Guide to the Investment Regimes of the APEC Member Economies

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CONTENTS

INTRODUCTION

Each of the 20 member economy responses to the APEC Investment Survey Questionnaire were prepared by the respective APEC member economy, and edited and prepared for publication by the APEC Secretariat..

Each response provides information on the following six major topics covered in the survey:

1. Background on the foreign investment regime;
2. Regulatory framework and investment facilitation;
3. Investment protection;
4. Investment promotion and incentives;
5. Summary of international investment agreements or codes to which the APEC member is a party; and
6. Assessment of recent trends in foreign investment.

A copy of the Questionnaire is at Annex I.

The information contained in each chapter is the sole responsibility of the respective APEC member economy which prepared the response to the questionnaire. Each chapter reflects the information made available to the Secretariat at the time of publication. The Secretariat accepts no responsibility for the comprehensiveness of the responses or for the responses to its comments or questions. Investors should be aware that this Guide is not intended to serve as a substitute for the full range of laws and attendant regulations governing the investment regimes of the APEC member economies.

The APEC member economy survey responses are arranged in the following order:

Australia	Brunei Darussalam	Canada
Chile	Peoples Republic of China	Hong Kong, China
Indonesia	Japan	Republic of Korea
Malaysia	Mexico	New Zealand
Papua New Guinea	Peru	Republic of Philippines
Russian Federation	Singapore	Chinese Taipei
Thailand	United States	Viet Nam

Annex II contains a copy of the "non-binding investment principles" agreed to by APEC Leaders in November 1994, a copy of the investment components of the Osaka Action Agenda and a copy of "Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies – For Voluntary Inclusion in Individual Action Plan".

AUSTRALIA

AUSTRALIA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

General

Australia's foreign investment policy comprises 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 require prior approval and therefore should be notified to the Government, are as follows:
- acquisitions of **substantial interests** in existing Australian businesses with total assets over $50 million or where the proposal values the business at over $50 million;
- proposals to establish new businesses involving a total investment of $10 million or more;
- portfolio investments in the media of 5per cent or more and all non-portfolio investments irrespective of size;
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at $50 million or more, or account for more than 50 per cent of the target company's global assets;
- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of interests in urban land that involve the:

acquisition of developed non-residential commercial real estate, where the property is subject to heritage listing, valued at $5 million or more;

acquisition of developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at $50 million or more;

acquisition of accommodation facilities irrespective of value;

acquisition of vacant urban real estate irrespective of value;

acquisition of residential real estate irrespective of value; or

- proposals where any doubt exists as to whether they are notifiable. Funding arrangements that include debt instruments having **quasi-equity** characteristics will be treated as direct foreign investment.

A **foreign interest** is defined as:

- a natural person not ordinarily resident in Australia;
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;

- a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

Examination by sector

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

Restrictions apply to several sectors in the economy viz, real estate, banking, civil aviation, airports, shipping, telecommunications and the media. The specific policy guidelines can be found in section B(1)(2)(b).

In relation to investments by foreign interests in other sectors (viz, rural businesses, agriculture, forestry, fishing, resource processing, oil & gas, mining, manufacturing, non-bank financial institutions, insurance, share broking, tourism, most other services) the policy is liberal.

Only proposals above certain thresholds in these sectors need to be notified. Notification thresholds are: $10 million or more for the establishment of new businesses; $50 million or more for acquisitions of existing Australian businesses and off shore takeovers (where the Australian assets are valued at $50 million or more).

Proposals above the notification thresholds where the relevant total assets/total investment involved is less than $100 million are not subject to detailed examination and are normally readily approved. When examining proposals for $100 million or more, the Government raises no objections unless the proposals are contrary to the national interest. Offshore takeovers do not generally raise national interest issues.

In considering the national interest and preparing its advice to the Treasurer, the Foreign Investment Review Board (the FIRB) considers whether the proposal is inconsistent with:

existing government policy and law — taking the view that existing policy and law define important aspects of the national interest (for example, environmental regulation and competition policy);

national security interests; and

economic development.

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

The Government's approach to foreign investment policy is to encourage foreign investment consistent with community interests. In recognition of the contribution that foreign investment has made and continues to make to the development of Australia, the general stance of policy is to welcome foreign investment. Foreign investment provides scope for higher rates of economic activity and employment than could be achieved from domestic levels of savings. Foreign direct investment also provides access to new technology, management skills and overseas markets.

The Government recognises community concerns about foreign ownership of Australian assets. One of the objectives of the Government's foreign investment policy is to balance these concerns against the strong economic benefits to Australia that arise from foreign investment.

The foreign investment policy provides for Government scrutiny of many proposed foreign purchases of Australian businesses and properties. The Government has the power under the FATA to block proposals that are determined to be contrary to the national interest. The FATA also provides legislative backing for ensuring compliance with the policy.

In August and September 1999, the Government announced a number of changes to its foreign investment policy (and the Foreign Acquisitions and Takeovers Regulations; see http://scaleplus.law.gov.au/html/pastereg/0/302/top.htm) designed to reduce notification obligations on business and to streamline the administration of foreign investment policy, while continuing to ensure that foreign investment is consistent with the interests of the Australian community. The changes have been incorporated in this chapter.

The screening process undertaken by the Foreign Investment Review Board (FIRB) enables comments to be obtained from relevant parties and other Government agencies in considering whether larger or more sensitive foreign investment proposals are contrary to the national interest.

The Government determines what is 'contrary to the national interest' by having regard to the widely held community concerns of Australians. Reflecting community concerns, specific restrictions on foreign investment are in force in more sensitive sectors such as the media and developed residential real estate. The screening process provides a clear and simple mechanism for reviewing the operations of foreign investors in Australia whenever they seek to establish or acquire new business interests or purchase additional properties. In this way the Government is able to put pressure on foreign investors to operate in Australia as good corporate citizens if they wish to extend their activities in Australia.

By far the largest number of foreign investment proposals involves the purchase of real estate. The Government seeks to ensure that foreign investment in residential real estate increases the supply of residences and is not speculative in nature. The Government's foreign investment policy, therefore, seeks to channel foreign investment in the housing sector into activity that directly increases the supply of new housing (i.e., new developments - house and land, home units, townhouses, etc) and brings benefits to the local building industry and their suppliers.

The effect of the more restrictive policy measures on developed residential real estate is twofold. First, it helps reduce the possibility of excess demand building up in the existing housing market and secondly, it aims to encourage the supply of new dwellings, many of which would become available to Australian residents, either for purchase or rent. The cumulative effect should therefore be to maintain greater stability of house prices and the affordability of housing for the benefit of Australian residents.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation

Summary

The *Foreign Acquisitions and Takeovers Act 1975* (FATA) provides legislative backing for the Australian Government’s foreign investment policy. The FATA empowers the Treasurer to examine proposals by foreign persons:

(i) to acquire interests in Australian urban land regardless of value; and
(ii) to acquire substantial interests in Australian businesses having total assets valued at $50 million or more.

The FATA 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 FATA are implemented without prior notification

to the Treasurer and are subsequently found by the Treasurer 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 (i.e., 15% or more) of an Australian corporation, unless the total assets are below the $50 million threshold. 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 1989* (the 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 FATA 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 (i.e., notification on, or in accordance with, the forms prescribed in the *Foreign Takeovers (Notices) Regulations*) sets a deadline for a decision. The Treasurer is required to make a decision within 30 days and notify the parties of this decision within a further 10 days, otherwise the proposal may proceed. 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) of the FATA).

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

Proposals

Guidelines/Conditions

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

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- portfolio investments in the media of 5 per cent or more and all non-portfolio investments irrespective of size;
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at $50 million or more, or account for more than 50 per cent of the target company's global assets;

- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of interests in urban land that involve the:

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- a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

Where it is uncertain whether a particular proposal is notifiable, investors should contact the Foreign Investment Review Board (see section B(1)(*2*)(d) for contact details).

In most industry sectors (viz, rural businesses and rural land, agriculture, forestry, fishing, resource processing, oil & gas, mining, manufacturing, non-bank financial institutions, insurance, share-broking, tourism, most other services), the Government registers, but normally raises no objections to, proposals above the notification thresholds (i.e. $50 million for acquisitions of substantial interests in existing businesses and off shore takeovers and $10 million for the establishment of new businesses) where the relevant total assets/total investment fall below $100 million.

The Government examines proposals to acquire existing businesses (with total assets over $100 million) or establish new businesses (with a total investment over $100 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 concerns.

Compulsory notification is required under the FATA for share purchases (in businesses over the relevant thresholds) and for all purchases of urban land, irrespective of value.

COMMONWEALTH GOVERNMENT

Real Estate

Proposed acquisitions of **residential real estate** are exempt from examination in the case of:

- Australian citizens living abroad purchasing either in their own name or through an Australian corporation or trust;

- foreign nationals purchasing (as joint tenants) with their Australian citizen spouse; and
- foreign nationals who are the holders of permanent resident visas or are holders, or are entitled to hold, a 'special category visa' purchasing either in their own name or through an Australian corporation or trust.

Proposed acquisitions of **real estate for development** are normally approved subject to a specific condition requiring continuous substantial construction to commence within 12 months. Once construction is complete, the parties are required to provide the completion date and actual development expenditure.

Foreign interests are normally given approval to buy:

- **vacant residential land**, including house and land packages where construction has not commenced, (on condition that continuous construction of a dwelling is commenced within 12 months): and
- house and land packages where construction has commenced, home units, townhouses, etc '**off-the-plan**', under construction or newly constructed but never occupied or previously sold. 'Off-the-plan' sales to foreigners are only permitted for new development projects or extensively refurbished commercial structures, which have been converted to residential, on condition that no more than half the dwellings 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 had designated as an '**Integrated Tourism Resort' (ITR)** prior to September 1999 are exempt from examination. For resorts designated as ITRs from September 1999, the exemption only applies to developed residential property, which is subject to a long term (10 years or more) lease to the resort/hotel operator, making it available for tourist accommodation when not occupied by the owner. All other property, including vacant land for development, within the ITR would be subject to the normal foreign investment restrictions. Strict conditions must be fully met to qualify for Integrated Tourism Resort status.

Certain categories of foreign nationals, temporarily resident in Australia continuously for more than 12 months, may be given approval to purchase **developed residential real estate** for use as their principal place of residence (i.e., not for rental purposes) while in Australia. This category includes long-stay retirees. A condition of such purchases is that the residence must be sold when the foreign nationals' temporary resident visas expire, they leave Australia, or the property is no longer used as their principal place of residence.

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, with an established substantial business in Australia, buying for named senior executives resident in Australia for periods longer than 12 months, provided the accommodation is sold when no longer required for this purpose. Whether a company is eligible, and the number of properties that may be acquired under this category, will depend upon the extent of the foreign company's operations and assets in Australia. Unless there are special circumstances, foreign companies normally will not be permitted to buy more than two houses under this category. Foreign companies would not be eligible under this category where the property would represent a significant proportion of its assets in Australia.

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

Proposed acquisitions of **hotels and motels** operating under one title are normally approved (unless considered contrary to the national interest) under the tourism sector policy. Proposed acquisitions of strata titled hotel accommodation may be approved in certain designated hotels. Full details of the requirements for designated hotels are contained in the Australian urban land policy summary. Other **accommodation facilities** such as guesthouses, holiday flats and undesignated strata titled hotels and motels are examined under policy applying to the residential real estate sector.

Banking

Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* and banking policy, including prudential requirements. Any proposed

foreign takeover or acquisition of an Australian bank will be considered on its merits on a case by case basis and judged on its merits.

The Government will permit the issue of new banking authorities to foreign-owned banks where the Australian Prudential Regulation Authority (APRA) is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply with APRA's prudential supervision arrangements.

Civil Aviation

Domestic Services

Foreign persons (including foreign airlines) can generally expect approval to acquire up to 100 per cent of the equity in an Australian domestic airline, unless this is contrary to the national interest.

International Services

Foreign persons (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or 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 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

Airports

Foreign investment proposals for acquisitions of interests in Australian airports are subject to case-by -ase examination in accordance with the standard notification requirements. In relation to the airports leased by the Commonwealth, the *Airports Act 1996* stipulates a 49% foreign ownership limit, a 5% airline ownership limit and a 15% limit on the cross ownership of Sydney (Kingsford Smith) / Melbourne, Sydney (Kingsford Smith) / Brisbane and Sydney (Kingsford Smith) / Perth airports. Moreover the owners of Sydney (Kingsford Smith)Airport, are precluded by their share sale agreement (entered into in June 2002) from acquiring more than a 15% stake in the airport operator companies for the other Sydney Basin Airports (Bankstown, Hoxton Park and Camden) for a period of five years. The three Sydney Basin airports are expected to be sold by the Commonwealth around the middle of 2003.

Shipping

The *Ship Registration Act 1981* requires that, for a ship to be registered in Australia, it must be majority Australian-owned (i.e., 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 direct (that is, non-portfolio) proposals to invest in the media sector irrespective of size are subject to prior approval under the Government's foreign investment policy. Proposals involving portfolio shareholdings of 5% or more must also be submitted for examination.

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 of 5% or more in an existing newspaper or to establish a new newspaper in Australia are subject to case-by-case examination. The maximum permitted aggregate foreign interest (non-portfolio) investment/involvement in national and metropolitan newspapers is 30% with any single foreign shareholder limited to a maximum interest of 25% (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further five per cent). Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50% for non-portfolio shareholdings.

Telecommunications

Telstra Corporation Ltd (Telstra) is predominantly owned by the Commonwealth of Australia. Since October 1997, the Government has partially privatised Telstra through the sale of 49.9 per cent of its equity to institutional and individual investors. Aggregate foreign ownership of Telstra is restricted to 35 per cent of that 49.9 per cent equity and individual foreign investors are allowed to acquire a holding of no more than 5 per cent of that 49.9 per cent equity.

Prior approval is required for foreign involvement in the establishment of new entrants to the telecommunications sector or investment in existing businesses in the telecommunications sector. Proposals above the notification thresholds will be dealt with on a case-by-case basis and will be normally approved unless judged contrary to the national interest.

Telecommunications-specific licensing, consumer protection and competition legislation also applies, both to foreign and domestic entities, on a non-discriminatory basis. The licensing regulation is contained in the *Telecommunications Act 1997*. The agency responsible for licensing is the Australian Communications Authority (ACA), whose website is at www.aca.gov.au

In addition to being subject to the general competition and consumer protection laws which apply to business generally, carriers and carriage service providers are subject to the following industry-specific legislation:

- Telecommunications consumer protection legislation contained in the *Telecommunications (Consumer Protection and Service Standards) Act 1999,* administered by the ACA.

- Telecommunications competition regulatory regime contained in Parts XIB and XIC of the *Trade Practices Act 1974.* This legislation augments the general competition law (outlined later), and creates an industry specific access regime. It is administered by the Australian Competition and Consumer Commission, whose website is at www.accc.gov.au.

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 sustained employment generation and 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.

The NSW Department of State and Regional Development (DSRD) is the first point of contact within Government for companies wishing to do business in NSW. DSARD offers a range of programs for all levels of business – from start-ups to multi-nationals investing in the Australian market. Further information is available at the Department's website: www.business.nsw.gov.au

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 as a major contributor to Queensland's economic development. The Government recognises that Australia has historically been capital deficient and that foreign investment has played a significant role in the development of Queensland and Australian economic capacity, particularly in the export sector.

The Queensland Government encourages foreign investment in all sectors of the State's economy. However, the Government seeks to influence the flow of such investment into sectors of the economy which will provide the greatest contribution to the long term growth and development of Queensland.

In this respect, the Queensland Government particularly encourages foreign investment which:

- involves the establishment of new industry or additions to industry;
- improves the prospects for employment;
- is export-oriented;
- improves industry competitiveness;
- relates to the higher value added sectors of the economy;
- enhances the local labour force with new skills and technologies; and
- increases access to international markets.

The Queensland Government would expect that such benefits would generally be maximised by way of joint venture arrangements between Australian companies and foreign investors. However, it is acknowledged that there will be circumstances when Australian equity participation is not available and when the State and national interest can be enhanced only by full foreign ownership.

Overall, the Queensland Government adopts a balanced and positive approach to foreign investment. Such investment should provide benefit to Queensland's economy as well as to the investors themselves.

The Foreign Investment Secretariat, within the Queensland Department of State Development's Commercial Advisory Services Division, is responsible for implementing the Queensland Government's approach to foreign investment. The Secretariat has responsibility for:

data gathering and analysis of foreign investment trends within the State;

- liaising with potential foreign investors and/or their agents in respect of foreign investment issues; and
- assessing applications for foreign investment approval referred by the Foreign Investment Review Board (FIRB) and provision of advice to the Government.

There is no legislative requirement for prospective foreign investors to make submissions direct to the Foreign Investment Secretariat. However, proponents are encouraged to consult with the Secretariat on significant and possibly contentious proposals at the same time as making submissions to the FIRB. Such consultation may enable the early identification, and remedy, of potential issues of concern. The Commonwealth Government consults with the Queensland Government as it recognises that particular State interests should be taken into account.

The Queensland Government fully recognises that much of the information provided to the Foreign Investment Secretariat will be sensitive, commercial information, and thus confidential. The Queensland Government will respect this confidence and will award it appropriate security.

For the purposes of foreign investment policy, the Queensland Government adopts the same definition of 'foreign person' as the Commonwealth Government.

Sectoral Approach

The Queensland Government's approach to examinable foreign investment proposals on an industry sector basis is outlined below.

Urban Real Estate

The Queensland Government supports the existing Commonwealth policy regarding the acquisition of or investment in urban real estate by foreign investors. The Queensland Government would expect that urban real estate proposals (other than those explicitly exempted from examination under Commonwealth guidelines) would generally add value or other tangible economic benefits to attract Queensland Government support.

The Queensland 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 (normally defined as 12 months).

Manufacturing

Although joint ventures involving Australian-owned interests are preferred, the Queensland Government would be prepared to accept up to 100% foreign ownership of manufacturing concerns provided that tangible economic benefits will result.

In assessing economic benefit to the State, the Queensland Government notes that some of the benefits of foreign investments in manufacturing include:

- introduction of new manufacturing technology;
- increased access to export markets;
- import replacement;
- employment generation or maintenance; and
- establishment of new industry.

Mining and Resource Industries

For examinable proposals involving a new mining business, the Queensland Government has a preference for a minimum of 50% Australian equity and control. In assessing the proposals for a new mining business with a level of foreign ownership exceeding 50%, the Queensland Government will pay regard to:

- economic benefit to Queensland as a result of the project;
- the extent to which the unavailability of sufficient Australian equity capital on reasonable terms and conditions would unduly delay development;
- the possibility of Australian equity participation during the course of the project; and
- whether the foreign proponent has been actively engaged in the exploration phase of the project.

The Queensland Government would not normally object to proposals for the acquisition of an interest in an existing mine where economic benefits are considered sufficient to offset any reduction in Australian ownership and control, or where the foreign interest making the acquisition is Australian controlled.

The Queensland Government particularly encourages foreign investment in the area of downstream mineral processing.

Rural Sector

In considering potential implications of primary industry sector proposals on the State's economy, the Queensland Government will generally require that an industry impact assessment be undertaken for proposed foreign investments in the form of establishing new businesses or the acquisition of existing businesses. These assessments will be undertaken by the Foreign Investment Secretariat after prior consultation with the foreign investor and the FIRB.

The Foreign Investment Secretariat will also monitor the impact of foreign investment in more sensitive sectors of the rural economy, particularly where the level of foreign ownership and control is high.

In addition, the Queensland Government opposes freehold acquisition by foreign investors 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

The Queensland Government encourages foreign investment in the tourism industry but would prefer joint venture projects between Australian and foreign companies.

However, in assessing foreign investment proposals in the tourism sector, the Queensland Government will also 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.

In considering foreign investment proposals involving offshore islands, the Queensland Government will apply the following approach:

- 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 land; and
- management to be in accordance with approved Commonwealth and Queensland Government island environmental management plans and other lawful requirements of Queensland's Environmental Protection Agency .

Queensland's foreign investment policy, as it relates to offshore islands, is currently under review.

Investment Attraction

The Investment Division has a whole-of-Department, and whole-of-Government leadership and coordination role in attracting domestic and international value-adding investment to Queensland, towards the Government's commitment to creating jobs.

Products and Services

- Promote increased awareness of Queensland as an investment location;
- Encourage and facilitate investment, job retention and re-investment in Queensland;
- Provide whole-of-Government leadership and coordination of investment activities;
- Manage and administer the Queensland Investment Incentives Scheme;
- Encourage business migration to Queensland and provide appropriate support services;
- Provide investment information and intelligence to Government;
- Provide commercial evaluation/due diligence services;
- Encourage the growth of the private equity industry in Queensland;
- Advise on issues pertaining to the development of a globally competitive business environment conducive to minerals processing and manufacturing projects;
- Facilitate the establishment of regional business angels groups;
- Provide investment education and coordination of Investment Ready Program to regional Queensland;
- Co-operates with investment allies such as Invest Australia, Office of Economic Development, other local development bodies, and our Australia TradeCoast Partners.

The Queensland Government's activities in investment attraction are targeted at specific industry sectors where the State has particular competitive strengths. These include biotechnology, information technology, aviation services and support, food processing and light metals.

Specific strategies for each of these industry sectors have been developed in association with Queensland's network of overseas offices and the network of Invest Australia.

Statutory (legislative) Requirements

After approval by the FIRB, the Queensland Government does not provide facilitation for various approvals. However, there is State legislation governing foreign leasehold and the land register. The *Foreign Ownership of Land Register Act 1989-90* requires that every foreign person or entity which acquires a freehold or leasehold interest in Queensland land must give notice to the Registrar.

All dealings involving foreign ownership of leasehold land are carried out in accordance with the *Land Act 1994*. For freehold land, dealings occur in terms of the *Land Title Act 1994.* Both Acts are administered by the Queensland Department of Natural Resources and Mines.

A foreign person who has the legal estate of an interest in land vested in them must lodge a notification of ownership with the Queensland Department of Natural Resources and Mines for registration in accordance with the *Foreign Ownership of Land Register Act 1988*. This Act also sets out other disclosure obligations of foreign persons in relation to the maintenance of ownership of land in Queensland.

The State is bound by Commonwealth legislation under *The Foreign Acquisitions and Takeovers Act 1975* (FATA).

The Queensland Government does not publish its foreign investment policy on its website.

The Queensland Government is currently reviewing its foreign investment policy.

Taxation

Taxation measures levied by the Queensland Government include payroll tax, stamp duty on transactions and land tax. The rates of taxation levied are consistent for both foreign and local investors.

Investment Promotion and Incentives

The Queensland Government operates an investment incentives program known as the Queensland Investment Incentives Scheme (QIIS). This scheme allows the government to offer incentives packages as appropriate to attract new job creating projects to Queensland or to secure expansions of existing projects. The decision to offer incentives, and the extent of such incentives, is driven in all cases by the extent of the net economic benefit to the State arising from the project. Benefits under the scheme are normally in the form of payroll tax rebates or cash advances to cover costs such as training and relocation.

South Australia

Statutory Requirements

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.

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.

Investment Review and Approval

The investment in a property together with the intended use of the property need to fit within the zoning regulations of that area and hence local councils need to be consulted during the purchasing/development process.

Tasmania

Tasmania's industrial relations legislation (the *Industrial Relations Act 1984*) provides for enterprise agreements and for industrial agreements under section 55 of the Act. An enterprise agreement need not involve a union as a party whereas an industrial agreement must. Both types of agreement must be approved through the Tasmanian Industrial Commission.

The *Casino Company Control Act 1973* was repealed in 2000 so the foreign ownership restriction it imposed is no longer operative. There are no restrictions on foreign land purchase and use in Tasmania additional to those which apply under Commonwealth legislation.

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 State Development advises 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 Resources Management Act 1994*, 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.

Under the Pearl Oyster Fishery Ministerial Policy Guideline dated 16 August 2001 (issued under the *Pearling Act 1990*), in general terms only a person who is an Australian citizen or a permanent resident may hold pearling industry licences. With respect to corporations, partnerships or trusts, such entities must be Australian owned or controlled. The effect of these provisions is to:

- restrict foreign ownership and control of the Western Australian pearling industry; and
- optimise the economic benefit of the Western Australian pearling industry to the State by limiting the extent to which foreign interests can control production of the pearl oysters or otherwise exert control over the Western Australian pearling industry.

The State Government does not directly prohibit or restrict foreign investment in any other sector of the Western Australian economy. However, investment in any Western Australian Government owned services is closed to private investment (including foreign investment) unless tenders have been publicly invited. There are no restrictions on foreign companies wanting to invest in or provide government services where tenders have been requested. Regulation of privately owned government services is non-discriminatory.

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

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

Western Australian Government policy directs that no transfer should be approved unless there is at least 50% Australian equity and control in the proprietorship of a pastoral lease, unless it could be shown that no Australian interest was forthcoming at the time.

The vendor is required to provide evidence that genuine endeavours have been made to obtain the required Australian equity by production of material to indicate that there has been adequate (Australia-wide) publicity to the proposed sale either by auction, inviting tenders or by private treaty.

If the vendor is unable to negotiate a sale to conform with the minimum proportion of Australian equity, the proposal is referred to State Cabinet for consideration and decision.

Potential purchasers of a pastoral lease should contact the Pastoral Lands Board for information on other conditions of sale that may apply.

(c) Indicate all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

Copies of the relevant notification forms required to give notice under the FATA, the voluntary real estate application forms, policy documents, the FATA and the Regulations can be obtained from the FIRB (see section B(1)*(2)*(d) below for other contact details). The information normally required to enable foreign investment proposals to be processed can also be obtained from the FIRB.

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax

Agency	**Address/Telephone/Fax**
Foreign Investment Review Board	Executive Member Foreign Investment Review Board C/- The Treasury CANBERRA ACT 2600 AUSTRALIA Fax: (61-2) 6263-2940 Telephone: Foreign Investment Policy Division, Treasury Executive Member: (61-2) 6263–3755 General Inquiries: (61-2) 6263-3795

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on line.

Copies of the relevant notification forms required to give notice under the FATA, the voluntary real estate application forms, policy documents, the FATA and the Regulations can be obtained from the FIRB's website at www.firb.gov.au.

Forms can currently be filled in online but need to be printed out and sent to the FIRB with the required accompanying information. The facility for online lodgment of application forms is currently being developed and should go live in early 2003.

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

The FIRB 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 FIRB and decisions reached by the Government within thirty days of lodgment. 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. In 2001-2002, 68 per cent of proposals were decided within 10 days and 92 per cent within 30 days of receipt of a completed application.

(g) List 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. Briefly describe 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.

(h) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

There are no formal "fast tracking" procedures, though foreign investors frequently request and receive expedited review.

(i) Indicate 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).

As stated in section B(1)*(2)*(g) above, there are no formal appeal procedures under the foreign investment legislation. The FIRB deals with any complaints regarding foreign investment. The address and relevant phone/fax number for the Board can be found in section B (1)*(2)*(d) above.

(j) 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.

The Secretariat to the FIRB (the Foreign Investment Policy Division of the Department of Treasury) (see section B(1)(2)(d) for contact details) is responsible for monitoring compliance with the Government's foreign investment policy.

There are substantial penalties for a number of offences against particular sections of the FATA 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) of the FATA). Failure to comply with an order made by the Treasurer is an offence (section 30 of the FATA). 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 FATA (section 38A of the FATA).

(k) Describe any 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 Office of Regulation Review (ORR) section of the Productivity Commission is the Australian Government's regulatory reform 'watchdog'. The ORR vets and reviews regulations to ensure that they are properly formulated and do not impose undue costs on business and the community.

Government policy requires that a Regulation Impact Statement (RIS) be prepared for regulatory proposals which affect business or restrict competition. A RIS provides a consistent, systematic and transparent process for assessing alternative policy approaches to problems. It includes assessment of the impacts of the proposed regulation on different groups in the community, including a specific focus on small business. For any proposal that requires legislative change, the RIS must be tabled in Parliament, thereby making it available to the public.

The Government, through the FIRB, also considers submissions from companies, industry bodies and individuals, both Australian and foreign, seeking changes to and making suggestions in relation to the Government's foreign investment policy. It continually monitors community and business sector concerns about the policy and its impact and reviews the relevant parts of the policy, where appropriate.

(l) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g., zoning, approvals of land purchase).

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 (e.g. energy costs), providing advice on availability of government services, etc.

2. MOST FAVOURED NATION TREATMENT / NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

(a) 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).

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

(b) Identify and describe any international agreements to which your economy is a party which provides any exceptions 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

(a) 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).

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 key laws, regulations and policies which provide exceptions to national treatment has been provided in section B(1).

(b) Description of the nature and scope of any limitations on foreign firms' access to sources of finance.

The Australian Securities and Investments Commission (ASIC) regulates the securities markets in Australia. A foreign corporation which offers securities (including bonds) in Australia must comply with the Corporations Law. The Corporations Law contains various requirements for an offer of securities, including the provision of a prospectus disclosing all material information in relation to the offer of securities.

However under the discretionary powers conferred on it, ASIC has provided relief from the prospectus provisions for foreign corporations issuing securities in Australia. This relief takes two forms. Firstly, ASIC has issued a number of class instruments (Class Orders) which modify the application of the

prospectus provisions to foreign corporations. Provided a foreign corporation complies with the conditions in the Class Orders, the relief will automatically apply.

Secondly, a foreign corporation can apply to ASIC for a particular exemption or modification of the prospectus provisions. ASIC has released a Policy Statement which describes the rationale for the relief and explains in detail the conditions under which relief will be granted. Foreign corporations wishing to raise funds in Australia by issuing securities are advised to make an application to the offices of ASIC.

ASIC has also released a Policy Statement which clarifies the circumstances in which it will seek to regulate offers of securities made over the internet and accessed in Australia.

4. REPATRIATION AND CONVERTIBILITY

(a) 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.

(b) 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.

(c) 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

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

Temporary business entry arrangements provide for the entry of foreign personnel for both short and long stay business entry.

Short-stay business visitor entry provides for a stay of up to three months on each occasion for business purposes such as pursuing investment opportunities, attending business meetings or attending to business interests in Australia. Visa options include a multiple entry visa valid for one year, five years or for the life of the applicant's passport (up to a maximum of 10 years). This visa is also available in many APEC economies through Electronic Travel Authority arrangements.

Passport holders of anticipating APEC Business Travel Card economies can apply for an APEC Business Travel Card for the purposes of short-term business visitor entry to Australia. The APEC Business Travel Card cuts though the red tape of business travel, and gives credited business people pre-cleared entry to participating APEC economies. Card holders enjoy:

- Fast-track entry and exit through special APEC lanes at major Australian airports,
- No need to individually apply for visas or entry permits each time you travel to any of the participating economies,
- Multiple short-term entry to Australia for 90 days stay each visit, and
- Cards are valid for three years.

For information on eligibility criteria and where to apply for the APEC Business Travel Card, see www.businessmobility.org/key/abtc.html.

Long-stay business entry provides for a stay of up to four years principally for:

- personnel for companies operating in Australia;
- personnel from offshore companies seeking to establish a business presence in Australia such as setting up a branch of the company or participating in joint ventures;
- independent executives seeking to establish new businesses or joining existing businesses in Australia; and
- personnel coming under a Labour Agreement or Regional Headquarters Agreement.

Streamlined arrangements are in place for Australian companies sponsoring skilled personnel . These streamlined sponsorship arrangements extend to the entry of skilled personnel for the purpose of establishing a business presence of an overseas company in Australia. All applicants must be sponsored by their prospective employer and meet certain prescribed criteria including any qualifications or licensing/registration requirements

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Restrictions/Descriptions

A spouse and dependent children who are part of the family unit of the principal applicant are granted a visa with the same conditions and period of validity as that of the principal. Spouses of approved business temporary residents are permitted to work while in Australia.

Further information about Australia's business temporary entry arrangements are available from:

www.immi.gov.au/allforms/temp_bus.htm

(c) 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.

For the purposes of obtaining entry to Australia for business temporary residence minimum salary and skill thresholds apply. Skilled positions are occupations that are classified as Managers and Administrators, Professionals, Associate Professionals, and Tradespersons and Related Workers.

Regulations relating to personnel management in Australia are subject to laws at the federal and the state level. However, in both cases Australian domestic law does not discriminate between foreign and locally owned enterprises. Accordingly, a foreign firm employing Australian workers has exactly the same legal rights and obligations in relation to conditions of employment and related matters as any local firm in a similar situation.

The federal system and the division of industrial relations powers

Australia has a federal system of Government under which government powers are divided or shared between the federal (or national) government and the various State/Territory governments.

The federal/state division of industrial relations power has meant that we have more than one industrial relations system. We have a federal system and a number of State systems. The federal government cannot legislate directly to set wages and conditions of employment (except where it can rely on other powers such as during wartime, or in relation to its own employees, or where the external affairs or corporations powers may be used). It can, however, establish independent tribunals for the purpose of using conciliation and arbitration powers to prevent and settle interstate industrial disputes. The federal tribunal is known as the Australian Industrial Relations Commission (AIRC). Similar tribunals exist in the State jurisdictions.

On 19 December 1996, the State of Victoria transferred its industrial relations powers to the Commonwealth. Further harmonisation of federal and State industrial relations systems is being pursued through complementary legislation and other arrangements (for example, between the federal and State tribunals); and through a cooperative approach to administrative arrangements and service delivery.

Legislation

The *Workplace Relations Act 1996* (WR Act) regulates industrial relations at the federal level in Australia.

The objects of the Act focus the federal system on: giving primary responsibility for industrial relations and agreement-making to employers and employees at the enterprise and workplace levels, with the role of the award system confined to providing a safety net of minimum wages and conditions; ensuring freedom of association; the avoidance of discrimination; and assisting employees to balance their work and family responsibilities effectively.

Industrial relations for businesses governed by the State jurisdictions are determined by a different set of legislation and regulations.

Wage setting

The award system: A safety net of minimum wages

Independent tribunals in both the State and federal jurisdictions have established a system of industrial awards. Awards may be occupationally based and, consequently, may overlap between industry sectors; industry based or enterprise based. Each award specifies the minimum wages and conditions of employment that relate to various occupational classifications and are based on skill and responsibility.

Approximately 80% of wage and salary earners are covered by the formal workplace relations system including those on enterprise agreements and those covered directly by awards. Approximately 20% of all employees are not covered by the formal system. In the federal jurisdiction almost 3,000 awards regulate wages and conditions of those on awards – the 20 largest of these awards cover around 700,000 of the estimated three million federally covered employees.

As the industrial relation system has been progressively decentralised, particularly at the federal level, awards are intended as a minimum safety net. The AIRC has responsibility for determining increases to the safety net.

The award system is also being simplified to focus on its role as setting a safety net of minimum wages and conditions. To meet this end, the AIRC's jurisdiction to incorporate matters in awards is confined to certain allowable matters. All other matters are generally to be determined at the enterprise or workplace level, whether in formal agreements or informally. New awards are not able to contain matters other than those prescribed.

Enterprise Bargaining at the federal level

The federal government has progressively introduced a much more decentralised industrial relations framework. Broadly similar trends towards decentralisation have occurred in all of the State jurisdictions.

In the federal system, actual wages and conditions and working arrangements more generally are determined as far as possible by agreement of employers and employees at the enterprise and workplace levels. To provide more effective choice and flexibility for parties in reaching agreements, the WR Act provides for Certified Agreements (CAs) and Australian Workplace Agreements (AWAs).

CAs may be reached directly with employees (for example, in non-unionised workplaces) but, in such cases, relevant unions are able to participate in negotiations and become parties to an agreement where a member requests this. CAs must meet a 'no disadvantage test', which means that agreements must not result in a reduction in employees' overall terms and conditions when compared with the relevant awards

and any relevant laws. The AIRC must also be satisfied that the majority of employees to whom the agreement will apply have genuinely endorsed the agreement.

AWAs may be negotiated individually or collectively, but they are to be signed individually. There is no uninvited union involvement. Employees are able to appoint a bargaining agent (including a union) to negotiate on their behalf and have a choice to sign individual or collective AWAs. Where an AWA is found to have been entered into by a party under duress, that party is entitled to have the AWA declared null and void. The Office of the Employment Advocate has been established to facilitate the operation of AWAs, in particular, by providing advice to employees and employers, especially small businesses, on the WR Act, receiving and filing AWAs and handling alleged breaches of AWAs.

Enterprises bargaining in the State jurisdictions is briefly outlined below:

South Australia (Industrial and Employee Relations Act 1994)

Key features include:

- State industrial relations legislation provides for Certified Agreements (CAs) only. CAs can be reached between employers and unions or directly with employees.
- The 'No Inferiority Test' is a line by line test that is less flexible than the federal global 'no disadvantage test'.

Queensland (Industrial Relations Act 1990 or Workplace Relations Act 1997)

Key features are:

- Queensland industrial relations legislation provides for collective agreements and Queensland Workplace Agreements (QWAs). Collective agreements include Section 19 agreements which are union agreements and Section 20 agreements which are non-union agreements.
- QWAs can be collective or individual, but all employees covered by the QWA need to sign it.
- QWAs are approved by any member of the Queensland Industrial Relations Commission. The Minister may request a report on QWAs and has been updated on QWAs on an ad hoc basis.

Western Australia (Industrial Relations Act 1979*)*

Key elements are:

- The *Industrial Relations Act 1979* provides for both collective and individual agreement making as well as arbitrated awards.
- Industrial agreements (also known as enterprise bargaining agreements or EBAs) are made between an employer and the relevant union or unions. They may also be made amongst multiple employers and the relevant union or unions.
- Employer employee agreements (EEAs) are agreements made directly between an employer and individual employees. They are underpinned by the relevant award and cannot be made a condition of employment.
- Recent legislative amendments (the *Labour Relations Reform Act 2002*) have removed the ability to create workplace agreements, which were the previous form of individual agreement making option under the Western Australian system. Any existing agreements have a legislated expiry date unless their nominal expiry date occurs earlier. The latest date for expiry of all workplace agreements is 14 September 2003.

New South Wales (Industrial Relations Act 1996*)*

This Act establishes a system that fosters a collective approach to industrial relations. The Act provides for collective agreements only; there is no individual agreement-making stream. The Industrial Relations Commission approves all agreements and has a wide discretion to do so. The Act also provides for enterprise awards, which are consent arrangements between industrial parties, approved by the Commission. The public interest test is applied to enterprise awards. Enterprise based agreements and

awards are made against a background of common rule awards, made by the Commission after hearing submissions and evidence from the parties, that apply to all person engaged in the particular occupations or industries governed by the award.

Tasmania (Industrial Relation Act 1984)

Tasmania's industrial relations legislation (the *Industrial Relations Act 1984*) provides for enterprise agreements and for industrial agreements under section 55 of the Act. An enterprise agreement need not involve a union as a party whereas an industrial agreement must. Both types of agreement must be approved through the Tasmanain Industrial Commission.

(d) List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

As noted in our response to Question 5(c) above, responsibility for industrial relations is shared between the federal government and the State Governments. Foreign firms are subject to the same laws as locally owned enterprises.

Australian domestic laws relating to the settlement of industrial disputes and industrial action vary in detail from one jurisdiction to another. The regulatory arrangements and the mechanisms available for resolving industrial conflict, however, are broadly similar. 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.

The incidence of industrial action has declined dramatically since the early 1980s. The Australian system seeks to encourage the resolution of industrial disputes through direct negotiation rather than 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.

Provisions of the *Workplace Relations Act 1996* regulating industrial action

Right to strike during the bargaining period

Consistent with the generally accepted principles of collective bargaining the Workplace Relations Act provides a right to strike (but not in support of secondary boycotts) and to lock out during bargaining for agreements. A genuine attempt to reach agreement must occur prior to industrial action during bargaining, and notice of such action will be required.

The AIRC has powers to facilitate bargaining for CAs and to suspend or terminate the right to engage in protected industrial action, particularly where genuine bargaining is not occurring or where there is risk of serious harmful effects for the economy or the community. In handling the latter case, the powers of the AIRC are closely circumscribed, emphasising the need for conciliation to be exhausted before any consideration is given to arbitration. Any such arbitration will be undertaken by a Full Bench consistent with principles established by the AIRC, including comprehension of productivity considerations.

When an agreement has been reached, industrial action will not be permitted during its period of operation.

Industrial action other than for genuine bargaining for agreements is not otherwise compatible with the norms of the system and will be unlawful.

Awards

Industrial action is not compatible where there is access to compulsory conciliation and arbitration. There is no legal protection for industrial action except as described above in relation to agreements.

Compliance powers

The AIRC has powers to give directions to stop or prevent unlawful industrial action. This applies to any matters within its jurisdiction, including inter-organisational disputes (e.g. demarcation/representation disputes). The Federal Court of Australia is able to enforce such directions by injunctions and will be able to award damages and sequester funds.

The AIRC is also able to exercise its existing powers in relation to unlawful industrial action (i.e. stand down provisions; refraining from hearing matters where a party is not complying with an award, order, direction or recommendation; suspension or cancellation of awards; and orders in relation to industrial action in the Commonwealth and Territory public sectors).

Payment of remuneration for periods of industrial action

It is unlawful for an employer to pay strike pay; for a union (or its representatives) to take industrial action to pursue strike pay; or for an employee to accept strike pay.

The prohibition does not apply where work has stopped or been performed differently by the employees concerned because they have a reasonable concern about their personal health and safety owing to unsafe working conditions which are within the reasonable responsibility of the employer, and they have not refused to accept a reasonable direction to perform other safe and appropriate work, whether at the same or another workplace. Such action is specifically excluded from the definition of industrial action.

Secondary boycotts

Secondary boycott provisions have been restored to the *Trade Practices Act 1974*. The AIRC is able to conciliate where a federally registered union is involved, but there is no requirement for a specified period of conciliation before legal action may be initiated.

6. TAXATION

(a) 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.

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. For certain taxpayers, including individuals, excess credits can be refunded where the shareholder's applicable marginal tax rate is less than the company rate.

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.

Consolidation

Australia also has a consolidation regime which allows wholly owned groups of entities to make a choice to consolidate and therefore be treated as a single entity for the purposes of determining income tax liability.

Single entity treatment extends to allow tax attributes (such as franking credits and losses) to be pooled and applied to/against group income as well as permitting the income tax free movement of assets within the group.

Indirect Taxes

On 1 July 2000, the Government introduced a broad-based goods and services tax (GST). The GST replaced the existing wholesale sales tax (WST) system and a range of State taxes. The GST is collected progressively on the 'value added' by each business in the production and distribution chain. The full value of a business' sales is taxed and the business is allowed a credit for GST incurred on its acquisitions, with only the net amount being remitted. The ability of businesses to claim input tax credits for the GST paid on their inputs means that GST only applies to the final value of items purchased by final consumers.

In the previous WST system, the WST paid by a business became embedded into its cost structure and cascaded as businesses made WST taxable supplies to other businesses. Also, the WST was applied at a number of rates to a narrow range of goods. In contrast, the GST applies a single rate of 10% across a broad base of goods and services. For cars above a certain price level and wine, which had attracted higher rates of WST, specific taxes were introduced to account for the removal of the WST and the introduction of the single rate GST. These are the Luxury Car Tax and Wine Equalisation Tax. While most goods and services are subject to GST, the health, education, childcare and charitable sectors are largely GST-free (or 'zero rated'). Basic food is also GST-free. Financial supplies and residential rents are input taxed (or 'exempt').

In June 1999, Commonwealth, State and Territory leaders endorsed an Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations which provides for the transfer of all the GST revenues to the States and Territories. Access to the GST revenues allows the States to progressively abolish, and not reintroduce, a range of indirect taxes. Bed taxes were repealed from 1July 2000, and financial institutions duty and stamp duties on quoted marketable securities were abolished from 1 July 2001. Debits tax is to be repealed by 1 July 2005, subject to review by a Ministerial Council comprising Commonwealth, State and Territory Treasurers.

State and Territory Governments also generally levy taxes on payroll, land, financial transactions and land transactions, while the Commonwealth imposes customs and excise duties on tobacco and tobacco products, alcoholic beverages other than wine, and petroleum products.

Depreciation Arrangements

The Uniform Capital Allowance (UCA) system was introduced on 1 July 2001 replacing a range of separate capital allowances that were previously available for items of 'plant', certain mining and quarrying expenditure, items of intellectual property, spectrum licenses, indefeasible rights to use submarine cables, software and certain primary production assets.

The UCA system applies to depreciating assets that start being held or constructed on or after 1 July 2001.

The UCA includes the following key features:

- The entitlement to write-off a depreciable asset for taxation purposes rests with the taxpayer that incurs the loss in value of the asset, not necessarily the legal owner of the asset.
- The cost of depreciable assets is the actual cost of the asset to the person who acquires the asset, including all relevant costs of acquiring and installing the asset except financing costs.
- Taxpayers have the option of either using the Commissioner of Taxation's effective life schedule or self-assessing the effective life of their assets.
    - From 1July 2002 statutory effective life caps apply to a range of assets used in the oil, gas and airline industries.
- Taxpayers have the option of writing off depreciable assets on the basis of prime cost or diminishing value.

- Project development costs are eligible for depreciation through pooling arrangements and written off on a diminishing value basis at a rate determined by the effective life of the project.
- Taxpayers can write off all depreciable assets costing, or with an opening written down value, less than $1000 through a low-value pool.

The UCA system also covers a number of types of capital expenditure for which there was previously no entitlement to a deduction. For example, special write-offs apply to the costs of establishing an entity and the costs of raising equity.

Capital expenditure on the construction of industrial buildings can 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 2.5% per annum.

Pooled Development Funds

A concessional tax rate of 15% applies to Pooled Development Funds (PDFs) for income derived from investment in small and medium sized businesses.

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) 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.

Research and Development (R&D) Tax Concession

A deduction of 125% 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 concession, unless the R&D is carried out by a Registered Research Agency, in which case the expenditure threshold is waived.

The concessional deduction is available to Australian incorporated companies, eligible companies in partnership and public trading trusts. To be able to claim the concession, the company must be registered with the Industry Research and Development Board. Applications for registration must be made annually, within six months of the end of the company income year.

A 175% R&D Tax Concession is available for eligible R&D expenditure above a three year moving average of the company's incremental expenditure.

An R&D Tax Offset of 37.5 cents per dollar on eligible R&D expenditure is available to small companies with an annual turnover of less than $5 million who spend up to $1 million per year on R&D.

Certain research and development activities carried on outside Australia are eligible for the tax concession with the value of overseas research and development that qualifies for the concession being limited to 10% of the total cost of the R&D project.

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 interest withholding tax (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.

Double Taxation Agreements (DTAs)

The Government is giving priority to renegotiating DTAs with major trading partners. During 2001-02, negotiations were held with the United States and the United Kingdom. The United States Protocol was signed in Canberra on 27 September 2001 and is awaiting ratification in the United States. Australia has completed its ratification procedures. Australia has completed its procedures for entry into force of a new DTA with Russia, which is awaiting ratification in Russia. Amending Protocols to Australia's DTAs with Canada and Malaysia were signed in Canberra on 23 January 2002 and at Genting Highlands on 28 July 2002 respectively. A new DTA was signed with Mexico in Mexico City on 9 September 2002. These agreements will enter into force in each case when both countries have completed their respective legislative and constitutional procedures for this purpose.

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 IWT exemptions are for interest paid on widely distributed debentures whether issued in Australia or not and for interest paid to a foreign entity that is exempt from tax in its home country and in Australia.

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.

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.

Venture Capital [also see D2]

Capital gains tax relief is provided for certain foreign investors in Australian venture capital companies.

Legislation has been introduced (14 November 2002) to encourage additional foreign investment in venture capital and to facilitate the development of the Australian venture capital industry by extending the existing tax exemption and by establishing new tax flow-through vehicles. Two of these vehicles will provide flow through tax treatment for venture capital investments: venture capital limited partnerships (VCLPs) and Australian venture capital funds-of-funds (AFOFs). The third vehicle, a venture capital

management partnership, will provide flow-through tax treatment to a limited partnership that is the general partner of a VCLP or an AFOF.

The existing tax exemption for venture capital investments by certain foreign pension funds is being extended to all tax-exempt residents and venture capital funds from Canada, France, Germany, Japan, the United Kingdom and the United States. In addition, the exemption is now provided to taxable residents of the above countries plus residents of Finland, Italy, the Netherlands (excluding the Netherland Antillles), New Zealand, Norway, Sweden or Taiwan who hold less than 10% of a VCLP or AFOF.

The bill also provides for VCLP and AFOF managers' share of gains (referred to as their 'carried interest') to be taxed as capital gains in the hands of individual managers, in order to attract skilled international venture capital managers to Australia.

Tax Reform

On 13 August 1998, the Prime Minister announced details of the Government's taxation reform package. In developing the taxation reform package the Government took particular care to ensure that the new system would be fairer for families and those on low or fixed incomes. The new tax system has been designed so that any increase in the cost of living is more than offset by income tax cuts, increases in pensions and benefits and other compensation measures.

The key features of recent tax reforms in Australia are described below.

Indirect Tax

- The introduction of a 10% GST on the consumption of most goods and services in Australia from 1 July 2000. Providing for a broad based indirect tax system more reasonably shares the tax bill and guarantees revenues to the states to deliver their services.
- Overall reductions in industry costs due to the replacement of the old wholesale sales tax and other embedded taxes with the GST.
- The removal of financial institutions duty and stamp duty on most share transactions as part of A New Tax System.

Personal Tax and Family Assistance

- Significant reductions in personal income tax through an increase in the tax free threshold and decreases in all marginal tax rates other than the top rate. These tax cuts are worth around $12 billion a year and mean that more than three-quarters of taxpayers face a top marginal tax rate of 30% or less.
- A better interaction between the tax and social security systems so that there are increased incentives to work and save. This is achieved through a combination of reduced personal income tax rates and a substantial easing in the income test for family payments.
- Increases in family assistance and the simplification of twelve family benefit payments to three;
- The refunding of excess imputation credits.
- A halving of the capital gains tax rate for individuals.
- Introduction of the simplified tax system and unified capital allowance regime.
- *Business Tax*
- The Government extended the Thin Capitalisation regime, which serves to prevent multinational corporations from allocating a disproportionate amount of debt to their Australian operations.
- In 1999, the Government introduced scrip-for-scrip roll-over which defers a capital gain arising where an interest in one entity is exchanged for an interest in another entity because of a takeover or merger.
- From 1 July 2002:

    - The new Consolidations regime which allows company groups to lodge a single tax return and will help overcome existing tax impediments to restructuring;
    - New demerger provisions to further facilitate group restructuring; and
    - The simplified imputation regime.

- A reduction in the company tax rate to 30%.

The Government has also announced the following reforms.

Leasing

The Government has announced a commitment to reforms to tax exempt leasing and public private partnership arrangements. It is anticipated that changes to the tax law will be based around the operation of a risk test rather than the current control test. Further consultation on these issues will be undertaken through the course of 2002-03 and it is expected that legislation will be introduced in the Autumn 2003 sittings.

Taxation of Financial Arrangements (TOFA)

The Government has announced a timetable to implement the reforms to TOFA as recommended by the Ralph report on reform of business taxation. This includes reforms to the taxation of foreign currency gains and losses; commodity hedging (commencement July 2003); and new tax-timing arrangements including a mark-to-market election, an accruals/realisation framework, internal hedging rules, disposal rules and synthetic arrangements (commencement July 2004).

Taxation of Temporary Residents

The Government announced reforms to the taxation of temporary residents to apply from 1 July 2002 including a four-year foreign source income exemption and an exemption from the foreign investment fund rules.

Review of International Taxation Arrangements (RITA)

The Government is reviewing international taxation arrangements, particularly whether current arrangements impede Australian companies from expanding offshore, attracting domestic and foreign equity, and how they affect holding companies and conduit holdings being located in Australia.

The review is focussed on the dividend imputation system's treatment of foreign source income; the foreign source income rules; the overall treatment of conduit income; and high-level aspects of double tax agreement policy and processes. Treasury prepared a paper for public release to serve as a basis for consultations the Board of Taxation is undertaking before it reports to Government by the end of 2002.

7. PERFORMANCE REQUIREMENTS

(a) Briefly describe 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

(a) 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.

(b) 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.	Export controls cover a wide range of defence and related goods and technologies, including technology with both civil and military applications. 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).

9. INVESTOR BEHAVIOUR

(a) 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. COMPETITION POLICY

(a) 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 laws relating to price oversight.

The competitive conduct rules contained in Part IV of the Trade Practices Act prohibit conduct which has the purpose or effect of substantially lessening competition in the relevant market. These prohibitions include secondary boycotts, exclusive dealing, and mergers which are likely to substantially lessen competition in a substantial market. In addition, collusive price-fixing, third-line forcing, primary boycotts, and resale price maintenance are prohibited, and subject to a *per se* prohibition (i.e., no competition test). Part IV also prohibits the misuse of market power by a corporation. Competitive conduct matters are determined exclusively by the Court. The Australian Competition and Consumer Commission (ACCC) is charged generally with bringing enforcement proceedings in the Court. Individuals and corporations may take private action for breaches of the provisions and may seek remedies including injunctions, damages, ancillary orders and, in relation to mergers, divestiture. In addition, the ACCC may seek the imposition by the Court of pecuniary penalties – up to $10 million for a corporation and up to $500,000 for an individual.

The Prices Surveillance Act establishes a price oversight regime administered by the ACCC. Under the regime, there are three types of oversight – surveillance, monitoring and public inquiries. Surveillance acts to restrain or limit price increases, 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. Under monitoring, the ACCC collects data on prices, costs and profits in an industry or business and provides a report on its findings, as directed by the Federal Minister. Monitoring is intended to provide information on the industry's performance and whether any other policy actions are required. The ACCC may hold public hearings in relation to the level of prices for the supply of particular goods or services, as directed by the

Federal Minister. The prices of goods and services to be subject to the inquiry must not be increased until the inquiry has been completed.

The National Competition Policy

In 1995 the Federal, State and Territory 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 referred to above, 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; and
- 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

Coverage

The competitive conduct rules in Part IV of the Trade Practices Act now extend to all businesses operating in the Australian economy.

Exemptions from the competitive conduct rules

The National Competition Policy provides for the review, and possibly 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 Federal Government and the 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 agreed to develop a timetable for the review and, where appropriate, reform of all existing legislation that restricts competition by 30 June 2002 to ensure compliance with the principle. For the Federal Government, this commitment is implemented through the Legislation Review Schedule, which will review approximately 100 pieces of legislation – of which around two-thirds have been reviewed.

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 of 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

Part IIIA of the Trade Practices Act provides a legal regime 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 three 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;

(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; and

(c) certification by the Federal Minister of an effective State or Territory access regime.

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 Federal level there are three levels of price oversight (not control) – surveillance, monitoring and inquiries.

The National Competition Policy permits the States and Territories to establish their own price oversight regimes for State/Territory-owned enterprises which have significant market power. The Federal

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 Federal Treasury Portfolio Ministers and, in particular, the Parliamentary Secretary to the Treasurer. Various aspects of the National Competition Policy (i.e., enforcement of competitive conduct rules, access and price oversight) are administered by the ACCC. The National Competition Council (NCC) is responsible for assessing governments' progress in implementing the National Competition Policy reforms (including recommending to the Treasurer the level of competition payments to be made to the States and Territories). The NCC also provides:

- recommendations on access issues arising under Part IIIA of the Trade Practices Act;
- assistance in determining whether State or Territory government businesses should be declared for price surveillance by the Australian Competition and Consumer Commission; and
- advice where the Federal Government is considering overriding State or Territory exemptions from the Trade Practices Act.

11. OTHER MEASURES

(a) List and briefly describe 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 in Australia is provided for under a number of Commonwealth statutes; including the Copyright Act 1968, the Circuit Layout Act 1989, the Designs Act 1906, the Patents Act 1990, the Plant Breeder's Rights Act 1994 and the Trade Marks Act 1995. The Government intends shortly to introduce new Designs legislation into the Parliament. These Acts implement government policy and Australia's obligations under relevant intellectual property treaties (such as the TRIPS Agreement). Appropriate civil or criminal remedies are available where intellectual property rights are infringed.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

(a) 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.

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

Not applicable.

2. SETTLEMENT OF DISPUTES

(a) 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.

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.

(b) Has your economy signed or acceded 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. *Briefly describe any investment promotion programs offered at both the national and sub-level (e.g. 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.*

Commonwealth Investment Programs:

Invest Australia is the Australian Government's national investment agency responsible for attracting productive foreign direct investment into Australia. Invest Australia undertakes strategic investment attraction activities through 12 overseas offices: London, Paris, Frankfurt, New York, San Francisco, Tokyo, Taipe, Hong Kong, Beijing, Shanghai, and Singapore.

Invest Australia:

- Identifies of appropriate business and investment partners and arrange meetings and site visits.
- Provides information on Australian industry capabilities, skills availability, R&D capacities, infrastructure, business costs, intellectual property issues, regulations and tax matters.
- Provides an initial contact point for Australian Government approvals and direct investors to key State/Territory and local government agencies.
- Advice to investors on the range of relevant government assistance programs.
- Provide Major Project Facilitation status for signi?cant, strategic projects.
- Assist investors to access tailored business immigration agreements.

Provide investment incentives for strategic projects, through the Strategic Investment Coordinator, in limited and special circumstances where projects are expected to generate signi?cant net economic bene?ts for Australia.

A National Investment Response Centre has been established in Sydney which operates a 24-hour call centre for investment inquiries. The Response Centre acts as a base for investment attraction services and houses investment promotion teams supporting the Government's investment activities.

Invest Australia works in partnership with Austrade to deliver investment services overseas.

Invest Australia has established a framework for cooperation and joint operations with State and Territory Governments. A set of guiding principles is being considered which will determine the roles and responsibilities of each jurisdiction in investment attraction and facilitation.

Invest Australia	*National Investment Response Centre*
Department of Industry, Science and Resources	Level 32, AMP Centre
20 Allara Street	50 Bridge Street
CANBERRA ACT 2600	SYDNEY NSW 2000
AUSTRALIA	AUSTRALIA
Telephone: (61 2) 6213 7560, (61 2) 6213 7715	Telephone: (61 2) 9397 1600
Facsimile: (61 2) 6213 7843	Facsimile: (61 2) 9397 1666

State Investment Programs:

All State and Territory Governments in 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.

Australian Capital Territory

Executive Director

Office of Business and Tourism

P O Box 243

CIVIC SQUARE ACT 2608

Telephone: (61 2) 6207-2599

Fax: (61 2) 6205-0597

www.business.act.gov.au

http://www.act.gov.au/cmd/organisation/obta.cfm

New South Wales

Senior Manager, Policy

Policy and Resources Division

Department of State and Regional Development

Level 35, Governor Macquarie Tower

SYDNEY NSW 2000

Telephone: (61 2) 9228-5110

Fax: (61 2) 9228-5671

E-mail: see interactive webpage

http://www.business.nsw.gov.au/

Victoria

Executive Director

Department of Innovation, Industry and Regional Development

Level 13, 55 Collins Street

MELBOURNE VIC 3000

Telephone: (61 3) 9651 9999

Fax: (61 3) 9651 9531

E-mail: see interactive webpage

http://invest.vic.gov.au/Home/CoverPage.htm

Western Australia

Resources Sector Investment

Executive Director, Investment Attraction

Department of Minerals and Petroleum Resources

PO Box 7606

CLOISTERS SQUARE WA 6850

Queensland

Foreign investment inquiries:

Director
Foreign Investment Secretariat
Commercial Advisory Services Division
Department of State Development
100 George Street
Brisbane, Qld 4000
Telephone: (61 7) 3405 6502
Fax: (61 7) 3210 0739
E-mail: see interactive webpage
http://www.sd.qld.gov.au/dsdweb/htdocs/global/frontdoor.cfm

Lease inquiries:

Director
State Land Asset Management
Department of Natural Resources and Mines
GPO Box 2454 Brisbane Q 4001
Telephone: (61 7) 3405-5509
Fax: (61-7) 3405-5522
E-mail: see interactive webpage
http://www.nrm.qld.gov.au/

South Australia

Chief Executive
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Northern Territory

Executive Director
Office of Territory Development
Department of the Chief Minister
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DARWIN NT 0801
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Fax: (61-8) 8946-9556
E-mail: see interactive webpage
http://www.otd.nt.gov.au/dcm/otd/otd/about_us.htm

Tel: (61-8) 9327-5555
Fax: (61-8) 9222-3862
http://www.mpr.wa.gov.au

Investment Promotion and Incentives

Director
Industry and Development
Department of Industry and Technology
Dumas House
2 Havelock Street
WEST PERTH WA 6005
Tel: (61-8) 9222-5838
Fax: (61-8) 9321-3115
http://www.indtech.wa.gov.au

Tasmania

Executive Director
Department of Economic Development
GPO Box 646
HOBART TAS 7001
Telephone: (61 3) 6233 5888
Fax: (61 3) 6233 5800
E-mail: info@development.tas.gov.au
http://www.development.tas.gov.au/

2. *Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g. 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 these schemes, including address and telephone/fax numbers.*

Commonwealth Incentives:

Invest Australia has responsibility for a number of programs described below which were designed specifically to encourage investment in Australia.

Regional Headquarters (RHQ) Program

The RHQ program offers assistance with immigration arrangements for executives and specialists and tax concessions for international companies considering Australia as the location for regional headquarters and regional operating centres. *Invest Australia* coordinates this program and provides assistance in the preparation of applications.

Immigration

The issuing of an Immigration Agreement is a free service from *Invest Australia* and exempts expatriate employees from many of the migration tests. Applications for Immigration Agreements are made by *Invest Australia* and are approved by the Minister for Industry, Science and Resources. Companies granted an Immigration Agreement by the Minister for Industry, Science and Resources have access to permanent and long stay business visas for key expatriate employees essential to the establishment and management of Australian based regional operations. Immigration procedures for key expatriate employees are fast tracked by a worldwide network of offices of the Department of Immigration and Multicultural Affairs.

Tax Concessions

Wholesale Sales Tax exemption applies to imported computer and computer-related equipment, owned or leased by a company for a period of nine months before local entry. The exemption applies for a period of two years from the date of the first local entry of equipment for use by the RHQ company.

Certain costs associated with the set up of a Regional Headquarters (RHQ) in Australia can be deductible expenses for taxation purposes. These costs include expenditure of a revenue or capital nature, incurred directly by the RHQ company within a 24 month period starting 12 months before and ending 12 months after the RHQ company first derives assessable income from the provision of "regional headquarters support". Access to the taxation incentives is only available to companies that have been determined by the Treasurer as a RHQ Company under Section 82CE of the Income Tax Assessment Act 1936. Applications for determination as an RHQ Company for taxation purposes are made to the Treasurer. *Invest Australia* assists in the preparation of applications. In making such determinations, the Treasurer considers a range of factors including whether or not the Australian economy would benefit significantly from the company's presence, and whether the benefits would substantially outweigh the cost to Government.

Investment Incentives

The Australian Government will consider the provision of investment incentives to strategic investment projects in limited and special circumstances where the project would generate significant net economic and employment benefits for Australia. Incentives are considered on a case by case basis, taking into account the following indicative criteria:

- The investment would not be likely to occur in Australia without the incentive.
- The investment provides significant net economic benefits through:
  - substantial increase in employment;
  - substantial business investment;
  - significant boost to Australia's R&D capability;

- significant benefit to, or investment by other industries, either users or suppliers (cluster investment) and;
- ensuring that it does not involve substitution of existing production capacity that would provide an unfair advantage over other competing projects.

- The investment complements areas of Australia's competitive advantage.
- The investment is viable in the long term without subsidy.
- The incentives are open to foreign and domestic investors.
- The quantum of project specific assistance takes into consideration the availability of other assistance from the Commonwealth and State and Territory Governments.
- Any incentives are consistent with our international obligations, including under the World Trade Organisation.

In order to coordinate the case by case assessment of projects and determine any need for investment incentives the Government appointed a Strategic Investment Coordinator. The Strategic Investment Coordinator advises the Government, through the Prime Minister, on proposals for the provision of incentives for particular projects and on policies to increase Australia's attractiveness as an investment destination. *Invest Australia* works closely with the Strategic Investment Coordinator in providing strategic advice on investment opportunities.

Feasibility Study Fund

Invest Australia can provide financial assistance, in conjunction with State and Territory Governments, to eligible companies to undertake pre-feasibility or feasibility studies into the commercial viability of new investment projects. The Commonwealth funding is usually based on matching funding provided by a State or Territory Government.

Studies must assess the commercial viability of major new investments (of at least $10 million) in value adding, advanced manufacturing or internationally traded services. Project proponents will need to at least match the combined funding of both Governments.

Other Areas of Assistance

Aside from the programs described above, investors are also able to access the full range of government programs, subject to eligibility, available to industry in areas like research and development, export development, training and education and infrastructure. Further information is available from *Invest Australia*:

Invest Australia

Department of Industry, Science and Resources

20 Allara Street

CANBERRA ACT 2600

AUSTRALIA

Telephone: (61-2) 6213 7560, (61-2) 6213 7715

Facsimile: (61-2) 6213 7843

E-mail: see interactive webpage http://www.investaustralia.gov.au/investor/states/states.htm

http://www.investaustralia.gov.au/sitemap/sitemap.htm

State and Territory Incentives:

State and Territory Incentives: Most State and Territory Governments	Some States offer specific assistance packages for the attraction of Regional Operating Centres, which involve the reduction or removal of payroll taxes, land taxes and/or stamp

offer incentives to 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. 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.	duties. 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%. 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; support for the provision of multi-user infrastructure as an incentive for major projects; key personnel removal costs; business plan and feasibility study costs; skills training; technology development; and training.

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

Invest Australia is the national investment agency and provides a central contact point for investors. *Invest Australia* coordinates with the States and Territories on the promotion, attraction and facilitation of investment in Australia.

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

1. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details 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 and Japan to accord to the nationals and companies of the other party within their territory, fair and equitable treatment with respect to matters relating to their business and professional activities. Subject to specified exceptions, the Parties are also required to accord to nationals and companies of the other Party within their territory, treatment no less favourable than that accorded to the nationals and companies 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 standard IPA provides for a Most Favoured Nation (MFN) 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 require any expropriation to be for a public purpose related to the internal needs of the expropriating party and under due process of law; require the expropriation to be non-discriminatory; and 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 freely and without unreasonable delay.

Dispute resolution

Australia's standard IPA also incorporates clauses intended to facilitate the settlement of disputes at different levels, i.e. 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 economies with which Australia has entered into Investment Protection Agreements:

Economies	Description	Entry Into Force
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
Chile	Agreement on the Reciprocal Promotion and Protection of Investments	Yet to apply
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, China	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
Lithuania	Agreement for the Promotion and Protection of Investments	Yet to apply
Pakistan	Agreement for the Promotion and Protection of Investments	14 October 1998
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 Protection of Investments	27 March 1992
Romania	Agreement on the Reciprocal Promotion and Protection of Investments	22 April 1994
Viet Nam	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.

Convention Establishing the Multilateral Investment Guarantee Agency

Australia is a party to the Convention Establishing the Multilateral Investment Guarantee Agency, concluded at Seoul on 11 October 1995 and which entered into force for Australia on 16 December 1998. The Multilateral Investment Guarantee Agency is a part of the World Bank Group. Its purpose is to encourage foreign investment in developing countries by providing insurance against the risks of currency transfer, expropriation, war and civil disturbance, and to provide advisory services to developing member countries on means of encouraging additional foreign investment.

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.
- The annual inflow of foreign investment has averaged just over $55 billion in the past five years.
- Foreign investment over the 1990s has been dominated by the inflow of portfolio investment, while investment of the 'other' category has been more prominent since 1996-97. Foreign direct investment flows into Australia have fluctuated between $5 billion and $23 billion.
- Foreign direct investment flows into Australia in recent years have been largely accounted for by foreign equity investment. In contrast, there has been a small net outflow of direct foreign borrowing in 1993-94 and more recently.
- Foreign portfolio investment flows into Australia have been volatile in recent years, reflecting volatility in both equity and borrowing.

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 fall in 1994-95 and a large increase in 1995-96, total outflows of Australian investment have been relatively stable until 2000-01 and 2001-02.
- The early 1990s saw the decline of both direct and portfolio investment abroad, while investment abroad of the 'other' category has become more significant. In the late 1990s direct and portfolio investment has increased sharply.
- Australian direct investment abroad in the 1990s has been influenced mainly by movements in direct equity investment abroad, which have accounted for the bulk of total direct investment outflows.
- Portfolio investment abroad has been volatile in recent years, contracting in two of the last four years. This reflects significant underlying volatility in portfolio equity investment, combined with negative portfolio lending for much of the 1990s.

2. List of the major 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 six years to 2001-02, the major sources of foreign direct investment flows are the United States, Japan, the United Kingdom, New Zealand, Switzerland and the Netherlands.
- The bulk of Australian direct investment abroad in the five years to 2001-02 was directed to the United Kingdom, the United States and New Zealand.

ANNNEX

Balance of Payments and International Investment Position						
	Sep-88	Dec-88	Mar-89	Jun-89	Sep-89	Dec-89
Changes in position reflecting - transactions						
Foreign Investment in Australia	9481	6211	7727	6732	8998	7547
Direct	3373	1620	3054	2704	2372	977
Equity	2445	873	2317	2920	831	1063
Debt	928	747	737	-216	1541	-86
Portfolio	4968	5791	2959	2733	3208	4105
Equity	375	529	476	750	272	266
Debt	4593	5262	2483	1983	2936	3839
Other	1140	-1200	1714	1295	3418	2465
Australian Investment Abroad	-4877	-3256	-2659	-2502	-2561	-2411
Direct	-1278	-1396	-1879	-84	-545	-1051
Equity	-959	-2459	-1093	24	-635	-1121
Debt	-319	1063	-786	-108	90	70
Portfolio	-1910	-100	-1357	-1107	627	-1068
Equity	-1730	-212	-1274	-1051	497	-1160
Debt	-180	112	-83	-56	130	92
Other	-1689	-1760	577	-1311	-2643	-292
	1988-89	**1989-90**	**1990-91**	**1991-92**	**1992-93**	**1993-94**
Foreign Investment in Australia	30.2	28.7	22.2	19.5	20.4	29.6
Direct	10.8	7.8	7.4	7.6	9.2	5.7
Equity	8.6	5.9	6.1	6.4	7.6	5.5
Debt	2.2	1.9	1.3	1.2	1.6	0.2
Portfolio	16.5	15.9	10.1	8.0	10.0	21.7
Equity	2.1	1.6	3.2	1.1	4.7	14.3
Debt	14.3	14.3	6.8	7.0	5.3	7.4
Other	2.9	5.0	4.7	3.8	1.3	2.2
Australian Investment Abroad	13.3	7.8	6.3	7.3	6.5	12.8
Direct	4.6	2.3	-0.1	4.4	5.8	3.5
Equity	4.5	4.2	-3.2	4.6	6.3	3.0
Debt	0.2	-1.9	3.0	-0.2	-0.4	0.5
Portfolio	4.5	-1.5	3.9	7.6	3.1	3.8
Equity	4.3	-1.6	3.3	4.4	-0.1	4.6
Debt	0.2	0.1	0.6	3.2	3.2	-0.8
Other	4.2	7.0	2.6	-4.7	-2.5	5.5

Balance of Payments and International Investment Position						
	Mar-90	Jun-90	Sep-90	Dec-90	Mar-91	Jun-91
Changes in position reflecting - transactions						
Foreign Investment in Australia	9282	2905	6005	6922	5396	3838
Direct	2162	2309	1694	4238	845	588
Equity	1900	2087	1490	3058	457	1070
Debt	262	222	204	1180	388	-482
Portfolio	6688	1892	1700	-1248	6123	3476
Equity	801	234	427	174	-329	2946
Debt	5887	1658	1273	-1422	6452	530
Other	432	-1296	2611	3932	-1572	-226
Australian Investment Abroad	-3571	719	-1543	-2145	-2171	-445
Direct	-1530	797	-1238	699	754	-70
Equity	-2424	-35	-1248	823	376	3222
Debt	894	832	10	-124	378	-3292
Portfolio	1038	888	353	-1769	-2228	-234
Equity	2096	176	283	-1769	-1508	-297
Debt	-1058	712	70	0	-720	63
Other	-3079	-966	-658	-1075	-697	-141
	1994-95	**1995-96**	**1996-97**	**1997-98**	**1998-99**	**1999-00**
Foreign Investment in Australia	24.3	36.8	37.5	41.3	49.3	54.9
Direct	6.9	12.5	11.3	10.3	8.0	12.6
Equity	7.4	12.2	11.2	9.1	9.1	8.7
Debt	-0.5	0.3	0.1	1.2	-1.1	3.9
Portfolio	20.9	26.1	19.6	20.7	17.4	27.0
Equity	4.9	4.7	3.6	17.2	18.4	2.7
Debt	16.0	21.4	16.1	3.5	-1.0	24.3
Other	-3.5	-1.8	6.5	10.4	23.8	15.3
Australian Investment Abroad	-4.1	19.0	19.9	16.7	19.1	24.0
Direct	3.1	8.3	6.4	7.4	3.3	2.9
Equity	3.9	6.0	6.0	7.4	4.6	4.8
Debt	-0.8	2.3	0.4	0.0	-1.3	-1.8
Portfolio	-0.1	4.5	4.4	-0.5	11.0	17.7
Equity	-0.6	3.0	3.8	-0.7	6.5	14.9
Debt	0.6	1.5	0.6	0.2	4.5	2.8
Other	-7.2	6.2	9.1	9.7	4.9	3.3

Balance of Payments and International Investment Position						
	Sep-91	Dec-91	Mar-92	Jun-92	Sep-92	Dec-92
Changes in position reflecting - transactions						
Foreign Investment in Australia	5210	7185	2568	4509	4928	6149
Direct	2306	1785	2311	1200	1791	2490
Equity	1952	1120	1955	1405	979	1393
Debt	354	665	356	-205	812	1097
Portfolio	3708	4766	-628	187	2197	2901
Equity	535	460	-566	647	-1070	2169
Debt	3173	4306	-62	-460	3267	732
Other	-804	634	885	3122	940	758
Australian Investment Abroad	-1675	-4163	-238	-1262	12	-3405
Direct	-130	-2094	-1471	-714	-392	-4598
Equity	-365	-2181	-1150	-864	-917	-4333
Debt	235	87	-321	150	525	-265
Portfolio	-2594	-1311	-2059	-1649	-1486	-327
Equity	-1698	-79	-2162	-449	534	7
Debt	-896	-1232	103	-1200	-2020	-334
Other	1049	-758	3292	1101	1890	1520
	2000-01	**2001-02**				
Foreign Investment in Australia	59.4	72.5				
Direct	11.5	23.2				
Equity	6.5	16.0				
Debt	4.9	7.2				
Portfolio	39.4	36.4				
Equity	15.4	10.5				
Debt	23.9	25.9				
Other	8.6	12.9				
Australian Investment Abroad	45.1	53.3				
Direct	7.1	20.3				
Equity	2.4	20.2				
Debt	4.7	0.1				
Portfolio	23.7	27.5				
Equity	16.5	22.5				
Debt	7.2	5.0				
Other	14.3	5.5				

Balance of Payments and International Investment Position						
	Mar-93	Jun-93	Sep-93	Dec-93	Mar-94	Jun-94
Changes in position reflecting - transactions						
Foreign Investment in Australia	3005	6321	7862	8038	6935	6778
Direct	3658	1218	1073	358	1968	2323
Equity	3421	1800	1133	877	1546	1955
Debt	237	-582	-60	-519	422	368
Portfolio	-1075	5928	7865	5047	9458	-655
Equity	2994	560	4705	2105	4453	3075
Debt	-4069	5368	3160	2942	5005	-3730
Other	422	-825	-1076	2633	-4491	5110
Australian Investment Abroad	-1060	-2056	-3413	-3627	-4321	-1488
Direct	117	-969	-1388	-628	-1503	-27
Equity	-176	-850	-1163	-1348	-1036	521
Debt	293	-119	-225	720	-467	-548
Portfolio	-1183	-148	-1000	-3532	-3178	3884
Equity	-194	-280	-1144	-1892	-2071	464
Debt	-989	132	144	-1640	-1107	3420
Other	6	-939	-1025	533	360	-5345
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

Balance of Payments and International Investment Position						
	Sep-94	Dec-94	Mar-95	Jun-95	Sep-95	Dec-95
Changes in position reflecting - transactions						
Foreign Investment in Australia	5438	5250	6422	7188	9155	11150
Direct	1855	733	3059	1241	4002	7843
Equity	2503	1026	2660	1218	2832	7074
Debt	-648	-293	399	23	1170	769
Portfolio	3569	7598	2609	7149	7916	2914
Equity	1444	2217	348	874	3535	-1242
Debt	2125	5381	2261	6275	4381	4156
Other	14	-3081	754	-1202	-2763	393
Australian Investment Abroad	3226	1008	627	-738	-2713	-6476
Direct	-1451	-875	969	-1748	-1470	-2180
Equity	-699	-766	-534	-1919	-1494	-1605
Debt	-752	-109	1503	171	24	-575
Portfolio	-164	1402	-582	-597	-459	-2180
Equity	881	-85	1016	-1187	-689	-751
Debt	-1045	1487	-1598	590	230	-1429
Other	4841	481	240	1607	-784	-2116
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

Balance of Payments and International Investment Position						
	Mar-96	Jun-96	Sep-96	Dec-96	Mar-97	Jun-97
Changes in position reflecting - transactions						
Foreign Investment in Australia	6327	10209	12326	10669	13459	1028
Direct	-128	773	3704	3454	846	3328
Equity	1269	1045	3400	3614	1421	2768
Debt	-1397	-272	304	-160	-575	560
Portfolio	6378	8916	7059	7910	7345	-2706
Equity	496	1891	-1331	1568	2238	1076
Debt	5882	7025	8390	6342	5107	-3782
Other	77	520	1563	-695	5268	406
Australian Investment Abroad	-2868	-6967	-6596	-5770	-9811	2247
Direct	-3152	-1538	-2384	-1976	-1077	-1000
Equity	-2682	-224	-2230	-1918	-374	-1506
Debt	-470	-1314	-154	-58	-703	506
Portfolio	194	-2057	-874	-1429	-1187	-926
Equity	-959	-633	-386	-1113	-1315	-953
Debt	1153	-1424	-488	-316	128	27
Other	90	-3372	-3338	-2365	-7547	4173
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

Balance of Payments and International Investment Position						
	Sep-97	Dec-97	Mar-98	Jun-98	Sep-98	Dec-98
Changes in position reflecting - transactions						
Foreign Investment in Australia	14689	12143	8023	6482	9622	13213
Direct	4160	1956	1987	2184	3963	1424
Equity	3659	2348	1174	1905	2655	4765
Debt	501	-392	813	279	1308	-3341
Portfolio	8681	4622	5008	2381	888	2561
Equity	2800	5991	5390	2975	2305	6318
Debt	5881	-1369	-382	-594	-1417	-3757
Other	1848	5565	1028	1917	4771	9228
Australian Investment Abroad	-8092	-6766	-1725	-109	-742	-7220
Direct	-4631	-1957	-2185	1338	-2396	-2083
Equity	-5227	-2044	-1626	1508	-3335	-2197
Debt	596	87	-559	-170	939	114
Portfolio	-55	2309	-1969	187	-1759	-2481
Equity	-59	1781	-2473	1406	-1893	-718
Debt	4	528	504	-1219	134	-1763
Other	-3406	-7118	2429	-1634	3413	-2656
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

Balance of Payments and International Investment Position						
	Mar-99	Jun-99	Sep-99	Dec-99	Mar-00	Jun-00
Changes in position reflecting - transactions						
Foreign Investment in Australia	15656	10759	14702	21688	10007	8476
Direct	-648	3261	1263	655	2320	8330
Equity	-81	1764	205	939	3347	4166
Debt	-567	1497	1058	-284	-1027	4164
Portfolio	14386	-418	8585	12586	3672	2175
Equity	4170	5584	95	6022	-2171	-1239
Debt	10216	-6002	8490	6564	5843	3414
Other	1918	7916	4854	8447	4015	-2029
Australian Investment Abroad	-8949	-2226	-3257	-15241	-2908	-2548
Direct	-253	1479	-1572	1412	-175	-2592
Equity	-762	1741	-1384	-1046	-250	-2081
Debt	509	-262	-188	2458	75	-511
Portfolio	-3725	-2996	-4574	-4970	-6827	-1317
Equity	-2456	-1433	-2958	-3571	-6294	-2028
Debt	-1269	-1563	-1616	-1399	-533	711
Other	-4971	-709	2889	-11683	4094	1361
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

Balance of Payments and International Investment Position						
	Sep-00	Dec-00	Mar-01	Jun-01	Sep-01	Dec-01
Changes in position reflecting - transactions						
Foreign Investment in Australia	13305	21659	19676	4796	16501	11967
Direct	852	10954	1193	-1543	6939	1613
Equity	163	3603	-2506	5255	5257	2369
Debt	689	7351	3699	-6798	1682	-756
Portfolio	13829	6498	2414	16652	13420	3716
Equity	-533	2291	399	13287	1494	5029
Debt	14362	4207	2015	3365	11926	-1313
Other	-1376	4207	16069	-10313	-3858	6638
Australian Investment Abroad	-7454	-17949	-17579	-2115	-12894	-7519
Direct	-1266	3070	-5271	-3621	-9931	-2475
Equity	-787	1409	-958	-2075	-6514	-7314
Debt	-479	1661	-4313	-1546	-3417	4839
Portfolio	-6020	-7174	-6434	-4053	-2325	-4722
Equity	-2463	-5877	-4419	-3742	-2000	-5244
Debt	-3557	-1297	-2015	-311	-325	522
Other	-168	-13845	-5874	5559	-638	-322
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

Balance of Payments and International Investment Position						
	Mar-02	Jun-02				
Changes in position reflecting - transactions						
Foreign Investment in Australia	20462	23611				
Direct	10077	4587				
Equity	6798	1613				
Debt	3279	2974				
Portfolio	10152	9125				
Equity	-422	4428				
Debt	10574	4697				
Other	233	9899				
Australian Investment Abroad	-16998	-15928				
Direct	-5273	-2635				
Equity	-4868	-1498				
Debt	-405	-1137				
Portfolio	-10205	-10267				
Equity	-8322	-6914				
Debt	-1883	-3353				
Other	-1520	-3026				
Foreign Investment in Australia						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						
Australian Investment Abroad						
Direct						
Equity						
Debt						
Portfolio						
Equity						
Debt						
Other						

BRUNEI DARUSSALAM

BRUNEI DARUSSALAM

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

Foreign Direct Investment has long been recognized as one of the ways to deal with Brunei Darussalam's over dependence on oil and gas. It remains as an important element in the diversification strategy of the National Development Plans of this country. It is also an important source of technology transfers, production know-how, employment as well as market access. Now FDI is not just "one of the ways" to develop the economy but it has just gained a new height when a new-image Brunei Economic Development Board (BEDB) was reestablished in 2001. The newly restructured BEDB is the result of Brunei Economic Council's recommendation to establish an effective investment promotion agency in line with the international best practices. Brunei Darussalam is set ready to pursue policy objectives domestically and internationally with a view to further facilitate and enhance investment both foreign and domestic.

2. Explain 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, has proclaimed that:

"We have always welcomed foreign investment. We are ready and willing to look at suggestions from would-be investors."

His Majesty Sultan's National Day Speech 23rd February, 2003:-

His Majesty said that one of the major steps towards developing the private sector and the economy the government has taken was through the newly established Brunei Economic Development Board (BEDB.) The implementation of the new initiative by BEDB would uplift the country's image as an investment destination and would also boost foreign investors' confidence.

HRH Prince Mohamed, Minister of Foreign Affairs and Minister in charge of economic policy coordination, during a conference on Brunei Darussalam's economic future on 17 April 2002:-

"We (the Brunei Government) have tried to work carefully with a wary eye on the past and a determination not to be too overconfident. What we hope to achieve is a business-like approach to the future. By this, I mean maintaining the optimism all those in business must always have, but also acting with caution and responsibility like all successful businesses do…BEDB is expected to work closely with new investors and it has been told, not only to attract and welcome them, but also to assist them directly in their efforts to succeed"

B. REGULATORY FRAMEWORK / INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

No changes except for Investment Incentive Act which was amended by Investment Incentive Order 2001 (**see Section D below.)**

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

No changes as before, except any FDI applications to be made through BEDB..

(b) For each proposal identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

No changes as before, except for FDI approved by BEDB no limitation on foreign equity.

(c) Indicate all application/approval forms required for screening purposes. Briefly summarize additional documentation that is required for review or approval processes.

No changes as before, similarly applies for FDI.

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax.

No changes to contact department for SMEs and Local applicants – BINA.

For FDI:-

Agency	**Address / Telephone / Fax**
Brunei Economic Development Board	Chief Executive Officer Brunei Economic Development Board Block 2K, Bangunan Kerajaan Jalan Ong Sum Ping, BA1311

	Bandar Seri Begawan Negara Brunei Darussalam Tel: 673-2-230111 Fax: 673-2-230078

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on line.

Currently there is no approval on line.

BEDB's website http://www.bedb.com.bn

(f) What is the average period from the formal submission of all relevant/required documentation to final approval / rejection?

Two months.

(g) List 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. Briefly describe appeal processes and the average time for an appeal to be considered.

No changes as before, addition BEDB on FDI's applications.

(h) Briefly describe 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 to the business plan and as required.

(i) Indicate 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).

No changes as before, addition BEDB on FDI complaints.

(j) 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 changes as before, addition BEDB on FDI's applications.

(k.) Describe any 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.

Comments / proposals can be submitted directly to BEDB or the relevant Ministries or agencies.

(1.) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g., zoning, approvals of land purchase).

No changes as before, addition BEDB on FDI applications.

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

(a) List and describe 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).

See 3 (a)

(b) Identify and describe any international agreements to which your economy is party which provides for a possible exception to MFN treatment.

Similar treatment to ASEAN Investment Area (AIA) – opening up all industries, with some exceptions as specified in the Temporary Exclusion List (TEL) and Sensitive List (SL), for investment on ASEAN investors by 2010 and to all investors by 2020.

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

Sector	**Restrictions / Requirements**
<u>Temporary Exclusion List (AIA):-</u> Food Manufacturing Services Agricultural & animal husbandry services Renting of Agricultural Machinery & equipment Veterinary Services Agricultural research & experimental development Agricultural Market Research	To utilise local resources, domestic market access and government facilities, foreign investment must have at least 30% local participation. Nevertheless with the objective of attracting FDI, BEDB welcomes foreign equity of up to 100% (no limitation) on approved industries and sectors.

Forest Plantations	
Sensitivity List (AIA):- Offshore Capture Fisheries Aquaculture Hunting, Trapping & game propagation Mining	To utilise local resources, domestic market access and government facilities, foreign investment must have at least 30% local participation. Except for mining whereby foreign company participation is allowed up to 99% with at least 1% local participation. Nevertheless with the objective of attracting FDI, BEDB welcomes foreign equity of up to 100% (no limitation) on approved industries and sectors.

