of protectionist and subsidy elements;
- pushing ahead with reforms on trade, tariff and taxation; and
- maintaining the pace of reform in other areas including the financing of higher education, privatisation and administrative reforms to improve the rate of utilisation.

Mr Haiveta said the country's external situation had improved, the currency was not at a more realistic level, inflation was coming down and employment and production were growing..."

## **Key Points on the 1996 Papua New Guinea National Budget**

### **Outlook - 1996**

- Total economy is expected to grow by 1.8% in 1996 compared with a forecasted negative growth of 4.8% in 1995. Growth in non-mining and petroleum sectors expected at 3.9%, up sharply from a negative of 2.4% in 1995. Consumer price inflation to fall from 15% (1995) to 6% to 4% (1996) GDP expected to contract by 5.4%.
- Deficit targeted at 1% of GDP.
- Gross fixed capital formation projected to increase sharply.
- Employment growth expected to continue, through increase in 1996 Investment Expenditure.
- Total exports expected to remain at around K3.3 billion in 1996 (about the same as 1995).
- Total imports expected to rise to K2.5 billion in 1996 (from K1.9 billion in 1995).

### **Revenue**

Forecasted growth to be higher than 1995 by 2.8%.

### **Expenditure**

Public Investment Program budget increased by 33% from 1995.

### **Investment Initiatives**

The Government is committed to the development of the private sector through the elimination of licensing and other barriers in various sectors and further rationalising the Reserved Activities List. This will be done to provide an environment which is conducive to both foreign and domestic private investment in both large and small scale segments of the economy.

### **National Sales Tax (or VAT)**

To be introduced in 1998. Its introduction to be complemented by major tariff reforms.

### **Reserved Activities List**

To be phased out gradually. Construction, mining and manufacturing activities already removed.

### **Infrastructure**

Expenditure to increase under increased Development Budget priorities.

### **Exchange Controls**

To continue to remain flexible and determined independently by the Bank of Papua New Guinea (a screen based foreign exchange market was introduced in August 1995).

### **Privatisation**

Expected sale of Government equities in various Corporations.

### **Tariff Reforms**

To be introduced and main policies being:

- maintain general imports at 11% as the basic rate until introduction of VAT;
- emphasis back on duty drawback facility for manufacturers;
- phased reductions from 11% to 8% in 1996 and 5% in 1997 of a range of business inputs;
- removal of general exemptions for capital plant and equipment for new industries;
- maintenance of the 40% protective rate for viable infant industries;
- complete move away from non-tariff protection to the 40% tariff level (most products under ban are to be changed immediately, while those subject to legal restrictions will be phased in as soon as legally possible);

- standard rates of 11%, 40% and 55% scaled down or imposed as circumstances permit, particularly in conjunction with the introduction of a broad based VAT or national sales tax.

### Price Controls

To be progressively removed over 2 to 3 years bar products requiring regulation because of monopoly status.

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory Requirements*

1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Investment Promotion Act, 1992	1. Promotes and facilitate investment. 2. Certifies foreign enterprises. 3. Administers legislation relating to businesses.
Papua New Guinea Companies Act	Provides guidelines and registration procedures for all companies conducting business in Papua New Guinea.
Income Tax Act, 1959	Contains tax laws and administers incentives for some sectors.
Foreign Exchange Control Regulation	Administered under the Central Banking Act, 1973 by the Bank of Papua New Guinea to provide for the recording, monitoring and supervision of payments to non-residents and also to protect the country's foreign exchange should the need arise.
Industrial Centres Development Act, 1990	Provides for industrial estate development.
Small Business Development Act, 1992	Provides guidelines and policy framework for the development of small business.
Non-Citizens Employment Act	Administered by the Department of Industrial Relations containing regulations on restricted and unrestricted occupations relating to issuance of work permits.
Migration Act, 1978	Containing regulations and guidelines on entry by non-citizens.
Forestry Act, 1991	Contains guidelines and regulations for enterprises intending to or actively participating in this sector.
Mining Act, 1992	Provides regulations and guidelines on applications for tenements.
Fisheries Act, 1994	Provides powers for licensing and regulation for fishing, fish exports and managements of fisheries resources.
Land Registration Act, 1981	Provides powers for the registration and transfer of title and leases (under current arrangements, customary and alienated land will not be sold but leased under conditions and for long term periods).
National Institute of Standards and Industrial Technology Act, 1993	To establish and coordinate a National Standard Systems in Papua New Guinea that is consistent with international Primary Measurement Standards and maintain harmony and transparency with the International Standards Organisation.

*(ii) Investment Reviews/Approvals*

- 1. Details of proposals and sectors that are/are not subject to screening.*
- 2. Details of guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

**Guidelines on Foreign Investment**

The Government of Papua New Guinea welcomes legitimate, non-speculative foreign investment and offers assistance through the Investment Promotion Authority (IPA). Business people investigating the investment potential of PNG are advised to contact the IPA in the first instance. The IPA was established by an Act of Parliament to promote and facilitate investment in the country.

While there are a few limits on the type of investment possible by foreign investors, there may be specific laws in place which investors must follow. At present, foreign and National Enterprises may not engage in activities reserved for citizens. This list of Reserved Activities will be phased out gradually over a period of time in line with major reforms instituted by the Government of Papua New Guinea.

Foreign investors in resource-based ventures are required, for example, to follow the laws of the government departments specifically responsible for the resource. These relate to investment in mining and petroleum, agriculture, livestock, fisheries and forestry sectors.

There are other laws and regulations which will affect investors. These include laws of the National Government which cover areas of foreign exchange, taxation and customs matters. Provincial governments and urban authorities may also require investors to follow certain laws and regulations. It is the responsibility of the investors to comply with all the relevant laws.

**Acquisitions, Mergers and Greenfield Investments**

At present in Papua New Guinea, there is no difference between Greenfield investments and mergers or acquisitions. However, businesses in Papua New Guinea must comply with the legislation administered by the Registrar of Companies.

- 3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

Copies of the relevant applications for certification and variation can be obtained from the Investment Promotion Authority (see contact details in section B(1)(ii)(4) below).

- 4. Contact points to which applications should be made.*

Key Contact for Investment Matters in PNG:

Agency	Address/telephone/facsimile
Investment Promotion Authority Attention: Certification and Research Division	PO Box 5053 BOROKO NCD 111 Papua New Guinea Telephone: (675) 321 7311 Fax: (675) 321 2819 Fax: (675) 320 0262

- 5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

Under the Investment Promotion Act, the time allowed is 35 working days.

- 6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is required. Description of appeals processes and the average time for an appeal to be considered.*

In respect of approval procedures contained in the Investment Promotion Act, investors may appeal to the Minister for Commerce and Industry if their investment proposal is rejected by the IPA Board or if the investor objects to any imposed terms and conditions. The Minister is required to respond to the appeal within 35 days. The IPA must then comply with the Minister's direction. See section B(1)(ii)(4) above for contact details.

- 7. Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

All applications should provide complete and correct information as required.



8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals.*

These may be lodged with the IPA (see section B(1)(ii)(4) for contact details), however, complaints relating to specific sectors should be lodged with the agencies concerned. Their addresses are contained in the Business Guide to Papua New Guinea.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Address and phone/fax numbers for these agencies.*

The agencies are the Investment Promotion Authority, Department of Foreign Affairs and Trade, Department of Labour and Bank of Papua New Guinea. Addresses are contained in the Business Guide to Papua New Guinea.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

These can be submitted through Chambers of Commerce and Industry, Mining and Petroleum, PNG Council of Manufactures and related Non-Government Organisations on sectoral interests. Comments on specific matters can be relayed through the Employers Federation of Papua New Guinea on sectoral trade unions.

11. *Where applicable, the role of sub-national agencies in the approval process.*

Approval of land is a National Government function under the auspices of the National Land Board and Land Titles Commission involving customary and alienated land. Further inquiries can be made through the IPA (see section B(1)(ii)(4) above for contact details).

## **2. Most Favoured Nation Treatment / Non-Discrimination Between Source Economies**

1. *List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg limits in terms of sectors, threshold value or otherwise).*

Not applicable.

2. *Description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.*

Not applicable.

## **3. National Treatment**

1. *List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).*

Reserved Activities List has been set in place for citizen and national entrepreneurs and is generally in small scale activities which most foreign investors may not be interested. The Reserved Activities List is administered under the Regulations of the Investment Promotion Act 1992. The list is subject to review from time to time as required by the provisions of the Act. As stated earlier in preceding statements, this list is being gradually phased out. Activities in relation to construction, mining and manufacturing have already been removed as a result of the current program of economic reforms. On current indications, the Government of Papua New Guinea is committed to a time frame of two to three years.

Under the Investment Promotion Act, there are three categories of business enterprises: citizen, national and foreign. A citizen enterprise is wholly owned by an PNG citizen. A national enterprise is one which is more than 50% owned by a PNG citizen, unless it is controlled by non-citizens. A foreign enterprise is one which is 50% or more owned or controlled by non-citizens.

### **Joint Ventures in Papua New Guinea**

The IPA, in accordance with Government policy, promotes the establishment of Joint Ventures (JVs). In PNG many businesses face establishment and development limitations in terms of capital, skilled labour, technological know-how, market access, product distribution, and so on. One obvious way for local businesses to expand to meet the demands of this rapidly growing economy is to form a JV with another similar type of enterprise.

There are no minimum or maximum equity requirements for either a foreign or domestic party to a JV. Businesses must freely choose to enter into such arrangements and are encouraged to do so on a sound commercial basis.

There are no linkages between export ratios and equity participation. There are no technology licensing requirements tied to investment approvals.

### **Land Availability for Foreign Investment**

While land is abundant, it is relatively under utilised for much-needed economic activities. Constraints to efficient and effective land utilisation have been related to mobilisation and transfer. Land in PNG is either customary or alienated. Approximately 97% of the total land area remains in the hands of customary landowners.

Alienated land is that which has been acquired from customary landowners by Government, either for its own use or private development requiring a mortgage or other forms of guarantees. Most alienated land is in urban areas or plantations.

The present laws governing alienated land whilst complex and cumbersome are under review to enable the system to be more transparent. A major component of this review will be to streamline the process of land allocation as such land will be available only on lease back arrangements and that the sale of land has been discouraged. This is also an intricate part of the current economic reforms package.

#### *2. Description of nature and scope of any limitations on foreign firms' access to sources of finance.*

##### **Borrowing in Foreign Currency**

Prior approval is obtained from the IPA (in respect of the certification functions) for all new and increased foreign investment proposals in PNG. Such proposals will usually involve a combination of the issue of equity capital to non-resident, the borrowing of funds for a non-resident investor or financial intermediary and the supply of goods and services on extended terms by a non-resident. Authorised dealers (the commercial banks in PNG) are empowered to approve such investments where the value does not exceed K500,000 in any calendar year. The actual transactions of foreign investors are the prerogative of the corporate entities involved and not the concern of the IPA.

Investors should be aware that the Bank of Papua New Guinea will normally require the locally incorporated company receiving the investment to maintain a satisfactory gearing ratio of total loans to shareholder funds. The requirement is designed to ensure that foreign investors are prepared to hold a significant proportion of their investments in the form of equity capital.

Authorised dealers may approve applications by business entities or persons resident in PNG (other than mining or petroleum enterprises) to borrow foreign currency offshore until such time that outstanding new net aggregate foreign currency borrowing exceeds the foreign currency equivalent of K5 million at a debt to equity ratio of up to 5:1. Conditions will apply.

All exchange control relating to the mining and petroleum and forestry sectors are dealt with by the Bank of Papua New Guinea and does not involve authorised dealers.

##### **Domestic Borrowing**

The exchange control division of the bank administers the guidelines governing borrowing on the domestic market by non-resident controlled companies (ie. most usually where voting control of a PNG company rests in the hands of non-residents). Under current practice, a newly established non-resident controlled company is limited to borrowings of K50,000 for the first two years of operations unless the lending bank's facility is supported by an overseas banker's guarantee from a bank of international standing. After this time, a company may borrow up to twice non-resident shareholder's funds defined as retained profits, paid up share capital and overseas borrowings. Such domestic borrowing is reviewed annually.

Issuance of Corporate Bonds does not occur in Papua New Guinea, however, the proposed establishment of the PNG Stock Exchange will no doubt create the markets for such activity.

#### **4. Repatriation and Convertibility**

##### *1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

Section 37 of the Investment Promotion Act also states that, subject to any laws relating to taxation and exchange control, a foreign investor shall be allowed to remit earnings overseas and repatriate capital and remit amounts necessary to meet payments of:

- principal, interest and service charges;
- similar liabilities on foreign loans; and
- the costs of other foreign obligations approved by the State.

The Bank of PNG may refuse to grant exchange control authority to the transactions where prior tax clearance is required. These apply to transactions involving taxation surveillance destined for identified tax haven countries.

A taxation clearance certificate is required prior to the transfer of funds amounting to more than \$50,000 or the foreign exchange equivalent thereof in any one calendar year to all other countries not identified as tax havens in respect of transactions requiring tax surveillance.

*2. Brief description of the foreign exchange regime.*

Papua New Guinea has recently adopted a flexible exchange rate policy and the regime is under review with a view to totally liberalising the system.

*3. Restrictions on the convertibility for the overseas transfer of funds.*

None except any daily transaction of K50,000 or more requires clearance from the IRC for taxation purposes.

**5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

The Immigration Section of the Department of Foreign Affairs will not issue residency or employment visas:

- (a) to foreign company directors or shareholders unless they can produce an IPA certificate in the name of the company concerned; or
- (b) to foreign owners of a business unless they can produce an IPA certificate in their own name; and
- (c) they can produce proof of the registration of a company or business name as the case may be.

*2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

This is dealt with by the Department of Industrial Relations during applications for work permits. The applicant is required to provide evidence of immediate family members to allow the issuance of appropriate visas by the Department of Foreign Affairs and Trade.

*3. Description of regulations relating to personnel management of foreign firms, eg minimum wage laws, minimum requirements for training or employment of local staff.*

In Papua New Guinea, there is a list of jobs which may not be undertaken by foreigners. This list is not meant to deter potential investors in any way - it is designed to preserve specific occupations for Papua New Guineans who are sufficiently skilled to perform such duties.

It is necessary for foreigners to apply for a work permit for each non-citizen employee employed in Papua New Guinea. The work permit application must be accompanied by a training and localisation program in accordance with the Employment of Non-Citizens Act. This program is to monitor the entry of all immigrants in to PNG, approve the positions in which they can work and ensure that there is a program for the transfer of skills to PNG citizens.

Each work permit is for a particular position and is generally valid for a period of three years, during this period it is possible to replace the employee working in that position without obtaining approval for a new position.

*4. Summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

The Department of Industrial Relations administers a range of laws which cover all aspects of employment, recruitment, dispute settlements, arbitration, and so on.

**6. Taxation**

*1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double tax agreements.*

Note: Sales taxes are applied in the 20 provinces of PNG by respective provincial governments. These will vary from 1.5% - 2.5%. Further information may be sourced from the Investor Promotions Division of the IPA (see section B(1)(ii)(4) above for contact details).

Taxation Arrangements	Summary
Withholding Tax	<p>Applies to royalties paid by a PNG resident to an overseas recipient and is calculated in the following manner:</p> <ul style="list-style-type: none"> <li>• 10% of the gross - where the royalty is paid to an arms length or unassociated person, or, at the option of the recipient, 48% of net profits; or</li> </ul>

	<ul style="list-style-type: none"> <li>of the gross - where the royalty is paid to an associated company or individual.</li> </ul>
Double Taxation Treaties (DTT)	<p>Existing DTTs with the UK, Australia, Canada, Singapore, Malaysia, the People's Republic of China, South Korea and Germany.</p> <p>Those under consideration listed in order of priority: USA, Japan, New Zealand, Philippines, Indonesia, Taiwan and Thailand.</p>
Employers	<p>Any person or business, employing one or more employees in PNG paid more than K123 per fortnight must register as a <i>Group Employer</i> with the (IRC). The employer is provided with tax deduction schedules and remittance forms and is required to deduct the correct tax from employees' wages and remit it monthly to the (IRC).</p>
Company Taxation	<p>The world-wide income of resident companies and the Papua New Guinea source income of non-residents is taxed. Companies incorporated in PNG or companies which carry on business in PNG and whose management and control is located in PNG are resident companies. Papua New Guinea's tax laws define taxable income not as accounting profit but as "assessable income less all allowable deductions". Rates are as follows:</p> <ul style="list-style-type: none"> <li>Resident companies, not engaged in mining or petroleum operations - 25%</li> <li>Non-resident companies, including those engaged in mining operations - 48%</li> <li>Resident mining companies - 35%</li> <li>Petroleum companies, resident and non-resident - 50%</li> </ul>

## 7. Performance Requirements

1. *Brief description of any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

Generally, there are no performance requirements in place, however, Papua New Guinea encourages the use of locally available material.

## 8. Capital Exports

1. *List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

On application to an authorised dealer, resident or non-resident individuals and business entities may purchase foreign currency up to K500,000 per annum for any purpose subject to taxation clearance where appropriate. Applications to enter into foreign currency transactions beyond this annual entitlement should be submitted to the Bank of Papua New Guinea.

2. *List and brief description of regulations/institutional measures that limit technology exports.*

There is no copyright law in Papua New Guinea. Trademarks are registered.

## 9. Investor Behaviour

1. *Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

None at this point in time.

## 10. Other Measures

1. *Brief outline of the competition policy regime*

Papua New Guinea is in the process of drafting a National Competition Policy

2. List and brief description of the current intellectual property laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

Papua New Guinea is in the process of applying to be a party to the World Intellectual Property Organisation and will be seeking the appropriate assistance to introduce the necessary legislation.

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.

Section 37 of the Investment Promotion Act guarantees that the property of a foreign investor shall not be nationalised or expropriated except in accordance with law, for a public purpose defined by law and in payment of compensation as defined by law.

The Investment Promotion Protection Treaty which is administered by the Department of Foreign Affairs and Trade and is effected between any two countries.

2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

### 2. Settlement of Disputes

1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations, or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.

Agency	Address/telephone/facsimile
The IPA which administers Section 38 of the Investment Promotion Act in respect of the Multilateral Investment Guarantee Agency and Section 39 relating to the International Centre for Settlement of Investment Disputes	PO Box 5053 BOROKO National Capital District Papua New Guinea Telephone: (675) 321 7311 Fax: (675) 320 0262
Department of Foreign Affairs and Trade which administers the Investment Promotion Protection Treaties.	PO Box 422 Waigani National Capital District Papua New Guinea Telephone: (675) 327 1121 Fax: (675) 325 4467

2. Signatory or accession to the ICSID Convention.

Section 39 of the Investment Promotion Act states that the Investment Disputes Convention Act (implementing the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States) applies, according to its terms, to disputes arising out of foreign investment. The Convention seeks to encourage greater flows of international investment by providing facilities for the conciliation and arbitration of disputes between governments and foreign investors.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.

The Internal Revenue Commission administers a number of different tax incentives. Most of these are targeted at companies and take the form of exemptions from company income tax or deferment of income tax liabilities. However, there are some incentives administered by the IRC which are not related to company income tax. This includes a wage subsidy provision, which is a straight subsidy rather than a tax incentive.

The incentives which involve some sort of exemption from company income tax include (these exemptions are also available to partnerships and sole traders):

- The export income exemption
- The rural development incentive
- The pioneer industries incentive
- The Bougainville incentive
- The double deduction for export market development costs
- The staff training double deduction; and

the incentives which involve a deferment of tax liability are the provisions which relate to the tax treatment of depreciation and include:

- The initial year accelerated depreciation provision
- the flexible depreciation for agriculture and fishing
- The additional depreciation of industrial plant
- The solar heating deduction
- The depreciation allowance for improvements made to existing plant for the purpose of fuel conservation.
- The depreciation allowance for the cost of conversion of existing oil-fired plant to non oil-fired plant
- The depreciation allowance for the acquisition of non oil-fired plant

The other current incentives are:

- The wage subsidy (aimed at promoting employment)
- The training levy (aimed at promoting employment)
- The deduction of capital expenses by primary industry

*2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers*

All tax incentives are offered by the Internal Revenue Commission of Papua New Guinea and will be applied as per the set of qualifying criteria. All enquiries should be directed through the IPA (see section B(1)(ii)(4) above for contact details).

*3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

All investment matters should be directed to the Investment Promotion Authority of Papua New Guinea (see section B(1)(ii)(4) above for contact details).

#### **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

*1. Agreements to which economy is a party including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

Agreement	Provisions
Friendship Commerce and Navigation Treaties	
Bilateral Investment Treaties	Investment Promotion Protection Treaties or Agreement: Australia, Malaysia and China. To accord reciprocal state assurance or guarantees against nationalism or expropriation of investment in respective territories.
Regional or sub regional Investment Treaties	South Pacific Forum - treaties relating to fisheries agreements with the United States and Japan. Melanesian Spearhead Group - investment between PNG, Vanuatu and Solomon Islands.
Other Trade Related Treaties	PATCRA- provides non-reciprocal preferential access and requires only that Papua New Guinea consult Australia prior to any tariff change.

	SPARTECA - provides access to Australia and New Zealand for all South Pacific nations.
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## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).

### Proposed number of Applications and Value of Investments according to Economic Sector

Economic Sector	No. of Applications				Proposed Value of Investments			
	*July 1992-3	*1994	*1995	Total Projects	*July 1992-3 K'm	*1994	*1995	Total K'm
Agriculture	18	7	6	31	0.20	204.00	428.00	<b>632.20</b>
Banking & Finance	24	6	4	34	12.50	0.00	0.63	<b>13.13</b>
Business Activities	13	47	29	89	224.70	8.60	12.66	<b>245.96</b>
Construction	31	17	6	54	11.30	164.00	41.44	<b>216.74</b>
Education	1	2	0	1	0.00	0.00	0.00	<b>0.00</b>
Electricity	1	0	0	1	0.00	0.00	0.00	<b>0.00</b>
Fishing	3	2	3	8	0.00	1.00	5.00	<b>6.00</b>
Forestry	6	26	26	58	12.20	189.00	312.73	<b>513.93</b>
Health	9	0	0	9	0.00	0.00	0.00	<b>0.00</b>
Hotels & Restaurants	15	4	5	24	5.30	19.70	30.44	<b>55.44</b>
Insurance	0	0	1	1	0.00	0.00	10.30	<b>10.30</b>
Manufacturing	56	32	19	107	15.20	110.10	16.91	<b>142.21</b>
Mining and Quarrying	50	13	13	76	783.68	39.50	1264.01	<b>2087.19</b>
Petroleum	0	11	5	16	120.78	395.30	80.89	<b>596.97</b>
Publishing	0	0	1	1	0.00	0.00	0.00	<b>0.00</b>
Real Estate	101	33	17	151	53.70	11.00	5.13	<b>69.83</b>
Social Services	8	3	6	17	0.00	0.00	1.74	<b>1.74</b>
Transport, Storage & Communication	18	10	6	34	9.70	193.00	87.05	<b>289.75</b>
Wholesale/Retail Trade	76	46	24	146	8.60	7.60	20.02	<b>36.22</b>
Total 1992-93	-	-	0	0	0.00	171.05	0.00	<b>171.05</b>
<b>Total</b>	<b>430</b>	<b>257</b>	<b>171</b>	<b>858</b>	<b>1257.86</b>	<b>1513.85</b>	<b>2316.95</b>	<b>5088.66</b>

**Proposed number of Applications and Value of Investments  
according to Investing Country**

Investing Country	No. of Applications				Proposed Value of Investments			
	*July 1992-3	*1994	*1995	Total Projects	*July 1992-3 K'm	*1994	*1995	Total K'm
Australia	245	113	74	432	0.00	455.50	513.26	968.76
Austria	1	1	0	2	0.00	0.25	0.00	0.25
Bahamas	0	0	1	1	0.00	0.00	820.00	820.00
Bermuda	2	0	0	2	0.00	0.00	0.98	0.98
British Virgin Islands	1	1	0	2	0.00	0.00	0.00	0.00
Canada	3	2	0	5	0.00	6.60	0.00	6.60
China	10	9	5	24	0.00	7.50	15.58	23.08
Cook Islands	1	0	0	1	0.00	0.00	0.00	0.00
Denmark	0	0	1	1	0.00	0.00	0.00	0.00
Fiji	1	0	0	1	0.00	0.00	0.00	0.00
France	2	0	1	3	0.00	0.00	0.41	0.41
Germany	1	2	1	4	0.00	0.10	1.00	1.10
Hong Kong	7	9	5	21	0.00	30.70	119.10	149.80
India	5	1	1	7	0.00	0.05	0.27	0.32
Indonesia	2	3	1	6	0.00	0.00	2.51	2.51
Israel	0	0	1	1	0.00	0.00	17.00	17.00
Italy	2	0	0	2	0.00	0.00	0.00	0.00
Japan	7	6	2	15	0.00	267.10	0.75	267.85
Liechtenstein	2	0	0	2	0.00	0.00	0.00	0.00
Malayan	2	0	0	2	0.00	0.00	0.00	0.00
Malaysia	45	42	38	125	0.00	253.00	507.36	760.36
Netherlands	5	1	2	8	0.00	0.20	1.44	1.64
New Zealand	13	11	4	28	0.00	0.79	13.80	14.59
Pakistan	0	1	0	1	0.00	0.00	0.00	0.00
Philippines	6	2	3	11	0.00	0.00	10.02	10.02
Russia	0	1	0	1	0.00	0.10	0.00	0.10
Singapore	8	14	10	32	0.00	52.50	200.65	253.15
Slovenia	0	1	0	1	0.00	0.00	0.00	0.00
South Korea	6	7	3	16	0.00	4.00	2.00	6.00
Sri Lanka	1	0	0	1	0.00	0.00	0.00	0.00
Switzerland	3	2	0	5	0.00	0.40	0.00	0.40
Chinese Taipei	0	2	2	4	0.00	2.50	1.80	4.30
Tanzania	1	0	0	1	0.00	0.00	0.00	0.00
United Kingdom	23	12	9	44	0.00	20.80	8.20	29.00
United States of America	24	13	6	43	0.00	240.41	80.82	321.23
Vanuatu	1	1	1	3	0.00	0.30	0.00	0.30
<b>Total for 1992-93</b>	-	-	0	0	1257.86	171.05	0.00	1428.91
<b>Total</b>	<b>430</b>	<b>257</b>	<b>171</b>	<b>858</b>	<b>1257.86</b>	<b>1513.85</b>	<b>2316.95</b>	<b>5088.66</b>

2. List of the major countries/economies that are source/receivers of FDI over recent years.

Australia and Malaysia are the dominant inward sources. Australia is the main outward destination.



**SINGAPORE**  
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# SINGAPORE

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

A major development strategy pursued by the Singapore government is the active promotion of investment in productive economic activities. The Economic Development Board was set up in 1961 as a one-stop agency to spearhead Singapore's industrialisation drive through investment promotion in manufacturing. The initial effort brought in mainly labour-intensive manufacturing as Singapore's labour cost was then very low. Nevertheless, this helped to generate jobs for the large numbers of workers. The main source of investment came from foreign investors who were allowed 100% foreign equity ownership, freedom to repatriate profits and freedom to bring in foreign skilled workers to operate their facilities. Since then, the investment promotion effort has been focused on higher value-added and skill-intensive activities including services sector activities such as financial services, information technology services and offshore services. A core of local industries, mainly in the supporting industries, has also been successfully nurtured. Besides encouraging such higher value-added activities into Singapore, the 1990s will see greater internationalisation of the Singapore economy. In the first instance, Singapore will focus on opportunities in the Asia-Pacific region. Singapore will seek to generate new businesses outside Singapore for Singapore companies. The fundamental policy in Singapore is to adopt an "open-door" concept of a market economy system.

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

The Singapore Government actively provides businesses in Singapore the opportunity to operate within a free market economy. The decision to privatise government services created since the 1960s was taken because of the advantage of more competition, more innovation, greater efficiency and better service. The government actively encourages foreign investment in almost all industrial sectors and generally treats foreign capital the same as local capital. In fact, most industries are open to foreign investors, and multinational corporations are viewed as valuable contributors to economic growth. Local businesses and the general public also welcome foreign investment. Multinationals are constantly encouraged to use Singapore as an international business centre and to establish operational headquarters that provide management services for their subsidiaries, associated companies or branches in other countries. No restrictions are generally imposed on the percentage of foreign ownership of business operations in Singapore.

Further references:

Press Report on Speech by BG Lee, Deputy Prime Minister at opening ceremony of DBS Bank's 5th Investment Conference 1995 on 30 Oct 95 (Straits Times, 31 Oct 95)

Report on Press Conference with Mr Philip Yeo, Chairman of the Economic Development Board (Financial Times, 18 April 1994)

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### (i) Statutory (legislative) requirements

##### 1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
New Business	Every business in Singapore must be registered with the Registry of Companies and Businesses. The requirement also applies to any firm, individual or corporation which carries on business as a nominee, trustee or agent for any foreign corporation. The Ministry of Finance administers the Business Registration Act and the Companies Act. The Singapore Government actively encourages foreign investment and generally treats foreign capital the same as local capital. With exceptions for national security purposes and in certain industries, no restrictions are placed on foreign ownership of Singapore operations.

Control of Manufacture	Generally, there is no restriction on the types of businesses that may be set up in Singapore but some have to apply for special licences from the Government. The products under control of manufacture include air-conditioners, beer and stout, cigars, drawn steel products, firecrackers, pig iron and sponge iron, rolled steel products, steel ingots, billets, blooms and slabs, cigarettes and matches.
Branches	Branches will need to also register with the Registry of Companies and Businesses and supply information relating to the parent company.
Representative offices	A foreign company may establish a representative office in Singapore to undertake promotional and liaison activities on behalf of its parent company. Approval must be obtained from the Trade Development Board.

*(ii) Investment Review and Approval*

1. Details of proposals and sectors that are/are not (yes/no) subject to screening.

2. For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals	Guidelines/Conditions
Merger (No)	Guidelines for takeover process are included in the Companies Act and maintained by the Securities Industry Council. A company with effective control of another company (25% of voting rights) must make an offer for the balance of outstanding shares.
Acquisitions (No)	Acquisitions do not require official approval. Rules for the process are included in the Code on Takeovers and Mergers within the Companies Act. The government generally does not interfere with takeovers, adopting the view that they are an essential feature of economic growth and development. The Securities Industry Council may examine takeover offers of listed firms. Except in a few sectors, foreign buyers face the same rules as local ones.
Greenfield investment (No)	No provision.
Joint venture (No)	Joint ventures may take the form of equity investment in a limited liability company or unlimited partnership and are governed by the laws of companies or partnerships as appropriate.
Real estate/land (No)	Foreigners and foreign-owned corporations are free to acquire land and buildings zoned for industrial or commercial purposes. For industrial zoning or environmental protection purposes, operation of certain industries, including hazardous industries, are restricted to certain districts. Licences are required from the Ministry of Environment. Foreigners and foreign-owned corporations are free also to purchase residential premises in buildings of six floors or more and apartments in approved condominium developments.

Sector	Guidelines/conditions
Telecommunications (Yes)	Telecommunications and broadcasting services were provided previously by the government. These are now privatised. Some shares in Singapore Telecoms have been floated on the Stock Exchange of Singapore. Licences are gradually being awarded for various services, including mobile data network, mobile phone, paging and satellite uplink and downlink facilities. Broadcasting stations must obtain a licence from the Ministry of Information and the Arts.
Media (Yes)	Legislative control on the level of foreign equity is exercised over the newspaper publishing industry. Any single ownership of more than 3% of companies in the newspaper publishing industry requires clearance.
Transport (No)	Free trade zones for seaborne cargo and air cargo exist. Within these zones, a wide range of facilities and services are provided for the storage and re-export of dutiable and controlled goods.  Bilateral air services agreements are being restructured to add more flights once traffic reach a predetermined capacity.
Agriculture (No)	For land zoning or environmental protection purposes, agriculture is restricted to certain districts. Zoned agricultural land is allocated usually through open tenders for development into agrotechnology parks.

*3. Obtaining samples of all application/approval forms required for screening purposes.*

Potential investment do not need to be screened. Investors need only to register with the Registrar of Companies and Businesses. Hence, no screening forms are issued. Licences, if required under specific sectors as stated in Section B(1)(ii)(2) above, may be obtained from the respective organisations named in Section B(1)(ii)(4) below.

*4. Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
Registry of Companies and Businesses	10 Anson Road #05-01/15 International Plaza Singapore 079903 Telephone: (65) 227 8551 Fax: (65) 225 1676
Trade Development Board	230 Victoria Street #07-00 Bugis Junction Office Tower Singapore 188024 Telephone: (65) 337 6628 Fax: (65) 337 6898
Telecommunications Authority of Singapore	35 Robinson Road, TAS Building Singapore 068876 Telephone: (65) 323 3888 Fax: (65) 323 1486

Ministry of Information and the Arts	460 Alexandra Road PSA Building Singapore 119963 Telephone: (65) 270 7988 Fax: (65) 375 7765
Ministry of the Environment	40 Scotts Road Singapore 228231 Telephone: (65) 732 7733 Fax: (65) 731 9456

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

The average waiting time is from one to three months.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeal processes and the average time for an appeal to be considered.*

Licence requirements, if any, stem mainly from special conditions of the specific sector. Should an application for a licence be rejected by any organisation, reasons are given. Should an appeal for a review be required, the same organisation should be approached. For example, the Ministry of the Environment should be approached should an application for use of certain chemicals in a hazardous industry be rejected by them. Some of the respective agencies are listed in Section B (1)(ii)(4) above.

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

The Singapore Government actively encourages foreign investment and generally treats foreign capital the same as local capital. With exceptions for national security purposes and in certain industries, no restrictions are placed on foreign ownership of Singapore operations.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (addresses, and phone/fax numbers for these agencies).*

Agency	Address/telephone/fax	Type of Complaint
Economic Development Board	250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288      Fax: (65) 339 6077	Those requiring investment facilitation and liaison with other government departments.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.*

Agency	Address/telephone/fax	Functions
Economic Development Board	250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288      Fax: (65) 339 6077	To consider items listed under Control of Manufacture Act.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

The Singapore Government encourages private-sector initiatives. Opportunities are available for raising issues with business associations, employers federations, chambers of commerce and industry, government-to-

government business councils and economic forums. Close interaction is maintained between Government agencies, including those with regulatory functions, and the private sector. Often, decisions are made after consultations with the private sector.

*11. Where applicable, role for sub national agencies in the approval process.*

As there are not many investment regulations in Singapore, the role of the statutory boards are limited in this area. Their focus is on investment promotion. The 1994 establishment of the Economic Promotion Club, an informal gathering of chief executive officers from a number of related government bodies is specifically to enhance facilitation of investment and to communicate government's major strategies and programmes to the private sector.

For a list of agencies, see Section B (1)(ii)(4) above.

## **2. Most Favoured Nation Treatment / Non-discrimination between Source Economies**

*1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).*

There are no exceptions to most favoured nation treatment.

*2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.*

None.

## **3. National Treatment**

*1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).*

Not applicable. Foreign investors are allowed to maintain 100% foreign equity and are free to make their own decisions on markets and technology licensing.

## **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

There is no restriction on the repatriation of funds related to foreign investment.

*2. Brief description of the foreign exchange regime.*

There are currently no exchange control regulations.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions on the convertibility of currencies for the overseas transfer of funds.

## **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

Business or social visit passes are required. Entry visas are required for holders of Hong Kong document of identity and holders of travel document issued by the governments of Afganistan, Algeria, Cambodia, China, India, Iraq, Jordon, Laos, Lebanon, Libya, former Soviet Union, Syria, Tunisia, Vietnam and Yemen.

*2. List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
Employment Pass	Foreign technical/managerial personnel may apply for an employment pass to engage in employment. There is usually little difficulty in obtaining employment passes for applicants who are senior executives of MNCs, qualified specialists or persons wishing to start up new industrial, financial or service undertaking. Accompanying family members may apply for a dependent pass.

Work Permits	Foreigners earning not more than \$1,500 a month are required to apply for work permits.
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3. *Description of any regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

There are no regulations relating to personnel management of foreign firms.

4. *List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

The domestic labour laws in Singapore apply to all domestic and foreign firms alike. Industrial peace is promoted through the regulation of the conduct of industrial matters and the impartial arbitration of trade disputes.

The Industrial Arbitration Court in Singapore certifies collective agreements which set out the terms and conditions of service negotiated between unions and management in addition to minimum terms of employment and labour relations provided in the Employment Act and the Industrial Relations Act. Should parties fail to reach agreement through direct negotiation, disputes arising can be referred by either party to the Labour Relations Department of the Ministry of Labour for conciliation. If settlement fails, the dispute may be referred to the Industrial Arbitration Court for arbitration. Under the Trade Disputes Act, a strike or lock-out action is prohibited when the Industrial Arbitration Court has taken note of the trade dispute. Disputes related to wage increase arising from the implementation of guidelines recommended by the National Wages Council may be referred by either party to the Industrial Arbitration Court.

Law	Summary
Employment Act	This is the key legislation governing the terms and conditions of employment in Singapore. Overtime payment, public holidays, annual leave, sick leave, maternity leave and retrenchment benefits are included.
Employment of Foreign Workers Act	To discourage over-dependence on unskilled foreign workers, the Act provides for a company dependency ceiling and a monthly levy on each work permit holder employed. The rates vary between sectors.
Central Provident Fund Act	The Central Provident Fund is a compulsory savings programme to which employers and employees mainly contribute 20% each of wages monthly. The Fund includes provisions for retirement, medical benefits, education, home ownership and other investments.
Factories Act	Safety and health requirements are stipulated.
Industrial Relations Act	The Act lays down the framework for amicable resolution of industrial disputes through conciliation and arbitration.
Retirement Age Act & Retirement Age (Exemption) Notification	The Act prescribes a minimum retirement age of 60. The Notification provides for certain classes of employees to be exempted from the provisions of the Act.
Trade Disputes Act	The Act lays down the rules by which industrial action eg. strikes and lockouts may be taken.
Workmen's Compensation Act	The Act provides for payment of compensation to workmen who are injured or afflicted with occupational diseases in the course of work.

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Taxation arrangements	Summary
Corporate income tax rates	Resident and non-resident companies are taxed at 27% on income after deduction for expenses, depreciation allowances, trading losses and donations to approved charities.
Double Taxation: (Treaties signed with 30 countries: Australia, Bangladesh, Belgium, Canada, China, Denmark, Finland, France, Germany, India, Indonesia, Israel, Italy, Japan, Republic of Korea, Malaysia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, United Kingdom and Vietnam. Limited treaties signed with Chile, Saudi Arabia, United Arab Emirates and United States.)	Generally, a tax credit is allowed for the foreign tax paid on the remitted income up to the amount of Singapore tax payable on the same income.  Limited treaty covers tax exemption on air or air and ship transportation only.
Skills Development Fund	1% of total payroll for employees earning \$1,000 or less a month is levied for training.
Water	20% is levied to encourage conservation.
Goods and Services Tax	A rate of 3% is imposed on the supply of goods and services in Singapore and on the importation of goods into Singapore. This is a tax on domestic consumption.

## 7. Performance Requirements

1. Brief description of any performance requirements that could impose limits on trade and investment and indicate any TRIMS.

There are no laws or policies stating performance requirements. All contracts are treated as commercial dealings.

## 8. Capital Exports

1. List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Not applicable. There are currently no exchange control regulations. As part of the globalisation strategy, Singapore encourages her companies to invest abroad.

2. List and brief description of any regulations/institutional measures that limit technology exports.

Not applicable. There are no regulations/institutional measures that limit technology exports.

## 9. Investor Behaviour

1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

Foreign and domestic investors are to abide by the laws, regulations and administrative guidelines/policies of the economy. There is no particular requirement of observance by foreign investors, except as stated under proposals for real estate and share acquisitions in Section B(1)(ii)(2) above.



## 10. Other measures

### 1. Brief outline the competition policy regime.

There are no antitrust or other laws to regulate competition in Singapore. All industries and services are developed to enhance national competitiveness. There is now a process of privatisation of government services to stay ahead of competition.

### 2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

In line with the intellectual property rights laws of industrialised countries, Singapore has drawn up its own patent law, the Patents Act 1994 and the Patent Rules 1995. These came into effect in February 1995. In 1995 Singapore became a member of the Paris Convention, the Budapest Treaty and the Patent Cooperation Treaty which will allow patents filed in Singapore to be examined worldwide.

Copyright protection is provided under the Copyright Act without the need for registration or application. This has been in place since 1987. The Copyright Tribunal was established as a form of adjudicating specific disputes between copyright owners and users of copyright materials. Materials covered are original literary works, including computer programmes and dramatic, musical and artistic works. Relatively good protection for intellectual property has been provided in Singapore with enforcements stepped up since the 1980s. Proactive efforts to fight copyright piracy include the establishment of a new police unit for enforcement of search warrants related to intellectual property rights, action taken by the Film Censor Board to pass information on suspected pirated videotapes to copyright owners and requirement of licence to photocopy books and other publications.

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

#### 1. List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.

Other than the Land Acquisition Act listed below, the provision for expropriation and compensation is usually included in bilateral investment guarantee agreements.

Laws/Regulations	Application and function
Land Acquisition Act	The Government is empowered to acquire land for public purposes. The Act provides for the payment of compensation to the owners of the land to be acquired and for appeals against awards of compensation made by the Collector of Inland Revenue. Appeals from such awards are heard by Appeals Boards.

#### 2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.

There has been no instance of expropriation and compensation of foreign investment in Singapore.

### 2. Settlement of Disputes

#### 1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.

Singapore has institutionalised and internationalised arbitration through the creation of arbitration bodies and ratification of international conventions.

The Singapore International Arbitration Centre, a non-profit organisation, was set up in 1990 to establish, manage and conduct a centre for international and commercial arbitration and conciliation and to promote the settlement of disputes by arbitration. It provides free information and advice on dispute resolution in Singapore and, through its international network of contacts, provides the latest information on other international centres and their means and facilities for dispute resolution. The centre also promotes and supports the study of and research and training in the law of practice of international arbitration and conciliation. The International Arbitration Act based on a model law adopted by the UN General Assembly and passed in 1994 provides the framework for international arbitration.

International commercial arbitration conventions ratified included the following:

- (a) The UNCITRAL (UN's Commission on International Trade Law) Arbitration Rules was adopted in Singapore in 1994. It provides a comprehensive set of rules to guide the arbitral process. As the Rules do not have the force of law in any country, parties must specify that the rules apply in their contract.
- (b) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the New York Convention was ratified by Singapore in 1986. It makes more effective the international recognition of arbitration agreements and foreign arbitral awards and the enforcement of the arbitration award.
- (c) The Convention on the Settlement of Investment Disputes between States and Nationals of other States has been adopted in Singapore's local statutes, specifically the Arbitration (International Investment Disputes) Act (see 2 below).

Agency	Address/telephone/fax
Singapore International Arbitration Centre	1 Coleman Street #05-07 The Adelphi Singapore 179802 Telephone: (65) 334 1277 Fax: (65) 334 2942

## 2. Signatory or accession to the ICSID Convention.

Singapore enacted the Arbitration (International Investment Disputes) Act to implement the International Convention on the Settlement of Investment Disputes between States and Nationals of other States on 10 Sep 1968. The Convention provided for the establishment of the International Centre for Settlement of Investment Disputes (ICSID). The ICSID makes available facilities for international conciliation or arbitration to which contracting States and foreign investors who are nationals of other Contracting States have access on a voluntary basis for the settlement of disputes between them in accordance with the rules laid down in the Convention.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of any investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

Investment incentives play a key role in shaping the pace and direction of industrial development. In Singapore incentives are used both for the promotion of new investments in industries and services and for encouraging existing companies to upgrade through mechanisation and automation and through the introduction of new products and services. The Economic Development Board, a statutory board responsible for the planning and promotion of industrial and commercial development, administers the following tax incentives under the Economic Expansion Incentives (Relief from Income Tax) Act.

Program	Nature of incentive	Contact point
Pioneer Status	Exemption of corporate tax on profits arising from pioneer activity for up to 10 years.	Economic Development Board 250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077
Post Pioneer Incentive	Concessionary tax rate of 15% for up to 10 years upon expiry of pioneer incentive.	
Expansion Incentive	Exemption of corporate tax on profits in excess of pre-expansion level. Tax relief period is up to 10 years.	

Investment Allowance Incentive	Exemption of taxable income of an amount equal to a specified percentage, not exceeding 50%, of new investment in productive equipment.	
Operational Headquarters	Income arising from the provision of approved services in Singapore taxed at 10% for up to 10 years with provision for extension.	
Approved Royalties Incentive	Full or partial exemption of withholding tax on approved royalties.	
Approved Foreign Loan Scheme	Full or partial exemption of withholding tax on interest payments.	
Export of Services Incentive	Exemption of corporate tax on 90% of qualifying export income. Tax relief period is 10 years with provision for extension.	
Warehousing and Servicing Incentives	Exemption of corporate on 50% of qualifying export income. Tax relief period is 10 years, with provision for extension.	
Double Deduction of R&D Expenses	Double deduction of qualifying R&D expenses against income.	
Venture Capital & Overseas Investment Incentives	Losses incurred from sale of shares or liquidation of the overseas investments, up to 100% of equity invested, can be set off against the investor's other taxable income.	

2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.

Program (National/sub-national)	Nature of incentive	Contact point
Initiatives in New Technology	Grants between S\$40 to S\$160 per trainee day for training of manpower in qualifying activities.	Economic Development Board 250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077
Product Development Assistance Scheme	Grants equal to 50% of approved direct development costs.	

3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.

Agency	Address/telephone/fax
<p>Economic Development Board (Offers one-stop service to investors. Includes providing information and assistance in securing industrial land, suitable operational facilities and skilled manpower. Foreign investors can also tap on the board's knowledge of Singapore's industrial capabilities to locate customers, suppliers, subcontractors and joint-venture partners.)</p>	<p>250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077</p> <p>Overseas officers are in:</p> <p>New York, Boston, Washington DC, Chicago, San Francisco, Los Angeles, London, Frankfurt, Milan, Paris, Stockholm, Tokyo, Osaka, Hong Kong, Taipei, Jakarta and Suzhou.</p>

#### **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

Agreement	Provisions
<p><u>Friendship Commerce and Navigation Treaties</u></p> <p>International Finance Corporation</p> <p>Commission on Sustainable Development</p> <p>Council of the International Maritime Organization</p> <p>International Civil Aviation Organization</p> <p>International Telecommunication Union</p> <p>International Bank for Reconstruction and Development</p> <p>International Atomic Energy Agency</p>	<p>Stimulation of economic growth in developing countries by promoting private enterprise in those countries.</p> <p>Global programme of action on environmental protection.</p> <p>Achievement of safe and efficient navigation and control of pollution caused by ships and crafts operating in the marine environment.</p> <p>Development of techniques of international navigation and planning and improvement of international air transport.</p> <p>World cooperation in the use of telecommunication to promote technical development and to harmonize national policies in the field.</p> <p>Economic development of member nations by financing productive investments.</p> <p>Enlargement of contribution of atomic energy to peace, health and prosperity throughout the world.</p>

<p><u>Bilateral Investment Guarantee Agreements</u></p> <p>ASEAN Belgo-Luxembourg Economic Union Canada China Czechoslovakia France Germany Netherlands Pakistan Poland Riau Archipelago Sri Lanka Switzerland United Kingdom United States of America Vietnam</p>	<p>Investment guarantee agreements are signed with countries to promote and protect investments coming into and going out of Singapore. The terms differ depending on the nature of the cooperation between Singapore and the specific country involved. In general, under the agreements, investments by nationals or companies of both contracting parties in each other's country are protected for an initial period of usually 15 years against war and non-commercial risks like expropriation and nationalisation.</p>
<p><u>Regional or sub regional Investment Treaties:</u></p> <p>Association of South-east Asian Nations (ASEAN)</p>	<p>An intra-ASEAN investment agreement, the focus is on economic cooperation, including trade and investment, and political and regional defence organisation.</p>
<p><u>Intellectual Property:</u></p> <p>WTO TRIPS</p> <p>World Intellectual Property Organization</p> <p>Paris Convention for the Protection of Intellectual Property</p> <p>Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure</p> <p>Patent Cooperation Treaty (PCT)</p>	<p>TRIPS requires countries to put in place mechanisms for owners of intellectual property to enforce their rights.</p> <p>WIPO promotes the protection of intellectual property throughout the world. Singapore became a member in 1990.</p> <p>The Paris Convention provides, among others, the right of priority in patents, trade marks and industrial designs. Singapore became a party to this convention in 23 February 1995.</p> <p>The Budapest Treaty provides, among others, that the deposit of microorganism with any of the international depositary authority suffices for the purposes of patent procedure before the national patent offices. Singapore became a party to this Treaty on 23 February 1995.</p> <p>The PCT provides an international filing patent application system.. It is under the control and management of the International Bureau of WIPO. Singapore became a member to the PCT on 23 February 1995.</p>

## **F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

### *1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).*

Cumulative foreign direct equity investment as measured by stock of paid-up capital and reserves of companies in Singapore amounted to S\$62.8 billion as at end 1993, as shown in 2 below. Financial/business services, manufacturing and commerce largely accounted for the inward investment.

Singapore's direct investment abroad, based on amount of paid-up shares of overseas subsidiaries and associates held by local companies plus net amount due from overseas branches plus reserves in overseas subsidiaries and associates attributable to the local investor companies, amounted to S\$21.2 billion in as at end

1993. The financial (mainly holding companies) and manufacturing sectors were the main sectors that invested abroad.

2. *List of the major countries/economies that are sources/receivers of FDI over recent years.*

Source of FDI (\$ million)	1990	1991	1992	1993
Japan	10663	11718	13186	13471
USA	8590	9530	9647	11251
UK	4639	6150	6021	6166
Netherlands	4072	4345	4079	4051
Hong Kong	3267	3245	3462	3759
All Countries	49831	54563	56661	62767

Source: Ministry of Trade and Industry, Singapore

Destination of FDI (\$ million)	1990	1991	1992	1993
Malaysia	2790	3121	3917	4657
Hong Kong	2266	2369	3051	4026
USA	690	1304	1590	1755
New Zealand	1359	1387	1333	1494
All Countries	13622	15184	17741	21240

Source: Ministry of Trade and Industry, Singapore

# CHINESE TAIPEI

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# CHINESE TAIPEI

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### *1. Summary of foreign investment policy including any recent policy changes.*

Chinese Taipei has always welcomed investment by foreigners and assisted them in completing investment-related procedures in accordance with the law. Efforts have been made to establish a good investment climate to attract foreign investors and heighten their willingness to invest, and thereby to stimulate the continued development of the domestic economy, upgrade the standards of industrial technology, and move closely in line with worldwide economic development trends.

In line with the steady world trend toward liberalization and internationalization, the authorities are currently carrying out a plan to develop Chinese Taipei into an Asia-Pacific Operations Center. The administrative authorities are currently carrying out, in reference to international norms such as those of the World Trade Organisation (WTO) and the Organisation for Economic Cooperation and Development (OECD), the revision of related laws and regulations including the Statute for Investment by Foreign Nationals. We are engaged in the continuous simplification of investment screening procedures so as to shorten the time required for approval; and in September of 1995 we completed a review and revision of the Negative List for Investment by Overseas Chinese and Foreign Nationals so as to expand the categories in which investment is allowed. The following are the main results of this revision.

1. Relaxation of the scope of foreign investment to include the previously banned categories of manufacturing of sodium cyanide and potassium cyanide, monosodium glutamate production using the fermentation method, asbestos and related products, military engineering and the production of military necessities, housing construction, and real estate brokerage, as well as the previously restricted categories of stone quarrying, animal feed processing, chemical fertilizer production, leather finishing, the operation of gasoline stations and travel agency services.
2. The switching of previously banned categories to restricted categories: petroleum refining, coking, waste metal recycling, ivory processing, electricity generation, water supply, rail shipping, harbour operations, supporting services for marine transportation and air terminal ground operations. For investment in these categories, foreign and overseas Chinese investors must first obtain the approval of the agencies in charge of the target industries.

On January 16, 1996, the legislative body passed three telecommunications liberalization bills (the Telecommunications Act, the Organizational Statute of Directorate General of Telecommunications, the statute of Chunghwa Telecom Co., Ltd.), thus paving the way for overall liberalization of the telecommunications market. These bills provide for the opening of five telecommunications services: Cellular Mobile Phone service, Paging service, Trunked Radio services, Mobile Data service and Very Small Aperture Terminal (VSAT) services in the near future. Also, in view of the fact that the demand of the telecommunications industry for communications, information and electronics products, is expected to increase vastly during the coming years, billions of dollars in business opportunities are expected to be produced.

In March 1996, the highest administrative authorities of Chinese Taipei passed a revision of the Regulations Governing Securities Investment by Overseas Chinese and Foreign Investors and Procedures for Remittance to fully open investment in domestic stocks to foreign natural and legal persons and to raise the ceiling for total foreign investment in the stock of any single listed company from the current 15% to 20%. This will increase foreign investment in the market by an estimated amount of almost US\$9.2 billion. The authorities also passed a revision of the Rules for Administration of Securities Investment Trust Fund Enterprises to allow foreign investors to establish wholly owned investment trust companies in Chinese Taipei. These two revised acts became effective on March 8, 1996.

In respect to outward investment, in line with the further relaxation of foreign exchange controls, prior remittance approval is no longer required for outward investment and outward technical cooperation cases amounting to less than an annual accumulated total of US\$20 million; from January 1, 1996, remittances for such investment cases need only be reported to the Investment Commission of the Ministry of Economic Affairs (MOEA) within six months after the cases are carried out.

### *2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment*

Liberalization, internationalization, and systemisation are Chinese Taipei's basic long-term economic development principles. As Chinese Taipei has advanced toward fully developed status, the administrative authorities have removed, step-by-step, obstacles to the flow of commodities, capital, labor, personnel, information, and services related to foreign investors (domestic and foreign). In January 1995, the highest administrative authorities passed a Plan for developing Chinese Taipei as an Asia-Pacific Operations Center involving accelerated macroeconomic adjustment as well as development of a manufacturing center, sea



transportation center, air transportation center, financial center, telecommunications center and media center. As far as macroeconomic adjustment is concerned, the key point of this plan is in facilitation of the flow of commodities, services, personnel, capital and information.

Regarding outward investment, in view of the help it provides in promoting economic cooperation in the Asia-Pacific area, as well as to assist in the export of capital and technology and to expand private-sector commercial cooperation--and as a natural readjustment after an economy develops --Chinese Taipei has adopted, in principle, an attitude of guidance and assistance. In view of the rapid increase in outward investment by small and medium enterprises in recent years, the Ministry of Economic Affairs offers active assistance including the provision to potential investors of information on the investment climate and investment opportunities in the countries where they intend to invest, the provision of assistance in developing overseas industrial zones, the provision of legal and taxation consultation services in areas where investment from Chinese Taipei is concentrated, and the provision of assistance to member economies holding investment seminars in Chinese Taipei.

## **B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION**

### **1. Transparency**

#### *(i) Statutory (legislative) requirements*

##### *1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment*

Citation	Summary
Statute for Investment by Foreign Nationals	Stipulates protection and application procedures for investment by foreign nationals.
Statute for Investment by Overseas Chinese	Stipulates protection and application procedures for investment by overseas Chinese.
Negative List for Investment by Overseas Chinese and Foreign National	Lists industrial items in which investment by foreign nationals and overseas Chinese is banned or restricted.
Statute for Upgrading Industries	Contains stipulations regarding tax incentives for the promotion of agriculture, industry, and services and regulations for the development of industrial zones.
Regulations Governing the Use of Patent Rights and Technical Know-how as Equity Investment	Contains stipulations regarding the use of patent rights and specialized technology as equity investment.
Regulations Governing Securities Investment by Overseas Chinese and Foreign Investors, and Procedures for Remittance	Contains stipulations related to foreign investment in the domestic stock market and the overseas issuance of corporate bonds and global depository receipts by domestic enterprises.
Regulations Governing the Screening and Handling of Outward Investment and Outward Technical Cooperation Projects	Contains regulations related to the screening of applications for outward investment and outward technical cooperation.
Rules Governing the Approval and Administration of Foreign Specialist and Technical Personnel Employed by Public or Private Enterprises and Ranking Executive Employed by Overseas Chinese or Foreign National Invested Enterprises	Contains stipulations for the screening and approval of applications by enterprises under the administration of the Ministry of Economic Affairs for the hiring of foreign nationals to serve as specialists or technical workers, or as ranking executives of enterprises invested by overseas Chinese or foreign nationals.

(ii) Investment Review and Approval

1. Details of proposals and sectors that are/are not (yes/no) subject to screening.

2. For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals		Guidelines/Conditions
merger & acquisitions	(Yes)	Provisions of the Fair Trade Law require the prior approval of the Fair Trade Commission for merger of enterprises when, as a result of the merger, the combined enterprise will have a market share of one third or more; when one of the enterprises participating in the merger holds a market share of one fourth or more; or when, for the preceding fiscal year, the sales of an enterprise participating in the merger exceed the amount announced by the central competent authority.
greenfield investment	(Yes)	In accordance with the provisions of the Statute for Investment by Foreign Nationals, foreign greenfield investment must obtain the approval of the Investment Commission, MOEA.
real estate/land	(Yes)	According to the provisions of the Land Law, the rights of foreign nationals to acquire or register land are limited to those rights which Chinese Taipei is granted by the foreign countries, by treaty or by the laws of the foreign countries.  Further, according to the Telecommunications Act passed in January of 1996, land needed for Type I telecommunications businesses or for the exclusive use of government telecommunications facilities may be expropriated in accordance with the provisions of the Land Law and related laws and regulations.
joint venture	(Yes)	Investment by overseas Chinese and foreign nationals in existing enterprises or in capital increases for originally invested enterprises must first obtain the approval of the Investment Commission, MOEA, in accordance with the Statute for Investment by Foreign Nationals.
transport	(Yes)	In accordance with the Statute for Encouragement of Private Participation in Transportation Infrastructure Projects, a private entity wishing to invest in the building and operation of major transportation infrastructure project must first obtain approval from MOTC Selection Committee set up for that purpose. Evaluation criteria include the applicant's building and/or operating capabilities, soundness of company organization, feasibility of financial plan, gains from ancillary businesses, amounts of royalty to be paid, and subsidies and investments requested from the government. The application form and documentation required are to be determined separately for each case.

Sector		Guidelines/Conditions
telecommunications	(Yes)	According to the Telecommunications Act passed in January of 1996, foreign citizens may invest in Type I telecommunications business but their shareholding may not exceed one fifth of total shares. Foreign investment in Type II telecommunications businesses is not subject to this limitation.

motion pictures	(Yes)	In accordance with the Motion Picture Law and its implementation bylaws, investment by foreign nationals in the motion picture industry (including motion picture production, distribution, screening and film processing) is subject to restrictions in such areas as the educational background of the responsible person and company capitalization. Investment applications must be accompanied by proof of identity, a floor plan of the business site as well as deed or lease contract, certification of building, fire safety, and sanitation approval, list of machinery and equipment and roster of administrative and technical personnel.
publishing	(Yes)	According to the Publication Law and its implementation by-laws, foreign investment in the publishing industry, including newspapers, news agencies, magazines and publishing houses, is subject to minimum capital requirements. Publishers are required to meet certain educational and experience requirements and must reside in Chinese Taipei. The principle of reciprocity will be followed in regard to the publications laws of the foreign investor's country, and publications are required to be printed in Chinese Taipei.
radio and television program supply	(Yes)	According to the Radio and Television Law and the Regulations Governing Radio and Television Program Supply, foreign investment in radio and television program supply, including production of radio programs, production of television programs, distribution of radio programs, distribution of television programs, radio and television advertising, production of videotape programs and distribution of videotape programs, must meet minimum capital requirements and equipment standards.
cable television systems	(Yes)	<p>In accordance with the Cable Television Law and its implementation by-laws, foreign investment in cable television systems is subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(a) a foreign-invested domestic company may not hold shares in a cable television company unless the total foreign-held equity in the domestic company amounts to no more than 20% of the domestic company's total equity.</li> <li>(b) investment applicants that are limited-liability companies must have a paid-in capital of at least NT\$200 million, and those that are corporate bodies must have assets of at least NT\$200 million.</li> <li>(c) the shareholding of cable television systems should be diversified. A single shareholder may not hold more than 10 percent of the total equity in a system, and a single shareholder plus his/her related enterprises may not hold more than 20%.</li> </ul>

shipping agency/freight forwarding/container yard operation	(Yes)	<p>According to the Shipping Enterprise Act, no one who is not a citizen or a legal person of Chinese Taipei is permitted to set up a shipping agency, sea freight forwarder, or container yard operation unless the government of the natural or legal person involved grants equal rights to citizens and legal persons of Chinese Taipei, and unless permission has been granted by the Ministry of Transportation and Communications.</p> <p>According to the Regulations for the Management of Shipping Agents/Sea Freight Forwarders, the ratio of foreign shareholding and foreign representation on boards of directors is limited to one third for limited liability companies and to one half for companies limited by shares.</p> <p>According to the Regulations for the Management of Container Yard Operations, the foreign shareholding in limited liability companies and companies limited by shares is limited to one third.</p>
agriculture	(Yes)	<p>According to the Statute for Investment by Foreign Nationals and the Negative List for Investment by Overseas Chinese and Foreign Nationals, foreign investment is prohibited in agronomic and horticultural crop production (with the exception that overseas Chinese may invest in flower growing), the livestock industry, hunting and the raising of animals for hunting, forestry (overseas Chinese are not restricted), fishery, and the manufacturing of agricultural chemicals (unless approved by the Council of Agriculture). Also, according to the Agricultural Products Marketing Act, the foreigner is not permitted to set up the agricultural products wholesale market.</p>

3. *How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

There are three different forms for foreign investors, depending on whether the investment is a newly established enterprise, an existing enterprise, or for a capital increase in an existing enterprise. The applicant must submit the following documents:

- ten copies of the application form.
- documents giving proof of the foreign investor's identity. Natural persons must submit proof of nationality, and juridical persons must submit proof of their qualification as juridical persons.
- in case of the delegation of an investor's representative, authorization documents recognized by a Chinese Taipei overseas mission in the investor's local area, or by a foreign mission in Chinese Taipei, must be submitted.
- an investment plan including the following: List of investors, composition of total capitalization, operational and capital utilization plan, production and sales projection and marketing projection.

For further information, refer to the documents:

- A. Directions on Preparation of Investment Applications (New Establishment);
- B. Directions on Preparation of Investment Applications (Investment in Existing Enterprise);
- C. Directions on Preparation of Investment Applications (For Re-investment).

Copies of the relevant documentation can be obtained for the contact listed in Section B(1)(ii)(4) below.

4. *Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec. 1, Taipei Telephone: (886 2) 351 3151 Fax: (886 2) 396 3970

5. *Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

The average time required is approximately one to three weeks.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeal processes and the average time for an appeal to be considered.*

After a foreign investor submits an investment application to the Investment Commission, the Investment Commission sends it to the various agencies in charge of the target industry to solicit their opinions. In accordance with the nature of application cases, meetings of the Commission will be held on a scheduled basis to carry out case evaluations. If a prospective investor wishes to appeal the results of the evaluation, an appeal should, in principle, be submitted to the original recipient of the application. After the Investment Commission receives an appeal, it will be discussed at a meeting of the Commission. In general, a reply will be forthcoming within one to three weeks.

Agency	Address/telephone/fax
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec. 1, Taipei Telephone: (886 2) 351 3151 Fax: (886 2) 396 3970

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal.*

Foreign investment cases with an investment amount less than NT\$200 million, and for which the category of investment is not on the negative list of banned or restricted investments, may be approved by the chairman of the Investment Commission alone without being subject to evaluation by a full meeting of the Investment Commission.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies).*

Agency	Address/telephone/fax	Type of Complaint
Industrial Development & Investment Center, MOEA	19th FL., 4 Chung Hsiao W. Rd., Sec. 1, Taipei Telephone: (886 2) 389 2111 Fax: (886 2) 382 0497	The Industrial Development & Investment Center maintains close contact with related agencies of the administrative authorities, and provides assistance to foreign investors in solving any difficulties encountered prior to, during, or after the completion of investment projects.
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec. 1, Taipei Telephone: (886 2) 351 3151 Fax: (886 2) 396 3970	Investment Commission deals with Investment application appeals and cases regarding the hiring of foreign personnel of a specialist or technical nature.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies*

Agency	Address/telephone/fax	Functions
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec. 1, Taipei Telephone: (886 2) 351 3151 Fax: (886 2) 396 3970	Compilation of statistics to gain an understanding of trends in foreign investment and technical cooperation in Chinese Taipei, and in outward investment and technical cooperation from Chinese Taipei; also, evaluation of the influence produced by such investments and technical cooperation cases on the overall economy and society of Chinese Taipei.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

Revision of the Statute for Investment by Foreign Nationals is being carried out to effect greater internationalization and liberalization of foreign investment in line with implementation of the Plan for Development of Chinese Taipei as an Asia-Pacific Operations Center. The key points of the revision are as follows:

- broadening of the negative list to cover reinvestment only by enterprises in which foreign investors hold one-third or more of total equity.
- expansion of the categories of capital invested by foreign investors so as to provide foreigners with a larger scope of investment.
- clarification, in conformity with the trend toward internationalization and liberalization, of items in which foreign investment is banned or restricted.
- cancellation, in conformity with international standards, of restrictions on the remittance rights of foreign-invested enterprises.

Chinese Taipei welcomes, at any time, any suggestion or comment related to the improvement of foreign investment laws or systems. Such suggestions or comments can be submitted through any available channel, including going through foreign associations in Chinese Taipei to the agencies in charge of the related industries. Any case related to foreign investment can be submitted through the administrative relief process. Public hearings will be held before the passage or revision of important bills, and those that involve disputes, in order to solicit opinions from all sectors.