(b) Briefly describe the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

The Royal Bank of Canada is the first bank to be granted a licence to open in the Brunei International Financial Centre (BIFC), Ministry of Finance. The Royal Bank of Canada will soon offer a full range of offshore wealth management services. Thus giving access to offshore financing.

Currently there are no restrictions on inter-company loans.

Issuance of corporate bonds still requires prior approval of the Exchange Controller, Ministry of Finance, Brunei Darussalam.

4. Repatriation and Convertibility

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Repatriation of capital is not restricted. No restrictions are imposed on remittance of earning profits and dividends on investment.

(b) Briefly describe the foreign exchange regime.

There is no restriction on foreign exchange regime. Banks permit non-resident account to be maintained and there is no restriction on borrowing by non-residents.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

No legal restrictions on the convertibility of currencies for the overseas transfer of funds.

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

All foreigners require work permits which are valid for two years. Application must first be made to the Labour Department for a labour license. On the recommendation of the Labour Department, the Immigration Department will give permission for the workers to enter Brunei Darussalam. Permission to enter will be in the form of visas.

The Labour department requires either a cash or in lieu of that, a banker's guarantee when the employer submits the work permit application. The deposit or bank guarantee is used for purposes in connection with the entry, subsistence allowance, housing, medical care and repatriation.

Identity cards must also be applied to the Immigration Dept and are required to be renewed annually.

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Malaysia, 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.

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

All other nationals entering Brunei Darussalam must have visas obtainable from any Brunei Darussalam diplomatic mission or representatives of other governments who are performing consular functions on behalf of His Majesty's Government.

Visitors who wish to enter Brunei Darussalam to take up employment must arrange with their employers to obtain employment passes prior to their arrival. Spouses and children under 18 years of age of pass holders are required to obtain dependents' passes.

(c) Describe any regulations relating to personnel management of foreign firms, e.g., minimum wage laws, minimum requirements for training or employment of local staff.

In Brunei there is no minimum or maximum wage for labourers. As long as both parties (employer and employee) agree on the wage to be paid it is sufficient. Wages are generally determined by market forces.

Average monthly wage rate for selected profession:

Profession	**Wage rate (BND)**
Typist	$450
Office Clerk	$500
Secretary	$1000

Stenographer	$750
Store Supervisor	$650
Construction Supervisor	$1000
Laboratory Technician	$750
Mixing machine operator	$750
Plant maintenance mechanic	$750
Professional	$1000
Packers	$350-$400
Drivers (class 3)	$500
Drivers (class 4)	$650
Quality Control inspector	$750
Labourers	$500

Normal hours of work are generally based on 8 hour day and the 6 day week prescribed by the Labour Act, which also prescribe 8 days in the year as paid holidays for the manual workers.

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

The Trade Disputes Act (Cap 129) accords to trade unions the customary immunities and protections in respect of acts done in furtherance of trade disputes. It prescribes procedures for conciliation and, subject to the consent of the parties, arbitration in disputes where machinery within the industry concerned does not exist or has failed to achieve settlement.

Trade unionism of either the employers is not extensively practiced in Brunei Darussalam. As has been already observed, the industrial structure consists almost entirely of small-scale enterprises. This state of affairs and the nature and cultural characteristics of the population are conductive to accommodation and a "give and take attitude" rather than a confrontational attitude. Except in the oil industry, the system of collective bargaining has not emerged.

Relations between employers and employees are generally good. Existing labour laws have adequate provisions such as for termination of employment, medical care and maternity leave and compensation for disablement. Labour disputes are very rare. The Government has implemented the Workers' Provident Fund Enactment to cover workers both in the public and private sectors.

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

Brunei Darussalam has no personal income tax. There are no exports, sales, payroll or manufacturing taxes. Sole proprietorship and partnership businesses are not subject to income tax.

Only companies registered under public and private limited are subject to 30% corporate tax. These companies are subject to tax on the following types of income:-

Gains of profits from any trade, business or vocation;

Dividends received from companies not previously assessed for tax in Brunei darussalam;

Interest and discounts; and

Rents, royalties, premiums, and any other profits arising from properties.

Witholding Tax is charged to non-resident companies under a charge, debenture or in respect of a loan at 20%i.

Double Taxation Agreement exists with the United Kingdom and Indonesia. The agreement provides proportionate relief from Brunei Darussalam income tax upon any part of the income which has been or is liable to be charged with United Kingdom and Indonesia income tax. Tax credits are only available for resident companies.

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (TRIMS).

N/A

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

No limitation.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

No limitation

9. Investor Behavior

(a) Indicate any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

All investors local and foreign alike are expected to observe all laws, regulations and administrative policies that are in place in Negara Brunei Darussalam.

10. Competition Policy

(a) Briefly outline the competition policy regime.

N/A

11. Other measures

(a) List and briefly describe current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

Trade Mark Act (Cap 98) – This Act provides for trade marks: application for registered trade marks; ground for refusal of registration, effects of registered trade marks; registration procedure; duration, renewal and alteration of registered trade marks; protection of well-known trade marks; emblems and proceedings relating to importation of infringing goods.

Merchandise Mark (Cap 96) – This Act provides for fraudulent marks on merchandise: trade mark, property mark and other marks; trade descriptions; unintentional contravention and forfeiture of goods.

Invention Act (Cap 72) – This Act provides for the grant of exclusive privileges in respect of inventions.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) Provide a 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.

N/A

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

N/A

2. Settlement of Disputes

(a) Describe all means of dispute settlement and processing of grievances existing under laws, regulations and 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 the following order:

Agency	**Address / Telephone / Fax**
Attorney General's Chambers	Attorney General Chambers The Law Building, KM 1 Jalan Tutong Brunei Darussalam Tel: (673 2) 244872 / 244876

	Fax: (673 2) 241428 E-mail: consec@brunet.bn

(b) Has your economy signed or acceded to the ICSID Convention?

One of the disputes resolutions is the arbitration which is provided under the Arbitration Act (Cap 173) – (now in Legal Section's collection)

D. INVESTMENT PROMOTION AND INCENTIVES

1. Briefly describe any investment promotion programs offered at both the national and sub-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.

Investment Incentives Act (Cap 97) as amended under Investment Incentives Order 2001

<table>
<tr><td>INDUSTRIES GRANTED PIONEER STATUS</td><td>Investment Incentives:
30% corporate tax is exempted for a pioneer industry.
Exemption from taxes on imported duties on machinery, equipment, component parts, accessories or building structures.
Exemption from taxes on imported raw materials not available or produced in Brunei Darussalam intended for the production of the pioneer products
Carry forward losses and allowances
Tax exemption period are as follows:

<table><tr><td>Fixed Capital</td><td>Tax Relief Period</td><td>Extension</td></tr><tr><td>more than $500,00 but less than $2.5 million</td><td>5 yrs</td><td>8 yrs + further 11 yrs</td></tr><tr><td>More than $2.5 million</td><td>8 yrs</td><td>Not exceeding 11 yrs</td></tr><tr><td>High Tech Park</td><td>11 yrs</td><td>Not exceeding 20 yrs</td></tr></table></td></tr>
<tr><td>PIONEER SERVICE COMPANIES</td><td>Investment incentives:
Exemption from income tax
Carry forward losses and allowance
Tax exemption period is 8 years and can be extended not exceeding 11 years in total.
Activities granted for pioneer services status:</td></tr>
</table>

	Any engineering or technical services including laboratory, consultancy and research and development activities; Computer-based information and other company related services; The development or production of any industrial design; Services and activities which relate to the provision of leisure and recreation; Publishing services; Services which relate to the provision of education; Medical services; Services and activities which relate to agricultural technology; Services and activities which relate to the provision of warehousing facilities; Services which relate to the organization or management of exhibitions and conferences; Financial services; Business consultancy, management and professional services; Venture capital fund activity; Operation or management of any mass rapid transit system; Services provided by auction house; Maintaining and operating a private museum; and Such other services or activities as the Minister may prescribe.
POST–PIONEER COMPANIES	Investment incentives: Exemption from income tax Deduction of losses Adjustment of capital allowances and losses Tax exemption period is 6 years and can be extended not exceeding 11 years in total.
EXPANSION OF ESTABLISHED ENTERPRISES	Investment incentive exemption from income tax Tax exemption periods are as follows: New capital not exceeding $ 1 million – 3 years New capital exceeding $ 1 million – 5 years Extension – not in the aggregate exceed 15 years
EXPANDING SERVICE COMPANIES	Investment incentive exemption from income tax Tax exemption period is 11 years and can be extended not exceeding 20 years in total.
PRODUCTION FOR EXPORT	Investment incentives Exemption from income tax Exemption from imports duties on machinery, equipment, component parts, accessories or building structures Exemption from import duties on raw material

	Tax exemption period varies from 6 to 15 years for pioneer enterprises and 8 to 15 years for non-pioneer enterprises.
EXPORT FOR SERVICES	Investment incentives Exemption from income tax Deduction of allowances and losses Tax exemption is 11 years and can be extended not exceeding 20 years in total
INTERNATIONAL TRADE INCENTIVES	Investment incentive Exemption from income tax Tax exemption period is 8 years
FOREIGN LOANS FOR PRODUCTIVE EQUIPMENT	Investment incentive Exemption of approved foreign loan interest form paying tax
INVESTMENT ALLOWANCES	Use for: For manufacture or increased manufacture of any product; For the provision of specialized engineering or technical services; For research and development; For construction operation' For recycling of domestic industrial waste; In relation to any qualifying activity under pioneer services company; for promotion of the tourist industry (other than a hotel) in Brunei Darussalam. Investment incentive Exemption from income tax Tax exemption period is 5 years except for tourist industry (other than hotel) is 11 years.
WAREHOUSING AND SERVICING INCENTIVES	For capital expenditure of not less than $2 million. Investment incentive – exemption from income tax Tax exemption period is 11 years and can be extended not exceeding 20 years in total.
INVESTMENT IN NEW TECHNOLOGY COMPANIES	To qualify tax exemption, at least 30% of the paid-up capital must b owned by citizens or persons whom a resident permit has been granted under regulation made under the immigration Act (Cap 17). Investment incentive- deduction allowable to eligible holding company.
OVERSEAS INVESTMENT AND VENTURE CAPITAL INCENTIVES	Investment incentive - deduction allowable to eligible holding company.

2. Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.

Income Tax (Cap 35)

i. Basic right and guarantees to investors

Repatriation of capital is not restricted. No restrictions are imposed on remittance of earning profits and dividends on investment.

ii. Carry forward losses

iii. Carry forward capital allowances during the relief period

iv. Deduction form taxable corporate income (depreciation allowance)

Tax payer is entitled to claim wear and tear allowance calculated as follows:-

a) Industrial Buildings

an initial allowance of 10% is given in the year of expenditure, and an annual allowance of 2% of qualifying expenditure is provided on a straight line basis until the total expenditure is written off.

b) Machinery and plant

an initial allowance of 20% of the cost is given in the year of expenditure together with annual allowances calculated on the reducing value assets. The rate prescribed by the collector of income tax range from 3% to 25% depending on the nature of the asset.

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

Agency	**Address / Telephone / Fax**
Brunei Economic Development Board	Brunei Economic Development Board Block 2K, Bangunan Kerajaan Jalan Ong Sum Ping, BA1311 Bandar Seri Begawan Negara Brunei Darussalam Tel: 673-2-230111 Fax: 673-2-230078

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

1. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Bilateral Investment Treaties have been signed between Brunei and the following countries:-

ASEAN Countries – December 1987

Germany – 30th March 1998

Oman – 8th June 1998

Republic of Korea -14th November 2000

The People's Republic of China – 17th November 2000

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Foreign Direct Investment in Brunei Darussalam was at its highest in 1999 with B$ 1,033,177,652 (which was an increase of 161% compared to the previous year). A large contributing factor was the high investment pouring into in the oil and gas industry that year. The non-oil and gas sector merely accounted for 1% of total FDI in 1999. In 2000, there was a 175% increase in FDI in the manufacturing sector which amounted to B$27,549,920. The manufacturing sector (especially garment) accounts for the largest share FDI after the Mining & Quarrying sector (mainly oil & gas). Despite the sharp increase in FDI in the manufacturing sector, total FDI in Brunei was down to B$673,321,057 in 2000. In 2001, total FDI increased slightly to B$689,523,896 with the Mining & Quarrying sector receiving 94% of the share. In most sectors, the amount of FDI in monetary terms also increased in 2001.

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

Source of FDI: UK, Singapore, Malaysia, USA, France

Destination: N/A

CANADA

CANADA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Description of the foreign investment policy including any recent policy changes.

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 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 17 years ago with the passage of the Investment Canada Act (ICA) in 1985, which replaced the more restrictive Foreign Investment Review Act (FIRA). In March 2002, Canada's Minister for International Trade stated that for Canada foreign investment is key to prosperity and job creation. The Minister has also promoted the benefits of inward investment as being an important source of high-skill, high-value jobs, and outward investment as being linked to increased exports of goods and services from Canada.

Canada has responded directly to the increased importance of international investment (both inward and outward). It has taken concerted actions that have greatly improved the Canadian investment climate; developed targeted investment attraction strategies; and actively participated in the development and implementation of international rules governing investment.

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

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. **Transparency**

(1) Statutory (legislative) Requirements

(a) List and summary of relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Foreign investment in Canada is subject to multilateral obligations (e.g., through the Organization for Economic Cooperation and Development (OECD) and the World Trade Organization (WTO) and, more recently, to obligations in regional and bilateral agreements (the North American Free Trade Agreement (NAFTA), Canada-Chile Free Trade Agreement (CCFTA) and 22 Foreign Investment Protection Agreements (FIPAs). If required, existing domestic legislation is amended to bring it into conformity with international obligations. 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 (the 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(2)(a) and B(2)(b)).

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 has provisions related to management and equity in federally incorporated businesses.

(2) Investment Review and Approval

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

(b) 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.

Overview

(i) Review Required Only in Limited Circumstances

The Investment Canada Act (ICA) 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 ensure that such investment will be of net benefit to Canada, the ICA contains provisions for the review of certain acquisitions of control of Canadian businesses by foreign investors above a certain threshold (see below) and the establishment of new businesses in industries related to Canada's national identity or cultural heritage. To encourage investment by non-Canadians, Canadian government officials work with potential non-Canadian investors to help them develop investment plans and undertakings that will comply with relevant policies and fully satisfy the net benefit criterion.

The ICA specifies the factors to be taken into account in reviewable investments. Assessments are made in terms of the factors that are relevant to the individual investment proposal. Not all factors

are relevant in all reviews. It is the net result of the assessment of the factors that determines the outcome, negative impacts can often be offset by positive impacts and result in an overall positive assessment. Each review is conducted on a case-by-case basis by examining the merits of the individual investment proposal. The factors of assessment are set out in Section 20 of the ICA and are as follows: the effect on the level of economic activity in Canada, on employment, on resource processing, on the utilization of parts and services produced in Canada, and on exports from Canada; the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industry or industries in Canada; 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 any industry in Canada; the compatibility of the investment with national, provincial and territorial industrial, economic and cultural policies; and the contribution of the investment to Canada's ability to compete in world markets.

(ii) Notification is usually the Only Requirement

Foreign acquisitions of Canadian businesses with assets below the threshold (outlined below) 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.

(iii) General Exemptions from the Investment Canada Act

The Investment Canada Act contains a number of exemptions from the review mechanism in 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.

(iv) Screening requirements in particular sectors

Proposal	**Guidelines**
	Except in sensitive sectors as set out in subsequent paragraphs, where either the non-Canadian investor or vendor is ultimately controlled in a World Trade Organization (WTO) country other than Canada, only the direct acquisition of control of a Canadian business that has assets equal to or greater than Can$223 million (for 2003) is a reviewable transaction. This figure is adjusted annually to reflect economic growth in Canada. 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 Can$5 million is reviewable, and the indirect acquisition of control of a Canadian

Mergers/acquisitions (Yes - in specific limited circumstances)	business with assets greater than Can$50 million is reviewable, or Can$5 million where 50 percent or more of the total assets of the business acquired are located in Canada. These review thresholds are fixed and are not adjusted. The acquisition of a Canadian business involved in cultural industries, financial services, transportation services or uranium production is subject to the lower thresholds regardless of the nationality of the investor or vendor. Acquisitions in cultural industries (i.e., publication and distribution of books, magazines, newspapers, 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. Reviewable investments are allowed to proceed if they are likely to be of 'net benefit' to Canada.
Greenfield investment (no)	Review not required, unless ordered by the Government in the case of an investment in the cultural sector.
Real Estate/land (no)	The acquisition of land is not subject to review.
Joint Venture (no)	The establishment of a joint venture is not subject to review.

General Restrictions	**Guidelines and Conditions**
Board of Directors	The Canada Business Corporations Act requires, for most federally- incorporated corporations, that 25 per cent of directors be resident Canadians. A simple majority of resident Canadian directors is required for corporations in prescribed sectors. These sectors include: uranium mining; book publishing or distribution; book sales, where the sale of books is the primary part of the corporation's business; and film or video distribution. Similarly, corporations that, by an Act of Parliament or Regulation, are individually subject to minimum Canadian ownership requirements are required to have a majority of resident Canadian directors. For purposes of the Act, "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 or she became eligible to apply for Canadian citizenship.

Issues, transfer, ownership of shares	In the case of a holding corporation, not more than one-third of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than five percent of the gross earnings of the holding corporation and its subsidiaries. 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. More information may be obtained by accessing the website at http://competition.ic.gc.ca/

Sectoral Restrictions	**Guidelines and Conditions**
Telecommunications	The legislation (the Telecommunication Act) governing the establishment and operation of Canadian telecommunications common carriers restricts foreign ownership to 20% (331/3 % in the case of holding companies). There are no ownership restrictions for the operation of international submarine cables, satellite earth stations or companies which provide telecommunications services on a resale basis, i.e. resale of leased common carrier facilities for the purpose of providing basic or value-added services.
Transport	The *Canada Transportation Act,* in Section 55, defines "Canadian" in the following manner: "... 'Canadian' means a Canadian citizen or a permanent resident within the meaning of the Immigration and Refugee Protection Act, a government in Canada or an agent of such a government, or a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 75%, or such lesser percentage as the governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians..." (a) Air Transport

	Under the *Canada Transportation Act* and the *Canadian Aviation Regulations*, only "Canadians" may provide the following commercial air services: (i) "domestic services" (air services within Canadian airspace, or between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country); (ii) "scheduled international services" (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future government-to-government air services agreements; and (iii) "non-scheduled international services" (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future government-to-government air charter arrangements. (iv) "specialty air services" (aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing and aerial crop spraying), subject to exemptions for the countries enumerated below, and under the conditions therein specified. A person from the United States, Chile and Mexico may obtain an operating certificate, subject to compliance by that person with Canadian safety requirements and other entry requirements, for the provision of those specialty air services specified above. These services are liberalized in accordance with timetables that form part of free trade agreements with the countries enumerated. However, there is no "right of establishment" in order to provide these services. Regulations made under the *Aeronautics Act* incorporate by reference the definition of "Canadian" found in the *Canada Transportation Act.* These Regulations require that a Canadian operator of commercial air services operate Canadian-registered aircraft. These Regulations also require an operator to be Canadian in order to obtain an air operator certificate (other than a certificate based on a foreign-issued certificate), and in order to qualify to

	register aircraft as "Canadian". No foreign individual may own a Canadian-registered aircraft for private use. A corporation incorporated in Canada but that does not meet the Canadian ownership and control requirements may only register an aircraft for private use when the corporation is the sole owner of the aircraft. The regulations also have the effect of limiting "non-Canadian" corporations operating foreign-registered private aircraft within Canada to the carriage of their own employees. (b) Marine The *Coasting Trade Act* restricts the transportation of cargo and passengers, along with all commercial marine activities in the territory of Canada to Canadian-flag, duty paid ships and is applicable to waters above the Continental Shelf for activities relating to exploration, exploitation and transportation of mineral and non-living natural resources. These ships do not have to be Canadian-built. Further, recent amendments to the *Canada Shipping Act*, entitle any foreign corporation to own a Canadian-flag ship. The *Coasting Trade Act* provides for the temporary importation of a foreign-flag or non duty-paid ship in cases where there is no suitable Canadian ship available to perform a specific activity. Application for the use of such a ship must be filed with Revenue Canada, Customs and Excise and reviewed by the Canadian Transportation Agency to confirm that a suitable Canadian ship is not available. Upon such confirmation, the foreign or non duty-paid ship can be granted a temporary coasting trade licence following payment of duty[1] which is assessed at a monthly rate of 1/120 of 25% of fair market value, and the ship meeting all safety and pollution prevention requirements imposed by Canadian law applicable to that ship.
Agriculture (no)	None
Business service industries	Residency requirements exist for a number of professional business

[1] Pursuant to the *Customs Tariff*, foreign-built, Canadian-flag ships engaged exclusively in international service are not subject to customs duty.

	service providers: - customs broker/brokerage; - duty free shop operator; - examiner of cultural property; and - some professions, i.e. lawyers.
Culture	The Department of Canadian Heritage 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: 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 with Canadian control. Indirect acquisitions are allowed, subject to net benefit. Newspaper, magazines, periodicals. For newspapers and magazines, the net benefit test is applicable. For periodicals, acquisition of Canadian-controlled periodical publishing businesses is not permitted. Foreign investments in new businesses are considered favourably subject to net benefit and, in particular, majority original content in the publication. 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. Sound recording industry. The net benefit test is applicable. Music publishing. The net benefit test is applicable..
Energy	<u>Uranium:</u> 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' (as defined in the

	Investment Canada Act). While these limits apply to the control of production facilities, there are no limits applied to foreign investment in exploration and development. Oil and Gas: (1) Under the Canada Oil and Gas Operations Act, the approval of the Minister of Energy, Mines and Resources of a "benefits plan" is required to receive authorization to proceed with any oil and gas development project. A “benefits plan” is a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan. The Act permits the Minister to impose an additional requirement on the applicant, as part of the benefits plan, to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in any proposed work referred to in the benefits plan. (2) The Canada – Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada – Newfoundland Atlantic Accord Implementation Act have the same requirement for a benefits plan but also require that the benefits plan ensure that: prior to carrying out any work or activity in the offshore area, the corporation or other body submitting the plan establish in the applicable province an office where appropriate levels of decision-making are to take place; expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and first consideration be given to goods produced or services provided from within the province, where those goods or services are competitive in terms of fair market price, quality and delivery. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in any proposed work or activity referred to in the

	plan. In addition, Canada may impose any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts. Provisions similar to those set out above will be included in laws or regulations to implement the Yukon Oil and Gas Accord and Northwest Territories Oil and Gas Accord which for purposes of this reservation shall be deemed, once concluded, to be existing measures.
Financial Services	In Canada there are three classes of banks, based on size of equity, for the purposes of determining ownership restrictions: small (less than Can$1 billion), medium (Can$1 billion-Can$5 billion) and large (greater than Can$5 billion). Large banks must remain widely held (investor, whether Canadian or foreign, may own up to 20% any class of voting shares and 30% any class non-voting shares). Medium size banks are allowed to be closely held, but must have a public float of 35% of voting shares. Small banks have no ownership restrictions other than "fit and proper" tests. In 1997, the government recognized the need to develop a new framework for the entry of foreign banks in Canada. The present framework offers foreign banks considerable flexibility to provide financial services in Canada. They may choose to do so through Canadian financial institutions and/or regulated foreign bank branches. As well, a foreign bank may establish more than one bank or more than one branch in Canada. They will be allowed to own both wholesale and retail banks and full-service and lending branches. As well, foreign banks will be permitted to own the same range of investments as Canadian banks. Further information can be found at the Department of Finance, Canada website: www.fin.gc.ca
Fisheries	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. 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.
Broadcasting	Broadcasting in Canada includes both broadcasting programming (e.g. 'over the air' broadcasting, pay and specialty services, video on demand) and broadcasting distribution (e.g. cable, direct-to-home satellite and wireless). Legislation (the Broadcasting Act) requires that the Canadian broadcasting system be effectively owned and controlled by Canadians. A Directive by the Governor-in-Council limits foreign ownership to 20% of voting shares in a licensee and 33 1/3 % of voting shares in the case of holding companies. Therefore, foreign ownership can comprise 46.7% of a Canadian broadcasting licensee both directly and indirectly (20% directly, plus 33% of the Canadian holding company which owns the remaining 80% of the licensee). There are no restrictions on foreign ownership of non-voting shares in a holding company or licensee. In addition, the Chief Executive Officer (CEO) plus 80% of the Board of Directors of a company, which directly holds a broadcasting license, must be Canadian. Useful Internet addresses: Broadcasting Act http://laws.justice.gc.ca/en/B-9.01/index.html (En) Direction to the CRTC (Ineligibility of non-Canadians) http://www.crtc.gc.ca/eng/LEGAL/NONCANAD.HTM (En)

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

A website has been established which provides detailed information on the Investment Canada Act and copies of the documentation/forms required. These may be completed and submitted on-line. This website is at http://icnet.ic.gc.ca/investcan/en_form.htm. Hard copies of the relevant documentation can be obtained from the contacts listed in the section below.

The following website provides specific information on foreign investment in the cultural sector: http://www.canadianheritage.gc.ca/progs/ac-ca/progs/eiic-csir/index_e.cfm. For additional information, please see the contact provided in the next section.

(d) Contact points for applications.

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
Cultural Sector Investment Review Department of Canadian Heritage	15 Eddy Street 6th Floor, Area K Hull, Quebec K1A 0M5 Telephone: (1 819) 997-4492 Fax: (1 819) 994-9744

(e) Availability of website information and whether there is that capacity to apply for approvals on line.

See B.1.(2)C .

(f) 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 responsible Ministers. 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 upon) 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. For cultural cases, the period is often extended to 75 days.

(g) 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.

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 she/he is not satisfied that an investment is likely to be of net benefit to Canada cannot be appealed under the Investment Canada Act. 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
Cultural Sector Investment Review Department of Canadian Heritage	15 Eddy Street 6th Floor, Area K Hull, Quebec K1A 0M5 Telephone: (1 819) 997-4492 Fax: (1 819) 994-9744

(h) Description of conditions that need to be met for an expedited review of a foreign investment proposal.

See section B.1(2)(f) above for processing time.

(i) 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(2)(g) above under appeals, and section B.1(2)(d) for contact details.

(j) 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.

Industry Canada or, in the case of cultural investments, the Department of Canadian Heritage, monitor 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 relevant 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 license.

(k) 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, is made public through publication in the Canada Gazette.

(l) The role of sub-national agencies in the approval process.

In conducting the review process, Industry Canada and/or the Department of Canadian Heritage, consult 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

(a) 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.

Description of international agreements to which Canada is party which provide for a possible exception to MFN treatment.

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, the Chile-Canada bilateral protection agreements). These international agreements contain some derogations from these principles, which are clearly laid out in those agreements.

3. National Treatment

(a) List and description of sectors 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).

Refer to section B(2).

(b) Description of nature and scope of any limitations on foreign firm's access to sources of finance.

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

4. Repatriation and Convertibility

(a) 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.

(b) 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.

(c) Restrictions on the convertibility of currencies for the overseas transfer of funds.

There are no restrictions.

5. Entry and Sojourn of Personnel

(a) Permits/entry visa requirements for non-resident staff of foreign firms and brief description of the nature of the entry restriction.

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

Canada's Immigration legislation stipulates that only Canadian citizens and permanent residents have a right to work in Canada without being subject to regulation, and that with some exceptions, no persons shall engage or continue in employment in Canada without a valid and subsisting work permit. It further recognizes that there is a need to admit foreign workers to complement the labour market or to benefit Canada, while ensuring that Canadians continue to have employment opportunities.

In order to work in Canada in an employee-employer relationship or under contract to a Canadian enterprise, a foreign worker will require a work permit. Generally an application for a work permit should be made at a visa office abroad before leaving for Canada. Application for extension can be made from within Canada.

There are over forty different mechanisms to permit temporary foreign workers to be issued with a work permit. These are based on labour market assessment; to honour international commitments (i.e. NAFTA, GATS, CCFTA); where significant benefits exist for Canada; where reciprocal employment opportunities exist for Canadians; and to fulfill social, cultural or humanitarian objectives.

The principal categories which apply to "business" can be summarized as follows:

? Confirmation of offer of employment (a labour market assessment provided by Human Resources Development Canada (HRDC)) which addresses skill shortages of various sectors of industry (e.g. skilled workers such as software specialists)

? Intra-company transferees for managers, executives and persons with specialized knowledge transferred within the same company

? Traders and Investors for NAFTA and Canada-Chile business persons seeking to conduct trade or establish services to operate an investment.

? Professionals for NAFTA and Canada-Chile business persons

? Self employed for persons establishing a business which may result in direct employment

? Workers generating significant benefits to Canada – including training personnel providing instruction in Canadian subsidiaries or headquarters.

Individuals may also be admitted to Canada to carry out business or trade related activities without the need for a work permit. They may work for or represent foreign companies or organizations and are not considered to seek to enter the domestic labour market to compete with Canadian workers. For instance, GATS business visitors are permitted entry to market their services, including establishing a business. They are considered visitors and will not be documented on a work permit but are still subject to the requirement for a temporary resident visa if applicable. Entry is usually for short durations of stay.

Canada has a business program for immigrants 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.

General provisions of the Immigration and Refugee Protection Act and Regulations apply to all temporary foreign workers. The most obvious is the general requirement for proof of identity and citizenship (passport). Citizens of some countries need to obtain a Canadian temporary resident visa before coming to Canada. Provisions of Immigration legislation also exist to bar the entry of persons with a criminal record, persons who are likely to be a danger to public health or to public safety or whose admission may cause excessive demands on health or social services.

Dependents may accompany the foreign worker to Canada, provided they meet the entry provisions which apply to all visitors to Canada. Spouses/common-law partners may apply for their own work permit and in certain cases are exempt from HRDC labour market assessment.

For more information on working in Canada, please visit the following web site: http://www.cic.gc.ca/english/work/.

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

(d) Summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

In Canada, responsibility for the regulation of labour relations is divided between the federal government and the governments of the ten provinces and three territories, with the majority of employees and employers subject to the labour laws of the province or territory in which they work or operate. All companies operating in Canada, and all employees working in Canada, including temporary foreign workers, are subject to Canadian labour laws.

Canadian labour laws are generally divided into four areas: industrial relations, employment standards, occupational safety and health, and workers' compensation.

Industrial relations legislation in each Canadian jurisdiction provides a framework for organizing and collective bargaining. The rights of workers and employers to join organizations and to participate in their lawful activities are recognized and protected. Legislation encourages collective bargaining and the voluntary resolution of disputes with the assistance of conciliation and mediation services.

Employment standards legislation covers such topics as minimum age for employment, hours of work and overtime pay, minimum wages, equal pay, weekly rest-day, general holidays with pay, annual vacations with pay, maternity and parental leave and individual and group terminations of employment. Minimum wages vary between the provinces and territories.

Occupational health and safety legislation sets out the general duties of employers and workers with respect to safe workplaces. Regulations specify technical requirements that must be complied with, set standards that must be met, and prescribe procedures that must be followed to reduce the risk of occupational accidents and diseases.

Workers' compensation systems provide appropriate compensation for work-related disabilities and assist injured workers and their employers by providing timely health care and rehabilitative support to facilitate the efforts of injured workers to return to work.

Information on labour legislation in Canada is available on the Internet at: *http://labour.hrdc-drhc.gc.ca*

Information on workers' compensation systems is available on the Internet at: http://www.awcbc.org/english/wcb_links.htm

6. Taxation

(a) List and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation 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. The statutory federal rate of corporate income tax will be 23% as of 2003, and will drop to 21% in 2004. A surtax equivalent to 1.12% of corporate income also applies. Provincial governments also tax corporate income on a basis similar to the federal government. The average provincial corporate income tax rate will be 12% in 2003, and will decline to about 9.8% by 2006.

Canada applies a 25% statutory rate of withholding tax on payments to non-resident investors of interest, dividends, rents, and royalties. These rates are generally reduced or eliminated under double taxation agreements. There is no withholding tax on payments of interest on government debt or long-term corporate debt.

The federal and most provincial governments levy general sales taxes and product-specific taxes in Canada. The federal Goods and Services Tax (GST) is a value-added tax that applies to most goods and services consumed in Canada. The GST is not generally charged on exports. Suppliers of goods and services collect GST on their domestic supplies. GST-registered suppliers are entitled to receive input tax credits for the tax paid on their imports of goods and services as well as on domestic purchases used in the course of commercial activities. Several provinces have harmonized their sales tax regimes with the federal government, while others either operate their own sales tax systems or do not impose sales tax. There are no special indirect tax considerations for non-resident investors.

Canada has double taxation agreements in force with 76 countries. Additional treaties are signed but not yet in force, or under negotiation or re-negotiation. A complete list of these treaties, their status, and the text of signed treaties are available at the following Internet address: http://www.fin.gc.ca/treaties/treatystatus_e.html.

7. Performance Requirements

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

Canada adheres to the obligations of the WTO Agreement on Trade Related Investment Measures. Canada has made additional and more rigorous commitments on performance requirements within the NAFTA and Canada-Chile Free Trade Agreements. Canada also has made performance requirements commitments in each of its bilateral FIPAs.

8. Capital Exports

(a) List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.

There are no restrictions.

(b) List and brief description of regulations/institutional measures that limit technology exports.

There are no restrictions.

9. Investor Behavior

(a) Laws, regulations or administrative guidelines/policies, 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. Canada endorses the OECD Guidelines for Multinational Enterprises. These guidelines set out voluntary principles and standards of responsible conduct which will help to promote and protect the environment and human rights, and uphold labour standards.

10. Competition Policy

(a) 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 Commissioner of Competition (the Commissioner). The Commissioner is an independent law enforcement official responsible for the administration and enforcement of the Act, as well as

three statutes involving the labeling of consumer products, textiles and precious metals. 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 offences and civil reviewable matters. Criminal charges are prosecuted before the various courts of criminal jurisdiction in each province. The Federal Court of Canada, Trial Division, also has jurisdiction with regard to indictable offences. The Commissioner initiates legal proceedings in non-criminal reviewable matters by filing an application with the Competition Tribunal. The Commissioner 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 fair business 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 Economics and International Affairs Branch that 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 and at international *fora* such as the OECD and the WTO. The Bureau also has a Compliance and Operations Branch 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. Finally, the Bureau has a permanent Amendments Unit, whose role is to ensure that the legislation is kept up-to-date, and a Communications Unit.

The Competition Tribunal is a quasi-judicial tribunal, which operates at arms' length from the Commissioner. Whereas the Commissioner'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 Commissioner 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, except in respect of fair business practices matters. This Act also provides rights of intervention before the Tribunal to provincial attorneys general. The Commissioner 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 Commissioner 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.

For further information concerning competition policy in Canada please visit the Canadian Competition Bu

11. Other measures

(a) 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

Intellectual property is protected in Canada principally by six federal statutes governing rights to inventions (Patent Act); trade-marks (Trade-marks Act); literary, dramatic, musical or artistic works, and related rights (Copyright Act); industrial design (Industrial Design Act); plant breeding (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 Plant Breeders Rights Act, which is administered by the Canadian Food Inspection Agency. Undisclosed information of commercial value is protected by federal and provincial statute and jurisprudence.

Canada supports effective intellectual property protection, that provides certainty and transparency to encourage marketing of goods, services, technology and entertainment; investment in R&D and innovation; and licensing arrangements (transfer of technology) to establish or expand existing business investment. Canada continues to improve intellectual property laws and their administration, to ensure adequate protection for owners of intellectual property, including effective mechanisms for enforcement of rights.

Canada recognizes the importance of intellectual property to the Canadian economy and is committed to developing effective intellectual property laws throughout the world. This is reflected in Canada's active participation in the work of the World Trade Organization, Council for Trade-Related Aspects of Intellectual Property (TRIPs), and the World Intellectual Property Organization (WIPO). Canada has adhered to the following international treaties with IP obligations:

- Paris Convention for the Protection of Industrial Property
- Berne Convention for the Protection of Literary and Artistic Works
- Universal Copyright Convention
- Patent Cooperation Treaty
- North American Free Trade Agreement
- World Trade Organization Agreement, including TRIPs
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) List and summary of laws and regulations relating to expropriation and compensation of foreign investment. Brief summary of the application and function of these laws/regulations.

(b) 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 giving 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

(a) Description of means of dispute settlement and processing of grievances existing under laws, regulations and administrative procedures to which foreign investors have recourse. List of agencies responsible for dispute.

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 10 June 1958. It entered into force for Canada on 12 May 1986.

The British Columbia International Arbitration Centre (Vancouver, B.C.) and the Quebec National and International Commercial Arbitration Centre (Montreal, Quebec) offer services that may be accessed by foreign investors.

(b) 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 investment promotion programs offered at both the national and sub-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.

2.Brief description of fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., tax incentives, grants) provided to foreign investors, and summary of programs.

3. Where applicable, if there is a one-stop-facility for foreign investors, details of service and contact point(s).

Investment Partnerships Canada (*http://investincanada.gc.ca)*

In June 1996, the Canadian government approved a new Investment Strategy. This new strategy committed it to increase efforts to attract foreign investment to Canada, and to facilitate the growth of Canadian-based, globally competitive companies. The strategy focuses on a number of priorities:

Marketing Canada as an investment site to international business executives – To increase international awareness of the advantages of Canada as an investment site, the Government is actively promoting specific opportunities and our positive economic policies to potential investors. Canada is focusing its efforts in the world's top five investment source countries – United States, Japan, U.K., Germany and France. Federal and provincial ministers, Deputy Ministers, Canadian business executives and other influential partners have been enlisted to help spread the positive word about Canada.

Targeting sectors and companies and offering customized servicing – The government is targeting decision-makers in specific multinational companies with strategic campaigns to influence their new investment decisions. Through, Investment Partnerships Canada (IPC), the Department of Foreign Affairs and International Trade and Industry Canada are working with Canadian business to develop and manage investment campaigns directed at leading international investment prospects.

Introducing Canadian small- and medium-sized businesses to international investment partners and sources of technology – International strategic alliances are important avenues by which Canadian companies can gain vital access to new technologies, markets, capital and skills. Such partnerships are particularly important for technology-based small and medium-sized businesses,

which must look to foreign markets to maximize their opportunities for growth and profitability. The government is working to promote the growth of globally competitive companies by introducing technology-based Canadian small- and medium-sized companies to international investment partners and opportunities.

Addressing investor concerns: making further improvements in Canada's investment climate – Many factors determine the attractiveness of the business environment. Some of these include access to sizable markets, labour force quality and productivity, costs of capital, taxation levels, the business infrastructure and government economic policies. Other less tangible factors also come into play, such as quality of life and social policies.

The Canadian government is working to improve the investment climate by addressing the concerns of both existing and potential investors.

Building Partnerships with other levels of government and the private sector to attract and retain investment – In Canada, provincial and municipal authorities compete among themselves for international investment capital. Investors consider this healthy, but it means that cooperation on investment initiatives is more difficult to achieve unless mutual interests and opportunities for complementary efforts are identified.

The federal government continues to build partnerships with provinces and municipalities, and to work with private-sector CEOs and labour leaders to attract investment to various industry sectors. In 1999, the Government of Canada extended the eligibility and funding for the Program for Export Market Development to international investment attraction by municipalities. In essence the program provides marketing, data and training funds to assist municipalities attract international investment. 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 [touchtone] fax machine at (1 613) 944-6500. A master index of documents available via FaxLink International may be ordered from the system.

The Government of Canada Primary Internet Site (Canada Site) is the Internet electronic access point through which interest parties from around the world can obtain information about Canada, its government and its programs and services. Direct links are also provided from this site to government departments and agencies that have Internet facilities. This website may be accessed at *http://Canada.gc.ca/main_e.html.*

Information on investment policies, Canada's participation in international investment discussions and Canadian investment agreements; and access to an extensive collection of studies on the impact of FDI is available on the Government of Canada International Investment Policy Website at: http://intinvest.ic.gc.ca/ and on the Department of Foreign Affairs and International Trade - Trade Negotiations and Agreements Website at:

http://www.dfait-maeci.gc.ca/tna-nac/menu-en.asp. Also, users can read about Canada's Investment Promotion Strategy and find detailed provincial and federal information on investing in Canada may be accessed at the following address at: *http://investincanada.gc.ca*

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

1. Agreements to which Canada is a party including 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 as a continuing State), Poland, Czechoslovakia (binds both the Czech Republic and Slovakia, and is considered two Agreements), Hungary, Argentina, Ukraine, Barbados, Thailand, Panama, Egypt, Latvia, Trinidad and Tobago, Philippines, Ecuador, Venezuela, Armenia, Costa Rica, Croatia, Lebanese Republic, Panama, Uruguay.	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) and Canada-Chile Free Trade Agreement (CCFTA)	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. The Canada-Chile Free Trade Agreement, with a few exceptions, essentially paralleled the obligations undertaken in the NAFTA. One of the most useful developments in the NAFTA/CCFTA was

	the use of detailed country annexes to achieve full transparency with respect to country-specific commitments and exceptions to general obligations. The NAFTA/CCFTA contains annexes specifying exceptions and commitments at the federal government level. 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 was a significant advance in international investment agreements. The NAFTA/CCFTA removed significant investment barriers, ensured basic protection for NAFTA/CCFTA investors and provided a mechanism for the settlement of disputes between such investors and a NAFTA country. The specific NAFTA/CCFTA provisions related to investment can be summarized as follows: - NAFTA/CCFTA applies national treatment and most-favoured nation provisions to investments. NAFTA/ CCFTA investments have a right to treatment no less favourable in like circumstances offered by the host government to investments, regardless of nationality; - All businesses located in North America and Chile get the full benefits of the investment provisions. For instance, non-North American and non-Chilean firms making a home-base in Canada gets treated as Canadian firms should they expand into other parts of North America and Chile; - NAFTA/CCFTA ensured foreign investors locating anywhere in North America/Chile are on an equal footing in terms of security of access for exports to North American countries/Chile; - NAFTA/CCFTA 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; - NAFTA/CCFTA added 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; - Mexico eliminated 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; - Canada retains its investment review of direct acquisitions. The preferential review threshold under the FTA will be extended to Mexican and Chilean investors; - Investment from NAFTA countries /Chile may be expropriated only for public purposes, on a non-discriminatory basis, subject to due process and fair market value which must be paid promptly; - Certain disputes between an investor from a NAFTA country/Canada-Chile and a NAFTA/Canadian-Chilean government may submitted by an investor to binding international arbitration; - Foreign investment may be restricted for existing state enterprises or government assets that are privatized; and - Local currency may be converted into foreign currency for investment transactions and freely transferred into and out of the country.
CCFTA	-In the CCFTA, Chile retained certain limited restrictions on capital transfers, but committed to freeze these at existing levels and agreed that once liberalized they would not subsequently be made more restrictive.
OECD Codes on Investment OECD Codes of Liberalization of Capital Movements and of Current Invisible Transactions and the OECD	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.

National Treatment Instrument (NTI). OECD Guidelines for Multinational Enterprises Guidelines on Corporate Responsibility	
World Trade Organization Agreements (TRIMS, GATS)	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. 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 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 the discussions on investment issues within the Free Trade Agreementof the Americas (FTAA) process, in negotiations toward free trade agreements with Singapore and with members of the CA4 countries (Guatemala, Honduras, El Salvador and Nicaragua), the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD).

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 company investment has more than doubled in the last 10 years with the stock of inward FDI reaching $321 billion in 2001. This represents 29.4% of Canada's total Gross Domestic product, up from 19.2% in 1990.

The last 10 years have marked a significant resurgence of inward FDI flows to Canada. Inward FDI flows averaged $21.8 billion per year between 1990 and 2000, almost quadruple the average between 1983 and 1989. Merger and acquisition activity has been a significant factor. In 2000, for example, foreign takeovers in Canada reached a record $64 billion, representing nearly 69 percent of FDI inflows that year. New investment (cross-border flows) accounted for 85.8% of the inward FDI flows in 2000, while 14.2% came from reinvested (retained) earnings.

Over the last decade, past preference for resource-based industries has given way to increased interest in the high tech, knowledge-based industries such as services, manufacturing and communication.

Canadian Direct Investment Abroad (CDIA)

One of the most significant features of Canada's recent economic history has been the rapid growth of Canadian investment abroad. The value has more than tripled between 1990 and 2001, from $98 billion to $389 billion. The share of outward CDIA stock in Canada's GDP is up considerably, rising up to almost 36% in 2001.

In the last decade, Canada's outward investment stock grew considerably faster than inward FDI stock. As a result, the ratio of outward to inward stock increased from 75% to 121% between 1990 and 2001, suggesting the increasing internationalization of Canadian business.

Acquisitions of foreign companies by Canadian-based companies reached a record of $48.6 billion in 2000. While the share of South and Central America countries in Canada's outward-bound investment has more than doubled, from 2.4% in 1990 to 5.4% in 2001, that of United States has declined from 61% to 51%. For the same period, Mexico's share of Canadian investment abroad has increased significantly, from 0.25% in 1990 to 1.03% in 2001.

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

Sources of FDI	**2001 $ Billions**	**Destination of FDI**	**2001 $ Billions**
United States	215	United States	198
United Kingdom	25	United Kingdom	38
France	23.2	Bahamas	7.9
Japan	8.3	Ireland	7.4
Germany	6.0	France	3.4

CHILE

CHILE

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

Under Chile's constitutional and legal framework, foreign investment in all sectors of the economy is allowed and encouraged, with minor restrictions in some sectors. Generally, foreign investors are subject to the same laws and regulations as nationals. The principal of non-discrimination is constitutionally guaranteed; its enforcement is carried out through efficient and timely judicial procedures.

There are two mayor mechanisms for foreign investment inflows into Chile: Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations and the Foreign Investment Statute (Decree Law 600). A third mechanism, Chapter XIX of the Central Bank's Compendium of Foreign Exchange Regulations, is no longer in place.

The first, simpler investment mechanism is Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (CFER). Under this mechanism, FDI need only comply with registration procedures. However, Chapter XIV does not carry all the guarantees that are provided by Decree Law 600.

The second mechanism is the Foreign Investment Statute (Decree Law 600). Since coming into force in 1974, the vast majority of foreign investors have chosen to use this mechanism. Under Decree Law 600, an investor signs a legally binding contract with the State for the implementation of an individual project and, in return, receives a number of specific guarantees and rights that are explained below. Between 1974 and 2000, investments worth US$ 43.8 billion, representing 83.5% of the total FDI inflow, used this mechanism.

Based on constitutional principles, the Foreign Investment Statute guarantees non-discriminatory and non-discretionary treatment of foreign investors. The former assures all people, regardless of their nationality, "to be treated by the State and its bodies in economic matters without arbitrary discrimination". Therefore, foreign investors enjoy the same rights and guarantees as local investors. The principle of non-discretionality rules the activities in every economic sector and entails the existence of clear, well-known and transparent rules, which assure foreign investors they will be treated fairly and impartially.

Any foreign individual or foreign legal entity as well as Chilean individuals with residence abroad can invest through Decree Law 600.

A third mechanism, Chapter XIX of the Central Bank's Compendium of Foreign Exchange Regulations (CFER), played an important role between 1985 and 1991, when it was used for investments totaling US$3.6 billion, mainly in the manufacturing and services sectors. However, this debt conversion mechanism is no longer in operation.

Table 1

Foreign Direct Investment by Inflow Mechanism

(Percentage of total)

Investment Mechanism	**1974-2000**	**1998**	**1999**	**2000**
Foreign Investment Statute (DL 600)	**83.5**	**91.5**	**93.0**	**80.2**
DL 600 Equity	62.0	67.3	88.1	68.5
DL 600 Associated Loans	21.5	24.4	4.9	11.7
Chapter XIV (CFER)	9.6	8.3	7.0	19.8
Chapter XIX (CFER)	6.9	-	-	-
TOTAL	100.0	100.0	100.0	100.0

Sources: Foreign Investment Committee (www.foreignvestment.cl), Central Bank of Chile (www.bcentral.cl)

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

The policies and philosophies towards foreign investment are reflected in Decree Law 600 and in the publications of Chile's foreign investment committee, available on its website at www.foreigninvestment.cl.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

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

Foreign Investment Statute Decree Law 600 of 1974

A. Overview

Any foreign individual or legal entity, as well as Chileans with residence abroad, can invest through Decree Law 600. Under this mechanism, investors enter into a *legally binding contract* with the Chilean State, which cannot be modified unilaterally by the State or by subsequent changes in the law. However, investors may, at any time, request the amendment of the contract to increase the amount of the investment, change its purpose or assign its rights to another foreign investor.

Decree Law 600 guarantees investors the right to repatriate capital one year after its entry and to remit profits at any time. In practice, the one-year capital lock-in has not represented a restraint since most productive projects --in areas such as mining, forestry, fishing and infrastructure-- require more than a one-year start-up period. Once all relevant taxes have been paid, investors are assured access to freely convertible foreign currency without any limits on the amount, for both capital and profit remittances. In addition, they are guaranteed the right of access to the formal exchange market. The repatriation of all capital invested is devoid of any tax, duty or charge up to the amount of the originally materialized investment. Only capital gains over that amount are subject to the general regulations contained in the tax code.

It should be noted that the Central Bank has the right to restrict access to the formal exchange market–made up by banks and other authorized dealers–if adverse macroeconomic conditions make this necessary. However, Decree Law 600 investors are exempt from these restrictions and their right to access the market in order to repatriate profits or capital is not affected.

The Decree Law 600 contract acknowledges as foreign investment:

Freely convertible currency that can be exchanged at the most favorable rate that foreign investors can obtain from an entity authorized to operate in the Formal Exchange Market.

Physical goods, in any form or condition brought into the country according to general import regulations, without exchange coverage. The value of these goods will be evaluated using general procedures applied to imports. These physical goods include among others, machinery or equipment used in productive processes.

Technology, in any form, provided it can qualify as capital, which will be appraised by the Foreign Investment Committee according to its real international market value, within 120 days after the application is submitted. If the 120 day period lapses and the appraisal has not been made, the assigned value shall be the value declared by the investor in an affidavit. In previous cases, independent consultants have performed this job.

Credits associated to foreign investments. The general regulations, terms, interest and other modalities of foreign credit contracts, as well as surcharges related to total costs to be paid by the debtor, including

commissions, taxes and sundry expenses, shall be those currently authorized or to be authorized by the Central Bank of Chile.

Capitalization of foreign loans and debts, in freely convertible currency, provided such contracts have been duly authorized by the Central Bank. The investors can, under Decree Law 600, increase the capital of their recipient company through both the capitalization of credits made under Chapter XIV and the obligations derived from current imports and pending payments.

Capitalization of profits transferable abroad: Decree Law 600 allows capital increases of the receptor company through the capitalization of transferable profits.

Foreign investors may request a maximum time-limit of three years to materialize their contributions. Investments of not less than US$ 50 million for industrial or non-mining extractive projects can request a time-limit of up to eight years. In the case of mining projects, the time-limit is eight years but, if previous explorations are required, the Foreign Investment Committee is empowered to extend it to up to twelve years.

B. SPECIAL ADVANTAGES FOR FOREIGN INVESTORS

Although Chile's constitution is based on the principle of non-discrimination, Decree Law 600 offers some tax advantages for foreign investors. These are not "tax break" of "tax holidays", but are intended to provide a stable tax horizon, acting as a form of "tax insurance". Decree Law 600 offers several different tax options, but basically allows the investor to lock into the tax regime prevailing at the time an investment is made. These options are:

Invariability of Income Tax Regime: All Chilean companies have to pay a First-Category Tax (or Corporate tax) equivalent to 16.5% in 2003 and 17% in 2004 (in August of 2001, Congress approved a bill proposing a reduction in personal income taxes equivalent to US$ 150 million a year; in order to compensate for lost revenues, the bill included this increase in the First-Category Tax).

Under Chile's Common Tax Regime, a 35% tax is currently levied on distributed or remitted profits but, under Decree Law 600, a foreign investor can opt to lock into a 42% tax on income for up to ten years or for up to twenty years in the case of industrial and extractive investments of US$50 million or more. The investor, thereby, acquires immunity from any tax increases in the Common Tax Regime that may occur during that period. The lock-in can be waived at any time, but an investor cannot subsequently revert to the guaranteed 42% rate. The First-Category payment can be set against tax returns under both the Common Tax and Invariable Tax Regimes.

It should be noted that investors who do not remit or distribute profits are liable only for the First-Category Tax.

Invariability of Indirect Taxes: Decree Law 600 states that foreign investments brought into the country in the form of physical goods are subject to the general VAT taxation regime and customs regulations. However, foreign investors are entitled to include a clause in their contracts giving them access to a regime that freezes Value Added Tax (currently at 18%), as well as import tariffs on capital goods for the project, at their rate at the date of the investment. This special regime applies throughout the period authorized for the carrying out the investment. Additionally, imports of some of these capital goods such as machinery or equipment are exempt from VAT, if they are not produced in Chile and are on a list prepared and published by the Ministry of Economy.

Foreign investors who sign a Decree Law 600 contract are exempted from VAT on other technology imports, providing they appear on this list compiled by the Ministry of Economy's International Trade Department. The products currently listed include accounting and data processing machines, TV cameras, lasers and magnetic resonance imaging diagnostic equipment (MRI), among several others.

Special Regime for Large Projects: Decree Law 600 investments in new industrial or extractive activities, including mining, are entitled to additional tax benefits, providing they have a value of at least US$ 50 million. This special regime was introduced in 1985 to reduce tax uncertainty and facilitate the development of foreign investments requiring high levels of external credits and financing. Available for a period of up to 20 years, this regime allows an investor or recipient company to use accounting in foreign currency and to

lock into existing practices on matters such as asset depreciation, carry-over of losses and the tax treatment of start-up expenses. In addition, because the regime was introduced at a time when exporters were still required to repatriate returns, it authorizes Decree Law 600 investors to hold export returns in offshore accounts and offers a special tax arrangement for repatriated returns.

C. Foreign Investment Procedures

A foreign investor who wishes to invest through the Decree Law 600 must submit an application to the Executive Vice-presidency of the Foreign Investment Committee. Applications forms are available through our website. By March 2003, the minimum investment amount for a new project was US$1,000,000 (one million dollars) when investments consist of foreign currency and associated credits. At that time, the minimum amount was US$25,000 (twenty-five thousand dollars) when the investment is in the form of physical goods, technology, and capitalization of profits or capitalization of credits. The Foreign Investment Committee retains the right to modify both figures.

Projects submitted to the Committee's consideration must involve a ratio between equity and associated credits of up to 25/75.

In the case of foreign currency, the investor can execute his/her foreign exchange operation only when the contract has been duly signed. However, when submitting the application, they can request a special authorization to exchange their currency immediately. Any other type of capital contribution requires the Foreign Investment Contract to be duly signed.

D. Institutional Framework

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 several Ministers of State (Economy, Finance, Foreign Affairs, Planning and the relevant Minister, in case of investment applications filed with Ministries not otherwise represented in the Committee) 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 Foreign Investment Statute (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

Central Bank of Chile

The regulations of the Chapter XIV apply to the inflows of foreign currency freely convertible, made from abroad to Chile, since April, 19th of 2001, when exchange restrictions were eliminated, basically it's possible to point out the following:

It's required to inform to the Central Bank of Chile, through a pre-established form, all foreign currency entering the country that exceed USD 10.000, used for capital contribution, foreign credits, investment or deposits in Chile.

This foreign currency inflows should be canalise or realized through the Formal Exchange Market (MCF), which consists in established banks in Chile and entities authorized by the Central Bank of Chile to operate in international exchanges.

From April 19, 2001, there is no permanency requirement in the country that invested capital nor the profits coming from them should comply, being able to re-exported them at any moment. In any case, from the same date, the inflows are governed by in force regulations at the moment of it's movement and the outflows or foreign currency remittance, by those ones which are in force at the effective moment of re-exportation.

In the case of foreign credits, debtors should fill a form with information regarding maturity dates and program amounts while the latter is in effect, they should also surrender general financial information of the operation.

The information that the Central Bank requests, is basically as follows and depends on each case: type of operation, identification of contributor and investor and identification of receiver among others.

(2) Investment Review and Approval

(a) Details of any proposals and sectors that are/are not (yes/no) subject to screening.

(b) 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 a foreign investment contract must submit a foreign investment application to the Foreign Investment Committee.

The Committee sets forth policies and procedures concerning foreign investment and has the 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, with prior approval of the President of the Committee, investments of less than US$5 million.

It is worth noting that besides the Foreign Investment Committee approval, some projects requesting authorization under Decree Law 600 require additional information or authorization, which must be obtained from other competent authorities. Only as an example, we can mention that when an application for investments in the mining sector are presented under Decree Law 600, the Foreign Investment Committee asks the Chilean Commission of Copper (Cochilco) to issue a report on the project; the Undersecretariat of Fishing reports on activities in that sector; the Banks and Financial Institutions Regulatory Agency must authorize operations in the financial banking area; and the Securities and Exchange Commission reports on activities in the insurance and investment funds fields.

A concession granted by the Undersecretariat of Telecommunications is required in order to install, operate and run public telecommunication services; intermediate telecommunication services through physical facilities and networks designed for this purpose; and radio sound broadcasting services. Complementary (added value) services, such as telephone banking or financial data over the telephone, do not require a concession or permit, although a technical ruling is required when equipment is connected to networks.

Potential environmental impact of projects is evaluated trough the Environmental Impact Evaluation System, a mechanism managed by the National Environment Commission (CONAMA) or the Regional Commission (COREMA), depending on the case.

(c) 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, and from our website.

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

Agency	Address/telephone/fax
Decree Law 600 application Foreign Investment Committee	Teatinos 120,10th Floor Santiago, Chile Telephone: (562) 698 4254 (562) 698 3705 Fax: (562) 698 9476 www.foreigninvestment.cl
Chapter XIV application 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 present it to the Central Bank.	 Huerfanos 1175, 8th Floor Santiago, Chile Telephone: (562) 670 2270 Fax: (562) 698 5866

(e) 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 approximately 30 to 40 days. For Chapter XIV mechanism it is about one week.

(f) 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 direct discussions among the investor and the Executive Vice-presidency staff, or by the submission of additional information by the applicants.

The same principle applies for a Chapter XIV application.

It is important to recall that the Political Constitution of Chile grants to any person in Chile several rights, among them, the right to carry out any form of economic activity and the non-discriminatory treatment by government authorities. The protection of these and others guarantees is made through the "Recurso de Protección", a special legal action that must be presented before the Judiciary Power. It may be submitted by foreigners or Chileans with no distinction.

(g) 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 bring the investment that is in the form of 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 that contains

all the rights and obligations indicated in Decree Law 600 which has the character of a contract law. This contract can only be modified by agreement of both parties.

This procedure, starting from the presentation of the application until entering into the respective contract may take approximately 30 to 40 days.

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

Document That 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:

A legalized and 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.

A legalized and notarized copy of the public deed granting power of attorney to the legal representative, which must be written in Spanish.

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

A document which substantiates nationality (notarized copy of passport).

If acting through a representative, a legalized and notarized copy of the public deed granting power of attorney, in Spanish.

(h) 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 only to investments made through Decree Law 600, Foreign Investment Statute.

(i) 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 in 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 Number 1 published on the Official Gazette, 28 April 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 (Securities and Insurance Commission) Article 4 of 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 Securities and Insurance Commission concerning its operations and to the investment of resources inside the country.	Teatinos 120, 1 Floor Santiago, Chile Telephone: (562) 549 5900 Fax: (562) 698 7425

(j) 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 the Foreign Investment Committee or the Central Bank's External Financing Management Department (see contact details in Section B(1)(ii)(4)).

(k) 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 under Decree Law 600, oriented to mining projects, must previously be the subject of a report from of COCHILCO.

The Commission should inform and advise 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, whether 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 Number 1 published on the Official Gazette, 28 April 1987.

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

(a) 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).

In the Chilean Foreign Investment Legal Regime, there are no exceptions to most favoured nation treatment principle in relation to the establishment, expansion and operation of foreign investment, except as provided for in foreign investment and free trade agreements, as described below.

(b) 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 by Chile and currently in force stipulate possible exceptions to MFN treatment. These treaties are those signed with Argentina, Australia, Austria, Belgium, Bolivia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Honduras, Italy, Korea, Malaysia, Norway, Panama, Paraguay, People's Republic of China, Peru, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Philippines, Turkey, Ukraine, United Kingdom, Uruguay, and Venezuela.

These treaties establish that the 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 or concluded negotiations for the establishment of a free trade agreements with Mexico, Canada, the countries of Central America, the European Union, Korea, the United States of America and the members of EFTA.

3. National Treatment

(a) 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 all its agencies, grant the foreign investor an equal treatment, or no less favorable than that granted to national investors. For the adequate protection of this right, 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 considered 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	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

SECTOR	NATURE OF EXCEPTION (E.G. PROHIBITION, LIMITATION SPECIAL CONDITIONS AND SPECIAL SCREENING)
	economic exclusive zone. Coastal trade, ocean, river or lake 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. 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. The appropriate local 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. 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). The transportation of empty containers may only be performed by foreign ship-owners when an identical authorization exists for Chilean shipping companies in the countries of the nationality and domicile of the respective ship owner or vessel operator. If, because of nationality and/or domicile, a ship owner 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. 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. 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: (1) Legal entities or communities that comply with those requirements provided in article 11 of Executive Decree 2222 of 1978: (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. (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. 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. (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.

SECTOR	NATURE OF EXCEPTION (E.G. PROHIBITION, LIMITATION SPECIAL CONDITIONS AND SPECIAL SCREENING)
	(2) Is dedicated to ocean transportation. (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.
Fishery activities	Limitation on ownership of fishing ships and on development of fishing and aquiculture activities. The Fishery and Aquiculture Law No 18.892, published on 23 December 1989, states that of the majority owners of the capital of companies owning 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. 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.
Non-Industrial Fishing	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. Industrial Extractive Fishing Activity: There is a general access system in the territorial sea, except in areas reserved for non-industrial 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. Natural person applicant: Chilean or foreigner with definite residence. 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. 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. 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: 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. Aquaculture: The following may only be aquaculture concessionaires or holders of

SECTOR	NATURE OF EXCEPTION (E.G. PROHIBITION, LIMITATION SPECIAL CONDITIONS AND SPECIAL SCREENING)
	an authorization to perform aquiculture activities: Chilean or foreign natural persons with definite residence. 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. Aquaculture concession assignments must be previously authorized by the Ministry of National Defense.
Aerial Transport Services	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. The Aeronautical Code determines what kind of vessels may be registered in Chile: (1) airships belonging to Chilean natural persons; (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; (3) airships belonging to communities, provided that the majority of the community rights belongs to Chilean natural persons or legal entities that meet the requirements provided in the preceding number; and (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.
Media Press News Agency	Limitations on ownership and management. Law 19.733, Freedom of the press, stipulates that the owner of a social communication medium such as sound and image transmissions or a national news agency, shall, in the case of a natural person, have a duly established domicile in Chile, and, in the case of a juridical person, shall be constituted with domicile in Chile or have an agency authorized to operate within the national territory. Only Chilean nationals may be president, administrators, or legal representatives of the juridical person. In the case of public radio broadcasting services, the majority of the members of the Board of Directors must be Chilean nationals. The legally responsible director and the person who replaces him or her must be Chilean with domicile and residence in Chile. Requests for public radio broadcasting concessions, submitted by a juridical person in which foreigners hold an interest exceeding ten percent of the capital, shall be granted only if proof is previously provided verifying that similar rights and obligations as those that an applicant will enjoy in Chile are granted to Chilean nationals in the applicant's country of origin.

SECTOR	NATURE OF EXCEPTION (E.G. PROHIBITION, LIMITATION SPECIAL CONDITIONS AND SPECIAL SCREENING)
	The Consejo Nacional de Televisión may establish, as a general requirement, that programs broadcast through public (open) television channels include up to 40 percent of Chilean production.
Insurance Services	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.
Acquisition of frontier or border land	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. 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. 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 to favorable report issued by the Naval Undersecretary of the Ministry of National Defense. In no way may fiscal shore land, within a strip 80 meters from the line of highest 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. 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 meter 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. 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. 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. 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

SECTOR	NATURE OF EXCEPTION (E.G. PROHIBITION, LIMITATION SPECIAL CONDITIONS AND SPECIAL SCREENING)
	possession or tenancy of said real estate.

(b) Description of the nature and scope of any limitations on foreign firms' access to sources of finance.

Article 11 of Decree Law 600, establishes that the access of foreign investors to local financing may be limited by the authorities. 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 in the hands of the Central Bank of Chile.

4. Repatriation and Convertibility

(a) 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 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 regarding remittance of profits paying the correspondent taxes.

(b) Brief description of the foreign exchange regime.

See (1) D.-

(c) Restrictions on the convertibility of currencies for the overseas transfer of funds.

See (1) D.-

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe 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. Justifiable reasons for residency 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.

(b) 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.

(c) 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.

(d) 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

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 some of 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 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 monthly income. If the contract has been in effect for more than one year, the employer must pay the equivalent of the latest monthly salary for each year of service and fraction over six 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 non-fulfillment 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 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, currently which is approximately US$150.

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 15workable 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 six months after the expiration of the period.

6. Taxation

(a) 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 (Servicio Nacional de Aduanas, hereinafter 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 that 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 flat rate of these duties is 6%.

I. Internal taxation

Includes 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 that affects capital income, business, agriculture, mining and transport.

Second Category Tax that affects individual's work income.

Global Complementary Tax, hereinafter GCT, which affects all the individual's income from any source.

Additional Tax that affects incomes of persons or entities that are not domiciled in Chile. It is a withholding tax of 35%.

Limited Liability Companies and corporations are subject to a First Category Tax of 16.5% rate for 2003, and 17% from 2004 and on, applied on accrued taxable income according to the provisions of the Income Tax Law.

The profits withdrawn or distributed to partners are subject to the GCT which has a scaled rate from 5% to 43%, 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 22% 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 with investments (under either Decree Law 600 or Chapter XIV) are subject to a 4% rate, when the loan comes from a foreign financial institution. However, such tax rate will be increased to35% on the excessive indebtedness, when interest are paid to a related party. Such excessive indebtedness exists proved the total debt is higher than three times the taxpayers equity., Likewise, 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.

(c) Real Estate Tax

Real estate is subject to a tax ranging from 1,425% to 1,2%, 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 which contain money loans operations (including foreign loans), are subject to this tax. The tax varies from 0.134% to 1.608% according to the term agreed in the respective operation. This rate is calculated considering the amount involved in the operation.

To longer terms correspond to a higher rate, demand documents have a fixed 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, such 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 taxable income for a term of 10 years beginning with the commencement of activities.

For purposes of Decree Law 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 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 (10 to 20 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

(a) 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.

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

8. Capital Exports

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

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

(b) 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

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

Foreign investors receive equal treatment with Chilean investors. They cannot develop economic activities contrary to law, morals, public order or national security. Foreign investors must comply with all laws and

regulations generally applicable to Chilean investors, including any specific regulation for the sector they wish to invest in and generally applicable regulations, such as environmental impact assessments.

10. Other Measures

(a) Brief outline of the competition policy regime.

Regulations about patents, trademarks and industrial model rights are regulated through Law No019.039[1], published in the Official Gazette 25 January 1991 and it is known as Industrial Property Law. Copyrights are guaranteed under Law N 17.336 of 2 October 1970.

(b) 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- Patents

An industrial patent may be granted for the exclusive right to exploit it for a sole period of 15 years[2] starting from the date that the patent was granted. Patents for inventions already patented abroad are granted only for the equivalent of the term remaining in the country in which they were first granted, without exceeding the 15 years period.

Patents for any invention can be granted, provided that the invention is new, involves an inventive step and is capable of industrial application. In that sense, some specific items may not be patented, for instance:

Discoveries, scientific theories and mathematical methods

Vegetal varieties and animal races

Systems, methods, economic, financial or commercial principles or plans of simple verification and enforcement, and the referred to purely intellectual activities or gaming issues.

Surgical or therapeutic treatments or methods from human or animal bodies, as well as the diagnosis methods applied to human or animal bodies, with the exception of products used to put in practice one of this methods.

New use of articles, objects or known elements and employed for certain ends and the change of forms, dimensions, proportions and materials of requested object, unless it essentially modify the qualities or with its use a technical problem is resolved that did not have an equivalent solution.

inventions that are against law, public order, State security and morality or good customs

all the inventions presented by whom is not its legitimate owner

B- Trademarks

The registration of a trademark, national or foreign, grants ownership for 10 years starting from the date of its inscription in the respective register, renewable for consecutive ten-year periods.

Each trademark shall only be requested and inscribed for determined products or one or more types of International Classification. Also trademarks can be requested for industrial establishment or commercial associated to one or several classes of determined products and propaganda the phrases that will be used in the publicity of already registered trademarks.

C- Industrial Models

[1] This Law is process of modification in order to fully comply with TRIPS Agreement.
[2] Eventually, the period will raise to 20 years.

The registration of an industrial model ensures absolute ownership a none renewal period of 10 years, starting from the date of its request.

The transfer intellectual property rights must be in the way of a public deed (this is due to the fact that can be transferred in any way, the public deed is the only requisite of proof).

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

D- Copyrights

Law N 17.336 amended by Law N 18.443, published 17 October 1985, protects copyrights of Chilean and foreign authors domiciled in Chile. Such legislation will be modified after Chile subscribes the WIPO, WPPT and WCT, as well as the free trade agreement recently sign by Chile. The protection is granted to authors for life, and extends 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

(a) 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 Nº 2186	This law regulates all the aspects related with expropriatory procedures, indemnification, immediate effects of expropriation, determination of indemnification, indemnification payment.

(b) 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

(a) *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 in the hands of the Judiciary Power. These procedures are applicable to certain matters, especially those related to legal controversies about corporate issues.

The constitutional rights are protected by a special recourse named ”Recurso de protección”. This legal action protects the enforcement of constitutional guarantees with no distinction between foreigners and Chileans. The competent authority to render decisions 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 of 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 excludes 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 under 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

(b) Signatory or accession to the ICSID Convention.

Chile signed the ICSID Convention on 25 January 1991. The deposit of the signed instrument was on 24 September 1991. The ICSID Convention came in force in Chile on 9 January 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) 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.

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.

In line with its commitment to free-market economic policies and free trade, Chile does not use tax incentives to support productive activities or to attract new investment. However, it does provide certain inducements for investments in some isolated geographic regions and new industries, particularly those in the technology field.

Investors can, for example, tap into government schemes to promote workplace training and to increase industrial productivity. All these schemes, in the form of grants and tax rebates, are available equally to both local and foreign investors and are part of a wider government strategy designed to increase competitiveness by extending the benefits of economic growth to all areas of the country, promoting education and training and encouraging technological innovation.

All firms in Chile are allowed to set training costs of up to 1% of annual payroll against corporate tax payments and, in some remote areas, can also claim a tax rebate on labor costs and for some start-up expenses. Grants, which are managed mostly by the Chilean Economic Development Agency (CORFO), are limited in number and qualifying firms are selected on the basis of established criteria that reflect the government's development objectives.

In 2000, CORFO introduced a program of special incentives for investments in high-technology projects. As well as information technology and biotechnology, this covers projects that introduce new methods in traditional processes and new technology-based services. Both foreign and local investors in projects with a minimum value of US$ 1 million can apply for support under this program which offers grants towards pre-investment studies and the acquisition of fixed assets and staff training, as well as for R&D projects with a high commercial impact.

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 www.foreign investment.cl 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 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 contain expressions of intentions towards future treaties.

Bilateral investment treaties

Argentina, Australia, Austria, Belgium, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Honduras, Italy, Korea, Malaysia, Norway, Nicaragua, Panama, Paraguay, People's Republic of China, Peru, Philippines, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukraine, United Kingdom, Uruguay, Venezuela

Signed agreements, not currently in force:

Bolivia, Brazil, Colombia, Dominican Republic, Egypt, Greece, Hungary, Indonesia, Lebanon, Netherlands, New Zealand, South Africa, Tunisia, Turkey and Viet Nam.

The most relevant aspects of these agreements are:

the option of changing to resorting to international arbitration in case of differences between 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;

future investments are protected as well as those made prior to the treaty are protected, but in the latter case, only 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

Chile is widely recognized for its success in attracting FDI. Between 1974 and 2000, materialized foreign investment totaled US$ 52.4 billion. Of this amount, 83.4% entered the country after 1990. During the 1990s, FDI represented an annual average 6.4% of Chile's GDP, rising to 8.3% between 1995 and 2000.

FDI flows worldwide increased dramatically during the 1990s[3], when they expanded by a factor of 4.3 [4]. Although high-income countries were the main recipients, the share of low- and middle-income countries in global FDI increased from 12% in 1990 to 21% in 1999 (of which Latin America received almost half).

Within this context, Chile has achieved a notable performance. Between 1990 and 1999, FDI increased by a factor of 15.2 and the country's share of FDI in low- and middle-income countries doubled from 2.5% in 1990 to 5% in 1999. Chile received 10% of all FDI in Latin America in 1999, although its GDP represents only 3.6% of regional output and it has only 3% of the region's population.

Table 2 sets out figures for performance by country, including Latin American and East Asian countries that have been characterized by high economic growth or policies that favor foreign investment. The table shows that, in the 1990s, some Latin American countries began to show FDI/GDP ratios that were similar to those of successful East Asian economies (notably Singapore). By the end of the decade, Trinidad and Tobago, Bolivia, Nicaragua, Chile and Panama all had FDI inflows that were equivalent to between 7% and 9% of GDP.

Comparisons of FDI/GDP ratios across countries can be misleading, since small economies find it easier to achieve high ratios than large economies. Figure 1 sets out FDI/GDP ratios, corrected for the effect of country size, and confirms that small countries (with size measured by GDP) tend to have a higher ratio than larger countries.

By taking the best-performing countries at each income level, we can obtain an approximation to an "efficiency frontier" i.e. the highest level of FDI/GDP that a country can expect to attain, given the size of its economy. In Figure 1, this "frontier" appears as a straight line and the data shows that only Chile and Singapore crossed the "frontier". In other words, when the figures are corrected for country size, Chile and Singapore are seen to have outperformed all other countries between 1995 and 1999 in attracting FDI.

Between 1974 and 2000, the mining industry accounted for 34.5% of foreign investment in Chile. As shown in Figure 2, it was followed by the services sector (23.8%), the electricity, gas and water industries (17.8%) and manufacturing (13.1%).

Until 1990, mining projects represented 47% of Decree Law 600 investment, boosted by the government's decision to lift restrictions on private investment in the exploration and exploitation of mineral deposits. Similarly, investment in financial services was encouraged by the deregulation of the financial sector. Since 1990, however, other sectors have gained in importance and the mining industry's share of Decree Law 600 investment gradually diminished to an average 28.5% in 2000 and 2001.

As shown in Figure 3, the decrease in the relative importance of mining was counterbalanced mainly by higher investment in the transport and communications industries (including telecommunications) and in the electricity, gas and water sectors. This new trend was mainly the result of privatizations in the energy and telecommunications sectors and of the intense competition that followed the deregulation of mobile and long-distance telephone services.

In addition, an Infrastructure Concessions program, launched in 1993, opened the way for the participation of private capital, mostly from abroad, in the construction and operation of roads and airports.

As from 1997, there has been a surge of M&A activity, mainly in the services, electricity and telecommunications industries, due partly to foreign companies' interest in using Chile as a platform for expansion into other Latin American countries. Water privatizations and a concessions program for water treatment services have also captured important inflows of FDI in recent years.

OUTWARD INVESTMENT

During the last years, the Chilean Investments abroad have increased considerably, reaching about US$3,145.5 million in 1998. The amount accumulated for the period 1990-1998 is US$23,714.5 million.

[3] Figures in this section use the latest data available in World Development Indicators, World Bank, 2001. In this database, countries are classified as having low, medium or high-income levels.
[4] Or equivalently, they grew at an average rate of 18% per year.

Chilean investments abroad are concentrated in Latin America and specifically in Argentina and Peru. The main economic sectors receiving Chilean investment are industry, energy and services.

2. List of the major 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 1990-1999 are:

United States	US$16,546.1m
Spain	US$9,470.4m
Canada	US$8,597m
United Kingdom	US$2,823.5m
South Africa	US$2,642.7m
Japan	US$2,174.2m
France	US$1,234.9m
The Netherlands	US$1,177.9m
Finland	US$880.4m
Australia	US$802.4m

Other APEC economies

Mexico	US$156.8m
New Zealand	US$125.4m
People's Republic of China	US$87.2m
Singapore	US$51,4m
Papua New Guinea	US$46.5m
Korea	US$42,6m
Peru	US$38,1m
Malaysia	US$27.5m

Chilean capital has been invested in at least 30 countries around the world.

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

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

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

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.

PEOPLE'S REPUBLIC OF CHINA

PEOPLE'S REPUBLIC OF CHINA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

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

Attracting FDI inflows is an important component of China's open door policy. Chinese government highlights FDI as priority in its effort to utilize foreign investment more actively, rationally and effectively.

The year 2002 was the first year of China's accession into the WTO. Chinese government has carefully honored its commitments on its obligations. Efforts have been made in the following to provide a more attractive environment for the outside world:

Reducing tariff and non-tariff measures. Since Jan.1, 2002 Chinese government has cut down its import duty greatly for over 5,000 commodities, from 15.3% to 12%. The tariff rate of some IT products is even lowered to zero. Concerning the non-tariff measures, Chinese government has abolished a set of quotas, licensing and designated bidding management of some products.

Reviewing the existing legal framework since 2000. In accordance with the WTO rules and our commitments, it was the first time for Chinese government to review the foreign-related economic laws and regulations formulated since 1978. At the central level, more than 830 of regulations including the internal regulations and not applicable to the new situation have been abolished. About 325 of existing regulations have been revised to meet the requirements. At the local level, provinces, municipalities and autonomous regions, under the requirements from the State Council, have made significant progress in adjustment of relevant local regulations.

Strengthening the protection of IPR. The patent law, the trade mark law and the copyright law have been revised in accordance with the requirements of TRIPs and international practices. Chinese government has cooperated with many developed economies such as EU members on a bilateral basis in IPR protection.

Opening more service sectors. Telecommunication is the first time to open to the foreign investors. Chinese government has promulgated the regulation on foreign investment in telecommunication. In addition, the competent authorities have either revised or promulgated regulations on foreign investment in banking, insurance, commerce, civil aviation, transportation, cinema, products

distribution, construction design, printing and travel agencies, accounting, legal services, international trade companies etc.

In addition, the three basic laws on foreign direct investment, namely the laws on Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Contractual Joint Ventures and Wholly Foreign-owned Enterprises and their implementing regulations, have been revised to meet the requirements of WTO TRIMs agreement. The contents of performance requirements such as the balance of foreign exchange, local production, export performance etc have been removed.

Furthermore, the Chinese government has promulgated the 3rd version of the Provisions on Guiding Foreign Investment and Industrial Catalogue for Guiding Foreign Investment which were taken effective on April 1,2002. The new versions are based on the requirements of its strategic restructuring of national economy and to its WTO accession.

To raise its comprehensive competitiveness and create a better environment for foreign investors, the Chinese government has made great efforts in the followings:

To improve the regulatory and legal environment for foreign investment. The revised laws and regulations on foreign investment will be taken as the key to improving the soft environment for foreign investment. To honour the WTO commitments and to satisfy the needs for opening-up, the Chinese government will further improve the legal system for foreign investment, and accelerate the formulation of new regulations to maintain the nationwide uniformity and conformity of laws and regulations on foreign investment, to make them more transparent, and to push the administration by law national wide.

To maintain and improve the fair and open market environment. As a supplement to the current nationwide rectification and standardization of the order of the market economy, serious efforts will be made to stop arbitrary fees, inspections, charges, and fines imposed on foreign-invested enterprises, to intensify the protection of intellectual property rights, to crack down on copyright piracy, and to create a uniformly open and openly competitive market environment. The system for foreign-invested enterprises to lodge complaints will also be further improved to protect the legitimate rights and interests of foreign investors.

To further expand opening up the service sectors. On the basis of the needs for its own development and the WTO commitments, Chinese government will expand the opening of the service sector in a proactive, steady and orderly manner. The short-term targets are set as follows:

By improving the related laws and regulations, enhancing the uniformed and standardized market entry system in the service sector, encouraging the introduction of modern concepts and advanced operation and management experiences, technologies, and modern market operating modes from the international service sector to improve the structure and boost the quality of China's service sector. Specifically, the governments encourage foreign investment in logistics, franchising, distribution center etc.

To encourage foreign investors to invest in the high-tech industry, the fundamental industry and related industries. Chinese government will continue to encourage foreign-invested enterprises to introduce, develop and innovate technologies, promote foreign investment in capital- and technology-intensive projects, facilitate foreign investment in more technologically advanced projects, and in due time, intensify regulatory guidance in terms of the limits on the proportion of registered capital of the enterprise and the conditions for contribution of funds by means of industrial property rights. Relevant regulations governing growth enterprises will be further improved, and favorable conditions will be provided to the establishment and growth of high-tech enterprises. Efforts will be made to attract foreign investors to invest in supporting industries, and the localization of the sourcing of the raw materials of foreign-invested enterprises will be encouraged; efforts will also be made to promote the external cooperation of small and medium-sized enterprises (including township enterprises) and the introduction of advanced and suitable technologies, so that these enterprises can provide supporting services to large-sized foreign-invested enterprises and become part of the global production and sales network of multinational companies.

To encourage more multinational companies to invest in China. The short-term and medium-term targets are: To transform the enterprises of production oriented into the type of R&D oriented. To encourage multinational companies to set up regional headquarters and transnational procurement centers in China. Efforts are being made to explore the effective policies to attract multinational companies to move their regional headquarters or distribution centers into the cities like Shanghai and Shenzhen.

In the mean time, international M&A studies have been taken and efforts have been made to draft the regulation on allowing foreign investors to take M&A as the way of FDI in China. Other efforts have been made to promote the formulation and improvement of various regulations concerning investment by means of BOT and transfer of franchising rights as well as the listing of foreign invested enterprises in and outside China, to actively create more favorable conditions for multinational companies to invest in China.

To rationalize the regional development of foreign investment. We will continue to make full use of the eastern region's advantages in opening-up and utilization of foreign capital, and support the development of capital and technology intensive industries as well as export-oriented industries in the area. Efforts will be devoted particularly to special economic zones, the Pudong New District in Shanghai, Suzhou Industrial Park and other national economic and technological development zones.

To balance the regional development between the east and central-western areas, Chinese government has implemented the so-called go west strategy since 1999. Positive initiatives have been introduced to guide and encourage foreign investment into the central and western regions. Efforts have been continuously made to push the implementation of relevant encouraging policies. Service sectors will be further opened for central and western regions, and more favorable domestic financing conditions will be offered to foreign investment in western regions. On the basis of the newly revised Industrial Catalogue for Guiding Foreign Investment, we will properly widen the range of Catalogue to promote the foreign investment in infrastructure, development of

mineral resources and tourist resources, ecological environment protection, agricultural and herding products processing and other technical projects. We will create better conditions to attract foreign investors in coastal eastern areas to input in central and western regions, and will encourage foreign investment in West-East natural gas transmission project, West-East electricity transmission project and the related projects.

Finally, maintaining the stability, continuity and predictability of the laws and regulations of foreign investment is an important task so as to guarantee a uniform, steady, transparent and predictable legal environment and regulatory environment for foreign investors.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation

At present, the basic laws and regulations of the People's Republic of China concerning foreign investment are as follows:

Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures and its implementing regulations;

Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures and its implementing rules;

Law of the People's Republic of China on Wholly Foreign-owned Enterprises and its implementing regulations;

Income Tax Law of the People's Republic of China Concerning Foreign invested enterprises and Foreign Enterprises and its implementing regulations;

Regulation on Guiding Foreign Investment

Industrial Catalogue for Guiding Foreign Investment

Company Law of People's Republic of China.

Contract Law of People's Republic of China.

Summary

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 into three categories: Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises.

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 capita1. 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. Member 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.

Chinese-foreign contractual joint ventures, mean that parties to such a venture shall agree in their cooperative venture contact 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 contractual joint venture may take the form of a limited liability company or an economic entity without having legal person status. Parties to the contractual 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. Contractual joint ventures are more flexible than equity joint ventures.

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.

In case of a company limited by shares, its entire capital is divided into share of equal value and shareholders shall be liable to the company to the extent of the shares held by them. A company limited by shares is liable to the debts of the company with its all assets. The Chinese and foreign shareholders should jointly hold the company's stock, with the shares subscribed and held by

foreign investors being more than 25% of the company's registered capital. The company may be established by means of promotion or offer.

(2) Investment Review and Approval

(a) Write Yes or No next to any Proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.
(b) For each proposal identify guidelines/conditions that apply for screening (e.g.. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide 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 or land (Yes) Luxurious real estate projects are restrained and land transfer formalities are needed.

Joint venture (Yes) In accordance with the "Regulations on Guiding Foreign Investment".

Sector Guidelines/Conditions

Telecommunications (Yes) Telecommunications have been opened in accordance with the timetable of Chinese commitments on its WTO accession. Regulation on foreign investment in telecommunications has been promulgated.

Media (Yes) More foreign banks have been granted the right to open operational agencies in China. Geographical limitation on such agencies has now been expanded from Shanghai and Shenzhen to all major cities in China. The regulations governing foreign banks' RMB business pilot projects have been improved.

Transport (Yes) Investment in transport infrastructure is encouraged, auto transport allowed, marine transport and air transport restricted.

Agreed by the relevant industrial departments and then submitted for approval by Ministry of Commerce (Previously Ministry of Foreign Trade and Economic Cooperation, MOFTEC).

Limit on the proportion of foreign investment: for marine 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.

Foreign trade (Yes) Foreign investors are permitted to establish international trading companies by joint ventures.

Tourist agency (Yes) Foreign investors are permitted to establish joint venture travel agencies.

(c) How to obtain application/approval forms required. (Or screening/purposes. Summary of additional documentation that is required. (Or 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 invested enterprises are set up:

Project proposals, feasibility study report, contract, and articles of association, investors' business registration certificate, list of candidates for board members.

Copies of the relevant documentation can be obtained from the contacts listed in Section B1(2)(d) below.

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

The Chinese government adopts the system of reviewing and approving proposals one by one. Agencies in charge of applications are Foreign Investment Administration Department, Ministry of Commerce (MOFCOM).

Provincial and municipal commissions of foreign trade and economic relations (note: the new government has restructured MOFTEC, now is Ministry of Commerce. The names of the local institutions will be changed later.). Agencies that assist investors to go through the review and approval formalities are Foreign Investment Service Center, consulting company and law firms.

Contact Points of Ministry of Commerce

Mr. Ge LI and Ms. Guangling QIU

Foreign Investment Administration Department, Ministry of Commerce

No. 2, Dong Chang An Street, Beijing, 100731, China

Tel: (86-10) 6519 7393, (86-10) 6519 7317

Fax: (86-10) 6519 7322

(e) Average period from the formal submission of all relevant/required documentation to final approval/rejection.

According to the Chinese laws, Ministry of Commerce and its authorized agencies should decide approval or disapproval within three months upon submission.

(f) 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.

Ministry of Commerce 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 this fails, they may appeal to an agency at a higher level or MOFCOM according to the Regulations on Administrative Reconsideration (see section B1(2)(d) for contact details).