11. *Where applicable, the role for sub national agencies in the approval process.*

With the exception of investment in the export processing zones, for which application should be made to the Export Processing Zone Administration or its Kaohsiung or Taichung branch and investment in the Hsinchu Science-based Industrial Park, for which application should be made to the Science-based Industrial Park Administration, foreigners wishing to invest in Chinese Taipei should submit their investment plans to the Investment Commission, MOEA. After a case has been approved and the capital remitted, the investor should carry out the related procedures with the competent government authority. For example, applying to the Commerce Department, MOEA for a company name check and for company registration; applying to the local county or city government office for profit-earning-enterprise registration; or negotiating with the relevant industrial zone development unit for the procurement of factory land. The reconstruction bureau of the local county or city government should be contacted regarding mixed industrial/commercial zones; then, following recommendation by the Commerce Department, MOEA, and environmental assessment by the environmental protection bureau of the respective county or city government, application for a development permit should be submitted to the public works bureau of the respective county or city government.

A foreign company wishing to establish a branch in Chinese Taipei should first obtain a foreign company certificate of recognition from the Commerce Department and then apply to the reconstruction department or bureau of the respective local provincial or city government where the branch is located for a branch company operating license, and to the local tax office for a profit-earning-enterprise registration. Foreign companies setting up offices in Chinese Taipei should register with the Commerce Department and obtain a certificate of registration.

Agency	Address/telephone/fax	Functions
Commerce Department, MOEA	15 Fuchou St., Taipei Telephone: (886 2) 321 2200 ext. 380 Fax: (886 2) 394 2702	Handling of local company registration, foreign company recognition, and foreign liaison office registration.
Commerce Department, MOEA	15 Fuchou St., Taipei Telephone: (886 2) 321 2200 ext. 770 Fax: (886 2) 341 4395 E-Mail: idpt552@tpts1.seed.net.tw  WWW address: <a href="http://www.seed.net.tw/~csec/">http://www.seed.net.tw/~csec/</a>	Receiving & examining the applications for Mixed Industrial/ Commercial Zones.
Industrial Development Bureau, MOEA	41-3 Hsinyi Rd., Sec. 3, Taipei Telephone: (886 2) 754 1255 ext. 2711 Fax: (886 2) 704 3753	In charge of laws and regulations regarding factory construction permits and registrations; also provides consultation services.
Taipei City Bureau of Reconstruction	1 Shihfu Rd., N. Bldg. 1, Taipei Telephone: (886 2) 725 6567 Fax: (886 2) 759 6577	Handles such matters as factory establishment permits and registrations in the Taipei area.
Kaohsiung City Bureau of Reconstruction	9Fl., 2 Weisan Rd., Lingya District, Kaohsiung Telephone: (886 7) 337 3160 Fax: (886 7) 331 6193	Handles such matters as factory establishment permits and registrations in the Kaohsiung area.
Taiwan Provincial Department of Reconstruction	4 Shengfu Rd., Chungsing New Village, Taiwan Telephone: (886 49) 31 2954 Fax: (886 4) 31 5374	Handles matters, submitted through county and city governments, related to the approval of factory establishment permits and the issuance of factory registration certificates.
Yilan County (Industry and Commerce Section)	23 Chiucheng S. Rd., Yilan Telephone: (886 39) 35 5420 ext. 185-187 Fax: (886 39) 32 3590	Approves or passes on to the proper authorities applications regarding factory establishment permits or registrations, and changes to factory establishment permits or registrations.
Keelung City (Industry and Commerce Section)	1 Yiyi Rd., Keelung Telephone: (886 2) 420 1122 Fax: (886 2) 423 0765	Same as above.
Taipei County (Industry and Commerce sections)	32 Fuchung Rd., Panchiao, Taipei County Telephone: (886 2) 967 4324 Fax: (886 2) 967 4365	Same as above.
Taoyuan County (Industry and Commerce Section)	1 Hsienfu Rd., Taoyuan Telephone: (886 3) 332 2101 ext 5121 Fax: (886 3) 332 0542	Same as above.

Hsinchu County (Industry and Commerce Section)	10 Kuangming 6th Rd., Chupei City, Hsinchu County Telephone: (886 35) 55 8447 Fax: (886 35) 51 6418	Same as above.
Hsinchu City (Industry and Commerce Section)	120 Chungcheng Rd., Hsinchu City Telephone: (886 35) 25 9003 Fax: (886 35) 26 0284	Same as above.
Miaoli County (Industry and Commerce Section)	100 Hsienfu Rd., Miaoli City Telephone: (886 37) 32 4428 Fax: (886 37) 32 6185	Same as above.
Taichung County (Industry and Commerce Section)	136 Chunghsing Rd., Fengyuan City, Taichung County Telephone: (886 4) 523 5641 Fax: (886 4) 528 1945	Same as above.
Taichung City (Industry and Commerce Section)	99 Minchuan Rd., Taichung Telephone: (886 4) 229 0081 Fax: (886 4) 229 7657	Same as above.
Nantou County (Industry and Commerce Section)	136 Chunghsing Rd., Nantou City Telephone: (886 49) 22 5144 Fax: (886 49) 23 4074	Same as above.
Changhua County (Industry and Commerce Section)	416 Chungshan Rd., Sec. 2, Changhua Telephone: (886 4) 722 9350 Fax: (886 4) 724 9384	Same as above.
Yunlin County (Industry and Commerce Section)	515 Yunlin Rd., Sec. 2, Touliu City Telephone: (885 5) 532 0368 Fax: (885 5) 532 9473	Same as above.
Chiayi County (Industry and Commerce Section)	1 Hsiangho 1st Rd., Hsiangho New Village, Taipao City, Chiayi County Telephone: (885 5) 362 0052 Fax: (885 5) 362 0123	Same as above.
Chiayi City (Industry and Commerce Section)	1 Minsheng N. Rd., Chiayi Telephone: (885 5) 225 4321 Fax: (885 5) 227 5217	Same as above.
Tainan County (Industry and Commerce Section)	36 Minchih Rd., Hsinying City, Tainan County Telephone: (886 6) 635 8273 Fax: (886 6) 632 1260	Same as above.
Tainan City (Industry and Commerce Section)	1 Chungcheng Rd., Tainan Telephone: (886 6) 220 0575 Fax: (886 6) 221 4280	Same as above.
Kaohsiung County (Industry and Commerce Section)	132 Kuangfu Rd., Sec. 2, Fengshan City, Kaohsiung County Telephone: (886 7) 747 7611 Fax: (886 7) 747 6422	Same as above.



Penghu County (Industry and Commerce Section)	32 Chihping Rd., Makung City, Penghu County Telephone: (886 6) 926 4482 Fax: (886 6) 9276640	Same as above.
Pingtung County (Industry and Commerce Section)	527 Tzuyu Rd., Pingtung Telephone: (886 8) 732 1583 Fax: (886 8) 732 3100	Same as above.
Taitung County (Industry and Commerce Section)	276 Chungshan Rd., Taitung City Telephone: (886 89) 33 0727 Fax: (886 89) 31 8201	Same as above.
Hualien County (Industry and Commerce Section)	17 Fuchien Rd., Hualien Telephone: (886 38) 22 8240 Fax: (886 38) 22 7894	Same as above.
Kinmen County (Industry and Commerce Section)	60 Minsheng Rd., Chincheng Town, Kinmen County Telephone: (886 823) 26 204 Fax: (886 823) 25 547	Same as above.
Lienchiang County (Industry and Commerce Section)	76 Chiehshou Village, Nankan Township, Matsu Telephone: (886 836) 25 125 Fax: (886 836) 25 021	Same as above.

## 2. Non discrimination between Source Economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise)

Relations across the Taiwan Straits remain in the stage of mutually beneficial interchange. In the interest of stability and the security of society in Chinese Taipei, and of the welfare of its people, a case-by-case approval procedure for people of the People's Republic of China (PRC) coming to Chinese Taipei to engage in economic and trade investigation has been adopted, based on the restrictions in the Guidelines for National Unification and the statute governing relations across the straits. This approval procedure is also used for foreign companies with more than 20% ownership by the people of the PRC, with a gradual relaxation under way.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

Not applicable.

### 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
1. Industries that violate public safety and security. 2. Industries that violate good morale. 3. Highly polluting industries. 4. Industries that are given monopoly status by laws or in which investment is forbidden by laws.	Investment by foreign nationals and overseas Chinese is prohibited.
1. Public utility. 2. Financial and insurance. 3. News media and publication. 4. Other industries in which investment is restricted by laws or regulations.	Investment by foreign nationals and overseas Chinese must comply with provisions as stipulated by the authorities in charge of the industries concerned, and must be examined and approved by the Investment Commission.

2. Description of nature and scope of any limitations on foreign firms' access to sources of finance

According to the provisions of the Offshore Banking Act, foreign firms are permitted to obtain financing through offshore banking units. According to the Company Law, a company's capital may not be extended as loans to any shareholder or other person except in cases where inter-company trading activities call for a capital loan. This stipulation also applies to foreign companies.

### 4. Repatriation and Convertibility

1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Article 13 of the Statute for Investment by Foreign Nationals and Article 12 of the Statute for Investment by Overseas Chinese stipulate that investors may repatriate the full amount of their investment capital and earnings on investment at one time after the invested enterprise has been in operation for one year.

Effective from January 4, 1996, the revised Regulations Governing Securities Investment by Overseas Chinese and Foreign Investors and Procedures for Remittance stipulate that foreign institutional investors may, after obtaining permission, invest directly in domestic securities. The revision cancels the limitation that foreign capital for portfolio investment cannot be repatriated until three months after inward remittance, and lifts the restriction that earnings, including capital gains and dividends, can be repatriated only once per year.

2. Brief description of the foreign exchange regime.

The competent agency for Chinese Taipei's foreign exchange controls is the Central Bank. Foreign exchange control is based on the principle that for enterprises approved by the authorities in charge of the target industry, foreign exchange receipts and payments with regard to goods and services are completely unrestricted.

In addition, in accordance with the stipulations of the Statute for the Management of Foreign Exchange, Regulations Governing the Reporting of Foreign Exchange Receipts and Disbursements or Transactions, and the 'amount of annual foreign exchange settlements by companies, businesses, groups, and individuals, and the amount of foreign exchange settlement per time by individuals' as stipulated by the Central Bank, Chinese Taipei citizens and/or Alien Resident Certificate holder of 20 years of age or older may freely convert the local currency into a foreign currency up to an amount equivalent to US\$5 million per year. Companies registered with the competent authority may do so to an amount up to the equivalent of US\$20 million per year. Non-residents may freely buy or sell New Taiwan dollars up to the equivalent of US\$100,000 per foreign exchange transaction. Applicants for foreign exchange settlements are required to complete the necessary form and to

attach the investment approval or other related documents, and to apply for conversion to a designated foreign exchange bank.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

The Company Law places no restrictions on the conversion of overseas capital. For investments approved by the competent authorities and for accumulated increments within the stipulated amounts as permitted by the relevant regulations, currency conversion may be freely carried out.

**5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

Except for the 14-day visa-free entry provision for citizens of specified countries, or unless otherwise specified, all foreigners entering Chinese Taipei are required to obtain a proper visa prior to entry.

According to Article 12 of the Regulations Governing Issuance of Visas on Foreign Passports, a visitor visa may be issued to foreigners who wish to stay in Chinese Taipei for less than six months for the purpose of engaging in business. The holder of a visitor visa may stay in Chinese Taipei for a maximum of 60 days and may, if necessary, apply at the nearest city/county police headquarters for a maximum of two extensions of up to 60 days each. In principle, no extension will be granted to holders of visas with duration of stay restricted to 14 days, 30 days, or 60 days, and which bear the stamp reading 'NO EXTENSION WILL BE GRANTED.'

According to Article 42 of the Employment Service Act, foreigners may not take employment in Chinese Taipei unless they have first applied, through their employer, for a work permit. In addition, according to Article 9 of the Regulations Governing Issuance of Visas on Foreign Passports, foreigners wishing to stay in Chinese Taipei for more than six months for the purpose of taking employment or joining their families should apply for a resident visa.

*2. List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
Application for Alien Resident Certificate	Foreigners who enter Chinese Taipei on resident visas are required to apply to their nearest city/county police headquarters for an Alien Resident Certificate within 15 days of entry. Those failing to apply within the stipulated period will be required to do so within 10 additional days. Those still failing to apply when the additional period has elapsed will be ordered to leave Chinese Taipei within a prescribed period of time.
Time limit on Alien Resident Certificates	The period of validity of Alien Resident Certificates held by foreigners residing in Chinese Taipei is determined in accordance with the purpose of residence, but shall not be in excess of three years. For those who come to Chinese Taipei to live with relatives, the period of residence may be the same as that of the relatives with whom they reside. If the relatives with whom they reside are citizens of Chinese Taipei, the period of validity of the Alien Resident Certificates shall not exceed three years.
Change of purpose of residence	Foreigners who need to stay in Chinese Taipei beyond the period of residence which they have been granted are required to apply for an extension prior to the expiration of the original period of residence. If the purpose of residence of a foreigner has changed and the change has been approved by the competent government authority, he/she is required to file an application with the police headquarters in the area of residence within 15 days for a change of purpose of residence. Those who fail to apply for extension or change of purpose of stay in accordance with regulations will be required to do so within an additional 10-day period, and those who still fail to do so during the 10-day additional period will be ordered to leave Chinese Taipei within a specified period of time.

Departure from and entry into Chinese Taipei during period of residence	Foreigners holding Alien Resident Certificates who need to leave and then re-enter Chinese Taipei during their period of residence are required to apply to police headquarters in their area of residence for a Re-entry Permit prior to their departure. Re-entry Permits may be for single or multiple re-entry and are valid for a period of six months unless otherwise stipulated by treaty or agreement. For holders of Alien Resident Certificates with validity periods of less than six months, the validity period of the Re-entry Permit will be the same as the remaining validity of the Alien Resident Certificate.
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*3. Description of regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

According to the stipulations of Article 9 of the Rules Governing the Approval and Administration of Foreign Specialist and Technical Personnel Employed by Public or Private Enterprises and Ranking Executives Employed by Overseas Chinese or Foreign National Invested Enterprises, overseas Chinese- and foreign national-invested enterprises wishing to employ, or to extend the employment of, foreign personnel to engage in work of a specialist or technical nature must be of a certain scale. However, enterprises that make substantial contributions to the economic development of Chinese Taipei, or that are subject to special circumstances, may be exempted from this requirement.

In addition, foreign nationals taking up employment of a specialized or technical nature within Chinese Taipei are required to have a university degree in a field related to their work, and to have at least two years of working experience. Those who do not meet these conditions will be considered and decided on a case-by-case basis by the Ministry of Economic Affairs in consultation with the Council of Labor Affairs. However, ranking executives employed by overseas Chinese- or foreign national-invested enterprises are not subject to this restriction.

Approval of hiring quotas will be determined on a case-by-case basis in accordance with such conditions as the employer's type of business, scale of operations and personnel plan. There is no requirement for ratio of foreign to local employees.

*4. List and provide a summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

Law	Summary
Labor Union Law	Governs the organization of industrial and trade unions with the aim of protecting the interests of labourers, advancing labor skills, developing productive industries and improving the life of labourers. The mission of labor unions encompasses the conclusion, revision and abolition of collective agreements; the mediation of labor-management disputes; the mediation of disputes between labor unions or their members; and the making of recommendations on the enactment, revision, or repeal of labor laws and regulations.
Collective Agreement Law	Article 83 of the Labor Standards Law provides that a business entity must convene labor-management conferences to coordinate relations and promote cooperation between labor and management as well as to increase work efficiency. The Collective Agreement Law further provides standards for the conclusion of written contracts between employers and workers' organizations regarding labor relations.
The Settlement of Labor Disputes Law	Differentiates two categories of labor disputes, rights disputes and adjustment disputes; stipulates mediation and arbitration procedures for the settlement of labor-management disputes, and provides for the compulsory execution of arbitration decisions and disciplinary actions.

## 6. Taxation

1. List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

Taxation arrangements	Summary
<p>To avoid double taxation, prevent tax evasion and improve relations, Chinese Taipei observes the OECD taxation agreement model and takes the political, fiscal, economic and trade situations of both sides into consideration in the signing of taxation agreements.</p> <p>By the end of 1995, income tax agreements had been signed with Indonesia and Singapore, and international transportation income tax agreements had been signed with Canada, the European Union, Germany, Japan, Korea, Luxembourg, Holland, Norway, South Africa, Sweden, Thailand and the United States.</p>	<p>The withholding rate on stock dividends from investments not approved under the Statute for Investment by Overseas Chinese or the Statute for Investment by Foreign Nationals is 35% for non-resident individuals and 25% for non-resident foreign profit-seeking enterprises. The withholding rate on stock dividends, interest and royalties from approved investments is 20%. Under taxation agreements, the withholding rate for stock dividends, interest and royalties is reduced to 5% to 15%.</p>

## 7. Performance Requirements

1. Brief description of any performance requirements that could impose limits on trade and investment and indicate any TRIMS

With the exception of local content requirements for the auto industry, Chinese Taipei imposes no other performance requirements. The local content ratio requirements will be abolished upon accession to the WTO.

## 8. Capital Exports

1. List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment

Regulations	Application and function
<p>Statute for the Management of Foreign Exchange</p> <p>Regulations Governing the Reporting of Foreign Exchange Receipts and Disbursements or Transactions</p>	<p>Individuals and groups whose foreign exchange payments, receipts, or transaction value do not exceed US\$5 million per year may apply to any designated foreign exchange bank for remittance.</p>
<p>Regulations Governing the Screening and Handling of Outward Investment and Outward Technical Cooperation Projects</p>	<p>Remittances for corporate outward investment and technical cooperation must be approved by the Investment Commission. However, investments of no more than an annual accumulated total of US\$20 million need only be reported within six months after being implemented.</p>

2. List and brief description of any regulations/institutional measures that limit technology exports

Regulations	Application and function
<p>Regulations Governing Export and Import of High-Tech Commodities</p>	<p>To conform to international norms, strengthen the protection of strategic technology, and prevent unauthorised shipment to prescribed countries, on June 1, 1995 the Board of Foreign Trade promulgated a 'High-Tech Commodities List' in accordance with the 'Regulations Governing Export and Import of High-Tech Commodities'. Technology covered by this list can be exported only upon issuance of an export permit by the competent authorities.</p>

## **9. Investor Behaviour**

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.*

(1) Company establishment and registration:

1. Company Law
2. Commercial Registration Law
3. Stock Transaction Law
4. Registration Regulations for Profit- Seeking Enterprises
5. Regulations for Factory Registration

(2) Labor:

1. Labor Standards Law
2. Employment Services Act
3. Worker Safety and Hygiene Law

(3) Environmental protection:

1. Air Pollution Control Act
2. Noise Control Act
3. Water Pollution Control Act
4. Waste Disposal Act

(4) Taxation:

1. Income Tax Law
2. Business Tax Law
3. Commodity Tax Law
4. Customs Law
5. Tax Collection Law

(5) Others:

1. Fair Trade Law
2. Consumer Protection Law
3. Statute for the Management of Foreign Exchange
4. Commercial Accounting Law
5. Commodity Labelling Law

## **10. Other measures**

*1. Brief outline of the competition policy regime*

The Fair Trade Law of Chinese Taipei was promulgated on February 4, 1992. The Law is meant to work in concert with the government's liberalization and internationalization policies. It aims to maintain and protect trade order and promotion of economic stability and prosperity. The enterprises subject to the regulation of this law include companies, industrial or commercial establishment owned by a sole owner or in the form of partnership, trade associations, or any other persons or organizations engaged in transactions by providing goods or services.

The Fair Trade Law covers the regulation of monopolies, combinations, and concerted actions. It also regulates unfair competition behaviour such as resale price maintenance, impediments to fair competition, counterfeiting or passing-offs, and commercial disparagement that damages the business reputation of others, or deceptive actions that adversely influences competition and are obviously unfair.

The Law also covers multi-level sales practices to fully guarantee the rights of those involved in such transactions. To facilitate its regulation in this regards, the Fair Trade Commission has promulgated the 'Supervisory Regulation of Multi-Level Sales'.

In addition, the Law also delineates the competence of the Fair Trade Commission. The last three parts of the Law contains civil remedies to parties whose rights have been infringed, punitive provisions of the Law and how they will be applied to violations and supplementary provisions.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

With the comprehensive revision of the Copyright Law in 1992 and refinement thereafter in 1993, Chinese Taipei's current Copyright Law has characteristics as follows: equal protection for works of both domestic and foreign origin on the basis of reciprocity; extension of the term of copyright protection to the life of the author plus 50 years, or to 50 years after publication; reasonable latitude for the application of the doctrine of fair use; the establishment of a system of copyright intermediary association; adequate civil remedy and penalty provisions to deter copyright infringement. In short, Chinese Taipei has brought its copyright law regime in line with international standards and affords a sound environment for foreign investment.

The Patent Law was revised in 1986 to provide patent protection for chemical and pharmaceutical products, after which numerous high-tech companies set up R&D units in Chinese Taipei or entered the local market. The law was further revised in January of 1994, and the categories protected by the law now include inventions, utility models and new designs; the term of patent protection is 20 years for patents, 20 years for utility models and 10 years for new designs. Since Chinese Taipei is not a party to the Paris Convention or any other international International Property Rights (IPR) organization, priority rights are limited to foreign countries which afford reciprocal treatment to Chinese Taipei.

The Trademark Law underwent an overall revision in December of 1993, and its amended Enforcement Rules were promulgated in July of 1994. The objectives of the revision were to rationalise the Trademark Law's provisions and enhance the effects of its enforcement so as to conform to the needs of commerce and industry as well as protect the interests of consumers. In addition, the requirement that the use of words in a trademark for which application is made by a citizen of Chinese Taipei be expressed primarily in Chinese was abolished, the right of priority for an application by a foreign applicant for the registration of a trademark was added, trademark registration fees were simplified, a clear definition was provided for the date of trademark registration, a clear definition was given for service marks and their manner of use, and provisions for certification marks and collective marks were added.

Chinese Taipei has no law specifically for the protection of industrial designs, but such protection is provided, to varying degrees, under the Patent Law, Copyright Law and other laws and regulations. The Patent Law, for example, provides for the registration and protection of original new designs with respect to shape, configuration, colour, or any combination thereof. The Copyright Law provides protection for industrial designs that fall within the scope of 'artistic works' 'pictorial works,' and 'scientific or technical designs.'

Since the semiconductor industry is one of the industries to which the authorities of Chinese Taipei give development priority, an Integrated Circuit Layout Protection Act was enacted and became effective on February 11, 1996. The term 'integrated circuit' refers to a final or intermediary product having electronic circuit capability and being comprised of transistors, capacitors, resistors, and other electronic components and their transmission lines fixed in a semiconductor material. The creator of the circuit layout, as named in the registration of the layout, enjoys the right to exploit the creation.

Furthermore, in January 1996, Chinese Taipei promulgated a Trade Secrets Act. In addition to the passage of laws to protect intellectual property rights and the strengthening of education work on IPR protection, the Ministry of Economic Affairs has established an IPR Coordination Committee which meets regularly and coordinates with other concerned agencies in maintaining a good environment for intellectual property and in protecting foreign investors.

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

*1. List of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

Laws/Regulations	Application and function
Article 15 of Statute for Investment by Foreign Nationals	In case the investor's investment is less than 45% of the total capital of the enterprise in which he invests, he shall be reasonably compensated if the government acquires or expropriates the invested enterprise because of national defence needs.
Article 16 of Statute for Investment by Foreign Nationals	In case the investor's investment is 45% or more of the total capital of the enterprise in which he invests, such an enterprise shall not be subject to requisition or expropriation for a period of twenty years after commencement of business as long as the investor continues to hold 45% or more of the total capital.  If the investor's investment is made in conjunction with overseas Chinese investment conforming to the Statute for Investment by Overseas Chinese, and their aggregate amount of investment is 45% or more of the total capital of the enterprise involved, the provision of the preceding paragraph shall still apply.

2. *Brief description of recent instances (last five years) of expropriation and compensation of foreign investment*

Not applicable.

## 2. Settlement of Disputes

1. *Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies*

In the spirit of the bilateral investment protection agreements signed by Chinese Taipei, any dispute or disagreement arising from investment by a foreign national should be solved by the parties to the dispute themselves through amicable discussion. When agreement cannot be reached in this way, the two sides may agree to turn it over to the International Court of Commerce Court of Arbitration or other dispute settlement agency that enjoys public credibility for an international mediation process that ends in a final and compulsory judgment, and that provides a basis for resolution of the dispute through legal action. Disagreements between foreign investors and the administrative authorities can be resolved through diplomatic channels or through general administrative relief appeal methods.

2. *Signatory or accession to the ICSID Convention*

No.

## D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers*

Program	Nature of incentive	Contact point
Investment tax credit for the procurement of equipment or technology	Private manufacturing or technical service enterprises procuring equipment or technology, may apply for an investment tax credit amounting to 20%, 10%, or 5% of the total cost of the equipment or technology, depending on whether it was domestically produced or imported, on the business income tax for the current year.	Industrial Development Bureau, MOEA; Export Processing Zone Administration, MOEA; Science-based Industrial Park Administration.
Investment tax credit on spending for research and development, personnel training, and the establishment of an international brand image	Companies spending funds on research and development, personnel training, or the establishment of an international brand image may claim an investment tax credit of 15% or 20% of such spending on their business income tax for the current year.	Local tax agency in area of the company's location.
Five-year tax holiday or income tax credit for shareholders	Within two years of the date when shareholders began making share payments, important technology enterprises and important investment enterprises may, with the agreement of the general shareholders' meeting, to opt for exemption on business income taxes for a period of five consecutive years.	Ministry of Finance; Ministry of Transportation and Communications; Energy Commission, MOEA Industrial Development Bureau, MOEA.



	Important technology enterprises, important investment enterprises, and venture capital enterprises are, upon establishment or expansion, eligible for an investment tax credit on business income tax or consolidated income tax amounting to 20% of the cost of purchase of shares.	Management Committee, Development Fund; Ministry of Finance; Ministry of Transportation and Communications; Energy Commission, MOEA; Industrial Development Bureau, MOEA.
Investment tax credit for corporate investment in areas with scanty natural resources or slow development	To promote balanced regional development, companies investing in areas with scanty natural resources or slow development may claim an investment tax credit on their business income tax equal to 20% of the total cost of new machinery, equipment, and structures.	County authorities of areas announced by the Ministry of Economic Affairs as having scanty natural resources or slow development.
Accelerated depreciation of fixed assets	Two-year accelerated depreciation is offered on instruments and facilities for research and development, experimentation, or quality inspection, and for machinery and equipment for energy conservation or substitution.  The depreciation period can be shortened by half for specified production machinery and equipment used for adjusting the industrial structure, or for improving the scale of operations or production methods.	For energy-conserving equipment: Energy Council, MOEA. For other equipment: Industrial Development Bureau, MOEA.
Tariff-free import	Duty-free import of production, research and development, and inspection equipment, or pollution control facilities, that are not manufactured locally.	Industrial Development Bureau, MOEA.
Tax exemption for creative works and inventions	Royalties and income from the creative works and inventions of individuals are exempt from the consolidated income tax.	Tax agency for inventor's residential area.
Merger incentives	Stamp taxes, contract taxes and land increment taxes resulting from mergers may be reduced, exempted or deferred.	Industrial Development Bureau, MOEA; Commerce Department, MOEA.
Preferential land increment tax treatment for plant removal	The land increment tax due as a result of the sale or transfer of the original plant is collected at the lowest marginal rate.	Industrial Development Bureau, MOEA; Local Provincial or City reconstruction department or bureau; Local Provincial or City tax department or bureau.

Increased amount of retained earnings	Companies may retain undistributed earnings up to the amount of their paid-in capital, and important productive enterprises may retain undistributed earnings up to double the amount of their paid-in capital; when retained earnings exceed these amounts, the excessive amount retained each year will be subject to the business income tax at a rate of 10%.	Ministry of Transportation and Communications;  Energy Commission, MOEA;  Industrial Development Bureau, MOEA.
Deferred payment of stock dividend tax	The value of shares obtained by shareholders or employees of companies that carry out a capital increase through retained earnings for the purpose of adding or renewing machinery, equipment, or transportation facilities, or of repaying loans or making payments on such machinery, equipment, or facilities, are exempted from the consolidated income tax for the current year.	Provincial or City reconstruction department or bureau;  Export Processing Zone Administration, MOEA;  Science-based Industrial Park Administration.
Allocation of reserve for loss on outward investments	Companies making outward investments approved by the Investment Commission may allocate an amount equal to 20% of the outward investment as a reserve against loss on that investment.	Investment Commission, MOEA.
Tax exemption on payments for the procurement of technology	Profit-earning enterprises that bring in new production technology or products, or that utilise approved foreign patents, trademarks, or other special utilization rights for the purpose of improving product quality or reducing production costs, are exempt from taxes on royalty payments and payments for technical services.	National Science Council;  Industrial Development Bureau, MOEA.

2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers

Program (National/sub-national)	Nature of incentive	Contact point
Encouragement of investment by overseas Chinese and foreign nationals	For a non-resident individual who, or a non-resident enterprise which, makes an approved investment in Chinese Taipei under the Statute for Investment by Overseas Chinese or the Statute for Investment by Foreign Nationals and receives dividends from a Chinese Taipei enterprise or profits from a Chinese Taipei partnership, the income tax payable by such individual or enterprise will be withheld at a rate of 20% at the time of payment.	District tax bureaux.

Low-interest loans for the procurement of domestically produced automation equipment	Loans for the procurement of domestically manufactured automation equipment by general productive enterprises and warehousing enterprises are available at an interest rate 1 percentage point above the Central Bank's rediscount rate.	Chiao Tung Bank; Taiwan Business Bank.
Low-interest loans for the procurement of imported automation equipment	Loans for the procurement of imported automation equipment by general productive enterprises and warehousing enterprises are available at an interest not to exceed 2.1555 percentage points above the Chiao Tung Bank's prime rate.	Chiao Tung Bank; Taiwan Business Bank.
Loans for the procurement of pollution control equipment by private enterprises	Loans for the procurement or improvement of pollution control equipment by private factories are available at an interest rate 2.875 percentage points below the Chiao Tung Bank's prime rate.	Chiao Tung Bank; The three commercial banks (Bank of Taiwan, Hua Nan Commercial Bank, Chang Hwa Commercial Bank); Taiwan Business Bank.
Other tax benefits	Increased value resulting from revaluation of assets by a profit-seeking enterprise is not included in taxable income.	District tax bureaux.

3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number

Agency	Address/telephone/fax
Industrial Development and Investment Center, MOEA Provides information related to investment and helps solve problems encountered in the process of carrying out investment projects in Chinese Taipei.	19 Fl., 4 Chunghsiao W. Rd., Sec. 1, Taipei Telephone: (886 2) 389 2111 Fax: (886 2) 382 0497
Export Processing Zone Administration, MOEA Provides services to export-oriented companies wishing to set up factories in export processing zones.	600 Chiachang Rd., Nantzu District, Kaohsiung Telephone: (886 7) 361 1212 Fax: (886 7) 361 4348
Kaohsiung Branch, Export Processing Zone Administration, MOEA Provides services to export-oriented companies wishing to set up factories in the export processing zone.	2 Chungyi Rd., Chienchen District, Kaohsiung Telephone: (886 7) 821 7141 Fax: (886 7) 831 0897
Taichung Branch, Export Processing Zone Administration, MOEA Provides services to export-oriented companies wishing to set up factories in the export processing zone.	1 Chienkuo Rd., Tantz Township, Taichung County Telephone: (886 4) 532 2113 Fax: (886 4) 532 2200

Science-based Industrial Park Administration	2 Hsinan Rd., Hsinchu
Provides services to technology-oriented companies wishing to establish factories in the science-based industrial park.	Telephone: (886 35) 773 311 Fax: (886 35) 776 222

## E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY APEC

1. *Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

Agreement	Provisions
Friendship Commerce and Navigation Treaties	A Treaty of Friendship, Commerce and Navigation with the United States became effective on November 30, 1948. This treaty grants the citizens of each party the right to carry out commercial, manufacturing and processing activities within the other party; to engage in the exploration and exploitation of mineral resources; and it provides most-favoured-nation treatment in the acquisition, holding, and disposal of real and movable property. It also provides the citizens of each party to the agreement with freedom of access to courts of justice and to administrative tribunals and agencies in the other party. It provides freedom of navigation and commerce between the two parties. Finally, it provides that the property of citizens of either party shall not be taken within the territory of the other party without due process of law and without prompt payment of just and effective compensation.
Bilateral Investment Treaties  Chinese Taipei has entered into investment protection agreements with 13 countries: the United States, Singapore, Indonesia, the Philippines, Panama, Paraguay, Nicaragua, Latvia, Malaysia, Vietnam, Argentina, Nigeria and Malawi.	These agreements are based on most-favoured-nation treatment and the principle of non-discrimination; they are designed to encourage and promote two-way investment, and provide protection in the areas of expropriation, compensation for damage, repatriation of investments, subrogation, and the resolution of disputes, thereby creating favourable investment conditions.
Regional or sub regional Investment Treaties	Not applicable.

## F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. *Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward)*  
 Statistics compiled by the Investment Commission together with the Export Processing Zones and the Science-based Industrial Park for 1995 show a total of 413 cases of approved investment in Chinese Taipei by overseas Chinese and foreign nationals (both new and old investors), with a total investment value of US\$2.925 billion. This was an increase of 79% over 1994. Most of the investment capital went into electronics and electrical apparatus manufacturing (a total of US\$1.241 billion), chemical products manufacturing (US\$375 million), banking and insurance (US\$259 million), services (US\$188 million), and international trade (US\$174 million). Approved outward investment in 1995 totaled 339 new cases (5% more than the previous year) and 205 old cases with a total value of US\$1.457 billion, a decline of 16% from 1994. Most of the outward investment was in banking and finance (US\$528 million), electronic and electrical apparatus (US\$195 million), textiles (US\$118 million), international trade (US\$100 million) and wholesale and retail marketing (US\$73 million). In addition, investment by Chinese Taipei in P.R.C. during 1995 amounted to 490 cases, down 48% from the year before; the approved amount totaled US\$1.092 billion, up 14%.

2. *Major countries/economies that are sources/receivers of FDI over recent years*

According to statistics from the Investment Commission, the major sources/receivers of FDI in 1995 were as follows:

Sources FDI	Destination FDI
The United States, Japan, the United Kingdom, Hong Kong, Holland.	The United States, Vietnam, Hong Kong, P.R.C., Malaysia, Thailand.

# THAILAND

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# THAILAND

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### 1. Summary of foreign investment policy including any recent policy changes.

The Thai Government recognises the important contribution of foreign investment to the domestic economy. The Board of Investment has been established to encourage foreign as well as local investment. Various measures have been initiated to attract more foreign investment that contributes to the country's industrialisation process. Over the recent years, a strong emphasis has been placed upon industrial decentralisation to address economic imbalance between urban and rural areas. The investment promotion policies are then geared towards this goal.

Another major policy theme is liberalisation and competitiveness enhancement. The Government continues to implement measures to encourage an active role of the private sector, both Thai and foreign.

Over the past few years, Thai companies started investing overseas. The Thai Government has encouraged Thai investors to look for new sources of raw materials and technology as well as diversified markets. Several Thai conglomerates have made extensive investment overseas, mostly in other countries in Asia such as People's Republic of China, Indochinese States and Indonesia.

### 2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

Under the Investment Promotion Act of 1977, the Board of Investment may approve the promotion of investment projects in agriculture, animal husbandry, fishery, mineral exploration and mining, manufacturing, and service sectors when it considers that the products, commodities and services:

- (1) are either unavailable or insufficiently available in Thailand or are produced by an outdated process;
- (2) are important and beneficial to the country's economic and social development, and to national security, or
- (3) are economically and technologically appropriate, and have adequate preventive measures against damage to the environment.

The Board of Investment maintains a policy of giving special consideration to investment projects which:

- (1) locate operations in provincial areas;
- (2) establish or develop industries which form the base for further stages of industrial development;
- (3) develop public utilities and basic infrastructure;
- (4) conserve natural resources and reduce environmental problems;
- (5) conserve energy or replace imported energy supplies;
- (6) contribute to technological development; and
- (7) significantly strengthen the balance of payments.

Further references:

Alien Business Law

Investment Promotion Act

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory (legislative) requirements*

#### 1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Alien Business Law, 1972	This legislation is applied to natural persons or juristic persons with at least one-half of their capital owned by aliens, or at least half of shareholders or partners of which are aliens. It sets out 3 categories of business activities where these foreign legal entities are (A) prohibited (B) permitted only with the Board of Investment promotion and (C) permitted by the Ministry of Commerce or the Board of Investment promotion. No foreign equity participation restriction is imposed on activities not covered by this Law or any specific laws.
Investment Promotion Act, 1977	This legislation sets out the types of tax and non-tax incentives offered to

	investment in Thailand.
Board of Investment Announcement No. 1/2536	This announcement spells out the policy and criteria in granting investment promotion, including joint-venture criteria and incentive schemes.
Industrial Estate Authority of Thailand Act.	This legislation sets out the incentives granted by the Industrial Estate Authority of Thailand to companies located in industrial estates.

*(ii) Investment Review and Approval*

1. Details of any proposals and sectors that are/are not (yes/no) subject to screening.

2. For each proposal, details of guidelines/conditions that apply for screening (eg. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.

Proposals	Guidelines/Conditions
merger (Yes)	Depending on types of business activities.
acquisitions (Yes)	Depending on types of business activities.
greenfield investment (Yes)	Depending on types of business activities.
real estate/land (Yes)	Foreign ownership in entities involved in land trade must be lower than half of the registered capital.
joint venture (Yes)	<p>Depending on types of business activities.</p> <p>Please refer to the Alien Business Law. Only companies that seek investment promotion are subject to the following joint venture criteria of the Board of Investment.</p> <p>For investment projects in agriculture, animal husbandry, fishery, mineral exploration and mining, or in the service sectors, Thai nationals must hold not less than 51% of the registered capital. However, for projects with investment capital over 1 billion baht, foreign investors may initially hold a majority or all of the shares, but Thai nationals must acquire at least 51% of the shares within 5 years of operation.</p> <p>For manufacturing projects, if the production is mainly for the domestic market, Thai nationals are required to own shares not less than 51% of the registered capital, except projects located in zone 3.</p> <p>Where at least 50% of total sales is for exports, foreign investors may hold a majority of the shares, and where at least 80% of total sales is for exports, they may hold all the shares.</p> <p>During the Seventh National Economic and Social Development Plan (1992-96), the foreign ownership requirement for projects in the following areas will be established by responsible ministries on a case-by-case basis and the Board will not consider the foreign ownership issue:</p> <ul style="list-style-type: none"> <li>• development of transportation systems;</li> <li>• public utilities;</li> </ul>



	<ul style="list-style-type: none"> <li>• environmental conservation and restoration;</li> <li>• direct involvement in technological development.</li> </ul>
other:-	Please refer to the Alien Business Law and the Board of Investment joint venture criteria.

Sector	Guidelines/Conditions
telecommunications (Yes)	Depending on subsectors of telecommunications services.
media (Yes)	Depending on the types of media.
transport (Yes)	Foreign equity must be lower than half of the registered capital.
agriculture (Yes)	Foreign equity must be lower than half of the registered capital.
other:	Please refer to the Alien Business Law, the Board of Investment joint venture criteria, and other specific laws.

*3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

Alien Business License: Application Form and Note to the Application Form  
Investment Promotion:

- two copies of completed investment promotion application form;
- feasibility study in case of projects with investment over 500 million baht, excluding working capital and land cost; and
- additional information as indicated by the Office of the Board of Investment.

Copies of the relevant documentation can be obtained from the contacts listed in Section B(1)(ii)(4) below.

*4. Contact point(s) to which applications should be made.*

Agency	Address/telephone/fax
Department of Commercial Registration, Ministry of Commerce	Maharaj Road, Bangkok 10200 Telephone: (66 2) 222 9851, 221 9889 Fax: (66 2) 255 8493
Office of the Board of Investment	555 Vipavadee-Rangsit, Chatuchak, Bangkok 10900 Telephone: (66 2) 537 8111, 537 8155 Fax: (66 2) 537 8188

*5. Average period from the formal submission of all relevant/required documentation to final approval/rejection*

Maximum time allowed for approving an alien business license by the Department of Commercial Registration:

- companies promoted by the Board of Investment: 15 days of the submission of the application with complete information required.
- regional offices: 7 days of the submission of the application with complete information required.
- companies engaged in activities in Annex C: 22 days of the submission of the application with complete information required.

Time period allowed for considering investment promotion approval: 60 working days.

6. List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal. Description of appeal processes and the average time for an appeal to be considered.

According to the Alien Business Law, in case of refusal to grant a permit, applicants have the right to appeal by means of written submission to the Committee within 60 days of the date when the order of refusal is known.

Agency	Address/telephone/fax
Ministry of Commerce	Sanam Chai Road, Bangkok 10200 Telephone: (66 2) 225 8411-27 Fax: (66 2) 226 3319, 226 3318

7. Description of conditions that need to be met for an expedited review of a foreign investment proposal. Please refer to Section B(1)(ii)(5).

8. List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies).

Agency	Address/telephone/fax	Type of Complaint
Office of the Board of Investment	555 Vipavadee-Rangsit Road, Chatuchak, Bangkok 10900 Telephone: (66 2) 537 8111, 537 8155 Fax: (66 2) 537 8188, 537 8177	

9. List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies.

Agency	Address/telephone/fax	Functions
Department of Commercial Registration	Maharaj Road Bangkok 10200 Telephone: (66 2) 223 1467 222 9851 221 9880 Fax: (66 2) 255 8493	Granting alien business licences.
Office of the Board of Investment	555 Vipavadee Rangsit Rd Chatuchak Bangkok 10900	Administering investment promotion incentives.

10. Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.

Foreign and domestic investors can make proposals or recommendations related to foreign investment regulations through various mechanisms such as the Joint Public and Private Consultative Committee and several ad-hoc working groups consisting of representatives from public agencies and private sector institutions. Public hearing is a common channel through which the opinions of the private sector are aired. Moreover, the private sector has representation in the Board of Investment, which is responsible for establishing investment promotion policies and considering investment projects applying promotion.

11. Where applicable, the role for sub national agencies in the approval process.

Regional offices of various agencies responsible for investment operations ie. the Office of the Board of Investment, Ministry of Industry and Ministry of Commerce are delegated certain degree of authority to deal with investors in areas of their responsibility.

Agency	Address/telephone/fax	Functions
Office of the Board of Investment	Northern Investment Promotion Office 369/1 Charoenrat Rd., Muang District, Chiang Mai 50000 Telephone: (66 53) 248 778 Fax: (66 53) 240 919	Administer investment incentives and provide information services.
	Northeastern Investment Promotion Office 555/1-5 Mittraphap Road, Muang District, Nakhon Ratchasima 30000 Telephone: (66 44) 257 341 Fax: (66 44) 257 340	
	South Investment Promotion Office 7-15 Juthi-Uthit Road, Hadyai, Songkhla 90110 Telephone and Fax: (66 74) 239 306 / 237 200	
	Eastern Region Investment and Economic Centre, Laem Chabang Industrial Estate Building Km. 126-129, Sukhumvit Road, Sriracha District Cholburi 20230 Telephone: (66 38) 490 477-8 Fax: (66 38) 490 479	

## 2. Most Favoured Nation Treatment / Non-discrimination between Source Economies

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (eg. limits in terms of sector, threshold value or otherwise).

The Alien Business Law is not applicable to aliens engaging in business in Thailand by permission of the Thai Government for a definite duration or by an agreement between the Royal Thai Government and a foreign government. Access to certain service sectors is on a reciprocal basis.

2. List and description of any international agreements to which your economy is a party which provides for a possible exception to MFN treatment.

Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America.

## 3. National Treatment

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Sector	Nature of Exception (eg prohibition, limitation, special conditions and special screening)
Category A Rice farming, salt farming including salt mining except rock salt, Internal trade in local agricultural products, Land trade, Accounting, Law, Architecture, Advertising, Brokerage or agency, Auctioning,	Foreign equity participation must be lower than half of the registered

Barbering, hair dressing and beautification, Building construction.	capital.
<p>Category B</p> <p>Cultivation, Orchard farming, Animal husbandry including silk worm raising, Timbering, Fishing, Rice milling, Flour making from rice and other cash crops, Sugar milling, Manufacture of alcoholic and non-alcoholic drinks and beverages, Ice making, Manufacture of pharmaceuticals, Cold storage, Timber processing, Manufacture of gold, silver, nielloware and stone inlaid products, Manufacture or casting of Buddha images and bowls, Wood carving, Manufacture of lacquerware, Manufacture of matches, Manufacture of white cement, Portland cement and cement finished products, Dynamiting or quarrying of rocks, Manufacture of plywood, veneer wood, chipboard and hardboard, Manufacture of garments or footwear except for exports, Printing, Newspaper publishing, Silk spinning, weaving or silk fabric printing, Manufacture of finished products from silk fabric, silk yam or silk cocoons, All retaining except for items included in category C, Ore trading except items included in Category C, Selling of food and drinks except items included in Category C, Trading of antique, heirloom or fine arts objects, Tour agency, Hotel business except hotel management, Business under the law on service providing establishments, Photography, photographic developing and printing, Laundry, Tailoring and dressmaking, Internal transportation by land, water or air</p>	Foreign equity participation must be lower than half of the registered capital except entities granted investment promotion by the Board of Investment.
<p>Category C</p> <p>All wholesale trade except items including in Category A, All exporting, Retailing of machinery, equipment and tools, Selling of food or beverages for the promotion of tourism, Manufacture of animal feeds, Vegetable oil extracting, Textile manufacturing including yam spinning, dyeing and fabric printing, Manufacture of glassware including light bulbs, Manufacture of food bowls and plates, Manufacture of stationery and printing paper, Rock salt mining, Mining, Service businesses not included in Category A or Category B, Other construction not included in Category A</p>	Foreign equity participation must be lower than half of the registered capital except in case of permission by the Director-General of Department of Commercial Registration or investment promotion by the Board of Investment.

2. *Description of nature and scope of any limitations on foreign firms' access to sources of finance.*  
There is no limitations on firms' access to sources of finance on the basis of their nationality.

#### **4. Repatriation and Convertibility**

1. *List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*  
Not applicable.

2. *Brief description of the foreign exchange regime.*

The Bank of Thailand had been entrusted by the Ministry of Finance with the responsibility of administration of foreign exchange. The exchange rate of the Thai baht continues to be determined by a basket of currencies of Thailand's major trading partners. All foreign exchange transactions are to be conducted through authorised banks. Authorised persons (money changers) only engage in the purchase of foreign notes and travellers' cheques and the selling of foreign notes.

3. *Restrictions on the convertibility of currencies for the overseas transfer of funds.*

There are no restrictions on the convertibility of currencies for the overseas transfer of funds related to foreign investment.

## 5. Entry and Sojourn of Personnel

1. *Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

All persons, other than those in transit and citizens of certain countries, are required to obtain a visa to enter Thailand. There are six types of visas, namely transit, visitor transit, tourist, non-immigrant, immigrant and non-quota immigrant. Non-resident staff of foreign firms must obtain a nonimmigrant visa. There are several categories of non-immigrant visas, including business visa (category B), business approved visa (category B-A) and investment and business visa (category IB). Business visa can be obtained from Thai embassies and consulates in respective countries. The holders of business visa (category B) are entitled to stay in Thailand for 90 days. As a part of the efforts to facilitate foreign investment, the investment and business visa (category I-B) is issued to foreign staff working under investment projects promoted by the Board of Investment.

A work permit is also required for foreign nationals intending to work or to conduct business in Thailand. The Office of the Board of Investment facilitates the application for work permits for foreign staff working under investment projects promoted by the Board of Investment.

2. *List and briefly description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

Restrictions	Description
The Alien Employment Act of July 8, 1978 requires that natural persons not of Thai nationality must obtain a work permit to work in Thailand.	A Royal Decree listed 39 occupations closed to aliens.

3. *Description of regulations relating to personnel management of foreign firms, eg. minimum wage laws, minimum requirements for training or employment of local staff.*

The Thai Government enforces minimum daily wages which vary from one area to another. The official minimum wages are as follows (effective since July 1, 1995):

- Bangkok, Samutprakan, Nonthaburi, Pathumthai, Phuket, Nakon Pathom, Samut Sakon: Baht 145.
- Pangnga, Ranong, Cholburi, Saraburi, Nakon Ratchasima, Chiangmai: Baht 126.
- Other Provinces: Baht 118.

There is no requirement as to the minimum number of local staff that foreign firms have to hire or train.

4. *List and provide a summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.*

Thai labor laws and regulations are equally applied to local and foreign firms.

Law	Summary
Labor Relations Act of 1975	The Labor Relations Act is designed to regulate the labor- management relations, setting our procedures for presentation of demands. Negotiations between employers and employees, mediation by the officials of the Ministry of Labor and Social Welfare, and arbitration by the Labor Relations Committee.
Labor Protection Laws	Protection such as work hours and holidays; wages, overtime and holiday pays; compensation; severance pay and termination; and welfare.
Social Security Act of 1990	This Act governs the social security fund and labor compensation benefits.

## 6. Taxation

1. *List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

Taxation arrangements	Summary
<b>Corporate Income Tax</b>	Incorporated firms operating in Thailand pay income tax at the rate of 30% of net profit. Foundations and associations pay income tax at the rate of 2-10%

	of gross business income, depending on types of activity. International transport companies pay at the rate of 3% of gross ticket receipts or gross freight charges.
<b>Value-Added Tax</b>	The value-added tax (VAT) system was introduced on January 1, 1992, largely replacing the business tax system. Value added at every stage of production process is subject to 7% tax rate.
<b>Specific Business Tax</b>	A specific business tax of not more than 3% is imposed in lieu of VAT in the following businesses: <ul style="list-style-type: none"> <li>• commercial banks and similar businesses;</li> <li>• finance companies and credit fonciers;</li> <li>• sale of non-movable properties;</li> <li>• insurance companies; and</li> <li>• sale on the stock exchange.</li> </ul>
<b>Withholding Tax</b>	Withholding tax applies to profits transferred or deemed transferred from a Thailand branch to its head office overseas. It is levied at the rate of 10% of the amount to be remitted before tax. However, outward remittances for the purchase of goods, certain business expenses, principal on loans to different entities and returns on capital investment are not subject to a withholding tax.
<b>Double Taxation Avoidance</b>	Thailand has entered into treaties on the avoidance of double taxation with 26 countries. Generally, these treaties provide that profits shall only be taxable if the taxpayer has a permanent establishment in Thailand. A system of tax credits is also established where income is otherwise taxable in both countries.

## 7. Performance Requirements

1. *Brief description of performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).*

Performance requirements applied by Thai authorities include the local content requirement and export condition. Both requirements are enforced by the Board of Investment. According to the TRIMs Agreement, Thailand has an obligation to phase out the local content requirement by January 1, 2000. Since April 1, 1993, the Board of Investment has lifted the local content requirement on many products. The export performance requirement is a condition attached to the joint venture criteria applied in granting investment promotion. Manufacturing projects located in certain areas (zones 1 and 2) must export at least 50% of total sales if foreign nationals hold a majority of the shares, and must export at least 80% if the projects are wholly foreign-owned.

## 8. Capital Exports

1. *List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

Regulations	Application and function
Foreign Exchange Control	Residents can provide direct foreign investments or loans to their affiliated abroad not exceeding \$US 10 million a year without prior authorisation

2. *List and brief description of regulations/institutional measures that limit technology exports.*  
Not applicable.

## 9. Investor Behaviour

1. Any law, regulation or administrative guideline/policy, of which the observance by foreign Investors is of particular concern to the member economy.

Alien Business Law.

National Environmental Protection and Promotion Act of 1992.

## 10. Other measures

1. Brief outline of the competition policy regime.

**Price Controls** - According to the Price Control and Anti-Monopoly Act of 1979, the Central Board chaired by the Minister of Commerce is authorised to declare certain goods as being controlled, with the approval of the Cabinet. Once the Board has issued a price control order, the price of the goods concerned cannot be altered without the permission of the Central Board Secretary General.

**Anti-Monopoly** - The Price Control and Anti-Monopoly Act provides that if any business has a monopolistic nature or free competition is limited, the Central Board has the power to declare it a controlled business. Factors that the Board may take into consideration when deciding whether any goods are monopolised or not include number of producers and sellers; types of goods that are similar and limited in variety; abrupt changes in the quantities of the goods on the market; and ease of product introduction to the market.

2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

Trademark Act of 1991

The Trademark Act of 1991 governs registration of and provides protection for trademarks, service marks, certification marks and collective marks. It also protects trademark owners and imposes criminal liabilities on infringers of a trademark owner's rights. Trademark registration is effective for a period of 10 years.

Patent Act of 1992

The Patent Act protects both inventions and product designs. Patents are valid for a period of 20 and 10 years from the date of application in case of inventions and product designs respectively.

Copyright Act of 1994

The Copyright Act of 1994 became effective on March 22, 1995, replacing the Copyright Act of 1978. It protects literary and artistic works as well as performance rights for a certain period of time by making it unlawful to reproduce or publish such works without the owner's permission. This Act complies with the standards of the Agreement on Trade Related Aspects of Intellectual Property (TRIPs) and the Paris Act of the Berne Convention. A copyright in literature, drama, artistry and music is valid throughout the life of the creator and for another 50 years thereafter, starting from the date of the creator's death. In case that the creator is a juristic person, the copyright shall be valid for 50 years from the creation of the work, and if the work is published during this period, the copyright shall be valid for 50 years from the date of the first publication. A copyright in photography, audiovisual materials, cinematography, recorded materials and disseminated sound and disseminated pictures is valid for 50 years from the creation of such works. If these works are published during this period, the copyright shall be valid for 50 years from the date of the first publication. The copyright in applied artistic work is valid for 25 years from the date of creation or the date of the first publication.

Computer programs are also protected under the Copyright Act. In case of a natural computer program writer, the protection for computer programs is valid throughout the life of the writer and extends until the end of 50 years from the writer's death. If the writer is a juristic person, the term of protection is 50 years from the date of creation. If the program is published during this period, the protection shall be valid for 50 years from the date of the first publication.

Enforcement

Thailand is exceeding its obligations under the TRIPs Agreement by setting up an intellectual property and international trade court. The Ministry of Justice has submitted a bill to establish this specialised court.

## C. INVESTMENT PROTECTION

### 1. Expropriation and Compensation

1. List of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.

Laws/Regulations	Application and function
Investment Promotion Act of 1977 Amended in 1991	The Investment Promotion Act provides investment projects promoted by the Board of Investment with the guarantee against:

	<ul style="list-style-type: none"> <li>• nationalisation;</li> <li>• competition from new state enterprises;</li> <li>• monopolisation of sales of similar products;</li> <li>• price control;</li> <li>• export restriction; and</li> <li>• duty-free imports by government agencies or state enterprises.</li> </ul>
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2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

## 2. Settlement of Disputes

1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.

Agreement for the Promotion and Protection of Investments

In most cases, the settlement of disputes between the Contracting Parties concerning the interpretation of an application of the agreement shall be settled through consultation or negotiation. If the disputes cannot be settled within, in most cases, 6 months, it shall be submitted to an arbitral tribunal of 3 members. The tribunal shall reach its decision by a majority of votes.

Disputes between a Contracting Party and a National or Company of other Contracting Parties should be solved as follows:

- (1) by consultation between the parties concerned;
- (2) within the period of time (mostly 3 months), if the consultation does not result in a solution, the disputes can be submitted to the:
  - competent courts of the Contracting Party in the territory of which the investment has been made or
  - the International Center for Settlement of Investment Disputes (ICSID) in case that both parties are Contracting States to the Convention.

Domestic Laws and Procedures Available for Arbitration in Thailand

- Arbitration Rule of the Arbitration Institute, Ministry of Justice.
- Conciliation Rule of the Arbitration Institute, Ministry of Justice.
- Thai Commercial Arbitration Rules, Office of the Arbitration Tribunal, Board of Trade of Thailand.
- Petroleum Act of 1971, Ministry of Industry.

It should be noted that more and more foreign parties are now resorting to the Thai Commercial Arbitration Rules, which are administered by the Board of Trade of Thailand, and the Arbitration Rules of the Arbitration Institute of the Ministry of Justice, the service of which is entirely private and unrelated to the official duty of the Ministry of Justice.

Agency	Address/telephone/fax
Board of Trade of Thailand	150 Rajbopit Road, Bangkok 10200 Telephone: (66 2) 221 0555, 221 1827, 221 9350 Fax: (66 2) 225 3995
Arbitration Institute	Ministry of Justice, Rachadaphisek Road, Chatuchak, Bangkok 10900 Telephone: (66 2) 541 2298-9, 541 2271 Fax: (66 2) 541 2298-9



2. *Signatory or accession to the ICSID Convention*  
No.

**D. INVESTMENT PROMOTION AND INCENTIVES**

1. *Brief description of investment promotion programs offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers.*

Program	Nature of incentive	Contact point
Investment Promotion	The Board of Investment offers to both tax and non-tax incentives to local and investors on a non-discriminatory basis. The present incentives scheme is geared towards encouraging industrial decentralisation. The magnitude of incentives depends on the location of an investment project. More remote areas are granted more tax incentives to lure companies to locate upcountry. Major tax incentives include tax holidays, exemption or reduction of import duties on machinery and exemption or raw materials. No tax incentives are offered at a sub-national level.	Office of the Board of Investment 555 Vipavadee-Rangsit Road, Chatuchak, Bangkok 10900 Telephone: (66 2) 537 8111, 537 8155 Fax: (66 2) 537 8188, 537 8177

2. *Brief description of fiscal, financial, reduction of import duties on tax or other incentives offered at both the national and subnational level (eg. tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

Please refer to Section D(1).

3. *Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number.*

Agency	Address/telephone/fax
Investment Services Center, Office of the Board of Investment	555 Vipavadee-Rangsit Road, Chatuchak Bangkok 10900 Telephone: (66 2) 537 8111, 537 8155 Fax: (66 2) 537 8188, 537 8177

**E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

*1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

Agreement	Provisions
Friendship Commerce and Navigation Treaties	
Bilateral Investment Treaties <ul style="list-style-type: none"> <li>• Treaty of Amity and Economic Relations between Thailand and the United States</li> <li>• Agreement for the Promotion and Protection of Investments with Germany, Netherlands, Great Britain and North Ireland, Canada, People’s Republic of China, BelgoLuxemberg Economic Union, ASEAN (except Vietnam), Bangladesh, Korea, Lao People’s Democratic Republic, Czech and Slovak Federal Republic, Hungary, Vietnam, Peru, Poland, Romania, Czech Republic, Finland, Cambodia and Philippines</li> </ul>	
Regional or sub regional Investment Treaties <ul style="list-style-type: none"> <li>• ASEAN Agreement of the Promotion and Protection of Investments</li> </ul>	

**F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

*1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward).*

Net foreign direct investment in Thailand peaked in 1990, with a total of 64.7 billion baht, and then declined in subsequent years. The share decline in 1994 was due to the change in reporting as a result of companies’ extensive shift to Bangkok International Banking Facilities (BIBF) in lieu of foreign equity or investment loans. Moreover, some foreign companies already existing in Thailand resort to reinvestment and alternative sources of funds for their expansion in Thailand. Japan and the United States still maintain a major share in total net FDI. Industry receives the largest share of FDI.

Net Foreign Direct Investment in Thailand Classified by Country  
Unit: Million Baht

Japan	8,571.8	9,651.8	3,079.4	6,207.1
Hong Kong	14,549.0	4,424.3	3,224.7	2,149.6
Chinese Taipei	2,220.8	1,539.4	2,364.1	849.4
U.S.A.	11,788.3	7,726.9	4,117.8	5,078.3
EU	6,886.9	6,587.8	2,648.3	1,944.5
ASEAN	7,170.0	5,687.0	-2,575.4	-4,777.9
Switzerland	776.5	275.7	673.8	271.2
Korea	262.4	369.0	323.0	117.5
China	-112.8	177.0	-29.9	-43.6
Australia	169.3	-953.1	271.7	177.1
Canada	89.6	152.3	115.2	69.5
Others	1,392.5	6,235.0	741.0	685.3
Total	53,764.3	41,873.1	14,953.7	12,589.0

2. *List of the major countries/economies that are sources/receivers of FDI over recent years.*

**Sources of FDI**

Japan, United States, Chinese Taipei, Hong Kong and Singapore.

**Destination of Thai FDI**

People's Republic of China, Indochinese States, and Myanmar.

# THE UNITED STATES OF AMERICA

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# THE UNITED STATES OF AMERICA

## A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

### *1. Summary of foreign investment policy including any recent policy changes*

It is the policy of the United States government to regulate foreign investment as little as possible and there is no single statute that governs foreign investment. An open and liberal investment regime fosters economic growth and increases competitiveness of companies. As competition for investment capital stiffens in the 1990s, it is increasingly important to offer a stable, non-discriminatory environment to encourage investors. The United States continues to provide such an investment regime, but also expects its investors to be treated similarly.

The United States is the world's largest economy and the world's largest host of foreign direct investment (FDI). Foreign investors are attracted to the United States' talented and skilled labor pool as well as the opportunity to create strategic alliances in the country's strong, competitive industries.

U.S. policy towards foreign direct investment has not changed in any substantial way for decades. The investment regime is characterized by a high degree of openness, and is based on the principle of national treatment. Foreign investors are provided fair, equitable and, for the most part, non-discriminatory treatment. The few exceptions to this policy are generally for reasons of national security or prudential considerations and should be viewed in the context of the overall stability and openness of the U.S. investment regime. In addition, the United States offers an investment regime in which investors have non-discriminatory legal recourse in the event of a dispute, free transferability of capital and profits, guarantees against expropriation, unparalleled infrastructure and a low tax burden.

### *2. Summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment*

President Clinton, in a speech on February 26, 1993, said "(We) will welcome foreign investment in our businesses, knowing that with it new ideas as well as capital...new technologies, new management techniques and new opportunities arise for us to learn from one another and grow. But as we welcome that investment, we insist that our investors should be equally welcome in other countries...We welcome the subsidiaries of foreign countries on our soil. We appreciate the jobs they create and the products and services they bring. But we do insist simply that they pay the same taxes on the same income that our companies do for doing the same business..."

## B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

### 1. Transparency

#### *(i) Statutory (legislative) requirements*

##### *1. List and summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.*

#### Constitutional Provisions

The Constitution of the United States contains several provisions that guarantee economic freedom. These guarantees generally benefit foreign investors. Among these are Articles I, III, and VI, and the Fifth, Thirteenth and Fourteenth Amendments.

Article I, Section 8 provides, in part, that: all duties, imposts and excises shall be uniform throughout the U.S.; foreign and interstate commerce will be regulated by the federal government through Congress; there shall be a uniform bankruptcy law which would free assets that would otherwise be tied up in bankruptcy; and authors and inventors shall have exclusive rights for their works and inventions for a period of time. Article I, Section 9 provides that neither Congress nor the states of the United States can tax exports and prohibits preferences on the regulation of commerce or revenue to ports of one state over other states. Article I, Section 10 provides that the states generally cannot act in a certain manner to impair contractual obligations. Article III provides for federal courts to resolve issues arising under the Constitution and federal law.

The Fifth Amendment includes the takings clause that provides that no "private property shall be taken for public use without just compensation." This constitutional requirement is consistent with international rules on expropriation. The Fifth Amendment also provides that no person shall be "deprived of life, liberty, or property, without due process of law." The Thirteenth Amendment prohibits involuntary servitude and the Fourteenth Amendment provides that states shall not "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

These provisions, as well as other provisions in the Constitution, have been interpreted by the U.S. Supreme Court in numerous cases dealing with specific rights to economic freedom. For example, the guarantee of

freedom of speech in the First Amendment has been interpreted to cover, in certain instances, “commercial” speech by which manufacturers, retailers, and service providers transmit information to the general public. Analyzing the interstate commerce clause and equal protection clause, the Supreme Court has also determined that foreign corporations incorporated in one state cannot be charged a tax or fee as a condition to doing business in another state and that states cannot impose more burdensome regulations on foreign corporations than they do domestic corporations unless they are rationally related to a legitimate state purpose.

#### General Laws Affecting All Investments

The United States has a host of federal, state and local laws that affect investment, the vast majority of which are applied without regard to the nationality of the investor. These include laws and regulations governing anti-trust, mergers and acquisitions, wages and social security, export controls, environmental protection and health and safety. While such laws and regulations obviously have a significant impact on investment decisions, they are applied in a non-discriminatory fashion and so are not addressed in this paper.

#### Selected Laws That Affect Domestic And Foreign Investment Differently

##### (a) Laws that protect national security

In addition to restrictions in specific industry sectors discussed below, the Exon-Florio Amendment to the Defense Production Act provides the President with authority to review, and in certain circumstances, suspend or prohibit any merger with, or acquisition of, a U.S. company by a foreign person, should he determine that there is credible evidence of a threat to the national security and that other laws and regulations are not adequate or appropriate to protect it. The law provides a framework for a maximum 90-day review of notified transactions. This period includes a 30-day initial review, an extended 45-day period, if necessary, to do an investigation, and 15 days for the President to announce his decisions. Exon-Florio regulations have been published in the Federal Register and thus are a matter of public record. Domestic and foreign parties alike had opportunity to comment on these Exon-Florio procedures. As of April 1996, of over 1,000 notified transactions, only 15 have been investigated, and only one has been blocked.

##### (b) Laws that protect classified information

The Executive Orders and Defense Department regulations which constitute the Industrial Security Program may make it difficult for foreign corporations to obtain the security clearances necessary to carry out a contract involving classified information. Both a facility clearance and individual clearances for key management personnel and others who may have access to classified information are required for any company in the United States carrying out a classified contract. Generally, facilities under “foreign ownership, control, or influence” are ineligible for facility clearances, unless foreign management is excluded. A foreign-controlled U.S. subsidiary might obtain clearances by forming a “voting trust” or “proxy agreement” in which it gives up management rights, but retains rights to profits, or by formally agreeing to special management arrangements to ensure the security of the classified information.