(g) 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.

(h) 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).

MOFCOM and local commissions of foreign trade and economic relations will consider complaints of foreign investors (see section B1(2)(d) for contact details). If complaints involve other government agencies, MOFCOM or local commissions will consult with the relevant agency to deal with complaints together. Associations of foreign invested enterprises in provinces and cities will also provided assistance in dealing with complaints and problems of foreign investors.

(i) 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.

MOFCOM and provincial and municipal foreign trade and economic commissions are entitled to the responsibilities of administering foreign investment and supervising law enforcement (see section B1(2)(d) for contact details).

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

MOFCOM and provincial and municipal foreign trade and economic commissions and other relevant authorities often hold meetings or seminars to collect opinions from foreign investors.

MOFCOM also organize relevant authorities to explain the policy issues required by foreign investors through the bilateral investment promotion mechanism such as sino-Japan investment promotion agency.

(k) Where applicable, the role for sub national agencies in the approval processes.

Agency Address/telephone/fax Functions

Provincial and municipal commissions of foreign trade and economic relations e.g.

Beijing Municipal Foreign Economic Relations and Trade Commission

Contact: Wu Weihua

No. 190 Chao Nei Da Jie,Beijing, 100010, China

Tel: (86-10) 6523 6688-2020 Fax: (86 10) 6513 018

In charge of the initial examination of a project and the submission to the higher level of authority.

Regional environmental protection administration departments

e.g. Beijing Environmental Bureau

Contact: Zheng Jiang

No. 14, Chegongshuang Xi Lu, Haidian District, Beijing, 100044

Tel: (86-10) 6841 3817 Fax: (86 10) 6841 3836

In charge of project examination from the viewpoint of environmental protection.

Regional land administration departments

e.g. Beijing House and Land Administration Bureau

Contact: Liu Jianguo

No. 1, Nanwazi Hutong, Nanheyan Da Jie,

Dongcheng District, Beijing, 100006

Tel: (86-10) 6512 4104 Fax: (86-10) 6512 4104

In charge of the examination and approval of land purchase.

Regional city-planning administration departments.

e.g.: Beijing City-planning Administration Bureau

Contact: Sun Chunlong

No. 60, Nanlishi Lu, Xicheng District, Beijing, 100045

Tel: (86-10) 6852 2994 Fax: (86-10) 6853 2672

In charge of project examination from the viewpoint of city planning.

Regional domestic assets administration departments

e.g.: Beijing Domestic Assets Administration Bureau

Contact: Zuo Weihua

No. 4, Block 2, Shuang Yu Shu Nanli, Haidan District, Beijing, 100086

Tel: (86-10) 6217 0718/6217 0738 Fax: (86-0) 6217 0741

In charge of the recognition of the assets appraisal of the Chinese partner's assets contribution in the way of domestic assets.

2. MOST FAVOURED NATION TREATMENT/NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

(a) 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).

There is no discrimination among source economies in relation to the establishment, expansion and operation of foreign invested enterprises according to Chinese law.

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

In Bilateral Agreements for the Promotion and Protection of Investment between China and other economies, 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

(a) 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).

According to the 3rd version of the Regulation on Guiding Foreign Investment effective from April 1, 2002, those foreign-invested projects under one of the following circumstances shall be listed as restricted foreign-invested projects:

Projects adopting out-of-date technologies;

Projects unfavorable to resource-saving and ecological environment improvement;

Projects for prospecting and/or mining specified mineral resources protected by laws and regulations of the state;

Projects in industries to be opened gradually; and

other cases stipulated as restricted by the national law and regulations.

Those foreign-invested projects under one of the following circumstances shall be listed as prohibited foreign-invested projects:

Projects that endanger the national security or damage social and public interests;

Projects that pollute the environment, or destroy natural resources or causing harm to the public health;

Projects that occupy large amounts of farm land and are unfavorable to protection and development of land resources;

Projects that endanger the safety of military facilities an their performance;

Projects that adopt the unique craftsmanship or technology which China owns; and

other projects stipulated as prohibited by the national laws and regulations.

The 3rd version of the Industrial Catalogue for Guiding Foreign Investment has shown that foreign investors have to meet the requirements of equity ratio in certain industries. The details are as follows:

Encouraged Sectors

Cultivation of traditional Chinese medicines (equity joint ventures or contractual joint ventures only)

Exploitation and beneficiation of gold mines with low quality or difficult to beneficiate (equity joint ventures or contractual joint ventures only, wholly foreign owned enterprises are permitted in west region)

Prospecting and exploitation of copper ores, zinc ores (equity joint ventures or contractual joint ventures only, wholly foreign owned enterprises are permitted in west regions)

Prospecting and mining of aluminum ores (equity joint ventures or contractual joint ventures only, wholly foreign owned enterprises are permitted in west regions)

Construction and operation of integrated engineering raw material base with an annual production capacity of over 300,000 tons of chemical wood pulp of an annual production capacity of over

100,000 tons of chemical wood pulp (CTMP, BVTMP, APMP) (equity joint ventures or contractual joint ventures only)

Production of ethylene with an annual production capacity of 600,000 tons or over (the Chinese partners shall hold relatively majority of shares)

Smelting of gold mines with low quality or difficult to beneficiate (equity joint ventures or contractual joint ventures only)

Design and manufacture of civil planes (Chinese partners shall hold majority of shares)

Design and manufacture of civil helicopters (Chinese partners shall hold majority of shares)

Design and manufacture of civil air-borne equipment (Chinese partners shall hold majority of shares)

Design and manufacture of aero-plane engines (Chinese partners shall hold majority of shares)

Repairing, design and manufacture of special vessels, high-performance vessels (Chinese partners shall hold majority of shares)

Design and manufacture of the equipment and accessories of high-speed diesel engines, auxiliary engines, radio communication and navigation for vessels (Chinese partners shall hold majority of shares)

Thermal power plant equipment: manufacture of super critical units of 600,000 kw or over, large gas-turbine, gas-steam combined cycle power equipment, coal gasification combined cyclic (IGCC) technique and equipment, pressure boost fluidized bed (PFBC), large air-cooling power units of 600,000 kw or over (equity joint ventures or contractual joint ventures)

Hydropower plant equipment: manufacture of large pump-storage power units of 150,000 kw and over, large tubular turbine units of 150,000 kw or over (equity joint ventures or contractual joint ventures only)

Nuclear power plant equipment: manufacture of power units of 600,000 kw or over (equity joint ventures or contractual joint ventures only)

Power transmitting and transforming equipment manufacture of super high-voltage DC power transmitting and transforming equipment of 500 kilovolts or over (equity joint ventures or contractual joint ventures only)

Design and manufacture of civil satellites (Chinese partners shall hold the majority of shares)

Manufacture of civil satellites effective payload (Chinese partners shall hold the majority of shares)

Design and manufacture of civil carrier rockets (Chinese partners shall hold the majority of shares)

Manufacture of receiving equipment of satellite navigation and key components (equity joint ventures or contractual joint ventures only)

Manufacture of equipment for air traffic control system (equity joint ventures or contractual joint ventures only)

Construction and management of nuclear power plants (Chinese partners shall hold the majority of shares)

Construction and management of key water projects for comprehensive utilization (Chinese partners shall hold relative majority of shares)

Construction and management of grid of national trunk railways (Chinese partners shall hold the majority shares)

Construction of management of feeder railways, local railways and related bridges, tunnels and ferry facilities (equity joint ventures or contractual joint ventures)

Construction and management of civil airports (Chinese partners shall hold the relative majority shares)

Air transportation companies (Chinese partners shall hold the majority of shares)

General aviation companies for agriculture, forest and fishery (equity joint ventures or contractual joint ventures only)

Construction and management of metro and city light rail (Chinese partners shall hold the majority shares)

High education institutes (equity joint ventures or contractual joint ventures only)

Prospecting an exploitation of oil and natural gas: in cooperation with Chinese partner only

Exploitation of oil deposits (fields) with low osmosis: in cooperation with Chinese partner only

Development and application of new technologies that can increase recovery factor of crude oil: in cooperation with Chinese partner only

Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well-drilling, well-logging and downhole operation etc: in cooperation with Chinese partner only

Manufacturing of automobile and motorcycle: the proportion of foreign investments shall not exceed 50%

International liner and tramp maritime transportation business: the proportion of foreign investments shall not exceed 49%

International container multi-modal transportation: the proportion of foreign investments shall not exceed 50%. Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign ownership will be permitted no later than Dec. 11, 2005

Road freight transportation companies: Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign ownership will be permitted no later than Dec. 11, 2004

Accounting and auditing: in cooperation with Chinese partner and in the form of partnership only

Restricted sectors

Development and production of grain (including potatoes), cotton and oil-seed (Chinese partners shall hold the majority shares)

Processing of the logs of precious varieties of trees (equity joint ventures or contractual joint ventures only)

Exploring and mining of minerals such as wolfarm, tin, antimony, molybdenum, barite, fluorite (equity joint ventures or contractual joint ventures only)

Exploring and mining of special and rare kinds of coal (Chinese partners shall hold the majority shares)

Printing of publications (Chinese partners shall hold majority of shares except printing of package decoration)

Production of material medicines for addiction narcotic and psychoactive drug (Chinese partners shall hold majority of shares)

Manufacture of truck cranes of less than 50 tons (equity joint ventures or contractual joint ventures only)

Manufacture of crawler dozers of less than 320 horsepower, wheeled mechanical loaders of less than 3 cubic meter (equity joint ventures or contractual joint ventures only)

Railway passenger transportation companies (Chinese partners shall hold majority of shares)

General aviation companies engaging in photographing, prospecting and industry (Chinese partners shall hold the majority of shares)

Development of pieces of land (equity joint ventures or contractual joint ventures only)

Construction and operation of network of gas, heat, water supply and water drainage in large and medium sized cities (Chinese partners shall hold the majority of shares)

Medical treatment establishments (equity joint ventures or contractual joint ventures only)

Education establishments for senior high school students (equity joint ventures or contractual joint ventures only)

Construction and management of cinemas (Chinese partners shall hold the majority of shares)

Mapping companies (Chinese partners shall hold the majority of shares)

Other service sectors requested either for equity control or joint ventures include the following:

Cross-border automobile transportation, water transportation, rail freight transportation, telecommunication, commodities trade, sales agents, franchising, whole sale, retail and logistic distribution of grain, cotton, vegetable oil, sugar, pharmaceutical products, tobacco, automobile, crude oil, capital goods for agriculture production, whole sale and retail of books, newspapers, periodicals, whole sale of product oil, construction and operation of gasoline station etc.

(b) Briefly describe the nature and scope of any limitations on foreign firms' access to sources of finance. e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds?

Foreign invested enterprises 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, a foreign invested enterprise is not restricted to acquire loans from abroad, but is required to make a file with the State Administration of Exchange Control or its branches.

Foreign invested enterprises are forbidden to acquire loans from non-financial institutions.

4. REPATRIATION AND CONVERTIBILITY

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Foreign invested enterprises are required to provide the authorized banks with the following documents upon repatriation of distributed profits or dividends of foreign partners:

-tax-paid certificate and tax declaration forms

-audit report provided by accounting firms on profit and dividend of the year

-foreign exchange registration certificate for foreign-funded enterprises

-resolution of board of directors on distribution of profit and dividend

-capital verification report provided by accounting firms

-other documents required by foreign exchange administrations

Apart from providing the above-mentioned information, foreign-invested enterprises intending to repatriate profits or dividends of previous years should also entrust accounting firms to audit on the year after profits and dividends occurs, and provide banks with audit reports. The audit mentioned above is authenticity audit.

Any foreign-invested enterprise which has not fully paid in registered capital according to stipulations of contract, is not allowed to repatriate profit or dividend in foreign exchange.

Organizations within China (including foreign invested enterprises) should, before paying royalties for intangible assets, submit a series of certificates or receipts to authorized foreign exchange banks for screening. Only when these certificates and receipts have been checked and found correct, can enterprises make the payment or purchase foreign exchange for payment from their foreign exchange accounts.

Repayment of interests and fees related to foreign currency loans lent by Chinese financial institutions can be handled directly by authorized foreign exchange banks, while repayment of principals of these loans requires screening by foreign exchange administrations, and should be handled with approval documents issued by foreign exchange administrations. According to regulations on administration of foreign debt, on repaying principal, interest and related fees of foreign debt, borrowers should apply to foreign exchange administration with their "Foreign Debt Registration Certificates", loan contracts and repayment notice issued by creditors, and make the payment through foreign exchange accounts or by purchasing foreign exchange at designated banks with approval documents issued by foreign exchange administrations.

In case of expiration of foreign invested enterprises by law, the after-tax income in RMB earned by foreign partners after liquidation according to law, can be remitted abroad or taken abroad by purchasing foreign exchange from designated banks.

(b) Briefly describe the foreign exchange regime.

Convertibility of RMB

China took a significant step in reforming its foreign exchange administration system in 1994. China officially committed to the Article No. 8 of IMF Agreement in 1996, and realized free convertibility of RMB under current account.

To prevent mixing capital account transactions with those under the current account, to combat illegal foreign exchange transactions such as money laundry, and various behaviors without real transaction background, e.g., foreign exchange evasion and fraud, China still conducts the authenticity verification on current account transactions. According to the rules of the International Monetary Fund, this is not regarded as exchange restrictions.

To certain extent, the RMB has already become partly convertible under the capital account. In China, currently there are 8 capital transactions falling into the category of free convertibility, accounting for 18.6% of the total, which mainly include commercial loans between residents and non-residents, non-residents' direct investments in China, as well as the liquidation of foreign direct investment, and so on. There are 11 transactions falling into the category of convertibility with minor constraints, 25.6% of total, which mainly include purchase or issuance abroad of money market instruments by residents, financial credits and guarantees between residents and non-residents, outward direct investment, local purchase and sale of real estate by nonresidents, and so on. The categories of convertibility with major constraints and the strictly controlled include 18 and 6 transactions, or 41.9% and 13.9% of the total, respectively.

Administration on foreign debt

Foreign debt is incorporated into the State Reform and Development Commission (previously is the name of State Development and Planning Commission). Long-term loans (over one year) are under quotas control, while short-term loans (within one year) are under balance control. The authority of providing guarantee for foreign loans is limited only to financial organizations (excluding foreign invested financial organizations) which have been approved with authority to conduct guarantee business to third parties, and non-financial legal entities which have subrogation and repayment capabilities. Borrowing of foreign loans and guarantees must be registered at foreign exchange administrations. Foreign invested enterprises can borrow directly from outside China without prescreening, on the basis of "self-borrow and self-repayment", but post registration is required. Relevant parties can open special foreign exchange accounts at designated banks upon receiving the foreign exchange borrowed from outside China or raised by issuance of bonds and stocks in foreign currencies, as well as special foreign exchange for the purpose of repayment of foreign debt from inside and outside of China upon approval. Before repaying principals and interests of foreign loans, they should apply at foreign exchange administrations with foreign debt registration certificate for purpose of purchasing foreign exchange and repayment of loans from designated banks with approval documents.

RMB exchange rates

At present, the government adopts a unified managed floating exchange rate regime based on the market supply and demand. The current RMB rate formation mechanism is still immature, with such weaknesses as underdevelopment of domestic foreign exchange markets, enterprises and individuals' insufficient understanding of foreign exchange risk, the lack of market instruments to hedge against risks, and so on. Under the precondition of maintaining the RMB basically stable, the government will carry on the managed floating exchange rate regime on the supply-demand basis to improve the rate formation mechanism.

Balance of payment

China's macro administration system on international balance of payment is composed of a statistical reporting system on international balance of payment, a statistical monitoring system on foreign debt and a verification and cancellation system on receipt and payment of foreign exchange concerning import and export.

Since 1996, China has gradually established a complete statistical reporting system on the international balance of payment according to international prevailing practices. At present, a statistical reporting system on the international balance of payment has formed on half-year reporting bases, which consists of collaboration of indirect reporting through financial institutions with agitate, direct investment, portfolio investment and asset, debt, profit and loss of financial institutions to institutions outside China.

In order to completely, accurately and timely collect debt information from all over the country, effectively control the scale of foreign debt, improve the benefit of utilizing foreign capital, and to promote the development of national economy, China established statistical monitoring system on foreign debt in 1989, which is still in the process of improvement.

The systems of verification and cancellation on receipt of foreign exchange on export and verification and cancellation of payment of foreign exchange on import were set up in 1990 and 1994 respectively. They are now very important ways to supervise the foreign exchange capital flow in import and export transactions and prevention for foreign exchange loss.

The long-term goal of reform on China's foreign exchange administration system is to achieve complete convertibility of RMB. At present, China's macro adjustment and control mechanism remains to be further strengthened; the effective supervision system on financial institutions is to be improved; and banking system is in the transitional stage. Achieving RMB's convertibility under capital account will be in a progressive manner. There is no timetable for the achievement now.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

(1) According to the present regulations on foreign debt, organizations within China should, when repaying principals and interests of foreign debt, apply to foreign exchange administrations with their foreign debt registration certificates, loan arrangement contracts and notices of repayment of loan from creditors, and then with review and approval documents issued by foreign exchange administrations, they can repay the loans from their foreign exchange accounts or by purchasing foreign exchange from designated banks. Except for repaying interests, repaying principals of foreign exchange loans lent by financial institutions within China needs to be approved by foreign exchange administrations.

In case there is no stipulation on the anticipated payment in the contract, such anticipation is unallowable. When there are articles on anticipation in a loan contract, relevant parties can, upon approval by foreign exchange administrations, repay the loan with their foreign exchange equities.

Borrowers are not permitted to purchase foreign exchange with RMB for anticipation of foreign debt, re-granting of loans or dealer loans in foreign exchange. Repaying loans by purchasing foreign exchange in a different place is not permitted.

(2) Organizations within China needing foreign exchange for guarantee to others should apply to foreign exchange administrations with guarantee agreements, guarantee registration certificates, balance sheets of debtors and notice of payment from creditors. Then they can repay the loans from their foreign exchange accounts or by purchasing foreign exchange at designated banks.

(3) In case of increase or transfer (or by other ways) of capital (in foreign exchange) in an enterprise with foreign investment, the enterprise should apply for approval to foreign exchange administration with resolution of board of directors and other document required, and then it can make the payment from its foreign exchange account or honor at designated foreign exchange bank with notice on sale of foreign exchange issued by the foreign exchange administration. Foreign invested holding companies which invest with their foreign exchange capital or increase or reinvest with profit of the foreign counterparts in China should go through approval procedures at foreign exchange administrations.

5. ENTRY AND SOJOURN OF PERSONNEL

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature or the entry restriction.

Foreigners, who entering, passing through or residing in China, must go through procedures for entry, transit, and residence according to the "Law of the People's Republic of China on Administration over Foreigners' Entry and Departure". In accordance with reasons of foreigners' application for entry, the relevant department of the Chinese government will issue the corresponding visa of F, L, G, C or X type.

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Restrictions:

If foreign technical or administrative personnel want to enter China and get a job, or if an enterprise wants to employ a foreigner, they must submit applications for employment approval for the foreigner according to "Administrative Provisions on Foreigner's Employment in China". Description: Non-resident staff of foreign firms, together with their accompanying family members, must acquire occupation visas from the Chinese embassies located in their country, with employment credentials applied by their employers on their behalf before entering China (except for visa exemptions agreed upon through bilateral agreements), and go through formalities to obtain employment certificate from labor administrative departments within 15 days upon entry, and to receive residence certificate from public security departments within 30 days.

(c) Describe any regulation relating to personnel management of foreign firms, e.g., minimum wage laws, minimum requirements for training or employment of local staff.

Labor laws, regulations and rules applying to foreign invested enterprises mainly include Labor law of the People's Republic of China and its related rules and regulations, Regulations of the Labor Management in Foreign-funded Enterprises, Regulations of the People's Republic of China on Settlement of Labor Disputes in Enterprises.

(i) Laws and Regulations on Minimum Wage

The government implements the minimum wage security system. The detailed standards of minimum wage are determined by the provincial level governments and need to be filed to the State Council. The wage paid to the employee should not be lower than the local minimum wage standards.

(Article 48 *of Labor Law of the People's Republic of China*)

Minimum wage of the employee for legal work hour shall not be less than the local minimum wage level. Allocation of remuneration in enterprises shall follow the principle of equal pay for equal work. Wage level of the enterprise shall increase gradually on the basis of its profit growth. The enterprise shall determine wage level of the employees through collective negotiations, in line with the guidance of local government or labor authority.

(Article 14 *of Regulations of the Labor Management in Foreign Invested Enterprises*)

If the wage of an employee is below the minimum wage level, local labor authority shall order the Enterprise to make corrections within a limited time period. Apart from making up the difference between the actually paid wage and the minimum wage, the Enterprise shall also pay compensation to the employee worth 20% to 100% of the difference. If the Enterprise refuses to pay the difference and the compensation, it can be imposed with a fine worth one to three times of sum of the difference and the compensation.

(Article 29 *of Regulations of the Labor Management in Foreign-funded Enterprises*)

(ii) Laws and Regulations on Minimum Requirement for Training and Employment of Local Staff

Summary: Foreign-invested enterprises shall establish a system for professional training. Staff to be employed in technical ability with special requirements must receive training and shall take up their posts with qualification certificates.

Foreign invested enterprises can determine the organization establishment, payroll and decide the time, quality and means of hiring staffs by themselves according to their production and management characteristics. When foreign-funded enterprises employ staff and workers, they may apply to job introduction centers (or institutions) permitted by the local labor department. With the approval by labor administrative department, they can employ staff members trans-regionally,

including employing personnel with special technical ability, senior technicians and senior administrators from abroad whom are not available in China. Foreign-funded enterprises shall not employ the staff who has not yet revoked their labor relationship. Employment of child under 16 years old is strictly prohibited.

Foreign-invested enterprises should sign labor contracts with their employees under the principles of equality and voluntarism and reaching consensus through consultation. Labor contracts shall be identified by the labor administration departments with signature. In case a labor dispute occurs, parties concerned can make an application for arbitration to local labor arbitration departments. If any party refuses to accept the award, a legal proceeding may be taken to court.

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 invested 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.

If Enterprise recruits employee in violation of these Regulations, the local administrative department can impose fines worth 5 to 10 times of the average monthly wage of the recruited employee on the Enterprise and order the Enterprise to send back the recruited employee.

If the Enterprise or the employee violates the labour contract, infringes upon the interests of the other party and brings losses thereto, the Enterprise or the employee shall be held possible for compensation.

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. Workers who have worked continuously over one year can enjoy yearly holiday with salary.

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

The followings are the laws and regulations on disputes:

Labor Law of the People's Republic of China (Chapter 10);

Regulations on Settlement of Labor Disputes in Enterprises;

Regulations on Labor Management of Foreign-funded Enterprises;

Opinions on Some Issues on Implementation of Labor Law of the People's Republic of China.

Summary:

Where disputes arise between employer and employee, the parties may seek settlements through negotiation or apply for mediation, arbitration, or bring a lawsuit. After labor disputes arise, the parties may apply to a labor dispute mediation committee within their own work unit for mediation. If mediation fails and one party asks for arbitration, the party may apply to a labor dispute arbitration committee for arbitration. Whoever does not agree with the arbitration decision may bring a lawsuit to court.

Where disputes arise from signing a collective labor contract and the parties fail to settle them through negotiation, the local government may coordinate the parties concerned to seek settlements.

Where the parties fail to settle disputes arising from implementation of a collective labor contract by way of coordination, they may apply to labor dispute arbitration committee for arbitration. If they do not accept the arbitration decision, they may bring a lawsuit to the court.

6. TAXATION

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

Taxation arrangements

Summary

Value-added tax 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. The basic tax rate of VAT shall be 17%; for taxpayers selling or importing grains, cooking oils, running water, books and magazines, fertilizer, etc, the tax rate shall be 13%.

Consumption tax Consumption tax is levied over the production, subcontracting for processing and the importation of consumer goods as certain items of tobacco, alcoholic drinks and alcohol, cosmetic, skin-care and hair-care products, precious jewelry and precious jade and stones, firecrackers and fireworks, gasoline, diesel oil, motor vehicle tyres, 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. There are 11 taxable items and 14 tax rates of Consumption Tax, from the lowest 3% to the highest 45%.

Business tax According to "Provisional Regulations on Business Tax" promulgated by the State Council on 13 December 1993, business tax is levied on the provision of services such as communications and transportation, construction, finance and insurance, posts and telecommunication, culture and sports, entertainment, servicing, and the transfer of intangible assets or the sale of real estate within the territory of 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. There are 3 tax rates of Business Tax, from the lowest 3% (such as transportation and communication fee) to the highest 20% (such as entertainment).

Corporate Income Tax According to "Income Tax Law of the People's Republic of China for Foreign invested enterprises and Foreign Enterprises" and its implementation rules, any foreign-invested enterprise which establishes its head office in China shall pay its income tax on its income derived from sources inside and outside China. Any foreign enterprise shall pay its income tax on its income derived from sources within China. The basic income tax rate for foreign invested enterprises engaging in production or business operations is 30%, and a local income tax rate is 3%.

In addition, any foreign enterprise which has no establishments or place in China but derives profit, interests, rental, royalty and other income from sources in China, or though it has an establishment or place in China, the said income is not effectively connected with such establishment or place shall pay an income tax (withholding tax) of 20% on such income.

Stamp Duty Stamp Duty is levied over the procession of purchase and sale, machine, property tenancy, transportation, storage, loan, property insurance, technological contract etc. The lowest tax rate of Stamp Duty is 0,005%, and the highest is 0.1%. Each certificate of authorization and business account book (not include account book that records capital) must paste a stamp of 5 Yuan.

House Property Tax House property tax is levied in accordance with "the Provisional Regulations on Urban Real Estate Tax". In China, house property tax shall be levied on the housing property owned by foreign-invested enterprises, foreign enterprises, foreigners at a rate of 1.2% on an annual basis according to standard house price or at a rate of 12% in line with the rental of housing property.

Personnel Income Tax The personnel income tax on foreign nationals working in the PRC is levied in accordance with "the Personnel Tax Law". The rate of Personnel Income Tax is computed with progressive taxation, and is divided into 9 degrees from the lowest 5% to the highest 45%.

A favourable tax treatment is adopted for foreign-invested enterprises, mainly as the following:

Preferential corporate income tax rate

The normal income tax rate is 30%. However, foreign invested enterprises can apply, according to their locations of different regions and industries they engage in, for reduced income tax levied at the rates of 24% or 15%.

The 15% preferential rate of income tax apply to:

-Foreign invested enterprises located in Special Economic Zones;

-Production oriented enterprises with foreign investment located in Pudong New District, Shanghai;

-Production oriented enterprises with foreign investment located in state economic and technological development areas;

-High-tech oriented enterprises located in state new and high-tech industrial zones.

-Foreign invested enterprises that are engaged in projects such as energy, communications, harbour etc.

The 24% preferential rate of income tax apply to:

-Production oriented enterprises with foreign investment located in open coastal economic zones, cities;

-Production oriented enterprises with foreign investment located in the old part of cities possessing special economic zones or state economic and technological development areas.

Income Tax Holiday

Production oriented enterprises with foreign investment that have an operation period exceeding 10 years, shall from the first profit-making year, be exempted from income tax the first and the second years and allowed a 50% reduction in the third to the fifth years.

Technology oriented enterprises with foreign investment shall be exempted from income tax for the first two years and allowed a 50% reduction for the following six years.

Export oriented enterprises with foreign investment shall be exempted from income tax for the first two years and allowed a 50% reduction for the following three years. In addition, this type of enterprises shall be allowed a reduced income tax rate of 50% as long as their annual export accounts for 70% or more of their sales (the minimum tax rate shall be 10% if enterprise enjoys double preferential tax treatment).

he income tax on foreign invested enterprises located in Central and Western China that are engaged in projects encouraged by the government shall be levied at a reduced rate of 15% for a period of another three following the expiration of the five-year period of tax exemption and reduction.

Reinvestment and tax refund

Foreign investors reinvest in its share of profit obtained from the established enterprise with an operation period of no less than 5 years shall, upon approval by the taxation authority, be refunded 40% of the income tax already paid on the reinvested amount. Foreign reinvested export oriented enterprises shall be refunded 100% of the income tax already paid on the reinvestment amount.

Deduction of local tax

The exemption and deduction of local income tax on foreign invested enterprises that are engaged in encouraged industries shall, be decided by local governments of province, autonomous region and municipality.

Tariff exemption for imported machinery and equipment

Machinery and equipment imported for foreign invested or domestic invested projects that are encouraged and supported by the state shall, enjoy tariff and import-stage VAT exemption if the commodities are not listed in the Catalogue of Imported Commodities not Entitled for Tariff Exemption for Foreign invested projects.

7. PERFORMANCE REQUIREMENTS

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

Chinese government keeps on reviewing its existing laws and statutes since 2000. Three basic laws on FDI and the detailed rules for the implementation of the Law on Chinese-Foreign Equity

Joint Ventures, Chinese-Foreign Contractual Joint Ventures and the Law on Wholly Foreign-owned enterprises have been revised since 2000. The restrictions on the requirement of balance of foreign exchange, export performance and localization of supplies etc have been removed.

8. CAPITAL EXPORTS

(a) List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Regulations: In Bilateral Investment Protection Agreements between China and other economies, 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 economy.

Application and function:

Chinese enterprises are allowed to make overseas investment subject to approval by relevant authorities.

(b) 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

(a) 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 organization 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

(a) 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 Reform and Development Commission, the Ministry of Commerce, 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.

The department of Fair Trade and the department of industry investigation have been set up after China's accession into WTO.

In addition, the issue of anti-monopoly has taken into account when drafting the relevant regulations.

(b) 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 been 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. Apart from 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 economies 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 five 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 re-stipulated.

In l992, 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 Producers of Phonogram Against Unauthorized Duplication.

In l993, China revised both its Trademark Law and the Rules for its implementation to expand the range of trademarks protected. AII these regulations are consistent with the requirements of TRIPS.

In l993, the Supplementary Regulations on Punishing Criminal Counterfeiting of Registered Trademarks were promulgated to further intensity 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.

The law enforcement system for IPR in China

China has established a comprehensive judicature and administrative mechanism for enforcement:

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.

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 is cracking down on infringement of IPR.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

(a) 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 stipulated that the State will not nationalize or expropriate any foreign invested enterprises; only under special circumstances, for the requirement of social and public interests, foreign invested enterprises may be expropriated in accordance with legal procedures, and appropriate compensation shall be provided.

China has signed Bilateral Investment Protection Agreement with more than 103 economies by the end of year 2002. 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.

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

Not applicable.

2. SETTLEMENT OF DISPUTES

(a) 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 utilize. They are arbitration, conciliation and litigation.

Arbitration

The Arbitration law of P. R.C. was promulgated on 31 August 1994. According to the law, the principle of voluntarism 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 ruing 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.

With the promulgation of Arbitration Law in 1995, both China International Economic and Trade Arbitration Commission (ClETAC) and Arbitration Commissions established by local government handle international commercial disputes. China Maritime Arbitration Commission (CMAC) is the commission in China which handles international maritime disputes.

Conciliation

Conciliation in China falls into five categories, i.e. 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 timely judgment. When the parties through conciliation reach upon a settlement agreement, 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 Intentional 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 CIETAC 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.

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.

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.

Approved by the State Council, China signed, examined and approved MIGA in 1988.

Bilateral Investment Protection Agreements (IPA)

Since 1982, the first IPA was signed between China and Sweden; China has signed 103 IPAs with other economies by the end of 2002. All the IPAs have provisions for settlement of disputes between one country and investor of another country. Investors are encouraged to first settle 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.

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.

According to the stipulations in Administrative Procedure Law, the people's court shall exercise judicial power independently with respect to administrative cases, and shall not be subject to interference by any administrative organ, public organization or individual.

AgencyAddress/telephone/fax

China International Economic and Trade Arbitration Committee

East Beisanhuan Road, Beijing, 100028, China

Tel: (86-10) 6466 4433Fax: (86-10) 6467 7335

(b) Signatory or accession to the ICSID Convention.

China acceded to the ICSID Convention in 1992.

D. INVESTMENT PROMOTION AND INCENTIVES

1. Briefly describe any investment promotion program offered at both the national and sub-level (e.g. 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.

China International Fair for Investment & Trade (CIFIT), sponsored by MOC, is currently the only national investment promotion event in China. It focuses on two themes-attracting FDI to China and encouraging Chinese enterprises to invest abroad. The fair is held every September in Xiamen, Fujian since 1997. During this period, there is an "International Investment Forum" which serves as a significant platform for discussing hot issues on FDI. State leaders of China, senior foreign government officials, leaders of international economic organizations, famous entrepreneurs and celebrated personages in economics will give speeches at the forum. Various seminars concentrating on FDI policies in different industries will be held in addition to the project display.

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 difficult to provide all the addresses and telephone numbers of the provinces and municipalities.

At the central level, the relevant department is Foreign Investment Administration, MOFCOM.

Contact: Mr. Cao Hongying

Address: No. 2, Dong Chang An St., Beijing, 100731

Tel: (86-10) 65197886

Fax: (86-10) 65197322

2. Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.

Tax incentives are adopted by Chinese government as a major tool for encouraging foreign investors o set up foreign invested enterprises in China. Please refer Part 6 "Taxation".

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

MOFCOM branches at provincial levels have set up the Foreign Investment Service Center to provide one-stop shop service. The followings are the examples of the contact points.

Beijing Municipal Foreign Economic Relations and Trade Commission

Add: No. 190 Chaoyangmen Nei Street, Dongcheng District, Beijing

Zip: 100010

Tel: 86-10-65248767

Fax: 86-10-65130181

Email: jmwcjc@hotmail.com

Website: http://www.bjfetc.gov.cn

Shanghai Foreign Investment Commission

Add: 17 Floor New Town Mansion

55 Lou Shan Guan Rd, Shanghai

Zip: 200336

Tel: 86-21-62752200

Fax: 86-21-62754200

Website: http://www.investment.gov.cn

Shanghai Foreign Investment Service Center

Add: 16 Floor New Town Mansion

55 Lou Shan Guan Rd, Shanghai

Zip: 200336

Tel: 86-21-62755191

Fax: 86-21-62758166

Email: shinvest@sfisc.com

Website: http://www.sfisc.com

Tianjin Municipal Foreign Economic Relations and Trade Commission

Add: No. 80 Qu Fu Dao, Heping District, Tianjin

Zip: 300042

Tel: 86-22-23304858

Fax: 86-22-23315231

Website: http://www.goldentianjin.net

Chongqing Municipal Foreign Economic Relations and Trade Commission

Add: Building 22, 65 Jianxin North Rd, Jiangbei District, Chongqing

Zip: 400020

Tel: 86-23-69019537, 69019455

Fax: 86-23-69019397

Website: http://www.ft.cq.cn

Chongqing Foreign Investment Service Center

Add: Floor 18, Foreign Trade Mansion

No. 65 Jianxin North Rd, Jiangbei District, Chongqing

Zip: 400020

Tel: 86-23-65019579, 65019478

Fax: 86-23-69019487

Email: cferc@163.com

Jiangsu Foreign Trade and Economic Cooperation Commission

Add: No. 30 Zhonghua Rd, Nanjing, Jiangsu

Zip: 210008

Tel: 86-25-2254455

Fax: 86-25-7712072

Guangdong Foreign Trade and Economic Cooperation Commission

Add: No. 351 Tianhe Rd, Guangzhou, Guangdong

Zip: 510620

Tel: 86-20-388-2165

Fax: 86-20-38802219

Email: cujin@gddoftec.gov.cn

Website: http://www.gddoftec.gov.cn

Shenzhen Foreign Trade and Economic Cooperation Bureau

Add: Floor 3, Government Building 2,

1023 Shangbu Central Rd, Shenzhen

Zip: 518006

Tel: 86-755-82104117

Fax: 86-755-82099760

Website: http://www.szboftec.gov.cn

Shenzhen Foreign Investment Service Center

Add: No. 6 Tongxin Rd, Shenzhen

Zip: 518027

Tel: 86-755-82101421

Fax: 86-755-82102191

Website: http://www.szboftec .gov.cn

Sichuan Foreign Trade and Economic Cooperation Commission

Add: No. 4 Chenhua Street, Chengdu, Sichuan

Zip: 610081

Tel: 86-28-83231115, 83221294

Fax: 86-28-83224675

Email: waizi@scbg.org.cn

Website: http://www.sichuaninvest.gov.cn

Sichuan Foreign Investment Service Center

Add: Building 7A Sichuan International Mansion

206 Shuncheng Street, Chengdu, Sichuan

Zip: 610015

Tel: 86-28-86521111

Fax: 86-28-86520199

Email: scefioff@mail.sc.cninfo.net

Website: http://www.scfesco.com.cn

Fujian Foreign Trade and Economic Cooperation Commission

Add: No. 92 Liuyi North Rd, Fuzhou, Fujian

Zip: 350013

Tel: 86-591-7841917

Fax: 86-591-7856133

Website: http://www.fiet.gov.cn

Fujian Foreign Investment Service Center

Add: Floor 16, Pingdong Building,

No. 128 Hualin Rd, Fuzhou, Fujian

Zip: 350003

Tel: 86-591-7817956, 7842758

Fax: 86-591-7843753

Email: fjfisc@163.com

Website: http://www.fjfdi.com

E. SUMMARY OF INTERNATIONAL INVESTMENT TREATIES OR CODES TO WHICH APEC MEMBERS IS A PARTY

1. Agreements to which economy is a party, including details of the 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

None.

Bilateral Investment Treaties

By the end of 2002, China has signed Bilateral Investment Treaties with 103 countries. Of these, 83 are in force (Sweden, Germany, France, Belgium and Luxemburg, Finland, Norway, Italy, Thailand, Denmark, Austria, Singapore, Kuwait, Sri Lanka, the United Kingdom, Switzerland, Poland, Australia, Japan, Malaysia, New Zealand, Pakistan, Bulgaria, Ghana, Turkey, Papua New Guinea, Hungary, Mongolia, Czech and Slovak Federal Republic, Portugal, Mongolia, Spain, Uzbekistan, Bolivia, Kirghizia, Greek, Armenia, Philippines, Kazakhstan, Republic of Korea, Ukraine, Argentina, Moldova, Turkmenistan, Viet Nam, Byelorussia, Laos People's Democratic Republic, Albania, Kyrgyz Stan, Tsjikistan, Croatia, United Arab Emir, Esthonia, Slovakia, Lithuania, Uruguay, Azerbaijan, Ecuador, Chile, Ice Land, Egypt, Peru, Romania, Jamaica, Indonesia, Armenia, Morocco, Cuba, Saudi Arabia, Mauritius, Zimbabwe, Lebanon, Cambodia, Syria, Sudan, Methadone, South Africa, Yemen, Cape Verde, Ethiopia, Barbados, Qatar, Bahrain, Cyprus, Myanmar); 20 have been signed BITs (Netherlands, Nigeria, Israel, Yugoslavia, Zambia, Bangladesh, Algeria, Gabon, Cameroon, Congo King, Congo, Botswana, Iran, Brunei Darussalam, Sierra Leone, Mozambique, Kenya, Jordan, Bosnia And Herzegovina, Trinidad and Tobago).

The basic contents of the agreements are stated below:

A contracting party shall grant MFN treatment to the investors from another contracting party.

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.

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.

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.

Regional or sub regional Investment Treaties

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 1 July 1992. Approved by the State Council, China signed, examined and approved MIGA in 1988.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. Provide an overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward and outward).

In 2002, newly approved foreign-invested enterprises reached 34171 growing by 30.72% over the year 2001, the amount of contractual investment reached 82.77 billion US dollars and the amount of actual investment reached 52.74 billion US dollars, growing by 19.62% and 12.51% respectively.

By the end of the year 2002, the cumulative numbers of approved foreign-invested projects are 424,196, with US$828.06 billion in cumulative contractual investment and US$448 billion cumulative actual investment.

Trends of FDI Inflows by Year since 1979

In Billion US Dollars

Year	No. of projects	Contractual Investment	Actual Investment
1979-1982	920	4.96	1.77
1983	638	1.92	0.92
1984	2,166	2.88	1.42
1985	3,073	6.33	1.96
1986	1,498	3.33	2.24
1987	2,233	3.71	2.31
1988	5,945	5.3	3.19
1989	5,779	5.6	3.39
1990	7,273	6.6	3.49
1991	12,978	11.98	4.37
1992	48,764	58.12	11.01
1993	83,437	111.44	27.52
1994	47,549	82.68	33.77
1995	37,011	91.28	37.52
1996	24,556	73.28	41.73
1997	21,001	51	45.26
1998	19,799	52.1	45.46
1999	16,918	41.22	40.32
2000	22,347	62.38	40.72
2001	26,140	69.2	46.88
2002	34,171	82.77	52.74
Total	424,196	828.06	448

Source: Ministry of Commerce

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

Source FDI

As of the end of 2002, the top 5 investors in terms of cumulative actual investment are: Hong Kong China, the United States, Japan, Chinese Taipei, Singapore.

Major FDI Sources by Economies in Actual Investment

in Billion US Dollar

Economy	1997	1998	1999	2000	2001	2002
Hong Kong, China	20.63	18.51	16.36	15.5	16.72	17.86
B. V. I	1.72	4.03	2.66	3.83	5.04	6.12
U S	3.24	3.9	4.22	4.38	4.43	5.42
Japan	4.33	3.4	2.97	2.92	4.35	4.19
Chinese Taipei	3.29	2.92	2.6	2.3	2.98	3.97
Republic of Korea	2.14	1.8	1.27	1.49	2.15	2.72
Singapore	2.61	3.4	2.64	2.17	2.14	2.34
Cayman Island	0.16	0.32	0.38	0.62	1.07	1.18
Germany	0.99	0.74	1.37	1.04	1.21	0.93
U.K	1.86	1.18	1.04	1.16	1.05	0.9
Total in China	45.26	45.46	40.32	40.72	46.88	52.74

Source: Ministry of Commerce

Destination FDI:

The top five are: Hong Kong, China; United States; Australia; Russia and Macao.

In 2002, there was 350 overseas investment projects made by Chinese enterprises upon approval or file to Ministry of Commerce, the amount of contractual investment was USD1.45 billion including the amount of USD0.98 billion made by Chinese enterprises.

By the end of the year 2002, the cumulative numbers of overseas investment projects were 6,960; the cumulative amount of contractual investment was USD13.78 billion including the amount of USD9.34 billion made by Chinese enterprises.

HONG KONG, CHINA

HONG KONG, CHINA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Brief description of foreign investment policy including any recent policy changes.

The Government of the Hong Kong Special Administrative Region (HKSAR) firmly believes in, and supports, a free market economy and a liberal investment regime. There are no restrictions on outward investment and an open inward investment regime is in place, which is best witnessed by:

- a level playing field to all investors, be they domestic or overseas, and to all types of investments;
- no restrictions on corporate ownership and no foreign exchange controls;
- rule of law and an impartial judicial system under which private property rights are fully guaranteed and protected;
- free flows of news and information; and
- transparency of laws and regulations.

As a corollary of this free market policy, there has been a sustained growth in both outward and inward investment attributed to Hong Kong, China (HKC) during 1998-2001. The stock of outward direct investment at market value amounted to US$353 billion as of end-2001 and the corresponding inward direct investment was US$419 billion. The *World Investment Report 2002* published by the United Nations Conference on Trade and Development ranked Hong Kong as the second best-performing host economy for foreign direct investment in the world after Belgium/Luxembourg. In 2002, the Heritage Foundation rated Hong Kong as the world's freest economy for the ninth consecutive year since 1994.

2. Summary of significant public statements which most accurately describe and define philosophies, policies and attitudes toward foreign (inward and outward) investment.

In his Policy Address in October 2001, the Chief Executive reaffirmed the HKSAR Government's determination to maintain Hong Kong's many advantages, including its unique position, favourable business environment and pool of entrepreneurial talents and enterprises. He stated that to continue moving forward, Hong Kong must build on its existing strengths as well as foster further economic growth by applying new knowledge and utilising the latest technology. On economic restructuring, he highlighted, among other things, that Hong Kong should enhance the soft and hard infrastructure, and improve the business environment and the quality of its living environment.

The Financial Secretary in his Budget Speech of March 2002 elaborated on the HKSAR Government's policy towards foreign investments. The following excerpts are relevant:

"As we undergo economic restructuring, we must consider what are our strengths and play to the best of them.

Our strengths lie in the following four areas -

- first, our geographic location. Hong Kong is at the centre of Asia. Our hinterland, the Mainland, is the fastest-growing economy in the world. Other cities cannot claim this advantage;
- second, our institutional strengths. These include 'One Country, Two Systems', the rule of law, a level playing field, clean government, the free flow of information, a simple and low tax regime, and an efficient and effective market-regulatory system. These institutional strengths, developed over many years, have deep roots;
- third, our talent. Hong Kong is rich in talent in fields such as business, management, and professional services, as well as some aspects of scientific research and education. These individuals are biliterate and trilingual, and familiar with both Chinese and Western cultures, management, business operations, mindset and practices; and
- fourth, our strong business base. Over the years, many leading enterprises have built up a strong presence in Hong Kong. They complement and support each other, and create a clustering effect that helps attract more high-value-added business activities to Hong Kong."

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

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

There are no dedicated legislation, regulations and administrative guidelines that regulate foreign investment in HKC.

(2) Investment Review and Approval

(a) Details of proposals and sectors that are/are not subject to screening.

There are no screening requirements for foreign investment proposals.

(b) 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.

Not applicable.

(c) Application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.

Not applicable.

(a) Contact point(s) to which applications should be made, and addresses, phone/fax numbers for contacts.

Not applicable.

(e) *Website through which applications could be made on line.*

Not applicable.

(f) Average period from the formal submission of all relevant/required documentation to final approval/rejection.

Not applicable.

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

Not applicable.

(h) Description of conditions that need to be met for an expedited review of a foreign investment proposal.

Not applicable.

(i) 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.

Not applicable.

(j) 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.

(k) Opportunities for comment (foreign and domestic) on existing foreign investment regulations, or for proposed changes to the foreign investment regime, and the nature of theses processes.

Not applicable.

(l) Where applicable, the role for sub-national agencies in the approval process. List of the agencies (including their addresses and phone/fax numbers) and their roles in the approval process (e.g. zoning, approval of land purchase).

Not applicable.

2. MOST-FAVOURED-NATION TREATMENT/NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

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

HKC does not maintain any MFN exceptions in relation to the establishment, expansion and operation of foreign investment.

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

Being a party to the Marrakesh Agreement Establishing the World Trade Organization (WTO), HKC has not listed any MFN exemptions in its schedule of commitments in the General Agreement on Trade in Services of the WTO.

3. NATIONAL TREATMENT

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

Sector	Nature of Exception(s) to National Treatment
Broadcasting	As stipulated in the Broadcasting Ordinance (Chapter 562), unqualified voting controllers (i.e. those who do not satisfy the "ordinarily resident in HKC" requirement) are subject to the restriction of a maximum of 49% of the total voting control at a general meeting of a company which is a domestic free television programme service licensee. As regards a sound broadcasting licensee, the aggregate ownership of voting shares by persons not ordinarily resident in HKC in the company is limited to a maximum of 49%, as prescribed by the Telecommunications Ordinance (Chapter 106).

Sector	Nature of Exception(s) to National Treatment
Banking	Since November 2001, overseas incorporated banks are no longer subject to any branching restriction. Moreover, the entry requirements for local and overseas incorporated bank applicants have been broadly aligned. For prudential reasons, however, all authorised deposit-taking institutions (local or overseas) must appoint a chief executive and not less than one alternate chief executive who are ordinarily resident in HKC.
Insurance	The chief executive appointed by an authorised insurer should normally reside in HKC.
Other Financial Services	Residency requirement in HKC applies to dealers engaging in securities or commodities futures business.
Maritime Transport	Income derived from international operation of ships registered in the Hong Kong Shipping Register is exempted from Hong Kong, China's profits tax. The exemption is to balance accounts for these registered shipowners who are required to pay tonnage fees to the Hong Kong Shipping Register.

(b) Description of the nature and scope of any limitations on foreign firms' access to sources of finance, e.g. restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

There are no limitations in HKC on foreign firms' access to sources of finance.

4. REPATRIATION AND CONVERTIBILITY

(a) 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 in HKC for the repatriation of funds related to foreign investment.

(b) Brief description of the foreign exchange regime.

The linked exchange rate system has been adopted in HKC since October 1983. This is basically a currency board system which requires the monetary base to be fully backed by foreign reserves at the fixed exchange rate. In HKC, the monetary base comprises the Certificates of Indebtedness against which banknotes are issued, notes and coins issued by the government, the sum of clearing account balances held by banks with the Hong Kong Monetary Authority (HKMA) for settlement purposes (i.e. the Aggregate Balance) and outstanding Exchange Fund Bills and Notes. Certificates of Indebtedness are issued and redeemed against US dollars at the fixed exchange rate of HK$7.80 to US$1. The HKMA undertook on 5 September 1998 to convert Hong Kong dollar balances held by banks in their clearing accounts with the HKMA into US dollars at the rate of HK$7.75 to US$1. The exchange rate under such Convertibility Undertaking moved by 1 pip (i.e. HK$0.0001) per calendar day from 7.75 starting from 1 April 1999, and converged with the

convertibility rate applicable to the issuance and redemption of the Certificate of Indebtedness at 7.80 on 12 August 2000. Since then, the rate stays at HK$7.80.

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 Certificates of Indebtedness and the exchange rate under the Convertibility Undertaking, the market exchange rate stays close to the rate of HK$7.80 to US$1.

(c) Restrictions on the convertibility of currencies for the overseas transfer of funds.

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

5. ENTRY AND SOJOURN OF PERSONNEL

(a) Description of any permits/entry visa requirements for non-resident staff of foreign firms and the nature of the entry restriction.

For the purpose of making a business visit to HKC, most foreign nationals may enter HKC visa-free, except for nationals of those countries who require a visit visa/permit for entry. During the visitors' sojourn in HKC, they are permitted to conduct business activities such as attending meetings, conferences, seminars and trade fairs; negotiating and signing contracts; purchasing goods; giving advice on business matters; and making investments in the financial and property markets.

Foreign nationals wishing to take up employment or to establish or join in a business operation in HKC need to apply for an employment visa/permit. They must possess special skills, knowledge, or experience of value to and not readily available in HKC, or be in a position to bring substantial economic contribution to HKC.

(b) 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 requirements and criteria mentioned in Section B5(a) above also apply to foreign technical and managerial personnel. Immediate family members such as spouse and unmarried dependent children of foreign nationals permitted to work or invest in HKC are normally allowed to take up residence as dependants in HKC.

(c) 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 labour legislation of the HKSAR applies equally to local and foreign firms. The local employees and expatriate staff of companies in HKC enjoy the same degree of protection provided in the labour legislation.

The HKSAR Government does not regulate the wage levels of workers by legislative means, and employers and employees are free to negotiate wage levels. The prevailing wage rates essentially reflect the situation of demand and supply in the labour market.

The Employment Ordinance (Chapter 57) prescribes the statutory minimum standards for employers to comply with in granting employment benefits (e.g. rest days, statutory holidays, paid annual leave, sickness allowance, etc.) to their employees, and provides for severance payment and long service payment payable by employers to employees. Under the Ordinance, employees may seek remedies of reinstatement/re-engagement or terminal payments for unreasonable dismissal, unreasonable variation of the terms of employment contracts, and for unreasonable and unlawful dismissal.

The Employees' Compensation Ordinance (Chapter 282) provides for payment of compensation to employees and family members of deceased employees, for injuries and fatalities caused by accidents arising out of and in the course of employment or by certain prescribed occupational diseases. The Ordinance applies to all workers who are employed under a contract of service or apprenticeship. All employers are required to possess valid insurance policies to cover their liabilities under the Ordinance and the common law.

The Factories and Industrial Undertakings Ordinance (Chapter 59) and the Occupational Safety and Health Ordinance (Chapter 509) and their subsidiary legislation prescribe minimum safety and health standards in workplaces. Employers are required to provide a safe and healthy workplace for their employees in such areas as safety management, accident prevention, fire prevention, first aid, work environment and hygiene.

The Disability Discrimination Ordinance (Chapter 487), the Sex Discrimination Ordinance (Chapter 480) and the Family Status Discrimination Ordinance (Chapter 527) prohibit discrimination in the context of employment against persons with a disability at work, or on grounds of sex, marital status or pregnancy, or that of family status.

(d) List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

The labour legislation of the HKSAR applies equally to local and foreign firms. The laws relating to labour disputes/relations are summarised below:

Ordinance	**SUMMARY**
Labour Relations Ordinance (Chapter 55)	The Ordinance embodies a set of procedures for settling labour disputes including conciliation, special conciliation, mediation, arbitration, board of inquiry and other actions as necessary.

Ordinance	SUMMARY
Employment Ordinance (Chapter 57)	The Ordinance gives all employees the right to become members or officers of trade unions; to take part in trade union activities; and to associate with other persons for the purpose of forming or registering a trade union. Employers are prohibited from preventing or deterring employees from exercising these rights and from dismissing, penalising or discriminating against them for doing so. The Ordinance also gives employees the right to claim remedies if they are dismissed for exercising their rights in respect of trade union membership and/or trade union activities within 12 months immediately before such dismissal. The remedies which the employee may seek include reinstatement/re-engagement or terminal payments and an award of compensation.
Employees' Compensation Ordinance (Chapter 282)	The Ordinance establishes a no-fault, non-contributory employee compensation system, whereby individual employers are liable to pay compensation for work-related accidents or prescribed occupational diseases. It requires all employers to possess valid insurance policies to cover their liabilities under the Ordinance and damages at common law.
Trade Unions Ordinance (Chapter 332)	The Ordinance provides for the registration of trade unions and other matters ancillary to better administration of trade unions such as application of funds, making of rules and rights and liabilities of trade unions. Protection against civil suits for certain acts committed in furtherance of labour disputes is also given to registered trade unions, trade union members/officers, employees and employers under this Ordinance.
Protection of Wages on Insolvency Ordinance (Chapter 380)	The 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 (Chapter 453)	The Ordinance establishes the Minor Employment Claims Adjudication Board within the Labour Department of the HKSAR Government to adjudicate minor employment claims when settlement cannot be achieved through conciliation. The Board is empowered to adjudicate employment claims not exceeding 10 claimants per case with claims not more than HK$8,000 per claimant.

6. TAXATION

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

HKC operates a territorial basis of taxation under which taxes are only imposed on profits or income of a Hong Kong source. The Inland Revenue Ordinance (Chapter 112) imposes three separate taxes, namely, profits tax, salaries tax and property tax.

Taxation Arrangements	Summary
Profits tax	The tax is charged on profits arising in, or derived from, HKC from a trade, profession or business carried on in HKC. Profits tax is charged on corporations at the rate of 16% 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. There are no taxes on capital gains or interest received by individuals and corporations from financial institutions. 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 (see Section D.1 below for details).
Salaries tax	Salaries tax is charged on income arising in, or derived from, HKC from any office or employment, including income derived from services rendered in HKC and any pension. Tax payable is calculated on a sliding scale which progresses from 2% to 17%. However, no one pays a rate higher than 15% of their total income.
Property tax	The owner of land and/or buildings in HKC 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.

Taxation Arrangements	Summary
Double taxation agreements	The HKSAR has entered into an Arrangement with the Mainland of China for the avoidance of double taxation on income. The Arrangement covers airline and shipping operations as well as other areas, such as business profits of enterprise which carries on business through permanent establishment. HKC is seeking to establish a network of bilateral comprehensive Avoidance of Double Taxation Agreements with its trading partners to minimise the scope for double taxation and remove investment disincentives caused by double taxation. In addition, HKC has concluded a number of specific agreements on shipping profits (with the Netherlands, the United Kingdom and the United States) and airline profits (with Bangladesh, Belgium, Canada, Denmark, Estonia, Germany, Israel, the Republic of Korea, Mauritius, the Netherlands, New Zealand, Norway, the Russian Federation, Sweden and the United Kingdom).

7. PERFORMANCE REQUIREMENTS

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

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

8. CAPITAL EXPORTS

(a) 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 from HKC.

(b) List and brief description of any regulations/institutional measures that limit technology exports.

There are no regulations/institutional measures that limit technology exports from HKC.

9. INVESTOR BEHAVIOR

(a) 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. COMPETITION POLICY

(a) Brief outline of the competition policy regime.

The HKSAR 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. HKC's open economy, which exposes its traders and producers to acute international competition, is a good illustration of this policy.

The HKSAR 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 may adopt appropriate and pragmatic measures to rectify any unfair business practices, safeguard competition and protect consumer interests.

The HKSAR Government recognises that there are circumstances where free competition may not be practicable or may not be the best solution, such as in situations 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, the HKSAR Government may seek to achieve 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.

The HKSAR Government has taken a sector-specific approach to promote greater competition. The deregulation and liberalisation in telecommunications is a notable example. Government will promote competition and safeguard consumers' interests in the few business sectors which are subject to regulatory control. The regulatory framework in force is reviewed and revised from time to time, to identify areas for possible improvement and to meet the needs of changing circumstances.

To discourage unfair, deceptive or misleading business practices, the HKSAR Government has put in place a package of legislation including the Trade Descriptions Ordinance (Chapter 362), the Control of Exemption Clauses Ordinance (Chapter 71), the Unconscionable Contracts Ordinance (Chapter 458), the Supply of Services (Implied Terms) Ordinance (Chapter 457) and the Sales of Goods Ordinance (Chapter 26). A Consumer Legal Action Fund administered by the Consumer Council assists consumers to take individual or collective legal action against unscrupulous traders. The Trade Practices Division of the Consumer Council examines business practices which may prevent, restrict or distort competition, with a view to tendering advice to the HKSAR Government on measures to promote healthy competition.

11. OTHER MEASURES

(a) 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 in HKC

The HKSAR Government strives to provide effective protection of intellectual property through:

- the administration of comprehensive intellectual property and related laws which provide for civil redress for owners of intellectual property rights and criminal sanctions for the manufacture and sales of pirated and counterfeit goods;
- the provision of an efficient and impartial judicial system to deal with law suits relating to intellectual property; and
- the promotion of public awareness in the importance of intellectual property rights and their protection.

The comprehensive legal framework in HKC enables both foreign nationals and local residents to exploit and protect their intellectual property rights.

Enforcement of Intellectual Property Rights

Intellectual property rights in HKC are primarily civil rights, and the prime responsibility for their protection and enforcement rests with the owner of these rights. To complement civil actions by the owners, there are also criminal sanctions against the manufacture and distribution of pirated works and counterfeit goods.

Work of the Intellectual Property Department

The primary task of the Intellectual Property Department (IPD) of the HKSAR Government is to ensure that HKC has an intellectual property regime commensurate with its status as an international trading and financial centre. The IPD advises Government on policies and legislation to protect intellectual property in HKC; provides high-quality and responsive patent, trade mark and design registration services to the public; and promotes awareness in the community at large of the importance of intellectual property protection.

Intellectual Property Categories

The following table sets out some general characteristics of different types of intellectual property protected in HKC.

	Trade Marks	Patents	Copyright	Designs	Integrated Circuit Designs	Plant Varieties
Types of subject-matter normally protected	Trade or service marks	Inventions	Literature, music, photographs, computer software, films, broadcasts	Industrial product designs, fabric designs	Layout designs of integrated circuits ("mask works")	New agricultural or horticultural plant varieties
Whether registration is required for effective protection in HKC	Yes	Yes	No	Yes	No	Yes
Enforcement available in HKC	Civil, Criminal	Civil	Civil, Criminal	Civil	Civil	Civil

Trade Marks

HKC has a system of registration of trade marks used on goods for over 120 years. The Trade Marks Registry started to register trade marks for services in 1992. The Trade Marks Ordinance (Chapter 43) sets out the basic criteria for the registration of as well as the rights attached to a registered trade mark.

Trade marks can be registered and unregistered. A trade mark can be protected either by way of the registration system or by the common law action of passing off. However, passing off is usually a more difficult action to bring than an action for infringement of a registered trade mark. Therefore, it is strongly recommended that traders should register their trade marks in HKC.

A new Trade Marks Ordinance (Chapter 559) was passed in May 2000. The new Ordinance will enable easier registration of marks, increase the range of signs that can be registered as trade marks, and streamline the procedures for recording assignments and licences of trade marks. The Ordinance and its subsidiary legislation will also provide for electronic filing and electronic publication of trade marks applications.

Patents

There is no original grant of patent in HKC. The Patents Ordinance (Chapter 514), in force since June 1997, provides the HKSAR with its own independent patent system. The law allows registration of patents granted by the Chinese Patent Office, and provides continuity with the patent system in place before July 1997 by allowing continued registration of United Kingdom patents and European patents designating the United Kingdom.

Any registered patents, when granted in HKC, is a HKSAR patent independent of the United Kingdom, European or Chinese patent. The patent will be enforced by the courts in HKC.

Protection of patent registrations is:

- up to 20 years for standard patents; and
- up to 8 years for short-term patents.

Short-term patent applications in HKC can enjoy Paris Convention priority.

Copyright

The Copyright Ordinance (Chapter 528), in force since June 1997, provides comprehensive protection for recognised categories of literary, dramatic, musical and artistic works, as well as for films, television broadcasts and cable diffusion, and works available on the internet.

There are no formalities required to obtain copyright protection for works in HKC. Works of authors from any place in the world, or works first published anywhere in the world, qualify for copyright protection in HKC.

The Copyright Ordinance also provides for border enforcement assistance to copyright owners by the customs authorities, as required under the Agreement on Trade Related Aspects of Intellectual Property Rights of the WTO.

Designs

The Registered Designs Ordinance (Chapter 522), in force since June 1997, provides the HKSAR with its own independent designs registry. Registered designs applications in HKC can enjoy Paris Convention priority. Designs registered with the Chinese Patents Office or elsewhere in the world must be registered in HKC before they can be protected in the HKSAR.

Integrated Circuits Designs

The HKSAR Government has implemented the Layout Design (Topography) of Integrated Circuits Ordinance (Chapter 445) to protect the original layout-design for incorporation into an integrated circuit. It is not necessary to register the layout-design right because protection is automatic. Subject to exceptions, the owner can take civil action to prohibit others from reproducing or distributing his layout-design without his consent or payment of royalties.

Plant Varieties Protection

Plant varieties protection is also known as "plant breeders rights". The Plant Varieties Protection Ordinance (Chapter 490) confers intellectual property rights on breeders of plant varieties. A plant variety must be new, distinct, uniform and stable in order to be considered for protection under the law. The Director of Agriculture, Fisheries and Conservation, as the Registrar of Plant Variety Rights, is responsible for considering applications for plant variety rights.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

(a) List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Brief summary of the application and function of these laws/regulations.

Some of the HKSAR laws provide for the deprivation of property and resultant compensation (e.g. the Lands Resumption Ordinance (Chapter 124), the Roads (Works, Use and Compensation) Ordinance (Chapter 370), and the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Chapter 276)). These laws apply indiscriminately to all investors affected. The statutory laws of the HKSAR that relate to expropriation and compensation are subject to Article 105 of the Basic Law of the HKSAR which provides that:

- the HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property;
- such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay; and
- the ownership of enterprises and the investments from outside the HKSAR shall be protected by law.

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

None.

2. SETTLEMENT OF DISPUTES

(a) 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 their addresses and phone/fax numbers.

In HKC, there are a variety of ways of resolving disputes. These include negotiation, conciliation, mediation, arbitration and litigation. The HKSAR has a well-developed system of courts which have jurisdiction in civil matters.

Agency	Contact Details
The High Court - its jurisdiction is unlimited in civil matters.	High Court Building 38 Queensway Hong Kong Tel : (852) 2530 4411 Fax : (852) 2869 0640
The District Court - its jurisdiction is limited to disputes involving a monetary value of up to HK$600,000.	Wanchai Law Courts 6/F, Wanchai Tower 12 Harbour Road Hong Kong Tel : (852) 2582 4222 Fax : (852) 2824 1641
The Small Claims Tribunal - it hears minor civil claims up to a limit of HK$50,000.	Wanchai Law Courts 4/F, Wanchai Tower 12 Harbour Road Hong Kong Tel : (852) 2582 4083 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 government or reduced in value by development.	19/F, Pioneer Centre 750 Nathan Road Mong Kok Hong Kong Tel : (852) 2625 0205 Fax : (852) 2625 0984
The Hong Kong International Arbitration Centre - it assists parties to choose the best available option to resolve disputes and provides a full set of support services for arbitration and mediation of disputes.	38/F, Two Exchange Square 8 Connaught Place Central Hong Kong Tel : (852) 2525 2381 Fax : (852) 2524 2171

(b) Signatory or accession to the ICSID Convention.

The Convention on the Settlement of Investment Disputes between States and Nationals of other States is applicable to the HKSAR.

D. INVESTMENT PROMOTION AND INCENTIVES

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

The following tax incentives and funding support programmes are available to all investors in HKC on a non-discriminatory basis.

Scheme/Measure	Details	Contact Point
Concessionary corporate tax rate	A concessionary tax rate at 50% of the prevailing normal profits tax rate is allowed for the offshore business of professional reinsurance companies authorised in HKC. In addition, interest income and profits derived from certain qualifying debt instruments issued in HKC are subject to a concessionary tax rate at 50% of the prevailing normal profits tax rate.	Profits Tax Unit Inland Revenue Department Revenue Tower 5 Gloucester Road Wan Chai Hong Kong Tel : (852) 187 8088 Fax : (852) 2877 1189 Website: www.info.gov.hk/ird
Tax exemptions	Owners of HKC registered ships are exempted from profits tax on international incomes derived from the operation of their ships. In addition, interest income and profits derived from certain bonds issued under the relevant enactments, Exchange Fund debt instruments and Hong Kong dollar denominated multilateral agency debt instruments are exempted from profits tax.	Same as above.
Tax deduction	Tax deduction for research and development purposes is allowed for expenditure on market research, feasibility studies and other research activities related to business and management sciences.	Same as above.

Scheme/Measure	Details	Contact Point
Depreciation allowances	An immediate 100% write-off is allowed for new expenditure on plant and machinery specifically related to manufacturing, computer hardware and software. Initial allowance of 20% is allowed on capital expenditure incurred in the construction of industrial buildings and certain structures, and an additional 4% per annum thereafter until the total expenditure is written off. A commercial building can qualify for a rebuilding allowance of 4% per annum.	Same as above.
Innovation and Technology Fund	The Fund is to support projects that either contribute to innovation and technology upgrading in local industry, or to the upgrading and development of the local industry. There are four programmes under the Fund: • Innovation and Technology Support Programme • University-Industry Collaboration Programme • General Support Programme • Small Entrepreneur Research Assistance Programme	Innovation and Technology Commission 14/F, Ocean Centre 5 Canton Road Tsim Sha Tsui Hong Kong Tel : (852) 2737 2229 Fax : (852) 2957 8726 Website : www.info.gov.hk/itc/itf
Applied Research Fund	The Fund encourages technology ventures and applied research and development activities that have commercial potential, by providing funding support as a catalyst.	Applied Research Council Secretariat Innovation and Technology Commission 14/F, Ocean Centre 5 Canton Road Tsim Sha Tsui Hong Kong

Scheme/Measure	Details	Contact Point
		Tel : (852) 2737 2206 Fax : (852) 2199 7004 Website : www.info.gov.hk/itc/arf
New Technology Training Scheme	The Scheme provides funding support of up to 75% of the cost for the training of staff in new technologies.	Technologist Training Unit Vocational Training Council 16/F, VTC Tower 27 Wood Road Wan Chai Hong Kong Tel : (852) 2836 1715 Fax : (852) 2574 3759 Website : www.vtc.edu.hk/it/it.htm
Patent Application Grant	The Scheme provides a grant of up to HK$100,000 to assist companies or individuals to apply for patent for new inventions.	Innovation and Technology Commission 14/F, Ocean Centre 5 Canton Road Tsim Sha Tsui Hong Kong Tel : (852) 2737 2278 Fax : (852) 2957 8726 Website : www.info.gov.hk/itc/pag
Science park	The Science Park provides premises and support services to technology-based firms engaged in applied research and development activities.	Hong Kong Science and Technology Parks Corporation Suites 1905-13 19/F, Tower 6, The Gateway 9 Canton Road Tsim Sha Tsui Hong Kong Tel (852) 2629 1818 Fax (852) 2629 1833 Website : www.hkstp.org

Scheme/Measure	Details	Contact Point
Industrial estates	Land on industrial estates is offered at development cost for industries which cannot operate in conventional multi-storey industrial buildings.	Same as above.
Technology-based business incubation programme	Technology-based start-up companies with commercially viable business ideas are nurtured through the incubation programme providing low-cost accommodation as well as management, marketing, financial and technical assistance in their critical initial three years of operation.	Same as above.
Small and Medium Enterprise (SME) Funding Schemes	SME Business Installations and Equipment Loan Guarantee Scheme The Scheme helps SMEs secure loans from lending institutions for acquiring business installations and equipment to enhance their productivity and competitiveness. The maximum amount of guarantee offered to each SME is 50% of the approved loan or HK$1 million, whichever is the less. The maximum guarantee period is three years. **SME Development Fund** The Fund provides financial support to non-profit-distributing industry support organisations, trade and industrial organisations, professional bodies and research institutes to implement projects which aim at enhancing the competitiveness of SMEs in general or in specific industry sectors. The maximum amount of grant for each project is HK$2 million, or 90% of the total project expenditure, whichever is the less.	Trade and Industry Department 4/F, Trade and Industry Department Tower 700 Nathan Road Mong Kok Hong Kong Tel: (852) 2398 5125 Fax: (852) 2396 5067 Website: www.smefund.tid.gov.hk

Scheme/Measure	Details	Contact Point
	SME Training Fund The Fund provides funding support to encourage SMEs to provide training relevant to their business operations to their employers and employees, with a view to enhancing their human resources. For employees' training, the maximum amount of grant that each SME can obtain, on a cumulative basis, is HK$10,000. For employers' training, the relevant maximum amount of grant is HK$5,000.	
Small and Medium Enterprise (SME) Funding Schemes (Cont'd)	*SME Export Marketing Fund* The Fund provides funding support to SMEs to participate in local and overseas export promotion activities, including trade fairs and study missions. Successful applicants will receive a grant covering 50% of the fundable items of the approved export promotion activity or HK$10,000, whichever is the less. Each SME can only receive grant once under the scheme.	

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 programmes including the nature of incentives offered and contact point(s) for these schemes, including address and phone/fax numbers.

Section D.1 above refers.

3. Details of any one-stop facility for foreign investors, its service and contact point(s) including address and phone/fax numbers.

Agency	Address/Telephone/Fax
Invest Hong Kong (InvestHK) was established on 1 July 2000 to spearhead Hong Kong's	Hong Kong Invest Hong Kong Suites 1501-6, Level 15

Agency	Address/Telephone/Fax
efforts to attract inward investment. Investment support services provided by InvestHK include supplying up-to-date information needed to make informed business decisions, such as corporate environment reports, profiles on economic sectors, comparative analyses of the costs of setting up business in Hong Kong, vital government statistics and regulations, and key publications. InvestHK also provides contacts, connects prospective business partners, and facilitates liaison with relevant government departments and commercial organisations. Once companies arrive in Hong Kong, InvestHK continues to support them with advice and assistance on such matters as work visas, incorporation, trademark registrations, and other administrative, legal and financial matters. Sector-specific experts in financial services, information technology, technology (especially electronics and biotechnology), telecommunications, media/multi-media, tourism and entertainment, trade-related services, business and professional services, and transportation provide consultation, regulatory advice, and logistics support guidance. InvestHK also gives advice on regional headquarters operations in all sectors. InvestHK offers solution-oriented investment promotion and support services in a straightforward one-stop shop. In addition, there is a network of eight Investment Promotion Units operating in the Hong Kong Economic and Trade Offices in Brussels, Guangdong, London, New York, San	One Pacific Place 88 Queensway Hong Kong Tel : (852) 3107 1000 Fax : (852) 3107 9007 E-mail : enq@InvestHK.gov.hk Brussels Hong Kong Economic and Trade Office Rue d'Arlon 118 1040 Brussels Belgium Tel : (32-2) 775 00 88 Fax : (32-2) 770 09 80 E-mail : general@hongkong-eu.org Guangdong Hong Kong Economic and Trade Office Flat 7101, Citic Plaza 233 Tian He North Road Guangzhou Postal Code : 510613 Tel : (86-20) 3891 1220 Fax : (86-20) 3891 1221 E-mail : general@gdeto.gov.hk London Hong Kong Economic and Trade Office 6 Grafton Street London W1S 4EQ United Kingdom Tel : (44-207) 499 9821 Fax : (44-207) 495 5033 E-mail : general@hketolondon.gov.hk New York Hong Kong Economic and Trade Office 115E 54th Street New York, NY10022 United States Tel : (1-212) 752 3320 Fax : (1-212) 752 3395 E-mail : hketony@hketony.gov.hk San Francisco

Agency	Address/Telephone/Fax
Francisco, Sydney, Tokyo and Toronto. Website: www.InvestHK.gov.hk	Hong Kong Economic and Trade Office 130 Montgomery Street San Francisco, CA94104 United States Tel : (1-415) 835 9300 Fax : (1-415) 421 0646 E-mail : hketosf@hketosanfrancisco.gov.hk <u>Sydney</u> Hong Kong Economic and Trade Office 80 Druitt Street, Level 1 Sydney, NSW 2000 Australia Tel : (61-2) 9283 3222 Fax : (61-2) 9283 3818 E-mail : enquiry@hketosydney.gov.hk <u>Tokyo</u> Hong Kong Economic and Trade Office Hong Kong Economic and Trade Office Building 30-1, Sanban-cho Chiyoda-Ku, Tokyo 102-0075, Japan Tel : (81-3) 3556 8961 Fax : (81-3) 3556 8960 E-mail : invest@hketotyo.gov.hk <u>Toronto</u> Hong Kong Economic and Trade Office 174 St. George Street Toronto Ontario M5R 2M7 Canada Tel : (1-416) 924 5544 Fax : (1-416) 924 3599 E-mail : info@hketotoronto.gov.hk

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

1. Agreements to which HKC is a party, including details of the economies with which the agreement has been entered into, and a brief summary of the provisions of the agreements.

Free Trade Agreement

Not applicable.

Friendship Commerce and Navigation Treaties

Not applicable.

Bilateral Investment Treaties

HKC has so far signed Investment Promotion and Protection Agreement with 14 economies, namely, Australia, Austria, the Belgo-Luxembourg Economic Union, Denmark, France, Germany, Italy, Japan, the Republic of Korea, the Netherlands, New Zealand, Sweden, Switzerland and the United Kingdom. These agreements generally contain the following undertakings on the part of each contracting party:

- not to subject investors of the other contracting party to treatment less favourable than what it accords to its own investors or investors of any third party;
- to compensate, on the same basis as above, investors of the other contracting party whose investments suffer losses during armed conflicts or national emergency;
- not to deprive investors of the other contracting party of their investments except lawfully, for a genuine public purpose, and against proper compensation;
- to guarantee the free transfer of investments and returns by investors of the other contracting party; and
- in the event that investment disputes cannot be settled by bilateral consultation or negotiation within a specified period, to submit such disputes to arbitration under internationally accepted rules.

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 total stock of inward direct investment at market value in Hong Kong amounted to US$419 billion as of end-2001, a decrease of 7.9% over end-2000. In 2001, Hong Kong continued to attract significant inflow of direct investment. This was however more than offset by a substantial reduction in valuation, due to a general decline in resident stock prices against the background of a global economic downturn. During 1998-2001, the stock of inward direct investment increased at an average annual rate of 23%. There were 9 132 enterprise groups in Hong Kong with overseas investment at the end of 2001, compared with 9 207 at the end of 2000.

The Mainland of China was the leading source of inward direct investment, contributing 29% of the total investment value at the end of 2001, followed by British Virgin Islands (29%), Bermuda (10%) and the Netherlands (6%). The many tax haven economies in the listing reflected partly the practice of Hong Kong enterprises in setting up non-operating companies in offshore financial centres for channelling direct investment funds back to Hong Kong, as well as the means by which foreign enterprises channelled their funds to Hong Kong.

The level of inward direct investment flow in 2001, while lower than that in 2000, was not much different from the level in 1999 and was significantly higher than that in 1998. This was partly due to a high base in 2000 when there was a huge amount of equity transactions arising from some prominent merger and acquisition activities in the telecommunications sector.

The stock of inward portfolio investment in Hong Kong, China amounted to US$119 billion at end-2001, declining by 22.1% from the previous year. This was mainly attributable to a substantial reduction in valuation, which was in line with a general decline in resident stock prices. Portfolio investment inflow, which was mainly in the form of equity securities, accounted for 86% of the total stock of inward portfolio investment.

Outward Investment

The total stock of outward direct investment at market value from Hong Kong, China amounted to US$353 billion as of end-2001, decreasing by 9.2% over end-2000. This was mainly due to changes in market value of the overseas affiliates of Hong Kong enterprises. During 1998-2001, outward direct investment increased at an average annual rate of 16.3%.

British Virgin Islands continued to attract the largest share of the outward investment, taking up 52% of the total value of investment at the end of 2001. The Mainland of China (31%) accounted for the second largest share, followed by Bermuda (3%) and Cayman Islands (3%).

The level of outward direct investment flow in 2001 also showed a decrease from 2000. This was partly due to the high base effect in 2000 as for inward direct investment flow, and partly due to a reduction in inter-company debt in 2001.

The stock of outward portfolio investment from Hong Kong, China increased by 17.6% over a year ago to US$210 billion as of end-2001. This was mainly attributable to a significant increase in portfolio investment outflows in 2001, partly offset by a decrease in valuation. Portfolio investment outflow, which was mainly in the form of debt securities and equity securities, accounted respectively for 55% and 45% of total stock of outward portfolio investment.

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

Sources of FDI	**Destination of FDI**
The Mainland of China, British Virgin Islands, Bermuda, the Netherlands and the United States	British Virgin Islands, the Mainland of China, Bermuda, Cayman Islands and Panama

Source: Census and Statistics Department, HKSAR Government

INDONESIA

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, Government Regulation No. 20 of 1994 as amended by Government Regulation No. 83 of 2001 concerning The Share Ownership in The Foreign Investment Company.

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 a maximum of 95% of the issued capital.

There is no longer 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 subject to any divestment requirement.

The minimum amount of capital required to be invested in a foreign investment company in Indonesia is no longer prescribed. The existing regulation provides that the amount of capital to be invested is determined according to the size of the project.

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

The Government of Indonesia has stated that private sector investment is important to achieving sustainable economic growth, employment creation, development of strategic national resources, transfer and implementation of competitive technology and technical skills, export growth and improved balance of payments. Based on that, an appropriate legal framework is prerequisite to promoting a stable, predictable and attractive business environment that will encourage and support private economic activity by Indonesian and foreign investors. To speed up the recovery of Indonesian economy, the inflow of FDI has to be increased. Furthermore, the deregulation of policies and measures, simplification of investment procedures should be continued and implemented in order to enhance and improve the productivity and efficiency of economy sectors. Besides that, due to the need for Indonesia development, the presence of FDI should be encouraged to support economic development.

The Government of Indonesia always welcomes and encourages FDI inflow to Indonesia. The Government of Indonesia will continue to take any measures to create an attractive and conducive investment climate and should implement any new measures with transparency and consistency directed to providing equal treatment of investors in similar circumstances irrespective of nationality; protection against expropriation, freedom to repatriate foreign investment capital and net proceeds thereon; and access to impartial, quick and effective mechanisms for the resolution of commercial and other investment disputes. These efforts are enabling environment for private investment, to be characterized by active promotion and facilitation of investment, transparent criteria for the admission and establishment of investments, transparency of government procedures and administration, and minimized restrictions, speedy screening and licensing.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

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

CITATION	SUMMARY
Act No. 1 of 1967 on Foreign Direct Investment as amended by Act No. 11 of 1970.	1) A foreign investment enterprise is a legal entity organized under Indonesian Law and has its domicile in Indonesia. 2) The owner of enterprise has full authority to appoint the management of the enterprise in which his capital is invested. 3) A foreign investment enterprise is required to meet their needs for manpower with Indonesian citizens. 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. 5) A foreign investment enterprise 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 with Indonesians. 6) Permit for a foreign investment enterprise shall specify the duration of its validity which shall not exceed 30 years. 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: (a) Company profits, (b) Proceeds from the sale of shares, (c) Compensation in case of nationalization and repatriation of remaining invested capital in case of liquidation, (d) Principal loan, interest, royalty fee and license fee, and (e) Expenses of expatriate.

Act No. 7 of 1983 and Act No.10 of 1994 on Income Tax as amended by Act No. 17 of 2000. Act No.8 of 1983 on Value Added Tax as amended by Act No.18 of 2000	Tax rates had been substantially simplified and lowered. The Income Tax and The Value Added Tax system in Indonesia is progressive and applied both to individual and corporations. The amount of income tax payable is determined through the self-assessment method.
Act No. 1 of 1995 on Limited Liability Company (Perseroan Terbatas)	1) Limited liability company should be established by at least 2 (two) parties. 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. 3) Members of the Directors and the Commissioners are appointed by the general Shareholders Meeting for a certain period. 4) One or more companies may merge (and become one) with another existing company and form a new company. The Merger or consolidation can only be carried out if the General Shareholders' Meeting of the respective companies approves the program for the consolidation or merger.
Government Regulation No. 20 of 1994 on Share Owner-ship in foreign direct invest-ment *as* amended by Government Regulation No. 83 of 2001	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 consideration. 2) A foreign investment company in infrastructure projects such as ports, generation, transmission and distribution of electricity for public use, telecommunications, shipping, airlines, potable water supply, public railways, and nuclear electric power generation should be established by way of joint-venture between foreign and Indonesian partner(s) and the share of Indonesian partner should be at least five percents (5%) of the total issued capital on the out-set of the company. 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. However, it is required that no later than 15 years from the commencement of commercial production, 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. 4) The requirements that foreign direct investment (FDI) can only be made in existing firms to "rescue and restore" these firms is no longer valid. 5) A foreign investment company, which has commenced commercial production, may apply for extension 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. 6) A foreign investment company which has commenced commercial production and/or a foreign legal entity and/or foreign citizen may purchase the shares of the existing domestic company through direct placement as well as through the domestic capital market provided that the field of investment is open for foreign investment.
5. Government Regulation No.146 of 2000; No.147of 2000; No.148 of 2000; No.20 of 2000; and No.12 of 2001 as amended by No. 43 of 2002 on Tax Facilities in certain area	These Government Regulation is concern with: a. Exemption on value added tax upon delivery of import and/or taxable goods or services. b. Tax treatment in integrated economic development areas. c. Income tax facilities for investment in certain business sectors and/or certain area *d*. Exemption on value added tax upon delivery of import and/or taxable strategic goods.
6.Presidential Decree No.90 of 2000 concerning foreign company representative office (KPPA)	1) a foreign company representative office (KPPA) is the office that lead by one or more foreign or Indonesian citizens which has been appointed by foreign company or several overseas foreign firms as their representative in Indonesia. The office has a specific purpose : a. To taking care the interest of companies or their affiliation b. To initiate the preparation of establishment of foreign direct investment companies in Indonesia or other countries. 2) KPPA determine be located in one of province capitals. 3) Licensing which be needed for KPPA and a foreign citizen who work for that office is issued by Head of Investment Coordinating Board
7. Presidential Decree No. 127 of 2001 concerning sectors reserved for small-scale business and sectors open for medium and large-scale business with partnership condition.	This decree has revoked the Presidential Decree No. 99 of 1998 concerning List of Sectors that are reserved for small-scale business and sectors open for medium and large-scale business with partnership condition. This decree still shows the Government commitment to encourage the growth of small-scale business along with medium-large scale ones. This decree reserves: 1) 20 sectors only for small-scale business 2) 16 sectors for medium or large-scale business that required partnership with small-scale business. Medium-large scale business that interested investing in these sectors are obligated to set-up a partnership with small-scale business based on a written agreement. There are many alternatives or types of partnership which could be chosen by foreign investors, i.e.: (a) Shares participation, and/or; (b) Plasma-nucleus system, and/or; (c) Sub-contractor, and/or; (d) Franchise, and/or; (e) General trade, and/or; (f) Agency, and/or; (g) Other forms.

	These sectors are listed in the table below.

List of Business regulated by Presidential Decree No. 127 of year 2001 concerning List of sectors reserved for small-scale business and sectors open for medium and large-scale business with partnership condition.

a. List of Sectors Reserved for Small-scale Business

*) Closed for medium/large domestic as well as foreign enterprises

1. Pedigree chicken husbandry
2. Catching fishery using vessels with weight less than 30 GT/90 HP which is performed in waters territory up to 12 sea miles
3. Cultivation fishery covers fish nursery and raising in fresh blackfish, and sea water
4. Catching of fresh water decoration fish
5. Forestry:
    1) Apiculture exploitation
    2) Exploitation of sugar palm, sago, rattan, candlenut, tree, bamboo, and cinnamon plant forest
    3) Exploitation of swallow nests in the nature
    4) Exploitation tamarind estates by small holders (tamarind seeds collection and processing)
    5) Exploitation of charcoal producing plant forest
    6) Exploitation of tree sap producing plant forest
    7) Exploitation of atsiri oil producing plant forest (pine oil, lawang oil, tengkawang oil, cajuput oil, kenanga oil, fragrant root oil, and other)
6. Small holder mining
7. Processed food and drink industry which makes conservation through process of salting, salt-giving, sweetening, fumigating, drying, boiling, frying, and fermentation by means of traditional methods.
8. Yarn improving industry from natural and imitation fiber to be motif/dipped, binding yarn using devices generated by hand.
9. Textile and textile product industry encompasses wearing, knitting, batik making, and embroidery which have the feature that is done by ATBM, or the device that is generated by hand, including batik, cap hat, and others of the kind.
10. Processing of forest and non-food category garden products:
    1) Building/household materials: bamboo, thatch palm, slate roof, charcoal, husk (coconut fiber)
    2) Industrial materials: tree sap, wood rind, natural silk, betel nut.
11. Hand appliance industry which is manually or semi mechanically processed for craftsmanship and cutting
12. Hand appliance industry for agriculture which is required for land tilling, production process, harvesting, post harvest, and processing, except hoes and scoops
13. Pottery industry which is both glazed and non glazed for household necessities.
14. Maintaining and repairing service industry which covers automotives, vessels below 30 GT, electronics, and house hold appliances operated manually or semi automatically.
15. Handicraft industry which has regional culture treasures, art values that use natural and imitation raw materials.
16. Small scale trade and informal business.