#### (ii) Investment Review and Approval

- 1. Details of proposals and sectors that are/are not subject to screening.*
- 2. For each proposal, details of guidelines/conditions that apply for screening (e.g. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Details of any special conditions that apply to individual sectors.*

The United States has no screening process for foreign direct investment (FDI). The United States has consistently welcomed FDI, providing foreign investors fair, non-discriminatory treatment both as a matter of law and practice. Foreign investors generally are free to either establish new businesses or acquire existing ones subject only to the laws and regulations applicable to all firms, irrespective of nationality. Exceptions to non-discriminatory treatment have been made primarily to protect the national security, and have focused on investment in discrete sectors, such as air and water transport, nuclear energy and telecommunications.

- 3. How to obtain application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.*

Not applicable.

- 4. Contact point(s) to which applications should be made.*

Not applicable.

- 5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.*

Not applicable.

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested. Description of appeal processes and the average time for an appeal to be considered.*

Not applicable.

7. *Description of conditions that need to be met for an expedited review of a foreign investment proposal*

Not applicable.

8. *List of agencies that consider foreign investment related complaints, the types of complaints that the agency deals with and how the agency can be contacted for appeals (provide addresses, and phone/fax numbers for these agencies)*

Not applicable.

9. *List of agencies responsible for monitoring/enforcing compliance with foreign investment laws/regulations and the functions in relation to enforcement for which they are responsible. Addresses and phone/fax numbers for these agencies*

Not applicable.

10. *Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime.*

See section B(1)(i)(1) above.

11. *Where applicable, the role for sub national agencies in the approval process.*

State and local governments also have laws and regulations which affect the operations of businesses located in their territory, but the ability of these governments to regulate investment in a manner which discriminates between residents of the state or companies incorporated in it and residents or companies from other states (or, for that matter, other countries) is severely constrained by the Inter-state Commerce Clause of the U.S. Constitution. Accordingly, state laws outside the areas of general company law, real estate, and banking and insurance (areas in which Congress has specifically delegated regulatory authority to the states), will generally apply equally to all persons residing in them and to all companies or other business entities doing business there. Where there may be differences of treatment, these are minor and can frequently be eliminated through simple incorporation in the state.

## **2. Most Favoured Nation Treatment / Non-discrimination between Source Economies**

and

### **3. National Treatment**

1. *List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (e.g. limits in terms of sector, threshold value or otherwise).*

2. *List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (e.g. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing)*

3. *Description of nature and scope of any limitations on foreign firms' access to sources of finance.*

Atomic Energy -- Aliens and entities owned, controlled or dominated by aliens or foreign governments may not engage in operations involving the utilization of atomic energy. This restriction applies primarily to nuclear reactors and reprocessing plants extracting plutonium.

*Authority:* Atomic Energy Act. 42 U.S.C. §§2011 et seq. (1954).

Customs House Brokers -- To obtain a license to operate a customs brokerage, one officer or partner of a firm must be a licensed customs broker and a U.S. citizen.

*Authority:* Tariff Act (1930), 19 U.S.C. §1641(b).

Licenses for Broadcast, Common Carrier, and Aeronautical Radio Stations -- For radio, broadcasting, and telephone companies in regard to common carrier radio licenses, U.S. enterprises with foreign ownership exceeding 20%, aliens, and foreign corporations may not be granted the relevant license. When a corporation is directly or indirectly controlled by another corporation, the Federal Communications Commission (FCC) may refuse to approve a license if more than a 25% interest in the controlling company is foreign and if the FCC finds it in the public interest to do so. Aliens, foreign corporations or any corporation of which any officer or director is an alien may not hold broadcasting, common carrier or aeronautical radio licenses. Moreover, aliens, foreign corporations or foreign governments may not own or vote more than 20% of the stock of U.S. corporations holding radio licenses for such services. There are additional restrictions on the nationality of

management that apply in the case of broadcasting companies, and telephone companies having a common carrier radio license.

*Authority:* Communications Act of 1934. 47 U.S.C. §§151 et seq., see particularly §§310(b).

COMSAT -- Foreign-controlled enterprises and all other foreigners may not hold in aggregate more than 20 % ownership in the Communications Satellite Corporation.

*Authority:* Communications Satellite Act (1962). 47 U.S.C. §734(d).

Subsidies or Grants Including Government Supported Loans Guarantees and Eligibility for Overseas Private Investment Corporation (OPIC) -- insurance and guarantees for investments in eligible developing countries is limited to entities organized in the U.S. and substantially (more than 50 %) beneficially owned by United States citizens, or to foreign entities at least 95 % owned by U.S. citizens.

*Authority:* Foreign Assistance Act (1961). 22 U.S.C. §2198(c).

Advanced Technology Program -- To receive financial assistance under the Advanced Technology Program, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a U.S.-owned company or a company incorporated in the United States whose parent is incorporated in a country which (1) affords to U.S.-owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; (2) affords U.S.-owned companies local investment opportunities comparable to those afforded any other company; and (3) affords adequate and effective intellectual property rights to U.S.-owned firms.

*Authority:* American Technology Pre-eminence Act of 1991. 15 U.S.C. §278h.

Technology Reinvestment Project -- To participate in the Technology Reinvestment Project, a company must conduct a significant level of its research, development, engineering, and manufacturing activities in the United States, or in a U.S.-owned company. A foreign-owned firm may be eligible if its parent company is incorporated in a country whose government encourages U.S.-owned firms' participation in research and development consortia to which that government provides funding, and affords effective intellectual property rights for U.S. companies.

*Authority:* Defense Conversion, Reinvestment and Transition Assistance Act of 1992. 10 U.S.C. §2491.

Energy -- To receive financial assistance under the Energy Policy Act, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a U.S.-owned company or a company incorporated in the United States whose parent is incorporated in a country which (1) affords to U.S.-owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; (2) affords U.S.-owned companies local investment opportunities comparable to those afforded any other company; and (3) affords adequate and effective intellectual property rights to U.S.-owned firms.

*Authority:* Energy Policy Act of 1992. 42 U.S.C. §13525.

Agriculture- Foreign-controlled U.S. enterprises cannot obtain special government emergency loans for agricultural purposes.

*Authority:* 7 U.S.C. §1922. 7 U.S.C. §1941. 7 U.S.C. §1961.

State and Local Measures Exempt from Article 1102 of the NAFTA Pursuant to Article 1108 thereof -- The NAFTA allows certain laws that do not conform with NAFTA's national treatment obligations to be grandfathered. These measures at the state level that were in effect on January 1, 1994, are automatically grandfathered for two years. After two years any state level measure otherwise prohibited in NAFTA must be noted in order to remain in effect. Measures in effect on January 1, 1994, on the local level are grandfathered forever.

Landing of Submarine Cables -- The Federal Communications Commission (FCC), under delegated authority from the President of the United States with concurrence of the State Department, is authorized to issue licenses to land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country. Under the Submarine Cable Landing License Act of 1921, the FCC may withhold or revoke licenses if such action will assist, *inter alia*, in securing cable landing rights for U.S. citizens in foreign countries.

*Authority:* Submarine Cable Landing Act. 47 U.S.C. §34-39.

Fisheries -- Foreign-controlled enterprises may not engage in certain fishing operations involving coastwise trade. In addition, foreigners may not hold more than a minority of shares comprising ownership in companies owning vessels which operate in U.S. fisheries. Also, corporate organization requirements pertain to the registration of flag vessels for fishing in the U.S. Exclusive Economic Zone.

*Authority:* Anti-Reflagging Act (1987).

Foreign-flag vessels may not fish or process fish in the 200-nautical-mile U.S. Exclusive Economic Zone except under the terms of a Governing International Fisheries Agreement (GIFA), or other agreement consistent with U.S. law.

*Authority:* Magnuson Fishery Conservation and Management Act (1976).



Air and Maritime Transport, and Related Activities -- Air transport, cabotage and exercise of U.S. international air route rights are reserved to national airlines controlled by U.S. citizens, and owned 75 % or more (voting stock) by U.S. citizens.

*Authority:* Federal Aviation Act (1958). 49 U.S.C. 41703.

Air transport (freight forwarding and charter activities) -- A reciprocity test on air freight forwarding and air charter activities applies any time a foreign-owned firm seeks authority to provide indirect air transportation either by cross-border or establishment for U.S.-originating traffic. If a favorable determination is made by the Department of Transportation, indefinite registration is granted to the applicant, and subsequent applications of the same applications of the same nationality are routinely approved.

*Authority:* 49 U.S.C. 40109 [formerly Section 416 of the Federal Aviation Act (1958)]; 14 CFR 297,380 Subpart F.

Maritime transport -- The Federal Maritime Commission is authorized to take unilateral action when a foreign government, foreign carrier or other persons providing maritime-related services engages in activity that adversely affects U.S. carriers in U.S. ocean-borne trade; creates conditions unfavorable to shipping in the foreign trade; or unduly impairs access by U.S.-flag vessels to trade between foreign ports. Sanctions proposed under these statutes most frequently affect the cross-border provision of services, however, sanctions could affect a foreign-owned investment established in the U.S. (e.g. revocation of freight forwarders' licenses, suspension of preferential terminal leases).

*Authority:* Foreign Shipping Practices Act (1988), Merchant Marine Act (1920) Section 19, Shipping Act (1984) §13(b)4.

Banking, Insurance, Securities and Other Financial Services Banking and Securities -- As of August 1989, the Federal Reserve may refuse to designate as a primary dealer a foreign-controlled commercial or investment bank if the government of the home country of the foreign bank denies national treatment to U.S.-owned banks for government securities operations. Denial of the primary dealer designation means that the Federal Reserve, at its initiative, will no longer deal with that firm in the conduct of monetary policy. The firm, at its initiative, can continue unencumbered to purchase U.S. Government securities in government auctions.

*Authority:* Primary Dealers Act of 1988. 22 U.S.C. §§5341-5342.

Banking and Securities -- Indentures must have at least one trustee organized and doing business in the U.S. The Securities and Exchange Commission can provide an exemption to this rule.

*Authority:* The Trust Indenture Act of 1939.

Banking, Insurance, Securities and Other Financial Services -- There are also reciprocity provisions in the financial services field (including banking, securities and insurance).

Insurance -- Regulation of the insurance industry is not done at the federal level. The one major exception to the policy of national treatment in the insurance sector is the licensing restriction as it relates to government-owned applicants. A few states prohibit the licensing of companies owned or controlled by foreign governments.

Mineral Land Leasing Act -- The Mineral Leasing Act (1920) makes public lands available for leasing only to citizens of the United States, associations of such citizens, or corporations organized under the laws of the United States, with respect to acquiring rights of way for oil pipelines, or leases or interests therein for mining coal, oil or certain other minerals. Non-U.S. citizens may, however, own a 100% interest in a U.S. corporation that acquires a right-of-way for oil or gas pipelines across onshore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared to the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries.

*Authority:* Mineral Land Leasing Act (1920). Chapter 3A, 10 U.S.C. §7435.

Under current U.S. law, treatment of foreign investors in air transport-related activities (i.e. freight forwarding, air charter), submarine cable landing rights, oil and gas pipelines across on-shore federal lands, leases to develop mineral resources on federal lands, primary dealers in financial services, and maritime shipping is conditioned on the way U.S. investors are treated in those activities in the foreign investors' home country. Also, activity concerning the designation of primary dealers and certain technology assistance programs such as the Advanced Technology Program, the Technology Reinvestment Project and the Energy Policy Program contain reciprocity requirements. There are also reciprocity provisions in the financial services field (including banking, securities and insurance).

#### **4. Repatriation and Convertibility**

*1. List and description of any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.*

There are no restrictions on foreign payments except for those imposed under Treasury Department regulations on transactions involving the governments or nationals of Cuba and the Democratic People's Republic of

Korea, the governments of Iraq and Libya, certain terrorists who threaten to disrupt the Middle East peace process, and designated persons related to Colombian drug trafficking. Treasury regulations also restrict most payment transactions involving Iran, and payment transactions involving prohibited exports to UNITA or to the territory of Angola. Transfers of funds are also prohibited to persons in Iraq pursuant to United Nations Security Council resolutions, and to or through Cuban, Iraqi and Libyan financial institutions or to entities owned or controlled by these governments. Certain payments to Cuba, Iran and North Korea related to exempted or authorized travel transactions are permitted, as are certain payments in connection with travel to and within the United States by nationals of these countries. Payment transactions relating to international trade in most information and informational materials are exempt from Treasury regulation.

*2. Brief description of the foreign exchange regime*

The United States formally accepted the obligations of Article VIII, Sections 2, 3 and 4 of the International Monetary Fund Agreement as from December 10, 1946. The U.S. dollar is a freely usable currency as defined in Fund Agreement Article XXX(F). The U.S. authorities do not maintain margins in respect of exchange transactions, and spot and forward exchange rates are determined on the basis of demand and supply conditions in the exchange markets. However, the authorities intervene when necessary to counter disorderly conditions in exchange markets or when otherwise deemed appropriate. There are no taxes or subsidies on purchases or sales of foreign exchange.

*3. Restrictions on the convertibility of currencies for the overseas transfer of funds.*

See section B(4)(1) above.

## **5. Entry and Sojourn of Personnel**

*1. Permits/entry visa requirements for non-resident staff of foreign firms and description of the nature of the entry restriction.*

*2. List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.*

The United States Immigration and Nationality Act and accompanying implementing regulations establish a clear process through which foreign nationals may apply for nonimmigrant visas to work in the United States. Principal categories include international, intracompany transfer of executives, managers and persons with specialized knowledge (L-1) visas. Treaty trader (E-1) and treaty investor (E-2) visas are also made available to nationals of countries which are parties to Treaties of Friendship, Commerce and Navigation with the United States. The E-2 treaty investor visas are also available to nationals of countries with which the United States has Bilateral Investment Treaties. "H" visas allow persons of skilled and unskilled professions in short supply to work in the United States on a temporary basis.

The E-1 treaty trader visa allows a foreign national to enter the United States to carry on substantial trade, which may include trade in services or technology, principally between the United States and the treaty country. The E-2 treaty investor visa allows a foreign national to enter the United States for the purpose of establishing, developing, administering or advising on the operation of an investment. The holder of a treaty investor visa must have committed or be in the process of committing a substantial amount of capital to the investment; "substantial amount of capital" is explained in the regulations not in fixed terms, but in terms of the kind of enterprise in which the investment is made and the proportional amount of capital invested in such an enterprise.

All of these visa categories enable foreign nationals to enter the United States and lawfully accept employment. No numerical quotas exist for treaty trader, treaty investor, and intracompany transferee visas. A treaty investor may remain in the United States for an indefinite period, as long as the qualifying investor maintains the appropriate relationship to the investment. In negotiating treaties to grant E-2 status, the United States looks to a reciprocal practice for U.S. investors who seek to enter, stay and work in the foreign investor's home country. The United States amended the Immigration and Nationality Act to create a separate, additional investment immigration visa process. In general, a foreign national may apply for immigration under this program by investing a minimum of one million dollars and creating employment for a minimum of 10 or more U.S. citizens or lawful permanent residents. Lower limits may apply if the investments are made in designated economic hardship areas.

3. *Description of regulations relating to personnel management of foreign firms, e.g. minimum wage laws, minimum requirements for training or employment of local staff;*  
and

4. *List and provide a summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations*

Generally U.S. labor laws apply to all foreign employers operating within the territorial jurisdiction of the United States *see, e.g., Avagliano v. Sumitomo Shoji Americana, Inc.*, 457 U.S. 176 (1982)(Civil Rights Act of 1964, 42 U.S.C. Sec. 200e applied to a foreign corporation doing business in the United States unless specifically exempted by the terms of a treaty); *Wirtz v. Healy*, 227 F. Sup. 123 (M.D. III.1964). *Cf. Goethe House New York v. NLRB*, 869 F.2d 75 (2d Cir. 1989), *cert. denied*, 493 U.S. 810 (1989). Labor statutes such as the National Labor Relations Act and Title VII by their terms apply to an “employer” and that term is defined in a manner that does not exclude foreign corporations. See National Labor Relations Act. Sec. 2(2) and (3), 29 U.S.C. Sec. 152(2) and (3); Title VII of the Civil Rights Act of 1964, Sec. 701(b), 42 U.S.C. 200e(b).

However, there are exceptions. International organizations, such as the International Monetary Fund, the World Bank, and the Inter-American Development Bank are exempt from the jurisdiction of U.S. labor law by virtue of the International Organization Immunities Act, 22 U.S.C. Sec. 288. Further, an agency or instrumentality of a foreign government is exempt from the jurisdiction of U.S. labor laws by virtue of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. Sec. 1602, except where that entity engages in commercial activities. *See State Bank of India v. NLRB*, 808 F.2d 526 (7th Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987). Another exception includes the employees of a foreign flag vessel. The U.S. Supreme Court has held that the National Labor Relations Act, 29 U.S.C. Sec. 151, does not apply to foreign flag vessels even when they are voluntarily within U.S. ports. *See Benz v. Campania Maviera Hidalgo, S.Z.*, 353 U.S. 138, 142 (1957); *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963).

Finally, the United States is a party to more than 130 treaties of Friendship, Commerce and Navigation, many of them bilateral. Many of these FCN treaties contain a limited exemption of foreign nationals from U.S. labor laws in that they give foreign companies the right to hire “accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice”: *McNamara v. Korea Air Lines*, 863 F.2d 1135, 1138 (3rd Cir. 1988; *Wickes v. Olympic Airways*, 745 F.2d, 363 (6th Cir. 1984). These treaty provisions may affect the application of American labor law to such foreign nationals.

Other than the indicated exceptions, foreign companies operating within the United States would be subject to U.S. labor laws. They are subject to the same legal obligations and may seek the same protection from abuses, such as illegal strikes, as a U.S. domestic corporation.

The U. S. labor laws applicable to labor disputes cannot reasonably be summarized in a few sentences.

However, it might be noted briefly that the Labor-Management Relations Act (which includes amendments of the National Labor Relations Act), 29 U.S.C. Sec 141, governs the relationship between most private employers and their employees. The major exceptions are the railway and airlines industries, which are covered by the Railway Labor Act, and agriculture, which is not covered by federal labor law. Covered employees have a right to choose freely their collective bargaining representatives and to seek recognition of such a representative from their employer as exclusive bargaining representative. Employees have the right to engage in “concerted activities,” including the right to strike. In collective bargaining, employers and employees have a mutual obligation to meet at reasonable times and to confer in good faith regarding conditions of employment, but that obligation does not include a duty to make concessions or to reach an agreement. Complaints of unfair labor practices committed by either party during collective bargaining, a strike, or other times may be in administrative proceedings before the National Labor Relations Board.

Foreign companies are not required to resort to any special procedure by virtue of their status as foreign companies in order to obtain protection.

## **6. Taxation**

1. *List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.*

### 1. World-wide taxation

The United States taxes U.S. citizens and residents and U.S. corporations on their worldwide income annually.

### 2. Types of entities

#### 2.1 Corporations

Generally corporations are taxable entities. However, certain types of corporations pay no income tax and pass their taxable income through to their shareholders who are taxed on it annually. See 4.3.2

#### 2.2 Trusts and Estates

Trusts and estates are nominally taxable entities. However, they generally are allowed a deduction for income that is distributed to beneficiaries in the year it is earned. This effectively passes the tax liability through to the

beneficiaries of the trust or estate. When trusts and estates are taxed because they accumulate income, individual rates apply. Generally trust and estates may not engage in business and continue to be taxed as trusts and estates.

### 2.3 Partnerships

Partnerships generally are not taxable entities. Income of a partnership is taxed to the partners annually. Certain partnerships with many partners are taxed as corporations, however.

### 2.4 Tax-Exempt entities

Pension trusts and organizations operated exclusively for religious, charitable, scientific or educational purposes are generally exempt from U.S. income tax.

## 3. Taxation of Individuals

### 3.1 Citizens and Residents

#### 3.1.1 Definition of resident

An alien individual is considered a resident of the United States for income tax purposes if he is considered a resident for immigration law purposes (he holds a "green card") or he is present in the United States for at least 31 days during the current year and during the last three years he was present in the United States, on average, at least 183 days. This average is computed by giving the days in the current year a weight of 1; those in the first preceding year a weight of one-third; and those in the second preceding year a weight of one-sixth.

#### 3.1.2 Tax rates

The United States has a progressive rate structure. Currently, the highest marginal rate is 39.6% which begins at \$250,000.

#### 3.1.3 Foreign tax credit

The United States allows a foreign tax credit for income tax paid or accrued to a foreign country. The credit is subject to a limitation that is intended to deny a credit to the extent the foreign tax exceeds the U.S. tax on foreign source income. This limitation is applied to individual categories of income, rather than all foreign source income in aggregate. Generally the categories have been designed to separate highly taxed income from lower taxed income. Credits disallowed in the current year may be carried to other taxable years and may be claimed in those years subject to the limitation.

#### 3.1.4 Income earned through foreign corporations

Generally the United States does not tax a U. S. shareholder's share of the earnings of a foreign corporation until that income is distributed to the shareholder. However, the United States has special rules that require a U.S. shareholder to include in income his share of certain income of certain foreign corporations -- for example, "controlled foreign corporations," "passive foreign investment companies" and "foreign personal holding companies" in the year the income is earned, without regard to whether it is distributed. Generally the type of income which is subject to these taxing regimes is passive investment income (such as interest and dividends), certain income from tax-haven activities and income from activities that normally bear a low tax rate, such as insurance and shipping.

#### 3.1.5 Alternative minimum tax

The United States imposes an alternative minimum tax (AMT) on individuals and corporations, which is intended to ensure that all individuals and corporations with large gross incomes pay some tax annually. The tax base for the AMT is the regular tax base with certain deductions and exemptions added back or recomputed. The maximum AMT rate for individuals is 28%. Since the AMT is intended to ensure that all taxpayers pay at least a small tax each year, there are special rules that do not allow the AMT liability to be fully offset by prior year's losses and the foreign tax credit.

#### 3.1.6 Deductions and losses allowed

Generally individuals may deduct all expenses and losses incurred in their trade or business or their investment activities in the year those expenses or losses are incurred, up to the income for that year. Taxpayers with excess losses generally may carry those losses to other years to reduce tax liability in those years. There are, however, numerous special rules limiting losses and deductions including special rules for capital losses and for losses from certain activities in which the taxpayer does not materially participate. Personal expenses are generally not deductible. The major exception is interest on home mortgages.

### 3.2 Nonresidents

#### 3.2.1 Tax rates

Nonresidents engaged in business in the United States are taxed on their business income at the same rates that apply to resident individuals. Generally they are allowed the same deductions as U.S. citizens or residents. Investment income from U.S. sources (such as interest, dividends, rents and royalties) earned by a nonresident is subject to a final 30% withholding tax. A nonresident earning real estate rental income may elect to be taxed on a net basis as though he were engaged in business in the United States.

#### 3.2.2 Real estate gains (FIRPTA)

Gains from the sale of real estate located in the United States are subject to tax at regular U.S. rates as though they were earned in connection with a U.S. business.

### 3.2.3 Exempt interest

The United States does not tax interest paid on deposits with U.S. or foreign branches of U.S. banks provided it is not “effectively connected” with a U.S. business. The United States also does not tax “portfolio interest.”

Generally this is interest paid by a U.S. person to a foreign person who is unrelated and who is not a bank, provided a filing requirement is satisfied and the interest is not effectively connected with a U.S. business.

## 4. Taxation of Corporations

### 4.1 *Classical system*

The United States corporate income tax system is a “classical” rather than an “integrated” system. Corporate earnings are taxed twice: once when earned and again when distributed. There are exceptions to this rule for an affiliated group of corporations that file a single tax return and for certain special corporations.

### 4.2 *Arms'-length pricing*

The United States follows the arms'-length pricing standard adopted by the OECD. Recently-issued regulations provide guidelines for determining the arms'-length price in transactions between related parties.

### 4.3 *U.S. Corporations*

#### 4.3.1 Tax rates

The United States has a progressive rate structure. The highest marginal rate is 35%, which begins at \$10,000,000. If the income is between \$75,000 and \$10,000,000, the rate is 34%.

#### 4.3.2 Special entities

There are special tax rules for corporations that serve as investment vehicles. Generally, regulated investment companies (RICs), real estate investment trusts (REITs) and real estate mortgage investment conduits (REMICs) do not pay tax, but their shareholder/investors do. Corporations with no more than 35 individual U.S. resident or citizen shareholders may elect “S Corporation” status which has the effect of eliminating the corporate level income tax. Shareholders of an S corporation pay tax on their share of the corporation's income annually.

#### 4.3.3 The indirect foreign tax credit

Corporations are allowed the same foreign tax credit (direct credit) as individuals, subject to the same limitations.

Corporations are also allowed a foreign tax credit for the foreign income taxes paid by foreign subsidiary companies in which they have at least a 10% direct or indirect interest down to the third tier (indirect credit). The credit is allowed for the portion of the foreign tax paid on the profits distributed to the parent. For example, if a foreign subsidiary earns \$100 of income and pays \$40 of foreign income tax on that income, and that same year distributes \$60 to its parent as a dividend, the parent would include \$100 (not \$60) in income and would be deemed to have paid foreign taxes of \$40 for purposes of claiming a credit.

This indirect credit is intended to provide parity for foreign corporations and foreign branches. It is limited in the same manner as the direct credit.

#### 4.3.4 Consolidation

An affiliated group of U.S. corporations may elect to file a single U.S. income tax return provided the corporations have a common parent with a sufficient ownership interest (80%) in the members of the group. There are various advantages to this election including use of losses of one company to offset income of another, deferral of gain on certain intercompany transactions and elimination of tax on dividends paid within the group. Generally a foreign corporation may not be included in an affiliated group.

#### 4.3.5 Alternative minimum tax

Corporations are subject to the AMT. Generally the same rules apply as apply to individuals. The rate is 20%.

## 4.4 *Foreign Corporations*

### 4.4.1 Tax rates

Foreign corporations engaged in business in the United States are taxed on their business income at the same rates that apply to U.S. corporations. Generally they are allowed the same deductions as U.S. corporations. Investment income from U.S. sources (such as interest, dividends, rents and royalties) earned by a foreign corporation is subject to a final 30% withholding tax. A foreign corporation earning real estate rental income may elect to be taxed on a net basis as though it were engaged in business in the United States.

### 4.4.2 Real estate gains

Same rules as for nonresidents. See 3.2.2

### 4.4.3 Exempt interest

Same rules as for nonresident, See 3.2.3

### 4.4.4 Branch Profits tax

Since 1987 the United States has imposed a corporate tax in addition to the regular income tax on U.S. business income earned by the U.S. branch of a foreign corporation. This tax is intended to tax a U.S. branch of a

foreign corporation and a U.S. subsidiary at the same effective rate by imposing a corporate tax that is similar to the withholding tax that would be due when a U.S. subsidiary remitted earnings to its foreign parent. It applies at the same 30% rate (or lower direct investment dividend treaty rate) to the portion of after-tax branch profits that represents the “dividend equivalent amount.”

#### 4.4.5 Branch interest tax

The United States treats interest paid by a U.S. branch of a foreign corporation as though it were paid by a U.S. subsidiary. Thus, the 30% withholding tax (or the lower treaty rate) is imposed on interest actually paid by the branch. Such interest may also qualify as tax-exempt portfolio interest. Also, to the extent interest of the foreign corporation that is allocated as an expense to the branch under U.S. tax rules exceeds the interest paid by the branch, such excess is treated as paid by the branch to its home office and is subject to tax at 30% (or the applicable treaty rate).

#### 4.4.6 Earning stripping

The United States does not allow a current deduction for certain excessive interest paid by a corporation to a related person if the corporation's debt-to-equity ratio exceeds 1.5 to 1, the interest is paid to a related person, and it is not subject to full U.S. tax in the hands of the recipient. The disallowed deduction may be carried forward and deducted in a later year, subject to the same limitation. Very generally, interest is considered excessive to the extent it exceeds 50% of the company's cash flow for the year.

#### 4.4.7 Information reporting

The United States requires foreign-controlled U.S. corporations and U.S. branches of foreign corporations to file annual information returns disclosing transactions with related parties. Such corporations are also required to keep certain books and records in the United States or to provide assurances that they will be available in the United States in the event of a tax audit.

### 5. Tax Procedure and Dispute Resolution

#### 5.1 *Public Comment*

U.S. law requires a period for public comment before significant regulations (and in particular most tax regulations) take effect. Domestic and foreign taxpayers are permitted to comment. Recently U.S. officials have traveled to other countries to solicit comments on the new transfer pricing regulations. This comment process is conducted by the Executive Branch alone and is generally free of political influences.

#### 5.2 *Reporting and Collection*

The United States has a self-assessment system which requires U.S. corporations and foreign corporations doing business in the United States to file a U.S. income tax return annually showing a calculation of U.S. income tax liability.

#### 5.3 *Audit Procedures and Confidentiality*

The IRS routinely audits a portion of the tax returns filed each year. By law, IRS personnel are not political appointees except for the Commissioner and Chief Counsel, and the audit process is designed to operate free of political considerations. The IRS may not disclose tax return information (including information about tax audits and litigation) to the public and generally may not disclose such information to other parts of the Government, except for enforcement and limited legislative purposes. Harsh penalties are imposed for violations of these rules. U.S. income tax treaties authorize the IRS to provide taxpayer information to the treaty partner's tax authority in appropriate cases.

#### 5.4 *Dispute Resolution*

Audited taxpayers may appeal a proposed income tax deficiency within the IRS. If satisfactory resolution is not reached through the appeal procedure, a taxpayer may either (i) pay the tax due and sue for a refund in federal district court or the Court of Claims or (ii) dispute the asserted deficiency in the Tax Court without paying it. Once a final decision is reached by the court, the tax is paid or refunded, as the case may be, with interest. In cases of potential double taxation, our income tax treaties authorize the competent authorities of the United States and the treaty partner to hold discussions in order to resolve the dispute. The United States does not require that tax be paid to both jurisdictions as a condition for a request for competent authority assistance.

### **7. Performance Requirements**

#### *1. Brief description of any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMs).*

With some limited exceptions, the United States government does not impose performance requirements on foreign (or domestic) investment. The United States did not notify any measures under the TRIMs Agreement in the World Trade Organisation. However, under the border provisions of the NAFTA, a limited Federal exception is listed related to waste management (ie. construction of treatment plants for municipal sewerage or industrial waste).

## **8. Capital Exports**

*1. List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.*

1. See section B(4) above.

*2. List and brief description of any regulations/institutional measures that limit technology exports.*

The United States does not generally control the export of technology except for military or dual-use technology. The export of technology and technical data for items designed, developed, produced modified, or configured for military use is controlled through the export licenses issued by the State Department's Office of Defense Trade Controls. The Department of Commerce processes export license applications for sensitive dual-use commodities and technologies. The controlled dual-use technologies are primarily those civil technologies which have application in, or can make a significant contribution to, the design, development, or production of weapons of mass destruction (chemical, nuclear, and biological), advanced conventional weapons and their means of delivery.

## **9. Investor Behavior**

*1. Any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy*

Not applicable.

## **10. Other measures**

*1. Brief outline of the competition policy regime.*

The United States' antitrust laws essentially prohibit business practices that unreasonably deprive consumers of the benefits of competition resulting in higher prices for inferior products and services. Following is a brief description of the three major federal antitrust laws.

The Sherman Antitrust Act (1890) criminalizes all contracts, combinations and conspiracies that unreasonably restrain interstate trade. This includes agreements among competitors to fix prices, rig bids and allocate customers. The Act also makes it a crime to monopolize any part of interstate commerce.

The Clayton Act (1914 and heavily amended in 1950) is a civil statute which prohibits mergers or acquisitions that are likely to lessen competition. Under the Clayton Act, the government challenges those mergers that a careful economic analysis shows are likely to increase prices to consumers. All persons considering a merger or acquisition above a certain size must notify both the Antitrust Division of the Justice Department and the Federal Trade Commission.

The Federal Trade Commission Act prohibits unfair methods of competition in interstate commerce, but carries no criminal penalties. It also created the Federal Trade Commission to police violations of the Act.

*2. List and brief description of current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.*

In the United States, intellectual property is adequately and effectively protected by a comprehensive system of federal and state laws. The federal government has exclusive competence regarding patents, copyrights and integrated circuit layout designs. Trademarks and service marks are principally protected by federal law, although state statutes and common law also provide additional protection, particularly for unregistered marks. In addition, many states provide protection for trade names, either by statute or through the common law. Trade secrets are protected by state statute or common law. The majority of states have adopted the "Uniform Trade Secrets Act."

The United States is a party to a large number of international intellectual property conventions, including the Paris Convention for the Protection of Industrial Property (Stockholm, 1967), the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971), the Universal Copyright Convention (Paris, 1971), the Patent Cooperation Treaty, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the International Convention for the Protection of New Varieties of Plants (1991) and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, and the Convention Establishing the World Intellectual Property Organization.