17. Hand rural, river, lake and ferry transportation by using vessels with 30GT weight.
18. Telecommunications services covers telecommunication shop, internet shop, cable installations to houses and buildings.
19. Health/Medical service/Pharmaceutical Services Profession :
1). Individual practice by medical personnel.
2). Group personnel practice by medical personnel.
3). Basic Medical service facilities.
4). Medical research Center/Institute/Station.
5). Dispensary, Pharmacist's profession practice.
6). Maternity hospitals.
7). Traditional Medical Service Practice (acupuncture, reflection massage, traditional massage parlor).
20. Medicine and food trade services :
    1) Drug stores,
    2) Traditional Medicine Retailers, Toting, Medical Hers (Jamu gendong), Medical Herbs Kiosks/Shops,
    3) Simplisia collectors.

b. Sectors Opened for Medium or Large-scale Business that required Partnership with Small-scale Business

*) Partnership requirement is applied to medium/large domestic as well as foreign enterprises

1. Year group farming exploration
2. Cultivation fishery covers white kakap (scale) kerapu, pearl, bandeng, shrimp, labi-labi, nila, sidat, and kodok lembu fish rising.
3. Natural silk and timber estate exploitation.
4. Small scale mining
5. Milk powder and condensed milk industry, processed food industry from cereals, yam group, sago, melinjo and copra.
6. Stamp Batik Industry.
7. Raw rattan processing and leather ready made goods industry.
8. Clay made goods for building materials, and goods industry from calcium.
9. Silver Handicraft Industry.
10. Wooden vessel industry for maintenance tourism, and for fish catching.
11. Agricultural machinery equipment industry which use medium technology such as paddy thresher, corn huller, and hand tractor.
12. Industry and hand pump, bicycle accessories, electric appliances (various types of clamp, anchor and track anchor) and other components and industry of drinking water box/case.
13. Large scale retailing and other services trade cover modern markets, among other : mall supermarket, hypermarket, department store, shopping center, and other things of the kinds, as well as restaurant services in tourist areas and/or those being integrated to hotel operation.
14. Tourism industry encompasses ;

1). Tourism Service Operation : among others tourism travel bureau, Convention Center, incentive travel, tourism consultation service show, tourism information service.

2). Tourism Facility Operation : among others jasmine hotel, caravan call, tourism transportation, food and bar service, tourism area, public recreation and entertainment such as recreation park, swimming center, golf course, bowling center, billiard house, steam-batch center, adroitness center, tourism village and public

entertainment service.

3). Tourism Object Service Operation : namely cultural tourism, special interest tourism and nature tourism that requires special expertise and skill.

15. Taxi transport operation; stevedoring operation, and forwarding agency operation, small-holder shipping operation and trusting (consignment) services operation.

16. Skill courses encompass : variety of technical vocational skills, trading system, languages, tourism, management, information technology, arts and agriculture.

Presidential Decree No. 96 of 2000 amended by Presidential Decree No. 118 of 2000 concerning List of Business Fields Closed and Open to Investments on Certain Conditions	These decrees have revoked the Presidential Decree No. 96 of 1998 concerning List of Sectors that are Closed for Investment (The Negative List). The New List consists of: 1) 11 Business Fields absolutely closed for investment activity, both for domestic and foreign investment; and 2) 8 Business Fields closed for investment activity where foreign citizen and/or foreign legal entity participate in company's capital ownership 3) 9 Business Fields open to investments on condition of joint ventures between foreign and domestic capital 4) 20 Business Fields open to investments on certain conditions These Business Fields can be seen at the table below.

List of Business regulated by Presidential Decree No. 96 of 2000 amended by Presidential Decree No. 118 of 2000 concerning List of Business Fields Closed and Open to Investments on Certain Conditions

(a) Business Fields Absolutely Closed for Investment

1. Cultivation and processing of marijuana and the kinds
2. Collection/utilization of sponge
3. Industries of chemical products harmful to the environment, like Penta Chlorophenol, Dichloro Diphenyl Trichloro Ethane (DDT), Dieldrin, Chlordane, Carbon Tetra Chloride, Chloro Fluoro Carbon (CFC), Methyl Bromide, Methyl Chloroform, Halon, etc
4. Industries of chemical products stipulated in the Schedule – 1 of the chemical weapon convention (Sarin, Soman, Tabun, Mustard, Levisite, Ricine and Saxitoxin)
5. Industries of weapons and components
6. Industries of Cyclimate and Saccharine
7. Industries of alcoholic drinks (liquor, wine and drinks containing malt)
8. Operations of casinos/gambling
9. Air traffic system providers (ATS providers) as well as ship statutory and classification surveys
10. Management and operation of Radio Frequency Spectrum and Satellite Orbit Monitoring Stations
11. Mining of radioactive minerals

(b) Business Fields Closed to investment with ownership of foreign citizens and/or statutory bodies in corporate capital

(*) Even joint venture with local partner is not possible.

Germ Plasma Cultivation
Concessions for natural forest
Contractors in the field of lumbering

Taxi/bus transport services

Small-scale sailing

Trading and trading supporting services, except:

Large-scale retailers (malls, supermarkets, department stores, shopping centers), wholesale trading (distributors/wholesalers, exporters and importers), exhibition/convention service providers, quality certification service providers, market research service providers, warehousing service providers other than Line I and seaports, and after-sale service providers.

Radio and television broadcasting service providers, radio and television broadcasting subscription service providers and print media

Film industry (film making businesses, film technical service providers, film export and import businesses, film distributors and movie house operators and/or film showing service.

(c) Business Sectors open to investments on condition of joint ventures between foreign and domestic capital

1. Building and operation of seaports
2. Electricity production, transmission and distribution
3. Shipping
4. Processing and provision of clear water for the public
5. Public railway services
6. Atomic power plants
7. Medical services, covering the building and operation of hospitals, medical check-ups, clinical laboratories, mental rehabilitation services for health aid and evacuation of patients in emergency condition, hospital management services and services for testing, maintenance and repair of medical equipment
8. Telecommunication
9. Regular/non regular commercial airliners

(d) Business Fields Open to Investments on Certain Conditions

1. Cultivation of fish in fresh waters
   a. Open to foreign investments for freshwater turtles, nila gift, sidat, kodok lembu, freshwater giant shrimps and thillapya sp;
   b. In cooperation with smallholders fishery businesses
2. Fishing of demersal fish (big fish, grouper and other sea fish)
   - Except ZEEI areas of the Malacca Straits and Arafura Sea
3. Industries of Pulp made of wood
   a. Raw material coming from imported chips or guarantee of material supply from industrial timber estates (HTI);
   b. Other than sulfonating and/or chlorination (Cl2)
4. Industries of pulp made of other cellulose fibers or other materials
   - Other than sulfonating and/or chlorination (Cl2)
5. Chloro alkali producing industries
   - Other than those using mercury
6. Processing of finished/semi-finished goods of mangrove wood
7. Raw material coming from mangrove cultivation
8. Money printing industry
   - must secure operational licenses from BOTASUPAL- BAKIN and approval from Bank Indonesia

9. Special printing industries (postal stamps, duty stamps, Bank Indonesia negotiable papers, passports and stamped postal matters)
   – must secure operational licenses from BOTASUPAL- BAKIN
10. Milk processing industry (powder and sweetened condensed milk)
- processing, not merely repacking
11. Plywood and rotary veneer industries
   – Only for the Papua Province
12. Sawn Timber industries
   a. Only for the Papua Province
   b. Outside the Papua Province, only using logs from non natural forests
13. Ethyl alcohol industries
   – Technical grade, being only used as raw materials and auxiliary materials of other industries
14. Industries of raw materials for explosives (Ammonium Nitrates)
   – must be in cooperation with business entities securing recommendations from the Ministry of Defense
15. Industries of explosives and components for industrial (commercial) needs
   a. must be in cooperation with business entities securing recommendations from the Ministry of Defense
   b. Only manufacturing activities, while storage and distribution are executed by companies appointed by the government
16. Electricity planning and supervision consulting services
   – Open to foreign investments with the provisions that:
   a. PLTA (hydro power plant) with a capacity of above 50 MW;
   b. PLTU (steam power plant) with a capacity of above 100 MW;
   c. PLTP (geothermal power plant) with a capacity of above 55 MW;
   d. Transmission networks with a voltage of above 500 KV.
17. Electricity equipment construction, maintenance, installation services, development of technology supporting the supply of electricity and testing of electricity installation.
   – Open to foreign investments with the provision that:
   a. Main electrical relay stations with a voltage of above 500 KV;
   b. Transmission networks with a voltage of above 500 KV
18. Petroleum and natural gas drilling services
   – Open to foreign investments with the provision that:
   a. Only for offshore drilling
   b. Especially for locations outside the Eastern Indonesian Region, must cooperate with national partners operating in the similar business field.
19. Power plant business
   – Open to locations outside Java, Bali and Madura
20. Restaurants
   – Open to foreign investment with the special provision that they must be located in tourism area/zones and/or integrated with hotels
21. Games services
   – Open to foreign investment with the special provision that they must be located in tourism area/zones and/or integrated with hotels

Minister of Investment/ Chairman of BKPM Decree No. 15 of 1994	This decree is the implementation guideline of the Government Regulation Number 20 of 1994, which stated that the foreign enterprise, either straight investment company and/or foreign citizen may purchase the existing domestic company including the existing foreign investment company which has the form of the 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.
Minister of Investment/ Chairman of BKPM Decree No. 38 of 1999	This decree is an explanation for filling applications for domestic and foreign investment and required documents which should be completed.

(2) Investment Review and Approval

(a) Details of any proposals and sectors that are/ are not (yes/ no) subject to screening.

(b) 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.

Proposal	**Guidelines/ Conditions**
Merger (Yes)	The field of business concerned is open for foreign direct investment. The companies have already been in commercial production.
Acquisitions (Yes)	The field of business concerned is open for foreign direct investment.
Greenfield (Yes) Investment	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
Real estate/ (Yes) Land	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 ports, generation, transmission and distribution of electricity for public use, telecommunication, shipping, airlines, potable water supply, public railways, and nuclear electric power generation, the share of Indonesian partner(s) in joint venture company should be at least 5% of the total issued capital on the out-set of the company. The other sectors, the foreign investor could own 100% of the shares starting from the establishment of the company until 15 years after the commencement of commercial production. After 15 years, a part of the company's shares should be sold to Indonesian citizen(s) and/or business entity(ies) either through direct placement and/or indirectly through the stock exchange. The amount of shares of Indonesian partner(s) is decided fully by parties concerned, and no Government

	intervention.
Telecommunications (Yes)	Basic telecommunication services should be deliver in cooperation 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 the prevailing laws and regulations, foreign direct investment is not allowed to enter mass media activities, except *multimedia information services*
Transport (Yes)	1. Taxi/ bus operation is reserved only for domestic enterprise. 2. Domestic and international shipping: – it is compulsory to own at least one vessel carrying Indonesian flag with minimum capacity of 2.500 DWT; and – the parties are foreign shipping enterprises and domestic shipping enterprises. – Ferry transportation: – It is compulsory to own at least one vessel carrying Indonesian flag and fulfilling the sailing safety requirements and straits, and harbors technical specifications.
Agriculture (Yes)	1. The application of fishery catching should be attached with coordinates of catching area which are issued by Directorate General of Fishery, Department of Agriculture. 2. The application of plantation sector should be attached with recommendation letter from Ministry of Forestry and Plantation concerning the availability of land for plantation. 3. Joint venture company may hold a "Land Right Cultivation (HGU)".
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"
Oil and Gas (Yes)	Based on Law No.22 of 2000, this sector is divided into 2 categories such as up stream and down stream oil and gas industry. In up stream oil and gas industry, production sharing contract made between foreign investor and institution pointed by government is required, whereas the investment in field of down stream oil and gas industry is regulated by Law No.1 of 1967.
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)	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. Toll road construction and management should be cooperation with PT. Jasa

	Marga, be in the form of joint venture, or BOO (Built, Operate and Own), or BOT (Built, Operate and Transfer).

(c) Indicate all application/approval forms required for screening purposes. Briefly summarize additional documentation that is required for review or approval processes.
Please refer to section B.1 (2) b and h.

Copies of the relevant documentation can be obtained from the contact points specified in section B (2) (d) below.

(d) Contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency address/telephone/fax.

AGENCY	**ADDRESS/ TELEPHONE/ FAX**
Investment Coordinating Board of Indonesia (BKPM)	JL. GATOT SUBROTO NO. 44 Jakarta 12190 Tel.: (62-21) 525-2008 (62-21) 525-4981 Telex: 62654 BKPM IA Fax: (62-21) 525-4945 : (62-21) 522-7609 Website : www.bkpm.go.id E-mail: sysadm@bkpm.go.id

(e) The availability of website information and whether there is that capacity to apply for approvals on line

Basically all investment licenses are still needed based on the principles of fairness, simple, quick and transparent mechanism and procedure. However, Indonesia does not have legal infrastructure to support e-government yet.

(f) Average period from the formal submission of all relevant/required documentation to final approval/rejection.

If application is submitted in the complete form and data, the whole process will be completed in average 10 working days. Previously, it took about 2 to 4 weeks.

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

AGENCY	**Address/ telephone/ fax**
Investment Coordinating Board of Indonesia (BKPM)	Jl. Gatot Subroto No. 44 Jakarta 12190 Tel.: (62-21) 525-2008

	(62-21) 525-4981 Telex: 62654 BKPM IA Fax : (62-21) 525-4945 (62-21) 522-7609 Website : www.bkpm.go.id E-mail : sysadm@bkpm.go.id

The average time to apply for the modification of an investment proposal for an appeal to be considered is 10 working days.

(h) 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, fulfill the documents and information needed, and submit it to the Investment Coordinating Board of Indonesia (BKPM). The details of required documents and information are as follows:

1) Foreign Participant:
   a. Articles of Association of the company in English or Indonesian language; or
   b. Copy of valid passport for foreign individual
2) Foreign Investment Company (PMA):
   a. Articles of Association of the company and any amendments(s)
   b. Permanent Business License (IUT)
   c. Tax Registration Code Number (NPWP)
3) Indonesian Participant:
   a. Articles of Association of the company and any amendment(s) or Identity Card for Individual
   b. Tax Registration Code Number (NPWP)
4) a. Flowchart of the production process and a raw materials
   b. Explanation of business activities for services sector
5) Power of Attorney to sign the application if the participant(s) are represented by another party
6) Other requirements from the sectoral Ministry concerned, if any, as stated among others in the "Technical Guidance's Book on Investment Implementation (Buku Petunjuk Teknis Pelaksanaan Penanaman Modal/PTPPM).
7) For certain business sectors where mandatory partnership is required:
   a. Agreement between Small-scale Business and Medium/Large-scale Business outlining among others, name and address of each party, pattern of partnership, right and obligation each party as well as guidance provided for small-scale business.
   b. Statement from the Small-scale Business outlining that the enterprise fulfills the criteria of small-scale business based on Law No. 9 of 1995 concerning Small Scale Business.

(i) 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.	Jl. Gatot Subroto No. 44 Jakarta 12190 Indonesia Tel.: (62-21) 525-2008 (62-21) 525-4981 Telex : 62654 BKPM IA Fax : (62-21) 525-4945 (62-21) 522-7609 Website : www.bkpm.go.id E-mail : sysadm@bkpm.go.id	Investment Application Procedures
Directorate-General of Immigration	Jl. H.R. Rasuna Said, kav 8-9 Jakarta Selatan, Indonesia Tel : (62-21) 522-4658 Fax : (62-21) 522-3036 Website: www.imigrasi.go.id	• Passport • Visit Pass • Employment Pass • Dependent's Pass • Student Pass
Directorate-General of Tax Office	Tel : (62-21) 525-0208 522-5139 Fax : (62-21) 520-7204 Website :www.pajak.go.id E-mail : info@pajak.go.id ditpenpa@pajak.go.id	• Income Tax • Company Tax • Real Property Gain Tax • Duty exemption on raw material and machinery and components
Directorate-General of Customs	Jl. Jenderal Ahmad Yani Jakarta 13230 Po Box 108 Jakarta 10002 Tel : (021) 4890308 Telex : DJBC Website : www.beacukai.go.id E-mail: perpen@beacukai.go.id	Customs procedures
Ministry of Manpower and Transmigration	Jl. Gatot Subroto Kav. 51, Jakarta Selatan Indonesia Tel : (62-21) 525-5733 Website : www.nakertrans.go.id	Work permit for expatriate
Ministry of Justice and Human Rights	Jl. H.R. Rasuna Said kav 4-5 Jakarta Selatan, Indonesia Tel : (62-21) 525-3004 Fax : (62-21) 525-3167 Website : www.depkehham.go.id	• Notarial document for article of association of company • Authorization of the limited liability companies

(j) 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.	Jl. Gatot Subroto No. 44 Jakarta 12190 Tel.: (62-21) 525-2008 (62-21) 525-4981 Telex: 62654 BKPM IA Fax: (62-21) 525-4945 (62-21) 522-7609 Website : www.bkpm.go.id E-mail : sysadm@bkpm.go.id	1. To conduct monitoring, guidance and controlling of investment imple-mentation. 2. To provide services on problems faced in the investment implementati-on as well as provide alternative solutions.

(k) 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 tries 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 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.

(l) Where applicable, the role for sub-national agencies in the approval process.

Agency	Address/telephone/fax	Functions
Kantor Pertanahan Kabu-paten/Kotamadya (The Regional Land Affair)	Regional Land Affair Office in Regency concerned.	Issue location permits.
Dinas Pekerjaan Umum Kabupaten/Kotamadya (The Regional Public Work).	Office of Regent/Mayor concerned.	Issue Building Construction Permits (IMB).
Sekretaris Wilayah Dati II (The Regency Secretary)	Office of Regent/Mayor concerned.	Issue Nuisance Act Permits (UUG/HO).

Badan Koordinasi Pena-naman Modal Daerah/ BKPMD (Regional Investment Coordinating Board)	Capital city of province concerned. Addresses' list of Regional Investment Agencies (BKPMD), please see below.	Issue Working Permits for Foreign Expatriates.

Addresses' list of Regional Investment Agencies (BKPMD) are:

No.	BKPMD	Office Address	Tel/Telex/Fax
1.	Special Territory of Jakarta	Lt. 12 Blok G Jl. Medan Merdeka Selatan 8-9, Jakarta Pusat.	Tel. (021) 3842169 (021) 3453838 Telex. 44242 Fax.(021) 3457205
2.	West Java	Jl. Sumatera No. 50 Bandung	Tel. (022) 437369 Telex. 28210 Fax. (022) 437081
3.	Banten	Jl. Brigjen K.H. Syam'un No. 5 Serang	Tel. (0254)200123 Fax (0254)200520
4.	Central Java	Jl. MGR. Soeriopranoto No. 1 Semarang 50131	Tel. (024) 3547091 (024) 3547438 (024) 3541487 Telex. 22201 Fax. (024) 3549560
5.	Special Territory of Yogyakarta	Jl. Tentara Rakyat Mataram No. 27-29 Yogyakarta	Tel. (0274) 513969 Telex. 25160 Fax.(0274) 563367
6.	East Java	Jl. Jagir Wonokromo No. 352 Surabaya 60244	Tel. (031) 8410877 (031) 8418676 Telex. 31365 Fax. (031) 8412363
7.	Nangroe Aceh Darussalam	Jl. Jend. A. Yani No. 37 Banda Aceh 23122	Tel. (0651) 23170 (0651) 21010 Telex. 5432 Fax. (0651) 23171
8.	North Sumatera	Jl. Imam Bonjol No. 11 Medan	Tel. (061) 564447 (061) 564155 Telex. 51400 Fax. (061) 515830 (061) 518922
9.	Riau	Jl. Gajah Mada No. 200, Lt. III Pakan Baru	Tel. (0761) 20212 (0761) 20214 Telex. 56210 Fax. (0761) 20213
9.	West Sumatera	Jl. Rasuna Said No. 74 Padang	Tel. (0751) 51432 Telex. 55188

			Fax. (0751) 51938
10.	Jambi	Jl. RM Noor Atmadibrata No.IA	Tel. (0741) 60450 (0741) 669352 Telex. 27301 Fax. (0741) 60450
11.	Lampung	Jl. Sudirman No. 29 Bandar Lampung 35127	Tel. (0721) 261430 Telex. 26130 Fax.(0721) 266184
12.	South Sumatera	Jl. Jend. Sudirman km.3,5 No.565	Tel. (0711) 352082 Telex. 27427 Fax.(0711) 357069
13.	Bengkulu	Jl. Pembangunan No. 1 Padang Harapan, Bengkulu	Tel. (0736) 21450 (0736) 21092 (0736) 21802 Telex. 27384 Fax. (0736) 21802 (0736)21092
14.	Bangka Belitung	Jl. Merdeka No.4 Pangkal Pinang	Tel. (0717) 437705 (0717) 437706 (0717) 437707 Fax.(0717) 437705
15.	West Kalimantan	Jl. St. Syahrir No. 17 Pontianak – 78116	Tel. (0561) 743491 Telex. 29153 Fax. (0561) 768002
16.	South Kalimantan	Jl. Pangeran Samudra No.40, Banjarmasin-70111	Tel. (0511) 59074 (0511)54145 (0511)366413 Telex. 39181 Fax. (0511) 68012
17.	East Kalimantan	Jl. Basuki Rahmat No.56 Samarinda 75117	Tel. (0541) 743235 (0541)743487 Telex. 38178 Fax. (0541) 736446 (0541)744917
18.	Central Kalimantan	Jl. Tjilik Riwut Km. 5,5 Palangkaraya 73112	Tel. (0536) 31416 (0536) 31456 Telex. 39377 Fax. (0536) 31454 (0536)24115
19.	North Sulawesi	Jl. Raya Tomohon Tomohon-95362	Tel. (0431) 35 1923 Telex. 74195 Fax. (0431) 863264 (0431) 351923

20.	Central Sulawesi	Jl. Pramuka No. 23 Palu	Tel. (0451) 421807 (0451) 424325 Telex. 75135 Fax. (0451) 424325
21.	South East Sulawesi	Jl. Taman Suropati No.2 Kendari	Tel. (0401) 323268 (0401) 323269 Telex. 75135 Fax. (0401) 323267
22.	South Sulawesi	Jl. Sam Ratulangi No.93 Ujung Pandang	Tel. (0411) 316042 Telex. 71236 Fax.(0411) 320321
23.	Bali	Jl. D.I. Panjaitan No. 5 Denpasar	Tel. (0361) 237991 (0361) 229593 Telex. 35117 Fax.(0361) 236037
24.	West Nusa Tenggara	Jl. Udayana No. 4 Mataram	Tel. (0364) 631060 Telex. 35431 Fax. (0364) 634926
25.	East Nusa Tenggara	Jl. Teratai No. 10 Kupang	Tel. (0380) 33080 (0380) 33111 Telex. 35431 Fax. (0380) 33213
26.	Maluku	Jl. Pengeringan Pantai Waihaong Ambon	Tel. (0911) 42151 Telex. 73100 Fax. (0911) 54413
27.	North Maluku	Jl. Saleh Efendi Kampung Pisang Ternate	Tel.(0921) 310165 Fax.(0921) 52321
28.	Papua	Jl. Sam Ratulangi No. 32 Jayapura	Tel. (0967) 533600 (0967)531332 Telex. 76210 Fax. (0967) 536943
29.	Batam Industrial Development Authority	Sekupang, Batam	Tel. (0778) 322222 Telex. 58115 Fax.(0778) 322019 or 322537

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

(a) List and description of the scope of any exception 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).

The Indonesian Government adopts “Most Favored Nations/MFN” treatment where Indonesia is opened for all foreign investors who want to invest in Indonesia regardless of their origin country,

unless otherwise stipulated.

(b) 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

(a) 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 condition and special screening)**
1) Infrastructure such as ports, generation, transmission and distribution of electricity for public use, telecommunication, shipping, airlines, and nuclear electric power generation (Government Regulation No. 20 of 1994).	Local partner's share in the joint venture company should be at least 5%
2) Freshwater fish and freshwater fish cultures; forest utilization rights; taxi/bus transportation; local shipping; private television broadcasting; radio broadcasting services, newspaper and magazine; operation of cinema; spectrum management of radio frequency and satellite orbit; trade services and its support services except: retailer (mall, supermarket, department store, shopping centre), distributor/ wholesaler, restaurant, quality certification services, market research services, and after sales services; medical services: general clinics, delivery clinics, specialist clinics (Presidential Decree No. 96 of 2000 and No.118 of 2000).	Reserved only for domestic enterprises.

(b) Brief description of the nature and scope of any limitations on foreign firms' access to sources of finance, e.g. are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

There is no limitation on FDI companies access to sources of investment funds from offshore financing as long as there is no government involvement.

4. Repatriation and Convertibility

(a) 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.

(b) Brief description of the foreign exchange regime.

Indonesia has already adopted a free foreign exchange regime.

(c) Restrictions on the convertibility if currencies for the overseas transfer of funds.

Not applicable.

5. Entry and Sojourn of Personnel

(a) 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.

(b) 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 Employ- ment of Expatriate.	Indonesia still needs expatriates, but they are limited to certain areas of expertise/occupation which can not 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 investors.

(c) 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.

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 position which cannot 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.

(d) List and summary of domestic labor laws which apply to foreign firms in the context of labor disputes/relations.

Law	Summary
Law No. 25 of 1997 on Manpower.	In case of labor disputes, labor 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 labor disputes. The committee consists of the representative of labor union, the representative of management and official from Manpower Ministry. Incase of large disputes which can effect national stability, the decision should be made by National Committee at the office of Ministry of Manpower.

6. Taxation

(a) 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	5%
Income between Rp. 25 – 50 million	10%
Income over Rp. 50 million-100 million	15%
Income over Rp.100 million-200 million	25%
Income over 200 –over	35%

Loses

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 (%)	Method of Calculation Declining Balance (%)
I. Non Building			
Group 1	4	25	50
Group 2	8	12.5	25
Group 3	16	6.25	12.5
Group 4	20	5	10
II. Building			
Permanent	20	5	
Non-Permanent	10	10	

Amortization

Non Physical Asset	Useful Life (years)	Method of Calculation Straight Line (%)	Method of Calculation 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 dividend, interest, premium, discount, royalties, technical & management fees for services, income regarding guarantee of debt payment 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 (except for technical and management services 6%), the rate is 15%; and

(ii) payments to non-residents 20%.

Land and Building Tax

Land and building taxes are payable annually on land, buildings and permanent structures. The effective rates are nominal, typically not more than 0.1% of the property's value.

Double Taxation Avoidance Agreements

To avoid incidental double taxation on certain income such as profits, dividends, interests, fees and royalties, Indonesia has signed 50 agreements (tax treaties) with the following economies:

1. Algeria	14. Hungary	27. Pakistan	39. Switzerland
2. Australia	15. India	28. Philippines	40. Syria
3. Austria	16. Italy	29. Poland	41. Thailand
4. Belgium	17. Japan	30. Rep. of Korea	42. Tunisia

5. Bulgaria	18. Jordan	31. Romania	43. Turkey
6. Canada	19. Kuwait	32. Saudi Arabia	44. UEA
7. Chinese Taipei	20. Luxembourg	33. Singapore	45. Ukraine
8. Czech	21. Malaysia	34. South Africa	46. United Kingdom
9. Denmark	22. Mauritius	35. Sri Lanka	47. USA
10. Egypt	23. Mongolia	36. Spain	48. Uzbekistan
11. Finland	24. Netherlands	37. Sudan	49. Venezuela
12. French	25. New Zealand	38. Sweden	50. Viet Nam
13. Germany	26. Norway		

7. Performance Requirements

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

None

8. Capital Exports

(a) List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Not applicable.

(b) List and brief description of any regulations/institutional measures that limit technology exports.

Not applicable.

9. Investor Behavior

(a) 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 guide lines/policies of the economy. There is no particular requirement observance by foreign investors.

10. Other measures

(a) Brief outline of the competition policy regime.

Indonesia has enacted the Law No. 5 of 1999 on the Prohibition on Monopoly Practices and Unfair Business Competition. Under this law, the Government regulates and prohibits any monopoly practices and unfair business practices that could be harmful to the public's interests. By this law, as long as a business sector is opened for investment activity, there is no barrier to the new entry to enter domestic market. So, it is hoped that business activity will grow more in quantity as well as quality. This law reflects a strong commitment from the Government to create a fair and healthy business competition and more conducive climate for investment and business activities in Indonesia.

This law is applied for both domestic as well foreign investment companies with the same treatment.

Limited Liability Company Law

Law No. 1 of 1995 on The limited liability company has already covered the issue of competition. This law, which primarily sets out the country's rules governing the creation and operation of companies, contains an express legislative statement[1] that promotes fair competition among businesses and prohibits monopolistic business combinations if the result from mergers, consolidations and other acquisitions. Under Article 104 of the law, mergers and acquisitions of the companies in Indonesia must observe "the interests of the public and fair competition in business[2]." 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 [3]."

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[4]. If a request is considered reasonable by the Chairman of the District Court, the investigation will be conducted by experts appointed by the Court[5]. This law is significant in that Indonesia 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 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.

(b) 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 standard:

1) *Act No. 6 of 1989 and Act No. 13 of 1997* on patents as amended by *Act No. 14 of 2001.* Technology invention would be protected by this act. Criteria of protection are new, inventive and can be implemented in industry. A patent application is submitted in Indonesian language to

[1] The 1984 Law on Industry and the 1995 Law on Small Business contain similar references.

[2] Law No. 1 of 1995, Article 194 (I) b.

[3] Elucidation, Law No. 1 of 1995, Article 104, Paragraph (I).

[4] Law No. 1 of 1995, Article 110 (3) (c).

[5] Ibid, Article 111 (2) and (3).

Government Patent Office, with the appropriate fee decided by the Minister of Justice. The patent is valid for 20 years from the received date of patent, and 10 years for simple patent.

2) Act No. 6 of 1982 on copyright as amended by Act No. 7 of 1987 and No. 12 of 1997. This law protects people's creations on science, art and literature.

3) Act No. 19 of 1992 and Act No.14 of 1997 concerning trademark as amended by Act No. 15 of 2001. The trademark protects trademarks in goods and services. The criteria for obtaining the trademark are unique and not against the common rules. A trade mark application is submitted in Indonesian language to Government Trademark Office, with the appropriate fee decided by Minister of Justice. The trademark is valid for 10 years from the date the trademark application is received.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) 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	(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 reasons. (b) Compensation • In the case of nationalization, the government has the obligation to provide compensation. The amount, type and method of payment shall have been agreed upon by both parties, in accordance with valid principles of international law. • If no agreement can be reached between the two parties, arbitration shall take place which shall be binding on both parties. • 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. • The Government guarantees for the transfer of compensation.

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

Not applicable.

2. Settlement of Disputes

(a) 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 of problems related to laws, regulations and procedures can be referred to Deputi Bidang Pengendalian BKPM (Deputy Chairman for Supervision, 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 Supervision	Jl. Gatot Subroto No. 44 Jakarta 12190 – Indonesia Tel : (62-21) 525-2008 (62-21) 525-4981 Telex : 62654 BKPM IA Fax : (62-21) 525-4945 (62-21) 522-7609 Website : www.bkpm.go.id E-mail : sysadm@bkpm.go.id
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

(b) Signatory or accession to the ICSID Convention?

Yes, Indonesia participates in the Convention on 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 (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.

Program (National/ sub-national)	Nature of incentive	Contact point
National	• For all investment projects, all expenses for: - research and development (R&D) activities conducted in Indonesia; - scholarship, education and training; - waste management facilities, will be counted as a cost and deducted to gross income. • For investment activities in certain priority sectors and/ or certain areas will be granted tax allowance as follows: - An investment Tax Allowance of 30% for 6 (six) years, in the form of taxable income reduction as much as 30% of the realized investment spread in 6 (six) years. - Accelerated depreciation and amortization. The rate for the deprecible asset : Physical Assets / Useful Life (years) / Method of Calculation: Straight Line / Declining Non Building a. Group I — 2 — 50% — 100% b. Group II — 4 — 25% — 50% c. Group III — 8 — 12,5% — 25% d. Group IV — 10 — 10% — 20% Building a. Permanent — 10 — 10% — - b. Non-permanent — 5 — 20% • A Loss carried forward facility for period of no more than 10 (ten) years. • A 10% income tax on dividends, and possibly being lower if stipulated in the provisions of an existing particular tax treaty.	Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179 Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179

	• 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. • Special incentives for investment activities located in Bonded Zone: - Exemption from Import Duty, 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. - Allowed diverting their products, amounting to 50% of the final product and 100% of the unfinished product exported (in terms of export realization) to the Indonesian customs area, through normal import procedure including payment of customs duties. - Allowed selling 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. - Allowed to lend their own machineries and equipments to their subcontractors located outside bonded zones, for no longer than two years, in order to further process their own products. - The exemption of Value Added Tax on Luxurious Goods on delivery of products for further processing from Bonded Zones to their subcontractors outside the Bonded zones, or the other way around as well as among companies in these areas. - Transaction of goods from a producer located outside bonded zones to company located in bonded zones for further processing is provided the same fiscal facilities with exported goods. • The Government has established 15 Integrated Economic Development Areas (KAPET) throughout Indonesia. For investment activities in these areas shall enjoy some incentives, among others: - Tax Allowance of 30% from the amount of	Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179

	investment. - Loss compensation as from the subsequent tax year consecutively up to 10 years. - Income Tax deductions on dividends in the amount of 10% from the amount otherwise payable. - Value Added Tax and Sales Tax on Luxury Goods are not imposed to entrepreneurs in KAPET for domestic purchases and/or imports of capital goods and other equipments, import of taxable goods for further processing and also some other interesting incentives. - Accelerated depreciation and amortization. The rate for the depreciable assets : Physical Useful Method of Calculation Assets / Life (years) / Straight Line / Declining Non Building a. Group I 2 50% 100% b. Group II 4 25% 50% c. Group III 8 12,5% 25% d. Group IV 10 10% 20% Building a. Permanent 10 10% b. Non-permanent 5 20%	Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179

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.

Program	**Nature of incentive**	**Contact point**
National	All investment projects approved by BKPM, in the framework of Foreign Direct Investment (PMA) as well as domestic investment (PMDN) are granted the	Investment Coordinating Board, attention: Deputy Chairman for Investment

	following facilities: • Reduction of import duty : 1) On the importation of capital goods namely machinery, equipment, spare parts, and auxiliary equipments. 2) On the importation of raw materials for the purpose of two years full production. • Exemption from Transfer of Ownership Fee for ship registration deed/ certification made for the first time in Indonesia, but no more than two years after commencing commercial operation. <u>Some incentives are provided for exporting Manufacturers</u> • Restitution (drawback) of import duty on the importation of goods and materials needed to manufacture the exported finished products. • The company can import raw materials required regardless of the availability of comparable domestic products. • Investment activities located in eastern part of Indonesia and at least 65% of production for export, are allowed to use freely foreign expatriates regardless of the availability of local manpower.	Services Jl. Gatot Subroto No. 44 Jakarta 12190 Tel.: (62-21) 525-2008 (62-21) 525-4981 Telex : 62654 BKPM IA Fax : (62-21) 525-4945 (62-21) 522-7609 Email:sysadm@bkpm.go.id Export Facility Services and Financial Data Processing Board (BAPEKSTA), Attn.: Head of Export Facility Services and Financial Data Processing Board. Jl. Lapangan Banteng Timur No. 2-4. Jakarta Pusat Tel. (62-21) 525-1609 525-0208 Investment Coordinating Board, attn.: Deputy Chairman for Investment Services Jl. Gatot Subroto No. 44 Jakarta 12190 Tel.: (62-21) 525-2008 (62-21) 525-4981 Telex: 62654 BKPM IA Fax : (62-21) 525-4945 (62-21) 522-7609 Email: sysadm@bkpm.go.id
Regional	Some regional governments offer some additional incentives to investors by providing a reduction on regional levies or retribution fee.	Regional Investment Coordinating Board (BKPMD) concerned.

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

Agencies	Address/ telephone/ fax
Investment Coordinating Board, attention: Deputy Chairman for Investment Services	Jl. Gatot Subroto No. 44 Jakarta 12190 Tel.: (62-21) 525-2008 (62-21) 525-4981 Telex : 62654 BKPM IA Fax : (62-21) 525-4945 (62-21) 522-7609 E-mail: sysadm@bkpm.go.id

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

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

Agreement	Provisions
Friendship Commerce and Navigation Treaties Indonesia has concluded bilateral agreement on trade/ commerce and navigation with a number of countries. Regional or sub regional Investment Treaties. Indonesia has concluded regional agreement within ASEAN countries as well as within Organization of Islamic Conference. Bilateral Investment Treaties Indonesia has signed bilateral investment agreements concerning Investment Guarantees Agreement (IGA) with 55 economies, namely: Argentina, Alger, Australia, Bangladesh, Belgium, Cambodia, Cuba, Chile, Czech, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Germany, Hungary, Kyrgyz, India, Italy, Jamaica, Jordan, Laos PDR, Luxembourg, Malaysia, Morocco, Mauritius, Mongolia,	The key provisions on the bilateral and regional agreement on investment guarantees are, among others: - Promotion and protection of investment - Most Favoured Nation Provision - Compensation for losses - Expropriation - Transfer of investment and returns - Subrogation - Transparency of laws - Settlement of disputes

Mozambique, Netherlands, Norway, People's Republic of China, United Kingdom, Rep. of Korea, Pakistan, Poland, Qatar, Romania, Singapore, The Republic of Philippines, Slovakia, Spain, Sri Lanka, Sudan, Suriname, Syria, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, United Kingdom, Ukraine, Uzbekistan, Viet Nam, Yemen, and Zimbabwe.	

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 October 2002 foreign investment approvals had reached a total value of US$ 254.7 billion with the number of 11,817 projects. The trend of foreign investment approvals in the last five years, as seen at the figures:

Years	**Project**	**Value (US$ billion)**
1997	783	33.8
1998	1,034	13.6
1999	1,174	10.9
2000	1,524	15.4
2001	1,317	9.0
2002	935	6.5

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 economies that are sources/receivers of FDI over recent years.

The ten leading foreign investing economies in Indonesia are (Period of 1967 until October 2002):

Economy	Investment Value (US$ million)	%
Japan	34,934.2	14.42
United Kingdom	29,326.8	12.11
Singapore	19,850.2	8.19
Hong Kong China	15,055.5	6.22
Chinese Taipei	12,657.6	5.23
USA	9,858.7	4.07
Korea	*9,550.5*	*3.94*

Germany	9,241.4	3.81
Malaysia	8,751.2	3.61
Australia	8,021.8	3.31

Destination FDI

Based on several sources of information, outflow of Indonesia investment has already existed in many countries, among others: Malaysia, Chinese Taipei, Thailand, Australia, Singapore, the USA, Philippines, Hong Kong China, India, Viet Nam, Myanmar, United Kingdom, France, the Netherlands, Tunisia, and the People's Republic of China.

JAPAN

JAPAN

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

With the increase of mutual dependence among economies in recent years, cross-border direct investment has attracted much attention in the world. International direct investment will contribute to the development of the world economy by stimulating economic activities around the world, and thereby contribute as well to stable and cooperative international relations.

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 believe that each economy should make the utmost efforts to minimize restrictions and ensure fair access to each other's markets, based on the principle of national treatment and MFN, in accordance with international rules and guidelines including the WTO agreement and the Organisation for Economic Co-operation and Development (OECD) Code for the Liberalisation of Capital Movements. We also believe that bilateral and regional endeavors will contribute to the improvement of cross-border investment environment. The Japanese Government therefore considers it important to help foster an open international environment for cross-border direct investment, through multilateral as well as bilateral and regional activities.

At the same time, the Government of Japan acknowledges that expansion of inward foreign direct investment (FDI) is important for the nation. FDI will bring new technology and renovative management methods, and will also lead to greater employment opportunities. Moreover, we are fully aware that inward FDI would contribute to structural reform of the Japanese economy, the objective of which is revitalization of Japanese economy, creation of new business, reduction of the disparities between international and domestic prices, import expansion, by introducing new technology, management know-how and more competition among domestic and foreign firms. Also, it will benefit Japanese consumers, by supplying less expensive and better goods and services as well as greater choice. Further enrichment of Japan's society and culture can be expected as well. Thus, the Government of Japan has decided to take measures based on the "Japan Investment Council Expert Committee Report" and the "Program for the Promotion of Foreign Direct Investment into Japan" in order to increase attractiveness of Japan as an investment destination for foreign firms, with a view to doubling the cumulative amount of inward FDI within next five years.

The Government of Japan has also established contact points, the offices of Invest Japan. They will contribute to the expansion of investment and growth of the nation by providing all information related to investment in Japan as well as by making administrative procedures simpler, faster and clearer. (see B.1.(ii).10 for the detailed information)

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

In the General Policy Speech of January 31, 2003, Prime Minister Junichiro Koizumi outlined the Government of Japan's plan with regard to inward foreign direct investment in the context of "Japanese Economic Rebirth and Investment Appeal": " Foreign direct investment in Japan will bring new technology and innovative management methods, and will also lead to greater employment opportunities. Rather than seeing foreign investment as a threat, we will take measures to present Japan as an attractive destination for foreign firms in the aim of doubling the cumulative amount of investment in five years"

Japan Investment Council Expert Committee (JICEC) finalized the report as well as "Program for the Promotion of Foreign Direct Investment into Japan." (available at; http://www5.cao.go.jp/access/english/jic_main_e.html). The report announces that the Government of Japan recognizes the importance of inward FDI while it clearly demonstrates, both domestically and internationally, the Government's firm intention to increase inward FDI,

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(i) Statutory (Legislative) Requirements

(a) Provide a list of and a summary of relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Foreign Exchange and Foreign Trade Law (the Foreign Exchange Law) (No. 228, 1 December 1949) Cabinet Order concerning Inward Direct Investments, etc. (Cabinet Order No. 261, 11 October 1980) Ordinance concerning Inward Direct Investment, etc. (Ordinance No.1, 20 November, 1980) Public Notice. Notification (No. 1, 7 March 1994)	Investment in Japan by foreign investors is treated as "Inward Direct Investment, etc." under the Foreign Exchange and Foreign Trade 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, considering national security, reciprocity, material adverse influence on the national economy and others.

In order to make administrative procedures in Japan better than those in other countries, efficiency and user-friendliness should be fully realized throughout the government. All public officials involved in regulatory procedures, including those who are answering queries, are committed to provide public services in a clear, simple and fast manner, recognizing the importance of building investment conditions better than that of other countries. In this context, the government of Japan takes various measures including;

making information for investment available in a one-stop-shop,

simplifying and expediting related administrative procedures,

promoting the use of the "no-action-letter" system and "public comment" systems, which clarify legislative interpretations responding to investors' queries.

(ii) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal, identify guidelines/conditions that apply for screening (e.g. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

Proposals	**Guidelines/Conditions**
Merger	Japan does not have this category in the present investment regime. Please see "other" in the box below.
Acquisitions	Japan does not have this category in the present investment regime. Please see "other" in the box below.
Greenfield investment	Japan does not have this category in the present investment regime. Please see "other" in the box below.
Real estate/land (No)	The Foreign Exchange and Foreign Trade Law requires ex post facto report of acquisition by a non-resident of any real property in Japan or rights related when it is acquired for the purpose of investment management and so on. The Alien Land Law stipulates that prohibitions, conditions or restrictions on the rights pertaining to land could be imposed on any foreigner or any foreign juridical person on a reciprocity basis. However, there has been no case so far in which such prohibitions, etc. are imposed.
Joint venture	Japan does not have this category in the present investment regime. Please see the contents of "other" in box below.
Other: When "foreign investors" make "Inward Direct Investment, etc.", prior notification	Foreign Investors are: non-resident individuals, companies or entities established under foreign laws,

Proposals	Guidelines/Conditions
or ex post facto report is required. The definitions of these terms under the Foreign Exchange and Foreign Trade Law are contained in the right-hand box. For further details, please refer to the Foreign Exchange and Foreign Trade Law.	domestic companies in which voting right by (a) or (b) amount to 50% or more, and (d)domestic companies or entities in which either a majority of officers or officers having power of representative are nonresident individuals. (e) Individuals or companies make direct investment on behalf of (a) or (b) Inward Direct Investments, etc. refer to: acquisition of stocks or shares of an "unlisted domestic company" transfer of stocks or 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) acquisition of 10% or more of the total stocks of a domestic company listed on the Tokyo Stock Exchange or over-the-counter ("listed domestic company") consent to a substantial change in the corporate objectives while holding one-third or more of the total shares establishing a branch, factory, or other business office and substantially changing these objectives medium and long term loans (more than 5 years) which amount to 100 million yen or more acquisition of medium and long term bonds which amount to 100 million yen or more (excepted which redeem within one year after the date of acquisition)

Sector	Guidelines/Conditions
	The Foreign Exchange and Foreign Trade Law basically requires an ex post facto report within 15 days after the investment is made, except for cases related to the following sectors: 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, drug, vaccines, security guard services, telecommunications (Type 1 telecommunications business * and telecommunications activities entrusted by Type1 telecommunications carriers), broadcasting) * Type 1 telecommunications business means the business which provides

Sector	Guidelines/Conditions
	telecommunications services by establishing telecommunications circuit facilities. those where liberalisation is not required under the OECD Capital Liberalisation Code (e.g., agriculture, forestry, fisheries, mining, petroleum, leather, maritime transport and air transport). (Note) Although, the mining industry in Japan is exempted from liberalization under the OECD's Code, only ex post facto reporting is required as of April 1998 with the revision of the Foreign Exchange and Foreign Trade Law. Those who make direct investments to Japan in the above sectors are requested to make prior notification in general. Moreover, from a viewpoint of reciprocity, prior notification is also required in cases regarding countries listed in the ordinance on inward direct investment.
Transport (yes) (air and maritime transport)	According to (b) in the box above.
Agriculture (yes)	According to (b) in the box above.
Other: - mining (yes) - petroleum industry (yes) - leather/leather products manufacturing (yes) – forestry(yes) - fishery (yes)	ex post facto reporting according to (b) in the box above. According to (b) in the box above. According to (b) in the box above. According to (b) in the box above. According to (b) in the box above.

(c) Indicate all applications /approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

Forms required under the terms of the Foreign Exchange and Foreign Trade Law and Copies of the relevant documentation can be obtained from the contacts listed in Section B(1)(ii)(4) below.

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax.

Agency	Address/telephone/fax
The Bank of Japan (The Administration Group, Balance of Payments Division, International Department)	2-1-1, Hongoku-cho Nihonbashi, Chuo-ku, Tokyo 103-8660 Japan Telephone: (81 3) 3277 2107

	http://www.boj.or.jp

(e) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection ?

As mentioned in section B1.(ii)2., it is expected that an ex post facto report is sufficient in most cases. Regarding prior notification, the Bank of Japan, which is authorized to perform this task by the Japanese Government, accepts the investment about two weeks after the formal submission unless an inquiry is necessary. In the case of suspension or modification, it takes five months at the longest.

(f) 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. Briefly describe appeal process 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 grants such an investor the opportunity for a public hearing.

Agency	**Address/telephone/fax**
Ministry of Finance (Legal Office, Research Division, The International Bureau) Ministry(s) in charge of the industry concerned.	3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8940 Japan Telephone: (81 3) 3581 4131 http://www.mof.go.jp/english/index.htm

(g) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

No special conditions apply.

(h) Indicate 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, Cabinet Office)	3-1-1, Kasumigaseki, Chiyoda-ku, Tokyo 100-8970 Japan Telephone: (81 3) 3581 0384 E-mail address:oto.bb@mfs.cao.go.jp	Complaints concerning market opening problems, including procedures of import of goods and service, direct investments to Japan, and government procurement.

(i) 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 and Foreign Trade Law (see section B(1)(ii)(1)).

(j) Describe any 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.

Agency	**Address/telephone/fax**
The Japan Investment Council (It is chaired by the Prime Minister and its task is to formulate necessary measures on investment regime. It is guided by and based upon the work of the Experts Committee chaired by Haruo Shimada, Professor of Keio University and Special Advisor to the Cabinet Office ("Experts Committee"). The member of committee has discussed and drafted concrete measures on the promotion of foreign direct investment to Japan. (see A.2.(2)))	Address: 3-1-1, Kasumigaseki, Chiyoda-ku, Tokyo 100-8970 Japan Telephone: (81 3) 3581 0262 E-mail address:jic.bg@mfs.cao.go.jp
The Office of Investment Japan: INVEST JAPAN The Government of Japan established contact points named the office of Invest Japan. The offices listed in the right box provides all information related to investment in Japan and endeavors to make administrative procedures simpler, faster and clearer under the basic concept described below. 1.Service offered (a)Office provides consultation service about investment. (b)Office provides necessary information on investment. (c)Office assists application submission, delivers files to the	Cabinet Office Tel:03-3581-8950(Direct), 03-5253-2111(ex.45207) Fax:03-3581-9897 E-Mail: invest-japan.be@mfs.cao.go.jp Fair Trade Commission Tel:03-3581-1998(Direct) Fax:03-3581-1944 E-Mail: invest-japan@jftc.cao.go.jp Financial Service Agency Tel:03-3506-6049(Direct), 03-3506-6000(ex.3199) Fax:03-3506-6113 E-Mail: invest-japan@fsa.go.jp Ministry of Public Management, Home Affairs, Posts and Telecommunications Tel:03-5253-5156(Direct) Fax:03-5253-5160

relevant section and manages the process, when requested and appropriate. (d)Regarding the no-action-letter system, office receives complaints and coordinates the relevant sections for solution. (e)Office provides other services that will contribute to promoting inward investment. 2.Procedure to inquire Inquiry shall be made in writing (including electric vehicles) or orally. On inquiry, a inquirer shall clarify his/her name, address (or corporation name and place of business), contents of inquiry and reasons. 3.Procedure to respond (a)The office will respond to the inquiry within 10 business days after the reception, unless there are reasonable grounds for delay. The reasonable grounds may include cases when critical judgement is required, when a great number of inquiries is received, and when the standard procedure period is set independently. (b)In case of delay, each ministry concerned shall notify the inquirer of expevted replying date and the reason for delay. When the standard procedure period is set independently, that shall be notified. When the reply is delayed more than one month, procedural progress shall be explained to the inquirer at least once a month. (c)Each ministry concerned can decline to answer to inquiry when it is impossible or inappropriate to provide the answer. Regarding the matters which will not be answered, the reason should be clarified beforehand in fine prints or by other means. 4.Policy of the office The officers serve with kindness, and avoid giving distrust or uneasiness to inquirer. Furthermore, the officers handle corporate information with due caution, and, in accordance with the disclosure law, refrain from disclosing the information when disclosure might violate individual or corporate rights, competitiveness, or other legitimate status.	E-Mail: invest-japan@soumu.go.jp Ministry of Justice Tel:03-3592-7420(Direct), 03-3580-4111(ex. 2087) Fax:03-5511-7200 E-Mail: invest-japan@moj.go.jp Ministry of Foreign Affairs Tel:03-3580-3311(ex. 5055) Fax:03-6402-2245 E-Mail: invest-japan@mofa.go.jp Ministry of Finance Tel:03-3581-8015(Direct) Fax:03-5251-2167 E-Mail: invest-japan@mof.go.jp Ministry of Education, Culture, Sports, Science and Technology Tel:03-5253-4111(ex. 3472) Fax:03-3581-4598 E-Mail: invest-japan@mext.go.jp Ministry of Health, Labor and Welfare Tel:03-5253-1111(ex. 7718) Fax:03-3502-5395 E-Mail: invest-japan@mhlw.go.jp Ministry of Agriculture, Forestry and Fisheries Tel:03-3502-8111(ex. 3222,3194) Fax:03-3502-0389 E-Mail: invest_japan@nm.maff.go.jp Ministry of Economy, Trade and Industry Tel:03-3501-1774(Direct) Fax:03-3501-2082 E-Mail: invest-japan@meti.go.jp Ministry of Land, Infrastructure and Transport Tel:03-5253-8313(Direct) Fax:03-5253-1561 E-Mail: invest-japan@mlit.go.jp

5.Follow-up report (a)To implement the system appropriately, Cabinet Office shall conduct the follow-up check on the concerned ministries and report the result to the Japan Investment Council Expert Committee. If needed, the system will be reviewed, based on the result of follow-up check. (b)Cabinet office can request the procedural record to the ministries if needed. When the procedural record is to be disclosed, the contents of disclosure should be consulted by concerned ministries and inquirer. 6.Other Approaches Each ministry will make various efforts, including improvement and enhancement of the homepage, in order to provide sufficient information on investment to Japan, while clarifying, simplifying and accelerating the administrative procedures. Each ministry also makes efforts to provide all information in English and basic information in other languages.	Ministry of the Environment Tel:03-5521-8324(Direct) Fax:03-3580-9568 E-Mail: invest-japan@env.go.jp Japan External Trade Organization Tel:03-3584-6042(Direct) Fax:03-3584-6024 E-Mail: invest-japan@jetro.go.jp Development Bank of Japan Tel:03-3244-1770(Direct) Fax:03-3245-1938 E-Mail: dbjmail@dbj.go.jp

In the case of suspending or modifying a prior notification of "Direct Domestic Investment" (as mentioned earlier in this section, 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 and Foreign Trade Law.

(k) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g. zoning, approvals and land purchase).

No sub-national agency is involved in the approval process under the Foreign Exchange and Foreign Trade Law regarding "Foreign Direct Investment."

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

(a) 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).

(1) Foreign Exchange and Foreign Trade Law

No exception to MFN treatment regarding establishment, expansion and operation of foreign investment other than the reciprocity principle mentioned earlier in this section.

(2) Other laws such as the following stipulate possible exceptions to MFN treatment.

(a) Banking

The establishment of branches or subsidiaries of foreign banks requires authorization and is subject to considerations of reciprocity (It will be examined by the Prime Minister whether Japanese banks are entitled to a status equivalent in substance to the one given under Japanese Banking Law in the country where the main office of that foreign bank exists.).

(b) International Freight Forwarding Services

An operation permit or governmental registration for international freight forwarding services is granted only to those firms of economies in which Japanese firms are eligible for such permit or qualified for such registration.

(b) 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

(a) 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).

Apart from the regulations written in the Foreign Exchange and Foreign Trade Law (mentioned in section (B)(1)), some laws, such as the following, restrict FDI in Japan.

Sector	**Nature of Exception (e.g., prohibition, limitation, special conditions and special screening)**
Telecommunications	Foreign capital participation, direct and/or indirect, in Nippon Telegraph and Telephone corporation (NTT) must be less than one-third.
Broadcasting	Foreigners or foreign-controlled enterprises (where any of the executive officers is a foreigner, or one-fifth or more of voting rights in aggregate are owned by foreigners) are not granted: licenses for broadcasting stations; and approvals for program-supplying broadcast business. Foreigners or foreign-controlled enterprises (where any of the corporate representatives is a foreigner, or one third or more of voting rights in aggregate are owned by foreigners) are not granted: licenses for broadcasting stations of facility-supplying broadcasting; licenses for broadcasting stations used for relay broadcasting for preventing reception disturbance Remarks: the term “foreigner(s)” means : any person who does not have Japanese nationality;

Sector	Nature of Exception (e.g., prohibition, limitation, special conditions and special screening)
	any foreign government or its representative; and any foreign juridical person or association.
Air Transport	A license to operate an air transport business shall not be granted to: a person who is not a Japanese citizen; a foreign government or its representatives; a foreign juridical person or association; and 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.
Maritime Transport	Transport of goods and passengers between Japanese ports is reserved to Japanese ships. Foreign ownership of Japanese ships can be obtained only through an enterprise incorporated in Japan in accordance with Ship Law.
Mining	Only the Japanese citizens or the Japanese juridical person is able to become an owner of a mining right.
Banking	The deposit insurance system only covers financial institutions which have their head office within the jurisdiction of Japan. Branches of foreign banks in Japan are not covered by the Deposit Insurance Law, mainly because jurisdictional problems might hinder Japanese authorities in taking prompt and appropriate action against them at the time of resolution of failed financial institutions.

(b) 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

(a) 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.

(b) Brief description of the foreign exchange regime.

There is no restriction on foreign exchange.

(c) Restrictions on the convertibility of currencies for the overseas transfer of funds.

Not applicable.

5. Entry and Sojourn of Personnel

The Government of Japan recognizes that human resources play a substantial role as a driving force in industrial growth. Provision of excellent personnel is essential for the development of new business. Facilitating the resident-eligibility clearance for foreign managers, researchers and engineers needed in Japan is vital for the promotion of inward FDI into Japan. Furthermore, it is also important to create a comfortable living environment for foreign professionals and their families in Japan. This includes improvement in education, medical services and pensions systems. In this context, the Government of Japan takes various measures such as improving systems related to entry and sojourn of foreign nationals.

(a) 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 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 case is more frequent.

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:

the facilities or offices are located in Japan;

the business has the capacity to employ at least two full-time employees; and

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 at graduate school to study relevant courses on business) and must receive a salary no less than that a Japanese would receive for comparable work.

The duration of the status of the investor/business manager is decided among the options of three years and one year, 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 is no regulation or guideline which require a minimum number of local staff to be included in an investment proposal and/or operation of an investment. However, in some exceptional sectors, such as mining and fisheries, any foreign individual or legal entity may not be able to enjoy mining or fishing rights.

In April 2003, the Government of Japan introduced APEC Business Travel Card, which farcilitates the movement of business people in the APEC region.

(b) List and description of any restrictions by law or regulation on the entry/stay 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) - (5) (1) Investor/Business Manager 1. In cases where the applicant is to commence the operation of international trade or other business, the following conditions are to be fulfilled. The office is located in Japan. The business has the capacity to employ at least two full-time employees in Japan (including Permanent Residents, etc.). 2. In cases where the applicant is to invest in international trade or other business and to operate or manage that business, or in cases where the applicant is to operate or manage international trade or other business on behalf of the foreign nationals or who has begun such an operation or has invested in such a business, the following conditions are to be fulfilled. The office is located in Japan. The business has the capacity to employ at least two full-time employees in Japan (including Permanent Residents, etc.). 3. In case where an applicant is to engage in the management of international trade or other business in Japan, the following conditions are to be fulfilled. At least three years' experience (including any period of study at a graduate school). No less in salary than a Japanese would receive for comparable work. The Government of Japan examines relaxation of requirements of status of residence for business managers who carry out important investments within FY 2003. (2) Engineer Based on a contract with organizations in Japan. The applicant must have graduated from or completed college or acquired an equivalent education with majoring in the subject relevant to the knowledge necessary for performing the job concerned, or the applicant must have at least 10 years' experience (including any period spent in study), except in the

Restrictions	Description
	case that the applicant is to engage in a job that requires skills and /or knowledge concerning information processing, and has passed the examination on information processing skills that is designated by the Minister of Justice in the Official Gazette or has obtained the qualification on information processing skills that is designated by the Minister of Justice in the Official Gazette. No less in salary than a Japanese would receive for comparable work. The Government of Japan continues to facilitate granting status of residence by means including expansion of mutual recognition of engineers' qualifications. The Government of Japan also examines, within FY 2003, relaxation of requirements of status of residence for outstanding engineers. (3) Specialist in Humanities/International Services In cases where the applicant is to engage in a job requiring knowledge in the humanities, the following conditions are to be fulfilled. Based on a contract with organizations in Japan. The applicant must have graduated from or completed college or acquired an equivalent education with majoring in the subject relevant to the knowledge necessary for performing the job concerned, or the applicant must have at least 10 years' experience (including any period spent in study). No less in salary than a Japanese would receive for comparable work. In cases where the applicant is to engage in a job requiring specific ways of thought or sensivitity based on experience with foreign culture, the following conditions are to be fulfilled. Based on a contract with organizations in Japan. To engage in translation, interpretation, or other similar work. At least 3 years' experience in a relevant job, except in cases when the applicant engaging in translation, interpretation, or instruction in languages has graduated from college. A salary of at least 250,000 yen per month. (4) Intra-company Transferee The applicant has been employed at the office abroad for at least one year immediately prior to the transfer to Japan. 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.

Restrictions	Description
	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. (5) Dependent A dependent (a spouse and/or child(ren) supported by the applicant) of those mentioned above.

(c) 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.

(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 keep the workers' living stable , raise the quality of the 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.

(d) List and summary of domestic labour laws which apply to foreign firms in the context of labour disputes/relations.

Law	Summary
Trade Union Law	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). 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).
Labour Relations Adjustment Law	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 .enacted. The law regulates labor disputes settlement procedures such as

Law	Summary
	conciliation, mediation and arbitration, and limits or prohibit labor disputes in certain cases.

6. Taxation

(a) 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
Taxes on corporate income consist of corporation tax (national tax), corporate inhabitants tax (prefectural and municipal tax) and corporate enterprise tax (prefectural tax). While corporation tax and corporate inhabitants tax are not deductive, corporate enterprise tax is deductible. Domestic source income such as interest, dividend etc. is subject to withholding tax at source. Foreign companies setting up a Japanese branch and doing business are subject to tax on income from all sources in Japan. Consumption tax is imposed on goods and services provided by enterprises in Japan and on foreign goods received from bonded areas.	Corporation tax rate : 30.0% Corporate inhabitants tax rates: (prefectural tax) - 5.0% of tax amount of corporation tax (municipal tax) - 12.3% of tax amount of corporation tax Corporate enterprise tax rate (deductible) -9.6% Withholding tax rates: -Dividends reduced to 10% until 2007. -Interest 15% Double taxation agreements-Japan has 45 Tax Treaties, under which the above-mentioned withholding tax may be mostly reduced. Consumption tax rate : 5% -Consumption Tax rate (national tax) 4% -Local Consumption Tax rate (prefectural tax) 1%

7. Performance Requirements

(a) Brief description of performance requirements that could impose limits on trade and investment and indicate any TRIMS.

There is no performance requirement in Japan.

8. Capital Exports

(a) 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.	In principle, an investor who has made a foreign direct investment need only to present to the Minister of Finance, through the Bank of Japan, a notification regarding the investment within 20 days after the investment having been made. In a limited number of sectors, investors must notify the Minister of Finance of the investment, through the Bank of Japan, up to two months prior to the investment being made. The sectors for which a prior notification is required (so-called restricted industries) are listed in a Foreign Exchange ministerial ordinance.

(b) List and brief description of any regulations/institutional measures that limit technology exports.

Regulations	Application and function
Foreign Exchange Control Order	The Government of Japan examines the transfer of specific technology to specific destinations from the viewpoint of maintaining international peace and security. The law contains a governmental order: the Foreign Exchange Control Order. This governmental order includes lists of controlled technologies under control.

9. Investor Behavior

(a) 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. The aim of the guidelines is to ensure that Japanese firms act in harmony with and contribute to the development of the investment recipient communities. The government of Japan has been disseminating the guidelines.

10. Other Measures

(a) Brief outline of the competition policy regime.

Japan's competition policy is implemented by strictly enforcing the Act Concerning the Prohibition of Private Monopoly and Maintenance of Fair Trade (the Antimonopoly 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.

(b) 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.

(i) 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 well-known trademarks which have goodwill under the Unfair Competition Prevention Law. And certain designs can also be protected under this 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 Trademark Law Treaty, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of Deposit of Microorganisms for the Purposes of Patent Procedure. Foreign right holders are generally given the same protection as Japanese right holders under these laws.

(ii) Copyright

The Copyright Law was revised in 1970. In addition, Japan became a party 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,the TRIPS Agreement in 1994, the WIPO Copyright Treaty in 2000 and the WIPO Performances and Phonograms Treaty in 2002.

Thus, foreigners' copyrights and related rights are protected in the same way as those of Japanese in general.

(iii) 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.

(iv) 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

(a) 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 economy's land. Of course this law is applied to Japanese and foreigners indiscriminately.

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

Not applicable.

2. Settlement of Disputes

(a) 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 (Legal Office, Research Division, International Bureau) The Ministry(s) in charge of the industry concerned	Address: 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8940 Japan Telephone: (81 3) 3581 4131 http://www.mof.go.jp/english/index.htm

(b) 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. Promotion of Foreign Direct Investment into Japan: Resolution of the Japan Investment Council	The outline of the council was given in section B(10). The council decided the following on March 27, 2003. Based on the Japan Investment Council Expert Committee Report and the "Program for the Promotion of Foreign Direct Investment into Japan," the Government of Japan will steadily implement 74 concrete measures under the following five categories. (1) Review administrative procedures (clearer, simpler and faster) Establish a single point of contact in each relevant ministry, etc. (2) Improve the business environment Facilitate cross-border M&A, etc. (3) Create favorable employment and living environments Relax entry requirements for engineers and researchers, assist foreign students finding jobs, etc. (4) Improve local and national structures and systems Assist autonomous efforts by local governments to attract FDI, examine utilization of the special zones for structural reform system, etc. (5) Disseminate information on these efforts and investment opportunities in Japan both domestically and internationally The Expert Committee will monitor the progress in	Secretariat for the Japan Investment Council (Office for Inward Investment Promotion, Cabinet Office) 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8970 Telephone: (81 3) 3581 0262 e-mail address : jic.bg@mfn.cao.go.jp

Program	Nature of incentive	Contact point
	implementing the "Program for the Promotion of Foreign Direct Investment into Japan" with close cooperation from the relevant ministries and agencies. When further measures are needed, the committee will carry out additional study and intend to improve the program. Based on this, the Government of Japan will effectively implement the measures. The Government of Japan will widely publicize these measures to foreign investors in order to promote investment into Japan and support their investments through these measures.	
2. Japan External Trade Organization (JETRO) Activities to Promote Foreign Direct Investment in Japan	(a) Invest in Japan Study Program (IJSP) JETRO, in order to help foreign companies research opportunities for investing directly in the Japanese market, invites business people to visit Japan through participation in the IJSP. The program includes study seminars, field trips and meetings with potential partners. JETRO bears the participant's airfare and hotel expenses. (b) Invest in Japan Individual Program(IJIP) IJIP provides companies that are ready to invest in Japan with a number of practical services: Introduction to advisors and other specialists. Help with gathering information on market trends, sites and potential partners. Arrangement of meetings with Japanese companies, law firms, accountants, certral and local government, investment organizations, etc. Arrangement of field trips.. (c) Investment advisors JETRO dispatches advisors and other specialists to provide foreign companies with information and consultation regarding direct investment in Japan and doing business in the Japanese market. Advisors and other specialists are also available for consultation at JETRO's Tokyo and Osaka offices in Japan.	Investment-in-Japan Division, Investment Promotion Department, Japan External Trade Organization (JETRO) 2-2-5 Toranomon, Minato-ku, Tokyo 105-8466 Telephone: (81 3) 3582 5571 Fax: (81 3) 3505-1854

Program	Nature of incentive	Contact point
	(d) Seminars and Symposiums JETRO overseas offic es sponsor seminars and symposiums to provide both group and individual consultation on a variety of themes related to business in Japan. Activiities in North America and Europe include invest-in-Japan symposiums and conferences which are organiezed in cooperation with the Japan Regional Development Corporation and Japan Industrial Location Certer. Presentations at these events conver subjects such as the Japanese market in general, M&A trends and regulations, regional investment in Japan and procedures concerning investment in Japan. (e) JETRO's BSCs provide fully equipped office facilities on a temporary basis from two weeks to four months, plus consultation with advisors, basic administrative support and more. Woth the exception of actual costs such as phone/fax, the services are completely free. The BSCs are located conveniently in Tokyo, Yokohama, Nagoya, Osaka, Kobe and Fukuka. (f) Online information "INVEST JAPAN!"website is an attractive homepage where one can obtain and search a variety of information on investments in Japan. The homepage offers the following information. · Trends of the Japanese economy/business and investments in Japan. · Procedures, laws, tax system, and preferential measures associated with investments in Japan. · Investment environments in various parts of Japan. · Cost of setting up business in Japan as calculated through a simulation format. · Examples of successful cases. etc.	Homepage address: http://www.jetro.go.jp/invest japan
3. Special Zones for Structural Reform	The Government of Japan has approved a large number of special zones for structural reform in which various types of deregulation are attempted. This system is a strong incentive for local	Cabinet Secretariat, Office for the Promotion of Special Zones for Structure

Program	Nature of incentive	Contact point
	governments that are taking a global perspective and striving for new developments that utilize foreign capital and human resources. Greater utilization of the system is expected to promote FDI into Japan.	Reform Toranomon dai 23 Bldg. 1-23-7 Toranomon Minato-ku Tokyo 105-0001 Telephone: (81 3) 5521-6611

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*

Program (National / sub-national)	Nature of incentive	Contact point
(1) Support Programs for a "Designated Inward Investor" based on the Import and Inward Investment Promotion Law	(1) A Designated Inward Investor (*) could receive following incentives. (a) Tax incentives Extension of carry-over period for operating losses incurred within the first five years of business from 5 to 7 years. (b) Loan Guarantees by the Industrial Structure Improvement Fund Loan guarantees on up to 95% of the liability up to \1 billion per enterprise of business funds borrowed. (c)Credit guarantees by Credit Guarantee Association SMEs which do business with designated inward investors are entitled to credit guarantees provided by Credit Guarantee Association when they borrow funds necessary for their business operations. (*) The conditions for becoming a "Designated Inward Investor" are as	(a) To be certified as a designated inward investor, apply to: ? Kanto Bureau of Economy, Trade and Industry (International Affairs Division) Telephone: (81 48) 600-0262 http://www.kantou.meti.go.jp/ ? Kansai Bureau of Economy, Trade and Industry Telephone: (81 6) 6941-4349 http://www. Meti-kansai.go.jp/ ? Other Regional Bureau of Economy, Trade and Industry (b)Industrial Structural Improvement Fund(ISIF) Guarantee Division, Business Department No.2 Telephone: (81 3)-3241-6357 http://www.isif.go.jp (c)National Federation of Credit Guarantee Corporation

Program (National / sub-national)	Nature of incentive	Contact point
	follows: – a branch or a subsidiary with at least one-third foreign equity (including those with 100% foreign equity); – a company which has been operating for less than 8 years since its establishment; and – a company engaged in manufacturing, wholesaling, retailing, or servicing sector in Japan.	Telephone: (81 3)-3271-7201 http://www.zenshinhoren.or.jp/index.html
(2) Low-interest Loans Program by Development Bank of Japan for the promotion of foreign direct investment in Japan.	(2)Company and Project Eligibility Companies: (a)Japanese companies with at least one-third of foreign capital (b)Registered branches in Japan of non-Japanese companies Projects: (a) Most types of capital investment made in Japan (includes land, factories, office buildings, warehouses, machinery, etc.,) that are expected to contribute to the Japanese economy through exchanges of know-how, etc. (The first significant investment or import-related investment is given particular favor.) (b) R&D Costs in Japan (i) Construction/purchase costs of R&D facilities (land, buildings, machinery, etc.) (ii) R&D-related personnel and other expenses (joint projects with Japanese companies, etc.)	(2)(a) Development Bank of Japan (International Department) 1-9-1 Otemachi, Chiyoda-ku, Tokyo 100-0004 Telephone: (81 3) 3244 1770, http://www.dbj.go.jp/top/index.html

Program (National / sub-national)	Nature of incentive	Contact point
	For further information, please contact Development Bank of Japan.	
(3) Program of Providing the Specific Facilities to Promote Foreign Investment Exchange based on the Private Participation Promotion Law	(3) Types of facilities: In order to facilitate business activities by foreign corporation in Japan, training facilities for foreign business persons and short -term office are available for foreign companies preparing to enter into Japan. Following facilities are available, ? Shonan Village Center (Hayama, Kanagawa-pref.) ? Japan Business Center (Makuhari, Chiba-pref.) ? Rinku Gate Tower (Osaka) ? Kobe International Business Center(Kobe)	(3) ? Shonan Village Center (General Administrative Section) Hayama-machi, Kanagawa-prefecture 240-0100Telephone: (81 468)-55-1811 http://www.shonan.ne.jp/~mura/english/index-e.html ? Japan Business Center WBG Marive East 14F, 2-6 Nakase, Mihama-ku, Chiba 261-7114 Telephone: (81 43)-297-3131 http://www.jbc.gol.com/ ? Rinku Gate Tower B uilding Co.,Ltd (Planning Division) Rinku Orai Kita, Izumisano-city, Osaka 598-0048 Telephone: (81 724)-60-1014 http://www.rinku.or.jp/invitation/main/rbc.html ? KIBC Project Office, Kobe City Urban Development Corporation Telephone(81 78)-251-8341 http://www.kobe-toshi-seibi.or.jp/

A. 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 economies with which the agreement has been entered into and a brief summary of the provisions of the agreement.

Agreement	Provisions

Friendship, Commerce and Navigation Treaties Japan has concluded this kind of treaty with 47 economies including some of APEC member economies: Australia, Canada, Indonesia, Korea, Malaysia, Mexico, New Zealand, Philippines, Thailand and USA.	Generally Friendship, Commerce and Navigation treaties deal with a wide array of bilateral consular and commercial, as well as investment issues. Each treaty, except the treaty with the United States, includes provisions stipulating most favoured nation treatment with respect to business activity by nationals 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, Turkey, Hong Kong China, Pakistan, Bangladesh, Russia, Mongolia and Korea.	Each treaty includes provisions which stipulate that the most favored nation treatment be accorded to nationals and companies of each Party in respect of the matters relating to the admission of investment. The treaty with Korea includes provisions which stipulate that the national treatment be accorded to nationals and companies of each Party in respect of the matters relating to the admission of investment. Each treaty also includes provisions which stipulate that the most favored 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.
Japan-Singapore Economic Partnership Agreement (JSEPA) Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership was signed on 13 January 2002. It entered into force on 30 November 2002. The agreement goes beyond commitments of both economies under the WTO on liberalisation of trade in goods and services, and investments.	JSEPA comprehensively contains provisions relating to the liberalization, promotion and protection of investment. In addition to traditional disciplines, there are advanced provisions such as national treatment for pre-establishment, prohibition of performance requirements.
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

The reported inward FDI based on the Foreign Exchange and Foreign Trade Law shows a increasing tendency until FY 2000. But in FY 2001.It amounted to 2,177.9 billion yen, equivalent to about 30% decrease as against FY 2000.

(2) Outward FDI

It amounted to 7,439.0 billion yen in FY1999, an increase of 42.6% as against FY1998. However, the reported outward FDI based on the Foreign Exchange and Foreign Trade Law has been on decline. It recorded 3,954.8 billion yen in FY 2001.

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

Sources FDI	**Destination FDI**
(1) United States: (FY 1999) - 10.4% (FY 2000) - 32.3% (FY 2001) - 29.5%	(1) United States: (FY 1999) - 33.4% (FY 2000) - 25.0% (FY 2001) - 20.2%
(2) Japan*: (FY 1999) - 6.7% (FY 2000 - 36.5% (FY 2001) - 12.1%	(2) United Kingdom: (FY 1999) - 17.6% (FY 2000) - 39.4% (FY 2001) - 12.5%
(3) Netherlands: (FY 1999) - 19.6% (FY 2000) - 1.7% (FY 2001) - 37.8%	(3) Netherlands: (FY 1999) - 15.5% (FY 2000) - 5.7% (FY 2001) - 14.3%

* Japan refers to FDI made by affiliates of foreign businesses in Japan

REPUBLIC OF KOREA

REPUBLIC OF KOREA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. *Provide a brief description of your foreign investment policy including any recent policy changes.*

- In 1997, the FDI concept of Friendly M&A was realigned and certain long-term loans were included as FDI. In 1998, the Korean government, in order to create a more supportive and convenient system of foreign direct investment, replaced the old system of regulating and administering foreign investment with a new policy. The new policy is symbolized by the new Foreign Investment Promotion Act, which became effective on November 17, 1998. In 1999, newly adopted systems to expedite FDI procedures and establish Foreign Investment Zones (FIZ).

- In order to promote investment into the components and basic material industries, foreign investment zones could be designated by plural investors. As far as liberalization is concerned, from 2001, 2 sectors were fully restricted to foreign investors, and a further 27 partially restricted. FDI requirements for manufacturing and tourism industries were eased: in the case of the manufacturing sector, the current level of not lower than $100 million in investment was eased to one of not lower than $50 million. At the end of 2001, a comprehensive plan was established for a total of 54 tasks in the sectors of finance, labor, taxation, education and housing in order to enhance the FDI environment, and also a cooperative system was set up among all Ministries.

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

- n/a

Complete the following cover sheet that indicates all documents attached for this question.

COVER SHEET list documents attached.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

- Korea provided information relating the regulatory framework on foreign capital participation through the "Guide to the Investment Regimes of the APEC Member Economies." Under the new 'Foreign Investment Promotion Act' (1998), to promote the transparency of Korea's FDI regime and provide further convenience for foreign investors, a comprehensive annual announcement on all FDI restrictions in various individual laws will continue to be made by the Minister of Commerce, Industry and Energy. The announcement has been made annually. For the purpose of eliminating obstacles and supporting foreign investors through all stages of investment, the Korea Investment Service Center (KISC) was launched on April 30, 1998. The KISC performs Invesment Promotion Activities, provides information and consultation.

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

Proposals

Guidelines/Conditions

merger (Yes) - Notification

acquisitions (Yes) - Notification

greenfield investment (Yes) - Notification

real estate/land (no)

joint venture (no)

other:-

Sector

telecommunications (Yes) – Foreign Investors' Permission standard is 49% or less of ownership.

media (Yes) – all sectors are open except radio broadcasting and television broadcasting which are wholly closed against foreign investors

transport (Yes) – Foreign Investors' Permission standard for coastal water passenger transport, coastal water freight transport, scheduled air transport, non-scheduled air transport is less than 50% of ownership.

agriculture (no)

other:

(c) Indicate all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

- n/a

COVER SHEET list documents attached

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax

- Korea Investment Service Center (KISC)
- tel: 82-2-3460-7550, fax: 82-2-3460-7940
- www.kisc.or.kr

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on line.

- www.kisc.or.kr

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

- It depends on the matters but usually less than 3 months

(g) List 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. Briefly describe appeal processes and the average time for an appeal to be considered.

- Korea Investment Service Center (KISC) and the Ministry of Commerce, Industry and Energy (MOCIE)

(h) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

- Foreign Investors need to contact central and local government through KISC in all procedure.

(i) Indicate 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).

- Foreign Investment Ombudsman of Korea (OIO), tel:82-2-3460-7631

- Major grievances from foreign investors are labor issues, Taxes and others.

(j) 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.

- Korea Investment Service Center (KISC)

(j) Describe any 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.

- N/a

(k) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g., zoning, approvals of land purchase).

- Each sub national agencies are responsible for attracting FDI and supporting investment procedure. Every sub national agencies have representative offices in KISC. On KISC website, investors can get to each sun national agencies by link.

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

(a) List and describe 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).

- There in no discrimination between source economies. All relevant laws, regulations, and administrative guidelines are stipulated in the form of "Regulations on Foreign Investment" in a transparent manner and there is no policy or agreement which may cause discrimination between source economies (Most Favoured Nation, MFN).

(b) Identify and describe any international agreements to which your economy is party which provides for a possible exception to MFN treatment.

- n/a

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

- Unless otherwise provided in law, foreign investors and foreign invested companies are accorded equal treatment to the nationals or corporations of the Republic of Korea (National Treatment, NT).

- Under the act(1998), to promote the transparency of Korea's FDI regime and provide further convenience for foreign investors, a comprehensive annual announcement on all FDI restrictions in various individual laws will continue to be made by the Minister of Commerce, Industry and Energy. The announcement has been made annually. Investors can browse the announcement in the website of MOCIE. (www.mocie.go.kr)

(b) Briefly describe the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

- There is no limitations on foreign firm's access to sources of finance.

4. Repatriation and Convertibility

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

- There is no regulations which restrict repatriations. Overseas remittance and repatriation are guaranteed by Article 4 of the Foreign Capital Inducement Act and Article 5 of its accompanying Enforcement Decree.

(b) Briefly describe the foreign exchange regime.

- On the KISC's Homepage(www.kisc.or.kr), investors can find out all relevant procedure.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

- No restrictions

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

- Foreigners who wish to receive a visa to work at a foreign-invested company should attach several documents to a visa application form and submit them to a Korean embassy or consulate.

- 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 Immigration Bureau or Korea Investment Service Center (KISC).

* Refer to http://www.moj.go.kr/immi

http://www.kisc.org

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

- n/a

(c) Describe any regulations relating to personnel management of foreign firms, e.g., minimum wage laws, minimum requirements for training or employment of local staff.

- the employee standard act and other relevant labor law

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

- According to the National Treatment provision which Korea have addressed, there is no special labor law which apply to foreign firms

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

- corporate tax rate: 27%(more than 10 billion won), 15%(less than 10 billion won)

- Income Tax rate: 9% ~ 36%

- VAT :10%

- Tax conventions aim at preventing double taxation and tax evasion. They define important concepts such as tax residence, fixed business establishment, the scope of taxable income, the economy of income source, and maximum tax rates. Korea has signed agreements on the prevention of double taxation with 61 countries. [Refer to website, http://www.mofat.go.kr]

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (TRIMS).

- Since the abolition of the performance requirement on foreign investment in 1989, there have been no performance requirements such as export or local content obligations that are inconsistent with the WTO/TRIMs Agreement.

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

- N/a.

- On the KISC's Homepage(www.kisc.or.kr), investors can find out all relevant procedure.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

- N/a.

- On the KISC's Homepage(www.kisc.or.kr), investors can find out all relevant procedure.

9. Investor Behavior

(a) Indicate any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

- none

10. Competition Policy

(a) Briefly outline the competition policy regime.

- The Korea Fair Trade Commission (KFTC) was organized 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 Standardized Contract Act, all of which aim to encourage fair and free competition.

- 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.

- The KFTC has led economic deregulation within the government in order to promote industry competitiveness. Through such efforts, the KFTC has contributed to the strengthening of market functions and has brought about substantial deregulation, the effects of which will be felt by the people and businesses. The KFTC has strived to minimize public inconveniences that may arise in the process of filing complaints, and it established a "Consumer Satisfaction Administrative System" to make KFTC affairs more consumer-oriented.

11. Other measures

(a) List and briefly describe current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

- In February 1993, the Korean government established the headquarters for the Joint Investigation of Intellectual Property Rights Violations. Since 1993, the protection of intellectual property rights were upgraded to an international level. The Korean government revised its IPR-related laws in 1995 to bring them into conformity with the WTO/TRIPS Agreement and continued to enhance IPR laws to ensure the protection of newly emerging fields, such as IPR on the Internet and trade secrets. The major laws are related to copyrights, computer software protection, customs, design, semiconductor chip protection, and unfair competition prevention.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) Provide a 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.

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

- none

2. Settlement of Disputes

(a) Describe all means of dispute settlement and processing of grievances existing under laws, regulations and 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 the following order:

- According to bilateral investment agreements contracted between Korea and other countries, most foreign investors can submit the disputes to the ICSID.

(b) Has your economy signed or acceded to the ICSID Convention?

- yes, Korea has signed the agreement to join the ICSID convention.

D. INVESTMENT PROMOTION AND INCENTIVES

1 Briefly describe any investment promotion programs offered at both the national and sub-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.

- N/a.

On the KISC's Homepage(www.kisc.or.kr), investors can find out all relevant procedure

1 *Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.*

- N/a.

On the KISC's Homepage(www.kisc.or.kr), investors can find out all relevant procedure

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

- KISC

- www.kisc.or.kr

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

1 Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Agreement including Free Trade Agreement - no

Provisions - no

Friendship Commerce and Navigation Treaties - N/a.

Bilateral Investment Treaties - Korea is a signatory to bilateral investment agreements for the protection of FDI with many countries. Among these agreements 56 are currently in force and 13 are signed.

Regional or sub regional Investment Treaties – Bangkok agreement

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

- Inward FDI in 2001: 11,870 million dollars (on the basis of notification)
- Outward FDI in 2001: 4,380 million dollars (on the basis of notification)

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

Sources FDI

- USA, Malaysia, Netherlands, Germany, etc.

Destination FDI

- China; USA; Netherlands; EU; Indonesia; Hong Kong, China

MALAYSIA

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. FDI is sought as a source of capital funds and foreign exchange, and as a means of securing industrial technology, managerial expertise, marketing know-how and network to achieve higher levels of growth, employment, productivity and export performance.

Malaysia promotes both FDI and domestic investment (DI) as sources of economic growth. Over the years, various policies and measures have been introduced to promote investments. Among these are liberal policies which allow 100 per cent foreign equity ownership. The conducive business and investment environment and dynamic promotional efforts have been successful in attracting a large number of investment projects into the economy.

FDI has contributed significantly to the economic development of the economy not only in terms of GDP growth, but also in terms of structural changes that have transformed Malaysia from a producer of primary commodities to a modern industrializing economy. With over three decades of industrial development, Malaysia has developed a strong manufacturing base and currently hosts substantial investments from major multinational companies from around the world.

In the 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.

To address the growing unemployment problem and limitations posed by the small domestic market, the development of export-oriented and labour-intensive industries were encouraged in the 1970's. The 1970s saw an influx of foreign investments primarily in the electrical & electronics and textiles industries, utilising the abundant labour and other comparative advantages. In the late 1980s, following further liberalisation of foreign investment policies, provision of attractive incentives/facilities, intensification of promotional efforts and favourable external factors, FDI flows into the manufacturing sector increased significantly.

In the 1990s, investment and industrial policies were geared towards encouraging capital and technology intensive industries. Towards this end, projects which embodied high technology, high value-added and skills intensity and which create industrial linkages were promoted. Focus was also given to the development of specific industry clusters.

To further diversify the economy, the manufacturing services sector covering value chain activities such as research and development, design, engineering and prototyping, integrated logistics, marketing and distribution, operational headquarters, international procurement centres/regional distribution centres, regional and representative offices are currently being promoted.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. **Transparency**

i) Statutory (legislative) requirements

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

Citation	**Summary**
Industrial Coordination 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, special incentive reliefs and exemptions from tax.
Free Zones Act, 1990	Enables operations in the zones to enjoy minimum custom control and formalities in import of raw materials, parts, machinery and equipment as well as in the export of finished goods.
Exchange Control Act, 1953	Provides 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 specific foreign investment law. The relevant laws and regulations apply to both foreign and domestic 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).

(ii) Investment Review and Approval

(a) Details of proposals and sectors that are/are not subject to screening.

(b) Details of guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10 per cent). Details of special conditions that apply to individual sectors.

Foreign Investment Policies

Manufacturing

Under the Industrial Coordination Act 1975, projects with shareholders' fund of RM2.5 million and more or which employ 75 or more full time workers are required to be licensed. However, projects which are below these threshold limits, whether local or foreign owned, are not required to be licensed. Licensed manufacturing companies are also not required to obtain prior approval of the Ministry Of International Trade and Industry to enter into technology transfer agreements or to utilise used machinery.

The Malaysian Government welcomes foreign investment in the manufacturing and related services sector. Effective 17 June 2003, the equity policy in the manufacturing sector has been further liberalised.

The guidelines on foreign equity ownership participation in greenfield investment in the manufacturing sector is as follows:

- Foreign investors can hold 100 per cent equity ownership in all manufacturing projects and no export requirements are imposed.

- This policy is applicable for all applications for new projects as well as expansion/diversification projects by existing companies. All projects approved under this policy will not be required to restructure their equity.

Equity and export conditions imposed on companies prior to the new policy will be maintained. However, some flexibility will be given to requests for the removal of these conditions, depending on the merits of each case.

Mergers, acquisitions and takeovers

The acquisition of assets, mergers or takeovers of companies are governed by the Foreign Investment Committee (FIC) Guidelines for activities not under the purview of respective Ministries and agencies. Processing of proposals on acquisitions by licensed manufacturing

companies are centralised at the Ministry of International Trade and Industry (MITI) and corporate proposals at the Securities Commission (SC) and do not require FIC approval.

In order to provide greater flexibility on foreign equity participation, and further enhance Malaysia's competitiveness in attracting FDI, Malaysia has liberalised the FIC guidelines on mergers, acquisition and takeovers effective 21 May 2003 as follows:

(i) For acquisitions by Malaysian and foreign interests, the only equity condition imposed will be Bumiputera equity of at least 30 per cent. In the case of acquisitions by foreign interests, the remaining equity can be held either by foreign interests or jointly by foreign and Malaysian interests.

(ii) The threshold level for acquisitions by foreign and Malaysian interests which is exempted from FIC approval has been raised from RM5 million to RM10 million. Acquisition and control by foreign interests below the RM10 million threshold are not subject to FIC rules subject to the proviso that any proposed acquisition does not amount to more than 15 per cent by any one foreign interest or associated group or in the aggregate more than 30 per cent of the equity/voting power of a Malaysian company or business.

(iii) In line with the liberalisation, foreign interests are allowed to acquire landed properties exceeding RM150,000 per unit (previously not allowed to acquire landed property valued less than RM250,000 except for industrial land).

(iv) For acquisitions exceeding RM100 million, companies can apply for exemptions from FIC Guidelines, subject to the approval of the Minister of Finance and on a case-by-case basis. This exemption is given for applications received before 31 May 2004.

Multimedia Super Corridor (MSC)

Malaysia has established the Multimedia Super Corridor (MSC) to spearhead the development of the Information and Communication Technology (ICT) sector. A significant number of foreign companies have located in Malaysia, using the economy as a base for IT and multimedia activities for the regional and global market. A fully empowered one-stop agency, the Multimedia Development Corporation (MDC) has been established to ensure the MSC meets company needs.

Companies with MSC status are entitled to enjoy a set of incentives and benefits backed by the Malaysian Government's Bill of Guarantees which:

- Provide a world-class physical and information infrastructure;
- Allow unrestricted employment of knowledge workers from overseas;
- Ensure freedom or ownership of companies;

- Allow freedom of sourcing capital globally for MSC infrastructure and freedom of borrowing funds;
- Provide competitive financial incentives including no income tax for up to 10 years or an Investment Tax Allowance of 100 per cent, and no duties on the import of multimedia equipment;
- Provide for intellectual property protection;
- Ensure no censorship of the Internet; and
- Provide globally competitive telecommunication tariffs.

For more information on MSC, please visit MDC's website at www.mdc.com.my.

(c) How to obtain applications/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.

Copies of relevant documentation can be obtained from the contact points listed below.

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

(e) Availability of website information.

Agency	Address/telephone/fax	Types of Applications
1. Malaysian Industrial Development Authority (MIDA)	5th Floor, Plaza Sentral, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, P.O. Box 10618 50470 Kuala Lumpur Tel: (60 3) 2267 3633 Fax: (60 3) 2274 7970 Website: http://www.mida.gov.my E-mail: mida@mida.gov.my	1. Manufacturing licence 2. Incentives for manufacturing, manufacturing related services, agriculture, hotel, and tourism, environmental protection, R&D and training 3. Expatriate posts relating to manufacturing and manufacturing related services 4. Duty exemption on raw material, components and machinery/tariff protection
2. Ministry of International Trade and Industry (MITI)	15th Floor, Block 10, Government Offices Complex, Jalan Duta 50622 Kuala Lumpur Tel: (60 3) 6201 3022 Fax: (60 3) 6203 1305 Website: http://www.miti.gov.my	1. Import licence 2. Export licence 3. Pioneer Status Certificate

Agency	Address/telephone/fax	Types of Applications
3. Ministry of Finance	Ministry of Finance Complex, Presint 2, Federal Government Administration Centre 62592 Putrajaya Tel: (603) 8882 3000 Fax: (603) 8882 3892 Website: http://www.treasury.gov.my E-mail: webmaster@treasury.gov.my	1. Training programme/training institutions for purpose of double deduction. 2. Approval for 'approved research companies' status. 3. Incentives/Allowances
4. Inland Revenue Board	15th Floor, Block 11 Government Offices Complex Jalan Duta 50600 Kuala Lumpur Tel: (60 3) 6201 7055 Fax: (60 3) 6201 3798 Website: http://www.hasilnet.org.my E-mail: lhdn@hasilnet.org.my	1. Company Tax 2. Personal Income Tax 3. Real Property Gains Tax 4. Reinvestment Allowance 5. Incentives for Tourism, Training, ICT. 6. Industrial Building Allowance
5. Immigration Department	Level 1-7, Block 1 Damansara Town Centre 50550 Kuala Lumpur Tel: (603) 2003 0181 Fax: (603) 2093 9092 Website: http://www.imi.gov.my E-mail: pro@imi.gov.my	1. Passport 2. Visit Pass 3. Employment Pass 4. Dependent's Pass 5. Student Pass 6. Foreign Workers
6.Foreign Investment Committee (FIC)	Economic Planning Unit Prime Minister's Department Level -1, Block B5, Federal Government Administration Centre, 62502 Putrajaya Tel: (603) 8888 3333 Fax: (603) 8888 3917	1. Acquisitions 2. Mergers 3. Takeovers For activities which are not under the purview of respective Ministries or agencies
7. Registrar of Companies	11th-17th Floor, Putra Place	1. Registration of Companies

Agency	Address/telephone/fax	Types of Applications
	100, Jalan Putra 50622 Kuala Lumpur Tel: (603) 4043 3366 Fax: (603) 4043 3778 Website: http://www.ssm.gov.my	
8. Royal Malaysian Customs	Block 11, Government Offices Complex, Jalan Duta 50596 Kuala Lumpur Tel: (603) 6201 6088/6201 9088 Fax: (603) 6201 4927 Website: http://www.customs.gov.my E-mail: kastam@rced.gov.my	1. Service Tax Licence 2. Sales Tax Licence 3. Excise Licence 4. Licensed Manufacturing Warehouse
9. Ministry of Agriculture	Wisma Tani, Jalan Sultan Salahuddin 50624 K. Lumpur Tel: (60 3) 2617 5000 Fax: (60 3) 269 13578 Website: http://agrolink.moa.my	1. Incentives for Food Production
10. Multimedia Development Corporation Sdn. Bhd. (MDC)	MSC Headquarters 63000 Cyberjaya Selangor Darul Ehsan Tel: (603) 8318 8477 Fax: (603) 8318 8519 Website: http://www.mdc.com.my E-mail: info@mdc.com.my	Multimedia Super Corridor Status (incentives and other benefits)
11. Human Resources Development Board	7th Floor, Wisma Chase Perdana, Off Jalan Semantan, Bukit Damansara, 50490 Kuala Lumpur. Tel: (603) 2098 4800 Fax: (603) 2093 5722 Website: www.hrdnet.com.my	1. HRDF Training Grants

(f) 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. Approvals for Manufacturing Licence for new manufacturing projects and for expansion/diversification projects for non-sensitive industries only require 7 working days from the date complete information is received.

(g) 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 as listed in paragraph (d) above.

(h) 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 in the prescribed application forms.

(i) 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).

Complaints/appeals should be submitted to the relevant organisations as indicated in paragraph (d) above.

(j) 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 paragraph (d) above.

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

Generally, policies are formulated after consultations with the private sector. Regular public-private sector industry dialogues/meetings are held by various ministries and agencies to consult with the private sector and obtain private sector inputs to improve the business and investment environment.

(l) Where applicable, the role for sub national agencies in the approval process.

Approval for industrial land and buildings is under the jurisdiction of the state governments.

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

(a) 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).

There are generally no exceptions to MFN treatment in relation to the establishment, expansion and operation of foreign investment.

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

The 1998 Framework Agreement on the ASEAN Investment Area grants national treatment to ASEAN investors first and to non-ASEAN investors at a later stage.

3. National Treatment

(a) 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).

There are restrictions on foreign equity participation for activities such as extraction and harvesting of timber, capture fisheries, and oil and gas upstream industries.

There are also exceptions to national treatment in certain areas such as land/property ownership; and some investment incentives which are restricted to small and medium industries.

(b) 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 an aggregate of RM50 million per corporate group or single entity basis, for any purpose. Permission is readily given for loans that will be utilized to encourage economic growth and investment in the economy. 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 RM50 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 RM50 million in Malaysia are required to ensure that their domestic borrowings, in excess of the initial RM50 million, 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. The above rules are however, implemented pragmatically and flexibly, to ensure that NRCCs have ready access to banking facilities at competitive prices to meet their financial requirements.

Domestic Borrowing by Non-Residents without entities in Malaysia

Non-residents are also permitted to obtain domestic borrowings:-

(a) to finance the purchase or construction cost of up to three properties in Malaysia;

(b) RM200,000 in aggregate for any purpose except for purchase of land only, from all banking institutions in Malaysia; and

(c) RM500,000 in aggregate of ringgit overdraft facilities from all licensed banks provided the facilities are fully secured by fixed deposits placed by the non-resident with the licensed banks.

In addition to the above, non-residents can now borrow up to RM5 million to finance projects undertaken in Malaysia.

Foreign Currency Credit Facilities and Ringgit Credit Facilities

There are no restrictions for residents to obtain credit facilities in foreign currency up to the equivalent of RM5 million in aggregate from 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 International Offshore Financial Centre (IOFC) or in foreign currency from non-residents who are individuals, or shareholders, related or associate companies which are not financial institutions. These facilities are not included in the computation of the 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 of any amount from non-residents in general requires the prior permission of the Controller of the Foreign Exchange. In line with the Central Bank's policy not to internationalise the ringgit, offshore borrowing in ringgit is generally not allowed.

4. Repatriation and Convertibility

(a) 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 paragraph 4(c) below:

(b) 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 economies, except Israel, Serbia and Montenegro for 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)(c) below.

(c) Restrictions on the convertibility of currencies for the overseas transfer of funds.

Direct Investment

No permission is required from the Controller of Foreign Exchange (hereinafter referred to as "the Controller") for a non-resident to undertake direct investment in Malaysia.

Remittances Abroad

There are no restrictions on payments in foreign currency to non-residents for the repatriation of capital, profits, dividends, interest, rental and commissions. Similarly, there are no restrictions on payments for imports of goods and services but the payments must be made in foreign currency. The commercial banks are authorised to effect such payments.

Payments to economies outside Malaysia may be made in any foreign currency other than the currencies of Israel, Serbia and Montenegro.

For investments abroad, prior approval of the Controller is required if the amount exceeds the equivalent of RM10,000.

Export Proceeds

Export proceeds must be in foreign currency (other than the currencies of Israel, Serbia or Montenegro) and have to be repatriated to Malaysia within the period of payment specified in the export contract. The period should not exceed a maximum period of six months from the date of export.

Exporters are allowed to retain the proceeds in foreign currency provided these are deposited in foreign currency accounts, with limits on the overnight balances, maintained with designated banks in Malaysia.

For exports in excess of RM100,000 f.o.b., resident exporters are required to submit quarterly reports detailing such exports. In addition, the resident exporters are also required to submit

yearly summary reports no later than 30 days after the close of the financial year of the companies.

Inter-Company Account

There are no restrictions for a company in Malaysia to maintain inter-company accounts with associated companies, branches or other companies outside Malaysia. Monthly returns should be submitted to the Controller. The following are excluded from the inter-company accounts:

(a) proceeds from exports of goods from Malaysia; and

(b) proceeds from external loans extended to Malaysian companies.

With the prior written permission of the Controller, companies are allowed to offset the export proceeds through inter-company accounts against payables to their affiliated or parent companies overseas for the supply of raw materials, parts, components and other items. This would enable the companies concerned to repatriate to Malaysia only the value-added in the form of services performed by the Malaysian companies. Where the companies have been given permission for the above offsetting arrangements, they are required to observe certain procedures in reporting and lodging monthly returns to enable the Controller to monitor their inter-company accounts and to ensure that the value-added in their exports are repatriated to Malaysia in the prescribed manner.

5. Entry and Sojourn of Personnel

(a) 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, Sri Lanka, Cameroon, Mozambique and Nigeria), citizens of ASEAN Countries and citizens of Switzerland, Netherlands, San Marino and Liechtenstein do not need a visa to enter Malaysia.

Citizens of Algeria, Argentina, Austria, Bahrain, Belgium, Bosnia-Herzegovina, Brazil, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, Italy, Japan, Jordan, Republic of Korea, Kyrgyzstan, Kuwait, Lebanon, Luxembourg, Norway, Oman, Poland, Qatar, Romania, Saudi Arabia, Sweden, Slovakia, Tunisia, Turkey, Turkesmenistan,

United Arab Emirates, U.S.A, Uruguay and Yemen do not require a visa for a visit not exceeding three months.

Citizens of Afghanistan, Iran, Iraq, Libya and Syria do not need a visa for a visit not exceeding two weeks.

Citizens of India, Bangladesh, Pakistan, Sri Lanka, Bhutan, China, Myanmar, Nepal, Chinese Taipei, Angola, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Congo Democratic Republic, Cote d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Guinea Republic, Guinea-Bissau, Liberia, Madagascar, Mali, Mauritania, Mozambique, Niger, Rwanda, Senegal and Nigeria are allowed to enter Malaysia with an approved visa.

For Israel, Serbia and Montenegro, prior approval is required from the Malaysian government.

For economies other than those stated above, no visa is required for visits not exceeding one month.

APPLICATION FOR VISAS

Application for visas for the purpose of entry into Malaysia should be made at the nearest Malaysian mission abroad. In economies 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 business visit may be issued at the point of entry if the visitor can satisfy the immigration authority at the point of entry that he/she has a valid passport and visa (wherever applicable).

The type of passes issued are as follows:

(i) Visit Pass (Social)

Visit passes (social or tourist) are issued solely for the purpose of a social visit. A person who has been issued with a social 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 the following purposes:

- Owner or company representatives attending to company meetings, seminars, inspection of company accounts or to ensure the smooth running of the company
- Investors or businessmen exploring business opportunities and investment potentials
- Foreign representatives of companies introducing goods for manufacture in Malaysia but not engaged in direct selling or distribution
- Property owners negotiating, selling or leasing of properties
- Foreign reporters covering any event in Malaysia
- Participants in sporting events

(iii) Conversion of Passes

Foreign visitors who have entered Malaysia on social visit passes may apply to the Immigration Department for converting their social passes into business visit passes. This aims to assist foreign visitors who wish to undertake business activities.

All applications for converting social 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 Issued Upon Arrival In Malaysia

Other than applications for entry for the purpose of social or business visits, all applications for passes of the types mentioned below must be made upon arrival in the economy.

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 economy to take up temporary employment.

(ii) Employment Pass

This is issued to foreigners who enter the economy to take up a contract of employment with a minimum period of two years.

(iii) Visit Pass (Professional)

This is issued to foreigners for the purpose of engaging in short-term contract with any agencies such as employment or supervision of the installation of new machinery or the construction of a factory. The validity of the pass varies but does not exceed twelve months at any one time.

(iv) Dependant's Pass

This is issued to wives and children of any person who has been issued with 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 economy for the purpose of taking up studies in any approved educational institution.

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

The Malaysian government is desirous that Malaysians are eventually trained and employed at all levels of employment. Notwithstanding this, foreign companies are allowed to bring in the required personnel in areas where there is a shortage of trained Malaysians to do the job. In addition to this, foreign companies are allowed "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 economy.

Guidelines On Employment Of Expatriate Personnel in the Manufacturing Sector

In order to attract FDI as well as to promote technology transfer and inflows of foreign talents/skills, particularly in the promoted manufacturing and related services sectors, Malaysia has liberalised the policy on the employment of expatriates in the manufacturing and manufacturing related services sectors.

A company with foreign paid-up capital of US$2 million and above will automatically be allowed up to ten expatriate posts including five key posts in the manufacturing sector.

Automatic approval will be given to up to five expatriate posts (including at least one key post)for manufacturing concerns with foreign paid-up capital of more than US$200,000 but less than US$2 million.

For executive posts, expatriates may be employed up to a maximum period of ten years, and for non-executive posts, expatriates may be employed up to maximum period of five years.

For Malaysian-owned companies, automatic approval for the employment of expatriates for technical posts, including R&D posts, will be granted as requested.

Additional expatriate posts can be considered based on the merits of the case as under the current practice.

Any company with foreign paid-up capital of less than US$200,000 will be considered for both expatriate posts based on the current guidelines as follows:-

(i) key posts can be considered where the foreign paid-up capital is at least RM 500,000;

(ii) time posts can be considered for up to a 10 years for executive posts, and 5 years for non-executive posts; and

(iii) the number of key posts and time posts approved depends on the merits of each case.

Manufacturing Related Services

In the manufacturing related services sector, the number of expatriates posts, (both key posts and time posts) will be approved as requested based on company's requirements.

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:

(i) companies which propose to establish new projects;

(ii) existing companies which propose to manufacture additional products (diversification of products); and

(iii) existing companies which propose to expand their production capacities (expansion of projects).

In the event that an applicant is unable to submit his requirements for expatriate personnel at the time of the submission of his application for approval of his project, he may do so at a later stage.

For companies which do not fall under the above categories, applications to add or extend expatriate posts can be submitted directly to the Immigration Department headquarters in Kuala Lumpur.

(c) Description of regulations relating to personnel management of foreign firms, e.g., 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) every employee must be given a written contract of employment which states the terms and conditions of the employment, including the notice period required to terminate it;

(ii) wages 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 except with the prior written approval of the Director-General of the Labour Department;

(iv) payment of maternity allowance for female employees on maternity leave for 60 days for up to five surviving children at the ordinary rate of pay subject to a minimum rate of RM6.00 per day;

(v) ten paid gazetted public holidays in any one calendar year and on any day declared as a public holiday under the Holiday Act 1951;

(vi) 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;

(vii) 14 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;

(viii) payment for overtime work is at a minimum of one-and-a-half times the hourly rate of pay on normal working days, two times the hourly rate on rest days, and three times the hourly rate on public holidays;

(ix) normal hours of work shall not exceed eight hours in one day or 48 hours in one week.

Employees Provident Fund (EPF)

The Employees Provident Fund Act, 1991 stipulates compulsory contribution for employees. Within the provision of this Act, all employers and employees, except foreign workers, must contribute to the Employees Provident Fund (EPF) at the minimum rates of 12 per cent and 11 per cent of the employee's monthly wages respectively.

Among the categories of employees precluded from compulsory contributions are:

(i) expatriates and foreign workers, 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. SOCSO however covers only Malaysian workers and permanent residents.

All establishments, including factories, employing workers earning wages not exceeding RM 2,000 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 per cent 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 per cent of the wage of an employee and is shared by the employer and the employee equally.

LABOUR COSTS

There is no national minimum wage law applicable to the manufacturing sector in Malaysia. Basic wage rates vary according to locations and 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 (EPF).

Human Resource Development Fund (HRDF)

The Human Resources Development Fund (HRDF), aimed at encouraging direct private sector participation in skills development, was launched in 1993 with a grant from the government.

The HRDF operates on the basis of a levy/grant system. Employers who have paid the levy will qualify for training grants from the fund to defray or subsidise training costs for their Malaysian employees.

Manufacturing companies contribute as follows:

– Companies that employ 50 or more Malaysian workers	1% of employees' monthly wages
– Companies that employ less than 50 to a	1% of employees' monthly wages

minimum of 10 employees, with a paid-up capital of RM2.5 million or more	
– Companies that employ less than 50 to a minimum of 10 employees, with a paid-up capital of less than RM2.5 million (Note: For this category, the government contributes RM2.00 for every RM1.00 spent.)	Option of registering with the HRDF and paying levy of 0.5% of employees' monthly wages

The rate of financial assistance is 100 per cent of the allowable costs incurred for training in Malaysia and up to 50 per cent for costs incurred overseas, subject to the availability of levy in the employer's account with the Human Resources Development Council, which has been corporatised and is now known as Pembangunan Sumber Manusia Berhad (PSMB).

For specific industries, apprenticeship schemes developed and implemented by PSMB help in providing trained workers to the industries. A RM35 million Apprenticeship Fund established by PSMB pays for the tuition fees of apprentices sponsored by employers in PSMB-initiated Apprenticeship Schemes. At the same time, 100 per cent of allowable training costs such as apprentices' monthly allowances, insurance premiums and consumables, can be reimbursed from levy contributions.

(d) 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;

(i) a union cannot organise a strike without first obtaining the consent by secret ballot of at least two third of its total members; and

(ii) 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) procedure relating to submissions of claims for recognition and scope of representation of trade unions and collective bargaining;

(iii) 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 and lockouts over any of these matters;

(iv) 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 fails;

(v) provision for the Minister of Human Resources to interview and to refer at any stage any trade dispute to the Industrial Court for arbitration;

(vi) prohibition of strikes and lockouts 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

(vii) 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

(a) 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 income of companies and individuals accrued in, derived from or remitted to Malaysia are liable to tax. However, income derived from outside Malaysia and remitted to Malaysia by resident companies (except those involved in the banking, insurance, air and sea transportation business), non-resident companies and non-resident individuals are exempted from tax.

To modernize and streamline the tax administration system, the assessment of income tax was changed to a current year basis of assessment from the year 2000 except for the petroleum income tax (charged on the petroleum upstream activities) which is still assessed on the income earned in the preceding year. In 2001, the Self-Assessment System replaced the Official Assessment System for companies. The Self-Assessment System will be implemented for businesses, partnerships, cooperatives and salaried groups in 2004.

Apart from income tax, there are other direct taxes such as stamp duty and real property gains tax, and indirect taxes such as sales tax, service tax, excise duty, import duty and export duty.

Source of Income Liable to Tax

The following sources of income are liable to income tax:

- gains and profits from trade, professional and business;
- gains and profits from an employment (salaries, remuneration, etc);
- dividends, interests or discounts;
- rents, royalties or premiums;
- pensions, annuities or other periodic payments; and
- other gains or profits of an income nature.

Chargeable income is arrived at after adjusting for expenses incurred wholly and exclusively in the production of the income. General provisions or reserves for anticipated losses or contigent 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 offset against income.

Company Tax

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is exempted from tax, except in the case of the banking and insurance business, and sea and air transport undertakings. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia. Places of control and management are considered on the basis of where meetings of the Board of Directors are held.

A tax rate of 28 per cent is applicable to both resident and non-resident companies. However, companies with paid-up capital of RM2.5million and below are subject to a corporate tax of 20 per cent on chargeable income up to RM100,000. The corporate tax on the remaining chargeable income is maintained at 28 per cent. In the case of a company carrying on petroleum production, the applicable tax rate is 38 per cent.

Personal Income Tax

All individuals are liable to tax on income accrued in, derived from or remitted to Malaysia. However, a non-resident individual will be taxed only on income earned in Malaysia. An individual's resident status is determined by reference to the duration of stay in the economy.

Resident Individuals

A resident individual is taxed on his total income at graduated rates from 0 to 28 per cent after the deduction of personal reliefs. However, individuals with chargeable income of less than RM2,500 is exempted from paying tax.

Non-resident Individuals

Generally, a non-resident individual is liable to tax at the rate of 28 per cent without any personal relief. An employee on a short-term visit 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. However, the income of non-resident individuals who performs independent services such as consultancy services is not exempted from tax.

Withholding Tax

Non-resident individuals are subject to a final withholding tax of:

– 10 per cent on special classes of income such as use of moveable property; technical advice, assistance or services; installation services on the supply of plant, machinery, etc.; and personal services associated with the use of intangible property. Effective from 21 September 2002, payments to non-residents for services rendered abroad will not be liable to the withholding tax of 10 per cent.

– 10 per cent on royalties

– 15 per cent on interest

– 15 per cent on the services of a public entertainer

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:

Disposal within 2 years	30 per cent
Disposal in the 3rd year	20 per cent
Disposal in the 4th year	15 per cent
Disposal in the 5th year	5 per cent

Disposal in the 6th year and thereafter

- Company and Non-Citizen

  or Non-Permanent Residents : 5 per cent

- Individual Citizen or Permanent Residents : NIL

Individuals who are citizens or permanent residents, are entitled to an exemption of RM5,000 or 10 per cent of the gains, whichever is the greater, besides a one-time tax exemption on the gains arising from the disposal of one private residence.

For non-citizens and non-permanent resident individuals, gains from the disposal of real property within five years are taxed at a flat rate of 30 per cent, after which the tax rate will be 5 per cent.

Stamp Duty

Generally instruments or written documents are liable to stamp duty and the rates of stamp duty vary according to the nature of the documents and values referred to. For documents of transfer of property, stamp duty is calculated at graduated rates based on the market value of the property as follows:

- 1 per cent on the first RM100,000;
- 2 per cent on the next RM400,000; and
- 3 per cent on the remaining

In the case of a loan agreement, the rate is RM1.00 for every RM1,000 or part thereof for the first RM250,000 and RM5.00 for each additional RM1,000 or part thereof. However, for foreign currency loan agreement, the rate is RM2.50 for every RM500 or part thereof but the maximum stamp duty is capped at RM500. As regards to contract notes relating to the sales of shares, the stamp duty rate is RM1.00 for every RM1,000 or part thereof. Besides the ad valorem stamp duty rates, many documents attract specific rates such as RM10 for a sales and purchase agreement, RM100 for a Memorandum of Association of a Company and RM0.15 for a cheque.

Import Duty

In Malaysia, import duty is mostly imposed ad valorem, although some specific duties are imposed on a number of items. Nevertheless, over the last few years, Malaysia has abolished import duties on a wide range of raw materials, components and machinery.

Furthermore, Malaysia is committed to the ASEAN Common Effective Preferential Tariff (CEPT Scheme) under which import duties imposed on most goods from ASEAN countries has been be reduced to between 0 per cent and 5 per cent on 1 January 2003.

Service Tax

A service tax is a consumption tax levied and charged on any taxable service provided by any taxable person except "exported taxable service". "Exported taxable service" is defined as a service supplied for and to a person in a economy other than Malaysia provided that the service is not supplied in connection with goods or land situated in Malaysia and the person is not in Malaysia at the time the service is performed. Generally, a flat rate of 5 per cent is imposed on services provided by a taxable person as set out in the Schedule to the Service Tax Regulations 1975.

Sales Tax

This is an ad valorem single stage tax imposed at the import or manufacturing level. Manufacturers are required to be licensed under the Sales Tax Act 1972. Manufacturers whose annual sales turnover do not exceed RM100,000 are exempted from licensing. These companies are taxed based on their inputs. However, to alleviate the burden of small manufacturers from paying sales tax upfront on their inputs, these companies can opt to be licensed under the Sales Tax Act, 1972 in order to purchase tax-free inputs. With this option, manufacturers will only have to pay sales tax on their finished products.

The general rate for sales tax is 10 per cent. However, raw materials for use in the manufacture of taxable goods are eligible for exemption from the tax. Inputs for selected non-taxable products are also exempted. Certain non-essential foodstuffs and building materials are taxed at 5 per cent while cigarettes are taxed at 25 per cent and liquor at 20 per cent. Certain primary commodities, basic foodstuffs, basic building materials, certain agricultural implements and heavy machinery for use in the construction industry are exempted. Certain tourist and sports goods, books, newspapers, reading materials and quality paper are also exempted.

Excise Duty

This is a consumption tax imposed on certain imported and locally manufactured goods, including cigarettes, liquors, playing cards and mahjong tiles.

Avoidance of Double Taxation Agreements

Avoidance of 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 economy and remitted to another economy. 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.

To date, Malaysia has signed double taxation agreements with the following economies (By alphabetical order):

1. Albania
2. Argentina*
3. Australia
4. Austria
5. Bahrain
6. Bangladesh
7. Belgium
8. Canada
9. China
10. Croatia
11. Czech Republic
12. Denmark
13. Egypt
14. Fiji
15. Finland
16. France
17. Germany
18. Hungary
19. India
20. Indonesia
21. Iran
22. Ireland
23. Italy
24. Japan
25. Jordan
26. Korea, South
27. Kuwait
28. Kyrgyz Republic
29. Luxembourg
30. Malta
31. Mauritius
32. Mongolia
33. Myanmar
34. Namibia
35. Netherlands
36. New Zealand
37. Norway
38. Pakistan

39. Papua New Guinea
40. Philippines
41. Poland
42. Romania
43. Russia
44. Saudi Arabia*
45. Singapore
46. Sri Lanka
47. Sudan
48. Sweden
49. Switzerland
50. Thailand
51. Turkey
52. United Arab Emirates
53. United Kingdom
54. United State of America*
55. Uzbekistan
56. Viet Nam
57. Zimbabwe

- *Limited to shipping and air transport services*

7. Performance Requirements

(a) *Brief description of performance requirements that could 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. In line with the TRIMs requirement, Malaysia will phase-out the local content requirements by 31 December 2003. Malaysia has phased-out the local content requirements linked to investment incentives since 2000. In the automotive sector, some components are no longer required to be sourced locally. The remaining list of items which are currently required to be sourced locally will be phased-out by 31 December 2003.

8. Capital Exports

(a) List and brief description of regulations/institutional measures that limit capital exports or the out flow 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.

(b) List and brief description of regulations/institutional measures that limit technology exports.

None.

9. Investor Behaviour

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

None.

10. Competition Policy

(a) Brief outline the competition policy regime.

Malaysia does not have a competition law. However, Malaysia is studying the possibility of having a fair trade law. Malaysia is continuing to undertake capacity building measures by attending courses, seminars and workshops on competition policy. A number of competition advocacy programs though briefings and workshops for both the government the private sector is being undertaken by the relevant agencies in the effort to disseminate the policy framework as well as to inculcate a competition culture in the business community.

11. Other Measures

(a) 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

Intellectual property protection in Malaysia comprises patents, trademarks, industrial designs, copyrights, geographical indications and layout designs of integrated circuits. Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention and Berne Convention which govern these intellectual property rights.

In addition, Malaysia is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organisation (WTO). Therefore, Malaysia's intellectual property laws are in conformance with international standards, and provide adequate protection to both local and foreign investors.

Patents

The Patents Act 1983 and the Patents Regulations 1996 govern patent protection in Malaysia. An applicant may file a patent application directly if he/she is domicile or resident in Malaysia.

A foreign application can only be filed through a registered patent agent in Malaysia acting on behalf of the applicant.

Similar to legislation in other economies, an invention is patentable if it is new, involves an inventive step, and is industrially applicable. In accordance with TRIPs, the Patent Act stipulates a protection period of 20 years from the date of filing of an application. Under the Act, the utility innovation certificate provides for an initial duration of ten years protection from the date of filing of the application. The owner of a patent has the right to exploit the patented invention, to assign or transmit the patent, and to conclude a licensed contract.

Trade Marks

Trade mark protection is governed by the Trade Marks Act 1976 and the Trade Marks Regulations 1997.
The Act provides adequate protection for registered trade marks and service marks in Malaysia. Once registered, no person or enterprise other than its proprietor or authorized users may use them. Infringement action can be initiated against abusers. The period of protection is ten years, renewable for a period of every ten years thereafter. The proprietor of the trade mark or service mark has the right to deal or assign as well as to license its use.

In accordance with TRIPs, Malaysia prohibits the registration of well-known trade marks by unauthorized persons and provides for border measures to prohibit counterfeit trade marks from being imported into Malaysia.

As with patents, while local applicants may file applications on their own, foreign applicants will have to do so through authorized agents.

Copyright

The Copyright Act 1987 provides comprehensive protection for copyrightable works. The Act outlines the nature of works eligible for copyright (which includes computer software), the scope of protection, and the manner in which the protection is accorded. There is no registration of copyright works.

Copyright protection in literary, musical or artistic works is for the duration of the life of the author and 50 years after his death. In sound recordings, broadcasts and films, copyright protection is for 50 years after the works are first published or made.

The Act also provides protection for the performer's rights in a live performance which shall continue to subsist for fifty years from the beginning of the calendar year following the year in which the live performance was given.

A unique feature of the Act is the inclusion of provision for its enforcement. A special team of officers is appointed to enforce the Act and empowered to enter premises suspected of having infringing copies and to search and seize infringing copies and contrivances.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) 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 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 economy such as Malaysia, it is hoped that the IGAs will help to quicken the pace of industrialisation by encouraging the inflows of foreign capital and also accord protection to Malaysian investments abroad. It is generally considered that the IGAs, which prevent arbitrary action on the part of a recipient economy, will generate confidence among 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; and

(b) permission to remit or repatriate profits or capital on investment in any freely usable currency.

Beneficiaries

Under the 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 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 tribunal for settlement.

(b)Disputes in connection with 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 (ICSID) under the Convention on the Settlement of Investment Disputes between States and Nationals of other states opened for signature at Washington D.C. on 18 March 1965, or to the arbitrator or International ad hoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

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 economies:

1. United States of America
2. Federal Republic of Germany
3. Canada
4. Netherlands
5. France
6. Switzerland
7. Sweden
8. Belgo-Luxembourg

9. United Kingdom
10. Sri Lanka
11. Romania
12. Austria
13. Finland
14. Kuwait
15. Organisation of Islamic Conference (OIC)
16. Association of South-East Asian Nations (ASEAN)
17. Italy
18. Republic of Korea
19. People's Republic of China
20. United Arab Emirates
21. Denmark
22. Socialist Republic of Vietnam
23. Papua New Guinea
24. Republic of Chile
25. Lao People's Democratic Republic
26 Chinese Taipei
27. Republic of Hungary
28. Republic of Poland
29. Republic of Indonesia
30. Republic of Albania
31. Republic of Zimbabwe
32. Turkmenistan
33. Republic of Namibia
34. Kingdom of Cambodia
35. The Argentina Republic
36. Jordan
37. Republic of Bangladesh
38. Republic of Croatia
39. Bosnia-Herzegovina
40. Spain
41. Islamic Republic of Pakistan
42. Kyrgyz Republic
43. Mongolia
44. Republic of India
45. Oriental Republic of Uruguay
46. Republic of Peru

47. Republic of Kazakhstan
48. Republic of Malawi
49. Czech Republic
50. Republic of Guinea
51. Republic of Ghana
52. Republic of Egypt
53. Republic of Botswana
54. Republic of Cuba
55. Uzbekistan
56. Macedonia
57. North Korea
58. Yemen
59. Turkey
60. Lebanon
61. Burkina Fuso
62. Republic of Sudan
63. Republic of Djibouti
64. Republic of Ethiopia
65. Republic of Senegal
66. State of Bahrain
67. Algeria
68. Saudi Arabia
69. Morocco
70. Iran

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

None.

2. Settlement of Disputes

(a) 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.

(b) Signatory or accession to the ICSID Convention.

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 (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.

See section D (2) below. Applications for incentives should be submitted to the relevant organizations, e.g. MIDA, Ministry of Finance, Inland Revenue Board.

2. Brief description of fiscal, financial, tax or other incentives offered at both the national and subnational 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.

Tax incentives, both direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990. These Acts cover investments in manufacturing, manufacturing related services, agriculture, tourism (including hotel), R&D, training and environmental protection activities.

The direct tax incentives grant partial or total relief from income tax payment for a specified period, while indirect tax incentives are in the form of exemptions from import duty, sales tax and excise duty. Some of the major incentives are as follows:

1. Pioneer Status

Companies undertaking manufacturing, manufacturing related services, agriculture; tourism; environmental protection and ICT based activities can be considered for Pioneer Status. Pioneer Status are normally given for 5 years with tax exemption on 70 per cent of statutory income. The balance of the 30 per cent will be taxed at the prevailing company tax rate.

In the following cases, the general rule of tax abatement and period of incentive is varied:

- Companies located in the Eastern Corridor of Peninsular Malaysia, Sabah and Sarawak will be granted an abatement of 85 per cent of their statutory income for 5 years.

- Companies engaged in the promoted products or activities in the area of new and emerging technologies will be given full tax exemption of statutory income for 5 years.

- Companies carrying out projects of national and strategic importance involving heavy capital investment will be granted full tax exemption of statutory income for 10 years.

- Small-scale manufacturing companies with shareholders' funds not exceeding RM500,000 and having Malaysian equity of at least 60 per cent, undertaking activities/products for

small-scale companies will be granted full tax exemption of statutory income for a period of 5 years.

• Vendors engaged in the manufacture of promoted products/activities under the industrial linkage programme, will be granted full tax exemption of statutory income for a period of 5 years; and for vendors who are capable of achieving world class standards, a full tax exemption of statutory income for a period of 10 years will be granted.

• Companies undertaking activities in the production of specialised machinery and equipment will be granted full tax exemption of statutory income for a period of 10 years.

• Companies undertaking design, R&D and production of qualifying automotive component modules or systems will be granted full tax exemption of statutory income for a period of 5 years.

• Companies that undertake forest plantation projects are granted full tax exemption of statutory income for 10 years.

• Companies that provide contract R&D services are granted full tax exemption of statutory income for 5 years.

• Companies granted 'strategic knowledge-based status' are granted full tax exemption for 5 years.

2. Investment Tax Allowance

• As an alternative to Pioneer Status, a company may be granted investment tax allowance (ITA) of 60 per cent in respect of qualifying capital expenditure incurred on a factory or plant and machinery used for the purposes of an approved product/activity (other than one granted pioneer status). ITA is granted on capital expenditure incurred for a period of five years.

• The amount of investment tax allowance to be utilised for each year of assessment is restricted to a maximum of 70 per cent of the statutory income, while the balance of 30 per cent is taxed at the prevailing corporate tax rate.

• Unused allowances may be carried forward indefinitely to 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 projects:

• companies located in the Eastern Corridor of Peninsular Malaysia, Sabah and Sarawak will be granted ITA of 80 per cent on the qualifying capital expenditure incurred. This allowance can be utilised to offset against 85 per cent of statutory income for each year of assessment;

• companies engaged in the new and emerging technologies will be granted ITA of 60 per cent to offset against 100 per cent of its statutory income;

• a company carrying out a project of national and strategic importance may be granted ITA for five years at a rate of 100 per cent and would be able to utilise the amount of ITA granted for set-off against its profit without restriction;

• vendors, in the industrial linkage programme, will be granted ITA of 60 per cent to offset against 100 per cent of its statutory income for five years; and for vendors who are capable of achieving world class standards, an ITA of 100 per cent on qualifying capital expenditure incurred for five years to be offset against 100 per cent of statutory income for a period of 10 years;

- companies in the production of specialised machinery and equipment will be granted 100 per cent ITA on qualifying capital expenditure incurred within 5 years to be offset against 100 per cent statutory income;

- companies undertaking design, R&D and production of qualifying automotive components will be granted 60 per cent ITA on qualifying capital expenditure incurred within 5 years and to be offset against 100 per cent statutory income;

- companies that undertake forest plantation projects are granted 100 per cent ITA on qualifying capital expenditure incurred with 5 years and to be offset against 100 per cent statutory income;

- companies that provide R&D services are granted various levels of ITA based on the type of activity i.e. contract R&D; R&D company or in-house research;

- companies establishing technical or vocational training are granted ITA of 100 per cent for 10 years which can be offset against 60 per cent of statutory income;

- companies granted 'strategic knowledge-based status' are granted 60 per cent ITA on qualifying capital expenditure incurred within five years which can be offset against 100 per cent of statutory income.

3. Reinvestment Allowance

Companies that have been in operation for at least 12 months and incur qualifying capital expenditure to expand production capacity, modernise and upgrade production facilities, diversify into related products, and automate its production facilities can obtain a Reinvestment Allowance (RA). The RA is 60 per cent on qualifying capital expenditure incurred by the company which can be offset against 70 per cent of its statutory income for the year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

A company that undertakes reinvestment projects in Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, or attains a productivity level exceeding the level determined by the Ministry of Finance can offset the RA against 100 per cent of its statutory income for the year of assessment.

The RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made. Companies can only claim upon completion of the qualifying project. Assets acquired for the reinvestment cannot be disposed during the two years from the time of reinvestment.

A company that intends to undertake reinvestment before the expiry of its Pioneer Status incentive can surrender its Pioneer Status for cancellation and be eligible for RA.

4. Operational Headquarters (OHQ)

An approved operational headquarters (OHQs) refers to a locally incorporated company, whether Malaysian-owned or foreign-owned, which carries on a business in Malaysia of providing qualifying services to its offices or its related companies outside Malaysia. A company granted OHQ status enjoys tax exemption on income from:

- Qualifying services rendered to its offices or related companies outside Malaysia
- Interest on foreign currency loans extended to its offices or related companies outside Malaysia

- Royalties received from R&D work carried out on behalf of its offices or related companies outside Malaysia.

For applications received from 21 September 2002 by MIDA, companies granted OHQ status will be exempted from income tax for 10 years. Dividends paid from the exempt income are also exempted in the hands of shareholders. OHQs established prior to 21 September 2002 will also enjoy full exemption from income tax for the remaining exemption period.

5. Regional Distribution Centre (RDC)

A Regional Distribution Centre (RDC) is a collection and consolidation centre for finished goods, components and spare parts from overseas or within the economy (produced by its own group of companies for its own brand) to be distributed to dealers and importers or its subsidiaries or associated companies within or outside the economy. Among the activities involved are bulk breaking, repackaging and labeling.

RDCs are eligible for full tax exemption on statutory income for 10 years, dividends paid from the exempt income is exempted from tax in the hands of the shareholder, import duty and sales tax exemption on goods for the purpose of distribution and expatriate posts to be approved according to requirements.

The above incentives are given subject to the RDC being incorporated in Malaysia under the Companies Act 1965, total annual turnover of the RDC should not be less than RM100 million, located in free zones (free industrial zone or free commercial zone), licensed warehouse (private and public) or licensed manufacturing warehouse, and must not sell more than 20 per cent of its products to the local market.

An International Procurement Centre (IPC) that undertakes similar activities can also be categorised as a RDC. Tax exemption on statutory income and dividends in the hands of the shareholder is also extended to the IPC.

6. International Procurement Centres

An International Procurement Centre (IPC) is a locally incorporated company, whether Malaysian or foreign-owned, which carries on a business in Malaysia to undertake the procurement and sales of raw materials, components and finished products for its group of related and unrelated companies in Malaysia and abroad. This would include procurement from and sales to local sources and third economies.

In order to encourage the establishment of IPCs and to make Malaysia a marketing and distribution centre, the following incentives are available:

- Approval for expatriate posts based on the requirements of the IPC
- Permission to open one or more foreign currency accounts with any licensed commercial bank to retain export proceeds, without any limit imposed
- Permission to enter into foreign exchange forward contracts with any licensed commercial bank to sell forward export proceeds based on projected sales
- Exemption from equity ownership requirement. Existing trading and manufacturing companies approved to operate IPCs will need to continue to abide by the existing equity ownership requirement
- Permission to bring in raw materials, components or finished products without paying custom duties into Free Zones or Licensed Manufacturing Warehouses for repacking, cargo consolidation and integration before distribution to the final consumers
- IPC which comply with existing criteria, i.e total turnover should not be less than RM100 million, will be eligible for income tax exemption for 10 years.

To qualify for the incentives, the IPC must be locally incorporated under the Companies Act 1965 with a minimum paid-up capital of RM0.5 million, have a minimum total business spending (operating expenditure) of RM1.5 million per year and handle its goods directly through Malaysian ports and airports.

7. Tariff-Related Incentives

Tariff-related incentives are considered based on certain criteria. These incentives are usually in the form of exemptions from import duty, sales tax and excise duty.

For more detailed information on the incentives, please refer to MIDA website at www.mida.gov.my

Labuan - an international offshore financial centre

The Labuan Offshore Financial Services Authority (LOFSA) is a regulatory body set up to spearhead and coordinate efforts to promote and develop Labuan as an International Offshore Financial Centre (IOFC).

LOFSA is expected to streamline the government machinery in supervising the activities and operations of the offshore financial services industry, undertakes research and development work, and plans the growth and promotion of the IOFC.

Incorporation and registration of companies fall under the purview of LOFSA. LOFSA also oversees the Labuan International Financial Exchange and Labuan offshore industries such as banking, insurance, securities, and trust and fund management.

Over 3,500 offshore companies have set up operations in Labuan, including trust companies, banks, insurance and insurance-related companies, and fund management and leasing companies.

Incentives offered under this legislation include the following:

(a) An offshore company carrying on an offshore trading activity can choose to pay a tax at the rate of 3 per cent of its net audited profits or a fixed sum of RM20,000 a year.

(b) An offshore company carrying on an offshore non-trading activity for the basis period for a year of assessment is not subject to tax for that year of assessment. An offshore company which has no basis period for a year of assessment, is taxed a fixed rate of RM20,000 for that year of assessment.

(c) Income derived by a person or his employee or a company from qualifying professional services rendered to an offshore company in Labuan is exempted from tax up to an amount equivalent to 65 per cent of the statutory income from that source until Year of Assessment 2004. Qualifying professional service means legal, accounting, financial and secretarial service and includes the services provided by a trust company as defined in the Labuan Trust Companies Act 1990.

(d) Income of a person derived from the carrying on of a business which relates to a qualifying asset or the letting of a qualifying asset in Labuan, is exempt from tax up to an amount equivalent to 50 per cent of the adjusted income from that source. This exemption applies where the person has undertaken the construction project of the qualifying asset himself or has purchased that qualifying asset from the person who undertook the construction project of that asset.

This exemption is applicable for a period of five consecutive years of assessment, commencing from the year of assessment in which the adjusted income first arises from that source, that is,

the total exemption given to both the person who constructed and the person who purchased the qualifying asset will not exceed five years of assessment.

The incentive is available if the construction project of a qualifying asset has commenced before 1 October 1996 or Pioneer Status/Pioneer Certificate or Investment Tax Allowance has been granted under the Promotion of Investments Act 1986 in respect of the business which relates to or the letting of the qualifying asset.

(e) Income derived by a non-citizen individual from an employment exercised in a managerial capacity in an offshore company in Labuan is exempt from tax up to an amount equivalent to 50 per cent of the gross income until Year of Assessment 2004.

(f) Exemptions from tax for:

(i) Dividend received by an offshore company is not subject to income tax and no refund or set-off is given in respect of tax deducted from such dividend.

(ii) Dividend paid by an offshore company out of income derived from an offshore business activity or out of exempt income is not subject to income tax in the hands of the recipient. Such dividend will be paid gross without any tax deducted at source.

(iii) Distribution made by an offshore trust is not subject to income tax in the hands of the beneficiary.

(iv) Royalty paid by an offshore company to a non-resident person or another offshore company is not subject to income tax and hence is not subject to withholding tax.

(v) Interest paid by an offshore company to a non-resident person or another offshore company is not subject to income tax. However, where the interest accrues to a banking, finance company or insurance business carried on by the non-resident person in Malaysia, that interest will be subject to income tax as part of business income.

(vi) Interest paid by an offshore company to a resident person, other than a person carrying on a banking, finance company or insurance business in Malaysia, is not subject to income tax.

(vii) Technical or management fee paid by an offshore company to a non-resident or another offshore company is not subject to income tax.

Free Zones and Licensed Manufacturing Warehouses

Free Zones (FZs) are categorized into Free Industrial Zones (FIZs) and Free Commercial Zones (FCZs).

FIZs are areas designed for export orientated companies and enjoy minimum customs formalities and duty free import of raw materials, component parts, machinery and equipment required directly in the manufacturing process, as well as, minimal formalities in exporting their finished products.

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 Malaysian government has allowed for the setting up of Licensed Manufacturing Warehouses which provide similar facilities as those available in a FIZ.

(c) 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	5th Floor, Plaza Sentral, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, P.O. Box 10618 50470 Kuala Lumpur Tel: (60 3) 2267 3633 Fax: (60 3) 2274 7970 Website: http://www.mida.gov.my E-mail: mida@mida.gov.my

The Malaysian Industrial Development (MIDA) is the one-stop agency responsible for facilitating and promoting investments in the manufacturing sector and services related to manufacturing. Besides a global network of offices, MIDA has 10 branch offices in various states to facilitate investors in the implementation and operation of their projects. As an organization that continuously strives to provide reliable, efficient and professional services to our clients, MIDA has implemented the ISO 9002 Quality Management System and obtained certification for its promotion of foreign and domestic investments in Malaysia's manufacturing sector.

MIDA provides assistance to investors from the pre-establishment stage (e.g. in obtaining approvals and incentives) through to the post-establishment state (e.g. overcoming any problems in implementation and operations).

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 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
	The Framework Agreement on the ASEAN Investment Area
	Investment Guarantee Agreement among members of 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 economies that are sources/receivers of FDI.

Inward Investment

Approved Inward Manufacturing Projects (1997-2002)

		1997	1998	1999	2000	2001	2002
Number		759	844	725	805	928	792
Potential Employment		73,421	83,241	65,938	88,112	89,440	64,744
Total Proposed Capital Investment	(RM mil.)	25,820.6	26,352.4	17,020.7	33,610.3	25,774.9	17,876.9
- Domestic	(RM mil.)	14,347.7	13,288.9	4,746.9	13,761.8	6,867.7	6,298.9
- Foreign@	(RM mil.)	11,472.9	13,063.5	12,273.8	19,848.5	18,907.2	11,578.0

@ Foreign investment = Foreign equity + estimated foreign loan.

Source: MIDA

FDI into Malaysia in the manufacturing sector amounted to RM11,578 million or 64.8 per cent of the total approved investment in 2002.

The top five investing economies in 2002 were the Federal Republic of Germany (RM5,055 million), USA (RM2,668 million), Singapore (RM1,019 million), the Netherlands (RM607 million) and Japan (RM587 million). Other major sources of investments were the Republic of Korea (RM369 million), Chinese Taipei (RM252 million), United Kingdom (RM168 million) and Australia (RM108 million).

Investments were mainly in electrical and electronics products (RM3,930 million), petroleum products including petrochemicals (RM4,789.3 million), food and beverages (RM1,318 million), chemical and chemical products (RM918 million), machinery manufacturing (RM707 million) and transport equipment (RM698 million).

Outward (reverse) Investment

Outward investment by Malaysian residents abroad includes direct equity investment, purchase of real estate and extension of loans to non-residents abroad. The flow of Malaysian investment overseas is captured by the Central Bank's Cash Balance of Payments Reporting System.

The flow of Malaysian investment abroad increased gradually from RM11,620 million in 1998 to RM13,613 million in 1999 and RM13,805 million in 2000. However, the investment declined in the year 2001 to RM13,107 million and increased in 2002 to RM16,424 million. The concentration of Malaysian overseas investments in 2002 were in economies such as United States (RM5,714 million), Chad (RM1,099 million), Singapore (RM1,057 million), Netherlands (RM928 million) and Cayman Islands (RM906 million).

MEXICO

MEXICO

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

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. Over the last several years, Mexico has removed significant foreign investment barriers as part of an ambitious economic development plan that aims to achieve, and sustain, industrial development and expansion.

The government recognized that substantial private capital is needed to create additional employment and to increase industrial output, which also results in attracting an influx of modern technology, management techniques and financing. This recognition was crystallized with the enactment of the Foreign Investment Law (FIL) in 1993. The FIL reduces many of the notifications and authorisations previously required under the previous regulations, and largely eliminates performance requirements.

The FIL establishes, as a general rule, that all activities not specifically mentioned in the law are completely deregulated, thus allowing up to 100% foreign investment in most economic sectors without authorisation. However, the FIL contemplates some strategic activities reserved to the State (Article 5), to Mexican Nationals (Article 6) and some activities with specific regulations (Article 7).

The FIL has also limited screening procedures to certain economic activities, listed in Article 8, where the foreign investor seeks a participation of more than 49%. Article 9 of the FIL has a similar procedure for foreign acquisitions of over 49% of the capital stock of Mexican corporations, when the total value of the assets of the relevant Mexican corporation exceeds a threshold stated on an annual basis by the National Commission of Foreign Investment (NCFI). Screening is to be carried out by the (NCFI), as well.

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;
- Foster the participation of fresh capital into the economy;
- Improve the quality of the domestic production through increased competition;
- Promote the transfer of technology and training of human resources;

- Encourage international competitiveness;
- Increase non-oil exports; and
- Contribute to economic development.

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

The National Development Plan 2001-2006 states that the economic policy of the Government is to promote quality growth. It stresses the need to create an environment conducive to progress and wealth, within a macroeconomic framework where productive activities, investment and savings offer opportunities for everybody. In this regard, the strategy related to economic growth, is based on:

a) Increase and extend the country competitiveness

b) Promote a regionally equilibrated economic development.

This Plan considers that foreign investment encourages modernisation of domestic industry, increases the competitiveness; and, contributes to improve Mexican living standards. Then, the challenge is to make inflows a supportive instrument for development. For this purpose, Mexico will:

- Promote trade liberalisation and subscribe new trade agreements with other economies, to guarantee the access of our products to more dynamic economies;
- Provide legal security and certainty to productive direct investment; and,
- Enhance transparency.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Summary

- In December 1993, Mexico enacted a new Foreign Investment Law ("FIL").
- The FIL liberalised several activities with specific regulations. Today, foreign investment may participate in any percentage in the capital stock of Mexican companies (except as

otherwise provided by the FIL), 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 that are related to the establishment, operation or expansion of an investment.

- Thus, the FIL came to extend to all foreign investors, the commitments of liberalisation 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 foreigners' exclusion clause to acquire real estate within the restricted zone for non-residential purposes. Foreign individuals and foreign corporations may acquire rights over 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 considered to determine the foreign investment percentage in the capital stock of Mexican corporations.

- With the entry into force of the FIL of 1993, the Regulations of 1989 resulted inapplicable. As a consequence, it was required to design a complementary instrument to the FIL that complies with the National FDI policy guidelines. These new Regulations to the FIL of September 1998 simplify administrative procedures and create favourable conditions for the entrance of capital flows. They reflect the economic deregulation as part of the economic deregulation process; describe the liberalised activities as a result of the amendments in specific laws, by reason of transparency and consistency; and, establish the economic survey requirement and the requirement to notify investments through the concept of reinvested earnings and inter-company loans.

Up to January 2003, the following activities have been liberalised:

i. Under the FIL in 1993, the railroad industry was classified as an activity reserved to the State. The Regulatory Law of the Railroad Services, published in the Official Gazette on May 12, 1995, repealed the FIL's above mentioned disposition in order to allow private investment to participate in the railroad sector. Thus, these reforms allow foreign capital participation up to 100% in railway related services, (such as passenger service, maintenance and rehabilitation of roads, rights of way, repair shops for tractive and hauling equipment, etc.) and in railway operations, for stakes above 49%, with prior authorisation of the NCFI.

ii. On May 11, 1995 the Decree that Amends and Additions 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. Currently, unrestricted FDI is allowed in

companies involved in the transportation, storage and distribution of natural gas. Authorisation from the NCFI is necessary for equity holdings in excess of 49%, in gas pipeline construction.

The Mexican Congress approved legislation in November 1995 guaranteeing the participation of foreign and Mexican companies on a non-discriminatory basis in construction, operation and ownership of facilities involved in the transportation, distribution and storage of natural gas.

iii. The Airports Law published in 1995, aims at fostering the development of infrastructure, based on transparent rules to regulate the activity in an equitable and efficient way. In addition, the same year, the Mexican Congress passed the Civil Aviation Law aimed at orderly liberalisation and providing a higher standard of services. The objective is to improve levels of air safety while promoting growth in profitability through efficiency and competitiveness in air transportation services.. With regard to the administration, building and operation of airports and heliports, , foreign investment is allowed to participate up to 49 %. To participate up to 100%, an authorisation from the NCFI is required. Likewise, the FIL establishes in article 7 that foreign investors may participate up to 25 % in national air transportation, air taxi services and specialised air transportation. With respect to the fuel and lubricants supply for vessels and airplanes and railroad equipment, foreign investment may participate up to 49 %. Also, for concessionaire or permissionaire enterprises of public services on airdromes (category that includes airports), FDI may participate up to 49%, and a favourable resolution from the NCFI is required to participate up to 100 %.

iv. Previously, the satellite communication sector was classified as an activity reserved exclusively to the State. On June 7, 1995 the Federal Law on Telecommunication approved by Congress was issued. The Law eliminates the State's monopoly on satellite communication; foreign investment may participate now up to 49% of the capital of a firm. At the same time, it allows up to 100% foreign capital participation in cellular telephone services, with the previous authorisation by the NCFI. Regarding local and long distance telephone services, FDI may participate up to 49%. The reforms also include the auctioning of the radio spectrum, which is underway, and private ownership of satellites, where foreign capital may participate up to 49%. Currently the FIL, article 7º, III, x, authorises foreign investment participation up to 49 % for concessionaire enterprises according to articles 11 and 12 of the Federal Telecommunications Law. Such concessions are:

- Exploitation of frequency bands on national territory;

- Installation, operation or exploitation of a public telecommunication net;

- Occupation of geostationary orbital position and satellite orbits assigned to the country; and

- Exploitation of rights for the emission and reception signals of frequency band associated to foreign satellite systems that cover and may provide services in national territory.

Finally, concerning cable television, foreign investment may participate up to 49%.

v. Foreign investment may now participate up to 51% of the capital of Mexican companies engaged with activities for international land transportation of passengers, tourism and freight

between destinations within Mexican territory and administration services of bus stations and auxiliary services.

vi. The Mining Law of 1994, regulates the exploration, exploitation and benefit of minerals and mineral substances (Articles 2 and 3), whether they are pure or with contents of any other substance, rare earth, mineral gems, rock salt, products derived from the decomposition of rocks, mineral materials or organic materials which may be used as fertilisers, mineral solid fuels and others determined, by the Federal Executive taking into consideration their industrial use based on the development of new technologies, their price in the international markets or the need to promote their rational exploitation and the preservation of the non-renewable resources for the benefit of society (Article 4). Currently, the FIL does not consider the mining activities as an activity reserved or conditioned to have a majority of Mexican investment (except those activities related to radioactive minerals in accordance with article 5 of the FIL). Therefore, foreign investment may participate in a percentage higher than 49 % without needing favourable resolution from the NCFI.

vii. In some port related services, reforms have been implemented to allow foreign capital participation up to 100%, with prior authorisation of the NCFI; and, in integral port administration, up to 49 %.

viii. As a general rule, the financial sector is now open to direct foreign investment. Foreign financial institutions can own up to 99% of ordinary capital shares in financial group holding companies, multiple banking credit institutions, stock brokerage firms, and specialised stock market firms. In the same way, the limits on foreign ownership on financial institutions shall not apply to Affiliates of Foreign Financial Institutions.

a. Commercial (multiple) banking credit institutions and holding companies for financial groups.

In 1993, the participation of foreign investment in commercial (multiple) banking credit institutions and holding companies for financial groups was limited up to 30 % of the ordinary capital. Since then, the Law of Credit Institutions (articles 11,12,13, 14 y 17), the Law to Regulate Financial Groups (article 18) and the FIL (article 7, III and IV) had several amendments. Such amendments allowed foreign investment to participate up to 49 % of the ordinary capital (series B shares, which were of free subscription) of a Credit Institution or a holding companies for financial groups. Furthermore, foreign investment could participate in series L shares (which were additional capital shares of free subscriptions, limited vote and granted the right to receive a preferential and cumulative dividend).

In January 1999 the Law of Credit Institutions and the Law to Regulate Financial Groups were amended in order to allow foreign investment to participate up to 100 % in the ordinary (now series "O" shares) and additional (series "L" shares) capital of commercial (multiple) banking credit institutions and holding companies for financial groups.

In June 2001, with the enforcement of the new Investment Companies Act, subparagraphs m) and n), of article 7, paragraph III of the FIL were expressly repealed. Therefore, there is no longer the

limitation of up to 49% of foreign investment, on investment companies qualified as such in the above mentioned Act.

Thanks to the Stock Exchange Act published on June 2001, sub-paragraph l) of paragraph III of article 7 of the FIL, which stated a limitation on the foreign investment participation up to the 49% in portfolio manager companies, was repealed, and there is no longer limitation of foreign participation in such companies.

b. Securities brokerage firms and Securities market specialists.

The total foreign investment in securities brokerage firms and securities market specialists was limited to the 30 % of the capital and individual ownership of foreign invested shares was allowed in no more than 10 % of the capital. Later, foreign investment was allowed up to 49 % of the ordinary capital of securities brokerage firms and securities market specialists (series B, shares of free subscription). Series L shares (additional capital) were also shares of free subscription and the foreign investment may participate by subscribing them (articles 17-bis and 19 of the Securities Market Law).

In January, 1999, the amendments to the Securities Market Law established that foreign investment may now participate up to 100 % in the ordinary (now series "O" shares) and additional (series "L" shares) capital of Securities brokerage firms and Securities market specialists.

c. General Deposit Warehouses, Financial Leasing Companies, Financial Factoring Companies (Auxiliary Credit Organisations), Bonding Institutions

The total percentage of foreign investment in General deposit warehouses, financial leasing companies, financial factoring companies and bonding institutions was limited to 49% of the paid capital. Currently and by virtue of the Auxiliary Credit Organisations Law, Bonding Institutions Law and the FIL provisions, foreign investment may participate up to 49 % of the capital in special series of shares, provided that Mexican investment has the power to determine the management and effective control of the company.

Neither a single natural nor juridical person (Mexican or foreigner) may acquire, directly or indirectly, the control of the series A or B shares above 10 % of an auxiliary credit organisation social capital. The foregoing shall not apply to the acquisition of shares made by affiliates of foreign financial institutions. Exceptionally, the Ministry of Finance and Public Credit (MFPC) or the National Commission on Banks and Securities (BSNC) shall authorise an acquisition of a higher percentage, provided that the purchaser of the stock is not linked directly with other shareholders and that the acquisitions will not become in an undue concentration of capital.

d. Currency exchange houses

Foreign investment was not entitled to participate in currency exchange houses. Currently, foreign investment may participate in up to 49 % of the paid capital (article 8 of the Auxiliary Credit Organisations Law and article 7 of FIL).

e. Insurance Institutions

Nowadays, foreign investment may participate up to 49 % of capital of insurance institutions; and regarding insurance agents, foreign investment may participate up to 100 % of capital, according to article 8º of FIL, prior authorisation of the NCFI.

f. Financial Companies whose activities are limited by article 103, paragraph IV of the Law of Credit Institutions (Non-bank banks), companies to which article 12-Bis of the Securities Market Law refers, shares representing the fixed capital of investment companies, operating companies of investment corporations, retirement fund management companies.

The 49 % limit applies to the foreign ownership in the aforementioned financial institutions.

ix. Manufacture and assembly of automotive industry parts.

In activities for manufacture and assembly of automotive industry parts, equipment and accessories, foreign investment was allowed to participate up to 49 % of the capital of Mexican companies, without prejudice of the terms of the Decree for the Fostering and Modernisation of the Automotive Industry. As of January 1, 1999, foreign investment may participate up to 100 % of the capital of Mexican companies without need of obtaining a favourable resolution from the NCFI (article 7 transitory, FIL).

x. Construction activities

Previously, a favourable resolution from the NCFI was required for foreign investment to participate in a percentage higher than 49 % of the capital of corporations who carry out activities of building, construction and installation of works. After January 1, 1999 foreign investment may participate in up to 100% of the capital of Mexican companies engaged therein, without favourable resolution of the NCFI (Article 9 transitory, FIL).

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide 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 its article 9 provides that favourable resolution from the NCFI is required for foreign investment to participate in a percentage higher than 49% in Mexican companies undercarrying non restricted activities, if the total asset value of such mexican companies, at the time of acquisition, exceeds the amount established annually by said Commission.
Greenfield investment (Yes)	Only in those activities listed in article 8 of the FIL.
Real estate/land (Yes)	Mexican companies with foreigners admission clause , may acquire ownership of real estate in the restricted zone only to be destined to a non-residential activity. A trust is necessary in order to acquire rights, although not ownership, over real state for residential purposes. Foreign legal persons or individuals are not allowed to acquire ownership of any kind of real estate in the restricted zone; they may only have rights, although not property, over such real state, through a trust.
Joint venture (No)	However, the relevant limitations for FDI participation in certain activities established by the FIL shall be observed.

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% with the prior authorisation of the NCFI.
Media (Yes)	According to the FIL no foreign investment is allowed in open broadcasting (both radio and TV). Only on cable television foreign investment may participate up to 49%.

Transport (Yes)	FIL in its article 6 reserves exclusively to Mexicans or Mexican companies with foreigner's exclusion clause several activities including National surface transportation of passengers, tourism and freight, excluding messenger and package delivery service. Also, transitional article 6 establishes that in 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, foreign investment may participate up to 51% of the capital of Mexican companies.
Agriculture (Yes)	FIL in article 7, section III, part r), provides that foreign investment may participate up to 49% in series T shares of Mexican companies, representing capital destined to acquire agricultural, ranching of forestry lands.
Construction (No)	Since January 1, 1999 foreign investment may participate in up to 100% of the capital of Mexican companies engaged therein, without favourable resolution from the NCFI (Article 9 transitory, FIL).
Automotive industry parts (No)	As of January 1, 1999, foreign investment may participate up to 100% of the capital of Mexican companies without need of obtaining a favourable resolution from the NCFI (Article 7 transitory, FIL).

(c) Indicate all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

Guide for the incorporation and registration of a Mexican incorporation with foreign investment or the establishment of branches in Mexico.

I. **<u>Automatic Procedure or via the National Commission of Foreign Investment.</u>**

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 authorisation by the Ministry of Economy.

b) National Commission of Foreign Investment (NCFI)

1. Procedure: Apply for an authorisation 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 and 9 of the FIL.

2. Requirements: General information.

- Exhibition of a questionnaire and the documents set forth therein (NCFI).

3. Resolution: 45 business days.

II. Ministry of Interior (MI)

1. Procedure: Apply for authorisation in order to demonstrate the legal entry and sojourn in the country and to appear before a Notary.

2. Requirements: Non-immigrant Visitant Form or business immigrant.

- Valid passport.

- General information.

3. Resolution: 4 business days.

III. Ministry of Foreign Relations (MFR)

1. Procedure: A permit from the MFR is required for the incorporation of companies.

2. Requirements: Present a SR-1 form, proposing 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 authorisation to demonstrate the corporation's representatives legal stay in the country.

- Authorisation for the incorporation of companies.

- Official letter from the NCFI in case of favourable resolution is 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 incorporation of a company is essential, because of its legal authority to attest documents.

V. Ministry 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 authorisation for the establishment of the company (MFR).

3. Resolution: 8 to 10 business days.

VII. Ministry of Economy

1. Procedure: Inscription before the National Registry of Foreign Investment.

2. Requirements:

- General information and documents.

- SE-02-001-2 Form, as required.

3. Resolution: 20 business day.

VIII. Others

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 Law Firm, specialised 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 MFR, as well as all subsequent requirements that can arise during the operation of the corporation (labour issues, tax issues, special permits, etc.).

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax

Agency	Address/telephone/fax
Directorate General for Foreign Investment	Av. Insurgentes Sur No. 1940 PB Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. Phone (5255) 52 29 61 00 ext 3502 Fax (5255) 52 29 65 07
National Commission of Foreign Investment	Av. Insurgentes Sur No. 1940 PB Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. Phone (5255) 52 29 61 00 ext 3545 and 3547 Fax (5255) 52 29 65 07

(e) *Identify the availability of website information and whether there is that capacity to apply for approvals on line.*

The FIL in English can be found at: http://204.153.24.57/documentos/ley_ing.doc

The Regulations to the FIL can be found at: http://204.153.24.57/documentos/reg_ing.doc

It is not possible to apply for approvals on line.

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

a) Establishing foreign legal person:

According to FIL, Article 17-A, any application to obtain an authorisation for establishing a foreign legal person in Mexico must be approved by the Ministry of Economy within 15 business days following the date of its filing. If the Ministry gives no response to the application to obtain an authorisation in the term set forth in the FIL, the authorisation is considered granted.

b) Neutral Investment applications:

FIL establishes a 35 business days term to approve or disapprove neutral investment filings (articles 19 and 20 of the FIL). If the Ministry gives no response, the authorisation is considered granted.

c) NCFI Authorisations:

FIL establishes a 45 business days term to approve or disapprove applications submitted before the NCFI (for the activities and acquisitions regulated in articles 8 and 9). If the NCFI (through the Ministry of Economy) gives no response, the authorisation is considered granted.

(g) List 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. Briefly describe appeal processes and the average time for an appeal to be considered.

Agency	Address/telephone/fax
Ministry of Economy Directorate General of Foreign Investment Legal Directorate	Insurgentes Sur 1940, 8th floor. Telephone: (5255) 52-29-61-00 ext. 3509 Fax: (5255) 52-29-65-07

Elaborate a script to be presented before the Directorate General of Foreign Investment, requesting an appeal. The appeal process should not be longer than four months.

(h) Briefly describe what conditions 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 legalised 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 corporate rights that this new shares of stock will bring to shareholders.

(i) Indicate 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 Economy Directorate General of Foreign Investment	Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. Phone (5255) 5229 61 00 ext 3505 Fax (5255) 5229 65 07	Any type of complaint

(j) 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.

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. Phone (5255) 5229 61 00 ext 3505 Fax (5255) 5229 65 07.	The General Directorate for Foreign Investment is in charge of the co-ordination, evaluation, authorisation and screening of projects involving FDI. The Directorate for the NCFI and Juridical Affairs has the following functions: a) Emission 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 **Directorate for the NRFI**	Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. phone (525) 229 61 00 ext 3509 and 3510 fax (525) 229 65 07.	The Directorate for the NRFI has the following functions: a) Authorise the registry of foreign corporations; b) Issue registry forms; c) Make studies and statistical informs regarding the presence and behaviour of foreign investment in our country; and, d) Impose sanctions.

(k) Describe any 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.

As previously mentioned, Mexico's government has entered into a process of economic modernization by adopting unprecedented actions to reduce governmental intervention in the economy and open the country to international competition, even in previously sensitive areas.

These objectives have been pursued through an intensive deregulation program directed towards promoting legal and administrative procedures favorable to private investment, national or foreign.

New dispositions have been issued in the following areas:

A. ENERGY

1. Petrochemicals and natural gas.

On December 31, 1995, the Energy Regulatory Commission Law was enacted and provides for the creation of the Energy Regulatory Commission (CRE) which has acquired the authority to act on behalf of the Ministry of Energy with regard to electric power and natural gas services.

The Law Regulating Article 27 of the Mexican Constitution referring to petroleum, reserves to the Mexican State the investment and rendering of services related to the "oil industry". Since 1995, the transportation, storage and distribution of natural gas was opened to the private sector, including foreign participation, subject to prior authorization of the CRE. Foreign investors are entitled to construct, operate and own pipelines, installations and equipment for such purpose. Authorizations can be assigned upon prior approval from the CRE.

First-hand sales, as well as activities that do not form part of the petroleum industry regarding natural gas, are regulated. Additionally, they establish the terms and conditions of the permits granted for transportation, storage and distribution of natural gas. Since 1997, several permits for distribution of natural gas in different geographic zones have been granted through public bids, conferring an exclusivity period of 12 years for the construction of the distribution system and the receipt, transmission and wholesale delivery of gas within the zone.

As per the Foreign Investment Law, the drilling of oil and natural gas wells is still subject to the 49 percent limitation on foreign ownership, unless authorization is obtained to exceed such limit.

2. The electric power sector.

Articles 27 and 28 of the Mexican Constitution contain provisions reserving to the Mexican State the supply of electricity as a "public service," which is considered a strategic activity. However, in 1992, the term "public service" was redefined to open the following areas for private investment up to 100 percent.

a) self generation; when companies acquire, establish or operate an electricity generating facility to satisfy their own needs. Any excess production must be sold to the Federal Electricity Commission (CFE);

b) co-generation; electricity generated associated with industrial processes using heat, steam or other energy sources. Owners of the industrial facility need not be the owners of the co-generating facility. Once again, any excess production must be sold to the CFE;

c) independent power production is an enterprise that generates over 30 megawatts for sale to the CFE;

d) export of electric power, derived from co-generation, independent production or small production (note that the CFE must be part of the contract negotiations);

e) importation of electric power, by individuals or companies, exclusively to supply their own needs;

f) production of electric power for emergency use arising from the interruption of the public service of electric power as required by the CFE; and

g) small production; generation of electricity of less than 30 megawatts.

B. TRANSPORTATION

1. **Land Transportation**

Activities of international overland passenger transportation, tourism and freight between destinations in the Mexican Territory and administration services for central bus stations for passengers and auxiliary services are reserved exclusively to Mexicans or Mexican companies with foreigners exclusion clause. However, in the activities mentioned herein, foreign investment may hold an interest in accordance with the following provisions:

I. As of December 18, 1995, up to 49% of the capital stock of Mexican companies;

II. As of January 1, 2001, up to 51% of the capital stock of Mexican companies; and

III. As of January 1, 2004, up to 100% of the capital stock of Mexican companies without the need to obtain a favorable resolution from the Commission.

2. Maritime activities.

Since 1994, navigation operations are considerably open to foreign companies. Mexican shipping companies may be 100 percent foreign owned, and may register in the National Maritime Public Registry and flag as Mexican, vessels owned by them or in their legal possession under any bare boat charter agreement with option to purchase. Foreigners may flag, record and register tourist or sport vessels for private use under Mexican nationality.

However, masters, pilots, engine room and deck hands and all personnel on board on any Mexican flag vessel must be Mexican by birth. Fishing vessel personnel who carry out the following duties may be Mexican or foreign: instruction, training and supervision of activities related to the capture, handling or processing of game fish, and tourist cruise ship personnel who carry out the duties of attending to tourists.

The general shipping agent is the person or company acting on behalf of shipping companies or operators as agent or business representative to represent his principal in the bills of lading, and to perform other business his principal may request. A shipping agent company may be 100 percent foreign owned.

a. Navigation regime.

Operation on inland waterways is reserved to Mexican shipping companies with Mexican vessels. However, Mexican shipping companies may obtain a temporary permit from the Ministry of Communications to operate or manage foreign vessels on inland waterways, or in

case no Mexican shipping companies are interested, foreign shipping companies may obtain such a permit.

Either Mexican or foreign shipping companies may navigate in coastal waters provided a permit from the Mexican Ministry of Transportation is obtained. The permit is subject to reciprocity and equal conditions with the country in which the vessel is registered and with the country where the shipping company has its corporate domicile.

Also, the operation and management in Mexican territorial inland and coastal waters of tourist cruise ships as well as dredges and naval equipment for port construction, conservation and operation may be carried out by foreign or Mexican shipping companies with foreign or Mexican vessels or naval equipment.

C. TELECOMMUNICATIONS

The use of radio frequencies and the installation, operation or exploitation of public telecommunication networks may be carried out through concessions, which will be granted by a public call for bids for radio frequencies, and through direct application to the Ministry of Communication, for public telecommunication networks.

The aforesaid concessions shall be granted to Mexican individuals or corporations, which may have up to 49 percent of foreign investment. Prior authorization from the Foreign Investment Commission, foreign ownership in excess of 49 percent is permitted for cellular telephone services.

The operation as a "reseller" of telecommunication services, without being a public telecommunication network, and the rendering of value-added services allow foreign investment up to 100 percent.

(c) *If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g., zoning, approvals of land purchase).*

Agency	Address/telephone/fax	Functions
Documents concerning procedures made before the National Registry of Foreign Investment and the Directorate for the NCFI and Legal Affairs can also be presented at	SEE ANNEX	hese agencies can issue registry forms and receive the documentation regarding approval. However, the resolution /approval process
Ministry of Economy's Federal Delegations and Subdelegations.		T only takes place at the Directorate General for Foreign Investment.

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

(a) List and describe 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).

Mexico 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 Liberalisation Commitments

Sector: Fishing

Type of Reservation: Most-Favoured-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 percent of the ownership interest in such an enterprise.

Phase-Out: None

Sector: Professional, Technical and Specialised Services

Sub-Sector: Professional Services

Type of Reservation: Most-Favoured-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-Favoured-Nation Treatment (Article 1103)

Description: Investment: Prior approval of the NCFI 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-Favoured-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-Favoured-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-Favoured-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 Specialised Services

Sub-Sector: Professional Services

Type of Reservation: Most-Favoured-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 consulting services by persons of the United States.

Activities Reserved to the State

The constitutionally-defined "strategic activities" continuing to be reserved

exclusively for the State are the following:

a) oil production and oil refining;

b) basic petrochemical production;

c) sale of electricity to the public;

d) nuclear power;

e) telegraph and radiotelegraph services;

f) local postal service;

g) bill issuance and coin minting; and

h) control, supervision and surveillance of

ports, airports and heliports.

Exceptions from Most-Favoured-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 Co-operation Program with Central America and the Caribbean (Pacto de San José) and the Organisation for Economic Co-operation and Development (OECD) Agreement on Export Credits.

(b) Identify and describe any international agreements to which your economy is 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, Chile-Mexico Free Trade Agreement, Costa Rica-Mexico Free Trade Agreement, Nicaragua-Mexico Free Trade Agreement, European Union-Mexico Free Trade Agreement, Mexico-European Free Trade Association Free Trade Agreement and the Mexico-CA3 (Guatemala, Honduras and El Salvador).

Bilateral Investment Treaties (BITs) with Spain, Switzerland, Argentina, Germany, Netherlands, Austria, France, Finland, Uruguay, Portugal, Denmark, Sweden, Greece, Korea and Cuba. BITs with Italy, Iceland, Czech Republic and the Belgo-Luxembourg's Union are in process of approval.

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

Sector	Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)
Article 5 of the FIL I. Petroleum and other hydrocarbons II. Basic petrochemicals III. Electricity IV. Generation of nuclear energy V. Radioactive minerals VI. (Repealed) VII. Telegraph VIII. Radiotelegraphy IX. Postal service X. (Repealed) XI. Bank note issuing XII. Minting of coins XIII. Control, supervision and surveillance of ports, airports and heliports XIV. Others as expressly provided by law	The activities determined by the relevant laws in the following strategic areas are reserved exclusively for the State.
Article 6 of the FIL *I. Domestic land transportation for passengers, tourism, and freight, not including messenger and package delivery service;* II. Retail trade in gasoline and liquid petroleum gas; III. Radio broadcasting service and other radio and television services different from cable television; IV. Credit unions; V. Development banking institutions, pursuant to the provisions of the law governing the matter; and VI. Supply of professional and technical services expressly set forth in the applicable legal provisions.	With the exemption of the first activity, where foreign investment can participate up to 51%, these economic activities and corporations are reserved exclusively to Mexicans or to Mexican companies with a Foreigners Exclusion Clause. Foreign investment may not participate in the listed activities and corporations 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 (Neutral Investment) of the FIL.

(b) Briefly describe the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., 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.

The Federal Income Tax Law, particularly with regard to transfer pricing regulates inter-company loans between related parties. Special laws also apply to the financial sector. Securities firms, for instance, have limitations regarding their source of financing.

4. Repatriation and Convertibility

(a) Identify and describe 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. Nevertheless, in FTAs and BITs signed by Mexico, there is an exception concerning the case of difficulties in the balance of payments. In such a case, transfers may be limited temporarily.

(a) Briefly describe 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.

(b) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

None

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe 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 authorised 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 500 times minimum daily wage 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 of 26,000 times minimum daily wage.

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.

(b) List and briefly describe 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 Labour Law	"In every enterprise or establishment, the employer shall employ at least ninety per cent Mexican workers". 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. Directors, Managers and General managers are excepted from this Article. 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.
Mexican Constitution, Article 25. Cooperative Societies General Law, Title I Chapter I, Title II, Chapter II. Religious Associations and Public Cult Law, Title II, Chapters I, II. Foreign Investment Law; Title I; Chapter III, Civil Aviation Law; Chapter I, III, IV and IX; among others.	For firearms: Foreigners may not designate or be designated members of the board of directors or occupy top direction posts of such enterprises. For religious services: The representatives of religious associations must be Mexican nationals. For aerial transportation: 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.

(c) Describe any regulations relating to personnel management of foreign firms, e.g., minimum wage laws, minimum requirements for training or employment of local staff.

The Labour Legislation provides a maximum 48-hour workweek. 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 normally 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.

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

Law	Summary
Labour Federal Law	Applies to national and foreign firms in the context of labour disputes/relations.

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

The following summary of the Mexican Tax System is only due 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 recognises 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 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 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 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 34%.

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
C.- CORPORATE INCOME TAXES	Resident corporations, most partnerships and certain individuals engaged in business are taxed on their income at the 34% corporate tax rate.
Taxable income.-	Defined as gross income less allowable deductions. Adjustments are made for inflationary gains or losses and for any loss carried forward from previous years.
Inflationary gain or loss/ Interest.-	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.
Deductions.-	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 uncollectable. 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.
Loss Carryforward.-	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.

Capital Gains.-	Normally treated as ordinary income, and are taxed at the ordinary 35% 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.
Group Taxation.-	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.
Branch Income.-	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.
Avoidance of Double Taxation.-	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.
Fiscal Year.-	Taxpayers are required to use the calendar year as their fiscal year.
Accrual vs. Cash Basis.-	Income is generally recognised on an accrual basis.
Tax Returns.-	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.
D.- INDIRECT AND OTHER TAXES ASSET TAX.-	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.

Value Added Tax.-	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.
E.- EMPLOYEE RELATED PAYMENTS & CONTRIBUTIONS Profit Sharing.-	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.
Social Security.-	According to the Social Security Law of 1997, each branch of the Social Security (occupational risks, diseases and maternity, invalidity and life, retirement at advanced age, nurseries and social services) shall be subject to its special regime to determine percentages of employee and employer fares. On the other hand, a portion of the premiums will be deposited, together with housing fund contributions and retirement savings, in a individual retirement account.
Housing Fund.-	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.
Retirement Savings.-	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.
F.- WITHHOLDING TAXES & DOUBLE TAXATION AGREEMENTS (Please also refer to the tables below)	Double Taxation Agreements are used to prevent fraud and tax evasion, but also, it is an incentive to invest because they reduce the costs that investors should face and that affect directly their earnings, and consequently, their decisions of allocations of resources. List of some of the most common withholding taxes on payments to non-residents: 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).

	Mexico has treaties in effect to avoid double taxation and prevent tax evasion with Belgium, Canada, Chile, Denmark, Ecuador, Finland, France, Germany, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Netherlands, Norway, Portugal, Romania, Singapore, Spain, Sweden, Switzerland, United Kingdom, and the United States. The Mexican government has also concluded tax treaty negotiations with the Czech Republic, Greece, India, Indonesia, Poland and Venezuela.

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate 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 TRIM's related to the automotive industry and autotransport vehicles.

AUTOMOTIVE INDUSTRY

The Automotive Decree entered into force on 15 June, 1990. According to the Decree, "automotive industry" refers to a group of enterprises that converse 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 settling 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. Likewise, at the WTO Mexico compromised to eliminate all non-compatible measures by the same date.

On the other hand, foreign investment is now allowed to have and equity of up to 100% in the capital stock of Mexican companies engaged in activities of manufacturing and assembly of parts, equipment and accessories for the automotive industry, without the need to obtain a previous favourable resolution from the NCFI.

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 organised 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.

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

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. Nevertheless, in FTAs and BITs signed by Mexico, there is an exception concerning the case of difficulties in the balance of payments. In such a case, transfers may be limited temporarily.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

There are not such regulations.

9. Investor Behaviour

(a) Indicate 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. Competition Policy

(a) Briefly outline the competition policy regime.

(1) 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 operate as an autonomous and decentralised administrative body of the executive branch within the Mexican Ministry of Economy. The President of Mexico 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 organisations, 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 Mexican 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: mail, telegraphs and radiotelegraphs; the coinage of currency and the issue of paper bills by one single bank controlled by the Federal Government; hydrocarbons, basic petrochemicals; radioactive minerals and the production of nuclear energy; electricity and activities expressly set forth in the laws issued by the Congress of the Union.

The State shall have the organisations 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 ($US 44.17 million);

2. If a single transaction or series of transactions implies accumulation of 35 percent 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 ($US 44.17 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 ($US 176.68 million), and such transaction implies an additional accumulation of assets or capital stock in excess of 4.8 million times the minimum general wage prevailing in the Federal District ($US 17.66 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 authorisations issued by agencies or entities of the Federal Public Administration, are neither granted nor distributed by such associations or co-operatives; and

e) In each case, incorporation is authorised 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 privatisation 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 privatise the nation's ports, a process that has already begun with the privatisation 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.

(4) Special Rules

Crisis/depression cartels, rationalisation 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 recognise 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 favour 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 authorised 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) 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.

(7) 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 analysed under the same merger control guidelines indicated in question 1.

(8) 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".

(9) 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 offence, 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.

(10) 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.

(11) 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 penalised by the Federal Competition Commission.

11. Other measures

(a) List and briefly describe 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, effective October 1st, 1994. Amended and added in 1997, published in the Official Journal on December 26, 1997, effective January 1, 1998.

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, effective April, 1, 1996).

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. Afterwards, amended on December 26, 1997, which entered into effect on January 1, 1998. Some of the most important objectives of the reforms contained in the Law are the following:

a) to harmonise 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 recognised 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 a 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, authorisations, registration or any other acts of authority.

- Considered as layout designs of integrated circuits are they layout designs that are original, as a result of their creator's own intellectual effort and are not common among creators of layout designs and manufacturers of integrated circuits at the time of their creation.

- In order to register a layout design of integrated circuits the layout design must be original and an application for registration of the layout design, containing the information and material

required by the Law and accompanied by the required fee must filed with Mexican Institute of Industrial Property (IMPI) before the layout design is commercially exploited or within two years thereafter.

- The exclusive right for a registered layout design has a term of ten years as of the filing date of the corresponding application.

- The Industrial Property Law filing and prosecution provisions for design applications are applicable to layout designs applications, except priority claim which is not applicable.

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 commercialisation 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. The Customs Law as amended on December 1998 does not modify any nor include new Industrial Property provisions.

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

(a) Provide a 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.

Laws/Regulations	Application and function
Constitution	Constitutional or legal causes that permit the expropriation or limitation of the property: Article 27, 2nd 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 reccourring 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 realise 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.

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

Waste Management, Inc. v. United Mexican States

Waste Management, Inc. sought before an ICSID Additional Facility Arbitral Tribunal ("Tribunal") damages for an alleged breach of NAFTA obligations (including expropriation) on the part of Mexican state-owned entities. In this regard, Mexico challenged the Tribunal's jurisdiction under NAFTA Article 1121 for the Claimant's alleged failure to properly waive the right to initiate or continue related proceedings in other fora.

The Tribunal found that the Claimant had undertaken proceedings after the date at which the Claimant requested arbitration, and that the separate proceedings were based on the same grounds as those for which the Claimant had sought arbitration. Consequently, the Tribunal determined that the Claimant had issued a statement of intent different from that required by a NAFTA Article 1121 waiver. On this basis, the Tribunal held the Claimant's waiver invalid, and allowed Mexico's claims.

Robert Azinian, Kenneth Davitian, & Ellen Baca v. the United Mexican States

In November 1993, the Global Waste Industries, Inc. ("Global Waste"), won an exclusive concession from Naucalpan, a heavy industrialised suburb of Mexico City, to implement an efficient and hygienic solid waste collection, transportation and processing system. However, due to a poor performance, Naucalpan authorities notified DESONA (an entity established by the Claimants to carry out the implementation of the Contract) of irregularities pertaining to the conclusion and performance of the Contract, and annulled the Contract. Subsequently, DESONA failed to obtain relief from the relevant Mexican administrative and judicial authorities.