The United States has fully implemented its obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights. The United States, for example, provides 20 years of protection from date of filing for all inventions, whether products or processes, in all fields of technology provided that they satisfy statutory requirements for novelty, utility and non-obviousness. The United States provides 10 years of renewable protection for registered trademarks and service marks and imposes no special requirements incumbering the use of such marks. Federal statutes also protect industrial designs, geographic indications of origins and plant varieties. The United States provides Berne Convention consistent copyright protection for literary and artistic

works (including computer programs and data bases). Sound recordings are protected by copyright law in a manner fully consistent with the TRIPS Agreement. Integrated circuit layout designs are protected for a term of 10 years by federal statute. The states provide TRIPS consistent levels of protection for trade secrets by statute and common law.

The United States provides extensive enforcement, both internally and at the border, for intellectual property rights. Severe criminal penalties (including prison sentences) are imposed on copyright pirates and trademark counterfeiters. Damages and injunctive relief (including provisional remedies) are available for infringement of patents, trademarks, service marks, copyrights, trade secrets, geographic indications of origin, plant varieties, industrial designs and integrated circuit layout designs. The United States also provides extensive border enforcement measures for trademarks and copyrights through the U.S. Customs Service and for patents and other forms of intellectual property rights through administrative proceedings before the U.S. International Trade Commission. The United States has provided the WTO with a detailed notification of its laws and regulations on intellectual property rights, as required by the TRIPS Agreement.

## **C. INVESTMENT PROTECTION**

### **1. Expropriation and Compensation**

*1. List of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Summary of the application and function of these laws/regulations.*

*2. Brief description of recent instances (last five years) of expropriation and compensation of foreign investment.*

#### Sources of Law

The U.S. has long recognized that a key attribute of sovereignty is the power of the government to take private property for public use without the owner's consent (i.e., the power of eminent domain or the power to expropriate). The "Takings Clause" contained in the Fifth Amendment of the U.S. Constitution limits the federal government's power of eminent domain by providing that private property shall not "...be taken for public use, without just compensation."

Although the Fifth Amendment is not by its own terms applicable to state governments, the U.S. Supreme Court has held that the Takings Clause is applicable to the states through the due process requirements of the Fourteenth Amendment. Chicago, Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226 (1897). In addition, the constitutions of every state, except for Kansas, North Carolina, and Virginia, expressly prohibit the taking of private property for public use without just compensation. The constitutions of these three states have nevertheless been construed to impose the same restriction on the taking of private property as does the Fifth Amendment. Within its own jurisdiction, each state possesses the power of eminent domain, subject to the limits in its state constitution and the limits imposed by the Fifth Amendment.

#### Legislative Authorization

Although the power of eminent domain is an inherent governmental power, it may be exercised only with legislative authorization. Berman v. Parker, 348 U.S. 26 (1954). The legislature may authorize the exercise of this power directly, may delegate this power to another governmental entity, or may delegate the power to private corporations promoting a public interest (e.g., public utilities).

#### Property Subject to Takings Clause

Tangible interests clearly constitute property that falls within the purview of the Takings Clause. All types of interests in real or personal property may be taken, including leasehold interests in real property, property held in trust, and the capital stock of a corporation. In addition, various forms of intangible property may be taken. The Supreme Court has held that trade secrets protected under state law are property under the Takings Clause. Ruckelshaus v. Monsanto, 467 U.S. 986 (1984). Likewise, the Court has found other intangible interests to be property for the purposes of the Takings Clause, including various types of liens, patents, and valid contracts. State courts too recognize tangible and intangible property as property that can be "taken".

#### What Constitutes a Taking?

A taking clearly occurs when the government initiates a condemnation proceeding to acquire a specific piece of property or when governmental action causes "[a] permanent physical occupation" of the property by the government or others. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). Most Takings Clause cases, however, do not concern actual physical invasion of real property by the government. Instead, in most Takings Clause cases an owner of property seeks compensation for the diminution in the value of property caused by a particular governmental regulation. The U.S. Supreme Court has indicated that no set formula determines at what point regulation of property becomes a taking for which just compensation is due. The Court has, however, identified several factors that it will balance when determining whether governmental regulation of property has become a taking: 1) the economic impact of the regulation on the owner; 2) the extent to which the regulation interferes with the owner's distinct investment-backed expectations; and 3) the character of the



governmental regulation. Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211 (1985); Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

With respect to land-use regulations in particular, the regulation will not effect a taking if it substantially advances legitimate state interests and does not deny an owner the economically viable use of his property. Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987); Agins v. City of Tiburon, 447 U.S. 255 (1980); Penn Central, supra. Even taxation may result in a compensable taking where the act complained of is so arbitrary that it is confiscatory. Acker v. Commissioner of Internal Revenue, 258 F.2d 568 (6th Cir. 1958).

#### What Is "Public Use"?

In order to fall within the Takings Clause of the Fifth Amendment, the taking must be for a "public use." (If a taking occurs that is not for public use, the taking violates the substantive due process requirements of the Constitution.) The Supreme Court has construed "public use" very broadly. As long as the legislature has authority over an activity, it may exercise its eminent domain power to achieve any goal with respect to that activity. Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984). In other words, the public use requirement is coterminous with the scope of the sovereign's police powers (i.e., the powers enumerated to Congress by the Constitution and the power of the states to enact regulations for the health, safety, and welfare of the public).

Ruckelshaus, supra; Hawaii Housing Authority, supra.

#### What Is Just Compensation?

The just compensation provision of the Takings Clause requires that the owner of the taken property be given "a full and perfect equivalent" for what has been "taken". Monongahela Navigation Co. v. U.S., 148 U.S. 312 (1893). Normally, just compensation is measured by the market value of the property at the time of the taking, and considerations that are not normally a part of market value are excluded from the calculation. U.S. v. 50 Acres of Land, 469 U.S. 24 (1984). The Supreme Court has indicated that the calculation can deviate from the market value if failure to do so would cause manifest injustice to the owner or the public. U.S. v. 50 Acres of Land, 469 U.S. 24 (1984). Generally, federal and state courts have given great latitude with respect to evidence that may be presented to demonstrate market value. For example, courts have used opinions by qualified experts, the values of comparable properties, the price paid for the property, the amount of any **bona fide** offers for the property, and the cost of reproduction or replacement of the property to determine the market value of taken property. Just compensation does not extend to compensation for consequential damages arising from the condemnation.

When a taking occurs prior to payment, interest must be paid to the owner to compensate for the delay. Kirby Forest Industries v. U.S., 467 U.S. (1984); U.S. v. Klamath Indians, 304 U.S. 119 (1938). Generally, the owner is entitled to interest of a proper or reasonable rate. Ordinarily, the normal commercial, legal, or statutory rate of interest applicable in the location where the property is located may be recovered. Courts have great discretion in determining an appropriate interest rate. In federal condemnation proceedings pursuant to the Federal Declaration of Taking Act, as amended, 40 U.S.C. §258a-e, the interest rate is linked to the interest rate payable on Treasury bills. However, the right to interest in eminent domain proceedings does not depend on the existence of a statutory provision. The right to interest is inherent in the just compensation provision of the Takings Clause itself.

#### Takings Proceedings

Federal and state statutes provide procedures by which federal and state governments can "take" various forms of property. In addition, federal and state governments can acquire private property summarily. In such a case, the owner has the right to bring an inverse condemnation suit to recover the value of the property as of the date of the taking. The owner's right to bring such a suit stems from the self-executing nature of the Takings Clause.

Federal and state statutes provide judicial fora for individuals to bring claims for compensation under the Takings Clause. Even in the absence of a specific statute, owners of "taken" property still have a course of action because of the self-executing nature of the federal and state constitutional provisions. However, where the taking occurs as a result of a constitutional statute and in compliance with its provisions, and the statute provides for adequate compensation, the statutory remedy is exclusive.

## **2. Settlement of Disputes**

*1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies*

In general, investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor. Generally, such disputes are resolved in domestic courts, although arbitration may be available depending on local law and practice, as well as the wishes of the parties to the dispute. Investor-state disputes are rare and generally are resolved in domestic courts where available, although some bilateral investment treaties permit investors to opt for international arbitration in certain disputes. Under certain bilateral treaties an investor who seeks a remedy (other than interim injunctive relief) in local courts forfeits the right to bring the

dispute to international arbitration.

## *2. Signatory or accession to the ICSID Convention*

The United States is a party to several conventions relevant to the settlement of investment disputes, including ICSID.

## **D. INVESTMENT PROMOTION AND INCENTIVES**

### *1. Brief description of investment promotion programs offered at both the national and sub-national level (e.g., tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for accessing these schemes, including address and telephone/fax numbers*

There are no foreign investment incentives **per se** at the national level (i.e., incentives not also available to domestic investors). State-level incentives are offered on a national treatment basis, and in fact states make an effort to share information with potential foreign investors. The incentives that states provide include: tax abatements, exemptions and credits for land, equipment purchases or training; grants, below-market rate loans, loan guarantees and low-interest bond financing to provide up-front money to help build or modernize a plant; training and employment assistance; and infrastructure, site improvements and land grants. Almost all states offer investors some combination of these incentives.

The U.S. Federal government plays a conservative role in the area of economic development, generally leaving responsibility for economic development activities, including investment promotion and attraction, in the domain of state and local government. The underlying philosophy of this approach is that states and local communities are in the best position to determine the specific needs and priorities for their economies. The Department of Commerce's International Trade Administration offers a program, the Agent/Distributor Service (ADS), to U.S. firms and individuals which may be used to locate, screen and assess potential foreign investors. The ADS, however, more commonly is used to assist U.S. exporters.

### *2. Brief description of any fiscal, financial, tax or other incentives offered at both the national and sub-national level (e.g., tax incentives, grants) provided to foreign investors. Summary of these programs including the nature of incentives offered and contact point(s) for these schemes, including address and telephone/fax numbers.*

The U.S. federal government does not have incentive programs specifically to encourage foreign direct investment in the United States. In general, foreign owned firms and foreign investors in the United States receive national treatment in regards to federal fiscal and financial incentives that are used to stimulate investment and promote economic development.

The U.S. federal government plays a relatively minor role compared to state and local governments in the area of economic development. Thus, investment incentives, including financial, fiscal and others, are handled primarily by state and local government entities and are outlined in the next section.

Most federal investment incentive programs consist of financial tools to assist particular regions or groups. The Economic Development Administration (EDA) in the U.S. Department of Commerce serves as the primary agency for promoting economic development. The EDA provides financial assistance to economically disadvantaged areas in the form of business loan guarantees and revolving loan funds. Other federal agencies that provide financial development assistance are the Small Business Administration and the U.S. Department of Agriculture under its Farmers Home Administration. Federal financial programs can be accessed by contacting the sponsoring agency. In terms of non-financial incentives, there are not significant programs at the federal level.

### *3. Where applicable, if there is a one stop facility for foreign investors, details of this service and contact point(s), including address, phone and fax number*

U.S. state governments maintain a long tradition of policies and programs focused on stimulating private investment. Today, all 50 states have some form of incentive and outreach program for investment, both domestic and foreign.

State investment programs typically are administered by state economic development agencies (SDAs). SDAs normally are cabinet level agencies (e.g., a department of commerce) headed by a commissioner who reports directly to the governor. Although SDAs have a wide range of functions, there are two primary responsibilities common to all SDAs: promoting economic growth and creating jobs within the state.

All states view investment as a key means of achieving economic growth objectives and many annually modify and improve their investment programs to attract greater investment. While states generally are open to all types of investment, investments that create jobs, for example, in manufacturing (as opposed to real estate or portfolio

investment) are likely to qualify for greater assistance. A growing trend in state investment programs over the past decade has been an increase in the selectivity and targeting of state investment promotion efforts. Now more than ever, states focus their investment attraction efforts on specific industries with potential for their states or on certain regions of the world with fast growing economies.

Most states view foreign direct investment (FDI) as a crucial means of economic growth. Over the past few years, state budgets for FDI attraction have grown rapidly, averaging about \$1 million per year for domestic and international marketing. Programs aimed at foreign investors commonly include direct mail, trade shows, investment missions, foreign offices, print media and electronic advertising, and video technology. Thirty-one states now maintain over 130 offices in a variety of foreign locations, including Japan, Germany, the United Kingdom, Korea, Hong Kong and Taiwan.

States sometimes offer comprehensive packages of incentives to interested foreign investors. These may include:

- financial incentives, such as direct state loans, loan guarantees, grants and industrial development bond programs;
- tax incentives, on corporate income tax, sales and use taxes and property taxes. Examples include credits for job creation, property tax abatements, and various exemptions and deductions for business inventory, research and development, pollution control equipment, industrial machinery and equipment, and fuels and raw materials;
- special incentives, such as “enterprise zones” (which offer packages of incentive for businesses locating in a certain area), development credit corporations (which offer capital for business construction and expansion) and employment training;
- issue specific programs, such as export promotion, small business development, and high technology development; or
- non-financial assistance, such as business consulting, management seminars, one-stop licensing and permit centers, research and development assistance and market studies.

Although the variety of incentives offered today continues to expand; the most popular and commonly used incentive remains the direct financial incentive. However, states do not offer any financial incentives to foreign firms that are not available to domestic firms. Special services are offered to foreign firms in the areas of language training, relocation and cultural assimilation assistance. States also emphasize job training and tax incentives in their FDI attraction efforts and recently have established programs for joint ventures and licensing agreements. Three quarters of the states now have joint venture programs.

Detailed information on the specific incentive programs offered by each state is contained in the “Directory of Incentives for Business Investment and Development in the United States,” by the National Association of State Development Agencies (NASDA). The Urban Institute, a non-profit policy research and educational organization located in Washington, D.C., publishes this Directory, as well as many other materials about state government.

#### Private Sector Role in Investment Promotion

The United States Chamber of Commerce represents the interests of over 200,000 U.S. companies and local Chambers of Commerce on policy issues affecting trade and investment. The Chamber's growing international programs work to lower barriers and promote open competition in the United States and abroad. A network of bilateral and multilateral councils around the world complements the Chamber's efforts in the United States. These bilateral business councils, including the U.S.-ASEAN Business Council, provide a forum for the private sector to help shape commercial and economic relations with U.S. trading partners and to improve bilateral trade and investment relationships. In addition to the Chamber of Commerce, there are many other business and trade associations throughout the country which aid their members in all aspects of international business.

## **E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS OR CODES TO WHICH APEC MEMBER IS A PARTY**

*1. Agreements to which economy is a party, including details of the countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).*

### Bilateral Agreements

U.S. bilateral investment agreements take three basic forms: treaties of Friendship, Commerce and Navigation (FCNs); Bilateral Investment Treaties (BITs), and Overseas Private Investment Corporation (OPIC) agreements.  
*FCNs and BITs*

Both the FCNs and BITs establish rights and obligations of the signing parties concerning the treatment of investment. There are 47 FCNs currently in force; the earliest (with the United Kingdom) dates from 1815, while the most recent (with Thailand) was concluded in 1966. FCNs deal with a wide array of bilateral consular and commercial as well as investment issues. The program was discontinued in the mid-1960s in part due to a belief

that many of the noninvestment concerns are better addressed through the GATT. By the early 1980s however, the U.S. government decided that, because of the lack of established multilateral rules governing the treatment of investment, it was necessary to develop a bilateral treaty instrument to provide protection for U.S. investment abroad.

The resulting Bilateral Investment Treaty was developed in close consultation with the U.S. private sector. Accordingly, while many of its investment-related provisions echo those in the FCN, it is in many respects stronger. The major obligations of the BIT include:

- the right of nationals and companies of a Party to establish investments on a basis no less favorable than nationals and companies of the other Party, or nationals and companies of any other country (the better of national or most favored nation treatment);
- the right to operate those investments, once established, also on the better of national or MFN treatment basis;
- the right to hire top managerial personnel of the investor's choice;
- the right to transfer freely all funds related to the investment into and out of the host country;
- international law standards for expropriation, meaning that such actions can be taken only for a public purpose, in a non-discriminatory manner, according to due process, and with prompt, adequate and effective compensation; and
- the right of an investor to take the host government to binding international arbitration to resolve disputes concerning the rights and obligations in the Treaty, investment authorizations and investment agreements.

Sectors and matters in which a Party takes exceptions to these basic obligations are specified in an annex to the BIT; such exceptions should be few and generally limited to those based on national legislation.

Since the inception of the BIT program, the United States has signed BITs with 37 countries. Of these, 22 are in force (Argentina, Armenia, Bangladesh, Bulgaria, Cameroon, Congo, Czech Republic, Egypt, Grenada, Kazakhstan, Kyrgyzstan, Moldova, Morocco, Panama, Poland, Romania, Senegal, Slovakia, Sri Lanka, Tunisia, Turkey and Zaire); one (Ecuador) has been ratified by both sides but awaits exchange of instruments before going into force; one (Russia) has been ratified by the United States but not by the other party; and 11 (Albania, Belarus, Estonia, Georgia, Haiti, Jamaica, Latvia, Mongolia, Trinidad and Tobago, Ukraine and Uzbekistan) have been submitted to the Senate Foreign Relations Committee. In addition the U.S. is in negotiations with several other countries.

#### *The United States Overseas Private Investment Corporation*

In contrast to a BIT, which establishes obligations concerning the treatment of investments, an OPIC agreement provides the procedural framework for operation of the U.S. government's investment insurance program as it ensures that upon payment of a claim to an investor, OPIC's succession to the rights of the investor will be recognized by the host government. It also makes available OPIC's finance program (a source of project finance through direct loans and loan guarantees) and OPIC's investment promotion programs (investment missions, the Investor Information Service and the Opportunity Bank). The OPIC agreement creates no new rights for investors, but lets OPIC operate in the existing investment climate, providing insurance of financing on a case-by-case basis to eligible U.S. investments which apply and qualify for it. The OPIC agreement differs from the BIT as well in that the BIT is a treaty requiring Senate advice and consent to ratification, while the OPIC Agreement is an executive agreement which can enter into force upon signature unless the laws of the other country require ratification.

#### Multilateral investment agreements

##### *The Organization for Economic Cooperation and Development (OECD)*

The OECD, of which the United States is a member, has three main agreements which regulate the way in which member states may treat investments from other member states. These are the Code of Liberalization of Capital Movements and the Code of Liberalization of Current Invisible Operations (the Codes), and the National Treatment Instrument (the NTI). The first two contain legally binding obligations requiring national treatment on the establishment of investments, while the NTI exhorts member states also to provide national treatment to such investments in post-establishment operations. Exceptions of the national treatment principle may be taken, but in general such exceptions should not be intensified, and, if liberalized, should be "frozen" at the new level. In addition, the OECD is negotiating an investment agreement which will provide a broad multilateral framework for international investment with high standards for the liberalization of investment regimes and investment protection and with effective dispute settlement. This agreement would be a free-standing international treaty open to all OECD members and to accessible by any non-OECD member countries.

##### *International Center for Settlement of Investment Disputes (ICSID)*

The United States is a charter member of the International Center for Settlement of Investment Disputes (ICSID), an international institution created under the aegis of the World Bank by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The purpose of ICSID is to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other

Contracting States, leading toward depoliticization of investment disputes. ICSID procedures have a number of distinctive features which give ICSID a unique place among dispute settlement mechanisms.

#### *The World Trade Organisation (WTO)*

The Uruguay Round Trade Agreement was signed in April 1994 and went into force on January 1, 1995, with some provisions phased in over a 10 year period. The TRIMs Agreement prohibits measures such as local content requirements and trade balancing requirements and mandates that any such measures existing as of the date of entry into force be notified and then eliminated. Developed countries have two years to bring notified measures into conformity with the Agreement. Developing countries have five years and the least-developed countries have seven. Twenty-four WTO Members submitted notifications as required to the TRIMs Committee. The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership. The GATS provides a legal framework for addressing barriers to trade and investment in services. It includes specific commitments by WTO Members to restrict their use of those barriers and provides a forum for further negotiations to open services markets around the world. These commitments are contained in a schedule, similar to the schedules on tariffs. The Council for Trade in Services oversees implementation of the GATS and reports to the General Council.

#### *North American Free Trade Agreement (NAFTA)*

The NAFTA creates a free trade area comprising the U.S., Canada and Mexico. Consistent with GATT rules, all tariffs will be eliminated within the area over a transition period. The NAFTA involves an ambitious effort to eliminate barriers to trade, to remove investment restrictions, to protect effectively intellectual property rights, and to address environmental concerns. The NAFTA countries are meeting these objectives by observing principles such as national treatment, most-favored nation treatment and procedural "transparency." Along these lines, NAFTA's investment chapter provides investors of the parties, when investing in the territory of another party, and subject to limited exceptions specified in an annex, with the rights:

- to establish new firms, acquire existing firms, and receive the same treatment as domestic investors;
- to repatriate profits and to obtain hard currency for all payments associated with an investment;
- to provide international law protections on expropriation, including the right to compensation equal to the market value of their investment;
- to establish and operate investments free from trade distorting requirements; and
- to go to international arbitration to seek monetary damages or restitution for any violations of these rights.

## **F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT**

### *1. Overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward)*

Foreign direct investment, once seen as a substitute for international trade, is increasingly viewed as a complement or even a necessary component of trade. The evidence on U.S. outward foreign direct investment bears this out. Roughly 60% of U.S. exports are sold by American firms that have operations abroad. The evidence also indicates that the countries where U.S. exports are most successful are the same countries where U.S. firms have the largest investment, and where investment restrictions are the most minimal. Furthermore, nearly \$1 of every \$5 in sales by U.S. companies abroad is earned by American sales affiliates or wholesaling companies that have established local facilities to sell U.S. exports. Access to foreign markets is the strongest motivation for investing overseas, not lower production costs.

Analyses of investment into and out of the United States are printed in the U.S. Department of Commerce publication The Survey of Current Business. In 1994, the most recent year for which figures are available, both U.S. direct investment abroad (USDIA) and foreign direct investment in the United States (FDIUS) grew nine percent on a historical cost basis. Favorable economic conditions in the United States and in many host and investor countries abroad boosted both growth rates.

Capital flows, the major component of the change in the positions, were about the same amounts for USDIA and FDIUS -- \$47.7 billion and \$50.1 billion respectively. However, the composition and purpose of the flows differed. For USDIA, the majority of the flows consisted of reinvested earnings, which were primarily used to finance the ongoing operations of foreign affiliates. For FDIUS, the majority of the flows consisted of equity capital, a major portion of which appears to have been used to finance acquisitions of new U.S. affiliates.

### *2. Major countries/economies that are sources/receivers of FDI over recent years*

#### U.S. Outward Investment

The U.S. direct investment position abroad valued at historical cost -- U.S. direct investors' equity in, and net outstanding loans to, their foreign affiliates -- was \$612.1 billion at year end 1994. The positions in the United Kingdom -- at \$102.2 billion, or 17% of the total -- and in Canada -- at \$72.8 billion or 12% of the total --

remained by the far the largest of any country. In 1994, the position increased \$52.4 billion, or 9%, somewhat less than the 11% increase in 1993, but more than the 7% increase in 1992. The increase in the 1994 position reflected several factors. First, sustained economic growth in the emerging economies of Asia and Latin America and pickups in growth in Canada and many European countries encouraged U.S. parents to continue to invest in these areas. Second, record profits by affiliates in some countries provided the affiliates with readily available financing in the form of reinvested earnings and increases in profits in the United States strengthened U.S. parents' ability to provide funds to their affiliates. Finally, the position was boosted by the appreciation of major European currencies and the Japanese yen against the U.S. dollar.

The \$52.4 billion increase in the U.S. direct investment position abroad was spread among most major geographic areas. The largest increases were in Europe, Asia and Pacific, and Latin America and other Western Hemisphere countries. Europe accounted for more than one-third of the increase in the overall position. However, the position in Europe grew at a slower pace than the positions in Asia and Pacific and in Latin America and other Western Hemisphere countries.

#### Foreign Direct Investment in the United States

The foreign direct investment position in the United States valued at historical cost was \$504.4 billion at the end of 1994. The United Kingdom had the largest position -- \$113.5 billion, or 23% of the total. Japan's position was the second largest -- \$103.1 billion, or 20% -- and the Netherlands position was the third largest -- \$70.6 billion, or 14%.

In 1994, the position increased \$40.3 billion, or 9%, about the same rate as in 1993. The increases in the last two years follow an unusually low growth rate of 2% in 1992. The strong increase in the 1994 position, as well as that in 1993, resulted from stepped-up economic activity both in the United States and abroad that increased foreign investors' ability and incentive to invest in the United States. Their ability to invest was strengthened by the continued improvement in business conditions in certain major investor countries, such as the United Kingdom, which raised the earnings of foreign parents in those countries. Their incentive to invest was enhanced by the continued growth of the U.S. economy, which increased the profitability of potential acquisition targets. In addition, some investment in 1994 may have been prompted by dollar depreciation against several major currencies. The impact of these factors can also be seen in the total outlays by foreign investors to acquire or establish U.S. businesses: in 1994, these outlays, including those financed by equity capital inflows, rose 80, following a 71% increase in 1993.

# The South Pacific Forum

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## ***INTRODUCTION***

The South Pacific Forum (SPF) is the political grouping of independent self-governing states in the South Pacific. Its sphere of political influence covers over 30 million square kilometres, stretching from the Republic of Marshall Islands north of the Equator to New Zealand in the south. Established in 1971, membership in the Forum now includes: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

The grouping was formed to develop a collective response to a wide range of regional issues including trade and investment. The Forum, chaired on a rotating basis by the Head of the host government is not governed by a set of rules. Instead, Forum sessions are conducted by consensus and informality in a similar fashion to APEC.

Among the various initiatives on trade and investment that the Forum has undertaken since its inception are the establishment of a Trade and Investment Division within the South Pacific Forum Secretariat and the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA). SPARTECA is a unilateral preferential trading agreement which gives Forum Island Countries non-reciprocal market access into Australia and New Zealand.

In recent years the Forum and the individual governments of the Forum Island Countries have recognised the important role that can be played by foreign direct investment. Due to their limited financial base and attractiveness as a host in areas such as labour-intensive manufacturing, marine resources and tourism the FICs are keen to facilitate further investment into their region. In 1995 at the Forum Leaders meeting in Madang, the Leaders endorsed the APEC Non-Binding investment principles. This endorsement was subsequently followed by a Finance Ministers declaration to implement the transparency principle of the APEC Non-Binding Investment Principles.

A key element of the FIC policy formulation plan is to reduce the administrative impediments to foreign investors. Hence, in addition to their unilateral initiatives they are pleased to make this contribution to the APEC process, which complements the Forum Secretariat's similar publication entitled *Foreign Investment Climate in South Pacific Forum Island Countries*.

Three Forum members already have independent submissions in this document, Australia, New Zealand and Papua New Guinea. This leaves fourteen FICs that will be included in this overview. Therefore, what follows is not an exhaustive cataloguing of the foreign investment policies of the Forum's members. Instead, a short overview is given for each country focussing on the main policy elements its investment regime.



### *Additional Documents*

Since this document is simply an overview of the various investment policies adopted by the FICs interested readers are encouraged to consult additional more detailed documents for information. A listing of documents that are relevant to the Forum's interaction with APEC and FIC foreign investment policy is given below. Documents that are specific to each country are listed in the individual country overviews.

Bora, B., *Maximising the Benefits from APEC*, South Pacific Forum Secretariat, Suva, Fiji, 1995.

*Directory of the South Pacific Forum Island Products 1993-1994*, South Pacific Forum Secretariat, Suva, Fiji, 1995.

*Foreign Investment Climate in South Pacific Forum Island Countries*, South Pacific Forum Secretariat, Suva, Fiji, 1995.

*Tourism Investment Guide*, Tourism Council of the South Pacific, 1992.

### **Further Information**

For further information related to foreign investment policy in the Forum Island Countries contact:

Investment Development Officer  
South Pacific Forum Secretariat  
Suva, Fiji  
Telephone: (679) 312 600  
Fax: (679) 312 226

## **COOK ISLANDS**

Area(km <sup>2</sup> ): 240	Population (1994): 20.1
GDP per capita (1994): 4,328	Imports (US\$'m): 67
Exports (US\$'m): 4	Net Aid Inflows(US\$'m): 13
Primary <sup>A</sup> Sector (% of GDP): 13.0	Manufacturing Industry (% of GDP): 2.6
Tertiary <sup>B</sup> Sector (% of GDP): 84.4	
Principal Import Items: Mineral fuels; manufacturing Goods; machinery; food	
Principal Export Items: Tourism; offshore banking; black pearls' paw paw	

### **OVERVIEW**

The Cook Islands is a group of 18 islands and atolls dispersed over an Exclusive Economic Zone (EEZ) of nearly 2 million square kilometres of the South Pacific Ocean.

Cook Islands became a self governing country 'in free association with New Zealand' in 1965, with New Zealand accepting most of the responsibility for foreign relations and defence.

Agriculture, black pearls and tourism are major local industries, while the internationally recognised off-shore regime and the activities of the financial centre are central to the economic development of the Cook Islands.

### **Government Policy**

The Primary aim of Government policy is to encourage optimum local investment. The ability of Cook Islanders to take part in development investments or new enterprises will vary, depending on one or more prevailing factors. For example, technical expertise, managerial skills and/or investment capital are just a few important factors that determine the level of investment. The Government recognises that foreign investment can make enormous contributions to the economic and social development of the Cook Islands and, therefore, offers encouragement where investment proposals are clearly beneficial.

### **REGULATORY FRAMEWORK**

#### **Review and Approval Mechanisms for Foreign Investment Proposals**

Proposals are vetted by the Cook Islands Monetary Board. The minimum period for approval of projects is six to eight weeks.

#### **Restrictions on Foreign Investment**

Reserved investment areas are those in which new investments will be reserved primarily for local investors or for enterprises predominantly owned by local investors. Examples are:

- copra production;
- commercial harvesting of pearl shell, shell fish and other reef and lagoon products;
- small retail shops; and
- garment manufacture for local sale

While foreign investors will generally be discouraged or not allowed in reserved activities, encouragement may be given in special circumstances if it is considered that such an enterprise will have an improved chance of succeeding as a result of joint ventures by local and foreign investors.

A full listing of reserved activities can be found in the *Cook Islands Investment Code*.

### ***Access to Land***

Ownership of land does not exist. The maximum lease obtainable by a non-Cook Islander is 60 years. All leases for longer than five years require approval from the Leases Approval Committee.

### ***Entry and Sojourn of Personnel***

Formal unemployment is low and there is a shortage of skilled and qualified workers in both the public and private sector. Where qualified local persons are not available to fill a position, the foreign investor may recruit from overseas.

Marketing and promotional activities relating to tourism are handled by the Cook Islands Tourist Authority, with its head office in Avarua and offices in Auckland and Sydney.

### ***Banking and Insurance Licences***

The Off-shore Banking and Insurance Acts provide for the licensing of companies to carry on off-shore businesses in these areas. Generally, eligible companies must be incorporated as international companies under the International Companies Act 1981-82 or registered as foreign companies under the Act. Certain levels of asset backing are also required.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

The laws and policies of the Cook Islands have been developed to enhance off-shore activities by companies. The statutes that have been enacted separate off-shore activities from domestic activities and enable companies to operate with a great deal of freedom and flexibility.

The Development Investment Act of 1977 administered by the Cook Islands Monetary Board, is regarded as the basis for all incentives and concessions.

Under the Act, any foreign enterprise (i.e. one with less than 66 percent local shareholding) must apply to the Monetary Board (in effect the Cook Islands Cabinet) to establish a new business.

The Development Investment Code identifies concession areas where discretionary incentives apply to particular sectors (e.g. commercial agricultural livestock and fishing operations, commercial manufacturing and tourism). These incentives include:

- exemption from customs duty and import levy;
- permission to lease land;
- work permits;
- tariff protection;
- tax concessions;

- accelerated depreciation allowances; and
- training incentives.

In addition to these concession areas there are 18 desired investment sectors where the Government has deemed that development by potential overseas investors is desirable for the economic development of the Cook Islands. These areas do not necessarily attract incentives, however they are encouraged and welcomed by the Government.

**Additional Reference Documents**

Cook Islands Investment Code, Department of Trade, Labor and Transport.

**Contact for Further information:**

Secretary  
Department of Trade, Labour and Transport  
Rarotonga  
Cook ISLANDS  
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Fax: (682) 23880

## ***FEDERATED STATES OF MICRONESIA***

Area (km <sup>2</sup> ): 705	Population (1994): 110
GDP per capita (1993): 1,554	Imports (US\$'m): 34
Exports (US\$'m): 109	Net Aid Inflows(US\$'m): 109
Principal Import Items:	Mineral fuels; manufactured goods; machinery; food; milled timber and building supplies.
Principal Export Items:	Copra; commercial fishing rights.

### **OVERVIEW**

The Federated States of Micronesia (FSM) are the four states of Yap, Chuuk, Pohnpei and Kosrae. The FSM, situated north of the equator, consist of 607 islands and atolls forming part of the Caroline Islands Group (the remainder form the Republic of Palau).

The FSM became fully self-governing in 1986 and was admitted to the United Nations in September 1991. It is governed by a president and a 14 member National Congress. Each of the four states elects its own legislature and governor.

The National Constitution divides federal and state responsibilities. Federal responsibilities include immigration, taxes, duties and tariffs, regulation of currency, foreign and domestic trade, banking navigation and shipping and development of national resources. The individual states have responsibility for their own regional development, health and education services.