In 1997, DESONA initiated arbitration proceedings before an ICSID Additional Facility Arbitral Tribunal ("Tribunal"), alleging violations of Articles 1105 ("Minimum Standard of

Treatment") and 1110 ("Expropriation and Compensation") of NAFTA. DESONA sought almost $20 million in damages on the ground that the concession was an "ongoing enterprise."

The Tribunal noted that the decision of the Naucalpan authorities to terminate the Contract was based on Mexican law governing public service concessions, and that the Claimants had neither contended nor proved that Mexican legal standards for the annulment of concessions violated Mexico's obligations under Chapter 11 of NAFTA, nor that the relevant law was expropriatory. The Tribunal concluded that the decisions of the Mexican courts and authorities could not be regarded as arbitrary or malicious. The Tribunal therefore found no violation of either Mexican law or its obligations under NAFTA.

Metalclad Co. v. the United Mexican States

On 2 January 1997, Metalclad Corporation, a U.S.-based company, submitted a claim to arbitration under ICSID Additional Facility on behalf of its wholly-owned Mexican enterprise Confinamiento Técnico de Residuos Industriales, S.A. de C.V. (COTERIN) against the Government of Mexico. At issue was the denial by Mexican municipal authorities to grant a construction permit to COTERIN for building a hazardous waste landfill in Guadalcázar, in the State of San Luis Potosí (SLP).

Metalclad claimed the denial of the permit constituted a breach of NAFTA Article 1110 (Expropriation and Compensation) amongst others. Finally, the tribunal concluded that Mexico take a measure tantamount to expropriation by permitting the issuance of an Ecological Decree without payment or compensation.

2. Settlement of Disputes

(a) Describe all means of dispute settlement and processing of grievances existing under laws, regulations and 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 the following order:

A foreign investor shall have access to the same process to recourses of national investors. There only exist special recourses 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

Panama Convention

(a) Has your economy signed or acceded to the ICSID Convention?

Mexico is not a member of the ICSID Convention.

D. INVESTMENT PROMOTION AND INCENTIVES

1. Briefly describe any investment promotion programs offered at both the national and sub-level (e.g. 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.

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. - The negotiation of international agreements, which grant more juridical security to the investors of the member States.	Transparency Juridical security to foreign investors	Ministry of Economy Directorate General for Foreign Investment. Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030 México D.F. Phone (5255) 5229 61 00 ext 3502 Fax (5255) 5229 65 07.
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).	Liberalization	Ministry of Economy Directorate General for Foreign Investment.
Bilateral investment treaties are currently being negotiated with the governments of our major investment-exporting countries, and new instruments for investment protection are being analysed to be implemented in the short term.	Bilateral Investment Treaties	Ministry of Economy Directorate General for Foreign Investment.
Our membership to the OECD, as well as the disciplines contained in	Highest international investment standards.	Ministry of Economy Directorate General for

Program	Nature of incentive	Contact point
Free Trade Agreements guarantee the application of the highest international standards on a long-term basis.		Foreign Investment.

2. Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.

The main investment incentives consist of duty free importation of inputs, machinery and equipment used to produce goods for export, conveniences for the acquisition of land in some states, access to risk capital under some programs available from development banks and federal and state training programs.

Program	Summary	Contact point
In-Bond Industry Programs	Under the framework of the NAFTA and the WTO, Mexico modified the Maquiladora Export Industry program and the Temporary Imports for Exports Program (PITEX). As of the year 2001, temporary import mechanisms in effect in the three signing countries were modified in order to avoid a distortion of the agreed tariff preferences; consequently as of January 1, 2001 there were equalised to the tariff treatment that Mexico grants on non-North American goods and machinery for the production of goods destined for the North American market.	
Sectorial Promotion Programs	Established in order to create competitive conditions for the supply of inputs and machinery for the export industry, as well as to foster a greater integration of efficient productive chains. These programs contain a list of the goods which may be imported permanently under favourable conditions when the goods are bound for these sectors.	Ministry of Economy Directorate General for Foreign Investment.
Risk Capital	Bancomext supports Mexican companies through equity participation in order to strengthen their financial structure and promote the incorporation of national and foreign investors.	Mexican Bank for Foreign Trade Periférico Sur 4333, 2th floor. CP. 14210 Mexico City

		Tel: + (52 55) 54 49 90 00 Fax: 01 800 3976782
Training	The Federal Government provides specific support for the training of labour by linking companies to institutions specialised in these fields and supports micro, small and medium companies in the development of human resources.	Ministry of Labour Periférisо Sur 4271 Col Fuentes del Pedregal CP. 14149 México D.F. Tel: (5255) 56 45 39 95
State Incentives	In order to attract foreign investment, some states confer incentives such as favourable prices on land, support for certain training expenses or infrastructure facilities such as industrial park facilities.	SEE ANNEX of Sub-delegations.

3. If there is a one-stop-facility for foreign investors, provide 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. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Agreement	**Provisions**

BILATERAL INVESTMENT TREATIES - Spain - Switzerland - Argentina - Germany - Netherlands - Austria - France - Finland - Uruguay - Portugal - Denmark - Sweden - Greece - Korea - Cuba	Protection and promotion of investments. National and Most Favoured Nation Treatment, Transfers, Expropriation and Compensation. Mechanisms for Dispute Settlement.
REGIONAL OR SUB REGIONAL INVESTMENT TREATIES North American Free Trade Agreement (NAFTA). Free Trade Agreements with Bolivia, Costa Rica, G-3, Nicaragua, Chile and CA3. Free Trade Agreements with the European Union and the European Free Trade Association. Organisation for Economic Co-operation and Development (OECD).	▪ Treatment: National Treatment, Most Favoured Nation Treatment, Non-discrimination Treatment; ▪ Abolition of Performance Requirements; ▪ Transfers; ▪ Expropriation and compensation; ▪ Mechanism for the Settlement of Disputes. Include the same framework and principles contained in NAFTA's Chapter XI. The provisions governing investment in goods are: ▪ Elimination of restrictions for payments related to investment ▪ Promotion of investment ▪ Transfers ▪ Takes into account other international commitments. Note: the Title of Trade in Services contains the provisions for investment in services. ▪ Code of Liberalisation of Capital Movements. ▪ Code of Liberalisation of Current Invisible Operations. ▪ National Treatment Instrument.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

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

FOREING INVESTMENT

(Annual Flows in millions of dollars)

	1997	1998	1999	2000	2001	2002		Acc. 1994-2002	
						Jan. – Sep.		Value	Part. %
						Value	Part. %		
TOTAL FDI	**14,146.3**	**12,028.4**	**12,767.2**	**15,317.7**	**25,221.1**	**9,028.3**	**100.0**	**123,142.0**	**100.0**
New Investments	**10,432.1**	**5,875.2**	**5,260.9**	**6,391.3**	**18,569.0**	**3,471.0**	**38.4**	**72,988.4**	**59.3**
Notified FDI	10,432.1	5,875.2	5,260.9	6,391.3	18,569.0	2,558.6	28.3	72,076.0	58.5
Not notified (estimated)				0.0	0.0	912.4	10.1	912.4	0.7
Reinvested earnings	**2,150.0**	**2,864.0**	**2,303.2**	**3,783.4**	**3,673.1**	**1,962.5**	**21.7**	**23,264.5**	**18.9**
Notified			2,303.2	3,783.4	3,673.1	1,627.9	18.0	11,387.6	9.2
Not notified (estimated)	2,150.0	2,864.0	0.0	0.0	0.0	334.6	3.7	11,876.9	9.6
Intercompany-loans	**-116.1**	**1,178.7**	**2,425.1**	**2,160.0**	**806.8**	**2,071.9**	**22.9**	**9,964.6**	**8.1**
Notified			2,425.1	2,160.0	806.8	2,071.9	22.9	7,463.8	6.1
Not notified (estimated)	-116.1	1,178.7	0.0	0.0	0.0	0.0	0.0	2,500.8	2.0
Maquiladoras	**1,680.3**	**2,110.5**	**2,778.0**	**2,983.0**	**2,172.2**	**1,522.9**	**17.0**	**16,924.5**	**13.7**

ECONOMIC SECTORS	1997	1998	1999	2000	2001	2002		Acc. 1994-2002	
						Jan.-Sep.		Value	Part. %
						Value	Part. %		
TOTAL FDI	**12,112.4**	**7,985.7**	**12,767.3**	**15,317.7**	**25,221.1**	**7,781.3**	**100.0**	**107,852.0**	**100.0**
Agriculture, fisheries and livestock	10.0	28.7	80.9	88.2	4.6	-0.8	0.0	265.2	0.2
Extraction Industry	130.2	42.4	127.1	181.1	33.2	86.0	1.1	860.7	0.8
Manufacture Industry	7,281.2	5,022.1	8,731.9	8,824.1	4,791.3	3,106.0	39.9	53,498.3	49.6
Electricity and water	5.2	26.6	139.5	116.8	247.9	20.9	0.3	575.3	0.5
Construction	110.4	82.8	129.0	168.4	72.0	84.6	1.1	958.3	0.9
Trade	1,899.4	937.2	1,155.8	2,165.2	1,532.5	859.1	11.0	11,533.7	10.7
Communications and transport	685.6	374.2	256.3	-2,458.3	2,864.0	618.0	7.9	4,363.4	4.0
Financial Services	1,087.0	708.4	714.4	4,585.7	13,571.2	2,626.8	33.8	26,515.3	24.6
Other services	903.4	763.3	1,432.4	1,646.5	2,104.4	380.7	4.9	9,281.8	8.6

ECONOMIES	1997	1998	1999	2000	2001	2002		Acc. 1994-2002	
						Jan.-Sep.		Value	Part. %
						Value	Part. %		
T O T A L F D I	**12,112.4**	**7,985.7**	**12,767.3**	**15,317.7**	**25,221.1**	**7,781.3**	**100.0**	**107,852.0**	**100.0**
North America	**7,671.0**	**5,426.0**	**7,460.4**	**11,898.8**	**20,631.5**	**5,662.0**	**72.8**	**75,798.5**	**70.3**
Canada	236.1	194.0	583.9	561.9	836.7	32.7	0.4	3,871.6	3.6
United States	7,434.9	5,232.0	6,876.5	11,336.9	19,794.8	5,629.3	72.3	71,926.9	66.7
European Union	**3,153.4**	**1,999.3**	**3,576.5**	**2,392.3**	**3,773.0**	**1,302.7**	**16.7**	**21,107.2**	**19.6**
Germany	481.1	136.9	742.6	342.8	-195.5	401.8	5.2	2,967.2	2.8
Austria	0.6	5.9	1.8	1.1	2.0	-0.7	0.0	13.2	0.0
Belgium	46.2	30.7	33.6	17.0	68.0	30.5	0.4	274.6	0.3
Denmark	18.9	68.1	173.6	145.8	178.5	118.6	1.5	754.6	0.7
Spain	326.9	307.8	960.7	1,886.0	559.4	192.3	2.5	4,500.3	4.2
Finland	1.0	1.7	28.2	216.2	83.4	17.0	0.2	352.0	0.3
France	59.8	127.8	166.5	-2,576.3	344.9	52.1	0.7	-1,484.8	-1.4
Greece	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.2	0.0
Netherlands	343.7	1,052.8	917.6	2,390.2	2,644.2	373.3	4.8	9,709.6	9.0
Ireland	15.0	-3.9	1.1	4.9	2.7	70.9	0.9	115.2	0.1
Italy	29.1	16.5	35.8	30.8	15.2	7.9	0.1	166.8	0.2
Luxembourg	-6.5	7.8	13.6	34.7	120.5	15.1	0.2	217.6	0.2
Portugal	0.6	3.4	4.2	-0.2	0.2	0.1	0.0	8.5	0.0
United Kingdom	1,829.8	184.1	-193.5	234.2	88.5	62.8	0.8	3,100.7	2.9
Sweden	7.2	59.7	690.5	-334.9	-139.0	-39.0	-0.5	411.5	0.4
Others	**1288**	**560.4**	**1730.4**	**1026.6**	**816.6**	**816.6**	**10.5**	**10946.3**	**10.1**

ANNEX

Sub-delegations

State	City	Telephone		Fax
AGUASCALIENTES	AGUASCALIENTES	449 9702501 9702503	449	9702502
BAJA CALIFORNIA NORTE	MEXICALI	686 5554513 686 5554516	686 5554514 686 5554517	5554520
BAJA CALIFORNIA NORTE	TIJUANA	664 6340202 664 6340156	664 6340155 664 6340157	6340204
BAJA CALIFORNIA SUR	LA PAZ	612 1221117 612 1228056	612 1229487 612 1227592	1220280
CAMPECHE	CAMPECHE	981 8163365	981 8162130	8162130
COAHUILA	PIEDRAS NEGRAS	878 7822642	878 7822079	7824380
COAHUILA	SALTILLO	844 4313161	844 4311639	
COAHUILA	TORREON	871 7173783	871 7185873	7179384
COLIMA	COLIMA	312 3123766	312 3121343	3122567
CHIAPAS	TAPACHULA	962 6253189	962 6253110	626 6210
CHIAPAS	TUXTLA GUTIERREZ	961 6027800	961 6027801	602 7803
CHIHUAHUA	CHIHUAHUA	614 4108079 614 4108964	614 4108836 614 4153446	410 8708
CHIHUAHUA	CIUDAD JUAREZ	656 6167214 656 6167562	656 6166752 656 6164036	616 7150
DURANGO	DURANGO	618 8120905 618 8120310	618 8122775 618 8128198	812 8580
DURANGO	GOMEZ PALACIO	871 7501484	871 7501485	750 1479
GUANAJUATO	CELAYA	461 6127344	461 6127377	612 6145
GUANAJUATO	LEON	477 7139343 477 7130783	477 7139344 477 7130785	713 9344
GUERRERO	ACAPULCO	744 4853832 744 4853152	744 4856528 744 4852164	485 6128
GUERRERO	CHILPANCINGO	747 4722077	747 4726321	4725497
HIDALGO	PACHUCA	771 7152281 771 7155106	771 7152303 771 7153848	7155010
JALISCO	GUADALAJARA	33 36135021 33 36130207	33 36135856 33 36134115	3613 5404
MEXICO	TOLUCA	722 2195580	722 2195152	219 5701
MEXICO	METROPOLITAN DELEGATION	57 29 93 00	EXT. 2860	57 299499
MICHOACAN	MORELIA	443 3156601 443 3156598	443 3233463 443 3156772	315 6832
MORELOS	CUERNAVACA	777 3227605	777 3227486	322 7487
NAYARIT	TEPIC	311 2130799	311 2130986	213 1050
NUEVO LEON	MONTERREY	81 83696480 81 83696492	81 83696481 81 83696483	83 696487
OAXACA	OAXACA	951 5154833	951 5155002	515 4881
PUEBLA	PUEBLA	222 2404221 222 2379373	222 2379371 222 2379379	237 9374
QUERETARO	QUERETARO	442 2143656	442 2143868	212 5101

State	City	Telephone		Fax
QUINTANA ROO	CHETUMAL	983 8329180 983 8328204	983 8323056 983 8328226	832 0729
QUINTANA ROO	CANCUN	998 8847367	998 8844462	884 7307
SAN LUIS POTOSI	SAN LUIS POTOSI	444 8117664 444 8113566	444 8117665 444 8117977	811 4568
SINALOA	CULIACAN	667 7139200	667 7139316	713 9377
SONORA	HERMOSILLO	662 2183176 662 2605935	662 2605934 662 2605936	216 1990
SONORA	CIUDAD OBREGON	644 4144044	644 414488	414 4045
SONORA	NOGALES	631 3131455	631 3131461	313 1839
SONORA	SAN LUIS RIO COLORADO	653 5340653	653 5340204	534 5139
TABASCO	VILLAHERMOSA	993 3159077 993 3159080	993 3159078 993 3159081	315 9079
TAMAULIPAS	CIUDAD VICTORIA	834 31627 05	834 31694 05	316 9261
TAMAULIPAS	MATAMOROS	868 8134122	868 8134968	812 3191
TAMAULIPAS	*NUEVO LAREDO*	867 7140196 867 7141120	867 7140303 867 7140304	714 0251
TAMAULIPAS	REYNOSA	899 9264843	899 9264847	926 3128
TAMAULIPAS	TAMPICO	833 2132221 833 2170363	833 2136832 833 2134377	213 4377
TLAXCALA	TLAXCALA	246 4621065 246 4625726	246 4625690 246 4624964	462 6976
VERACRUZ	COATZACOALCOS	921 2126400	921 2120141	212 2359
VERACRUZ	JALAPA	228 8172661 228 8178839	228 8183396 228 8177442	817 2030
VERACRUZ	POZA RICA	782 8221468	782 8223028	822 3028
VERACRUZ	VERACRUZ	229 9223434	229 9224202	922 3636
YUCATAN	MERIDA	999 9256822 999 9256500	999 9256911 999 9256641	925 6933
ZACATECAS	ZACATECAS	492 9236800	492 9236801	923 6950

NEW ZEALAND

NEW ZEALAND

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

The following summary is taken from A summary of the Overseas Investment policies in New Zealand available at http://www.oic.govt.nz/invest/policies.htm.

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 the facilitatory nature of the Government's foreign investment policy regime.

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 Agriculture and Forestry and the New Zealand Tourism Board are active in promoting foreign investment into their respective sectors, including the production of promotional sectoral material.

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.

However, a minimal level of controls over "significant" overseas investment are maintained:

- to ensure investment inconsistent with government criteria is discouraged, particularly in relation to certain land; and
- for statistical purposes.

The Overseas Investment Commission (the Commission) administers the Overseas Investment Regulations 1995 (the Regulations). Under the Regulations an "overseas person" must obtain consent to acquire or take "control" of 25 percent or more of New Zealand:

- businesses or property worth more than $50 million;
- land over 5 hectares and/or worth more than $10 million;

- land on most off-shore islands; and

- land over 0.4 hectares that includes or adjoins "sensitive" land over 0.4 hectares (e.g. on specified islands, containing or next to reserves, historic or heritage areas, or lakes); and

- land over 0.2 hectares that includes or adjoins the foreshore.

While 100 percent overseas ownership can be approved in all industry sectors some New Zealand based companies have restrictions relating to foreign ownership.

Overseas Investment Commission

The Commission administers the Government's policy on overseas investment under powers delegated from the Minister of Finance, the Minister for Land Information and the Minister of Fisheries.

The primary function of the Commission is to assess applications from overseas investors who intend making significant investments in New Zealand. The Commission determines under a delegated authority, usually within 10 working days:

- all applications not involving "land"; and

- land applications which do not involve freehold "sensitive land" (being land on specified islands, reserves and historic areas, the foreshore or lakes) except where the land is "sensitive" solely because it includes or adjoins a marginal strip that extends along or abuts any river or stream.

The Minister of Finance and the Minister for Land Information jointly determine, normally within 20 to 30 working days, "sensitive land" applications that are outside the Commission's delegated authority.

OVERSEAS INVESTMENT REGULATIONS 1995

An "overseas person" must obtain consent under the Regulations to acquire or take "control" of 25 percent or more of certain New Zealand property, assets or land.

Overseas Person

The Act and Regulations treat the following as "overseas persons":

- 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 percent or more of its shares or voting power held by overseas persons;

- a trust where 25 percent 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 percent or more overseas persons or where overseas persons control 25 percent or more of the voting power;
- a unit trust where the manager or trustee is an overseas person or where overseas persons hold 25 percent or more of the beneficial interests; and
- any other entity owned or controlled more than 25 percent by overseas persons.

Non-land Transactions

For non-land investments an overseas person must obtain consent under the Regulations to:

- establish a new business where the total expenditure to be incurred in setting up the business exceeds $50 million;
- acquire 25 percent or more ownership or control of a New Zealand company where the consideration for the transfer or the value of the New Zealand company's assets exceeds $50 million;
- increase their proportion of ownership or control of a New Zealand company where the overseas person already has 25 percent or more ownership or control and the consideration for the acquisition of the extra securities or the value of the New Zealand company's and any subsidiaries assets or the value of the extra securities exceeds $50 million; and
- acquire property used in carrying on a business where the cost of the acquisition exceeds $50 million.
- acquire any land or any estate or interest in land regardless of the land's value;

The 25 per cent threshold as it relates to overseas persons is not an indication of preferred levels of investment; it is merely a trigger point for official involvement.

Farm Land means land used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry or livestock. The definition of "farm land" does not include land used principally or exclusively for forestry.

Advertising procedures for farm land

Before selling to an overseas person, the owner of farm land or farm land securities must advertise that the farm land or farm land securities are for sale or acquisition. The owner may authorise a real estate agent or any other person to advertise the property.

The advertisement must contain:

- a general description of the land;
- a statement that the farm land or farm land securities are for sale or acquisition and that offers are sought from potential purchasers; and
- the contact details of the owner or person to whom offers may be made.

The advertisement must be published in a medium generally used for advertising sales of land that is generally available to people in the local district.

The farm or farm land securities must be available on the open market for at least 20 working days after an advertisement is first placed.

Criteria for consent

All applications for overseas investment will only be approved if:

(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.

Applications for overseas investment involving 'land' in addition to the criteria above, will only be approved if the investment would be in the national interest.

In determining whether an investment involving "farm land" is in the national interest Ministers (or the Commission where it has been delegated authority) must consider whether the overseas investment will, or is likely to, result in substantial and identifiable benefits to New Zealand or to a region, district or locality, or other part of New Zealand. In considering whether the investment will, or is likely to, result in substantial and identifiable benefits to New Zealand or to a region, district or locality, or other part of New Zealand, Ministers or the Commission must have regard only to the following matters:

- whether experimental or research work will be carried out on the land;
- the proposed use of the land by the applicant;
- 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;

- whether the overseas investment will or is likely to result in-
- 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
- the introduction into New Zealand of new technology or business skills; or
- the development of new export markets or increased export market access for New Zealand exporters; or
- added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
- the introduction into New Zealand of additional investment for development purposes; or
- increased processing in New Zealand of New Zealand's primary products:
- 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;
- such other matters as may be prescribed;
- such other matters as the Ministers (or the Commission), having regard to the circumstances of the particular overseas investment, think fit.

Pursuant to section 14E, in determining whether an overseas investment involving land, other than "farm land", is in the national interest, Ministers (or the Commission where it has been delegated authority) must have regard only to the following:

a) whether the overseas investment will or is likely to result in-

- 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
- the introduction into New Zealand of new technology or business skills; or
- the development of new export markets or increased export market access for New Zealand exporters; or
- added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
- the introduction into New Zealand of additional investment for development purposes; or
- increased processing in New Zealand of New Zealand's primary products

(b) 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;

(c) such other matters as may be prescribed;

(d) such other matters as the Ministers (or the Commission), having regard to the circumstances of the particular overseas investment, think fit

Fees

The Regulations provide the Commission with the power to charge for processing applications. The fees (including GST) for a non-land application are $1,200 to a maximum of $3,000 and a land application are $3,500 or $3,800 depending on whether the application is dealt with by OIC under delegation or dealt with by Ministers to a maximum of $8,750 and $9,500 respectively. For more information on the fees refer to Appendix A of the Commission's "Guide to Making an Application".

Monitoring

Under the Act the OIC is required to undertake a post consent monitoring function. An applicant must notify the Commission within one year from the date of consent advising on whether:

(a) the investment proceeded and if it did proceed, providing final details of settlement; and
(b) the applicant has complied with any conditions of consent.

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

Current directive letter available at http://www.oic.govt.nz/invest/dltr060700.htm

6 July 2000 (Received 21 July 2000)

Chairman
Overseas Investment Commission
P O Box 2498
WELLINGTON

Dear Mr Webb

OVERSEAS INVESTMENT POLICY, DELEGATION AND CRITERIA

This letter conveys the Government's general policy approach to overseas investment and indicates the delegated authority for the Overseas Investment Commission (the Commission) and its staff to determine applications and related matters as from the date of this letter.

The Government has decided to alter the previous letter issued on 19 November 1999 to ensure that there are no doubts that the Commission's responsibilities under its legislation should be exercised in a neutral manner. We have also decided that, due to the sensitive nature of overseas ownership of New Zealand fishing quota and the small number of applications in that field, all fishing quota applications should be dealt with by Ministers.

Please note that these changes are technical in nature and the Government remains committed to an open and facilitative overseas investment regime.

GENERAL POLICY APPROACH

Section 9(2) of the Overseas Investment Act 1973 (the Act) requires the Commission to "*comply with the general policy of the Government…transmitted in writing…by …the Minister (Treasurer) and the Minister Of Lands*". We wish to convey the following general policy of the Government in relation to the exercise of the Commission's functions, powers, and duties:

1. the Government recognises the need for overseas capital and welcomes and encourages investment which meets the tests set out in the legislation.
2. the Commission's operating procedures should be consistent with the Government's intention to facilitate positive investment. Accordingly, the Commission should:

a. perform its functions and administer the legislation it has responsibility for in a timely, consistent and efficient manner;
b. seek to minimise the compliance and transactions costs to the private sector of the investment regime;
c. seek sufficient information from applicants for it to be assured about the accuracy of the information supplied;
d. seek sufficient evidence from applicants for it to be able to judge whether any national interest benefits claimed by them are likely to eventuate;
e. when it considers it necessary to verify that information or that evidence, seek input from government agencies or others it considers have particular competence in relation to that application;
f. seek to recover its operating costs, through fees that must be approved by the Treasurer, from persons who use its services;
g. continue to advise Ministers on proposals with the presumption that the investment will be compatible with the policy of the Government relating to any other matter;
h. continue to monitor compliance with any conditions of approval, consent, permission, or exemption granted under the legislation with an approach that seeks a balance between the objectives of ensuring compliance with any conditions and providing the Commission with more accurate statistics on investment, and the desire to maintain a welcoming approach to investment; and
i. continue the practice of the Commission's staff performing the Commission's day-to-day functions, with the Commission's role being primarily one of governance and overview.

We are aware that the Commission compiles information on investment in New Zealand in the course of performing its functions. To the extent that existing resources permit, the Commission, in conjunction with other relevant agencies, should:

- disseminate information on investment in New Zealand; and
- publicise and explain the nature of our regulatory regime to potential overseas investors and domestically.

DELEGATION

The Treasurer delegates to the Commission and its staff the power to determine all applications under Part II of the Overseas Investment Regulations 1995 (the Regulations).

The Treasurer and the Minister for Land Information (the Ministers) delegate to the Commission and its staff, in relation to Part III of the Regulations:

a. their powers to determine applications which do not involve "sensitive" land as described in the First Schedule to the Act and Regulations under the headings of **Islands**, and **Foreshore, lakes and reserves** and **Land over 0.4 hectares on certain islands**;
b. notwithstanding (a) above, their powers to determine land applications:

i. that do not involve a freehold estate or other estate or interest in land equivalent to a freehold estate; or
ii. that are part of a purchasing programme previously approved by Ministers under the Overseas Investment Regulations 1985 and 1995 or the Land Settlement Promotion and Land Acquisition Act 1952, where each acquisition is consistent with any conditions established for the programme; or
iii. involving land that is "sensitive" solely because it includes or adjoins a marginal strip that extends along or abuts any river or stream.

The Ministers also delegate to the Commission and its staff the following related matters:

- their powers under Regulation 12 to specify information and particulars to be supplied by applicants;
- their powers under regulation 14 in respect of applications:

    i. which have been delegated in terms of paragraphs 6 and 7 above; or
    ii. which have been initially considered by the Minister and that require an administrative amendment;

- their powers under Regulations 16 in respect of applications that have been delegated in terms of paragraphs 6 and 7 above;
- their powers under Regulations 16 in respect of adding entities to or deleting entities from the Schedules to the Overseas Investment Exemption Notice 1995;
- their powers under Regulation 17 in respect of any matter delegated;
- their powers under Section 15 of the Act in respect of applications that have been delegated; and
- in each case where a power has been delegated, the power of delegation under Section 16 of the Act.

CRITERIA

In considering any applications under the Overseas Investment Act 1973 under delegation the Commission and its staff must take into account the matters provided for under section 14A of the Overseas Investment Act 1973.

REVOCATION OF EXISTING DELEGATION

The existing delegation conferred on the Commission and its staff on 19 November 1999 is hereby revoked as from the date of this letter.

Hon Dr Michael Cullen
Treasurer
Hon Pete Hodgson
Minister of Fisheries

Hon Trevor Mallard
Acting Minister of Land Information

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a 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.
Overseas Amendment Act 1998	Explicitly recognises three distinct types of overseas investment in NZ (non land, farm land, land other than farm land).
Overseas Investment Regulations (No 2) 2001	Prescribes procedures by which farm land must be offered for sale or acquisition on the open market to New Zealanders.
Overseas Exemption Notice 2001	Exempts certain persons connected to portfolio investors and certain New Zealand controlled companies from the provisions of the Overseas Investment Regulations. Exempts certain types of transactions involving farm land from the

Citation	Summary
	advertising requirements of the Overseas Investment Regulations.
The Fisheries Amendment Act No.34, 1986	Contains provisions to restrict the purchase of New Zealand fishing quota by foreign entities.

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide 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 acquire any land or estate or interest in land regardless of the land's value or the consideration payable; 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: - 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. Land is defined as: any land (regardless of zoning) over 5 hectares or worth more than $10 million; certain sensitive land over 0.4 hectares (e.g. islands, historic or heritage areas, the foreshore or lakes).
Joint venture: non-land (Yes)	The OIC reviews investments by joint ventures where an "overseas person" has 25% or more ownership and control and

Proposals	Guidelines/conditions
	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 49% foreign ownership, or 35% by foreign airlines or airline interests, or 25% by any one foreign airline or airline interest.
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 management of state owned enterprises	(No)	Postal Service

(c) Indicate all application/approval forms required for screening purposes. Briefly summarise 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. The guide is available on the OIC's website (www.oic.govt.nz).

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 and outlined under Question A1. 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 refuse an application.

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.

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax

The contact point is:

Overseas Investment Commission.
P O Box 2498
Wellington
New Zealand
Phone +64 4 471 3838
Fax: +64 4 471 3655
email: oic@oic.govt.nz

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on line.

The website www.oic.govt.nz contains all details required by applicants.

See specifically; http://www.oic.govt.nz/invest/brief/index.htm for an overview of the New Zealand system and http://www.oic.govt.nz/publicat.htm#Help%20with for help with making an application.

There is no capacity to apply on line, but applications can be emailed to oic@oic.govt.nz provided that a hard copy of an application is also submitted together with the prescribed fee.

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

Application Turnaround (Working Days) 2002 Calendar year		
	Average	Worst
Overall	**5**	**60**
OIC secretariat	2	12
Ministers	11.5	60

The OIC secretariat deals with all applications unless they involve sensitive land. For sensitive land applications the Secretariat makes a recommendation for Ministers. The time measured under Ministers is from when all documentation is received to when the final Ministerial decision is made.

(g) List 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. Briefly describe 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.

(h) Briefly describe what conditions 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.

(i) Indicate 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.

(j) 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.

Agency	Address/telephone/fax	Functions
Overseas Investment Commission	PO Box 2498 Wellington Telephone: (64 4) 471 3838 Fax: (64 4) 471 3655 Internet: http://www.oic.govt.nz E-mail: oic@oic.govt.nz	Post consent monitoring

(k.) Describe any 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.

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".

(l.) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g., zoning, approvals of land purchase).

Regulation of foreign direct investment is applied only at the level of national government.

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

(a) List and describe 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).

Not applicable

(b) Identify and describe any international agreements to which your economy is party which provides for a possible exception to MFN treatment.

Not applicable

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

Sector	Nature of exception
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)(2)(b).	

(b) Briefly describe the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

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

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Not applicable

(b) Briefly describe the foreign exchange regime.

The New Zealand dollar has floated freely since March 1985. There has been no intervention since this date.

(c) *Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.*

Not applicable.

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe 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. 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.

Exceptions

You do not need a visa or permit to work in New Zealand if you are:

- A New Zealand citizen or a New Zealand Residence Permit holder; or
- An Australian citizen entering New Zealand on an Australian passport; or
- The holder of a current Australian resident return visa (you will be granted a Residence Permit on arrival in New Zealand); 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 exceptions, (applicants should contact their local immigration office for full details, or visit the New Zealand Immigration Service web site at www.immigration.govt.nz).

Who may apply for a work visa or permit?

- All applicants must be bona fide applicants and meet health and character requirements;
- 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 exchanges the Government has approved.

A work permit may be granted for the period for which employment is offered, up to a maximum of three years.

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 residence permit holders with no requirements attached to their permits.

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

See answer to above question.

(c) Describe any regulations relating to personnel management of foreign firms, e.g., 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 Relations Act 2000 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 Relations Act have been underpinned by clear statutory protection for employees. These protections are provided by both the Employment Relations 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 Relations Act 2000);

II. Disputes over the interpretation, application, or operation of an employment agreement can be resolved via mediation or access to the specialist employment institutions: the Employment Relations Authority and the Employment Court (Employment Relations Act

2000);

III. A range of holiday entitlements such as three weeks annual leave after twelve months of service; eleven statutory holidays per year if the holiday falls on a day on which the employee would otherwise have worked; and five days special leave for sickness or bereavement or domestic reasons after six months of service for the next 12 months (Holidays Act 1981). Some changes are proposed as part of the Holidays Bill currently before Parliament;

IV. A minimum wage for adult employees (aged 20 years or more) of $8.50 per hour, or $340 for a 40 hour week. A minimum youth wage (for 16 - 17 year olds) of $6.80 per hour, or $272 for a 40 hour week (Minimum Wage Order 1997 made pursuant to the Minimum Wage Act 1983).[i]

V. Protection from deductions from wages without the written consent of the employee (Wages Protection Act 1983);

VI. Equal pay for men and women doing the same or substantially similar work (Equal Pay Act 1972);

VII. Certain employees are entitled to 12 weeks of parental leave payments out of public money when they take parental leave from their employment in respect of a child. Unpaid parental leave of up to twelve months on the birth or adoption of a child (Parental Leave and Employment Protection Act 1987);

VIII. The right to belong or not to belong to an employee's organisation (Employment Relations Act 2000).

Information about these provisions is made available by the Employment Relations Service of the Department of Labour through a range of publications, an information telephone service or from their website (www.ers.dol.govt.nz).

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 1981, the Minimum Wages Act 1983, the Wages Protection Act 1983 and the Equal Pay Act 1972. Employees can also enforce their rights in this respect.

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

Law

The domestic labour laws relating to labour disputes/relations are contained in the Employment Relations Act 2000. 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 agreement, whether a collective agreement will bind more than one employer, or on health and safety grounds. A strike is unlawful during the term of a collective agreement, or in relation to personal grievances, disputes about the interpretation, application or operation of a collective contract or freedom of association. 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 has sole jurisdiction over all remedies in relation to unlawful strikes.

The Employment Relations Act also requires that all employment agreements 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 that are included in any agreement that 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 specialist employment institutions, which may provide mediation and/or adjudication assistance in resolving the dispute or personal grievance.

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

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.

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 usual ate of NRWT applying to dividend income is 15%. This applies for the payment of fully imputed dividends and is also generally the rate set in New Zealand's double tax agreement (DTA) network. To the extent that dividend income is not imputed and no DTA applies then the rate is 30%.

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.

New Zealand residency rules, and hence the extent to which New Zealand taxes worldwide income, are subject to our DTA network.

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:[ii]

- 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%,[iii] 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,[iv] 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 generally can 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:

- 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 26 countries. They generally provide that the maximum 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.

Taxation of Company Distributions for a Treaty Investor

CASH FLOW	**DEBT**		**EQUITY**
	Portfolio	**Direct**	
Income	100	100	100
Company Tax	0[v]	0[vi]	-21[vii]
Distribution	100	100	79
AIL/NRWT	-1[viii]	-10[ix]	-12[x]
Net Received	99	90	67
Effective Tax Rate	1%	10%	33%

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (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:

- an expiry date of twelve months after which the consent will lapse if the investment has not taken place; and

- an activities restriction on any new investment.

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

Not applicable.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

Regulations

Customs and Excise Act 1996

Customs Export Prohibition Order 1996

Application and function

Permits may be needed to export goods of a strategic nature that have both military and non-military purposes, e.g., sensors and lasers, nuclear materials and certain lethal micro-organisms. The purpose of these controls is to limit the spread of weapons.

9. Investor Behavior

(a) Indicate any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particul concern to the member economy.

Not applicable.

10. *Competition Policy*

(a) Briefly outline 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.

The Commerce Act 1986 is designed to protect competition (as opposed to competitors) in New Zealand markets from anti-competitive conduct. The Act applies a substantially lessening of competition threshold to prohibit collusive conduct, mergers, and acquisitions. Price fixing is a *per se* offence (with the exception of joint-venture pricing) and is prohibited. Exclusionary contracts, arrangements, or understandings between two or more competitors that have the purpose of restricting the supply of goods or services to a competitor are prohibited. However, exclusionary conduct can be defended if the parties can demonstrate that the conduct did not have the purpose, effect, or likely effect of substantially lessening competition. A firm with a substantial degree of market power in a market is prohibited from taking advantage of that market power for an anti-competitive purpose, as proscribed by Section 36 (with the exception of enforcing a statutory intellectual property right).

Parties may seek authorisation of conduct that would otherwise breach the Commerce Act through the Commerce Commission. Authorisation can be granted if the Commerce Commission is satisfied that there is a net public benefit from the conduct that outweighs the anti-competitive effect. The authorisation process recognises that in some circumstances competition may not lead to the most efficient outcome for New Zealanders.

11. Other measures

(a) List and briefly describe 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 trademarks 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

(a) Provide a 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.

Laws/regulations

None except the provisions in the Investment Protection and Promotion Agreements with China and Hong Kong, China.

Application and function

See section E(1).

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

2. Settlement of Disputes

(a) Describe all means of dispute settlement and processing of grievances existing under laws, regulations and 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 the following order:

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 Minister's decisions and have access to non-litiguous 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 Relations Act 2000 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
The High Court can be contacted through the Department for Courts in many localities in New Zealand.	
The Executive Director The Arbitrators' and Mediators' Institute of New Zealand Inc	16 Palmer Street PO Box 1477 Wellington Telephone: (64 4) 385 4178 Fax: (64 4) 385 7224
LEADR New Zealand Chapter Office	PO Box 4329 Shortland Street Auckland Telephone: (64 9) 357 9019 Fax: (64 9) 357 9099

(b) Has your economy signed or acceded to the ICSID Convention?

Yes. New Zealand is a signatory to the ICSID convention.

D. INVESTMENT PROMOTION AND INCENTIVES

1. Briefly describe any investment promotion programs offered at both the national and sub-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.

The New Zealand Government promotes foreign direct investment primarily through two bodies; the Ministry of Foreign and Trade Affairs (MFAT), and Investment New Zealand.

Other Government agencies, such as the Tourism Board and the Ministry of Agriculture and 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

Investor referral service

Investment New Zealand is the government's investment promotion agency, which actively attracts and facilitates foreign direct investment (FDI). FDI may be in the form of joint ventures or partnerships with New Zealand companies, "greenfields" (e.g. startup companies) investments, or corporate relocations. Investment New Zealand is part of New Zealand Trade and Enterprise[1], reporting to its board, and works closely with other parts of New Zealand Trade and Enterprise, the Ministry of Foreign Affairs and Trade, and other public and private sector organisations.
Contact details are:

Investment New Zealand,
Level 8
22 The Terrace
P O Box 2878
Wellington
Telephone: (64 4) 910 4651
Fax : (64 4) 496 6541
Email investnz@investmentnz.govt.nz
Web www.investnewzealand.govt.nz
Also offices in Auckland, Los Angeles and New York.

2. Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.

[1] New Zealand Trade and Enterprise is a recently formed organization which merges Tradenz (New Zealand's trade promotion body) and Industry New Zealand (which provided support for New Zealand companies).

Program (national/sub-national)	Nature of incentive	Contact point
East Coast Forestry Project	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 Strategic Investment Fund	Provides funding to encourage firms to make significant investment in new added value projects. Funding is available for 50% of total costs up to a maximum of $100,000 (GST inclusive) for pre-feasibility and feasibility studies for potential investors. Guarantees of funding are available for significant projects to access funding through other government programmes. Foreign and domestic investors can access the Fund.	New Zealand Trade and Enterprise Level 9, 22 The Terrace PO Box 2878 Wellington NEW ZEALAND Phone +64 4 910 4300 Fax +64 4 910 4309

The New Zealand Government does not underwrite private sector risk or offer any other fiscal incentives to overseas investors.

3. *If there is a one-stop-facility for foreign investors, provide 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. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Agreement	Provisions
Agreement including Free trade agreement • Closer Economic Partnership agreement with Singapore • A Trade and Investment Framework Agreement with the USA; • Party to the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States; • a party to the TRIMS agreement as agreed during the Uruguay Round negotiations.	The CEP aims to encourage two-way investment, but not without limitations. In New Zealand, the Overseas Investment Commission will continue to examine certain investment proposals, including those above a certain value or company shareholding in large firms, and/or for major fishing assets and for most rural or sensitive foreshore areas. Singapore's investment rules prohibit the ownership of land, low-rise buildings and government-built apartment blocks by nonresidents. Singapore also reserves the right to favour its own nationals and permanent residents: ▌in the sale of government enterprises; ▌by limiting foreign ownership of entities in which the Singapore Government has a majority stake or exercises special voting rights; ▌in the printing and publishing industries; ▌in the manufacture and repair of transport equipment and the energy sector.
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) Transparency: 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) Repatriation: A key objective is to ensure that investors are permitted to repatriate the capital and returns from any offshore investments. (c) Expropriation: 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 ensure that proper compensation is paid. (d) Disputes settlement: 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.

Agreement	Provisions
	(e) Appropriate safeguards: 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.
Regional or sub regional investment treaties	None.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Foreign investment

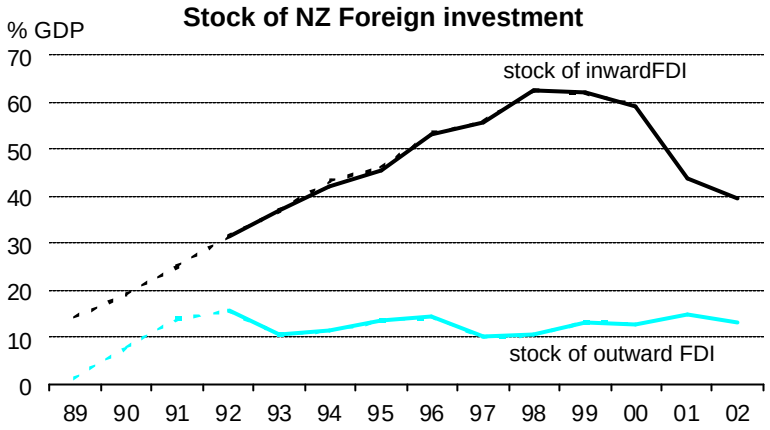
The stock of inward foreign direct investment in New Zealand grew steadily over the 1990s to reach over 60% of GDP by 1998.

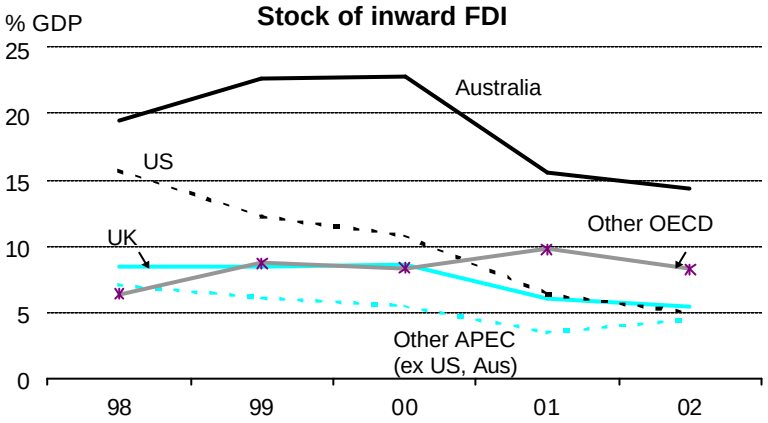
The rising stock reflected not only a number of government asset sales and company acquisitions by international investors over the 1990s, but also international confidence in the New Zealand economy following from the reform process.

FDI stock has fallen to about 40% of GDP by 2002, reflecting decreases in the stock of foreign investment. This is also partly due to a change in the methodology, which has seen some direct investment reclassified as portfolio investment. The new series uses a 10 percent ownership threshold for defining direct investment relationships, whereas the previous series used a 25 percent threshold.[2]

In contrast the stock of FDI by New Zealanders in other countries has remained relatively constant as a percent of GDP.

[2] Statistics New Zealand used to measure total foreign ownership (which met the 25% threshold), whereas they now look at individual investments (which typically fall below the 10% threshold).





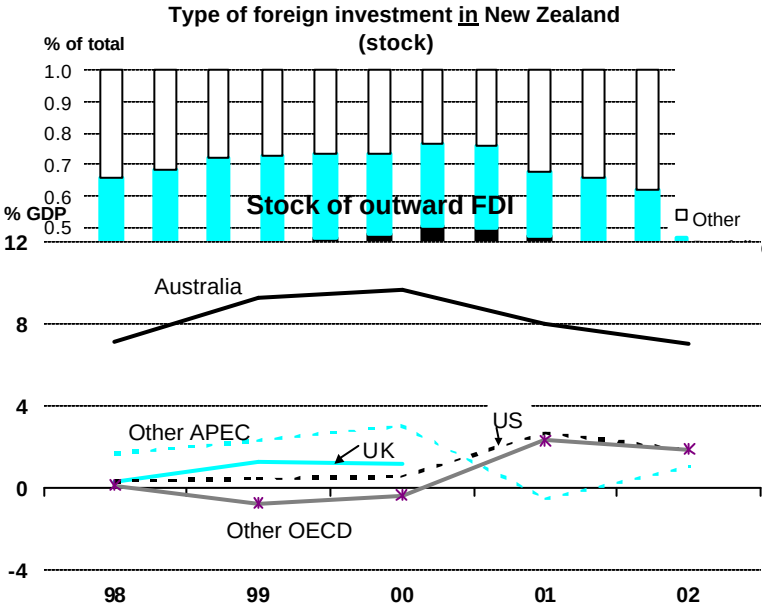
For New Zealand, Australia is the most important source of FDI, and is the largest destination for New Zealand international investment.

The largest type of inward foreign investment over the past decade has been direct investment.

However in 2001 and 2002 the level of direct investment has fallen to under 30% of total investment. Portfolio and other investment types are becoming increasingly common.

The change from FDI to portfolio investment reflects:

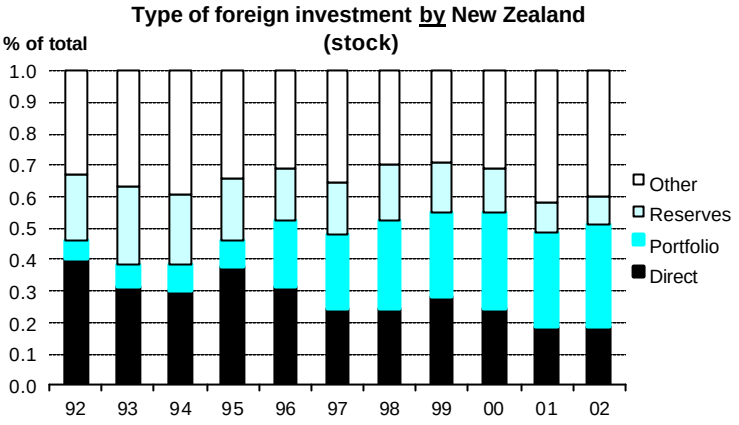
- reduced FDI as New Zealand 'fell off the radar screen' in the late 1990s



- reclassification – the Statistics New Zealand methodology change described above between 2000 and 2001.

This trend away from direct investment is also observeable in investment by New Zealanders abroad, although it appears to have started earlier.

In 2002 'other' investment types were most common at 40%. Portfolio investment also made up 30% of total investment by New Zealanders abroad.



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

Flow of Total Investment By Economy [(1) (2)]

Year Ended 31 March

NZ$(million)

	2001	2001
New Zealand's Total Investment Abroad		
Australia	29	271
Germany	2,788	1,591
Hong Kong	64	2,661
Italy	-17	-4
Japan	-7	319
Netherlands	7,457	..C
Singapore	-144	430
Switzerland	27	81
United Kingdom	-1,247	339
United States of America	4,757	4970
Total Investment Abroad	12,150 R	9,238
Total Foreign Investment in New Zealand		
Australia	-15	6,084
Germany	-963	1,690
Hong Kong	372	527
Italy	1,036	1,384
Japan	-65	61
Netherlands	..C	28
Singapore	-1,480	765
Switzerland	338	-82
United Kingdom	10,507	-1,047
United States of America	5,184	2,229
Total Investment in New Zealand	17,512 R	14,197

Symbols:

C confidential
R revised
.. date not available

Data available at
http://www.stats.govt.nz/domino/external/pasfull/pasfull.nsf/7cf46ae26dcb6800cc256a62000a2248/4c2567ef00247c6acc256c1d007800b6?OpenDocument

[1] 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.

[1] 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.

[1] 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.

[1] 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.

[1] Because interest is deductible in determining company tax, there is no net tax imposed on profits distributed as interest.

[1] 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.

[1] 33% company tax less FITC credit which amounts to approximately 12% of distributed profits.

[1] 2% AIL less effect from 0.66% company tax deduction for net 1.34% effective cost of AIL.

[1] 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%.

[1] 15% NRWT on the dividend and supplementary dividend which together amount to $79 in this example.

PAPUA NEW GUINEA

PAPUA NEW GUINEA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

2. Explain any significant public statements which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.

Geography and Socio-Cultural

With a land area totaling 462,243 km^2, and a sea area of 3.1million km^2, Papua New Guinea is by far the largest of the Forum Island Countries. It consists of the eastern half of the island of New Guinea and more than 600 other islands ranging in size from New Britain with 37,736 km^2 to tiny islands which are mere dots in the ocean. Other significant islands include Manus, New Ireland, the Trobrians and Bougainville.

Papua New Guinea has a population of 5.2 million with a rich diversity of culture with well over 800 different languages spoken. English is adopted as the official language and "Pidgin" a local lingua franca is spoken widely in the country as a medium of communication between the different language-speaking people.

Political, Legal & Institutional Framework

Papua New Guinea gained independence in September 1975. It is a constitutional monarchy, with the British Queen as the head of the state being represented by a governor-general approved by Parliament. Legislative power resides in a unicameral (single chamber) National Parliament. Executive power is vested in the National Government. Parliamentary election is held every five years (last was in July 2002). The Prime Minister is elected by Parliament and he/she appoints ministers to the National Executive Council, or Cabinet. The new governments have a constitutional grace period against vote of no confidence for 18 months and can be replaced by a vote on confidence. It has become a norm that no coalition government has survived its full term and the legislation on Integrity on Political Party and Candidate was passed by Parliament in November 2000 to instil political stability.

ECONOMY

RESOURCE BASE INVESTMENT OPPORTUNITIES

Papua New Guinea is blessed with abundance of natural resources, giving it considerable development potential in agriculture, forestry, fisheries, minerals and petroleum, tourism, and agro-processing activities.

MINING SECTOR & PETROLEUM SECTORS

Papua New Guinea was amongst the ten largest producer of gold in the world when Porgera, Misima, OK Tedi and Lihir gold mines came into operation. The mining sector contributed much to the economic growth and the enclave-mining sector which exports it entire output also brought about the "Dutch Diseases" has affects the growth in the agricultural sector, which is the mainstay industry. Although the export of coffee, copra, cocoa and palm oil and logging accounts for 30 percent of GDP, the mining and petroleum sectors still play a predominant role in generating foreign exchange and revenue for the government.

Agriculture Sector

PNG's soil is ideally the best to grow plantations of any commercial crops such as Coffee, Coconut, Cocoa, Tea, Rubber, Oil Palm, Rice, and tropical fruits such as Bananas, Mangoes, Pineapple etc to Vegetable and Spices. The tropical hot and wet climate, volcanic and sedimentary soil deposits by some of the big and fast flowing rivers have naturally provided the rich nutrients for the organic growth of these crops. The Agriculture Sector remains the main stay of the economy and will continue to do so for a very long time. The agricultural resources naturally provide a continuous supply of raw materials for potential manufacturing industries.

MARINE SECTOR

Papua New Guinea has a significant marine resource, which has been commercially develop to a significant extent. The 200 Exclusive Economic Zone (EEZ) of Papua New Guinea covers an area of 2.4 million square kilometers, stretching outwards to more than 5000 kilometers of coast line and contains tropical marines resources of different species. Pelagic tunas are the most abundant fish group in the PNG waters and skipjack and yellowpin are the most important commercial tuna while other species are relatively significant.

Other commercial marine resources are; prawns, lobster, reef-fish, near shore tuna and deep sea shark. Inland fisheries development has potential for fresh water lobster and prawns, trout, talapia, carp, eel fish etc.

FORESTRY SECTOR

Timber products are one of PNG's major export earners but still the timber resources remain largely untapped. There are 36 million hectares of enclosed forest of which 15 million hectares of high quality tropical hard woods are considered to be suitable for development. Timber operators are currently harvesting an estimated 1.5 million cubic meters of estimated 375-450 million cubic meters of available timber. The Government is mindful of the important obligations to its environmental heritage. Each major investment project is carefully evaluated in terms of its

environmental impact. Every effort is made to devise appropriate solutions to meet the needs of both the local people and the investors.

Tourism Sector

PNG has some of the most beautiful and pristine scenery (both underworld and on the land) in the world. Its environment and intriguing diverse culture remains untouched in the day and age of rapid development and industrialization. This untouchable ingredient presents PNG as a big tourist destination. However, this sector is yet to be fully developed to its full potential and remains a potential for churning out mega tourist dollars. PNG receives approximately 30, 000 tourists a year, however, this is not truly reflective of what it is there to lure. Its natural beauty and intriguing cultures is yet to be exposed to lure more tourist.

Investment Opportunities

Foreign investors will find that the abundance of natural resource that provides the resource base of the country creates the best opportunity to tap in. The government has given priority to promote foreign investments in the down Stream Processing industries utilizing raw materials and also the manufacturing industry. Currently it is the manufacturing sector, including the downstream processing of natural resources and the manufacture of industrial goods, which government policies have targeted for greater expansion. Village eco-tourism and large-scale resort developments are also seen as priority areas for foreign investment.

PNG continues to enjoy a macro economic stability as is indicated by the key economic indicators. The key statistics are summarised in the table below.

Economic Indicators	
l GDP (2001)	675.9million kina
l GDP Growth (Annual rate 2000)	p.a.
ation (CPI) (2000)	2
wth of Money Supply (M3) (2001)	%
al Deficit (2000)	%

(Source: Second semi- annual Monetary Policy Statement, PNG Central Bank)

GOVERNMENT POLICY

The government benefits largely from minerals sector but given the enclave nature and in anticipation of any problem this resource boom can exacerbate, the government recognized the need to promote investment in the non-mining sector and as such initiated major reforms in 1994 to pursue this objective. The reform in totality provides 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 utilization, skills transfer,

increase export volume, increase ownership of investment by citizens and import substitution measures, were to be realized.

Papua New Guinea has a liberal investment policy that encourages and welcomes foreign investment. To facilitate the foreign investment, the Government has made considerable efforts to curtail regulatory and administrative requirements. These changes promise to relieve many of the roadblocks experienced in the past. The Government also developed a long term National Investment Policy, which builds on the considerable progress the Government has made to curtail regulatory and administrative requirements.

The National Investment Policy aims to provide the transparency, equal treatment and consistency required by foreign companies, to enable them to make medium term strategic decisions to invest in Papua New Guinea. As part of its strategy to implement the policy, the Government is reviewing the investment incentives and establishing a One-Stop-Shop (OSS) facility for investment in the Investment Promotion Authority (IPA). The first phase of the OSS facility is the establishment of a Business Licensing and Information System (BLIS) which phase I was completed in 2001.

The Government is committed to make PNG more APEC compliance and has created and endorsed important legislation and policies and undertaken many changes that make its investment regime more transparent in its investment procedures and regulations. Some of these initiatives are major milestones in the history of the economy as far as the effort and commitment of the Government is concerned to creating a conducive and transparent investment environment. The Government has made a commitment in 2000 to remove obstacles to growth and providing the private sector with the environment where it can develop and create wealth. This commitment has seen the following initiatives:

- Comprehensive Taxation Regime Review (which was completed in 2000)
- Financial Sector Reform (which is currently being undertaken)
- Passing of the Intellectual Property Rights Bill in 2000
- Passing of the Integrity on Political Party and Candidate Bill (for political stability in 2000)
- Passing of the Free Trade Zone Bill in 2000
- Creation of One-Stop-Shop Concept in PNG for investment approval process
- Privatization of Public Enterprise (currently underway)
- And several other initiatives such as the development of the 10 year National Transport Development Plan (NTDP) to improve the country's road net work and focusing more on Law and Order as a priority.
- Areas that are under current discussion are competition policy, and Industrial Development Plan.

The National Investment Policy (August 1998)

The National Investment Policy informs both domestic and foreign investors that the Government of Papua New Guinea is serious about aligning its policies and that the country welcomes and supports private sector initiative and investment. The National Investment Policy provides the foundation policy frame work for transparency, equal treatment and consistency required by the private sector, to enable it to make medium term strategic decisions to invest in Papua New Guinea. The National Investment Policy makes the Investment environment consistent with:

- The Government's overall strategy for development- as set out in the Medium Term Development Strategy (MTDS); and
- The Government's ongoing commitment to greater participation in the global economy, through trade and investment liberalization as exemplified by Papua New Guinea's membership to APEC and WTO.

Objectives of the National investment Policy

The Government's National Investment Policy for the next five years addresses the fundamental requirements investors seek when investing. In order to facilitate greater investment, the Government is determined to achieve the following objectives:

- The creation of social and economic environment conducive to private investment;
- The development of infrastructure and human capital;
- Greater clarity and transparency in investment incentives;
- The elimination of regulatory and procedural obstacles to investment;
- The promotion of small to medium enterprises (smes);
- The encouragement of backward linkages and support for domestic value added;
- The provision of greater consistency in policy measures;
- The creation of the necessary institutional framework, in order to ensure strong implementation of its investment policy.

Specific Measures Contained in the National Investment Policy

In order to meet these objectives, the Government, in consultation with the private sector and non-profit organizations, has undertaken a fundamental review and simplification of its industrial and investment policy. The Government proposes the following specific measures. It intends to:

- Strengthen and modify the Investment Promotion Authority's (IPA) support and advocacy functions and establish the IPA as the co-ordinating agency and focal point for investment promotion and facilitation; (The One Stop Shop Concept is being facilitated with the Phase I of the Business Licensing Information System Project being implemented and completed)
- Modify the Investment Promotion Act to shift from case by case approval of foreign investments to a simpler system of registration of business, with ex-post monitoring of investments; (The impact is under review.)

- Repeal of the Pioneer Industries Act, so as to eliminate case by case approval of investment incentives and bring them all under the tax code; (The Pioneers Industry Act has been repealed in 1999)
- Review investment procedures, under specific pieces of sectoral legislation and make the procedures and requirements consistent with a liberal approach to investment; (in progress)
- Amend the Employment Act to allow enterprises flexibility in payment of piece-rate wages, particularly for export-oriented industries; (in progress)
- Reduce the cost of doing business, by improving the supply of infrastructure and through greater participation of the private sector in infrastructure development; (A Government Priority- in progress)
- Improve domestic availability of skilled labour and management, by promoting the delivery, both public and private, of technical and vocational education; (A Government Priority- ongoing activity of Government)
- Increase incentives for exports, by streamlining and expediting customs clearance and aligning procedures with the new simplified tariff structure. (A Government Priority- ongoing efforts in line with APEC/WTO obligations.

The Government does not discriminate against proposals for different investment activities provided they achieve some of the following:

1. contribute to economic growth;

2. create new jobs;

3. utilise domestic resources, particularly renewable resources;

4. assist in skills acquisition;

5. expand the volume and value of exports;

6. develop remote areas of the country;

7. facilitate increased ownership of investment by, citizens; and

8. promote import replacement.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

TRANSPARENCY

(1) Statutory (legislative) requirements

(2) Review and Approval Mechanisms for Foreign Investment Proposals

The Investment Promotion Authority (IPA) is mandated by the Government to promote and facilitate both foreign investment and local investment. This involves provision of information on business opportunities, rules and regulations on conducting business in PNG. The Authority also facilitates meetings for business missions in the country and outbound, as well as lobby on behalf of investors to obtain the necessary approvals. The IPA accepts applications for foreign investment and approves certification prior to business being conducted.

The IPA is the relevant agency to contact in the first instance, with regard to queries or complaints regarding applications. IPA pursues strict quality controls and will process certificates within 35 working days. Foreign Businesses are defined as those with 50% or more foreign ownership. Contact details for certification submissions are provided at the end of the chapter.

Government Departments in some economic sectors have their own regulatory procedures for approving foreign investment once a business certificate is approved by IPA to enable foreign investors do business. In this case, the IPA provides investors with the relevant information and contacts. IPA has established One-Stop-Shop (OSS) Center to provide information on all investment approval process administered by the different government departments and institutions. This is to cut down on bureaucratic red tape and other procedural constraints being faced by the investors.

The IPA also administers a number of Acts and these are:

- Investment Promotion Act;
- Companies Act;
- Securities Act; and
- Intellectual Property Rights Act.

In respect to approval procedures contained in the Investment Promotion Act, the Authority is required to certify foreign investors into the country within 35 working days upon receiving a complete and correct application. Investors may appeal to the Minister for Trade and Industry if the IPA Board rejects their investment proposal or if the investor objects to any imposed terms and conditions. The Minister is required to respond to the appeal within 35 days. IPA must then comply with the Minister's direction.

Copies of the relevant applications for certification and variation can be obtained from the IPA. All applications should provide complete and accurate information as required. Complaints may be lodged with the IPA, however complaints relating to specific sector should be lodged with the agencies concerned (addresses are contained in the Business Guide to PNG or can be obtained from IPA.)

The agencies responsible for monitoring and enforcing compliance with foreign investment laws and regulations are:

- Investment Promotion Authority;
- Department of Foreign Affairs;

- Department of Trade & Industry;
- Department of Youth & Employment;
- Bank of Papua New Guinea.

(Addresses are contained in the Business Guide to Papua New Guinea or can be obtained from IPA.)

Comments on existing foreign investment can be submitted through:

- Chambers of Commerce & Industry;
- Chamber of Mines & Petroleum;
- Manufactures Council of PNG;
- Business Council of PNG; and
- Other related NGO's on sectoral interests.

(Addresses are contained in the Business Guide to Papua New Guinea or can be obtained from IPA.)

Mining and Petroleum

For projects in the Mining and Petroleum Sector, the Government has initiated the Development Forum process. This process is an effective dialogue avenue to engage local landowners, provincial and national government representatives and the developer in a cooperative process aimed at arriving at agreements that will serve all interests and thereby guaranteeing the stability and security of the large investment projects.

The relevant stages of the approval process for the petroleum sector are summarized in the table below.

Stage 1	Application for a Mining or Petroleum Exploration License.
Stage 2	Exploration phase, from reconnaissance to definition of a commercially viable project, including declaration of location.
Stage 3	Negotiation of the terms of project approvals and Government participation. Agreements with Provincial and Local-Level Governments and project area landowners.
Stage 4	Application for project approvals by the National Government and granting of mining or petroleum development lease and other necessary lease for the project.
Stage 5	Approvals, construction and operation of project.

Forestry

Foreign Investors interested in the forestry sector are required to register with the PNG Forest Authority prior to conducting business.

The issuance of log export licenses come under the control of the Department of Trade and Industry and on recommendation from the Minister for Forestry, who then issues the Export Permit.

Fishery

Foreign investors interested in the fisheries sector are required to apply for a Fishing License with the National Fisheries Authority. Those interested in the exporting fish are also required to apply for an Export License from the Fisheries Authority.

Land

The National Land Board screens applications for land allocations and submits its recommendation to Minister for Lands for approval.

Investment in the Manufacturing and other major Industrial Projects

The Department of Trade and Industry evaluates the project proposals and advises government on the viability of the projects. The Department coordinates and organizes meetings between concern departments and line agencies, resource owners and developers. This forum is the avenue that facilitates and establishes dialogue with landowners, the government and investors aimed at arriving at an agreement that will serve all interests. The process is similar with the mining and petroleum sectors except that no license is given but an agreement is normally signed between the government and the developer.

STATUTORY AND LEGISLATIVE REQIREMENT

Citation	Summary
Investment Promotion Act, 1992	• Promotes and facilitates investment • Certifies foreign enterprises • Administers legislation relating to businesses
PAPUA NEW GUINEA COMPANIES ACT	Provides guidelines and registration procedures for all companies conducting business in Papua New Guinea
Business Names Act	Allows for the registration and protection of business names.
Business Groups Incorporation Act	Provides for (a) the incorporation of customary groups for business and other economic purposes and (b) the control and regulation of the conduct of business by such groups.
Associations Incorporation Act	Provides for the incorporation of certain Associations.
Securities Act, 1997	Regulates the establishment of Stock Markets, and practices relating to the offering of securities to the public.

Intellectual Property Rights Act, 2000	Allows for the registration and protection of Intellectual Property Rights.
Income Tax Act, 1959	Contains tax laws and administers incentives for some sectors
Customs Act (101)	Sets out the laws and regulations governing the import and export of goods, including import and export duties
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 Centers Development Act 1990	Provides for industrial estate development
Small Business Development Act 1992	Provides guidelines and policy framework for the development of small business
National Institute of Standards and Industrial Technology Act, 1993	Establishes and co-ordinates a National Standards System in PNG is consistent with international standards and maintains harmony and transparency with the international Standards Organizations.
Free Trade Zone (FTZ) Act 2000	Establishes the framework and mechanism for creation, operations, administration, and co ordination of FTZ in PNG.
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
Fisheries Management Act, 1994	Provides for licensing and regulation of fishing. Fish exports and management of fisheries resources.
Mining Act, 1992	Provides mining licenses and regulation to mineral resources.
Oil and Gas Act, 1998	Provides the licensing and regulatory regime governing the exploration for and production of petroleum (including oil and gas)
Land Registration Act, 1981	Provides powers for the registration and transfer of title and leases (under current arrangements, customary and alienated land can not be sold but leased under conditions and for long term periods)

The relevant authorities and departments are empowered by the respective legislation to approve and facilitate both the foreign and domestic investments into the economy.

For proposals in other sectors, the Investment Promotion Authority (IPA) provides information to investors, helps investors obtain relevant government approvals and acts as a 'match-maker' between citizen investors and appropriate foreign investors.

Monitoring and Regulatory Environment Applying to the Activities of Foreign

Investors

The IPA performs the monitoring of foreign investment activities. It also has the authority to prosecute breaches of the Investment Promotion Act.

There is legislation in place that protects consumers in Papua New Guinea. Recently the Independent Consumers Competition Commission (ICCC) is establish to monitor and ensure that competition is not undermined by anti-competition behaviour by firms. There is, for example, no legislative equivalent of the Australian trade practices legislation or the various State fair-trading acts.

There is also no legislation and protection afforded to copyright in Papua New Guinea although trademarks may be registered under the Trademarks Act.

The relevant authorities in Papua New Guinea are more aware of the potential impact of development on the environment than many other countries in the region and this is, to an extent, reflected by the provisions in the Environmental Contaminants Act.

COMPANY/BUSINESS STRUCTURE

Business operations in Papua New Guinea may be conducted through the normally recognised types of commercial enterprise. These are:

1. incorporated companies: regulated by the provisions of the Companies Act and, to a lesser extent, the Business Names Act. There is also separate legislation for certain specific industries, such as banking and finance; branches of foreign corporations: regulated by the provisions of the Companies Act;

2. partnerships of two or more persons: regulated by the provisions of the Partnership Act and Business Names Act;

3. joint ventures;

4. individuals operating as sole proprietors.

The Government generally prefers joint ventures between citizens and foreign investors. However, it is the decision of the business parties concerned as to how much equity will be owned by the respective partners.

However, citizen participation in any project is a desired outcome and proposal, which support this type of joint venture, are generally more favoured by the Government.

In respect of approval procedures contained in the Investment Promotion Act, investors may appeal to the Minister for Trade and Industry if the IPA Board rejects their investment proposal 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. All applications should provide complete and correct information as required.

Complaints relating to specific sectors should be lodged with the agencies concerned. These can be submitted through Chambers of Commerce and Industry, Mining and Petroleum, PNG Council of Manufacturers and related Non-Government Organizations on sectoral interests. Comments on specific matters can be relayed through the Employers Federation of Papua New Guinea or through the sectoral trade unions.

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

Not applicable.

3. National Treatment

Restrictions and Limitations on Foreign Investment and Reserved Activities

The Regulations of the Investment Promotion Act 1992 contains a list of business activities, which are reserved for citizens or national enterprises.

However during the delivery of the 1995 Papua New Guinea Budget, the Government indicated its intention to phase out the reserved activities list in two to three years.

The following list is an example of industries or activities, which are not currently open to foreign investment:

1. land transportation without operators;
2. handicrafts and artifacts;
3.export of commodity; coffee and copra production and export;
4.small-scale alluvial gold mining;
5.small scale going of tree crops; coffee, cocoa and copra and certain agricultural activities;
6. coastal fishing; and
7. 'trade stores' such as snack bars, taverns, shoe repair and amusement shops.

A detailed list is available from the IPA.

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 freely choose to enter into JV 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.

Access to Land

Whilst land is abundant, it is relatively under utilised for much-needed economic activities. Papua New Guineans own 97 per cent of land in communal tenure. The Government has acquired land from customary landowners; either for its own use or to promote private sector development.

One way to facilitate access to land is where the Government has developed an Industrial Centers strategy. The currently developed industrial centers are one; in Lae, in the Morobe province and one under construction in Kokopo (East New Britain).

Investors involved in manufacturing operations will not usually face difficulties with land availability. Those involved in resource or agricultural projects should appreciate that access to land may be difficult. In such cases investors should approach Government for assistance. Furthermore, under the Free Trade Zone (FTZ) initiative, those investors who manufacture exportable products will have free access to land in those specified FTZ areas. Further information on Industrial Centers can be obtained from IPA.

Access to Finance

The amount of local non-government finance available to businesses is limited. Little long-term or venture capital is available for the foreign investor.

4. REPATRIATION AND CONVERTIBILITY

Foreign investors are allowed to remit earnings overseas, 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.

Commercial banks may approve applications by foreign investors (other than mining or petroleum companies) to borrow foreign currency offshore, within certain prescribed limits.

The Bank of Papua New Guinea deals with all exchange controls relating to the mining and petroleum and forestry sectors.

Foreign companies may borrow domestically up to K50, 000 in the first two years of operations. They may borrow sums greater than K50, 000 if the lending bank's facility is supported by an overseas banker's guarantee from a bank of international standing.

After two years, a company may borrow up to twice non-resident shareholder's funds defined as retained profits, paid up share capital and overseas borrowing. Such domestic borrowing is reviewed annually.

For transactions destined for identified tax haven countries, tax clearance is required prior to approval by the Bank of PNG for exchange control authority.

A taxation clearance certificate is required prior to the transfer of funds amounting to more than US$50,000 a year to all other countries not identified as tax havens in respect of transactions requiring tax surveillance.

There are no restrictions on the convertibility of currencies for the overseas transfer of funds, although any daily transaction of US$35,500 or more requires clearance from the Internal Revenue Commission (IRC) for taxation purposes.

5. Entry and Sojourn of Personnel

Papua New Guinea welcomes people from overseas and the Department of Foreign Affairs facilitate entry, offering a variety of permits to meet the different needs of non-citizens. The main types of entry permits are summarised below.

Entry Permits	
Visitors Entry Permit	Tourist and people visiting friends and relatives in PNG frequently use this visa, however it does not allow employment. This permit can be collected on arrival at Jackson's International Airport, Port Moresby.
Business Entry Permit	This is a multiple entry visa, which allows investors to enter the country to investigate business opportunities, however it does not allow employment.
Consultant/Specialist Permit	This is a single entry visa and is valid for three months. It allows non-citizens to work on a specific task under the supervision of a PNG sponsor.
Short-Term Employment Permit	This is a multiple entry visa and is valid for six months. It is aimed at the agriculture, fisheries, mining and petroleum industries to facilitate quick access to PNG, particularly for emergency situations requiring urgent specialist skills not available locally.
Working Resident Permit	This is a multiple entry visa and is normally valid for three years. This permit allows long term employment. Applications are required to obtain a Work Permit form the Department of Labour and Employment.

The Immigration Section of the Department of Foreign Affairs will issue Residency or Employment Visas:

- To foreign company directors or shareholders provided they produce an IPA certificate in the name of the company concerned; or
- To foreign owners of a business provided they can provide IPA certificate in their own name; and
- They must also produce proof of the registration of a company or business name as the case may be.

In 2001, the Department of Foreign Affairs, Labour & Employment and the Investment Promotion Authority undertook to review the Immigration Act, the work permit Act, and the Investment Promotion Act, to streamline the procedures for foreign enterprises facilitation including visas and work permits processing in the country.

Work Permits

Foreign investors are expected to employ nationals in areas where local expertise is available and are encouraged to train local employees to fill positions held by expatriates through training and localisation programs. However, where it is shown that local employees do not have adequate qualifications, a work permit may be obtained for an expatriate, normally for up to three years.

In order to preserve specific occupations for Papua New Guineans, who are sufficiently skilled to perform such duties, the Government has a Reserved Occupations List administered through the Department of Youth and Employment.

Labour

Basic conditions of employment are covered by the Employment Act and minimum wages are determined by the Minimum Wages Board; currently K62.40 or (US$20.40) per week.

The private sector is still largely non-unionised, however an increasing number of unions are being established.

All employers are required to take out a policy of insurance for all employees and a compulsory system of superannuation fund payments is applicable through the National Provident Fund Act, for companies with more than 25 staff.

6. TAXATION

Income Taxes

Any person or business, employing one or more employees in PNG paid more than K123 per fortnight must register as a Group Employer with the Internal Revenue Commission.

TAXATION REFORM

PNG's Tax Regime has been reviewed in 2000 and several changes have been made to corporate and personal income tax. The Mining and Petroleum Sectors have been granted a reduction in corporate taxes while low-income earners have been exempted from paying direct tax.

The rates of personal income tax are as follows:

Resident (Kina)	Non-resident (Kina)	Marginal Tax Rate
0-5,500		0%
5,500- 16,000	0-16,000	25%
16, 000- 70,000	16, 000 –70, 000	35%
70, 000- 95, 000	70, 000- 95, 000	40%
95, 000 and over	95, 000 and over	47%

(New tax rates and Threshold)

The rates for company tax are as follows:

Type of Company	Rate
Resident companies, not engaged in mining or petroleum operations	25%
Non-resident companies, including those engaged in mining operations	48%
Resident mining companies with Special Mining Lease	30%
Resident mining companies with mining lease	30%
Petroleum companies, resident and non-resident	45%
Gas companies, resident and non resident	30%

(New Tax Rates)

Withholding Taxes

Whenever a PNG resident company (other than a petroleum company) pays a dividend it must deduct 17% dividend withholding tax (DWT) and remit it to the Internal Revenue Commission. The DWT is legally a tax on the recipient of the dividend.

Double Taxation Treaties

Papua New Guinea has existing double taxation treaties with the UK, Australia, Canada, Singapore, Malaysia, the People's Republic of China, Korea, Germany, Indonesia and Fiji.

Those under consideration listed in order of priority: USA, Japan, New Zealand, Philippines, Chinese Taipei and Thailand.

Indirect Taxation

Papua New Guinea is committed to a tariff reforms and economic development through competition and cooperation. As part of this, PNG is rationalising and reducing import tariffs and replacing the revenue lost with a Value Added Tax (VAT)

The VAT has many advantages over the previous system of using import tariffs to generate revenue. In particular, it increases transparency and reduces distortions.

The Government has embarked on a seven- year tariff reform program, which commenced in July 1999 with the removal of import duties of 11% on thousands of household items. Most other import duties have been reduced and these have been replaced with a single rate of VAT of 10%.

Value Added Tax

In order to facilitate and encourage investment and stimulate private sector development, the Government has introduced Value Added Tax (VAT) in July 1st 1999 and replaced the usual method of sales tax. The aim was to rationalise the usual indirect tax regime in order to reduce distortions and increase private sector efficiency.

- The supply of goods and services are taxed at one rate (10%).
- A very limited number of goods and services are zero-rated.

Import Tariffs

The tariff reform is designed to remove disincentives to value adding activities by shifting the tax burden to taxing final products and luxury goods.

Import tariffs will be gradually reduced between 1999 to 2006. Import tariffs on capital equipment, inputs and raw materials will be reduced to zero. The intermediate tariff is applied to goods that are one company's final product, while being input into another company's production. The protective tariff is applied to products that are manufactured in PNG and require protection for some time.

Products with very high tariff rates will gradually be phased down to one prohibitive rate. The tariff is used for a few products that require additional protection for a limited amount of time.

Time Schedule for the Tariff Reform Program						
	1996	**1997**	**1999-2001**	**2001-2003**	**2003-2006**	**2006**
VAT			10%	10%	10%	10%
Import Duty						
Free	0%	0%	0%	0%	0%	0%
Input rate	8%	5%	0%	0%	0%	0%
Basic rate	11%	11%	0%	0%	0%	0%
Intermediate rate	40%	40%	30%	25%	20%	15%
Protective rate	55%	55%	40%	35%	30%	25%
Prohibitive rate	Specific rates or ad valorem (75%-125%)	Specific rates or ad valorem (75%-125%)	55%	50%	45%	40%

Further information on VAT and Tariff Reform can be obtained from the IPA

7. Performance Requirements

Generally, there are no performance requirements in place. However, Papua New Guinea encourages the use of locally available material.

8. Capital Exports

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.

9. Investor Behaviour

There are currently no restrictions relating to investor behaviour.

10. Other Measures

Intellectual Property

There is protection to Intellectual Property Rights in Papua New Guinea with the passing of the Intellectual Property Rights Bill to legislation in July 2000. Protection of intellectual property rights can be registered with IPA.

Further information on Intellectual Property Rights can be obtained from IPA.

Competition Policy

Papua New Guinea is bracing for a Competition Policy and a policy paper has been prepared and discussed. It is anticipated that a Competition Policy will be formulated to promote the forces of

market to prevail in the distribution of goods and services and discourage any element of monopoly in the market.

A Central Agencies Working Group (CAWG) has been set up to carry out a review of competition policy and to establish the regulatory framework for state owned enterprises. A comprehensive and appropriate competition policy will be developed to regulate business behaviour, remove barriers to competitive operations of the markets through deregulation and ensure that competition is not undermined by the anti-competitive behaviour of some firms.

A review of the competition policy has been endorsed and legislated by the government and established the Independent Consumer's Competition Commission (ICCC) which will ensure no anti-competition behaviour by firms.

For detailed information, contact the Department of Trade & Industry on (675) 3012527/3012533

PRIVATIZING PUBLIC ENTERPRISES

In 1999 the Government has endorsed the Privatization Policy and established the Privatization Commission to administer the Privatization Policy.

The government has approved a program for privatization, the necessary amendments to the Privatization Commission Legislation have been made.

The first enterprises on the list to be privatised and sold in 2001 are Air Niugini, (State owned Commercial Airline) and Papua New Guinea Banking Corporation (PNGBC) (State owned Commercial Bank).

In 2001, the Privatization Commission planned to:

- Complete the due diligence exercise for ELCOM (State owned electricity supplier), Telikom (State owned telephone service provider), Harbours Board (State owned ports Manager) , Post PNG (State owned postal services provider) and Air Niugini in the first half of 2001;
- Aim for the preparation on the PNGBC sale in the first half of 2001;
- Implement the sale of Air Niugini in the first quarter of 2001; and
- Prepare the large Assets sale in 2001.

PNGBC has been sold under the privatization program while others are pending as a result of the change in government. The current government supports the privatization program and aspires to progress the programme in a more transparent manner.

For detailed information, contact the Privatization Commission.

D. INVESTMENT PROMOTION AND INCENTIVES

The Government promotes and facilitates investment through the Investment Promotion Authority (IPA). The IPA produces, and continually updates, a wide range of information materials for the interest investor, these include:

- "A Business Guide to Papua New Guinea" (Also available on CD-ROM)
- Detailed booklets on specific topics: Foreign Investment, Foreign Exchange Controls, Wages, Investment Incentives, Taxation and Customs and Land. (These are updated regularly.)
- "Riches Run Deep" Promotional Video
- "Investment Papua New Guinea " A Quarterly Magazine
- Sectoral Profiles on: fisheries, forestry, agriculture and tourism (Also available on CD-Rom)
- Update of this Investment Regime

Information on investment opportunities in PNG can also be accessed through IPA's web site at www.ipa.gov.pg.

Most of the incentives take the form of exemptions from company income tax or deferment of income tax liabilities. However, there are some incentives that are not related to company income tax. This includes a wage subsidy provision, which is straight subsidy rather than a tax incentive.

Tax Holidays

PNG has the following tax holidays:

- the Rural Development Incentive; and
- the East New Britain and Bougainville incentive.

Double Deductions

PNG has the following double deduction provisions:

- The double deduction for export market development costs;
- The double deduction for staff training; and
- Primary Products Investment Scheme.

Accelerated Depreciation

PNG has the following incentives, which involve a deferment of tax liability. These provisions relate to the tax treatment of depreciation and include:

- the initial year accelerated depreciation provision;
- the additional depreciation of industrial plant;
- 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; and
- the depreciation allowance for the acquisition of non oil-fired plant.

Other Incentives

The other current incentives are:

- Wage Subsidy;
- Training Levy;
- Duty Drawback; and
- Free Trade Zone.

Papua New Guinea has a Free Trade Zone (FTZ) Act in place. FTZ Act was passed in July 2000 to encourage foreign investors who are manufacturers and export oriented to invest in the FTZ areas. The main incentives under FTZ are tax exemption (both import & export duties) and free land lease for up to 10 years among others. Four provinces, West Sepik, Gulf Western and North Solomons were initially declared FTZ areas when Parliaments legislated FTZ in July 2000. West Sepik Province is the first province to have plans to implement the FTZ concept.

For more information contact the Department of Trade & Industry on 3012525/3012527.

Investor Confidence Measures

Investor Confidence Measures

Integrity Bill on Political Party and Candidate

The Integrity of Political Party and Candidate Bill has been passed into legislation in December 2000. This legislation provides for political stability, which has been lacking in the last 25 years. The legislation will prevent Members of Parliament to move from one party to the other and also provides for political parties to be properly registered and funded by the Government and private sector. The Legislation provides for stability in government, which should instil confidence to the private sector to make serious and long term investment decisions.

Law & Order

The Government acknowledges that Law & Order problems are a serious constraint on the country's social, economic and political development. Personal insecurity and the threat to private property through theft and vandalism serve to diminish the quality of life for all people living in

Papua New Guinea. Most importantly, the crime also deters foreign investors and increases the cost structure of the economy and directly inhibits the growth of industries such as tourism.

The law and justice are priority under the Governments development policy framework. In the 2002 and 2003 Budget, there has been a substantial increase in resources allocated to programs in the sector. The police department is provided sufficient funding by the government to control the law and order problem.

The Government is also committed to strengthening other sectoral agencies, such as the Attorney General's Office and the Ombudsman Commission. This will assist in strengthening the Government's Law and Justice Strategy that also looks at protecting the interest of investors in the country.

National Transport Development Plan (NTDP)

According to the Medium Term Development Strategy (MDTS) and the National Charter for Development, Government has made a commitment to maintain and develop all the public infrastructures. To complement this commitment, the Government has launched its National Transport Development Plan (NTDP) for the next ten years (2001 – 2010) to maintain and develop the entire road networks in the country.

– The focus of the NTDP in next 10 years will be to,

- Firstly, to maintain the transport infrastructure system already in place;
- Secondly; to upgrade current infrastructure; and
- Thirdly, maintain the road network.

The current government is committed to funding the infrastructure programs and provided sufficient funding in the 2003 budget.

One Stop Shop Facility

The Investment Promotion Authority is working towards establishing a One-Stop-Shop (OSS) facility to effectively facilitate foreign investment in PNG. The first phase of the OSS facility is the establishment of a Business Licensing and Information System (BLIS) which was completed in December 2001.

The BLIS allows for easy access to licensing information by investors.

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

Agreement	Provisions
Bilateral Investment Treaties	Papua new Guinea has investment protection agreements with Australia, Canada, China, Germany, and the United Kingdom. These accord reciprocal state assurance or guarantees against nationalisation or expropriation of investment in respective territories. They also cover taxation aspect. PNG is in the process of negotiating IIPPA's with Thailand and Indonesia. PNG has bilateral fisheries agreement with Korea, Chinese Taipei, the Philippines and Vanuatu**.**
Regional or Sub-Regional Investment Treaties	South Pacific Forum - this covers: Treaties relating to fisheries; and Agreements with the United States.
Trade Agreements	Melanesian SpearHead Group (MSG)- provides mutual Cupertino on Trade and Investment between Papua New Guinea, Fiji, Vanuatu and Solomon Islands. Lome Convention- a non-reciprocal agreement providing preferential access to the EU markets for specified products. SPARTECA- provides access to Australia and New Zealand for all South Pacific Nations. PATCRA- provides non-reciprocal preferential access to Australia and requires only that Papua New Guinea consult Australia prior to any tariff charge. World Trade Organisation (WTO)- Papua New Guinea is a member of the WTO, which is committed to removing barriers, trade. Generalised System of Preference (GSP)- Papua New Guinea has preferential access to the markets of developed nations for some specified goods. Bilateral Trade Agreement- Papua New Guinea has bilateral trade agreements with Australia, Fiji and Indonesia.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

Total foreign investment and employment (created by that foreign investment) for the years 1999-2001 are shown in the table below.

Sector	Investment (K millions)	Investment (Percent)	Employment (National)	Employment (Foreign)
Mining and Quarrying	23.3	2	203	64
Petroleum	696.	45	0	18
Construction	35.6	2	373	143
Forestry	302.5	19	3,487	712
Wholesale and Retail	142.6	9	2,558	468
Manufacturing	167.7	11	2,741	245
Financial	26.0	2	108	35
Transport Storage and Communication	62.2	4	241	52
Business	43.8	3	3,797	180
Others	54.3	3	1,000	218
Total	**1,554**	**100**	**14,365**	**2,135**

(Note: Trends for 1999-2000 was still in the process of compilation when this,

guide was reviewed. Please contact IPA for latest update)

The major economies that were sources of FDI over recent years are shown in the table below.

Region	Foreign Investment Values (Kina'm) 1999-2001	Percentage
Western Europe	160.3	10
United States & Canada	72.6	5
Australia & New Zealand	336.7	24
Asia	413.5	26
Others	540.9	35
Total	1,554	100

Contacts for Further Introduction

Investment Promotion Authority PO Box 5053 Boroko NCD Papua New Guinea Tel: (675) 321 7311 Fax: (675) 321 2819 Internet: www.ipa.gov.pg Email: iepd@ipa.gov.pg	**Department of Employment and Youth** PO Box 5644 Boroko NCD Papua New Guinea Tel: (675) 3217408 Fax: (675) 3201062
Department of Foreign Affairs and Trade PO Box 422 Waigani NCD Papua New Guinea Tel: (675 327 1121 Fax (675) 325 4467	Bank of Papua New Guinea PO Box 121 Port Moresby NCD Papua New Guinea Tel: (675) 322 7200 Fax: (675) 322 1288
National Land Board PO Box 5665 Boroko NCD Tel: (675) 301 3109	Department of Trade & Industry P.O. Box 375 Waigani N.C.D Tel: (675) 3012525/2527
Privatization Commission P.O. Box 45 Konedobu N.C.D Tel: (675) 3212977 Fax: (675) 3213142	National Lands Board P.O Box 5665 Boroko N.C.D Tel: (675) 3013109
Internal Revenue Commission (IRC) P.O. Box 777 Port Moresby Tel: (675) 3226600 Fax: (675) 3214249	

PERU

PERU

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. *Provide a brief description of your foreign investment policy including any recent policy changes.*

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

Peru offers an open Foreign Investment Regime based on core international principles, an opened and deregulated economy involved in the globalization process, modern competition policies, relaxed labour regulations and a simplified tax regime. The State promotes private domestic and foreign investment, given the important role it plays in the country's economic development.

The Peruvian Constitution includes provisions on essential principles to guarantee a favorable juridical framework for the development of private investment in general, and foreign investment in particular.

The legal framework governing foreign investments in Peru is based on national treatment. Foreign investments are allowed, without restrictions, in the most economic activities; just few services establish specific restrictions (e.g. mass media, air transportation, and land transportation are reserved for national investors or majority national share is required). No prior authorization is required for foreign investments; acquisition of national investors shares is fully allowed, through stock exchange or other mechanism. Except for a constitutional exclusion of resources' ownership of various kinds within fifty kilometers of Peru's international borders, FDI is welcomed in every geographical area of the country. Nevertheless, this exclusion can be waived by decree on a case-by-case basis.

WTO commitments are fully abide by. In that sense, no selection mechanism or performance requirement is applied or demanded to foreign investment. In cases where investments enjoy benefits coming from the subscription of legal stability agreements with the State, requirements are the same than those established for national investors.

The legal framework provides a regime to guarantee the stability of important investment rules and bilateral and multilateral instruments consolidates a stable and predictable investment climate. Peru is a member of the Multilateral Investment Guarantee Agreement – MIGA of the World Bank, the International Constitutive Settlement of Investment Disputes – ICSID, and UNCITRAL.

Peru has had a very active participation in the negotiation of instruments of bilateral, regional and multilateral nature, in order to consolidate the juridical framework that guarantee and protect investments and aid the creation of an adequate climate to encourage bigger foreign investment flows. Those instruments have the purpose of setting forth guarantees for the treatment, protection and access to mechanisms of settlement of controversies applicable to investments.

Investment Promotion Agency - PROINVERSION

With the purpose of attracting private national and foreign investment necessary to boost Peru's development, a new Investment Promotion Agency- PROINVERSION- has been created. This Agency is in charge of strategic promotion, guidance services and promotion of private investment in projects and public assets.

As part of its duties, PROINVERSION elaborates, proposes and executes the national policy for the treatment of private investment, according to economic plans and integration policy. Besides, PROINVERSION registers foreign investment; handle and subscribe legal stability agreements; and, coordinates and negotiates international investment treaties.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

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

Constitutional Principles

The Peruvian Constitution includes provisions on essential principles to guarantee a favourable juridical framework for the development of private investment in general, and foreign investment in particular. Some of them are: (i) free private initiative exercised in a social market economy and economic pluralism; (ii) freedom of work and to engage in business, trade and industry; (iii) definition of the subsidiary role of the State in the economic activity; (iv) free competition and prohibition of all restrictive practices and the abuse of dominant or monopolistic positions; (v) freedom to engage workers; (vi) powers of the State to establish guarantees and grant securities by means of contract law; (vii) national treatment; (viii) possibility to submit controversies arising from the contractual relationship with the State to national or international arbitration; (ix) freedom to hold and dispose foreign currency; (x) inviolability of property and establishment of exceptional causes that empower expropriation previous cash payment of a fair-value indemnity; application of equal treatment on taxation matter; and the express acknowledge that no tax may have confiscating effects.

Foreign Investment Promotion Law (Legislative Decree Nº 662)

The Foreign Investment Promotion Law, approved in August 1991, by Legislative Decree Nº 662, is the cornerstone of a sound legal framework that establishes clear rules and the necessary security for the development of foreign investments in the country.

The Promotion Law recognizes the following basic rights to foreign investors:

- Right to receive non discriminatory treatment against national investor
- Freedom to conduct commercial and industrial activities and to perform any import and export operations.
- Right to remit abroad profits or dividends, previous payment of the corresponding taxes
- Right to use the most favorable exchange rate existing in the market for any exchange operation
- Right to free re-exportation of invested capital, in case of sale of shares, reduction of capital or total or partial liquidation of investments
- Non-restricted access to domestic loans, under the same conditions than national investor
- Free acquisition of technology and free remittance of royalties
- Freedom to acquire shares of national investors
- Possibility to acquire insurances for investments
- Possibility to benefit from a Legal Stability Regime, through the conclusion of Stability Agreements with the State.

There is no minimum size of investment restriction on FDI. No restrictions apply exclusively to foreign investors as to the degree of ownership interest or management control that they may exercise in any form of investment.

Private Investment Framework Law (Legislative Decree Nº 757)

The Framework Law for Private Investment Growth, approved by Legislative Decree Nº 757, complements the general legal framework for the treatment of foreign investment. The provisions are addressed to encourage the growth of investments in every sector of the Peruvian economy. Legislative Decree 757 eliminates all privileges in favor of the State in economic activity by eliminating monopolies in production and commercialization of goods and services.

Every enterprise has the right to organize and develop its activities under the form it deems convenient. All legal statutes providing for production patterns or productivity levels prohibiting or imposing the use of consumables or application of technical processes based on the type of the economic activity performed by them, their installed capacity or any other similar economic factor

were revoked by this law, except for those relating to industrial hygiene and sanitation, environmental protection and health.

Legal Stability Agreements

Empowered by the Political Constitution, and under the Foreign Investment Promotion Law and the Framework Law for the Growth of the Private Investment, the State guarantees the legal stability to foreign investors and to the enterprises where they invest, through the subscription of agreements with contract-law status, and abide by the general provisions on contracts established in the Civil Code.

i. Guarantees granted by the State to Foreign Investors
   - Equal treatment, by which the national legislation does not discriminate against investors participating in enterprises, due to their status of foreign person.
   - Stability of the Income Tax System in force when the agreement is concluded.
   - Stability of the system of free availability of foreign currency and remittance of profits, dividends and royalties.

ii. Guarantees granted by the State the Enterprise receiving the investment
   - Stability of the systems of labor engagement in force when the agreement is concluded.
   - Stability of the system of export promotion applicable when the agreement is concluded.
   - Stability of the Income Tax System

iii. Who may subscribe Legal Stability Agreements?
   Investors and enterprises receiving the investment, in the case of new enterprises or in the case of increasing capital stock of the enterprises already established. Also in the case of investors participating in the privatization process and the enterprises involved in such process, which fulfill the following requirements:

iv. Investment commitment by Foreign Investors
   The investor shall fulfill one of the following investment commitments:
   - To make, in a two-year term, capital contributions for an amount not under US$ 5 million in any economic activity, except mining and hydrocarbon sectors.
   - To make, in a two-year term, capital contributions not under US$ 10 million in mining and hydrocarbon sectors.
   - To acquire more than 50% of shares of an enterprise participating in the privatization process.
   - To make capital contributions in a concession contract.

v. Requirements for the Receiving Enterprise

- One of its shareholders shall have concluded the corresponding Legal Stability Agreement.
- In case tax stability is requested, contributions shall account for 50% increase in relation with the total amount of capital and reserves, and shall be destined to the expansion of the production capacity or to the technological development of the enterprise.
- The case of transfer of more than 50% of shares of an enterprise participating in the privatization process.
- The case of an enterprise involved in a concession contract.

vi. The term of Legal Stability Agreements is 10 years, and may be only modified by common agree between the parties.
In case of concessions, investment requirements and term of agreements abide by the established in the concession contract

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal identify guidelines /conditions that apply for screening (e.g. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%) Provide details of any special conditions that apply to individual sectors.

No screening mechanism is applicable to foreign investment in Peru.

In accordance with the Investment Promotion Law, once a foreign investment is made, it must be registered with the national competent agency (Since May 2002, PROINVERSIÓN). Registration of investments is an administrative requirement for the recognition of the aforementioned rights on the transfer of investment related flows without previous authorization. The pertaining form to be filled can be downloaded from the web site www.proinversion.com

(c) Indicate all application/approval forms required for screening purposes. Briefly summarize additional documentation that is require for review or approval processes.

Not applicable.

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts.

Not applicable.

(e) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection.

Not applicable.

(f) List agencies responsible for dealing with appeals in cases where a proposal is denied or a modification of the proposal is requested. Briefly describe appeal process and the average time for an appeal to be considered.

Not applicable.

(g) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

Not applicable.

(h) Indicate 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.

Public agencies as well as other entities of public administration shall approve and publish the pertaining Unique Text of Administrative Facilities- TUPA (in Spanish) as set forth by the Law of General Administrative Procedure approved in April, 2001. In case of non-fulfillment, or, distortions in transparency of administrative formalities, the interested party may lodge a respective claim.

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

INDECOPI (the national agency for the defense of competition and protection of intellectual property) is the competent entity in case foreign or domestic investors lodge a claim for actions that affect the participation of economic agents in the market. It also considers distortions in fair competition between suppliers of goods and services, distortions in accessing or leaving the market and actions against the respect of intellectual property rights.

(i) 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

Considering the non-discrimination principle, compliance of law and regulations by foreign investors lays in the hands of the same authorities that control local investors' activities. PROINVERSIÓN is the national competent agency for the application of the Foreign Investment Promotion Law.

(j) Describe any opportunities for comment on existing foreign investment laws/regulations or for proposed changes to the foreign investment regime, and indicate the nature of these processes.

One of the duties of PROINVERSIÓN is to identify administrative barriers affecting the development of private investment. PROINVERSIÓN maintains a permanent coordination with the main private entrepreneurs associations.

(k) *If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone – fax number) and their roles in the approval process.*

Not Applicable.

2. Most Favoured Nation Treatment / Non Discrimination between Source Economies

(a) List and describe 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).

Most favoured nation treatment applies to every activity and investment in relation with the expansion and operation of foreign investment. In the case of restrictions to national treatment applicable to the establishment of foreign investments in few activities, the benefits derived from Decision 291 of the Andean Community, which provides for national treatment applicable to investments coming from Andean investors, do not extent to investors from other economies.

(b) Identify and describe any international agreements to which your economy is party which provides for a possible exception to MFN treatment

In relation with the 29 bilateral investment agreements concluded by Peru, the most favoured nation treatment, agreed thereof, "shall not extend to the privileges that either of the Contracting parties may grant to nationals or companies of third States because they are members of a customs or economic union, a common market or a free trade area or similar international agreements entered into with third States, including integration and border development agreements, as well as to the benefits from double taxation agreements". The list of bilateral investment agreements is attached on point "E"

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

- Acquisition or possession of mines, lands, forests, water, fuel - Under Article 71º of the Constitution "foreign citizens are not allowed to acquire or possess, under any title, within fifty kilometers from the borders, mines, land, forests, water, fuels or energy sources, whether directly or indirectly, individually or in association, under penalty of losing the right thus acquired to the benefit of the State".

- Commercial aviation – Article 79º of Law Nº 27261, Law on Civil Aeronautics of Peru, establishes that national civil aviation is reserved to Peruvian individuals and corporate bodies. According to definition of this Law, at least 51% of equity stock shall be Peruvian capital and shall be under real and effective control of Peruvian shareholders or partners with permanent domicile in Peru.

- Activities of aeronautic labour - Article 75º of Law 27261, Law on Civil Aeronautics of Peru, establishes that personnel developing aeronautic duties in operations made by national carriers, except general aviation, shall be Peruvian staff.

- Commercial aquatic passenger and cargo transportation in national traffic or coastal trading – According to Article 3º of Legislative Decree Nº 683, this is reserved to Peruvian flag trading ships, as well as to foreign flag ships provided that they are leased or operated by national ship companies, whatever its origin or destination may be.

- Private services of broadcasting – Article 23º of Legislative Decree Nº 702 establishes that besides the requirements set forth by pertaining regulations to get authorization for broadcasting services, it is required that individuals or corporate bodies requesting such authorization have Peruvian nationality.

- Fabrication of warfare weapons - In conformity with Article 285º of the Peruvian Constitution, the fabrication of warfare weapons shall be only authorized to private companies under agreement entered into with the State.

- Juridical Services – Law on Notary – Decree Law Nº 26002 and Legislative Decree Nº 872, establishes that Notaries shall have Peruvian nationality.

(b) Briefly describe the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

Not applicable

4. Repatriation and Convertibility

(a) Identify and describe 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 for the repatriation of funds related to foreign investment. Repatriation of profits, dividends, royalties, loan payments and liquidation do not require specific previous authorization. The foreign investment law gives specific assurances to investors in relation to convertibility and repatriation, in particular:

(a) Free remittance abroad of profits, proceeds of asset disposals, royalties and payments for the use of technology; and

(b) Access to the most favourable exchange rate for currency conversions for inward and outward remittances.

Furthermore, the bilateral investment treaties concluded by Peru guarantee the free remittance of investment related payments.

(b) Briefly describe the foreign exchange regime.

Local currency is freely convertible to hard currency for current and capital transactions and investors are statutorily entitled to seek the most favourable exchange rate. There are no restrictions on holdings by residents of foreign currency either domestically or abroad. Independent monetary management by the Central Bank supports these measures.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

Not applicable.

5. Entry and sojourn of Foreign Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

Legislative Decree Nº 703 governs matters related to temporary entry and resident status for foreigners who, due to their activities, require or wish to have domicile in the country. The resident status can be obtained with migratory authorities in Peru, as well as in Consulates of Peru abroad.

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Peruvian migration laws consider the existence of different migratory status, which allow foreigners to carry out several activities.

Business: Foreigners are allowed the entry and sojourn up to 90 days, extended to 30 days more. In this case, foreigner can not receive any income from Peruvian source, nevertheless, he may entered into contracts or make transactions. This kind of visa is temporary.

Worker: Foreigners are allowed to stay in Peru with the purpose of carrying out labour activities, as the result of labour contracts. The time authorized for living in Peru depends on the extension of the contract, previous approval from the Labour Ministry. In this case, the visa is a residence visa.

Free lance: Foreigners are allowed to live indefinitely in Peru to make investments, receive any income or to make free lance labours. The visa is a residence visa.

(c) Describe any regulations relating to personnel management of foreign firms, e.g., minimum wage laws, minimum requirements for training or employment of local staff.

Hiring of foreign personnel is based on Legislative Decree Nº 689, which sets forth that local companies are entitled to hire foreigners up to 20% of their work force, provided that their salaries do not exceed 30% of the total wages paid by the company. Employers shall be exempt from the limiting percentage in the case of highly skilled technical and professional personnel. Workers may freely remit their after-tax salaries abroad.

Specific restrictions on personnel managerial aspects are established in:

- Services of investigation and security – Only Peruvian personnel is allowed to be hired (Regulations on private security services – Supreme Decree Nº 005-94-IN)

- Services of maritime transportation - Cooperatives and sea companies are allowed to hire only Peruvian personnel for tasks as loading and unloading, transship and mobilization of cargo in trading ships, from dock to ship and vice verse, and on bay.

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

The employer is empowered to guide and regulate labour relationships, give orders for the correct execution and punish any breach thereof.

Workers can not be fired unilaterally and arbitrary by the employer. Nevertheless, it shall be considered that some kind of contracts, such as part-time contracts or contracts for specific tasks, exclude from this protection.

Labour controversies or disputes that may rise between the employer or worker initially may be submitted to conciliation process. In case, the solution is not reached by this process, controversies may be submitted to the Court where specialized tribunals solve them.

Applicable legislation is contained in the Unique Arranged Text of Legislative Decree Nº 728, approved by Supreme Decree Nº 002-97-TR; General Law on Labour Surveillance, approved by Legislative Decree Nº 910, and, Process Labour Law, approved by Law 26636.

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

Principal taxes applicable to investors and the companies where they participate are:

- **Income Tax:** It is annually applied to every income earned by domiciled or non-domiciled taxpayers. Non-domiciled taxpayers are subject to income tax only with respect to their Peruvian-source income.

  Income Tax Rates:

- Tax payable by corporate bodies, partnerships and joint ventures on third-category income: 27% of net income. [1]

- Tax payable by individuals shall be determined applying the following progressive accumulative rate:

  Up to 27 UIT 15%

  Over 27 UIT and up to 54 UIT ..... .21%

  Por el exceso de 54 UIT 27%

Credits authorized by law shall be deducted from the tax calculated.

- Interests coming from external credits: 4.99%, whenever they fulfill the following requirements:
  - The cash loans will be proved with the entrance of the currency to the country.
  - The credit does not yield annual interest on the balance due superior to the preferential rate in the market where it comes from, plus 3 points.
  - Interests from external credits destined to financing imports are included, whenever they fulfil the legal provisions in force.
- Interest paid abroad by banking and financial companies established in Peru, derived from their foreign lines of credit used in the country: 1%
- Dividends and other types of distribution of profits received from corporate bodies: 4.1% [2]
- Royalties: 30%
- Individuals shall calculate their tax by applying a 30% rate on pension benefits or remunerations for personal services rendered in the country, royalties and other incomes.

♦ **General Sales Tax:** This tax applies to domestic sale of goods and chattels; rendering or use of services in the country; construction contracts; the first sale of real estate made by its constructor; importation of goods. The rate applicable is 18%, which includes the Municipal Promotion Tax.

♦ **Excise Tax:** It is levied upon the domestic sale, at producer level, and importation of some goods, such as cigarettes, alcoholic beverage, mineral and carbonated water, other luxury articles, fuels, gambling and bets. The current rate runs between 0% and 125%, according to the type of good or service.

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[1] Other persons receiving third-category income shall determine its tax by applying the rate of 30% over their net income. Likewise, if the taxpayer total or partially distribute its profits, he shall apply an additional rate of 4.1% over the distributed amount paid to a shareholder or third party, which due to its nature, means an indirect use of a taxable income not to be further tax controlled.

[2] Capitalization of profits, reserves, primes, re-expression adjustment, revaluation exceeds or any other form of patrimony account shall be considered as dividend or any other form of profit distribution.

- **Customs Duties:** Those applied to the importation of supplies. There are no restrictions to import goods. Customs duties rates depend on the kind of items imported.

- **Taxation Agreements:** Peru has concluded Agreements to avoid Double Taxation with Sweden, Chile and Canada. It is also in force, a Convention to avoid double taxation within the Andean Community member countries (Bolivia, Ecuador, Colombia, Venezuela y Peru)

7. PERFORMANCE REQUIREMENTS

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

WTO commitments are fully abide by. In that sense, no selection mechanism or performance requirement is applied to foreign investment.

To promote and develop dairy farming in Peru, imported milk powders, anhydrous fat and other milk products may not be used in the reconstitution and re-mixing processes for the production of liquid milk products, cheeses, butter, and similar products for direct human consumption (XV Complementary Provision on Legislative Decree Nº 653). This restriction, notified to the Committee on Trade-Related Investment Measures in 1995, also requires producers of evaporated milk to use nationally produced fresh milk.

This measure is supposed to be applied to every local producer regardless the origin of its capital. However, the measure have not been implemented in practice nor have attempts been made to enforce it.

8. CAPITAL EXPORTS

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

Not existing

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

Not existing

Peruvian legislation does not include restrictions to convertibility or transfer of freely convertible currency of funds related to foreign investment. No prior authorization is required for exchange operations. Every individual or corporate body is entitled to remit abroad or keep in the country foreign currency.

9. Investor Behavior

(a) Indicate any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

The Peruvian State expects fair performance of every private investor, national or foreign, avoiding the implementation of monopolistic practices and restrictive measures of competition in production and commercialization of goods and rendering of services, as well as the fulfillment of labour and environmental regulations.

10. Other measures

(a) Briefly outline the competition policy regime.

The State facilitates and supervises free competition, fights any limiting practice and regulates the exercise of dominant position in the market.

INDECOPI, the national institute for the defense of competition and protection of the intellectual property, is the agency in charge of applying legal provisions on protecting market from monopolistic practices, which may control and restrict competition in the production and commercialization of goods and rendering services, as well as practices that may generate unfair competition and those affecting market agents and consumers.

INDECOPI, as well, controls and punishes application of dumping and subsidies practices; defends consumers right; and, looks after the fulfillment of regulations that punish practices against commercial good faith; defends regulations on free trade; controls provisions establishing non-tariff restrictions. It also revises actions and provisions of Public Administration entities, included within municipal or regional scope, which may impose bureaucratic obstacles impeding or hindering, unlawfully or irrationally, the access or permanence of economic market agents.

(a) List and briefly describe current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment

Legislation in force protects national or foreign intellectual and industrial property rights. Article 2, item 8) of the Political Constitution sets forth that every person has the right to freedom of intellectual, artistic, technical and scientific creation, as well as to the property of those creations and their product. Besides, complementary provisions focused on protection of intellectual property have been given. As to industrial property, Legislative Decree Nº 823 is aimed at regulating and protecting the constitutive elements of intellectual property and invention patents. The protection of copyright is given through Legislative Decree Nº 822 – Law on Copyrights.

Contracts for the use of technology, patents, trademarks or another element of intellectual property of foreign origin, technical assistance, basic and detailed engineering, management and franchising are freely negotiated between the parties and further registered with the National Institute of Defense of Competition and Protection of Intellectual Property – INDECOPI. The remittance of royalties is freely made through the national financial system, prior payment of the corresponding taxes.

Peru has adhered to the Paris Convention for the Protection of Industrial Property and the Inter-American Convention for the Protection of Trademarks and Commerce of Washington.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) Provide a list of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Briefly summarize the application and function of these laws/regulations.

The Political Constitution of Peru, approved in 1993, guarantees property rights for foreigners and nationals. It sets forth that no person can be deprived of their property except by reason of national security or public need, expressly declared by Law, and after payment in cash of a fair-value indemnity including redress for any possible damages. An action can be filed with the Judiciary to contest the value assigned to the property by the State in the expropriation procedure. Complementary actions have been established in General Law of Expropriations approved in May, 1999.

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

No case of expropriation of foreign investment has been produced during the last five years. In August 1993, the Peruvian government concluded a Compensation Agreement for 7 years with the American International Group-AIG, for the expropriation of BELCO assets, occurred before 1990.

2. Settlement of Disputes

(a) Describe all means of dispute settlement and processing of grievances existing under laws, regulations and 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 can access to the local courts for disputes, in the same conditions than national investors. Peruvian government encourages arbitration as a way to facilitate the settlement of disputes through the Law of Arbitration, approved by Law Nº 26572.

The State, its branch offices, Central, Regional and Municipal Governments, and other persons subject to public law, as well as the companies managed by the State, shall be authorized to submit to national or international arbitration all controversies relating to their goods and obligations. Peru is entitled in conformity with national laws or international

treaties in which Peru is a signatory country, provided any such controversies arise from their relationship with a company subject to private law or under a contract.

(b) Has your economy signed or acceded to the ICSID Convention?

Peru is a member to the International Center of Settlement of Investment Disputes Convention – ICSID and UNCITRAL.

Peru has also ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award and the Inter American Convention on International Commercial Arbitration.

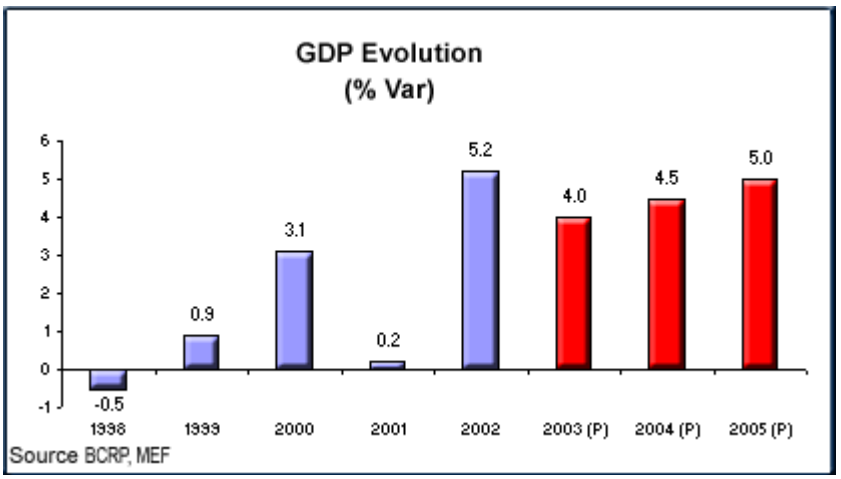
D. INVESTMENT PROMOTION AND INCENTIVES

1. Briefly describe any investment promotion programs offered at both the national and sub-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.

No special investment promotion program based on incentives is provided to foreign investment.

The principal incentive to attract foreign investment flows to Peru is its stable and predictable investment climate based on macroeconomic and legal stability. Implementation of coherent policies in the economic context have been the key to consider Peru as a safe and reliable place where important flows of foreign investments can be channeled.

Peruvian economic activity registers, over the Latin American average, an upward trend although the unfavourable international environment. Peru places as a leader in economic results. By the end of 2002, Peruvian GDP grew 5,2%, inflation places in 1,5%, and investment improved 4,5%.



Favorable results of GDP growth is mainly sustained by the increase of mining production, agriculture and fishing activity, and main primary items, which by generating foreign currencies determines an appropriate economic situation for general reactivation of the country. Activities such as construction and manufacturing, sectors favoring growth of domestic demand, have also start registering important growth rates.

Peru offers investors:

I. Stable macroeconomic situation;
II. Less country-risk compared to other countries in the Latin American region;
III. Investment opportunities;
IV. Various integration alternatives expanding the potential market; and
V. Political decision to promote private investment.

Peruvian commercial links with important international markets have been recently favored by the inclusion of new items, such as apparel, agribusiness and aquaculture, in the Andean Trade Promotion and Drug Eradication Act, enacted by the United States.

Investment opportunities

Peru offers investors sectors with clear comparative advantages such as:

Mining: Peruvian wealth

Mining is an important source of foreign currency (over 40%) and largely explains investments made in the last years. Antamina Mining project is one of the most important projects with investments over US$ 2 billion. It increased by 1,4% national production, 60% production of Ancash department, and copper and zinc exportation over US$ 700 million. On the other hand, gold is the main Peruvian export good with forecasts of US$ 1,5 billion.

Peru ranks the first places in extraction of gold, zinc, tin, silver and copper.

Peruvian Mining Worldwide

Mineral	Ranking
Latin America	
Gold, Zinc, Tin, Lead	1º
Silver and Copper	2º
Iron	5º
Worldwide	
Silver and Copper	2º
Tin	3º
Zinc and Lead	4º
Copper	5º

Source: Ministry of Energy and Mines
Elaboration: Proinversión

Fishery: Sea abundance

Fishery is one of the main production activities of Peru, since it generates around 20% of total exports. Peruvian waters have a diversity of resources that place it as one of the most important fishery countries and as the main worldwide producer of different qualities of fish meal and fish oil. The specie most used for the elaboration of fishmeal is anchovy (80%); sardine, mackerel and horse mackerel share the remaining 20%. This sector has as main export products fishmeal and fish oil, which invoiced US$ 892 million in 2002.

Aquaculture and direct human consumption offer an attractive alternative for diversification of industrial fishery, due to its orientation towards markets with higher prices per ton of product. Nowadays, main aquaculture products are prawn, Peruvian scallops and trout.

Agriculture: Potential exporting country

Peru is a mega-diverse country that has 84 from the total 104 life zones in the world. That, gives Peru the advantage of growing almost any product. Among the main export products, we can mention fresh and canned asparagus, coffee, fresh or dried vegetables (pimientos, artichokes), mangoes, citrus fruits, etc.

Those products, besides grapes and paprika, are goods with more future participation. Also must be included frozen vegetables.

Tourism: Beyond the Incas

Tourism is an important activity for Peru. In 2002, more than one million tourists visited our country. The most attractive places are historical sites such as the famous Machu Picchu, Chavin de Huantar, Kuelap Fortress, etc. Peru is currently working on new tourist destinations that may offer visitors special climate, amazing landscapes, delicious food and popular festivities of each city.

2. *Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.*

Main Fiscal Incentives

(1) Income Tax Rate

A reduced income tax rate of 15% shall be applied over income, provided individuals or corporate bodies develop cultivations and/or breeding, including aquaculture, excepted aviculture, agribusiness and forestry industry

(2) Exemptions on Income Tax

- Capital gains derived from:
  - — The sale of securities registered with the Public Register of the Stock Exchange through negotiation mechanisms to which the Law of Securities Market refers.
  - — Sale of securities at the Commodity Exchange.
  - — Redemption of registered and bearer securities, representative of debts issued through public offering in conformity with the Law of Securities Market, by corporate bodies, Investment Funds or Trustee Patrimony, formed or established in the country.
- Any type of fixed or floating interest rate in national or foreign currency, paid on deposit, under the General Law of Banking, Financing and Insurance Institutions, as well as interest accrued on deposits and investments in national or foreign currency. Any type of fixed or floating interest rate in national or foreign currency, as well as capital gains or capital readjustment derived from securities issued by corporate bodies, incorporated or to be incorporated in the country, provided that those are marketed through public offering, under Law of Securities Market. Likewise, any type of fixed or floating interest, in national or foreign currency, and capital increase, coming from Mortgage Certificates and

Titles of Marketability Mortgage Credit, as well as Endorsable Mortgage Certificates to which the Law of Securities Market refers.

- Interests derived from development of credits granted directly or through financial suppliers or intermediates, by international entities or foreign government institutions.

- Interests and capital readjustment obtained from mortgage bills in accordance with applicable legislation.

- Companies established or set up in the Centres of Export, Transformation, Industry, Commercialization and Services (CETICOS) of Ilo, Matarani, Tacna and Paita until December 31, 2004, which annual operations correspond to not less than 92% to the export of goods produced.

- Interests earned or paid by cooperatives of saving and credit for operations made with their associates.

(3) Agreements to Avoid Double Taxation

Peru has started a process to subscribe "Agreements to Avoid Double Taxation" with the purpose of solving problems derived from international double taxation. Up to date, agreements with Sweden, Chile and Canada have been subscribed.

(4) General Sales Tax (value added tax)

Non-Affected Items:

— Export of goods

— Export of services as established by law.

— Transfer of goods made as consequence of companies reorganization.

— Leasing and any other form of cession for the use of real estate, provided that the income generated is qualified as First or Second Category Income to which sales tax applies.

— Transfer of used goods made by individuals or corporate bodies who do not carry out business activities.

— The amount equivalent to the CIF value in the transfer of goods from abroad carried out before the importation is requested.

— Awarding, at exclusive title, to each contracting party, goods obtained from the execution of contracts of business collaboration that do not keep independent bookkeeping, based on the contractual proportion, provided they submit the SUNAT (Tax Entity) the information required.

— The allotment of funds, goods, services and construction contracts carried out by the contracting parties of associations, consortia, joint ventures or any other form of contract of business collaboration, which do not carry independent accounting,

for the execution of business or common work derived from an obligation expressed in the contract, provided the requirements and conditions established by SUNAT are fulfilled.

— The competence of the operator of contracts of business collaboration, which do not carry independent accounting of the tangible common goods, services and construction contracts, acquired for the execution of business or common work, subject matter of the contract, in the proportion corresponding to each contracting party, in accordance with the established by the Regulations.

(4).1 Anticipated Recovery System

This system consists on the refund of tax paid on imports and/or domestic acquisitions of capital assets carried out by individuals or corporate bodies engaged in production activities of goods and services destined to be exported or which sale is burdened with the GST, provided they have not even started their commercial activities.

The refund will be made by means of Negotiable Notes of Credit against the fiscal credit generated by imports and/or acquisitions of capital assets that had not been depleted during the 6 months following the date in which their capital goods were registered in the acquisition registry.

The minimum amount that shall be accumulated to request the refund shall be the equivalent to 4 UIT, applicable at the moment of the request.

On the other hand, companies that subscribe contracts with the State, under sectoral laws for the development, exploration and/or exploitation of natural resources, and those that conclude concession contracts with the State for the development of infrastructure works and public utilities are entitled to enjoy the Anticipated Recovery System of GST, related to imports and domestic acquisition of goods, services and construction contracts required for the execution of the project matter of the contract. Companies that fulfill the requirements to enjoy this benefit shall be qualified by means of Supreme Resolution.

(4).2 Exemptions

— Operations listed in Appendix I and II of the Unique Text of General Sales Tax Law.

— Industrial companies located on the Peruvian borders.

— Companies incorporated or established in the CETICOS – Ilo, Matarani, Tacna and Paita until December 31, 2004, which annual operations correspond to not less than 92% of the export of goods produced.

(5) Regimes of Customs Improvement

(5).1 Temporary Admission Regime

The Regime implies the suspension of rights and taxation destined to “active improvement” process for further exportation of goods.

"Active improvement" shall be understood as physical and/or chemical transformation of raw material, supplies, ingredients, intermediate goods, and in general any type of good, in order to produce or transform any good; assembly of two or more goods; and operations made with cans, deposits, and packing materials for products to be exported.

REQUIREMENTS

- Good to be entered shall be destined to operations and/or processes of "active improvement", and,
- The company requesting shall be duly set up in the country and registered in the sectoral registers according to its economic activity.
- This regime applies on every type of goods, included raw material, supplies, ingredients, intermediate goods, spare parts and pieces, material for conditioning, handling and packing. This type of goods shall be effectively contained in goods to be exported.

(5).2 Drawback

This is a Customs Regime that enable, as result of export of goods, the total or partial refund of customs duties levied on the importation of goods used in the elaboration of such exported goods or consumed during their production.

Exporting companies importing or that have imported, through third parties, goods added to or consumed during the production of exported good, as well as goods made with imported inputs or raw material acquired to local suppliers, in accordance with legal provisions on that matter, may be granted with this benefit.

(6) Special Zones

Companies incorporated or established in the CETICOS (centers for manufacturing, exportation and services) located in the coastal towns of Ilo, Matarani, Tacna and Paita, until December 31, 2004, which annual exportations correspond to not less than 92% of the total value of goods produced are exempted from income tax, GST, excise tax and customs duties.

(7) Amazon Region

The Promotion Law for Investments in the Amazon Region (Law Nº 27037) grants incentives for some economic activities to be carried out in the Peruvian Amazon.

E. Summary of International Investment Agreements or Codes to which APEC Member is a Party

1. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Bilateral Agreements on Promotion and Protection of Investment

In the bilateral field, Peru has concluded agreements on promotion and reciprocal protection of investments, by which Peru vows to respect and grant national treatment to foreign investors. Since 1994, Peru has concluded 29 bilateral agreements. Besides, Peru has concluded a Financial Agreement on incentives for OPIC investments.

ECONOMY	STATUS	ECONOMY	STATUS
GERMANY	IN FORCE	MALAYSIA	IN FORCE
ARGENTINA	IN FORCE	NORWAY	IN FORCE
AUSTRALIA	IN FORCE	NETHERLANDS	IN FORCE
BOLIVIA	IN FORCE	PARAGUAY	IN FORCE
COLOMBIA	APPROVED	PORTUGAL	IN FORCE
CHILE	IN FORCE	UNITED KINGDOM	IN FORCE
CUBA	IN FORCE	CZECH REPUBLIC	IN FORCE
DENMARK	IN FORCE	KOREA	IN FORCE
ECUADOR	IN FORCE	PEOPLE'S REPUBLIC OF CHINA	IN FORCE
SPAIN	IN FORCE	RUMANIA	IN FORCE
UNITED STATES /1	IN FORCE	SWEDEN	IN FORCE
EL SALVADOR	IN FORCE	SWITZERLAND	IN FORCE
FINLAND	IN FORCE	SINGAPORE	SIGNED
FRANCE	IN FORCE	THAILAND	IN FORCE
ITALY	IN FORCE	VENEZUELA	IN FORCE

Regional or Sub-regional Agreements

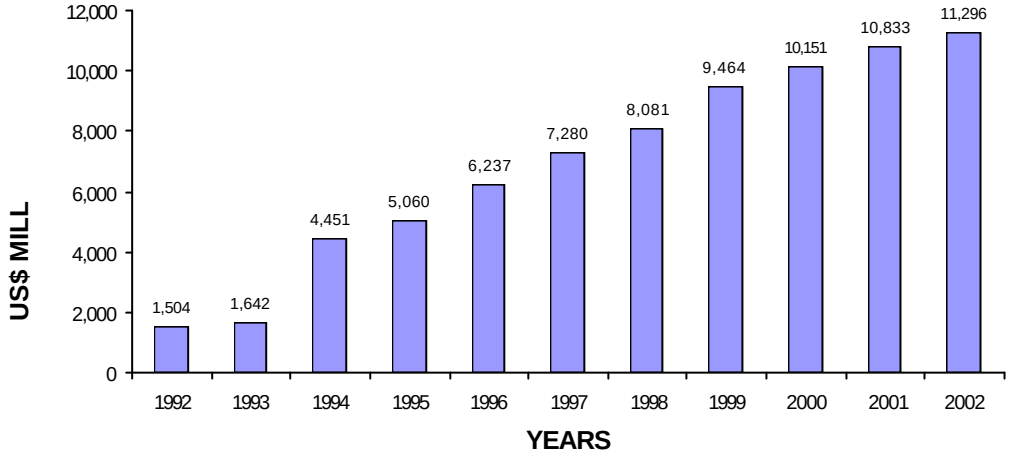
As to regional and sub-regional integration blocs, Peru is a member of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) since 1969. On investment matters, the Andean Community focuses on the encouragement of investment flows in the sub-region through mechanisms of the investment Andean regime mainly based on Decision 291 (in force since 1991) and Decision 292 on Multilateral Andean Companies.

Peru is actively participating in the negotiation group on investment, within the framework of negotiations for the establishment of the **Free Trade Area for the Americas – FTAA**, which will be in force in 2005.

F. Assessment of Recent Trends in Foreign Investment

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

FOREIGN DIRECT INVESTMENT STOCK



Source: PROINVERSIÓN

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

FDI STOCK MAJOR COUNTRIES (US$ MILLION)

ECONOMY	2002
SPAIN	2,401.63
UNITED KINGDOM	2,366.64
USA	1,971.94
NETHERLANDS	1,254.80
PANAMA	645.14
CHILE	596.91
FRANCE	412.45
SWITZERLAND	214.70
COLOMBIA	191.01
CANADA	160.39
URUGUAY	123.80
CHINA	122.16
JAPAN	101.13
GERMANY	99.97
CYPRUS	68.00

ANNEX

I – DIRECTORY OF PRINCIPAL SECTORAL INSTITUTIONS AND ADMINISTRATIVE COMPETENT AGENCIES FOR FOREIGN INVESTORS

PROINVERSIÓN

INVESTMENT PROMOTION AGENCY

Agencia de Promoción de Inversiones

Paseo de la República 3361- Piso 9 Lima 27

Telephone (511) 612-1200

Fax (511) 221-2941

Web Site: www.proinversion.com

MINISTRY OF FOREIGN TRADE AND TOURISM (MINCETUR)

(MINISTERIO DE COMERCIO Y NEGOCIACIONES COMERCIALES INTERNACIONALES)

Calle Uno Oeste Nº 50 Urbanización Corpac, San Isidro

Telephone (511) 224-3347

Fax (511) 224-3144

Web Site: www.mincetur.gob.pe

MINISTRY OF FOREIGN AFFAIRS

(MINISTERIO DE RELACIONES EXTERIORES)

Jirón Ucayali 363

Telephone (511) 427-3860

Fax (511) 426-2365

Web Site: www.rree.gob.pe

MINISTRY OF AGRICULTURE

(MINISTERIO DE AGRICULTURA)

Av. Salaverry S/N

Telephone (511) 433-3034 (511) 433-2271

Fax (511) 432-6784

Web Site: www.minag.gob.pe

MINISTRY OF PRODUCTION

(MINISTERIO DE PRODUCCIÓN)

Calle Uno Oeste S/N Urb Corpac- San Isidro

Telephone (511) 224-3336

Fax (511) 224-3237

Web Site: www.minproduce.gob.pe

MINISTRY OF ENERGY AND MINES
(MINISTERIO DE ENERGÍA Y MINAS)
Av. Las Artes 260, San Borja
Telephone (511) 475-0065
Fax (511) 475-0689 (511) 475-2669
Web Site: www.mem.gob.pe

MINISTRY OF LABOR AND SOCIAL PROMOTION
(MINISTERIO DE TRABAJO Y PROMOCIÓN SOCIAL)
Av. Salaverry. Cuadra 6 S/N Jesús María
Telephone (511) 433-2512
Fax (511) 433-8126

SUPERINTENDENCE OF BANKING AND INSURANCE
(SUPERINTENDENCIA DE BANCA Y SEGUROS)
Los Laureles 214- San Isidro
Telephone (511) 221-8990
Fax (511) 441-7760

NATIONAL SUPERINTENDENCE OF TAX ADMINISTRATION
(SUPERINTENDENCIA NACIONAL DE ADMINISTRACIÓN TRIBUTARIA)
Av. Garcilazo de la Vega 1472- Lima
Telephone (511) 433-4010
Fax (511) 432-2530

NATIONAL SUPERINTENDENCE OF CUSTOMS ADMINISTRATION
(SUPERINTENDENCIA NACIONAL DE ADMINISTRACIÓN DE ADUANAS)
Calle Gamarra 680 Chucuito- Callao
Telephone (511) 465-5885
Fax (511) 465-3221

NATIONAL SUPERINTENDENCE OF PUBLIC REGISTRY
(SUPERINTENDENCIA NACIONAL DE REGISTROS PÚBLICOS)
Mayor Armando Blondet 260 San Isidro
Telephone (511) 221-0125 (511) 221-1401
Telefax (511) 221-1391

II- List of principal institutions related to complaints raised by foreign investors
PUBLIC MINISTRY AND NATION'S PUBLIC PROSECUTOR
(MINISTERIO PÚBLICO Y FISCALÍA DE LA NACIÓN)
Av. Abancay. Cuadra 5- Lima 1
Telephone (511) 426-4620
Fax (511) 426-4429

TAX AND CUSTOMS TRIBUNALS

(TRIBUNAL FISCAL Y TRIBUNAL DE ADUANAS)

Diez Canseco Nº 250-270 Miraflores

Telephone (511) 446-9696 (511) 446-1219

Fax (511) 447-5406

INDECOPI

National Agency for the Defense of Competition and Intellectual Property

(Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual)

Prolongación Av. Guardia Civil esquina con Av. Canadá, San Borja

Telephone (511) 224-7800

Fax (511) 224-0358

PHILIPPINES

REPUBLIC OF THE PHILIPPINES

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

2. Explain any 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 government has made it an official policy to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments. The objective of this policy is to channel this investment into activities contributing significantly to the process of industrialization and socioeconomic development within the Philippines, while at the same time remaining within the limits set by the Constitution and laws of the country. Foreign investment is encouraged in enterprises that significantly expand employment opportunities for Filipinos; enhance the economic value-added of agricultural products; promote the welfare of Filipino consumers; expand the scope, quality and volume of exports and their access to foreign markets; aid the transfer of relevant technologies in the agricultural and industrial sectors, together with the supporting services sector. Foreign investment is encouraged not only in the development of the export-oriented sector but is also 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 the extent of foreign ownership of export-oriented enterprises. For domestic market enterprises, foreigners can invest as much as 100% of total equity except in those areas specified in the negative list provided the paid-up capital is at least $200,000.00 or US$100,000.00 if it involves advance technology or hiring of 50 direct employees.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a 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) as amended by RA 8756	Provides the rules by which foreign and local investments in the Philippines may qualify for certain incentives.
2. The Foreign Investments Act of 1991 (Republic Act No. 7042) as amended by R.A. 8179	Governs the entry of foreign investments and doing of business by foreigners without incentives. The Act was amended to ease restrictions on foreign investment by decreasing the minimum paid-up equity for new enterprises from Five Hundred Thousand Dollars (US$500,000) to Two Hundred Thousand Dollars (US$200,000) or One Hundred Thousand Dollars (US$100,000) provided they involve advanced technology or hire fifty direct employees, and shortening the Negative List.
3. Bases Conversion and Development Act of 1992 (Republic Act No. 7227)	Provides for incentives to enterprises located within the Subic Bay Freeport Zone, the Clark Special Economic Zone, and their extensions.
4. The Special Economic Zone Act of 1995 (Republic Act No. 7916)	Provides for incentives to enterprises located within the Special Economic Zones as defined in RA 7916.
5. Export Development Act of 1994 (Republic Act No. 7844)	Provides for incentives to enterprises in the export business.
6. Investors' Lease Act (Republic Act No. 7652)	Allows qualified foreign investors to lease private lands for an initial period of up to 50 years, renewable for up to 25 additional years.
7. An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines (Republic Act 7721, 1994)	Eased the restrictions on the entry and operations of foreign banks in the Philippines.
8. Amendment of the Build-Operate-Transfer Law (R.A. 7718, 1994)	Allows for variations of Build-Operate-Transfer schemes, eases the restrictions on government financing including the setting of tolls and charges, and increases the opportunity for wholly foreign-owned corporations to undertake such projects.
9. An Act to Amend Article 7(13) of Executive Order 226, otherwise known as the Omnibus Investments Code of 1987 (Republic Act No. 7888, 1995)	Allows the President of the Philippines to suspend the nationality requirements under the Omnibus Investments Code in cases of investments by ASEAN nationals, regional ASEAN or multilateral financial institutions in preferred projects.

Citation	Summary
10. Anti-Money Laundering Act of 2001 (Republic Act No. 9160) as amended by RA 9194 (2003)	Creates a three-member Anti-Money Laundering Council that is empowered to look into suspicious bank accounts and initiate forfeiture of such deposits. It aims to ensure that the Philippines shall not be used as a money-laundering site for the proceeds of any unlawful activity.

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal, identify guidelines/conditions that apply for screening (e.g. mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

Proposals		Guidelines/Conditions
Merger	(Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements.
Acquisition	(Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements.
Greenfield investment	(Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements
Real estate/land	(Yes)	Foreign ownership of up to 40% only
Joint venture	(Yes)	Compliance with the Corporation Code and the Foreign Investments Act requirements
Other - management contracts	(Yes)	Compliance with the Corporation Code requirements
Telecommunications	(Yes)	Foreign Equity of up to 40% only
Media	(Yes)	No Foreign Equity
Transport	(Yes)	Foreign Equity of up to 40% only
Agriculture	(Yes)	Foreign Equity for land ownership is up to 40% only, whether public or private land.
Other - mining	(Yes)	Subject to the provisions of the Revised Mining Act of 1995, the Constitution and the Foreign Investment Act.
- infrastructure	(Yes)	Subject to the provisions of P.D. 1594 and BOT Law, the Constitution and the Foreign Investment Act.

(c) Indicate all application/approval forms required for screening purposes. Briefly summarize additional documentation that is required for review or approval processes.

- S.E.C. Form No. F-100 (for new corporations with more than 40% Foreign Equity/ provided that the areas of economic activities are not in the Foreign Investments Negative List).
- S.E.C. Form No. F-103 (for licensing a branch office of a foreign corporation).
- BOI registration form.
- PEZA registration form.

Copies of the relevant documentation can be obtained from the contacts listed in Section B1(2)(d) below.

(d) Identify contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts.

Agency	Address/telephone/fax
1. Board of Investments (BOI) *Contact Person* – Ms. Florina A. Vistal Executive Director Investment Promotion Group	Industry and Investment Bldg. 385 Sen. Gil J. Puyat Avenue, Makati City Telephone: (63 2) 896-9212 Fax: (63 2) 897-2181 Email: FAVistal@boi.gov.ph
2. One-Stop-Action Center (OSAC) *Contact Person* – Mr. Dennis R. Miralles Director	Board of Investments Industry and Investment Bldg., 385 Sen. Gil J. Puyat Avenue, Makati City Telephone: (63 2) 899-3586 / 896-7342 Fax: (63 2) 895-8322 Email: DRMiralles@boi.gov.ph
3. Securities and Exchange Commission (SEC) *Contact Persons* - Atty. Benito A. Cataran Director Company Registration and Monitoring Department Atty. Ferdinand B. Sales Corporate and Partnership Registration Division	SEC Building E. de los Santos Ave. Mandaluyong City Telephone: (63 2) 727 2011 Fax: (63 2) 724 1319 E-mail: benito.cataran@sec.gov.ph
4. Philippine Economic Zone Authority (PEZA) *Contact Person* - Atty. Lilia B. De Lima Director-General	Almeda Building Roxas Boulevard cor. San Luis St. Pasay City Telephone: (63 2) 551-3436 / 551 3438 Fax: (63 2) 551-3435

Agency	Address/telephone/fax
5. Bases Conversion Development Authority *Contact Person –* Mr. Rufo B. Colayco President and CEO	BCDA Corporate Center Gozar cor. Lucas Street, Villamor Air Base, Pasay City Telephone: (63 2) 510-0408 Fax: (63 2) 510-0414 E-mail: rcolayco@bcda.gov.ph
6. Bureau of Internal Revenue (BIR) *Contact Person –* Mr. Antonio I. Ortega Director Revenue Region VIII, Makati City	Atrium Building Makati City Telephone: (63 2) 811-4393 / 811-4390 Fax: (63 2) 811-4055 E-mail: tony.ortega@bir.gov.ph
7. Bangko Sentral ng Pilipinas (BSP) *Contact Person –* Ms. Celia M. Gonzalez Director International Operations Department	Corner A. Mabini & P. Ocampo Sr. Streets, Malate, Manila 1004 Telephone: (63 2) 536-6077 Fax: (63 2) 536-0053 E-mail: cgonzalez@bsp.gov.ph
8. Social Security System (SSS) *Contact Person –* Ms. Corazon S. de la Paz President and CEO	SSS Bldg., East Avenue, Diliman Quezon City Telephone: (63 2) 921-2022/922-2995 Fax: (63 2) 924-8470 E-mail: cdelapaz@globenet.com.ph
9. Subic Bay Metropolitan Authority (SBMA) *Contact Person -* Mr. Felicito Payumo Chairman and Administrator	Building 229 Waterfront Road, Subic Bay Freeport Zone, Olongapo City Telephone: (63 47) 252-4381/4383 Fax: (63 47) 252-3014 E-mail: fcpayumo@sbma.com
10. Clark Development Corporation (CDC) *Contact Person –* Mr. Emmanuel Y. Angeles President and CEO	Bldg. 2122, C.P. Garcia Street, corner Quirino Street Clark Field, Pampanga Telephone: (63 45) 599-9000, 599-2043 Fax: (63 45) 599-2506 to 07 E-mail: eya@clark.com.ph

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on-line.

Agency	Website Address	Available Information	Capacity for On-line Applications
Board of Investments (BOI)	http://www.boi.gov.ph	- Basic Facts about the Philippines - Cost of Doing Business - Incentives - Investment Opportunities - Statistics - Industry Features - New Investments	None
Philippine Economic Zone Authority (PEZA)	http://www.peza.gov.ph	- Performance Indicators - Registration Procedures - PEZA Firms - Economic Zones - Circulars/Board Resolutions/Issuances	None
Subic Bay Development Authority (SBMA)	http://www.sbma.com	- Business/Investment Opportunities - Tourism/Recreation - Demography - Site Map	None
Bases Conversion Development Authority (BCDA)	http://www.bcda.gov.ph	- Subsidiaries and Affiliates	None
Clark Development Corporation (CDC)	http://www.clark.com.ph	- Business Advantages - Investment Opportunities - Investment Support Services - Locators - Frequently-Asked Questions	None
Securities and	http://www.sec.gov.ph	- Securities Regulation	Name verification

Agency	Website Address	Available Information	Capacity for On-line Applications
Exchange Commission (SEC)		Code and its Implementing Rules and Regulations - Memorandum Circulars/Orders/ Advisory/Notice to the Public - Guide to SEC Registration	and reservation
Bureau of Internal Revenue (BIR)	http://www.bir.gov.ph	- Issuances and Rulings - Tax Information - BIR Updates - Legal Matters - Tax Code - Tax Calendar	- Filling and payment of tax return - Confirmation of receipt of tax payment - Verification of Tax Identification Number
Bangko Sentral ng Pilipinas (BSP)	http://www.bsp.gov.ph	- Statistics - Regulations - News	None
Social Security System (SSS)	http://www.sss.gov.ph	- Services - Laws - How to Register	None

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

Regular Processing and Express Lane

Under the 1987 Omnibus Investments Code, the BOI will render its decision within 20 working days after official acceptance of the application for registration. Application shall be acted upon within 10 days after official acceptance of the application.

Under the Foreign Investments Act, the Securities and Exchange Commission (SEC) in cases of corporations/partnership shall act within two (2) working days. The DTI-NCR in cases of sole proprietorship, shall act on the same within one (1) working day.

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/representative offices in the Philippines. The processing period from official acceptance of various types of applications are provided hereunder:

- Partnership/corporation under the Express Lane - one (1) day
- Those with more than 40% foreign equity - two (2) days

In case of PEZA, the processing and evaluation of application by the appropriate department usually takes a week and the decision on the project is made during the bi-monthly meetings of the PEZA board.

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

Agency	Consultation Process	Action Time	Address/Telephone/Fax
Securities and Exchange Commission (SEC) - office dealing with applications for incorporation that require amendments and inquiries pertaining to denied applications for incorporation.	Consultation/ conference with the examiner or processing lawyer at the Securities and Exchange Commission, Company Registration and Monitoring Department.	Upon advice on the applicant.	SEC Building, EDSA near Ortigas, Mandaluyong City Tel: (63 2) 726-9245 Fax: (63 2) 724-1319

(h) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

All the required documents must be complete when submitted.

(i) Indicate 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
Securities and Exchange Commission (SEC) Corporate and Legal Department	SEC Bldg., EDSA, near Ortigas, Mandaluyong City Tel: (63 2) 726-0931 Fax: (63 2) 724 1319	Violation of Corporate Code of the Philippines, and RA 7042 (Foreign Investments Act)
Bureau of Trade Regulation and Consumer Protection (BTRCP)	361 Sen. Gil Puyat Ave., Makati City Tel: (63 2)890 4872	Violation of consumer protection of sole proprietorship

	Fax: (63 2) 890-9363	
Office of the Resident Ombudsman	Board of Investments Industry and Investments Building 385 Sen. Gil Puyat Avenue, Makati City Contact Person: Atty. David Corpuz Tel. No.: (63 2) 899-3587 Fax: (63 2) 528-1463	Violation of the Anti-graft and Corrupt Practices Act

(j) 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.

Agency	Contact Person/ Address/ Telephone/Fax	Functions
1. Board of Investments (BOI)	Lucita P. Reyes Executive Director Industry & Investments Bldg. 385 Gil J. Puyat Ave., Makati City Tel: (63 2) 896-7895 Fax: (63 2) 895-3978 Email: LPReyes@boi.gov.ph	Implementation of the Omnibus Investments Code (E.O. 226)
2. Department of Trade and Industry-National Capital Region	Mr. Ferdinand Manfoste Director 12/F Trafalgar Plaza, H. V. dela Costa St., Salcedo Village, Makati City Tel: (63 2) 811-8231 Fax: (63 2) 890-4854 E-mail: itbdc@netasia.net	Licensing
3. Securities and Exchange Commission (SEC)	Atty. Benito Cataran Director SEC Bldg., EDSA, Mandaluyong City Tel: (63 2) 727-2011 Fax: (63 2) 724-1319 E-mail: benito.cataran@sec.gov.ph	Implementation of the Foreign Investments Act of 1991 (R.A. 7042)
4. Philippine Economic Zone Authority (PEZA)	Atty. Lilia B. De Lima Director General Roxas Boulevard cor. San Luis St., Pasay City Tel (63 2) 551-3436 to 38 Fax: (63 2) 551-3435	Implementation of the Special Economic Zone Act (R.A. 7916)

Agency	Contact Person/ Address/ Telephone/Fax	Functions
5. Subic Bay Metropolitan Authority (SBMA)	Atty. Arlene Pangan Head, Legal Department Building 229, Waterfront Road, Subic Bay Freeport Zone, Olongapo City Tel: (63 47) 252-4093 Fax: (63 47) 252-4780 Email: apangan@subic.com	Implementation of the Bases Conversion and Development Act of 1992 (R.A. 7227)
6. Export Development Council (EDC)	Emalita Z. Mijares Executive Director 6/F, New Solid Building 357 Sen. Gil J. Puyat Ave. Makati City Tel: (63 2) 897-4708 Fax: (63 2) 890-4704/890-4645 Email: edc@dti.gov.ph	Implementation of the Export Development Act (R.A. 7844)
7. Clark Development Corporation (CDC)	Mr. Emmanuel Y. Angeles President and CEO Bldg. 2122, C.P. Garcia St., corner Quirino St., Clarkfield, Pampanga Tel: (63 45) 599-9000 Fax: (63 45) 599-2506, 599-2507 E-mail: eya@clark.com.ph	Implementation of the Bases Conversion and Development Act of 1992 (R.A. 7227)
8. Office of the Resident Ombudsman	Atty. David Corpuz Board of Investments Industry and Investments Building 385 Senator Gil Puyat Avenue, Makati City Tel: (63 2) 899-3587	Receive and promptly act on report or complaints, written or otherwise, involving illegal, unjust, irregular, improper and inefficient acts of officials and employees of government agencies performing investment-related functions.

(k) Describe any 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 Philippines maintains transparency in all its actions as part of the democratic process. Public hearings or consultations are usually conducted in the formulation of policies and in the enactment of laws (e.g., investment liberalization laws). The private sector and civil society have representation in certain government councils/committees. As a general rule,

laws and rules and regulations cannot take effect until after 15 days following complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines unless otherwise provided.

(l) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax numbers) and their roles in the approval process (e.g., zoning, approvals of land purchase).

Agency	Address/telephone/fax	Functions
Housing and Land Use Regulatory Board (HLURB)	NHA Compound, Elliptical Road, Diliman, Quezon City *Contact Person:* Ms. Petronila de Castro Tel: (63 2) 924-3389 Fax: (63 2) 927-9041	Issues certificate of registration and license to sell for condominium and subdivision developers.
Department of Agrarian Reform (DAR)	Elliptical Road, Diliman Quezon City *Contact Person:* Mr. Jeffrey Galan Director Center for Land Use Policy and Planning Implementation Telefax: (63 2) 926-1652	Issues certificate for land-use conversions on individual landholdings.
Department of Environment and Natural Resources (DENR)	Visayas Avenue, Diliman Quezon City Contact Person: Mr. Julian D. Amador Director Environmental Management Bureau Telefax: (63 2) 927-1517/18 E-mail: emb@emb.gov.ph	Issues certificate on environmental clearance certificate.

2. MOST FAVORED NATION TREATMENT/NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

(a) List and describe 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).

The Philippines does not discriminate against any investment source economy.

(b) Identify and describe any international agreements to which your economy is a party which provides any exceptions to MFN treatment.

None

3. NATIONAL TREATMENT

(a) Identify 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). In your response briefly list laws, regulations and policies which provide for those exceptions.

The Foreign Investments Act of 1991 (RA 7042 as amended by RA 8179, 1996) provides the rules and regulations for foreign investments without incentives. The law clarified to foreign investors that the domestic market is open to them as long as the activity is not restricted in the foreign investment negative list. For an export enterprise, which exports 60% or more of its output, there are no restrictions on the extent of foreign ownership unless the activity falls within the negative list.

The components of the current negative list, the Fifth Regular Foreign Investment Negative List (Executive Order No. 139 dated 22 October 2002), are shown below:

LIST A: FOREIGN OWNERSHIP IS LIMITED BY MANDATE OF THE CONSTITUTION AND SPECIFIC LAWS

No Foreign Equity

1. Mass media except recording (Article XVI, Section 11 of the Constitution; Presidential Memorandum dated 04 May 1994)

2. Services involving the practice of licensed professions save in cases prescribed by law

   a. Engineering

      i. Aeronautical

      ii. Agricultural

      iii. Chemical

      iv. Civil

      v. Electrical

      vi. Electronics and Communication

      vii. Geodetic

      viii. Mechanical

ix. Metallurgical

x. Mining

xi. Naval Architecture and Marine

xii. Sanitary

b. Medicine and Allied Professions

i. Medicine

ii. Medical Technology

iii. Dentistry

iv. Midwifery

v. Nursing

vi. Nutrition and Dietetics

vii. Optometry

viii Pharmacy

ix Physical and Occupational Therapy

x Radiologic and X-ray Technology

xi Veterinary Medicine

c. Accountancy

d. Architecture

e. Criminology

f. Chemistry

g. Customs Brokerage

h. Environmental Planning

i. Forestry

j. Geology

k. Interior Design

l. Landscape Architecture

m. Law

n. Librarianship

o. Marine Deck Officers

p. Marine Engine Officers

q. Master Plumbing

r. Sugar Technology

s. Social Work

t. Teaching

u. Agriculture

v. Fisheries

(Article XII, Section 14 of the Constitution, Section 1 of RA No. 5181)

3. Retail Trade enterprises with paid-up capital of less than US$2,500,000 (Section 5 of RA 8762)[1]

4. Cooperatives (Chapter III, Article 26 of RA No. 6938)

5. Private Security Agencies (Section 4 of RA No. 5487)

6. Small-scale Mining (Section 3 of RA No. 7076)

7. Utilization of Marine Resources in archipelagic waters, territorial sea, and exclusive economic zone (Article XII, Section 2 of the Constitution)

8. Ownership, operation and management of cockpits (Section 5 of Presidential Decree No. 449)

9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Article II, Section 8 of the Constitution)[2]

10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personal mines (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines)[2]

11. Manufacture of firecrackers and other pyrotechnic devices (Section 5 of RA No. 7183)

Up to 20 Percent Foreign Equity

12. Private radio communication network (RA 3846)

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[1] Full foreign participation is allowed for retail trade enterprises: (a) with paid-up capital of US$2,500,000 or more provided that investments for establishing a store is not less than US$830,000; or (b) specializing in high end or luxury products, provided that the paid-up capital per store is not less than US$250,000 (Sec. 5 of RA 8762)

[2] Domestic investments are also prohibited (Article II Section 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory)

Up to 25 Percent Foreign Equity

13. Private recruitment, whether for local or overseas employment (Article 27 of Presidential Decree No. 442)

14. Contracts for construction and repair of locally-funded public works (Section 1 of Commonwealth Act No. 541, Letter of Instruction No. 630) except:

    a. infrastructure/development projects covered in RA No. 7718; and

    b. projects which are foreign funded or assisted and required to undergo international competitive bidding (Section 2a of RA No. 7718)

15. Contracts for construction of defense-related structure (Section 1 of Commonwealth Act No. 541)

Up to 30 Percent Foreign Equity

16. Advertising (Article XVI, Section 11 of the Constitution)

Up to 40 Percent Foreign Equity

17. Exploration, development and utilization of natural resources (Article XII, Section 2 of the Constitution) [3]

18. Ownership of private lands (Article XII, Section 7 of the Constitution; Chapter 5, Section 22 of Commonwealth Act No. 141)

19. Operation and management of public utilities (Article XII, Section 11 of the Constitution; Section 16 of Commonwealth Act No. 146)

20. Ownership/establishment and administration of educational institutions (Article XIV, Section 2 of the Constitution)

21. Culture, production, milling, processing, trading except retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof (Section 5 of Presidential Decree No. 194; Section 15 of RA 5762)[4]

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[3] Full foreign participation is allowed through financial or technical agreement with the President (Article XII, Section 2 of the Constitution)

[4] Full foreign participation is allowed provided that within the 30-year period from start of operation, the foreign investor shall divest a minimum 60 percent of their equity to Filipino citizens (Section 5 of Presidential Decree No. 194; National Food Authority Resolution No. 193 series of 1998)

22. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation (Section 1 of RA No. 5183)

23. Project proponent and facility operator of a BOT project requiring a public utilities franchise (Article XII, Section 11 of the Constitution; Section 2a of RA No. 7718)

24. Operation of deep sea commercial fishing vessels (Section 27 of RA No. 8550)

25. Adjustment Companies (Section 323 of Presidential Decree No. 612 as amended by Presidential Decree No. 1814)

26. Ownership of condominiums units where the common areas in the condominium projects are co-owned by the owners of the separate units or owned by a corporation (Section 5 of RA No. 4726)

Up to 60 Percent Foreign Equity

27. Financing companies regulated by the Securities and Exchange Commission (SEC) (Section 6 of RA No. 5980 as amended by RA No. 8556)[5]

28. Investment houses regulated by the SEC (Presidential Decree No. 129 as amended by RA No. 8366)[5]

LIST B: FOREIGN OWNERSHIP IS LIMITED FOR REASONS OF SECURITY, DEFENSE, RISK TO HEALTH AND MORALS AND PROTECTION OF SMALL AND MEDIUM-SCALE ENTERPRISES

Up to 40 Percent Foreign Equity

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance.

   a. Firearms (handguns to shotguns), parts of firearms and ammunition therefor, instruments or implements used or intended to be used in the manufacture of firearms

   b. Gunpowder

   c. Dynamite

   d. Blasting supplies

   e. Ingredients used in making explosives:

[5] No foreign national may be allowed to own stock in financing companies or investment houses unless the country of which he is a national accords the same reciprocal rights to Filipinos (Section 6 of RA No. 5980 as amended by RA No. 8556; Presidential Decree No. 129 as amended by RA No. 8366).

i. Cholorates of potassium and sodium

ii. Nitrates of ammonium, potassium, sodium barrium, copper (11), lead (11), calcium and cuprite

iii. Nitric acid

iv. Nitrocellulose

v. Perchlorates of ammonium, potassium and sodium

vi. Dinitrocellulose

vii. Glycerol

viii. Amorphous phosphorus

ix. Hydrogen peroxide

x. Strontium nitrate powder

xi. Toluene

f. Telescopic sights, sniper scope and other similar devices

However, the manufacture or repair of these items may be authorized by the Chief of the Philippine National Police to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA No. 7042 as amended by RA No. 8179)

2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance:

a. Guns and ammunition for warfare

b. Military ordinance and parts thereof (e.g., torpedoes, mines, depth charges, bombs, grenades, missiles)

c. Gunnery, bombing and fire control systems and components

d. Guided missiles/missile systems and components

e. Tactical aircraft (fixed and rotary-winged), parts and components thereof

f. Space vehicles and component systems

g. Combat vessels (air, land and naval) and auxiliaries

h. Weapons repair and maintenance equipment

i. Military communications equipment

j. Night vision equipment

k. Stimulated coherent radiation devices, components and accessories

l. Armament training devices

m. Others as may be determined by the Secretary of the Department of National Defense

However, the manufacture or repair of these items may be authorized by the Secretary of the Department of National Defense to non-Philippine nationals; Provided that a substantial percentage of output, as determined by the said agency, is exported. Provided further that the extent of foreign equity ownership allowed shall be specified in the said authority/clearance (RA No. 7042 as amended by RA No. 8179)

3. Manufacture and distribution of dangerous drugs (RA No. 7042 as amended by RA No. 8179)

4. Sauna and steam bath houses, massage clinics and other like activities regulated by law because of risks posed to public health and morals (RA No. 7042 as amended by RA No. 8179)

5. Other forms of gambling, e.g., race track operation, (RA No. 7042 as amended by RA No. 8179)

6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000 (RA No. 7042 as amended by RA No. 8179)

7. Domestic market enterprises which involve advanced technology or employ at least 50 direct employees with paid-in equity capital of less than the equivalent of US$100,000 (RA No. 7042 as amended by RA No. 8179)

(b) *Briefly describe the nature and scope of any limitations on foreign firms' access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.*

a. Foreign Firm's Access to Peso

Foreign-owned firms, like domestic companies, have access to peso funds from the Philippine financial system, without any ceilings imposed by the government.

b. Access to Foreign Loans

Rules and regulations relative to foreign borrowings which apply to domestically-owned firms shall also apply to foreign-owned (but locally incorporated) companies.

Generally, all foreign borrowings, irrespective of maturity and creditor, require prior approval of and registration with the BSP to be eligible for servicing with foreign exchange to be purchased from the banking system.[6]

Only BSP-registered loans shall be eligible for servicing with foreign exchange to be purchased from the banking system.

Loans Requiring Prior Bangko Sentral Approval

Prior Bangko Sentral approval shall be required for the following loans:

1. Loans of the following public sector entities irrespective of maturity, creditor and source of foreign exchange for servicing thereof except short-term FCDU loans covered by Section 24.4 (Loans Not Requiring Prior Bangko Sentral Approval).

   (a) National Government, its agencies and instrumentalities;

   (b) Government-owned/controlled corporations;

   (c) Government financial institutions, except short-term normal interbank borrowings; and

   (d) Local governments.

2. Loans of the private sector irrespective of maturity, creditor and the source of foreign exchange for servicing thereof if:

   (a) guaranteed by government corporations and/or government financial institutions;

   (b) covered by foreign exchange guarantees issued by local commercial banks; and

   (c) to be granted by FCDUs and specifically or directly funded from or collateralized by offshore loans or deposits.

3. Loans with maturities in excess of one year to be obtained by private commercial banks and financial institutions intended for relending to public or private sector enterprises.

4. Other private sector loans, irrespective of maturity if to be serviced using foreign exchange purchased from the banking system.[6]

Loans Not Requiring Prior Bangko Sentral Approval

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[6] Except those loans specifically exempted from the prior Bangko Sentral ng Pilipinas (BSP) approval requirement under Sec. 24 of BSP Circular No. 1389 as amended. These loans need only to be registered with the BSP to be eligible for servicing with FX to be purchased from the banking system.

The following loans may be granted without prior approval of the Bangko Sentral:

1. a. Loans of resident private sector borrowers from FCDUs/offshore sources, irrespective of maturity, to be serviced using foreign exchange purchased from outside of the banking system;

   b. Loans of non-residents from FCDUs, irrespective of maturity, provided that:

   - the loan shall be serviced using foreign exchange purchased from outside the banking system; and

   - all applicable banking rules and regulations are complied with including Single Borrower's Limit which shall be defined to include lendings and guarantees issued to companies, their subsidiaries, affiliates and major stockholders all over the world.

2. Short-term (with maturity not exceeding one year) loans of financial institutions, both public and private, for normal interbank transactions, e.g., interbank call loans and general liquidity loans.

3. Short-term loans of the private sector in the form of export advances from buyers abroad.

4. Short-term loans of the following private and public sector borrowers from FCDUs:

   a. Commodity 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 exports shall refer to Philippine residents engaged or proposing to engage in rendering technical, professional or other services which are paid for in foreign exchange.

      Indirect exports may likewise borrow to find export-related costs, which may include both foreign exchange as well as peso costs. Indirect exporters shall refer to cottage/small and medium industries (producers/manufacturers) that have supply arrangements with direct exporters who are holders of an export letter of credit or a confirmed purchase orders/sales contract from a foreign buyer.

   b. 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. Producers/manufacturers shall refer to any person or entity who undertakes the processing/conversion of raw materials into marketable form through physical, mechanical, chemical, or other means or by special treatment or a series of actions that results in a change in the nature or state of the products.

Public utility firms shall refer to any business organization which regularly supplies the public with commodities or services such as electricity, gas, water, transportation, telegraph/telephone services and the like.

5. Short-term loans of private exporters/importers from Offshore Banking Units (OBUs) and foreign banks with branches in the Philippines, provided that:

   a. The loans are not covered by a guarantee from a government financial institution/corporation;

   b. The loans shall be exclusively used to finance specific trade transactions, i.e., to liquidate/pay for import obligations and/or in the case of export financing transactions, to fund the borrower's pre-export financing requirements and shall not be refinanced by a medium-/long-term foreign currency loan;

   c. Proceeds of loans intended to pay for foreign exchange requirements shall be paid directly to the supplier/creditor, while amounts intended to fund pre-export peso costs shall be inwardly remitted and sold to the banking system;

   d. Drawdown and registration requirements shall be complied with;

   e. Any assignment of the loan by the creditor concerned shall be reported to BSP within five days from date of assignment;

   f. Creditor banks shall submit the following reports to BSP:

      - their short-term lending program for private sector borrowers for the next six months indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries; and

      - monthly report on loans granted to eligible borrowers.

   g. The borrowers shall submit monthly reports on transactions and status of their short-term loans within three banking days after end of reference month.

6. Short-term loans of private exports/importers from other offshore sources/creditors provided that all provisions of Sec. 5 are complied with, except item (F), and that the loans shall be granted against BSP approved short-term relending programs of foreign creditors. Creditors shall submit to the Bangko Sentral their short-term relending program for Philippine borrowers indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries. These relending programs shall be valid for one year, but shall be subject to semi-annual review if commitments and/or utilization for the semester shall be below 50% of total relending limit.

7. Private sector loans not guaranteed by foreign governments/official export credit agencies covering importations of freely importable commodities under deferred Letters of Credit (L/Cs) or open account/documents against acceptance (OA/DA) arrangements with a term of more than one year.

8. Private sector loans granted by foreign companies to their local branches/subsidiaries, irrespective of amount and maturity, provided these are used to finance eligible projects/costs. Also included are loans from other foreign branches and wholly-owned subsidiaries of parent company as well as other subsidiaries of parent company provided that in the case of other subsidiaries, the loan/s shall be fully guaranteed by the parent company.

(c) Controls on the sale or issue abroad by residents of IPOs/Bonds

In case of sale or issuance of IPOs by residents abroad, the registration with the BSP or designated custodian bank may be made at the option of the investor. In addition, proceeds of international allocation of initial public offerings (IPOs) and shares of domestic companies listed in the foreign stock exchange must also be reported to the BSP within five days from receipt and remitted to the country. The servicing or transfer of funds pertaining to registered investments using foreign exchange from the banking system in this category is allowed without BSP approval.

All public and private sector publicly guaranteed obligations from foreign creditors, Offshore Banking Units and Foreign Currency Deposit Units shall be referred to the BSP for prior approval. Other private sector loans from these creditors and other financing schemes/arrangements shall require prior approval and/or registration by the BSP if to be serviced using foreign exchange purchased from the banking system.

4. REPATRIATION AND CONVERTIBILITY

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

As a general policy, foreign investments need not be registered with the BSP. The registration of a foreign investment with the BSP is only required if the forex needed to service the repatriation of capital, remittance of dividends, profits and earnings shall be sourced from the banking system. Foreign exchange needed to service unregistered foreign investments may be sourced outside the banking system. Given this general policy, BSP-registered foreign investments enjoy full and immediate repatriation of capital and remittance of profits, dividends, and other earnings which accrue thereon. The same regulations apply to investments in money market instruments. Unregistered investments may be serviced using foreign exchange sourced outside the banking system.

Similarly, only loans which have been registered with the BSP shall be available for servicing using foreign exchange purchased from the banking system. Unregistered loans can be serviced using the debtor's own supply of foreign exchange or forex sourced outside the banking system.[7]

(b) Briefly describe the foreign exchange regime.

The country adopts a floating rate system where the determination of the peso to dollar exchange rate is left to market forces. The BSP occasionally intervenes in the foreign exchange market by selling or buying dollars with the intention of smoothing out sharp fluctuations in the exchange rate, providing indicative guidance and ensuring stability in the foreign exchange market.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

In addition to the regulations discussed in items 3 and 4, and 8, a ceiling is also imposed on the amount of forex that banks can sell over the counter, without need for documents, to US$5,000 (BSP Circular No. 287 dated 26 July 2001).

5. ENTRY AND SOJOURN OF PERSONNEL

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

Foreign nationals who wish to come to the Philippines can enter as a tourist without visa under Executive Order No. 408, or secure a temporary visitor's visa under Section 9(a) of the Philippine Immigration Act, as amended before any Philippine consular posts abroad. Section 9(a) visa can either be for business, pleasure, or health and normally entitles the alien to an initial stay of 59 days, extendible to a year.

While in the Philippines, the Bureau of Immigration (BI) allows the alien to convert his immigration status from tourist/temporary visitor to another visa category without the necessity of leaving the country to secure the new visa.

Multiple Entry Visa Holder Requirements

The expatriates of BOI-registered firms who qualify for special non-immigrant visa under Section 47(a)(2) of the Philippine Immigration Act may apply for multiple entry visa by securing Emigration Clearance Certificate (ECC) and multiple Special Return Certificate (SRC) before departure from the Philippines with the Bureau of Immigration. ECCs serve as their Exit Clearance while SRC's enable them to be admitted upon their return to the country under the same category when they left.

[7] Rules governing transactions of bank-affiliated forex corporations have been aligned with those for banks.

Any alien, except nationals classified restricted by the Department of Foreign Affairs and who meets the following qualifications may be issued the following types of visas:

1. Special Investors Resident Visa (SIRV)

- he/she had not been convicted of a crime involving moral turpitude;
- he had not been afflicted with any loathsome, dangerous or contiguous 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.

2. Pre-arranged employment Visa under Sec. 9(g) of the Philippine Immigration Act

- Employment in any technical, executive or managerial position.

3. International Treaty Investors Visa under Sec. 9(d) of the Philippine Immigration Act.

- Investment of at least P300,000.00. Only Germans, Japanese and Americans are parties to this treaty.

4. Special Non-Immigrant Visa under Presidential Decree (PD) No. 1034

This is granted to foreign personnel of offshore banks duly licensed by the Bangko Sentral ng Pilipinas to operate as an offshore banking unit. They are also entitled to multiple entry privileges and are exempt from the payment of immigration fees, fingerprinting, and registration with the Bureau of Immigration.

1. Special Non-Immigrant Visa under Section 47(a)(2)

Enterprises registered under E.O. 226 and R.A. 7916 are allowed to employ foreign nationals in supervisory, technical, or advisory position under Section 47(a)(2) of Philippine Immigration Act (PIA) during its first five years of registration. Majority foreign owned registered enterprises may employ foreign nationals as President, treasurer and general manager beyond the five year period.

2. Special Non-Immigrant Visa under Book III of Executive Order No. 226

Art. 59 of E.O. 226, provides for the issuance of special non-immigrant multiple entry visas to foreign national executives of Regional Headquarters or Regional Operating Headquarters of Multinational Companies.

3. Special Subic Work Visa

This is granted to foreign nationals employed as executives by Subic Bay Freeport zone enterprises and other foreign nationals possessing highly technical skills.

(b) List and briefly describe any restrictions of law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

Instances/Cases	Positions
1. Registered enterprise under the Board of Investments may employ foreign nationals for a period not exceeding five years from its registration.	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 or their equivalents
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.	Foreign executives and highly technical positions.
4. Foreign nationals entering into coal operating contracts and service with the government for the exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals.	Specialized and technical personnel.
5. Foreign nationals under the Corporation Code may be elected as member of the Board of Directors in proportion to the foreign equity holding.	All corporate positions except secretary who should be a Filipino citizen.

(c) Describe 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.

The Labor Code of the Philippines sets the minimum conditions of employment in its Book III and the health, safety and social welfare benefits in its Book IV.

The Occupational Safety and Health Standards promulgated pursuant to Article 162 of the Labor Code prescribes the different rules for the protection of workers from workplace hazards.

RA 6715, in particular, aims to bolster protection for workers; strengthen their rights to organise, strike and conduct collective bargaining; promote voluntary modes of dispute settlement; and reorganise the National Labor Relations Commission (NLRC, which has jurisdiction over cases involving employer-employee relations) in order to professionalise its ranks and bring its services closer to disputing parties.

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.

(d) 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, as amended)	A consolidation of labor-related legislation, Book V thereof covers labor relations. It provides for the procedure and the agencies involved in the resolution of labor disputes and the rules governing labor organisations, collective bargaining and administration of agreements. Book VI governs post-employment which include termination of employment and retirement. The latest major amendment to Book V is Republic Act 6715 (New Labor Relations Law effective March 1989).
2. Productivity Incentives Act of 1991 (Republic Act 6971)	While primarily on productivity incentives, the law provides for the procedure in the resolution of disputes arising from productivity incentive programs adopted in accordance with law.
3. Special Protection of Children Against Child Abuse, Exploitation and Discrimination (Republic Act 7610)	The law regulates the employment of children.
4. Anti-Sexual Harassment Act of 1995 (Republic Act 7877)	The law defines sexual harassment in a work-related environment, the duties of the employees and penalties for its violation.

6. TAXATION

(a) Provide a brief summary of all taxation arrangement affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements

1. Corporate Income Tax

	Domestic/resident foreign corporation	Nonresident foreign corporation

	%	%
Taxable income not subject to special tax rates	32	32
Interest from deposits and yield from deposit substitutes/trust funds and royalties	20 Reduced to 7.5% for interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system.	32 Reduced to 20% for foreign loans.
Interest on foreign loans	N/A	20
Interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system	7.5	N/A
Dividends from domestic corporations	0	15 or 32. Rate of 15% applies if the host country exempts the dividend from tax or permits a 17% or greater credit for underlying corporation tax paid by the company paying the dividend.
Gains on sales of shares of stock not traded in the Stock Exchange	Rate of 5 % applies to the first P100,000 of gains annually and rate of 10% applies to the excess. Stocks of shares in listed companies are subject to a 0.5% tax on the sale proceeds.	

Income tax rates for special corporations

Entity	Rate (%)	Tax base
Proprietary educational institutions and nonprofit hospitals	10	Taxable income. If the gross income from unrelated activity exceeds 50% of the total gross income derived by a proprietary educational institution or nonprofit hospital, the entire

Entity	Rate (%)	Tax base
		taxable income is subject to the regular corporate income tax (32%).
Certain enterprises registered with the Philippine Economic Zone Authority	5	Gross income
Nonresident lessors of aircraft, machinery and other equipment	7.5	Gross Philippine rentals, lease, charter fees
Nonresident owners of vessels chartered by Philippine nationals and approved by the Maritime Industry Authority	4.5	Gross Philippine rentals, lease, charter fees
Nonresident cinematographic film owners, lessors or distributors	25	Gross Philippine source income
Foreign international carriers (air and sea)	2.5	Gross Philippine billings
Offshore banking units (OBUs) and foreign currency deposit units (FCDUs) authorized by the Bangko Sentral ng Pilipinas	10	Income from foreign currency transactions with residents
Regional operating headquarters	10	Taxable income

2. Value-Added Tax (VAT)

Sale of goods, other properties, and services in the Philippines, as well as importation of goods to the Philippines, are subject to the 10% VAT.

VAT is imposed on the gross selling price (in case of sale of goods) and gross receipts (in case of sale of services). For importation of goods, the tax is based on the total value used by the Bureau of Customs in determining tariff and customs duties. VAT paid by a VAT-registered person on his purchase of goods and services or on importation of goods or services (input tax) is creditable against the VAT due on his own sale of goods and services (output tax).

3. Withholding Taxes

	Dividends			
Domestic Rates	Portfolio	Substantial holdings	Interest	Royalties
Resident individuals	10	10	7.5 or 20 /1	10 or 20 /2
Nonresident individuals	20	20	7.5 or 20 /1	10 or 20 /2
Other nonresident individuals	25	25	25	25
Domestic corporations and	Nil	Nil	7.5 or 20 /1	20

foreign corporations doing business in the Philippines				
Nonresident foreign corporations	15 or 32 /3	15 or 32 /3	20 or 32 /4	32

NOTES:

1/ Interest derived from a foreign currency deposit unit is subject to 7.5% tax. Interest from deposits, yields, other monetary benefits, trusts and similar arrangements is subject to 20% tax. Other interest earned is subject to normal income tax rates of 5 – 32% for individuals and 32% for corporations.

2/ Royalties on books, other literary works and musical compositions are subject to 10% tax. Other royalties are subject to 20% tax.

3/ The rate of 15% applies if the host country exempts the dividend from tax or permits a 17% or greater credit for underlying corporation tax paid by the company paying the dividend.

4/ Interest on loans with nonresidents payable in a foreign currency is subject to 20% tax.

4. Double Taxation Agreements

Philippine Tax Treaties with other economies on the avoidance of double taxation:

1. Australia
2. Austria
3. Belgium
4. Brazil
5. Canada
6. China
7. Denmark
8. Finland
9. France
10. Germany
11. Hungary
12. India
13. Indonesia
14. Israel
15. Italy

16. Japan
17. Korea
18. Malaysia
19. Netherlands
20. New Zealand
21. Norway
22. Pakistan
23. Romania
24. Russia
25. Singapore
26. Spain
27. Sweden
28. Switzerland
29. Thailand
30. United Kingdom of Great Britain and Northern Ireland
31. United States of America

7. PERFORMANCE REQUIREMENTS

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (TRIMS).

A. Performance requirements under the Car Development Program (CDP), Commercial Vehicle Development Program (CVDP), and Motorcycle Development Program (MDP).

a.i. Local content requirement

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 comply with the local content requirement for them to stay in the program. From a shopping list of locally produced automotive parts and components, investors may select the automotive parts to import or source locally in order to meet the required local content which differs from category to category. However, pursuant to the provisions of Sec. 7.5 of Memorandum Order No. 346, which was signed by President Fidel V. Ramos on 26 February 1996, the local content requirement shall be terminated by the year 2000 based on the Agreement on Trade-Related Aspects of Investment Measures under the General Agreements on Tariff and Trade.

a.i.i. Foreign exchange requirement for the importation of components/sub-assemblies for assembly of motor vehicles

Aside from local content, automotive assemblers are required to earn foreign exchange credits (net value) by promoting the exports of automotive parts and components before they can import CKDs. To ensure foreign exchange credits, the assemblers encourage their foreign suppliers to locate in the country and to export the greater bulk of their production. Similar to the local content requirements, Sec. 10.8 of M.O. 346 provides that the net foreign exchange requirement shall be terminated by the year 2000 based on the Agreement on Trade-Related Aspects of Investment Measures under the General Agreements on Tariff and Trade.

THE WTO-CTG GRANTED THE PHILIPPINES AN EXTENSION OF THE APPLICABILITY OF ITS NOTIFIED MEASURES AFFECTING TRADE AND INVESTMENT IN THE MOTOR VEHICLE SECTOR (I.E., ADDITIONAL 3.5 YEARS FROM AND AFTER 1 JANUARY 2000 – THE ORIGINAL EXPIRY DATE OF THE TRANSITION PERIOD FOR THE ELIMINATION OF TRIMS – UNTIL 30 JUNE 2003 SUBJECT TO A REQUIRED PHASE-OUT SCHEDULE).

Following the approval of the WTO-CTG to extend the applicability of the TRIMS in the motor vehicle sector, the Philippines issued Memorandum Order No. 51, on 22 January 2002, which was further amended by Memorandum Order No. 73, issued on 12 September 2002, amending the Guidelines on the Car Development Program, the Commercial Vehicle Development Program and the Motorcycle Development Program.