Primary production is directed mainly at subsistence farming with the coconut tree as a vital element of the islanders' existence. In recent years there has been an increase in commercial fishing with the National Fisheries Corporation responsible for examining the potential for further development of international fishing rights.

There is little manufacturing although there is potential for the further development of high quality handicraft. Similarly, tourism is largely undeveloped.

### ***Federal and State Government Policies***

The FSM welcomes foreign investment and is aware that foreign capital, management and technology are critical to its development.

Preference is given to foreign investments that are constructive and encouragement is offered to activities and enterprises that:

- earn or save foreign exchange;
- create a significant number of jobs;
- make efficient use of local raw materials;
- offer prospects for future expansion;
- stimulate technological development;
- develop new and modern industries;
- manage judicious use of natural resources;
- allow for local equity participation;
- offer training to locals at all levels of the business enterprise; and
- have the support of FSM State Governments.

The Department of Resources and Development is responsible for the promotion of trade, investment and tourism at the national level. Its Division of Commerce and Industry is the first point of contact for foreign investment proposals as well as other commercial ventures requiring major assistance packages from the Government.

The Department is the facilitator for all dealings with other departments and agencies and carries out research and development studies in cooperation with other agencies.

### ***State Governments***

#### *Kosrae*

The Governor's Office and the Department of Conservation and Development are both actively involved in business promotion and the Department oversees the State's development activities. Potential foreign investors are advised to contact both the Governor's Office and the Director of Conservation and Development.

#### *Pohnpei*

The State has three levels of active development promotion:

- the cabinet-level Department of Conservation and Resources Surveillance is charged with handling development issues for the State;
- the Foreign Investment Board has a role in promoting development as well as reviewing foreign investment permit applications; and
- the Economic Development Authority offers its services as an access point for foreign investors.

#### *Chuuk*

The State Government takes the view that, while outside investment is welcome, it ought not be an active participant but that development should be left to the private sector. Nevertheless, the Government is the owner of the state's dock and small cold storage facility, both of which could be utilised for a major fisheries project. The State Government prepared to participate actively in the development of these facilities.

#### *Yap*

Economic development is considered by the Yap Government to be its highest priority and is prepared to actively participate in project development and implementation. A specific budget is earmarked for project feasibility studies and the Government is willing to participate in a project as a investor and/or as a guarantor of loans.

## **REGULATORY FRAMEWORK**

### **Review and Approval Mechanisms for Foreign Investment Proposals**

If a business is to be a sole proprietorship or partnership and one of the partners is a foreign corporation, the only registration requirement is the Foreign Investment Permit. A foreign investor must apply for this permit before commencing business even if the investor acquires equity in a domestic corporation.

A foreign investment permit must be obtained by a foreign investor in the following cases:

- if a foreign investor wishes to acquire a stake in excess of 20 percent of any local business;
- if the proposals involve business activities in more than one state;
- if export sales will be in excess of 50% of total sales;
- if the proposal involves imports of 50% or more of the materials processed; or
- if the proposal's main business activity is related to communication, air or sea transportation or the transport of fuel.

Application forms may be obtained from the Registration of Corporations and are filed with a non-refundable fee of US\$250.

An application can take from three to nine weeks with the final decision being made by the Department of Resources and Development after consultation with the respective offices of the affected State(s).

## **Restrictions on Foreign Investment**

### ***Entry and Sojourn of Personnel***

Investors coming to the FSM will be granted permits to reside in the country for the duration of their investment. The FSM also has flexible rules with regard to the use of expatriate labour where it is necessary. However, the use of expatriate labour is subject to determination by the FSM of the availability of local workers and preference is given to local hiring for all jobs.

If an investor wishes to bring in outside labour, application must be made to the Division of Labour, Department of Resources and Development. An attempt will be made to find suitably qualified local labour and, if none is available, importation of labour will be subject to negotiation with the Division over terms and conditions of employment.

In practice, as the FSM has a shortage of skilled labour, the requirements necessary to import foreign labour have not been difficult to meet. The shortage is expected to continue for the foreseeable future, but investors are advised to plan for the use of local employees and provide for their training.

### ***Access to Land***

Land ownership is limited by the Constitution to citizens only. Even domestic corporations which have non-citizen shareholders may not own land. Non-citizen individuals and corporations may lease either public or private lands.

Because of its short supply and traditional importance special significance is attached to land in Micronesia. Leasing of private lands in particular can be time-consuming, due to clan ownership and uncertain boundaries and titles. Many parcels of land are held by families or clans which may have different factions, all of whom assert an interest.

The initial point of contact in respect of access to land should be the Secretary of the Department of Resources and Development.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

#### ***Duty-Free Access to the US Market***

As a general rule, all articles wholly grown, made or produced in the FSM will enter the US duty free except for certain categories. These include;

- watches, clocks and timing apparatus;
- buttons;
- articles subject to textile agreements, for example, footwear and leather wearing apparel; and
- tuna canned in oil.

Exports qualify for duty free treatment if the total cost of or value of the materials produced in the FSM and the direct cost of processing operations performed in the FSM is not less than 35 percent of the appraised value of the merchandise at the time of its importation into the US.

#### ***Canned Tuna***

Tuna canned in water has duty free access to the US so long as total exports do not exceed 10 percent of total US consumption.

#### ***Quotas***

Products produced in the FSM are not currently subject to quota restrictions. This is particularly relevant with regard to textile production, which is generally subject to highly restrictive quotas based on country of origin.

#### ***Investment Development Fund (IDF)***

The IDF has been established to provide funding for approved projects which require financing in excess of US\$500,000. Approved loans are re-payable within 25 years and currently attract an interest rate of five percent. Loans are available to FSM citizens, corporations with 20 percent local ownership and joint ventures between US citizens/companies and local companies for projects that fall within the general investment guidelines of the national and State Governments.

#### ***Import duties***

Materials or products imported for transshipment or processing for re-export are eligible for duty drawbacks.

#### ***Additional Reference Documents***

The FSM promotes investment opportunities in various publications including:

*'An Investors Guide to the Federated States of Micronesia'*, Department of Resources and Development; and

*'Federated States of Micronesia Business Director 1992'*: FSM National Government Publication.



## Contacts for Further Information

### National

The Secretary  
Department of Resources and Development

PO Box PS - 12  
Pohnpei, FSM 96941  
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Fax: (691) 320 5854

### Pohnpei

Director  
Department of Conservation and Resources  
Surveillance

PO Box 539  
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Fax: (691) 320 5779

or

Executive Director  
Economics Development Authority  
PO Box 783  
Kolonia, Pohnpei  
FSM 96941

### Chuuk

Director  
Department of Commerce and Industry  
Weno, Chuuk, FSM 96942  
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### Yap

Chief  
Division of Commerce and Industry  
Department of Resources and Development  
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### Kosrae

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Department of Conservation and  
Development

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Fax: (691) 370 2066

### Secretary

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Tofol, Kosrae 96944  
Federated States of Micronesia  
Telephone: (691) 370 3170  
Fax: (691) 370 2004

### Secretary

Pohnpei Foreign Investment Board  
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Kolonia, Pohnpei 96941  
Federated States of Micronesia  
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### Secretary

Chuuk Foreign Investment Board  
PO Box 280  
Weno, Chuuk 96942  
Federated States of Micronesia  
Telephone: (691) 330 2552  
Fax: (691) 330 2233

### Secretary

Dept. of Resources and Development  
Yap State Government  
PO Box 336  
Colonia, Yap 96943  
Federated States of Micronesia  
Telephone: (691) 350 2182  
Fax: (691) 350 2571

## ***FIJI***

Area(km <sup>2</sup> ): 148,272	Population (1994): 784
GDP per capita (1994): 2,051	Imports (US\$'m): 835
Exports (US\$'m): 504	Net Aid Inflows (US\$'m): 67
Primary <sup>A</sup> Sector (% of GDP): 21.6	Manufacturing Industry (% of GDP): 12.1
Tertiary <sup>B</sup> Sector (% of GDP): 66.3	
Principal Import Items:	Mineral fuels; manufacturing goods; machinery; food
Principal Export Items:	Tourism, sugar and molasses; gold; fish; lumber; garment manufacturing' ginger

### **OVERVIEW**

The Republic of Fiji consists of approximately 320 islands dispersed over an Exclusive Economic Zone (EEZ) of 1.3 million square kilometres of the South Pacific Ocean.

The total land area of the Fiji group is 18,272 square kilometres with the majority of islands being mountainous and of volcanic origin.

The biggest island, Viti Levu, is also the most developed and the most heavily populated island. The capital of Suva, Nadi International Airport, most of the primary and secondary industrial development and a good deal of the tourism infrastructure are located on the island.

In general there is little distinction between the form and conduct of a foreign-owned business and one that is locally owned. Essentially, conditions placed on investment by the Fijian Government are designed to ensure that the investment is desirable for Fiji in terms of its development, existing resources and investment.

The Government favours overseas investment proposals that will:

- assist in developing Fiji on a sound economic basis;
- generate increased exports;
- provide opportunities for significant local equity participation, particularly in projects that involve the utilisation of the country's natural resources;
- make provision for employment and training opportunities for local people;
- involve maximum processing of products in Fiji; and
- involve the enterprise in the provision of maximum common-use facilities, such as roads, labour, etc.

In view of the small size of the local market, industrial development is geared towards the establishment of export-oriented manufacturing units. In principle, the Fijian Government will encourage any export-oriented project found suitable for location in Fiji, provided it satisfies the goals previously mentioned.

## **REGULATORY FRAMEWORK**

### **Requirements**

Foreign investment is welcomed when it introduces in addition to foreign capital, management and technology and makes a contribution to Fiji's economic and social development. Joint ventures are encouraged in order to stimulate local entrepreneurship.

The real requirements for foreign investments are that they:

- introduce adequate funds for their projects;
- pay a fair price for assets acquired locally;
- do not have a debt to equity ratio greater than 3:1; and
- are generally expected to finance fixed assets from overseas sources.

In addition, lenders in Fiji require Exchange Control approval from the Reserve Bank to make loans to non-resident equities.

### **Review and Approval Mechanisms for Foreign Investment Proposals**

All proposals from foreign investors, and requests from locals for concessions and assistance, must be approved by the Government. Applications to the Government are submitted through the Fiji Trade and Investment Board (FTIB).

The FTIB appraises all investment proposals and, together with its recommendations, submits them to the Government for consideration and decision. Decisions are conveyed to the applicants by the FTIB. Decisions normally take eight weeks provided all relevant information is given by applicants.

The Government has given FTIB approval to act as a 'one stop shop', which will enable the FTIB to provide all the necessary approvals.

### **Restrictions on Foreign Investment**

Restrictions enforced on foreign investment include:

- remittances in and out of Fiji are controlled by Ministry of Finance through the Reserve Bank of Fiji;
- overseas investors require Exchange Control permission to make any investment in Fiji securities;
- local borrowing by non-residents is limited and is generally related to the amount of equity and the percentage of local equity participation;
- land tenure is regulated;
- overseas investors are discouraged from acquiring controlling interest in, or taking over, established, locally owned businesses in Fiji; and
- the milling of all sugar cane in Fiji is handled by the Government controlled Sugar Corporation and is closed to private enterprise.

### ***Limitations on Transfer of Capital***

Exchange control permission is required for remittances in and out of Fiji.

The following areas are affected by exchange control;

- transactions in foreign currency;
- transfer of currency into and out of Fiji;
- transfer of property and securities out of Fiji; and
- export and import transactions.

Generally, therefore, investment outside Fiji, overseas equity, loan investment into Fiji and the flow of funds arising from commercial and private commercial and private transaction into and out of Fiji are subject to exchange control.

*Bona fide* applications for foreign currencies for repatriation of capital and profit are generally approved after an income tax clearance has been issued by the Inland Revenue Department.

### ***Access to Land***

Eighty three percent of land is owned by Fijians in communal tenure. Fijian land which is reserved for the special use of its owners may not be leased except with their consent. Surplus land outside the reserve may, through the Native Land Trust Board (NLTB), be leased by anyone.

About seven percent of the land is controlled by the Government and, like the NLTB land, Government land may not be sold. The availability of crown land is usually advertised. This does not, however, preclude consideration being given to individual applications in cases where the land is required for special purposes.

Freehold land accounts for the remaining 10 percent of total land area. Access to land held in freehold tenure is negotiable with the private owners and estate.

### **Competition Policy**

#### **Entry and Sojourn of Personnel**

Because of the rapidly expanding population, immigration is subject to strict control. The Government recognises, however, the need to admit persons investing funds in the country. An investor introducing at least US\$345,000 into a business or undertaking can be issued a permit to take up residence in Fiji for an initial period of up to seven years.

Persons wishing to establish smaller businesses or undertakings may also be admitted, provided the business or undertaking is considered to be of economic benefit to Fiji. Similarly, persons who are to be employed under contracts with firms in Fiji are normally admitted, provided the positions in question cannot be adequately filled by local people. A foreigner's family may accompany him or her during the period of residency.

Subject to the proviso that no local person is available, local firms or companies that are branches or subsidiaries of overseas concerns are able to transfer skilled staff to Fiji. Persons in these categories may be granted permits to reside, generally, for a three-year period. These permits may be renewed (but normally for no longer than a total period of five or six years) if the continued presence of the holder is considered to be to Fiji's economic advantage or if the persons concerned are shown to be indispensable to their employers.

## INVESTMENT INCENTIVES AND PROMOTION

### Investment Incentives

The *Tax Free Zone/Tax Free Factory (TFZ/TFF)* scheme provides further taxation and customs concessions to incentives already in place. A collection of factories in a specific location is referred to as a Tax Free Zone while individual factories enjoying the same preferential conditions are known as Tax Free Factories.

The key criterion for qualification for TFF status is that the enterprise should export 95 percent or more of its annual production. Provision exists for TFZ status for an enterprise which re-exports 95 percent or more of its output, provided it is located within a proclaimed TFZ, an any enterprise engaged in an approved trade, product or service which supplies 95 percent or more of its annual output to a TFF also will be eligible for designation as a TFF. Some already established industrial areas have been designated TFZs while other are to be set up.

Types of enterprises considered to TFZ/TFF are:

- manufacturing;
- mixing, blending and packaging;
- assembly; and
- exportable professional services (as approved).

Benefits of the TFZ/TFF package.

#### A) Customs Concessions

- Total waiver of licensing for import of capital goods and other production materials.
- Exemption from customs duty on imported:
  - capital goods and equipment;
  - raw materials;
  - components, spares and packaging materials; and
  - other items purchased to set up a TFF, e.g. building materials, furniture, office equipment.
- Exemption from excise duty on products manufactured within the zone.
- All materials supplied to the zone from outside to be treated as exports and eligible for export benefit such as remission of excise duties.
- The following are 'exceptions' to customs concessions:
  - passenger and goods motor vehicles along with any other means of conveyance of goods and persons;
  - goods purchased ex-traders' duty paid stock will not be eligible for refund of duty; and
  - consumable articles.

#### B) Tax Concessions

- Corporate profits will be fully exempt from tax for a period of 13 years.
- No withholding tax on interest, dividends and royalty provided there is no 'shift of revenue abroad'.
- Final dividend tax of 15 percent on dividend paid to resident shareholders.
- Freedom to repatriate capital and profit.

Further benefits available to both Tax Free Enterprises and other foreign investors include:

- generous depreciation allowance;
- accelerated depreciation;
- carry forward of losses;
- double Taxation Agreements with Australia, NZ, Japan, UK and South Korea;
- concessional rates of interest to eligible exporters;
- reduced rates of withholding taxes; and
- enterprises expanding at least 30 percent of output are entitled to:
  - tax relief for a period of 8 years (with provision for extension); and
  - deductibility for income tax liability of 150% of expenditure increased in promoting Fijian products overseas.

Industry specific concessions include support for:

- tourism related investments:
  - Hotels (Hotels Aid Act) investment allowance.
  - Supportive Projects to the Tourist Industry Investment Allowance.
  - Tourist Vessel Investment Allowance.
- mining industry:
  - Income Exemption.
  - Deduction of Expenditure.
  - Acceleration Depreciation.
- Agricultural Enterprises:
  - Tax Exemption/Holiday.
  - Losses Offset and Carry Forward.
  - Land Improvement Allowance.

A Fuel Economy Investment Allowance is given to encourage economic use of fuel oil and its derivatives.

### ***Additional Reference Documents***

The Government undertakes investment promotion and holds forums through the FTIB.

Official documents used in promoting investment opportunities include:

*'An Investors Guide to Fiji'*: FTIB;

*'Fiji: A New Horizon Across the Pacific'*: FTIB;

*'Fiji Product Directory 1994'*: FTIB

Other promotional documents include:

*'Doing Business in Fiji'*: Price Waterhouse.

**Contacts for Further Information:**

Director Fiji Trade and Investment Board  
Fiji Trade and Investment Board  
PO Box 2303

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## ***KIRIBATI***

Area(km <sup>2</sup> ): 811	Population (1994): 78.3
GDP per capita (1993): 500	Imports (US\$'m): 25
Exports (US\$'m): 4	Net Aid Inflows(US\$'m): 14
Primary <sup>A</sup> Sector (% of GDP): 39.9	Manufacturing Industry (% of GDP): 10.8
Tertiary <sup>B</sup> Sector (% of GDP): 49.3	
Principal Import Items: Mineral fuels; manufacturing goods; machinery; food	
Principal Export Items: Copra; tuna fish' commercial fishing rights	

### **OVERVIEW**

Kiribati (pronounced Kiribass) has 33 coral atolls widely dispersed over a vast area of the Pacific Ocean and has an Exclusive Economic Zone (EEZ) covering 3.5 million square kilometres.

For administrative and demographic purposes, Kiribati is divided into atoll island groups, the Gilbert, Line and Phoenix Groups. The 17 islands of the **Gilbert Group** which include Tarawa, are all inhabited. Kiritimati (Christmas Island), the largest atoll, accounts for 48 percent of the country's total land area and is the administrative centre of the **Line and Phoenix Groups**.

The Kiribati economy is small with few resources. The agricultural base, including subsistence, is narrow and averages 30 percent of GDP. Copra is the only important cash crop and commercial fishing (mainly tuna) is undertaken by the small fleet of the national fishing company.

The service sector accounts for 61 percent of GDP with the major activity coming from Government Services. Trade and hotels account for 14 percent with tourism remaining underdeveloped although it has the potential of becoming the second largest industry after fisheries development.

### **Government Policy**

The Government of Kiribati aims to improve on the growth of performance of the country by encouraging private sector investment, diversification of the economy and instituting appropriate policies and measures.

Foreign investment is generally encouraged. Investors who wish to establish an enterprise must make an application to the Foreign Investment Commission which is chaired by the Secretary for Commerce, Industry and Tourism. Licences are granted on a case by case basis.

All proposals put to the Commission are considered under the following guidelines:

- the potential employment of I-Kiribati (the indigenous population);
- net export contribution;
- the balance between local resource exploitation and the size of the foreign investment;
- the potential for transferring to I-Kiribati foreign managerial and technical skills required in the enterprise;



- the extent of competition with local enterprises; and
- the impact on social and natural environments.

## **REGULATORY FRAMEWORK**

### **Review and Approval Mechanisms for Foreign Investment**

Overseas investment in Kiribati is controlled under the Foreign Investment Act 1985 and the Foreign Investment Regulation 1986.

For investment over US\$180, approval must be sought from Cabinet on advice from the FIC may approve the investment directly. The average time involved in processing an investment application from point of submission to final approval is two to three months.

If the application is accepted, the FIC often sets performance criteria relating to employment, training of local staff, and production targets, including a timetable for implementation. To ensure compliance, the firm is expected to submit quarterly reports.

### **Restrictions and Limitations on Foreign Investment**

The Government of Kiribati imposes restrictions on Foreign Investment only where local expertise or local industry already exists (for example, handcraft) or where the local, natural or social environment could be adversely affected.

#### *Access to Land*

The Kiribati Government owns about two-thirds of the land, the bulk of which is in the Line and Phoenix Groups. Although total land area in the country is small, suitable land still exists in certain areas for development. Christmas and Fanning islands in the Line group and Canton island in the Phoenix groups have been earmarked by the Government as prime areas for future development.

Land in the country cannot be bought by foreigners. However, for investment purposes, land can be leased on a long-term basis. All enquiries and approval for Government land is handled by the Lands and Survey Division (LSD) of the Ministry of Home Affairs.

Investors may enter into direct negotiations with private landowners on the terms and conditions for leasing.

### **Entry and Sojourn of Personnel**

Investors are normally granted visas for one year with provision for annual extensions.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

A range of incentives are offered to those wishing to invest in Kiribati. These incentives are not automatic but available on a case-by case basis. It is up to the investor to initiate any request for such assistance.

#### *Pioneer Status*

Any company that wishes to establish a business in Kiribati may apply to the Internal Revenue Board for 'pioneer status'. This allows for a reduced company tax rate of 10

percent for five years with the exception of business operations on South Tarawa and Christmas Island.

### ***Depreciation Allowance***

New plant and equipment are allowed a depreciation allowance of 25 percent in the first year and 15 percent, thereafter, on a reducing balance, while used plant and equipment are allowed a flat 15 percent. New and used buildings are depreciated at five percent of cost in the first year and thereafter on a straight-line basis. Depreciation allowance for new ships is 20 percent in the first year and 10 percent thereafter on a straight line basis, while the rate for used ships is set at 10 percent.

### ***Carry Forward of Losses***

Losses from previous years may be carried forward for up to three consecutive years but should be offset against like income.

### ***Loan Interest Deduction***

Interest payable on both foreign and local loans may be 100 percent free of tax deductions for income tax purposes but with total debt deductions restricted to an equity ratio of 3:1.

### ***Customs Duties***

Import duties are generally low and full or partial exemptions of import duties may be granted on capital items. These include building materials, plant and equipment, furniture and fittings and boats.

### ***Direct Government Investment***

The Government may assist by equity involvement or through joint-venturing a project. Assistance may be in the form of a financial contribution or through another resource contribution such as land (land cannot be owned by foreigners, but for investment purposes it can be leased at low rates on a long-term basis).

### ***Development of infrastructure***

Assistance may be provided for development projects, such as tourism. This may take the form of the development of or improvement of general infrastructure such as roads, port facilities, airport development, electricity and water supplies.

### **Additional Reference Documents**

*'Investment Opportunities in the Republic of Kiribati'* produced by the Department of Trade and Industry and the Ministry of Foreign Affairs, New Zealand, 1988.

### **Contact for Further Information:**

Secretary Foreign Investment Commission  
Ministry of Commerce, Industry and Tourism  
PO Box 510, Betio, Tarawa  
KIRIBATI

Telephone: (686) 26157  
Fax: (686) 26233

## ***REPUBLIC OF THE MARSHALL ISLANDS***

Area(km <sup>2</sup> ): 181	Population (1994): 54.1
GDP per capita (1993): 1,610	Imports (US\$'m): 75
Exports (US\$'m): 9.5	Net Aid Inflows(US\$'m): 50
Principal Import Items:	Mineral fuels; manufacturing goods; machinery; food
Principal Export Items	Coconut oil and copra

### **OVERVIEW**

The Marshall Islands is a republic associated with the USA in a compact of free association. It consists of a double chain of 29 coral atolls comprising 1,225 islands and reefs. Total land area is only 171 sq. kms, scattered over an Exclusive Economic Zone (EEZ) of 1.2 million sq. kms of ocean.

Among the 24 inhabited islands and atolls there are four administrative centres, Majuro, the capital, with a population of 20,000 Ebeye in the Kwajalein group which has 9,000 people, Jaluit and Wotje.

Significant atolls include Rongelap (land area 4.9 sq kms, lagoon 624 sq. Kms), Enewatak (land area 3.6 sq. Kms, lagoon 624.3 sq. Kms) and Maloelap (land area 6.1 sq. Kms, lagoon 604.3 sq. Kms).

An elected president is both Head of State and leader of a 10 minister cabinet whom he appoints. The legislature, known as the Nitijela, consists of 33 members elected by universal suffrage from 24 districts. Elections are held every four years. Cabinet exercises executive power and is accountable to the Nitijela.

A 12 member Council of Chiefs called the Iroij has a consultative function on matters relating to land and customs.

Marshall Islanders are categorised as Micronesians. The census population in 1988 was 43,335 with an annual growth rate of four percent. Approximately 66 percent of the population live in the urban centres of Majuro and Ebeye.

Marshallese is the official language although English is widely spoken and, as a result of the Japanese occupation of the islands during World War II, some people can converse in Japanese.

The estimated labour pool is 10,000 people of whom 50 percent have had a secondary education. A significant number of the paid workforce are Filipinos on term contracts in the construction industry. The employers of foreigners are required to pay 25 US cents per hour per employee into a government training fund to sponsor skills training for local people. The minimum wages in both public and private sectors are low compared to the general cost of living.

### **Government Policy**

The Government recognises the value of foreign investment as a means of promoting more vigorous economic development.

The taxation system is currently being modified with a view to assisting the economic development process.

Principal opportunities for foreign investment are likely to be in the areas of tourism, fisheries, derivative products of the coconut tree and fresh or processed tropical fruits and vegetables.

## **REGULATORY FRAMEWORK**

### **Review and Approval Mechanisms for Foreign Investment Proposals**

The Foreign Investment Advisory Board should be the first point of contact for potential investors, providing detailed information on all requirements. The Board also processes applications for investment licences. Applications should include the following information:

- names and nationalities of applicant and proposed shareholders;
- name and nature of proposed business;
- purpose, scope and objectives of the proposed enterprise;
- amount and source of investment;
- proposals for participation at management level by Marshallese citizens;
- proposed wages and benefit programs;
- detailed feasibility study report including cash flow statement covering first five years;
- proposed marketing strategy; and
- proposed use of utilities and infrastructure.

In the case of corporations, additional information should include:

- articles of incorporation, charter and by-laws; and
- amount of authorised capital stock. Insurance companies who are applicants must submit both a certificate stating that the company is authorised to transact business in the country of registration or incorporation and a certified copy of the last annual company statement.

In addition to an investment licence, foreign investors must also obtain a business licence from the local government authorities of the area in which they intend to operate. In the case of the local government of Majuro, annual business licence fees vary from US\$50 for a small take-out food enterprise to US\$500 for a bank. Companies can be incorporated by submitting the charter and by-laws to the registrar of corporations in the office of the Attorney General. Fees vary according to the degree of local participation.

### **Restrictions on Foreign Investment**

#### ***Entry and Sojourn of Personnel***

Work permits are available to the foreign investor although stringent rules apply.

#### ***Access to Land***

In spite of considerable progress in improving the tenure system, including the issuance of 50 year leases, acquisition of land for investment remains a formidable barrier with difficulties caused by the traditional system of multiple rights.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Incentives**

The country is a beneficiary of various trade agreements which allow preferential access to major markets for its exports. The Compact of Free Association gives access to US markets as does the Generalised System of Preferences (GSP) which covers markets in Canada, Japan and non-western European countries as well. The South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) opens the markets of Australia and New Zealand.

### **Contacts for Further Information**

Secretary  
Ministry of Resources and Development  
PO Box 1727  
Majuro  
Republic of the Marshall Islands 96960  
Telephone: (692) 625 3206/3352  
Fax: (692) 625 3218

Managing Director  
Marshall Islands Development Bank  
PO Box 1048  
Majuro  
Republic of the Marshall Islands 96960  
Telephone: (692) 625 3230  
Fax: (692) 625 3309

## NAURU

Area(km <sup>2</sup> ): 21.1	Population (1994): 10.6
GDP per capita (1992): 4,640	Imports (US\$'m): 21
Exports (US\$'m): 26	
Principal Import Items:	Mineral fuels; manufacturing goods; machinery; food
Principal Export Items	Phosphate deposit

### OVERVIEW

The Republic of Nauru is one of only two single island nations in the South Pacific. It is located 41 kms south of the equator and has a land area of only 21 sq kms, although its Exclusive Economic Zone (EEZ) covers 310,000 sq kms.

The Nauruan Government comprises 18 elected members headed by a president who is both head of state and *de facto* prime ministers.

Nauru's rich phosphate deposits have made it the wealthiest nation in the South Pacific with a per capita GNP of US\$4,640. The local labour force is insufficient to meet the phosphate mining needs of the Nauru Phosphate Commission imports contract workers from areas such as the Philippines. Hong Kong, Kiribati, Tuvalu and other Pacific Islands.

### Government Policy

Nauru has never had a specific foreign investment policy, mainly as a result of its economic situation and because of the limited space available for development.

The Government, therefore, has never actively encouraged foreign investment and offers no incentives as such for investors. It does, however, operate a financial centre which allows international companies to register therefor tax planning purposes. Laws and regulations have been designed to promote the further development of this centre.

Nauru is a beneficiary of the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) which gives its products preferential access to Australian and New Zealand markets. It is not, however, partner to the Generalised System of Preferences (GSP) and the Lome Conventions which benefit the trading agreements of many other Pacific nations.

### Significant aspects of the economy

- Nauru's sole export is high quality phosphate. The estimated value of exports over the period 1989-93 was US\$95 million.
- The trade balance is heavily weighted in Nauru's favour even though virtually every commodity is imported. Main suppliers of imports are Australia and New Zealand. There are no import duties except on tobacco products and alcoholic beverages.
- Primary production is confined to fruit and vegetables for domestic consumption although the country is nowhere near self-sufficient and commercial fishing does not exist on any scale.
- Nauru has not developed as a tourist destination; most arrivals are in transit on Air Nauru flights or returning expatriate workers.

- The Nauru Government does not impose any taxes except for an Airport Departure Tax impose on foreigners passing through Nauru

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Contact for Further Information**

Secretary  
Department of Island Development and Industry  
Republic of Nauru  
Central Pacific  
Telephone: (674) 444 3181  
Fax: (674) 444 3791

## *NIUE*

Area(km <sup>2</sup> ): 259	Population (1994): 2.3
GDP per capita (1993): 3,447	Imports (US\$'m): 2.5
Net Aid Inflows(US\$'m): 1	
Principal Import Items:	Mineral fuels; manufacturing goods; machinery; food
Principal Export Items	Handcrafts and agricultural goods

### **OVERVIEW**

Niue, like Nauru, consists of a single island. It is an uplifted coral island of 250 square kilometres. The Constitution Act of 1974 provides for self-government in free association with New Zealand, with New Zealand accepting most of the responsibilities for foreign relations and defence.

### **Government Policy**

Government policy is to support, within reason, any overseas investment proposal which could provide employment for local people, increase opportunities for import substitution and reduce the trade deficit.

Proposals relating to horticulture, timber milling, labour intensive light manufacturing and tourism are of particular interest to the Government.

### **REGULATORY FRAMEWORK**

There is very little in the way of regulatory framework. The Development Investment Act 1992 and the accompanying Investment Code are relatively open, both having the objective of imposing minimum restrictions on overseas investment. In general, each application will be considered on its merits.

A review and approval mechanism generally involves the relevant officials (for example, agricultural or fishing based industry is via the Director of Agriculture Forestry and Fisheries) advising the Cabinet (the Premier and three Ministers). Cabinet makes the final decision on all investment submissions. Tax incentives are not, however, likely to be available except in exceptional cases of very high benefits accruing to the Niuean economy.

### **Restrictions on Foreign Investment**

Depending on their nationality, there may be restrictions on skilled workers. All Niueans are New Zealand citizens. Therefore entry of New Zealand citizens is unrestricted. However, other nationalities may require a visa or permit.

Currently, land can be leased but not sold. There is an ongoing land titling project with the aim of registering family interests in all land.

There is currently no company legislation in Niue. For business purposes, companies registered elsewhere are recognised.

There are no limitations on capital/profit transfers. There are very few restrictions on raw material imports. The main restriction is related to the importation of plants and animals, where investment approval is needed. There is no excise legislation.



The Niue Development Bank has lending rates varying between four percent and seven percent per annum. However, access to this capital by foreign investors is discouraged, due to the small amount of funds available.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

Individual proposals are assessed according to merit for the amount of concession to be given.

There are guidelines in place which grant the Government wide discretionary powers over import duties on new plant, tariff or quota protection for Niuean industries, taxation rebates and relief, employee training, infrastructure requirements, repatriation of profits and capital and degree of local participation in any enterprise. In the past, tax holidays have been granted for up to five years. Accelerated depreciation may also be granted and, in a small number of cases, exemptions from import duties have been provided. However, availability of tax concessions is now limited to exceptional cases.

The granting of concessions and other forms of encouragement to investors is normally based on the following criteria:

- The employment potential of the enterprise.
- The use of local raw materials and local personnel.
- The ability to earn or save foreign exchange.
- The capacity to increase exports or reduce imports.
- The provision of a service or product which is not currently available in Niue.
- The capacity of the enterprise to produce by-products or materials from which other products can be made.

The Niue Government is extremely interested in attracting foreign investment and Ministers and officials will consider submissions and support those which offer benefits to the country.

The current program aims to encourage the tourism industry, initially with the aim of fully utilising capacity on current flights.

### **Contacts for Further Information:**

Economic Adviser  
Planning and Development Unit  
PO Box 40  
Alofi  
NIUE  
Telephone & Fax: (683) 4148

General Manager  
Niue Development Branch  
PO Box 34  
Alofi  
NIUE  
Telephone: (683) 4126  
Fax: (683) 4335

## ***REPUBLIC OF PALAU***

Area(km <sup>2</sup> ): 487	Population (1994): 16.9
GDP per capita (1993): 4,600	Imports (US\$'m): 45
Exports (US\$'m): 32	Primary <sup>A</sup> Sector (% of GDP): 11.4
Manufacturing Industry (% of GDP): 0.7	Tertiary <sup>B</sup> Sector (% of GDP): 87.9
Principal Import Items:	Manufacturing goods, machinery, food, beverage & tobacco
Principal Export Items	Fish

### **OVERVIEW**

The Republic of Palau is an archipelago of more than 300 islands, only nine of which are inhabited. The islands of Palau form a total land mass of 487 square kilometres - the largest island, Babeldaob, 334 square kilometres.

The Republic of Palau is associated with the USA in a compact of free association, officially attaining its independent in October 1994.

The democratically elected National Government is modelled upon that of the United States and has three separate branches of government: the executive, the legislative and the judicial. In addition, a 'Council of Chiefs', composed of a traditional chief from each of the States, advises the President on matters concerning traditional laws, customs and their relationship to this constitution and laws of Palau.

### **Government Policy**

The National Government aims to maximise opportunities for the people of Palau by implementing policies designed to stimulate a free and vibrant market economy to supersede the subsidised economy that developed during Palau's years as a trust territory. Thus, the Government encourages and recognises the value of foreign investment, provided such investments are compatible with the cultural and environmental heritage of the islands.

### **Special Requirements**

A proposed business activity either must involve a foreign investment of more than US\$500,000 or the workforce of the business must be at least 20 percent Palauan.

In addition, entry and work permits must be obtained from the Division of Immigration and the Division of Labour for any foreign workers.

### **REGULATORY FRAMEWORK**

#### **Review and Approval Mechanisms for Foreign Investment Proposals**

All proposals from foreign investors seeking to engage in business in the Republic of Palau are required by the Foreign Investment Act to apply for an obtain a license known as a Foreign Investment Approval Certificate (FIAC).

Any foreign investor wishing to do business in the Republic of Palau will need to obtain the necessary business licenses from the Bureau of Revenue, Customs and Taxation. Also a business may have to obtain any applicable state business licenses from the state government

where the business will be located. In certain circumstances, specific permits from the environmental Quality Protection Board or the Maritime Authority may need to be obtained.

Applications to the Government are submitted through the Foreign Investment Board for decisions.

The Board has the following functions:

- a) review and evaluate proposals for foreign investment;
- b) to grant or deny application for FIAC's
- c) to monitor and enforce compliance with the terms and conditions of any FIAC granted;
- d) to monitor and enforce compliance with the provisions of the Act.

An FIAC application must be submitted with an additional 20 copies plus a non-refundable application fee of \$500. This application shall be evaluated by the Board according to the following criteria:

- a) the economic need for the proposed activity in the Republic;
- b) the extent of its current availability in the Republic;
- c) the likely impact on same or similar activities currently being carried on by citizen;
- d) the overall benefit to the national economy;
- e) the bona fide, financial capacity, experience and expertise of the applicant;
- f) the technical and economic viability of the proposed project.

The Foreign Investment Board is required by law to issue a decision on applications within 90 days of the submission of a complete application. However, moves are presently being made to expedite the review process and to issue decisions more quickly.

Following an application approval, the Board will set the duration, scope and any conditions to be included in the FIAC.

Foreign investors are required to submit periodic reports to the Board. This information enables the Board to monitor investors compliance with the law and with the terms and conditions of the FIAC.

An FIAC may be modified, suspended, or revoked by the Board under the Foreign Investment Act. Such circumstances that could warrant this action include, but not limited to:

- submission of false or fraudulent information;
- violation of any laws or regulation of the Republic of Palau; and
- violation of any of the terms or conditions of the FIAC.

## **Restrictions on Foreign Investment**

### ***Reserved Activities***

Reserved investment areas are those in which new investments will be reserved for local citizens or for enterprises partially or wholly owned by local citizens. These areas include:

- handicraft and gift shops; provided, however, that handicraft or gift shops located on the premises of hotels or at the Palau International Airport shall be exempt from the prohibition of this section;
- bakeries;
- bar services not associated and contained within a restaurant or hotel complex. For purposes of this subsection, hotel complex means any lodging facility having at least 50 rooms for the accommodation of guests;
- operations manufacturing products being produced by wholly Palauan-owned manufacturing enterprises;
- equipment rentals for both land and water within the Republic, including equipment for purpose of tourism;
- commercial fishing for farm-raised fish or maricultured species;
- any such other businesses as the Board may determine.

Exclusive investment areas are those in which new investments are reserved local citizens or for enterprises wholly-owned by local citizens. These areas include:

- wholesale or retail sale of goods;
- all land transportation including bus services, taxi services, and car rentals;
- tour guides, fishing guides, diving guides, and any other form of water transportation services;
- travel and tour agencies;
- commercial fishing for other than highly migratory species.

### ***Access to Land***

Foreign investors cannot buy land in the Republic of Palau. Only citizens of Palau and corporations wholly owned by citizens of Palau may acquire title to land or waters in Palau. However, foreigners may lease land from the Palauan owners for up to 50 years.

Due to the complex history of Palau, including the long periods of foreign control and management of the islands, the actual ownership and title to much of the land in Palau is only now in the process of being conclusively established. Accordingly, the foreign investor should be careful to ensure that the Palauan lessor with whom they are dealing legally has acquired the right to alienate a specific parcel of land before entering into a lease on behalf of a foreign business enterprise.

### ***Entry and Sojourn of Personnel***

To ensure that interested Palauans will have an opportunity to apply for jobs as they become available in the private sector, the Division of Labour requires that all prospective employers first advertise a position locally before bringing in a foreign workers. If after 30 days no Palauan is available to hire, a foreign investor is free to recruit foreign employees. In general, both local and foreign investors in recent years have supplemented the local work force by recruiting from abroad to an acute shortage of skilled labour.

Foreign investors are also required to pay an annual fee of US\$500 for every foreign worker employed in the company.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

The primary incentive for investment in the Republic of Palau is its status as one of the lowest taxed business environments in the Asia Pacific region. There is no corporate tax, nor is there any taxation of income for business owners.

The country is a beneficiary of the Compact of Free Association which allows business access to US markets.

Also any foreign investor who constructs a facility in the Republic may be entitled to a refund of taxes paid equal to the costs of off-site roads, water, power or sewer infrastructure improvements accomplished to service such facility. The amount refunded in any single tax year shall not exceed 50 percent of the amount paid in that tax year by the foreign investor.

### **Additional Reference Documents**

The Republic of Palau actively promotes investment opportunities through the Foreign Investment Board. The official publication produced by this Board is *'Palau - The Foreign Investor's Guide: Foreign Investment Board'*.

### **Contacts for Further Information**

Foreign Investment Board  
PO Box 1733  
Koror  
PALAU 96940  
Telephone: (680) 488 1135  
Fax: (680) 488 3722

Secretary  
Bureau of Revenue  
Customs and Taxation  
PO Box 6011  
Telephone: (680) 488 2580

Secretary  
Environmental Quality Protection Board  
PO Box 100  
Koror  
PALAU 96940  
Telephone: (680) 488 1639  
Fax: (680) 488 2963

## ***SOLOMON ISLANDS***

Area(km <sup>2</sup> ): 462,840	Population (1994): 4,100
GDP per capita (1994): 1,290	Imports (US\$'m): 1321
Exports (US\$'m): 2652	Net Aid Inflows(US\$'m): 244
Primary <sup>A</sup> Sector (% of GDP): 54	Manufacturing Industry (% of GDP): 8
Tertiary <sup>B</sup> Sector (% of GDP): 38	
Principal Import Items: Mineral fuels; manufacturing goods; machinery; food	
Principal Export Items: Gold; copper; coffee' logs; oil	

### **OVERVIEW**

The Solomon Islands are a group of several hundred islands stretching over approximately 1,500 kilometres. They are characterised by steep mountain ranges and dense tropical forests and are surrounded by extensive coral reefs.

The Solomon Islands is the second largest Pacific Island nation in terms of land area and the third largest in terms of population.

The Solomon Islands became fully independent in 1978. Recently the central government embarked on a program of decentralisation and to date eight provincial governments have been established.

### **Government Policy**

The Solomon Island's Government welcomes and encourages investors whose development proposals are compatible with its national aims and objectives in respect of the environment and social structure. In addition, the Government has developed a list of desired investment areas for potential investors. This can be obtained from the Foreign Investment Board.

The Government recognises the important role that overseas investment can play in broadening the country's economic base. The assessment process for overseas investment also pays particular attention to the impact of the proposal on:

- strengthening the technical and marketing expertise of the private sector;
- use of local raw materials;
- net export income;
- import cost savings; and
- employment and training, especially in regional areas.

### **REGULATORY FRAMEWORK**

#### **Review and Approval Mechanisms for Foreign Investment Proposals**

Proposals for foreign investment are screened under the provision of the Foreign Investment Act and Regulation. Section 11 of the Act provides for investment guarantees where transfer or proceeds of sales, dividends, profits, payments under approved technology agreement etc, is permitted.

The Foreign Investment Board is the national body responsible for approving all foreign investment applications. The Board is chaired by the Prime Minister. The Foreign Investment Division of the Ministry of Commerce and Primary Industry acts as the secretariat to the Board.

The Board has the following functions:

- a) approve foreign investments and technology agreements;
- b) monitor and enforce compliance with the terms and conditions of any approval granted under the Act; and
- c) review and advise the Government on policies and procedures relating to the promotion and regulation of foreign investments.

Proposals may be approved in as little as 30 days but can take considerably longer depending on the complexity of the project, its location and the land related issues involved.

Foreign investment approvals are also subject to exchange control approval in respect of transactions which have exchange control implications.

## **Restrictions on Foreign Investment**

### ***Reserved Activities***

The only activities not open to foreign investment are retail and the right to fish in in-shore areas, the reef and lagoons (subject to traditional ownership/usage rights).

### ***Access to Land***

Land is a complex and integral part of the Solomon Islands way of life. It is generally communally owned by clans or lines. Children inherit land rights through either the father or mother depending on the lineal system practised by the particular clan.

Title to land in Solomon Islands is either customary or registered:

- a) the Government recognises that all customary land is owned, usually in a lineage group;
- b) registered land has its ownership and boundaries recorded in a land registry in Honiara and these are guaranteed by law rather than by custom. The registered system is therefore attractive to investors but permits to own a perpetual estate (freehold interest) in registered land are limited to indigenous Solomon Islanders. Non-Solomon Islanders, including expatriate Solomon Island citizens, may only lease registered land.

About 88 percent of land is customary and 12 percent registered. In 1977, an Amendment Bill to the Lands and Titles Ordinance converted perpetual estates owned by non-Solomon Islanders into 75 year fixed term estates (leases from government) with development conditions.

### ***Entry and Sojourn of Personnel***

Entry of new foreign employees must be approved by the Commissioner of Labour and based on evidence that:

- no trained Solomon Islander is available to fill the position;
- the foreign employer is qualified, experienced and able to train Solomon Islanders to undertake the task; and

- provision has been made for localising the position through suitable training. Investors must provide suitable training to enable their Solomon Island employees to obtain the skills to eventually fill all positions in the organisation except those needed to safeguard the investor's interests (for example, that of the Managing Director).

Periodic checks are made at work places to ensure that overseas workers are undertaking duties in accordance with their work permits.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

The Solomon Islands Investment Board is empowered by the Solomon Islands Investment Act to negotiate investment incentive packages tailored for individual proposals.

The incentive package includes:

- up to 10 years tax free holiday;
- up to 15 years exemption from withholding tax on dividends;
- up to 10 years exemption from withholding tax on interest paid to non-residents;
- the capacity to carry forward losses;
- accelerated capital write off of 40 percent in first year and five percent per annum thereafter for manufacturing enterprises (a special rate of 50 percent is allowed for tourist developments);
- double deduction for expenditure on apprenticeships and tertiary education;
- 150 percent deduction for cost of inter-province transport of raw materials;
- 150 percent deduction for export promotion expenditure;
- duty free entry for capital equipment and drawback on re-exported items;
- special additional incentives for tourism developments; and
- free movement of capital and profit remittances.

### **Additional Reference Documents**

The Solomon Islands actively promotes investment opportunities in various publications including:

*'Solomon Islands Investment Guide'*: Foreign Investment Board;

*'Solomon Islands Welcomes You and Your Investment'*: Foreign Investment Board  
Ministry of Commerce and Primary Industries; and

*'Solomon Islands Trade Directory'*.

### **Contacts for Further Information:**

Secretary, Foreign Investment Board  
Ministry of Commerce, Employment and Trade  
PO Box G26, Honiara, SOLOMON ISLANDS  
Tel: (677) 23 015/21 849, Fax: (677) 21 651/26 075

Managing Director, Foreign Exchange Department  
Central Bank of Solomon Islands  
PO Box 634, Honiara, SOLOMON ISLANDS  
Telephone: (677) 23492



## ***TONGA***

Area(km <sup>2</sup> ): 699	Population (1994): 98.3
GDP per capita (1993): 1,591	Imports (US\$'m): 66
Exports (US\$'m): 13	Primary <sup>A</sup> Sector (% of GDP): 36.2
Manufacturing Industry (% of GDP): 5.5	Tertiary <sup>B</sup> Sector (% of GDP): 58.3
Principal Import Items:	Mineral fuel; manufacturing goods; machinery; food
Principal Export Items:	Food and live animals

### **OVERVIEW**

The Kingdom of Tonga, or the Friendly Islands as Captain Cook called the cluster of islands south-east of Fiji, is one of the world's few remaining constitution monarchies.

The islands are of volcanic and coral formation.

The Tongan economy is based predominantly on agriculture with at least 60 percent of the population depending on it for their livelihoods. The economy was estimated by the Government to grow about 2.8 percent in 1992-93 and by four percent in 1993-94 due to increased exports and new construction.

Wages and salaries are comparatively low. Wages, salaries and other conditions of work in the private sector are a matter of direct negotiation between employers and workers. There are no trade unions in Tonga, although a 1964 Act of Parliament provided for their establishment.

Local skilled labour is available in sufficient quantities to undertake most types of building works, except for some specialised skills and supervisory levels manpower which can be recruited from abroad.

### **Government Policy**

Foreign investment is welcomed in Tonga and, while there is a range of Government regulations and procedures to be adhered to, each proposal is dealt with on its own merits.

A proposal is particularly welcomed where it has the potential to:

- bring in foreign capital;
- introduce technical expertise (management, engineering and technological) which would otherwise be unavailable;
- generate workforce skills;
- create employment for Tongans;
- generate and/or conserve foreign exchange through export, tourism and import substitution; and
- develop or create access to new export markets and/or the expansion of existing export markets.

## **REGULATORY FRAMEWORK**

### **Review and Approval Mechanism for Foreign Investment Proposals**

The policy on foreign investment is administered by the Ministry of Labour, Commerce and Industries (MLCI). The provisions of the industrial Development Incentives Act require that a development licence be obtained for any proposed industry or tourism prime facility. The Ministry also deals with company registration and the administration of incentives under the Act.

The Ministry will appraise applications in consultation with other ministries and departments and submit them to the Standing Advisory Committee on Industrial Licensing. All successful proposals are issued with a development licence which sets out clearly all incentives and concessions granted for the project.

The time taken for the approval process varies, depending on the nature of the proposal and the completeness of the supporting documentation, but most decisions are made within five to six weeks.

In addition to the above requirements, a one stop centre has been created within the Ministry of Labour, Commerce and industries to take care of other requirements such as trading licence, work permits from the Ministry of police, and appropriate assistance regarding land from the Ministry of Land, Survey and Natural Resources.

### **Restrictions on Foreign Investment**

#### ***Transfers of Capital and Profit***

For the purpose of conserving foreign exchange, the National Reserve Bank of Tonga exercises some control on foreign receipts and payments. Repatriation of funds, including dividends, profits, capital gains, interest on capital and loan repayment and salaries is permitted according to the provisions of the Foreign Exchange Control Act except:

- where an industrial enterprise is partly financed by locally raised capital (including working capital), in which case the repatriation of funds will be related to the extent of foreign financing, meaning repatriation will be regulated on a *pro rate* basis;
- in respect of capital gains, the amount eligible for repatriation will be restricted to the amount transferred in through the banking system or by other approved methods;
- expatriate employees will be allowed to remit overseas their wages and salaries received in Tonga up to the amount on which income tax has been paid.

#### ***Access to Land***

Foreign investors cannot buy land in Tonga. The Government provides areas designated to small industry sectors and will help in negotiation for leasing of private lands between foreign investors and locals.

#### ***Entry and Sojourn of Personnel***

Foreign investors and their families will be issued with visas to reside and work in the Kingdom as long as their enterprises are in operation. Visas will also be issued to non-Tongan employees of approved enterprises for the contracted period of their employment. Spouses are allowed, without restrictions, to find employment or generate their own employment.

## INVESTMENT INCENTIVES AND PROMOTION

### *Investment Incentives*

For approved industrial and prime tourist enterprises a range of incentives is offered. They include:

#### *Tax Holidays*

- an income tax holiday of five years (which may be extended up to a total of 15 years);
- additional tax holidays may also be granted for expansion of an enterprise; and
- shareholders' dividends will not be taxed if received by shareholders during the tax holiday period.

#### *Exemption from Customs Duties*

Capital goods imported by an approved enterprise are exempt from customs duties for a period of two years from when the enterprise commenced operating or was expanded, provided the imported goods are for the sole purposes of manufacturing, processing or assembling of an approved product or for servicing industry or creating a prime facility.

Semi-finished products and raw materials imported and used for further processing, manufacturing or assembling are exempt from customs duties if the finished product is exported.

#### *Concessional Rate of Port and Service Tax*

A 50 percent concessional rate on Port and Service Tax will be levied on all imports of capital goods, machineries and construction materials. In the case of export oriented industries, these items are fully exempt from payment of the tax including all imported semi-finished products and raw materials.

#### *Other Investment Incentives*

- Protection from competition for specified periods.
- Long term space and land leasing on the Small Industries Centre, a 12 acre industrial estate one kilometre from the centre of Nuku'alofa.
- Residential and work visas for foreign investors and their families for as long as the enterprise is in operation.
- Exemption from customs duties for investors and families' personal effects.
- Priority for electricity telephone and water connections.
- Technical and promotional assistance from the Ministry of Labour, Commerce and Industries is available to help prospective investors identify, evaluate and set up industries.

The Industrial Promotion Unit of the Ministry of Labour, Commerce and industries is the industrial promotion arm of Government. Other institutions including the Bank of Tonga undertakes active investment promotions supplying the '*Investing in Tonga Guide*' (1989).

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## TUVALU

Area(km <sup>2</sup> ): 26	Population (1994): 9.5
GDP per capita (1990): 1,009	Imports (US\$'m): 4
Net Aid Inflows(US\$'m): 8.4	Primary <sup>A</sup> Sector (% of GDP): 21.2
Manufacturing Industry (% of GDP): 51	Tertiary <sup>B</sup> Sector (% of GDP): 73.7
Principal Import Items:	Food and beverage; crude materials; machinery and transport equipment; manufacture goods
Principal Export Items:	Stamps; copra; handicrafts; garments

### BACKGROUND

Tuvalu consists of nine dispersed islands of atoll or coral formation none of which is over 4.6 metres above sea level. They have a combined land area of only 26 square kilometres.

Tuvalu has an extremely limited resource based and is relatively difficult to visit even by South Pacific standards. The economy is significantly aid dependent.

### Government Policy

The Government of Tuvalu has recently taken steps to develop guidelines for foreign direct investment making Tuvalu more attractive to private investors.

Foreign investment proposals are dealt with on a case-by-case basis with the Government generally being accommodating regarding the terms and conditions under which overseas firms can operate.

### REGULATORY FRAMEWORK

#### Review and Approval Mechanisms for Foreign Investment Proposals

There is no specific Foreign Investment legislation. The Ministry of Finance, Economic Planning, Commerce and Industry will provide information on investment opportunities. Proposals or applications relating to potential investments and requests for information should be directed to the Ministry. Applications should contain sufficient relevant information on the size and nature of the project, its projected costs and benefits, land requirements, etc. The Ministry will appraise the proposal and make appropriate recommendations, including the granting of concessions. The Ministry may also seek advice from the Development Bank of Tuvalu as well as other ministries and government departments. Large investment projects may also be referred to the Cabinet for consideration and approval.

#### Restrictions on Foreign Investment

##### *Access to Land*

As a small island state, Tuvalu faces the problem of limited territory. The Government itself does not own any land, leasing land for its own purposes from traditional owners.

The Government can acquire land for any 'public purpose' but is usually required to pay compensation to the traditional landowners. Presently, the Government pays a rate of around US\$950 per acre per annum to traditional landowners for the government leased land.

The Ministry of Natural Resources has the responsibility for lands. Non-natives can only access land on a leasehold basis, and then only with the approval of the minister of Natural Resources.

### ***Entry and Sojourn of Personnel***

Permits are granted to investors involved in any project and for expatriate personnel where comparable local staff is not available.

### ***Transfers of Capital***

Approval to repatriate profits under the Foreign Currency Act is required from the Secretary of Finance.

### **Imports**

Most capital items, including plant, machinery and vehicles for newly established businesses, are exempted from duty upon application. All building materials are imported duty free.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

No specific or fixed set of incentives currently exist for investment in general. In most instances incentives are granted on a case-by-case basis. Certain types of industries, including tourism, qualify for 'pioneer status' which gives them the opportunity of applying for tax exemptions. Under this category, the Minister of Finance can, at his discretion, grant exemption on tax for any concession period. Incentives are currently being reviewed to make them more attractive.

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## ***VANUATU***

Area(km <sup>2</sup> ): 12,190	Estimated Population (1994): 164.1
GDP per capita (1993): 1,160	Imports (US\$'m): 72
Exports (US\$'m): 23	Net Aid Inflows(US\$'m):37
Primary <sup>A</sup> Sector (% of GDP): 20	Manufacturing Industry (% of GDP) 5.9
Tertiary <sup>B</sup> Sector (% of GDP): 75.1	
Principal Import Items: Food; mineral fuels; manufacturing Goods; Machinery	
Principal Export Items Copra; beef; cocoa; timber; shells	

### **OVERVIEW**

The Republic of Vanuatu comprises a chain of 13 larger islands and about 60 smaller islands including the Banks and Torres Group, stretching from northwest to southeast for a length of approximately 725 kilometres. The terrain throughout is generally hilly and rough and covered with dense forest.

Vanuatu is a sovereign democratic state. It achieved independence in 1980 after 74 years of joint rule by Britain and France.

### **Government Policy**

The Government of the Republic of Vanuatu launched a 15 year development program in 1982 aimed at achieving the goal of economic self-reliance. Currently in its third and final stage, the main focus of the program is on:

- ensuring the progressive achievement of the long term goal of economic self-reliance;
- promoting a balance of regional and rural development; and
- increasing the quality of rural life.

One of the Vanuatu Government's main aims is to encourage foreign investment in the country, with a particular emphasis on encouraging investment in industries which use local resources, create employment and produce goods for export or import substitution.

There are few specific guidelines regulating investment in the country and each project is considered on its own merits.

### **REGULATORY FRAMEWORK**

#### **Review and Approval Mechanism for Foreign Investment Proposals**

No specific legislation exists for foreign investments in Vanuatu. However, a Foreign Investment Code being formulated by the Government is expected to detail the various procedures and incentives available for different industries. The possibility of setting up a Foreign Investment Board in order to co-ordinate all matters relating to foreign investment is also being examined. A comprehensive tourist development plan has been formulated which will help to refine government policy for development in the country over the next ten years.

New investors require approval from the Ministry of Finance before establishing a business in Vanuatu. This requirement may be met by formal application and personal interview if

considered necessary. The average period of time involved in processing an investment application from the point of submission to final approval is one to two months.

The Ministry of Finance issues the mandatory Business Licences. Applications are required on a prescribed form and considered by the Minister of Finance on a case by case basis.

Residency permits are also normally required for investors.

## **Restrictions on Foreign Investment**

### ***Reserved Activities***

Most industries are open to foreign investment. However, license restrictions apply which limit to Vanuatu citizens only the operations of local tour operators, fisheries, passenger bus services and taxi services.

### ***Transfer of Capital***

As there are no exchange controls in Vanuatu, foreign companies are free to repatriate profits and any income earned. Accounts may be opened in most major currencies.

### ***Access to Land***

About 90 percent of land in Vanuatu is owned according to custom, with the balance owned by the Government and a small portion by the private sector. Leases can be obtained for periods ranging from 50 to 75 years. The Government, through the Department of Lands, can facilitate negotiation of land leases with land owners. Undeveloped land must be improved within five years of acquiring a lease.

### ***Entry and Sojourn of Personnel***

Work and residency permits are required for non-Vanuatu citizens. Such permits will not be issued in instances where skilled Vanuatuan labour is available. There is however a shortage of skilled and semi-skilled Vanuatuan workers and overseas recruitment of skilled personnel is often necessary.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

Incentives are mostly applied on a project-by-project-by-project basis. The primary incentive for investment in Vanuatu is its status of Tax Haven which allows freedom from corporate tax, income tax, estate duties and non-capital gains tax. In addition, the country is free of withholding tax and does not have any treaties or double taxation agreements with other countries.

While no specific free trade zone exists in certain projects, total or partial exemptions from import duties may be offered in respect of:

- capital goods during the start-up period;
- spare parts and maintenance tools for the period under consideration;
- raw materials or manufactured goods that are not locally available and are to be used in the production of export production; and
- certain specific items for agricultural purposes.



Particular encouragement is given to industries involving tourism, fishing and processing of agricultural or marine products.

Generally, there are no restrictions on exports from Vanuatu. Export duties are quite low and in certain circumstances a reduction in the rate of export duty may be granted.

Legislation has been introduced creating Provincial Chambers of Commerce. The intention is to promote business development in Vanuatu. All business licence holders are automatically members of their local Chamber of Commerce.

### **Additional Reference Documents**

The official document used in promoting investment opportunities is:

- *‘Investing in Vanuatu’* : Ministry of Economic Affairs and Tour, 1993

Other promotional documents include:

- *‘Doing Business in Vanuatu’* : Price Waterhouse.

### **Contacts for Further Information**

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Secretary  
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## ***WESTERN SAMOA***

Area(km <sup>2</sup> ): 2,934	Population (1994): 163.5
GDP per capita (1993): 748	Imports (US\$'m): 103
Exports (US\$'m): 6	Primary <sup>A</sup> Sector (% of GDP): 18
Manufacturing Industry (% of GDP): 39.9	Tertiary <sup>B</sup> Sector (% of GDP): 10.8
Principal Import Items:	Food; mineral fuels; manufacturing goods; machinery
Principal Export Items:	Coconut products and tar; cocoa; beer

### **BACKGROUND**

Western Samoa consists of two main islands, Upolu and Savoi, with several smaller adjacent islands. Investigate a total land area is 2,934 square kilometres. Western Samoa has an Exclusive Economic Zone (ECZ) of only 120,000 square kilometres, the smallest in the South Pacific.

The islands are volcanic, dominated by rugged mountain ranges generally with a 4-5 kilometre 'skirt' of gently sloping fertile land.

Approximately 90,000 persons of the total population of Western Samoa are in the age range of 15-64 years. It is estimated that around 20 percent of these are formally employed with the remainder being involved in a range of traditional subsistence orientated activities.

Government, industrial and most commercial enterprises work five days a week (about 40 working hours per week), depending on the industry. Every employee is entitled to 12 paid public holidays per year.

The statutory minimum wage for the private sector is 50 US cents per hour.

There are two statutory provisions for social security for the labour force. These are contributions to the Western Samoa National Provident Fund and an Accident Compensation Levy.

### **Government Policy**

The Government of Western Samoa actively encourages foreign investment. The Government is committed to industrial development and recognises that foreign capital, technology and management can substantially contribute to Western Samoa's economic development. The Government's philosophy is that those who provide these sources must be both welcomed and encouraged by creating a positive environment for private sector investment.

The Government has streamlined legislation and procedures to encourage the establishment and expansion of enterprises capable of providing increased employment opportunities and contribute substantially to widening the economic base of the country.

Manufacturing and tourism are seen by the Government as the two most important sectors. The Government has provided infrastructural facilities and an attractive incentives package to encourage both local and foreign investors in these sectors.

## **REGULATORY FRAMEWORK**

### **Review and Approval Mechanism for Foreign Investment Proposals**

Any business entity wishing to do business in Western Samoa must be registered prior to its operation. A business license is also required which must be renewed annually. A separate license must be obtained for each location in which the business is carried on.

Proposals for foreign investment in Western Samoa are vetted by the Department of Trade, Commerce and Industry.

Foreign business enterprises that benefit from incentives offered by the Western Samoan Government are usually legally bound to operate for at least five years. Failure to comply may result in court action.

### **Restrictions on Foreign Investment**

#### *Transfers of Capital*

There are no set minimum or maximum limits to the amounts of capital an investor can bring into Western Samoa. Overseas borrowings are subject to approval by the Central Bank.

Repatriation of overseas capital and profits is normally permitted provided the original investment had come to Western Samoa through the Banking system or in some other approved way.

#### *Access to Land*

Land holdings in Western Samoa fall into three categories:

- customary land;
- freehold land; or
- public land

#### *Customary Land*

This land is not for sale but can be leased out to foreigners as well as locals. This is usually the option taken by foreign investors, particularly in the tourism industry. All land leases in this category are registered with the Department of Lands, Survey and Environment.

#### *Freehold Land*

This land has mostly been taken up for residential purposes located around the Apia urban area.

#### *Leasing Arrangements*

customary land is available for lease on liberal terms and conditions. The Government has recently established new procedures to facilitate and speed up the leasing of land to investors. These procedures allow the Government to lease lands from traditional owners and villages. These lands may then be sub-leased to local and overseas investors.

#### *Industrial Sites*

A 100 acre industrial estate has been developed close to Apia at Vaitele with water and electrical supply. Long term leases are generally available at attractive rentals.

Industrial building space on a rental basis is generally readily available from the private sector or the Small Industries Centre (SIC) being developed at Vaitele.

### ***Entry and Sojourn of Personnel***

Work permits are required for the employment of non-Western Samoan citizens. Such permits are granted only if the skills needed are unavailable locally, although there is general recognition that foreign investors will require experienced foreign managerial and technical staff.

A work permit must be applied for by a local firm on behalf of a non-citizen of Western Samoa. The permit lasts for six months and is renewable upon request by the local firm.

Permanent residence status may be granted only to those people who have resided continuously in Western Samoa for not less than five years. Individuals must apply to the Secretary to Government.

## **INVESTMENT INCENTIVES AND PROMOTION**

### **Investment Incentives**

The Government provides a range of incentives for new investment, including:

#### ***Incentive Legislation, Enterprise Incentives and Export Promotion Act 1992/1993***

This Act categorises enterprises as either a domestic or an export enterprise:

- **Export Enterprises** are industrial activities that export at least 95 percent of their annual production.
- **Domestic Enterprises** are activities defined in the schedule to the Act as non-exporting enterprises or those which export less than 95 percent of their production output.

### ***Summary of Incentives***

- A tax-free concession allows deduction of income liable for tax for a period of up to five years or accelerated depreciation rates at the option of the investors.
- Import duty exemptions or concessions on buildings, plant, machinery and equipment for establishment or expansion and industrial raw materials not available locally can be offered for up to five years and, subject to extension approval, to an additional five years.
- During its income tax holiday, a company's dividends are exempted from withholding tax.
- The possible lease of a site on which there is a newly constructed, fully serviced factory building. The rental cost reflects the current cost of construction and providing services.
- Generally, repatriation of invested capital, dividends, net profit, royalty, and license fees is freely permitted.
- Completion within 24 hours of customs inspection of incoming or outgoing commodities.
- Electric power preferential rates.
- The issue of long-term resident permits to promoters and shareholders are warranted by the size of the interest.

- Provision of house for use of expatriate staff in order to attract industries that either have a high labour content or would create employment opportunities through linkage effects.

### ***Export Enterprises***

For new enterprises which intend to export at least 95 percent of their annual production, the following incentives are available:

- A tax holiday up to 15 years.
- A subsequent tax rate of 25 percent on assessable income.
- A holiday on tax on dividends of up to 10 years (up to the limit of funds invested).
- Complete relief from all customs and excise duties on both imports and exports.

### ***Export Finance Facility (EFF)***

This facility, introduced by the Central Bank of Western Samoa through the commercial banks, provides pre-shipment and post-shipment credit to exporters at reduced interest rates to meet firm export orders. All exports (excluding re-exports) qualify under this scheme without any local value-added criteria being imposed.

Exporters may apply to a commercial bank for a loan up to the full CIF value of a firm export order.

The interest rate is determined from time to time by the Central Bank.

The Government is preparing new investment guidelines and further details may be obtained from the Secretary, Department of Trade, Commerce and Industry.

### **Additional Reference Documents**

Current promotional material includes:

*'A Guide to Investment'*: Department of Trade, Commerce and Industry;

*'Doing Business in Western Samoa'*: Price Waterhouse.

### **Contacts for Further Information**

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