B. Local content requirement under the soap and detergent industry

Soap and detergent manufacturers are required to use at least 60% locally produced cocochemical surfactant. The requirement applies to all soap and detergent manufacturers.

The above requirement is contained in Executive Order 259 which was enacted in July 1987 for the purpose of rationalizing the soap and detergent industry and promoting the utilization of chemicals derived from coconut oil.

ON 31 OCTOBER 2000, A NEW LAW WAS ENACTED (REPUBLIC ACT NO. 8970) WHICH MAINTAINED THE PROHIBITION ON THE USE OF HARD SURFACTANTS DUE TO ENVIRONMENTAL CONCERNS BUT ALLOWED THE USE OF SOFT SURFACTANTS THAT ARE NOT NECESSARILY COCONUT-BASED.

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

A Philippine resident may invest abroad only if:

- The investment are funded by withdrawals from foreign currency deposit units; or
- The funds to be invested are not among those required to be sold to the banking system for pesos; or

- The funds to be invested are sourced from the banking system but in amounts of less than $6 million per investor per year.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

There is no regulation limiting technology export.

9. INVESTOR BEHAVIOR

(a) Indicate any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

10. COMPETITION POLICY

(a) Briefly outline the competition policy regime.

The Philippines, through constitutional and statutory provisions, encourages competition for a healthier business environment. The Philippine Constitution mandates that the state must protect Philippine enterprises against unfair competition and trade policies. The Constitution also prohibits monopolies and combinations in restraint of trade or unfair competition.

The basic statute which prohibits unfair trade practices, monopolies and combinations in restraint of trade is the Law on Monopolies and Combinations under RA 3247, as amended and the Revised Penal Code, as amended by RA 1956. The law deters any person, firm or entity from monopolizing or attempting to monopolize, or from taking part in any conspiracy or combination in the form of trust in restraint of trade or commerce or from restraining free market competition. The objective is to promote efficiency by effectively promoting desirable competition resulting in increased output, faster economic growth and lower prices of goods and services.

Other competition-related laws/statutes include, among others:

- The Civil Code of the Philippines which allows the collection of damages arising from unfair competition;

- The Corporation Code of the Philippines which provides for rules regarding mergers and consolidations, and the acquisition of all or substantially all the assets or shares of stock of corporations;

- The Securities Regulation Code which proscribes manipulation of security prices and insider trading; and provides protection to shareholders through tender offers, among others;

- The Intellectual Property Code of the Philippines which penalizes patent, trademark and copyright infringement;

- The Price Act which defines and identifies illegal acts of price manipulation such as hoarding, profiteering and cartels; and

- The Consumer Act of the Philippines which provides for consumer product quality and safety standards.

- The Strengthening the Mechanism for the Imposition of Countervailing Duties and the Anti-Dumping Act of 1999 deal with unfair trade practices of subsidization and dumping.

11. Other Measures

(a) List and briefly describe current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

INTELLECTUAL PROPERTY LAWS

On 6 June 1997, Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines (IP Code), was passed establishing a new intellectual property system. This law served at least two purposes, namely: to highlight the celebration of 50 years of Philippine Industry Property System, and to make good our commitment and obligation under the TRIPS Agreement.

The intellectual property rights recognized by the law are: patents, copyright and related rights, trademarks, geographical indications, industrial designs, lay-out designs of integrated circuits, and undisclosed information.

a) Patent

A *patentable invention* is any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing. It may also include microorganisms, non-biological and microbiological processes.

The present patent system adopts the first-to-file system setting aside the first-to-invent system observed in the country for 50 years. It provides for a term of 20 years from the filing date of the patent application.

b) Copyright and Related Rights

The copyright law provides protection to literary, scholarly, artistic and scientific works. Works are protected from the moment, and by the sole fact, of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. Although only certain classes of works are required to be registered and deposited for purposes only of completing the records of the National Library and the Supreme Court, registration of work is not required for purposes of claiming protection and remedies under the law.

Rights related to copyright called “neighboring rights” are likewise protected under the law. These are the performer’s rights, sound recording producer’s rights, and broadcasting organization’s rights.

Copyright is protected during the lifetime of the author and generally, for 50 years after his death. Moral rights have the same term of protection.

In the case of related rights, the term of protection is 50 years from the end of the year in which the performance/recording took place. On the other hand, broadcaster's rights are protected for 20 years from the date the broadcast took place.

c) Trademarks

A *mark* is any visible sign capable of distinguishing the goods or services of an enterprise and shall include a stamped or marked container of goods. The present trademark system eliminated use as requirement for application and shortened the term of registration to 10 years with 10-year period renewal.

d) Geographical Indications

Protection of geographical indications is found under the trademark law. Specifically, Sections 123.1(g), 169 and 170 address this particular concern. Under the present system, the *False Designation of Origin and/or False Description or Representation* is made as a specific violation of intellectual property rights falling under the concurrent jurisdiction of the Bureau of Legal Affairs and of the Regional Trial Court.

e) Industrial Designs

Industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; *Provided,* that such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft. Only non-technical and non-functional designs are protected. An application for industrial design is subject to simple registration as provided under the new implementing rules and regulations.

An industrial design is protected for a period of five years and may be renewed twice for the same period.

f) Undisclosed Information

The Rules and Regulations on Voluntary Licensing contain provisions relative to the protection of undisclosed information.

In Part I (1) (f), undisclosed information shall mean information which:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances to keep it secret, by the person lawfully in control of the information.

There are likewise scattered provisions of different laws that can be invoked by analogy for the proper protection of this type of intellectual property. Among those are found in the New Civil Code on provisions dealing with human relations and obligations and contracts. Articles 318, 229 and 230 of the Revised Penal Code are also relevant.

Enforcement Efforts

Enforcement efforts have been strengthened with the continuing coordination of various agencies of government under the Inter-Agency Committee on Intellectual Property Rights (IAC-IPR) created under Executive Order No. 60. Several member agencies of this Committee have created special task forces on IPR such as: the Department of Trade and Industry (DTI), Department of Justice (DOJ), National Bureau of Investigation (NBI), Bureau of Customs (BOC) and the Philippine National Police (PNP). To further strengthen the enforcement of IPRs, the number of member agencies in the IAC-IPR has been increased from 14 to 19 by virtue of Executive Order No. 320 issued on November 2000.

Infringement cases may be filed before the regular courts regardless of amount claimed. The Bureau of Legal Affairs (BLA) of the Intellectual Property Office (IPO) can take cognizance of administrative complaints with claim of damages of PhP200,000.00 and above. There are 10 administrative penalties that may be imposed by the Director of Legal Affairs for violations of laws on Intellectual Property Rights. These penalties may be found under Sec. 10.2(b) of the IP Code, to wit:

1. The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

2. The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

   a) An assurance to comply with the provisions of the intellectual property law violated;

   b) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;

   c) An assurance to recall, replace, repair, or refund the money values of defective goods distributed in commerce; and

   d) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

   The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking;

3. The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments into charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;

4. The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

5. The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five Thousand Pesos (P5,000) nor more than One Hundred Fifty Thousand Pesos (P150,000). In addition, an additional fine of not more than One Thousand Pesos (P1,000) shall be imposed for each day of continuing violation;

6. The cancellation of any permit, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one year;

7. The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;

8. The assessment of damages;

9. Censure, and;

10. Other analogous penalties or sanctions.

Without prejudice and in addition to administrative penalties, the IPC provides for criminal action which may be prosecuted before the regular courts. If found guilty, imprisonment and/or fine shall be imposed upon the infringer.

a) Patents

Sec. 84. *Criminal action for Repetition of Infringement.* – If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three years and/or a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribe in three years from date of the commission of the crime.

b) Copyright

Sec. 217.1 *Criminal Penalties.* – Any person infringing any right secured by provisions of Part IV of this Act or abetting such infringement shall be guilty of a crime punishable by:

- Imprisonment of one year to three years plus a fine ranging from Fifty Thousand Pesos (P50,000) to One Hundred Fifty Thousand Pesos (P150,000) for the first offense;

- Imprisonment of three years and one day to six years plus a fine ranging from Five Hundred Thousand Pesos (P500,000) to One Million Five Hundred Thousand Pesos (P1,500,000) for the third and subsequent offenses.

- Imprisonment of six years and one day to nine years plus a fine ranging from Five Hundred Thousand Pesos (P500,000) to One Million Five Hundred Thousand Pesos (P1,500,000) for the third and subsequent offenses.

- In all cases, subsidiary imprisonment shall be imposed in case of insolvency.

c) Industrial Designs

Sec. 84. *Criminal action for Repetition of infringement.* – If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six months but not more than three years and/or a fine of not less than One Hundred Thousand Pesos (P100,000) but not more than Three Hundred Thousand Pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribed in three years from date of the commission of the crime.

d) Trademarks

Sec. 170. *Penalties.* – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two years to five years and a fine ranging from Fifty Thousand Pesos (P50,000) to Two Hundred Thousand Pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

<u>International Treaties</u>

The Philippines is a signatory in several international treaties on intellectual property rights. These are:

- Convention Establishing the World Intellectual Property Organization (since 1980)

- Paris Convention for the Protection of Industrial Property (since 1965)

- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure (since 1981)

- Berne Convention for the Protection of Literary and Artistic Works (since 1984). Substantive provisions of the Berne Convention entered into force with respect to the Philippines on 18 June 1997.

- International Convention for the Protection of Performers, Producers of Phonographs and Broadcasting Organizations (since 1984)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- Patent Cooperation Treaty (5 February 2001)

Other related laws and executive issuances:

- P.D. 1987 (Decree Creating the Videogram Regulatory Board)
- E.O. 913 (Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in order to further protect consumers)
- R.A. 9150 (An Act Providing for the Protection of Layout Designs (Topographies) of Integrated Circuits (06 August 2001)

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

(a) Provide a list of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Briefly summarize 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.

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

2. SETTLEMENT OF DISPUTES

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

Disputes Between Government

The Philippines subscribes to the WTO dispute settlement procedures as the primary and ultimate mechanism to settle disputes between governments in matters related to the formal jurisdiction of the WTO. It resolves disputes with its APEC partners through consultations, mediations and/or arbitration, as appropriate. Disputes are settled under the WTO dispute settlement procedures only as a matter of last recourse.

Bilateral trade and investment agreements entered into by the Philippines provide for consultations through diplomatic channels as a primary means of resolving disputes arising from the interpretation and application of the agreements. Joint commissions are established to settle trade and economic issues. Investment agreements provide an option for the submission of disputes to an ad hoc international arbitral tribunal.

Disputes Between Private Parties and Government

The Philippines is a signatory to the International Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID).

BILATERAL INVESTMENT PROMOTION AND PROTECTION AGREEMENTS ENTERED INTO BY THE PHILIPPINES PROVIDE FOR THE AMICABLE SETTLEMENT THROUGH NEGOTIATIONS OF DISPUTES BETWEEN A CONTRACTING PARTY AND A NATIONAL OF A CONTRACTING PARTY. IT ALSO PROVIDES AN OPTION FOR THE SUBMISSION OF DISPUTES TO A COMPETENT COURT OF A CONTRACTING PARTY OF THE INTERNATIONAL CENTER FOR THE SETTLEMENT OF INVESTMENT DISPUTES.

Disputes Between Private Parties

The Philippines recognizes various forms of alternative dispute resolution. Commercial disputes may be settled through negotiation, mediation/conciliation and arbitration.

Existing laws on disputes between private parties include:

- Republic Act No. 876 (Arbitration Law) prescribes the procedures for arbitration in civil controversies;

- Presidential Decree No. 1746 authorizes the Philippine Domestic Construction Board to adjudicate and settle claims and disputes in the implementation of public and private construction contracts;

- Executive Order No. 1008 (The Construction Industry Arbitration Law) establishes the Construction Industry Arbitration Commission, the body which has original and exclusive jurisdiction over disputes arising from or connected with contracts entered into by parties involved in construction in the Philippines, whether government or private contracts;

- Republic Act No. 8293 (The Intellectual Property Code of the Philippines) provides for a dispute settlement mechanism for disputes between parties to a technology transfer payments. It also provides the Director-General of the Intellectual Property Office with the original

jurisdiction to resolve disputes relating to the terms of license involving the author's right to public performance or other communication of his work.

The Philippine Dispute Resolution Center Inc. (PDRCI) of the Philippine Chamber of Commerce and Industry was established in 1996 for the purpose of promoting and encouraging the use of arbitration as an alternative mode of settling commercial transaction dispute and providing dispute resolution services to the business community.

Last September 2002, the Board of Investments announced the creation of a Mediation Team composed of intensively trained mediators to render dispute resolution services to its registered companies and investors.

The Philippines adheres to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

International arbitration proceedings are generally referred to arbitration institutions such as the International Chamber of Commerce and the American Arbitration Association.

(b) Has your economy signed or acceded to the ICSID Convention?

The Philippines is a signatory to the ICSID Convention.

D. INVESTMENT PROMOTION AND INCENTIVES

1. *Briefly describe any investment promotion programs offered at both the national and sub-national level (e.g. 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. *Briefly describe 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. Provide a summary of these programs including the nature of incentives offered and provide contact point(s) for these schemes, including address and telephone/fax numbers.*

Incentives offered under the Omnibus Investments Code of 1987

An enterprise engaged in a preferred activity listed in the current Investment Priorities Plan (IPP) and registered with the Board of Investments is entitled to the following incentives:

1. Income Tax Holiday

Newly registered pioneer projects are fully exempt from income tax for six years from the start of commercial operation and non-pioneer firms for four years from the start of commercial operation. The exemption period may be extended for another year in each of the following cases:

- the project uses indigenous raw materials;
- the project meets the BOI prescribed ratio of capital equipment to the 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 operation.

Projects locating in less developed areas (LDA) shall be entitled to the incentive for six years. Expansion projects and modernization projects are entitled to the income tax holiday incentive for three years limited only to incremental sales revenue/volume.

2. Additional deduction for labor expense

   For the first five years from registration, a registered enterprise shall be allowed an additional deduction from taxable income equivalent to 50% of the wages of additional skilled and unskilled workers in the direct labor force. This incentive shall be granted only if the enterprise meets a prescribed capital to labor ratio and shall not be availed simultaneously with ITH. This additional deduction shall be doubled if the activity is located in an LDA.

3. Tax and duty free importation of breeding stocks and genetic materials for 10 years from registration or commercial operation for agricultural producers.

4. Tax credit on domestic breeding stocks and genetic materials under the same condition as in number 3.

5. Simplification of customs procedures for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.

6. Importation of consigned equipment for 10 years from date of registration, subject to posting of a re-export bond.

7. Employment of foreign nationals

   This may be allowed in supervisory, technical or advisory positions for five years from date of registration. Foreign nationals may hold indefinitely the position of president, general manager and treasurer (or their equivalent) of foreign-owned registered enterprises.

8. 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.

9. Access to bonded manufacturing/trading warehouse system. Registered export-oriented enterprises may have access to bonded warehousing systems subject to customs rules and regulations.

10. Exemption from wharfage dues and export tax, duty, impost and fees.

    All enterprises registered under the IPP will be given a 10-year period from date of registration to avail of the exemption from wharfage dues and any export tax, impost and fees on its non-traditional export products.

11. Exemption from taxes and duties on imported spare parts. A registered enterprise with a bonded manufacturing warehouse shall be exempt from customs duties and national internal revenue taxes on its importation of required supplies/spare parts for consigned equipment or those imported with incentives.

12. Additional deduction for necessary and major infrastructure works. Registered enterprises locating in LDAs or in areas deficient in infrastructure, public utilities and other facilities may deduct from taxable income an amount equivalent to the expenses incurred in the development of necessary and major infrastructure works. This privilege, however, is not granted to mining and forestry-related projects as they would naturally locate in certain areas to be near their sources of raw materials.

Incentives offered under the Special Economic Zone Act of 1995

The Philippine Economic Zone Authority (PEZA) grants the following incentives to registered ecozone companies:

- 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.

- Tax credit for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994.

- 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.

Two other special economic zones were created under two separate special laws. These are the Cagayan Special Economic Zone and the Zamboanga City Special Economic Zone. The incentives granted to those that will locate in these ecozones are similar to the incentives granted to PEZA ecozone enterprises.

Incentives offered under the Export Development Act of 1994

Republic Act No. 7844, or the Export Development Act (EDA) of 1994, was promulgated to provide a macroeconomic policy framework to support the development of the export sector and the activities undertaken by exporters. Exporters are generally defined as those earnings at least 50% of their normal operating revenue from the sale of products or services abroad. Once registered under the EDA, exporters are entitled to the following incentives:

- Tax credit for imported inputs and raw materials primarily used for the production and packaging of export goods which are not readily available locally until 31 December 1999
- 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 to a credit of 10%.

Incentives offered under the Bases Conversion and Development Act of 1992

The Subic Bay Metropolitan Authority and the Clark Development Corporation grant incentives to registered enterprises located at the Subic Bay Freeport Zone and Clark Special Economic Zone, respectively.

- Exempt from all national and local taxes but in lieu of paying taxes, Subic Bay Freeport Zone/Clark Special Economic Zone enterprises will be required to pay a final tax of 5% of their gross income earned from sources within the SBFZ/CSEZ.
- Business enterprises and individuals residing in SBFZ/CSEZ will enjoy tax and duty exemptions on their importations of raw materials, capital equipment and consumer items.

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

<u>One-Stop Action Center</u>

THE ONE-STOP ACTION CENTER HOUSES UNDER ONE-ROOF REPRESENTATIVES FROM VARIOUS GOVERNMENT AGENCIES THAT AN INVESTOR WILL HAVE TO DEAL WITH WHEN MAKING AN INVESTMENT. THESE ARE: BANGKO SENTRAL NG PILIPINAS, BUREAU OF IMMIGRATION (COMPLETE VISA PROCESSING), SECURITIES AND EXCHANGE COMMISSION (ON-CALL), AND DEPARTMENT OF TOURISM. IN ADDITION, THE PHILIPPINE INDUSTRIAL ESTATES ASSOCIATION, A PRIVATE SECTOR, ALSO PROVIDES ITS SERVICES IN TERMS OF SITE LOCATION THRU THE

OSAC. FURTHER, FULL CIRCLE INVESTMENT SERVICING IS RENDERED THROUGH THE INVESTMENT PROMOTION UNIT (IPU) NETWORK COMPOSED OF 26 AGENCIES WITH CORRESPONDING CONTACT POINTS FOR INVESTORS.

Contact Details of Available Frontlines

Agency	Contact Details
1. One Stop Action Center Board of Investments (BOI)	Industry and Investments Bldg. 385 Sen. Gil Puyat Ave., Makati City Telephone: (63 2) 896-7884/896-7342 Fax: (63 2) 895-8322 Contact person: Mr. Dennis R. Miralles Director Email: DRMiralles@boi.gov.ph
2. One-Stop Processing Center Bureau of Customs	Manila International Container Port Isla Puting-bato, Tondo, Manila Telephone No.: (63 2) 245-4101 local 2455 Contact Person: Mr. Erasto Aguila Chief Appraiser
3. One-Stop Shop Tax Credit Center Department of Finance (DOF)	3/F, Executive Tower BSP Complex, Roxas Boulevard Manila Telephone No.: (63 2) 526-8450/523-9217 Fax: (63 2) 526-8450 Contact Person: Mr. Ernesto Q. Hiansen OIC-Deputy Executive Director
4. One-Stop Action Center Garments and Textile Exports Board	3/F, New Solid Building 357 Sen. Gil Puyat Avenue Makati City Telephone: (63 2) 890-4646/890-4651 Fax: (63 2) 890 4653 Contact Person: Ms. Arminda del Rosario Officer-in-Charge E-mail: adelrosario@gteb.gov.ph

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

1. *Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).*

Agreement	Provisions
Friendship Commerce and Navigation Treaties "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.

Bilateral Investment Guarantee Protection Agreements	
1. Argentina 2. Australia 3. Austria 4. Bahrain 5. Bangladesh 6. Belgium/Luxembourg 7. Cambodia 8. Canada 9. Chile 10. China	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.
11. Chinese Taipei 12. Czech Republic 13. Denmark	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.
14. Finland 15. France 16. Germany 17. India 18. Indonesia 19. Iran 20. Italy 21. Korea 22. Kuwait 23. Mongolia 24. Myanmar	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 shall accord treatment to that economy no less favorable than its accords to investments of any third State.
25. Netherlands 26. Pakistan 27. Portugal 28. Romania 29. Russia 30. Spain 31. Sweden 32. Switzerland	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. e) Subrogation

Bilateral Investment Guarantee Protection Agreements	
33. Thailand 34. Turkey 35. United Kingdom of Great Britain and Northern Ireland 36. Venezuela 37. Viet Nam	

Regional or sub regional Investment Treaties	
The ASEAN Agreement for the Promotion and Protection of Investments	Similar with the provisions for bilateral investment treaties.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Non-resident Investment in the Philippines

The Asian financial crisis in 1997 put a break to the phenomenal growth of foreign investment into the Philippines. From the onset of foreign exchange liberalization in 1993 on to 1996, direct and portfolio investment placements by non-residents as recorded in the BOP averaged to an annual growth of 65.5%. The low point in investment trend was set in July 1997 as the Philippines suffered from the contagion effects of the crisis. By year's end, direct investment placement by non-residents posted an 18% drop. While portfolio placement managed to grow by 4%, heavy withdrawals due to market uncertainties resulted in a net outflow of $406 million, the first deficit to be recorded for these types of investments since 1991.

Foreign investors remained cautious as the crisis deepened in 1998 and the peso plunging to record lows against the US dollar. Portfolio placements and withdrawals fell by 38% and 45%, respectively. Though trading of equity securities was relatively thin, a net inflow of $264 million in portfolio was recorded in the balance of payments (BOP).

In contrast, foreign direct investment placement pulled off a 40% growth in 1998 to a level of $1.752 billion due largely to the first tranche of the Nestle Switzerland buy-out of San Miguel's (a resident company) shares in Nestle Philippines. Likewise, foreign participation in a number of local cement firms was recorded in the latter part of the year. This development pushed the total non-resident direct and portfolio investment in the Philippines to a net inflow of $2.016 billion in 1998, or a 139% rise from the 1997 level.

It is worth noting though that since liberalization, direct investment remained relatively stable at more than $1 billion annual placements even through the crisis period.

In 1999, net inflows of direct and portfolio investments by non-residents increased by 53% to reach $3.089 billion. However, new foreign direct investments declined by 23.9%to $1.2 billion, compared with $1.6 billion for 1998. Under the BPM5 framework, a net inflow of $7.228 billion was recorded in direct and portfolio investments due mainly to the public sector's issuances of debt securities in the international capital markets.

In 2000, under the BPM5 framework, net inflows of both direct and portfolio investments were sustained but dropped to $1.934 billion.

IN 2001, NOTWITHSTANDING THE GENERALLY CAUTIOUS STANCE OF INVESTORS FOLLOWING THE GLOBAL ECONOMIC SLOWDOWN AND THE 11 SEPTEMBER TERRORIST ATTACKS, NON-RESIDENTS' DIRECT INVESTMENTS RECORDED A NET INFLOW OF $1.792 BILLION DUE LARGELY TO HIGHER INVESTMENTS IN THE FORM OF INTER-COMPANY LOANS. BULK OF THE FOREIGN DIRECT INVESTMENTS WAS DIRECTED TO MANUFACTURING, TELECOMMUNICATION AND SERVICE SECTORS AS WELL AS TO BANKS AND FINANCIAL INSTITUTIONS. NON-RESIDENTS' PORTFOLIO INVESTMENTS LIKEWISE RECORDED A NET INFLOW OF $1.165 BILLION FROM A NET INFLOW OF $693 MILLION IN 2000 DUE TO NET PLACEMENTS BY NON-RESIDENTS IN EQUITY SECURITIES.

In January-September 2002, net direct and portfolio investments by non-residents amounted to $733 million and $947 million, respectively. The stronger showing of portfolio investments stemmed from increased non-residents' investments in resident-issued foreign-denominated securities, particularly government-issued medium-term bonds earmarked for budgetary support and international reserve management.

General Banking Law of 2000 (R.A. No. 8791) allows a foreign bank to invest up to 100 percent of the voting stock of only one bank within seven years from the effectivity of the law. The law also permits foreign banks which acquired 60 percent of voting stocks of thrift banks under the Foreign Banks Liberalization Act and Thrift Banks Act to further raise their share up to 100 percent of voting stocks.

Resident Investment Abroad

Meanwhile, the BOP also shows that residents' investment abroad in direct equity and portfolio instruments amounted to a net outflow of only $81 million and $344 million, respectively. The uncertainty in other Asian financial and capital markets provided the incentive for domestic funds to stay in the local economy especially those for short-term placement.

INVESTMENTS

1991-1999

(In Million US Dollars)

Item	1991	1992	1993	1994	1995	1996	1997	1998	1999
Investments	654	737	812	1558	1609	3517	762	1672	1329
A. Non-Resident Investments in the Phils.	681	931	2135	2492	2944	3621	843	2016	3089
Direct Investments	556	776	1238	1591	1459	1520	1249	1752	1679
Placements	556	776	1238	1591	1459	1520	1249	1752	1801
New Foreign Inv't in the Phils.	130	234	547	930	1300	1074	1073	1631	1241
Of which: Privatized Assets	-	-	-	563	295	146	72		
Fort Bonifacio	-	-	-	-	50	16	0		
National Steel	-	-	-	-	245	130	72		
Petron	-	-	-	532	-	-	-		
Philseco	-	-	-	31	-	-	-		
Assigned Capital of									
Foreign Banks	-	-	-	-	186	76	0		
BOT Schemes	-	-	-	134	216	195	164	85	
Reinvested Earnings	34	42	43	29	23	44	56	85	534
Bond Conversions				45	46	277	114	36	0
Debt Conversions	273	269	193	2	0	0	0	0	0
Technical Fees and Others								0	26
Converted to Equity	50	41	5	36	22	0	0		
Imports Converted into Inv'ts	6	5	0	1	6	0	6	0	0
Others	63	185	450	548	62	125	0	0	0
Withdrawals	…	…	…	…	…	…	…	0	122
Portfolio Investments	125	155	897	901	1485	2101	-406	264	1410
Placements	227	566	2257	2979	3861	6687	6947	4297	15490

Withdrawals	102	411	1360	2078	2376	4586	7353	4033	14080
B. Less: Resident Investments Abroad	27	194	1323	934	1335	104	81	344	1760
Direct Investments	27	101	374	302	98	182	136	160	-45
Placements	27	101	374	302	98	182	136	160	63
Residents' Investments Abroad	2	24	323	112	98	182	136	160	63
Others	25	77	51	190	0	0	0	0	-
Withdrawals	-	-	-	-	-	-	-	0	108
Portfolio Investments	0	93	949	632	1237	-78	-55	184	488
Placements	15	115	1061	1338	1864	119	184	184	788
Withdrawals	15	22	112	706	627	197	239	0	300
Residents' Withdrawal of of Foreign Inv'ts Abroad	15	22	112	706	627	197	239	0	300
Other Investments									1317
Placements									1372
Withdrawals									55

Notes:

1. *Revised to reflect proper classification of BOI-related transactions from non-resident to resident transactions.*
2. *Other investments represent deposits/placements of resident abroad.*

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

SOURCES OF FDI **(In Million US Dollars, BOP Basis)**			
Economy	**January – December**		**Growth Rates (%)**
	2000	**1999**	
1. USA	814.10	825.99	(1.44)
2. United Kingdom	510.77	4.89	10,345.19
3. Singapore	70.59	107.26	(34.19)
4. France	69.73	7.48	832.22
5. Japan	60.93	142.06	(57.11)
6. Hong Kong, China	45.88	64.55	(28.92)
7. Malaysia	15.16	2.51	503.98
8. Chinese Taipei	8.27	9.00	(8.11)
9. Cayman Islands	8.01	29.28	(72.64)
10. Spain	7.89	-	-

RUSSIAN FEDERATION

RUSSIAN FEDERATION

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1.Brief description of foreign investment policy including any recent policy changes.

The current policy of the Government of the Russian Federation is aimed at encouraging foreign investments in Russia. Investment policy was particularly directed at creating the conditions to promote the expansion of foreign investments, and also the formation of transparent and stable rules in the conduct of economic activities.

The Russian legislative acts in this sphere provided proper guarantees for the protection of foreign investors' rights and interests and advantageous conditions for foreign investors and enterprises which intended to invest in the Russian Federation respecting its domestic investment legislation and relevant international treaties signed by the Russian Federation.

According to the Federal Law No. 160-FZ of 9 July 1999 "On Foreign Investment in the Russian Federation" (as amended on 21 March 2002, 25 July 2002), foreign investors in the Russian Federation were treated not less favorably than Russian ones with few exceptions provided by the same federal legislation.

The basic texts relating to the activities of foreign investors were set forth in the Constitution of the Russian Federation adopted on 12 December 1993; the Civil Code Part One, No. 51-FZ of 30 November 1994 (as amended on 20 February, 12 August 1996, 8July 1999, 16 April, 15 May 2001) and Part Two, No. 14-FZ of 26 January 1996 (as amended on 12 August 1996, 24 October 1997, 17 December 1999); and a number of other legislative acts. Those legislative acts provided proper guaranties for the protection of foreign investors' rights and interests and advantageous conditions for foreign investors and enterprises which intended to invest in the Russian Federation respecting its domestic investment legislation and relevant international treaties signed by the Russian Federation.

The adoption of the Land Code of the Russian Federation (Federal Law No. 136-FZ of 25 October 2001), together with a number of legislative acts on "debureaucratization" (Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Specific Types of Activity", as well as Federal Law 178-FZ on Amending the Law on Licensing Specific Kinds of Activities dated 26 November 1998), Federal Law No. 134-FZ of 8August 2001 "On the Protection of Legal Entities' and Individual Entrepreneurs' Rights in the Case of Exercise of State Control (Supervision)", and the Tax Code of the Russian Federation significantly contributed to the formation of a favorable investment climate and facilitated the activity of foreign companies in the Russian market.

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

The attraction of foreign investments into the economy of Russia is one of the priority directions of the State investment policy. For the provision of pursuing the consistent and coordinated State policy in the sphere of attraction of foreign investments into the economy of the Russian Federation in 1994 the Russian government adopted a decision on the formation of the Consultative Council for foreign investments in Russia under the guidance of the Chairman of the Government of the Russian Federation.

The Government of the Russian Federation is actively working on the improvement of the business and investment climate in the economy – the creation of transparent and stable rules of

carrying out the economic activity, which stimulate the development of the entrepreneurial initiative and attraction on this basis of the investments, including those from foreign sources.

A programme adopted by the Resolution of the Government of the Russian Federation "On Complex Programme of Encouraging of the Foreign and Native Investments into Economy of the Russian Federation" No. 1016 of 13 October 1995 was in place to encourage investments in the Russian Federation. Similar programmes are also in place to attract foreign investments in Russian regions, taking into account local conditions and experience. The Russian legislative acts mentioned above provided proper guaranties for protection of foreign investors' rights and interests and advantageous conditions for foreign investors and enterprises with foreign investments within national investment legislation and in conjunction with international treaties signed by the Russian Federation.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

(a) List and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment

The main regulations, relating to the activity of foreign investors, were laid down in the Constitution of the Russian Federation adopted on 12 December 1993, Civil Code, Part I dated 30 November 1994, No. 51-FZ (with amendments dated 20 February, 12 August 1996, 8 July 1999, 16 April, 15 May 2001) and Part II dated 26 January 1996, No. 14-FZ (with amendments dated 12 August 1996, 24 October 1997, 17 December 1999) and some other legislative acts like Federal Law dated 9 July 1999, No. 160-FZ "On Foreign Investments in the Russian Federation" (as amended on 21 March 2002, 25 July 2002), Federal Law dated 25 February 1999, No. 39-FZ "On Investment Activities in the Russian Federation in the Form of Capital Investments" (with amendments of 2 January 2000), Law of the Russian Federation dated 9 October 1992, No.3615-1 "On Currency Control and Currency Regulation" (with amendments of 29 December 1998, 5 July 1999 and 8 August 2001) and Federal Law dated 30 December 1997, No. 225-FZ "On Product Sharing Agreements" (with amendments of 7 January 1999, 18 June 2001).

Prior to investing in the regions, in addition to reviewing federal legislation, potential investors should also examine regional laws. In fact, some regions have made special efforts to introduce favorable conditions for foreign investment, while other regions have introduced laws that positively discourage investment.

One of the most progressive regional foreign investment laws was approved in the Leningrad Oblast in June 1998. This law was designed specifically to increase foreign investment in the Leningrad Oblast and contained loan guarantees and several tax incentives. Other pro-investment regions include Samara, Khabarovsk, Novgorod, Saratov, Nizhniy Novgorod, and St. Petersburg. These subjects of the Federation have all attracted significant amounts of foreign capital and highlight the need of foreign investors to review local legislation before investing in a particular region.

According to the Article 15 of the Constitution of the Russian Federation "Laws are subject to official publication. The laws, that have not been published, are not applicable. Any statutory legal acts, affecting the rights, freedoms and obligations of a human being and citizen cannot be applied unless they are officially published for general information".

The constitutional principle of mandatory publication of legislative acts was further developed in Federal Constitutional Law dated 17 December 1997, No. 2-FKZ "On the Government of the Russian Federation" (with amendments dated 31 December 1997), in Federal Law dated 14 June

1994, No. 5-FZ "On the Procedure of Publication and Taking Effect of Federal Constitutional Laws, Federal Laws, Acts of Chambers of the Federal Assembly" and in the Decree of the President of the Russian Federation dated 23 May 1996, No. 763 "On the Procedure of Publication and Taking Effect of Acts of the President of the Russian Federation, Government of the Russian Federation and Statutory Acts of Federal Bodies of Executive Power".

In accordance with the above-mentioned legislative acts, only officially published federal constitutional laws, federal laws and acts of chambers of the Federal Assembly are valid on the territory of the Russian Federation. Official press-media for their publication are "Parlamentskaya Gazette", "Rossiyskaya Gazette" and "Collection of Legislative Acts of the Russian Federation".

(2) Investment Review and Approval

(a) Details of proposals and sectors that are/are not subject to screening.

(b) 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)	
Acquisition (Yes)	
Greenfield Investment (Yes)	
Real Estate/Land (Yes)	
Joint Venture (Yes)	

The Government of the Russian Federation has provided the Ministry of Economic Development and Trade with wide-range powers in the field of foreign investments, entrusting it, in particular, to co-ordinate appropriate actions of state power authorities at federal and subfederal levels, arrangement of tenders, conclusion of concession agreements, product sharing agreements and bilateral investment agreements.

Since 2002 the Ministry of Taxation of the Russian Federation has been in charge for registration of enterprises, including those ones with foreign investments,

Sector	Guidelines/Conditions
Telecommunications (Yes)	See below
Media (Yes)	See below
Transport (Yes)	See below
Agriculture (Yes)	
Other: Banking, Healthcare, Tourism	See below

The Federal Law on Licensing of Certain Activities (No. 158-FZ of 25 September 1998) specifies the types of activities which are to be licensed, describes the licensing procedure, and contains the list of documents necessary to obtain a license. That Law does not provide for any licensing restrictions applicable to foreign legal persons and individual businessmen. Indeed that Law does not provide for licensing of certain activities which used to be licensed before the adoption of the Law.

Telecommunications

Regulation is based on the Federal Law "On Communications" and the Law "On Natural Monopolies". Physical and legal persons operating in this sector are required to obtain licenses issued by the Ministry for Communications and Informatization of the Russian Federation and authorization by the Glavgossviaznadzor authorities for radio emitters and high frequency

equipment. In the most part of communications services the activities of foreign companies are subject to national regime.

In the territory of the Russian Federation foreign organizations or citizens can provide jointly with Russian operators the following services:

- All types of services on dedicated lines (i.e. lines without access to the lines of general use);
- Local telephone communication services (rural, urban, area);
- Value added communication services.

Coordination of foreign service providers with the national communications network is reviewed separately.

Provisions concerning qualification requirements, technological standards and licensing/registration for providing communication services in the territory of the Russian Federation are regulated by appropriate provisions of Acts, Conventions, and Agreements of the International Telecommunications Union and the World Post Union.

Media

TV and radio broadcasting in and from the territory of the Russian Federation is subject to compulsory licensing. Over 900 commercial companies are operating in this sector.

The existing legislation does not impose any quantitative limitations either on the use of foreign programs or participation of foreign investors in the development and operations of receiver-transmitter equipment. In the field of film and video production and rental all persons are required to obtain registration of films made for the purpose of public rental and a state rental certificate of the set form. Activities related to the public rental of cine- and video films is subject to compulsory licensing. No screen time limitations are applied.

Transport

Transportation of cargo and passengers and a number of other transportation services are subject to licensing. Unlike other types of transport water transportation has certain limitations for foreign companies (a prohibition to sail under foreign flags in the internal waters of Russia with the exception of certain areas where a special permission of the Government of the Russian Federation is required). The Russian Federation is not a participant in the multilateral Agreement on Transit (1944), and air-traffic through the territory of the Russian Federation is regulated on a bilateral basis.

Over three hundred agreements with foreign countries have been signed in the field of transportation. Some contain limitations of the most-favored-nation regime in the field of services trading.

Banking and other financial services

Commercial banks and non-bank credit institutions perform activities on the basis of a license issued by the Central Bank of Russia (a special license is required for currency operations). Foreign banks can set up subsidiary credit organizations in the Russian Federation. The amount (share) of foreign capital participation in the banking system of the Russian Federation is determined by the Federal Law according to the proposal of the Government of the Russian Federation agreed with the Central Bank of Russia. The present share of participation is set at 12 percent. Banks are licensed subject to the requirements of Articles 14,17, 18 of the Federal Law "On Banks and Banking Activities" (No. 17-FZ, 3 February 96).

The subsidiary credit organizations of foreign banks established in the Russian Federation have the right to open branches in the territory of the Russian Federation or abroad with the permission of the Central Bank of Russia.

When a foreign citizen performs the function of the sole executive body of the credit organization with a share of foreign investment, the collective executive body of the credit organization should comprise no less than 50 percent of citizens of the Russian Federation. A foreign or stateless person can be head of the collective body of a credit organization with foreign investment participation, or be head accountant of such organization under the condition of knowing the Russian language. A credit organization with foreign investment participation should have 75 percent of Russian staff.

In accordance with the Federal Law "On Insurance" foreign legal persons and foreign citizens can participate in establishing an insurance company in Russia in the amount not exceeding 49 percent of the company's capital. The Law stipulates other limitations on the activities of foreign legal persons, in particular, intermediary activities on behalf of foreign insurers without the status of a Russian legal person and a state license for insurance activity in the territory of the Russian Federation is prohibited.

Healthcare and social sphere services

Foreign persons wishing to perform medical or pharmaceutical activities in the Russian Federation are required in accordance with the effective legislation to have official notification of certificates of professional education and to pass the relevant qualification examinations.

Tourism and travel services

Services in the field of international tourism are subject to compulsory licensing. The effective legislation does not provide for any other limitations on the activities of foreign firms in the Russian market of tourist services.

2. MOST FAVOURED NATION TREATMENT/NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

(a) 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).

Russia's foreign investment policy is applied on a non-discriminatory basis as to source country of investment funds. Russian legislative acts provide for proper guarantees to protect rights and interests of foreign investors and provision of favourable conditions for foreign investors whose purpose is to invest in the Russian Federation, observing the Russian investment legislation and the relevant international agreements signed by the Russian Federation.

In accordance with Federal Law dated 9 July 1999, No.160-FZ "On Foreign Investments in the Russian Federation" (as amended on 21 March 2002, 25 July 2002), foreign investors in the Russian Federation enjoy the same favorable treatment as Russian investors with rare exceptions stipulated by the same federal legislation.

Federal Law dated 8 August 2001, No.129-FZ "On State Registration of Legal Entities" establishes the procedure for registration of legal entities and does not contain any restrictions or discriminatory regulations in relation to foreign founders of legal entities.

(b) Identify and describe any international agreements to which your economy is party which provides for possible exception to MFN treatment.

In Model Bilateral Agreements on the Promotion and Protection of Investments approved by the Government of the Russian Federation there are exceptions to MFN treatment resulting from:

- participation in a free trade zone, customs or economic union;
- agreements on the avoidance of double taxation, or other arrangements on taxation issues;
- agreements between the Russian Federation and the states, which had earlier formed part of the USSR.

3. NATIONAL TREATMENT

(a) 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).

(b) Description of the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

Mining Industry

The concession may be required for mining some ores and metals for the companies, not controlled by the Russian companies.

Some special auctions in respect of use of the underground natural resources for small enterprises or defense enterprises in the process of conversion may be closed for the companies, not controlled by the Russian companies.

Aviation Industry

The share of foreign participation in the authorized capital of the organization, which carries out the development, production, tests, repair and (or) disposal of the aviation equipment, is limited by 25%.

The Head and the persons, included in the management bodies of such organization should be the citizens of the Russian Federation.

Electric Energy

The share of foreign participation in the authorized capital is limited by 25%.

Gas Industry

The share of foreign participation in the authorized capital of OAO "Gazprom" is limited by 14%.

Fishing Industry

The permit is required from the competent governmental authority for fishing.

Acquisition of and Trade in Real Estate

The companies, not controlled by the Russian companies, are not allowed to buy land plots. At the same time, such companies may rent the land plots for the period of not more than 49 years.

As an exception, the companies, not controlled by the Russian companies, may acquire the land plots in cases when such companies are recognized as the buyer in accordance with the legislation of the Russian Federation on privatization of the State and municipal enterprises in the Russian

Federation and other relevant legislation or normative acts, including the requirements of the privatization programs:

- within the framework of the privatization of the State and municipal enterprises in the form of tenders for commercial investments and auctions;
- within the framework of extension and reconstruction of the enterprises on the terms and conditions of the auctions and tenders for commercial investments.

Communications

There are limitations in the sphere of the communications services, including the services of the mobile and satellite communications, the development, installation, operation and maintenance of the communications facilities.

Mass Media

Citizens of another State or person without citizenship, not living permanently in the Russian Federation cannot be the founders of the mass media.

Banking Activities

The quota may be set for participation of foreign capital in the banking system of the Russian Federation.

It is necessary to obtain the preliminary permit from the Central Bank of Russia for creation of the credit organization with foreign investments.

It is necessary to obtain the preliminary permit from the Central Bank of Russia for the increase in the authorized capital of a credit organization on the account of the funds of the non-residents.

Insurance Activities

The share of foreign participation in the authorized capital of the insurance organizations is limited by 15%.

The insurance organizations, being the subsidiary companies in respect to the foreign investors (main organizations) or having the share of foreign investors in their authorized capital of more than 49%, cannot carry out some types of insurance in the Russian Federation.

The insurance organizations, being the subsidiary companies in respect to the foreign investors (main organizations) or having the share of foreign participation in their authorized capital of more than 49%, are required to obtain the preliminary permit for the opening of the subsidiaries on the territory of the Russian Federation or for participation in the affiliated insurance organizations.

Aviation Transport

The share of foreign participation in the authorized capital is limited by 49%.

Only the citizen of the Russian Federation may head an aviation enterprise.

The number of foreign citizens in the managerial body of an aviation enterprise should not exceed one third.

Architectural Activities

In the absence of the relevant international agreement of the Russian Federation, foreign citizens, persons without citizenship and foreign legal persons take part only in the architectural activities

on the territory of the Russian Federation only together with the architect-citizen or the legal person of the Russian Federation.

4. REPATRIATION AND CONVERTIBILITY

(a) 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.

As per the Federal Law No. 3615-1 of October 9, 1999 "On Currency Regulation and Currency Control" foreign currency, received by the enterprises (organizations)-residents, is subject to compulsory crediting to their accounts with the authorized banks, unless otherwise is established by the Central Bank of Russia (CBR). The exception – is the part of the currency earnings of the organizations-debtors in respect of the credits of the governmental agencies of the OESR member states.

The conversion is available without restrictions for current currency operations and loan payments for loans granted in hard currency. Under the Russian law, current currency operations are deemed as trade and non-trade bank transfers not exceeding 180 days. Payments on loan transactions exceeding 180 days and investments payments refer to capital transfers. Capital transfers require a license from the CBR which is usually time consuming for a recipient.

Russian currency law stated that transfers which did not exceed 90 days were classified as current currency operations and were performed freely without any limitations and did not require a permit by the CBR. Those that took longer than 90 days were classified as operations involving capital flow thus requiring an appropriate permit issued by the CBR. An importer who may find that 90 days will be exceeded can apply for a permit before the end of the 90 days period.

Capital transactions were subject to the regulative procedures of the CBR. These transactions could require permissions of the CBR, or notifications to the CBR, or could be conducted freely. Permissions and notifications did not constitute unnecessary barriers to foreign investments. The procedures were transparent and publicly available through normative acts published by the CBR. The number of capital operations requiring the permissions by the CBR was constantly being reduced and superseded by simple notification procedures or free execution.

(b) Brief description of the foreign exchange regime.

Since 1992, the Russian Federation followed internationally accepted foreign exchange regime. The national currency - the Ruble (equal to 100 Kopeks) - was convertible to foreign currencies on the basis of current market rates. No multiple exchange rates were maintained, but a single exchange rate based on the market.

Foreign exchange regulation and foreign exchange control were efficient against non-sanctioned leakage of capital from the Russian Federation. In this regard, the CBR was currently taking further steps in order to improve the system of control on timely and full transfer of export revenue returned to the country and on payment for goods which were imported into the territory of the Russian Federation on prepayment conditions. The CBR was also strengthening control measures to enable the detection of fictitious foreign exchange operations by residents to increase the efficiency on the transfer of foreign currency to offshore zones. These measures were provided in the CBR Directive No. 500-U of 12 February 1999 "On Enhancing the Currency Control by Authorized Banks over the Lawfulness of Their Clients' Currency Transactions and on the Procedure for the Application of Sanctions to Authorized Banks for Breach of the Currency Legislation".

The procedure for the acquisition of foreign currency on the internal currency market by physical and legal entities was established under Article 4 of Federal Law No. 3615-1 of 9 October 1992 "On Currency Regulation and Currency Control". There are no restrictions for residents to buy foreign currencies on the domestic exchange market to meet their payment commitments on

current transactions. Foreign currencies to pay capital transactions could also be freely obtained on the domestic market on condition that the requirement of the CBR was met. Purchase of foreign currency by resident legal entities to make pre-payments under import contracts for the delivery of goods was to be made in accordance with the requirements of the CBR Directive No. 519-U of 22 March 1999 "On the Procedure for the Purchase by Resident Legal Entities of Foreign Currency for Rubles on the Internal Currency Market of the Russian Federation to Make Payments under Agreements for the Import of Goods into the Russian Federation". Payments to non-residents for the performance of works, the rendering of services or the transfer of results of intellectual activity was established under CBR Directive No. 721-U of 30 December 1999 "On the Procedure for the Purchase by Resident Legal Entities of Foreign Currency to Make Payments for the Performance of Works, the Rendering of Services or the Transfer of Results of Intellectual Activity". Existing currency legislation did not restrict the rights of resident physical persons to acquire foreign currency on the internal currency market.

Federal Law No. 120-FZ of 21 July 1997 "On the Tax on the Purchase of Foreign Legal Tenders and Instruments Denominated in Foreign Currency", as subsequently amended, introduced a tax in the amount of one per cent of the amount of foreign currency cash acquired by physical persons (not applicable to legal entities). At the end of June 2002, the Government of the Russian Federation approved and introduced to the State Duma a draft Law "On Recognizing as Invalid Certain Legislative Acts of the Russian Federation on Tax on the Purchase of Foreign Currency and Payment Documents Expressed in Foreign Currency", envisaging the cancellation of this tax as of 1 January 2003.

Russian currency legislation under the Federal Law No. 116-FZ of 7 July 2003 "On Amendments to the Article 6 of the Law of the Russian Federation "On Currency Regulation and Currency Control" envisaged a requirement for resident legal entities to mandatorily sell 25 per cent of the entire amount of currency revenue received from non-residents currency revenue on the internal currency market (75 per cent prior to August 2001).

Foreign currency revenue from non-residents was not subject to mandatory sale if it was:

- non-residents' contributions to charter capitals;
- income (dividends) obtained from participation in capital;
- revenue from the sale of securities (shares, bonds);
- income (dividends) from securities (shares, bonds);
- contracted loans (deposits, holdings);
- amounts received as repayment of loans (deposits, holdings) granted, including accrued interest;
- receipts in the form of charitable donations;
- foreign currency acquired by residents on the internal currency market;
- foreign currency payments made from funds remaining following the mandatory sale of a part of export revenue;
- pre-payment amounts returned by non-residents under unfulfilled import contracts.

This applied to all foreign currency export revenue - export of goods, works, services and the results of intellectual activity. The sale took place on the internal currency market at the market exchange rate of foreign currencies to the Ruble on the internal currency market on the date of the sale. Prior to the mandatory sale of the part of the export currency revenue, resident legal entities were entitled to make payments in foreign currency for the transportation, insurance and forwarding of cargoes to non-residents and residents, and to pay in foreign currency for all customs formalities, export customs duties and commissions to authorized banks.

With regard to the opening of foreign currency accounts in non-resident banks by physical process and legal entities, Federal Law No. 3615-1 of 9 October 1992 "On Currency Regulation and Currency Control" determined in Article 5.2 that residents (physical persons and legal entities) could open foreign currency accounts in non-resident banks in accordance with the procedure established by the CBR. The CBR Instruction No. 100-I of 29 August 2001, "On Resident Physical Persons' Accounts in Banks Outside the Russian Federation", stated that resident natural

persons could open accounts in non-resident banks functioning in OECD and FATF member-countries. Funds from these accounts could not be used to conduct entrepreneurial activity without permission from the CBR. Physical persons had to inform the tax authorities at their place of residence of the opening and closure of such accounts.

Resident legal entities could open accounts in foreign currency in non-resident banks on the basis of permissions of the CBR which would be issued in each specific case. Legal entities could only open foreign currency accounts in non-resident banks to make payments under international construction agreements as provided for under CBR Directive No. 1010-U of 3 August 2001, "On the List of Foreign States (Territories) and their Non-Freely Convertible Currencies, in which Residents May Open Accounts Outside the Russian Federation to Make Payments Under International Construction Agreements".

In January 2003, the Government of the Russian Federation introduced into the State Duma a new Draft Federal Law "On Currency Regulation and Currency Control". The document provides for the compulsory sale of the currency earnings will be cancelled from January 1, 2007. The current foreign exchange operations are conducted without limitations, and the capital ones – according to the procedure, established by the Government and the Central Bank of Russia. The Draft Law introduces the compulsory reservation of up to 50% of the amount of transaction for the period of up to two years, if the resident grants to the non-resident the deferment of payments for the period of over 180 days. In case of export of the machine-building products such period is increased up to three years, and in case of settlements for the construction or contractual works - up to five years. The residents will be able to open accounts with the banks of the OESR and FATF member states as per the notification procedure, and they will have to report to the currency control authorities regarding the movement of funds under such accounts.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

There are six exchange restrictions. These restrictions exclusively covered transactions involving capital flow which were not regulated by the WTO Agreement and in respect to which the Russian Federation had no commitments under its international agreements. These restrictions were gradually being abolished. The restrictions still maintained were connected first and foremost with the necessity to prevent the illegal outflow of capital from the country and to combat money-laundering practices, in line with joint efforts of the world financial community, through international financial organizations, including the Financial Action Task Force on Money Laundering (FATF). These restrictions, however, did not limit the ability of service providers to offer a service or to be established in the territory of the Russian Federation in line with WTO requirements.

5. ENTRY AND SOJOURN OF PERSONNEL

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

According to the Federal Law "On Amendments and Additions to the Federal Law No. 7-FZ dated on 10 January 2003 "On the Procedure of Entry to and Departure from the Russian Federation" foreign nationals and apatrides (stateless persons) entering Russia are required to produce valid papers identifying them and recognized in Russia as such as well as visa issued by the diplomatic mission or the consular post of Russia, unless otherwise is stipulated by the international treaty signed by Russia.
The grounds for issuance of a visa to a foreign national are:

1) The invitation for entry to the Russian Federation, which is issued by the federal body of executive power in charge of the matter of foreign affairs as per the solicitation from:
   - the federal bodies of executive power;
   - the diplomatic representations and consulates of foreign states in the Russian Federation;

- the international organizations and their representations in the Russian Federation, as well as the representations of foreign states, attached to the international organizations, located in the Russian Federation;
- the bodies of State power of the entities of the Russian Federation.

2) The invitation for entry to the Russian Federation is issued by the federal body of executive power in charge of the matters of the internal affairs as per the solicitation from:
   - the local self-government bodies;
   - the legal persons, registered as per the notification procedure with the federal body of executive power in charge of the matters of the internal affairs or with its territorial body;
   - the citizens of the Russian Federation and foreign nationals, who permanently live in the Russian Federation.
3) The decision adopted by the federal body of executive power in charge of the matters of foreign affairs, by the diplomatic representation or the consulate of the Russian Federation or by the representation of the federal body of the executive power in charge of the matters of foreign affairs, located within the boundaries of the frontier territory, including the point of passing through the State border of the Russian Federation as per the solicitation of a foreign national who stays outside the boundaries of the Russian Federation.
4) The decision of the federal body of executive power in charge of the matters of foreign affairs on the issuance of a visa to a foreign national, sent to the diplomatic representation or consulate of the Russian Federation.
5) The decision of the Head of the diplomatic representation or consulate of the Russian Federation on issuance of a visa to a foreign national, adopted in exceptional cases upon the written application from a foreign national.
6) The decision of the territorial authority of the federal body of executive power in charge of the matters of internal affairs on the issuance to a foreign national of permit for temporary residence in the Russian Federation.
7) The agreement on rendering the services under the tourist servicing and the confirmation of the receipt of a foreign tourist by the organization, engaged in the tourist activities. Depending on the purpose of entry of the Russian Federation by a foreign national and the purpose of his stay in the Russian Federation, the foreign national is issued a visa, which may be diplomatic, service, common, transit visa and the visa of a temporary resident.

Visa may be single, double and multiple. Depending on the purpose of entry and stay, the common visas are subdivided into private, business, tourist, study, work, humanitarian visas and the visas for the entry to the Russian Federation for the purposes of getting the asylum. The common business visa is issued for the period of up to one year. The common work visa is issued to a foreign national, who enters the territory of the Russian Federation for the purposes of carrying out the working activity, for the validity period of a labor contract, but for not more than one year.

Visa is issued by a diplomatic representation, consulate of the Russian Federation, federal body of executive power in charge of the matters of foreign affairs, its representation on the territory of the Russian Federation, including the point of passing through the State border of the Russian Federation, as well as by the federal body of executive power in charge of the matters of internal affairs or its territorial body.

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

The entry of the Russian Federation by a foreign national or a person without citizenship may not be allowed in case, if such foreign national or person without citizenship:

1) At the point of passing through the State border of the Russian Federation violated the rules of crossing the State border, the customs rules, the sanitary norms – till the violation is corrected;

2) Used the false documents or gave deliberately false information on themselves or on the purpose of their stay in the Russian Federation;
3) Have valid or non-cancelled sentence for committing the deliberate crime on the territory of the Russian Federation;
4) Two or more times were subject to administrative responsibility in accordance with the legislation of the Russian Federation for committing the administrative violation of law on the territory of the Russian Federation;
5) During the period of their previous stay in the Russian Federation did not hand in the migration card during departure from the Russian Federation;
6) During the period of their previous stay in the Russian Federation evaded from paying the tax or administrative fine, or did not reimburse for the expenses, pertaining to the administrative expulsion outside the boundaries of the Russian Federation or to the deportation – till the respective payments are effected in full.

The entry of the Russian Federation by a foreign national or person without citizenship is not allowed in case if:
1) This is necessary for the purposes of providing the defense capability or security of the State, or public order, or protection of the health of the population;
2) During the period of their previous stay in the Russian Federation a foreign national or person without citizenship were subjected to administrative expulsion outside the boundaries of the Russian Federation or were deported – for five years from the date of the administrative expulsion outside the territory of the Russian Federation or deportation;
3) A foreign national or person without citizenship have valid or non-cancelled sentence for committing the grave or particularly grave crime on the territory of the Russian Federation or outside it, recognized as such in accordance with the federal law;
4) A foreign national or person without citizenship did not submit the documents required for obtaining the visa in accordance with the legislation of the Russian Federation;
5) A foreign national or person without citizenship did not submit the medical insurance policy, valid on the territory of the Russian Federation, except for (on a reciprocal basis) the employees of the diplomatic representations and consulates of the foreign states, the employees of the international organizations, family members of the said persons and other categories of foreign nationals;
6) During application for visa either in the point of passing through the State border of the Russian Federation a foreign national or person without citizenship were not able to submit the availability of funds for living on the territory of the Russian Federation and for the subsequent departure from the Russian Federation or were not able to produce the guarantees of provision of such funds in accordance with the procedure, established by the Government of the Russian Federation;
7) The decision has been made in respect of a foreign national or person without citizenship that their stay (sojourn) in the Russian Federation are not desirable.

(c) 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.

(d) List and a summary of domestic labor law which apply to foreign firms in the context of labor disputes/relations.

The main normative acts in the sphere of the legal status of the foreign nationals are the Labor Code of the Russian Federation No. 197-FZ of 30.12.2001, the Civil Code of the Russian Federation No. 14-FZ (Part One) of 26.01.1996, the Law No. 115-FZ "On Legal Position of Foreign Nationals in the Russian Federation" of 25.07.2002.

Besides, regarding the matter, dealing with the attraction and use of foreign labor force, the Decree of the President of the Russian Federation No. 2146 of 16.12.1993 (Revision of 05.10.2002) is in force, the Resolution No. 755 of the Government of the Russian Federation of 11.10.2002 was adopted, which determined the list of projects and organizations, where foreign nationals are not entitled to be employed for work.

In the Russian Federation, in the sphere of civil, labor and civil-procedural legal relations for foreigners the national regime is envisaged, except for the cases, established by the Federal Laws (Paragraph 4 of Item 1 of Article 2 of the Civil Code of the Russian Federation, Item 2 of Article 22 of the Civil Code of Practice of the Russian Federation, Paragraph 4 of Article 11 of the Labor Code of the Russian Federation). On the territory of the Russian Federation, the rules, established by the Labor Code of the Russian Federation, by the laws, other normative legal acts, containing the norms of labor law, apply to the labor relations of foreign nationals, persons without citizenship, organizations, created or founded by them or with their participation, employees of international organizations and foreign legal persons, unless otherwise is provided for by the federal law or international agreement of the Russian Federation).

The Federal Law "On the Legal Status of Foreign Nationals in the Russian Federation" fixes the main provisions, related to the labor activity of foreign nationals on the territory of the Russian Federation, including those, determining the following notions: labor activity, foreign worker, work permit; besides, the procedure is indicated for attraction and use of foreign nationals by the employer or the customer of works (services).

Also in accordance with this law the quota for issuance to the foreign nationals of temporary resident permits is annually approved by the Government of the Russian Federation on the proposals from the executive bodies of the State power of the entities of the Russian Federation, taking into account the demographic situation in respective entity of the Russian Federation and the capabilities of such entity in respect of settling down the foreign nationals.

By the Decree No. 2146 of the President of the Russian Federation of 16.12.1993, the Provision on the attraction and use in the Russian Federation of foreign labor force was approved, the amount of fee was determined for the issuance of permits for the attraction of foreign labor force, the bodies of executive power were indicated, the competence of which includes the relevant procedures.

In the performance of the Federal Law "On the Legal Status of Foreign Nationals in the Russian Federation" the Resolution No. 755 of the Government of the Russian Federation of 11.10.2002 was adopted, by which the List of the projects and organizations was approved where the foreign nationals cannot be recruited for work. They include: 1. The projects and organizations of the Armed Forces of the Russian Federation, other troops and military units; 2. The structural units, protecting the State secrets and units, which perform works, connected with the use of information, representing the State secrets, the bodies of State power and organizations; 3. The organizations, the composition of which includes the radiation-dangerous and nuclear-dangerous production facilities and installations, where the development, production, operation, storage, transportation and disposal of nuclear weapons and the radiation-dangerous materials and products are carried out.

The procedure of payment for the work of the foreign nationals is provided for in accordance with the staff list of the firms and organizations, which attract the foreign employees. The Legislation of the Russian Federation has fixed the sum of the minimal amount of payment for work, which is determined by the Federal Law No. 43-FZ of 29.04.2002 from May 1, 2002, as 450 rubles per month and is uniform for all categories of persons: the citizens of the Russian Federation and foreign nationals.

The methods of registration of the amount of work and payment for it are established by the staff list. The preparation of the staff list is carried out on the basis of the Resolution No. 835 of the Government of the Russian Federation of July 8, 1997 "On the Primary Accounting Documents" and the Resolution No. 26 of the State Committee of Russia for Statistics of 06.04.2001, which establishes the unified forms of the primary accounting documentation for registration the amount of work and payment for it.

The matters of labor relations in the Russian legislation are regulated by Chapter 2 of the Labor Code of the Russian Federation "Labor Relations, Parties to the Labor Relations, the Grounds for Origin of Labor Relations". This Chapter determines among other matters, the parties of the labor relations, the basic rights and duties of the worker and the employer.

Article 308 of the Labor Code of the Russian Federation fixes the possibility of settling the labor disputes by legal proceedings, if they are not settled by the worker and the employer independently. Chapter 60 of the Labor Code of the Russian Federation determines the non-court method of consideration of the individual labor disputes. In particular, the procedure of forming of the committee on labour disputes has been designated, its competence, time-limits for filing the documents, the adoption, fulfillment and appeal of the committee's decisions.

6. TAXATION

(a) List and brief summary of all taxation arrangement affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements.

In the Russian Federation every person must pay the legally established taxes and charges. The principle of the Russian tax legislation – is the universal nature and equality of taxation.

In the Russian Federation the legal conditions of activities of foreign investors and the use of the profit, received from investments, cannot be less favorable than the legal conditions of activities and the use of profits, provided for the Russian investors, except for the cases, established by the federal laws.

The legislation of the Russian Federation on taxes and charges consists of the "Tax Code of the Russian Federation" (Parts One and Two) and of the federal laws on taxes and charges, adopted in accordance with it, in particular the Law "On Foreign Investments".

The taxes and charges cannot have the discriminatory nature and applied differently, proceeding from the social, racial, national, religious or similar criteria, as well as they do not depend on the form of ownership, citizenship of natural persons or the place of origin of the capital. All doubts that cannot be eliminated, contradictions and unclear matters in the legislation acts on taxes and charges are construed in favor of the tax payer (payer of the charges).

6.1. Types of taxes and charges in the Russian Federation

6.1.1. Federal taxes and charges

Value added tax;
Excise duties on individual types of goods (services) and on individual types of mineral raw materials;
Tax on profit (income) of organizations;
Tax on incomes from capital;
Income tax for natural persons;
Contributions to the State social non-budget funds;
State duty;
Customs duty and customs charges;
Tax on the use of the bowels of the earth;
Tax on reproduction of the mineral-raw material basis;
Tax on additional income from extraction of hydrocarbons;
Charge for the right of use of the objects of fauna and water biological resources;
Forest tax;
Water tax;
Ecological tax;
Federal license fees.

6.1.2. Regional taxes and charges

Tax on property of the organizations;
Tax on real estate;
Road tax;
Transport tax;
Sales tax;
Tax on gambling business;
Regional license fees.

6.1.3. Local taxes and charges

Land tax;
Tax on property of natural persons;
Tax on advertising;
Local license fees.

6.1.4. Special tax conditions

Special tax conditions include:
The simplified system of taxation of the small business entities;
The system of taxation in free economic zones;
The system of taxation in closed administrative-territorial formations;
The system of taxation when carrying out the concession agreements and product sharing agreement.

6.2. Tax on profit of the organizations

The Russian organizations and foreign organizations, which carry out the activities in Russia through the permanent representations and (or) which receive the incomes from the sources in Russia – are the tax payers of such tax.

In case when new federal laws or other normative legal act of the Russian Federation come into force, or alterations and addenda thereto, which alter the sizes of the federal taxes (except for the excise duties, value added taxes on goods, produced on the territory of Russia) and contributions into the State non-budget funds (except for the contributions into the Pension Fund of the Russian Federation), which result in the increase in the aggregate tax load on the activities of a foreign investor and the commercial organization with foreign investments on the implementation of the priority investment projects, then the stability of the terms and conditions for a foreign investor are guaranteed during the payback period of the investment project, but for not more than seven years from the date of commencement of financing at the expense of a foreign investor. In exceptional cases, the Government of the Russian Federation may make a decision on the extension of such period.

The priority investment project is such investment project, the total volume of investments into which is not less than 1 billion rubles (not less than the equivalent sum in foreign currency at the rate of the Central Bank of Russia), or the investment project where the minimal share (contribution) of foreign investors is not less than 100 billion rubles, included into the list, which is approved by the Government of the Russian Federation.
The profit for the foreign organizations, which carry out activities in the Russian Federation through the permanent representations is recognized as the incomes received, minus the value of expenses, made by such permanent representations.

For foreign organizations, which do not carry out their activities through the permanent representations, the profit means the incomes, received from the sources in the Russian Federation.

6.2.1. Tax rates

The tax rate on profit for foreign organizations, which carry out activities in the Russian Federation through the permanent representations, is established in the amount of 24%. At the same time:

The amount of tax, calculated at the tax rate in the amount of 7.5% is placed into the federal budget;

The amount of tax, calculated at the tax rate of 14.5%, is placed into the budgets of the entities of the Russian Federation;

The amount of tax, calculated at the tax rate of 2%, is placed into the local budgets.

The laws of the entities of the Russian Federation may reduce the amount of rate for the individual categories of tax payers in respect of the tax sums, which are subject to placing into the budgets of the entities of the Russian Federation. At the same time, the amount of the said rate cannot be below 10.5%.

The tax rates on incomes of foreign organizations, which do not carry out activities in the Russian Federation through a permanent representation, are established in the amount of:

20% - from all incomes;

10% - from utilization, maintenance or renting (freight) of the vessels, airplanes or other moving transport facilities for carrying out the international transportation;

15% - for the incomes, received in the form of the dividends from the Russian organizations by the foreign organizations;

15% - for the income in the form of interest on the State and municipal securities;

0% - for the income in the form of interest on the State and municipal bonds, issued before January 20, 1997 inclusive, on the State currency loan of 1999, issued during carrying out the novation of the Series III bonds.

6.2.2. The peculiarities of taxation of foreign organizations

When foreign organization carries out in Russia of the activity of the preparatory and (or) auxiliary nature in the interests of third parties, which results in the formation of a permanent representation and, at the same time, in respect of such activity the receipt of remuneration is not provided for, the tax basis is determined at the rate of 20% of the amount of expenses, connected with such activity.

If foreign organization is a subcontractor, then its activity is viewed upon as the activity, which creates the permanent representation of such organization – subcontractor, and the taxation procedure corresponds to the taxation of foreign organizations, which carry out activities in the Russian Federation through the permanent representations. Such provision is applied to the organization – subcontractor, the duration of activities of which totals all in all not less than 30 days, provided the general contractor has the permanent representation.

The tax basis for the incomes of a foreign organization, which are subject to taxation, and the amount of tax are calculated in the currency, in which the foreign organization receives such incomes.

6.2.3. Elimination of double taxation

Foreign organization must submit the confirmation of the fact that it has permanent location in the country, with which Russia has the international treaty (agreement) on avoiding the double taxation, which should be attested by the competent authority of the respective foreign country.

6.2.4. Depreciation

The property, which is depreciated, is such property with the period of useful utilization of over 12 months and which has the initial cost of more than 10,000 rubles. The depreciated property is subdivided into groups in accordance with the periods of its useful application. The period of useful application is determined by the tax payer independently as on the date of putting of such property into operation in accordance with the qualification of the fixed assets, which is to be approved by the Government of the Russian Federation.

6.3. Tax on extraction of mineral resources

The tax basis is determined as the cost of the extracted mineral resources.

Tax rate:

3.8% when extracting the potassium salts;

4.0% when extracting:
peat;
coal, brown coal, anthracite and combustible shales;
apatite – of nepheline, apatite and phosphorite ores;

5.5% when extracting:
raw materials of radioactive metals;
mining-chemical non-metallic raw materials (except for the potassium salts); non-metallic raw materials, used mainly in construction industry;
natural salt and pure sodium chloride;
underground industrial and thermal waters;
nephelines, bauxites;

6.0% when mining:
mining ore non-metallic raw materials;
bituminous rocks;
concentrates and other semi-products, containing gold;
other mineral resources, not included into other groups;

6.5% when extracting:
concentrates and other semi-products, containing precious metals (except for gold);
precious metals which are useful components of multi-component complex ores (except for gold);
quality product of piezo-optical raw materials, particularly pure quartz raw materials and rock gem raw materials;

7.5% when extracting:
quality ores of non-ferrous metals;
rare metals, both those forming their own deposits and those which are the associated components in the ores of other mineral resources;
multi-component complex ores, as well as the useful components of multi-component complex ore, except for precious metals;

16.5% when extracting the hydrocarbon raw materials.

During the fulfillment of the product sharing agreements, concluded with investor, the tax rates are applied with the coefficient 0.5.

6.4. Tax on incomes of natural persons

The object of taxation is the tax payer's income. The tax payers of this tax in the Russian Federation are the natural persons, who are the tax residents of the Russian Federation, as well as the natural persons, who receive incomes from the sources in the Russian Federation and who are not the tax residents of the Russian Federation.

6.4.1. The main tax rate is 13%

The tax rate of 35% is established in respect of the following incomes:

The cost of any winnings and prizes;
The insurance payments under the agreements on voluntary insurance;
The interest incomes on deposits with the banks;
The sums of economy on interest when getting the loan funds.

The tax rate of 30% is established in respect of all incomes, received by natural persons who are not the tax residents of the Russian Federation.

The tax rate of 6% is established in respect of the incomes from the share participation in the activities of the organizations, received in the form of the dividends.

6.5. Other significant taxes in the Russian Federation

6.5.1. Value added tax

The following tax rates of this tax are in force in Russia – 0%, 10%, 20%, depending on the object of taxation. The tax payers of this tax are the organizations, individual entrepreneurs, persons who are recognized as the tax payers of this tax in connection with the movement of goods across the customs border of the Russian Federation. The objects of taxation are:

The sale of goods (works, services);
The transfer of goods for one's own needs;
The performance of construction and erection works for one's own consumption;
The importation of goods to the customs territory of the Russian Federation.

6.5.2. Excise duties

The tax payers of this tax are the organizations, individual entrepreneurs, persons, recognized as the tax payer of the tax in connection with the movement of goods across the customs border of the Russian Federation.

The excise duty goods and the excise duty mineral raw materials:
ethyl alcohol;
alcohol-containing products;
alcohol products;
beer;
tobacco products;
jewelry products;
motor cars and motor cycles;
motor car petrol;
diesel fuel;
motor oils;
natural gas.

The persons who make operations with petroleum products must have the certificates of registration, issued by the tax authorities in accordance with the tax payer's application. For each

type of excise duty goods the respective tax rate is established (in per cent or rubles and kopecks per unit of measurement).

6.5.3. Uniform social tax

In accordance with the Tax Code of the Russian Federation, the tax payers of this tax are:

The persons who effect payments to natural persons;

The organizations, individual entrepreneurs, natural persons who are not recognized as individual entrepreneurs.

The objects of taxation in such case are payments and other remunerations, calculated under the labor and civil-legal agreements, the subjects of which are the performance of works, rendering of services, as well as under authorship contracts.

Individual entrepreneurs, lawyers. The objects of taxation in this case are the incomes from the entrepreneurial or other professional activity, minus the expenses, pertaining to their deriving.

Foreign nationals and persons without citizenship are released from paying the tax, if they carry out their activities as individual entrepreneurs on the territory of the Russian Federation and have no right to the State pension, social security, medical care, as well as the tax payers who pay remunerations and fees in favor of foreign nationals and persons without citizenship, who, in accordance with the legislation of Russia or the terms and conditions of the agreement with the employers have no right to the State pension, social security and medical care.

The total rate of tax on the amounts of payments or remunerations up to 100,000 rubles – 35,6%; over 100,001 rubles up to 300,000 rubles – 35,600 rubles + 20% from the amount, which exceeds 100,000 rubles; from 300,001 rubles up to 600,000 rubles – 75,600 rubles + 10% from the amount exceeding 300,000 rubles; over 600,000 rubles – 105,600 rubles + 2% from the amount exceeding 600,000 rubles.

Part One of the Tax Code of the Russian Federation was signed by the President of the Russian Federation on July 31, 1998, and Part Two was signed on August 5, 2000.

7. PERFORMANCE REQUIREMENTS

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (TRIMS).

Trade-Related Investment Measures (TRIMS), connected with trade, are applied in the Russian practice of concluding the product sharing agreements. The Federal Law No. 225-FZ of December 30, 1995, with the alterations of January 7, 1999, No. 19-FZ "On Product Sharing Agreements" provides for in Article 7 the obligations of investor (foreign and national) in:

- provision to the Russian legal persons of the pre-emptive right to participate in the works under the agreement as contractors, suppliers, carriers or in other capacity on the basis of agreements (contracts) with investors;
- attraction of workers – citizens of the Russian Federation, the number of which should be not less than 80 percent of the composition of all attracted workers, attraction of foreign workers and specialists only at the initial stages of works under the agreement or when the workers and specialists – citizens of the Russian Federation of the appropriate qualification are not available;
- placing of orders for the manufacture of the equipment, technical facilities and materials, required for the geological study, extraction and initial processing of mineral resources in the volume of not less than 70 percent of the total cost of such orders between the Russian legal persons or foreign legal persons, who carry out the appropriate activities and are registered as tax payers on the territory of the Russian Federation;
- acquisition on a tender basis of new machinery and introduction of the progressive technologies for the performance of works under the agreement. At the same time, the Russian

commodities (equipment, technical facilities and materials) in respect of reliability, safety, quality and delivery dates should be competitive in respect of the similar foreign commodities.

Apart from that, the same Article stipulates that the parties should provide in the agreements the condition that not less than the certain part of the technological equipment for extraction of the mineral resources and their processing (if provided for by the agreement), to be purchased by the investor with subsequent compensation of the costs by the compensation share of the products, should be produced on the territory of the Russian Federation.

With the accession of Russia to the WTO it is possible to expect that these provisions will be altered in accordance with the terms and conditions of the TRIMS Agreement, which is included into the mandatory package of the WTO documents.

Federal Law No. 178-FZ of 21 December 2001 "On Privatization of State and Municipal Property" did not itself contain any restrictions concerning foreign participation in privatization, but required mandatory compliance with the restrictions established by other legal acts. The State Program of Privatization of State and Municipal Enterprises in the Russian Federation (approved by Presidential Decree No. 2284 of 24 December 1993) provided that the Government of the Russian Federation and governments of the subjects of the Russian Federation were entitled to define the terms of foreign investor participation in the privatization of facilities and objects of the defense industry, the oil and gas industry, mining and processing of ores of strategic materials, precious and semiprecious stones, precious metals, radioactive and rare-earth minerals, certain objects and facilities in transportation and communications (federally owned and privatized at a decision of the Government of the Russian Federation), when making the decision on privatization. In each instance a regulatory legal act should be adopted. According to the State Program of Privatization of State and Municipal Enterprises in the Russian Federation, the privatization decision and authorization of foreign participation for retail and wholesale enterprises, public catering and consumer services, as well as of small enterprises in industry, construction, and automobile transportation, which were the subjects of municipal ownership, were to be made by local administrations. Privatization of State property maintained by the subjects of the Russian Federation and of municipal property was governed by the Russian Federation legislation on privatization.

8. CAPITAL EXPORTS

(a) List and description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

In accordance with the Russian legislation in force, the non-residents have the right without limitation to transfer, import and send the currency values to the Russian Federation, provided they observe the customs regulations.

The non-residents have the right to sell and buy foreign currency for the currency of the Russian Federation according to the procedure, established by the Central Bank of Russia.

Natural persons – non-residents have the right to transfer, bring out and send from the Russian Federation the currency values (except for the foreign currency cash), previously transferred, brought in or sent to the Russian Federation, within the limits, indicated in the customs declaration or other document, confirming their transfer, bringing in or sending to the Russian Federation according to the procedure, established by the Central Bank of Russia jointly with the State Customs Committee of the Russian Federation.
Natural persons – non-residents have the right to send from the Russian Federation foreign currency cash according to the procedure, established by the Central Bank of Russia jointly with the State Customs Committee of the Russian Federation.

Natural persons – non-residents may, on a single-time basis, to bring out of the Russian Federation the foreign currency cash in the amount, not exceeding the equivalent of 10,000 (Ten thousand)

US dollars. At the same time, it is not required to submit to the customs authorities of the Russian Federation the documents, confirming that the foreign currency cash, which is being brought out, has been previously transferred, brought in or sent to the Russian Federation or has been acquired in the Russian Federation.

The non-residents have also the right to bring out of the Russian Federation the foreign currency cash, previously brought into the Russian Federation, within the amount, indicated in the customs declaration, confirming its bringing in into the Russian Federation.

The single-time bringing out of the foreign currency cash from the Russian Federation by natural persons – non-residents in the amount, exceeding the equivalent of 10,000 (Ten thousand) US dollars is not allowed, except for the cases when it is matter of the currency, previously brought in.

During the single-time bringing out of the foreign currency cash from the Russian Federation by natural persons – non-residents in the amount, not exceeding the equivalent of 3,000 (Three thousand) US dollars, the foreign currency cash, which is being brought out, is not subject to declaration to the customs authority of the Russian Federation.

During the single-time bringing out of the foreign currency cash from the Russian Federation by natural persons – non-residents in the amount, exceeding the equivalent of 3,000 (Three thousand) US dollars, the foreign currency cash, which is being brought out, is subject to declaration to the customs authority of the Russian Federation by means of submission of the customs declaration in writing.

(b) List and description of any regulations/institutional measures that limit technology exports.

In accordance with the Federal Law on State Regulation of Foreign Trade Activities, exports from the Russian Federation basically are not subject to quantitative restrictions. Such restrictions may be introduced by the Government of the Russian Federation only in exceptional circumstances.

There remains only a limited number of goods the export of which is subject to some kind of state regulation.

Such goods include first of all weapons, dual use goods and technologies, nuclear materials, narcotic drugs and psychotropic substances, precious stones and metals which are exported in accordance with special procedures taking into account national security considerations and international obligations.

Russia is a State party of the Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal, Montreal Protocol on Substances that Deplete the Ozone Layer, Wassenaar Arrangements, and a number of other international agreements, including agreements on the transfer of nuclear materials and control over the proliferation of missile technologies, and fully meets its obligations. Restrictions apply also to rare species of plants and animals in order to protect the environment and to a number of raw materials (including certain kinds of hides, sunflower seeds, soy beans and rape and precious wood which are in short supply for domestic processing industries.
Export quotas are applicable only to a number of goods in accordance with the international obligations of the Russian Federation (caviar, narcotic drugs).

9. INVESTOR BEHAVIOR

(a) Indicate 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, regulations or administrative guideline/policy is stressed in most of the Russian laws and regulations related to foreign investment.

10. COMPETITION POLICY

(a) Briefly outline the competition policy regime.

The Constitution of the Russian Federation referred promotion of competition and freedom of enterprise to the competence of the Russian Federation. The basic goal of competition policy in the Russian Federation was to create a favorable climate for developing free enterprises, and facilitating competition and effective functioning of commodity markets by preventing, restraining and eliminating monopolistic and anti-competitive practices among economic operators. To this end, the Russian Federation had adopted and maintained a number of legislative acts implementing its competition policy. The existing Russian legislation, consistent with international norms, contained all the basic elements of state supervision and control over agreements (Concerted Actions) of economic operators which could affect competition on the commodity and financial services markets.

The role of the Ministry of Antimonopoly Policies and Support for Entrepreneurship of the Russian Federation (MAP of Russia) is to implement government competition policies and control the enforcement of anti-monopoly legislation. The main functions of the MAP of Russia are to prevent, restrain and prosecute monopolistic activities and unfair competition practices; promote the formation of a market environment through developing competition; implement state control over the enforcement of anti-monopolistic legislation and related legislative acts.

MAP of Russia is entrusted with the responsibility of introducing legislative initiatives in the field of anti-monopoly activity; development and execution of measures on demonopolization of production and distribution of goods and services; monitoring of compliance with anti-monopoly requirements in the establishment, mergers and affiliations of business (unions and associations) liquidation and separation (spin-off) of state and municipal enterprises and buy-ins into commercial companies; advising on the effects of safeguard measures on competition in the Russian market; monitoring compliance to anti-monopoly legislation and related legislation by federal and regional executive authorities, local administrators, business and non-profit organizations.

11. OTHER MEASURES

(a) List and 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 national system of protection of intellectual property rights complied with the basic international standards adopted in this field, including the provisions of the WTO Agreement on TRIPS. The framework of the Russian Federation's policy on intellectual property was determined by the Constitution of the Russian Federation (Article 44, item 1) which in particular guaranteed freedom of literary, artistic, scientific, technical and other types of creative activity, and provided protection for such activities. The whole system of the Russian legislation in force supported the implementation of this constitutional right. A number of international agreements signed by the Russian Federation constituted an integral part of this system.

The Russian Federation applied national treatment to the legal entities and individuals of those countries which had signed the treaties providing for such treatment (in particular, the Paris Convention for the Protection of Industrial Property, the World Convention on Copyright, and the Bern Convention for the Protection of Literary and Artistic Works) both directly pursuant to such covenants (Clause 4 of Article 15 of the Constitution of the Russian Federation provided for the direct application and prevalence of international agreements) in accordance with the obligations undertaken under these treaties and in accordance with applicable provisions of legislative acts of the Russian Federation (in particular, Articles 36 and 37 of the "Patent Law of the Russian Federation" No. 3517-1 FZ of 23 September 1992; Articles 47 and 48 of Federal Law No. 3520-FZ of 23 September 1992 "On Trademarks, Service Marks, and Appellations of Origin"; Article 3, Article 5:1 and Article 35:4 of Federal Law No. 5351-1 FZ of 9July 1993 "On

Copyrights and Related Rights"; Article 7 of Federal Law No. 3523-1 FZ of 23 September 1992 "On the Legal Protection of Computer Programs and Databases"; and Articles 13 and 14 of Federal Law No. 3526-1 FZ of 23 September 1992 "On the Legal Protection of Layout Designs of Integrated Circuits").

The application of most-favored-nation treatment (subject to exceptions regarding certain preferences granted by the Russian Federation under certain treaties including those with CIS countries) as to intellectual property was additionally provided for under the treaties signed with the European Union and Switzerland. As a party to the Eurasian Patent Convention the Russian Federation granted no advantages and privileges to other parties under this Convention. Any party to this Convention which used the procedure set out in the Convention could obtain the benefits of being a party to the Convention within the territory of any signatory.

Since 1999 there had been a special department dealing with intellectual property crimes within the Main Economic Crime Division of the Ministry of Interior (and its regional departments). As for criminal sanctions, the Criminal Code of 13 June 1996 included three articles specifically dealing with intellectual property: Article 146 (Copyright and Related Rights Violations); Article 147 (Patents Violations); and Article 180 (Trademark Violations). While copyright violations were punishable by fines and imprisonment, for other intellectual property violations no imprisonment had been provided until December 2001 where a new paragraph was introduced to the Criminal Code providing for liability for illegal use of trademarks. In addition to fines, this paragraph stipulated that sanctions up to five years of imprisonment. The legislators continued their work on the Criminal Code with a general intention of establishing an even wider scope of liability.

A new Code of Administrative Offences was in force since 1 July 2002. Articles 7.12, 7.28 and 14.10 of this Code established liability for violation of copyrights and related rights, rights to inventions, useful models and industrial designs, service marks and appellation of origin. The administrative sanctions, in addition to fines, included confiscation of counterfeit products. In addition, anti-monopoly legislation provided certain sanctions that were administered directly by the Ministry of Antimonopoly Policies and Support for Entrepreneurship of the Russian Federation. Any business entity whose rights of intellectual property were violated by another business entity could apply to the Ministry to start the proceedings against the offender. The Ministry could issue a decision imposing fines or demanding certain actions or prohibiting infringing actions. The procedure normally took between one and two months, and in complicated cases between three and six months.

Article 10 of the Customs Code referred intellectual property protection to the competence of the Customs authority. Since 1998, the State Customs Committee accepted applications from right holders for the customs measures. The following documents had to be presented: confirmation of the intellectual property rights, power of attorney (when necessary) and information on the violation (description of goods) as well as any additional information available from the right holder. The Code of Administrative Offences in force since 1 July 2002 introduced administrative liability for import of goods violating intellectual property rights.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

(a) List and summary of all laws and regulations relating to expropriation and compensation of foreign investment. Briefly summarize the application and function of these laws/regulations.
Article 8 (Guarantee of Compensation During the Nationalization and Requisition of the Property of Foreign Investor or Commercial Organization with Foreign Investments) of the Federal Law No. 160-FZ “On Foreign Investments into the Russian Federation” of July 9, 1999 (as amended on 21 March 2002, 25 July 2002), provides for:

1) The property of a foreign investor or commercial organization with foreign investments is not subject to forcible seizure, including nationalization, requisition, except for the cases and on the grounds, which are established by the federal law or international agreement of the Russian Federation.

2) In case of requisition, foreign investor or commercial organization with foreign investments are paid the cost of the requisitioned property. When the circumstances end, in connection with which the requisition was made, the foreign investor or the commercial organization with foreign investments are entitled to demand according to the legal proceedings the return of the preserved property, but at the same time, they are obliged to return the sum of compensation, received by them, taking into account the losses from reduction in the cost of the property.

3) In case of nationalization, the foreign investor or the commercial organization with foreign investments are reimbursed for the cost of the nationalized property and for other losses. The disputes on the reimbursement for the losses are settled according to the procedure, provided for by Article 10 of the present Federal Law.

Article 10 of the said Law envisages that the dispute of foreign investor, which arose in connection with making the investments and carrying out the entrepreneurial activities on the territory of the Russian Federation, is to be settled in accordance with the international agreements of the Russian Federation and the federal laws at court or arbitration court, or at the international arbitration court (arbitration tribunal).

The Federal Law of the Russian Federation "On the Investment Activities in the Russian Federation, Carried Out in the Form of Capital Investments" (No. 39-FZ of February 25, 1999), which also spreads its action to the "foreign entities of the entrepreneurial activities" (Article 4), envisages (Article 16 – "Protection of Capital Investments") that capital investments may be:

- Nationalized only on condition of preliminary and equitable reimbursement by the State for the losses, inflicted on the entities of the investment activities, in accordance with the Constitution of the Russian Federation;
- Requisitioned by decision of the State authorities in cases, according to the procedure and on the terms and conditions, which are determined by the Civil Code of the Russian Federation.

The interests of foreign investor in Russia are also protected by the relevant provisions of bilateral agreements on encouragement and mutual protection of investments, concluded by Russia with other countries.

Such agreements, fix, as a rule, the firm obligation not to resort to nationalization and expropriation of investments, except for the cases when such measures are taken in the public interests, according to the procedure, established by the legislation, have no discrimination nature and are accompanied by payments of fast, adequate and efficient compensation. At the same time, normally, the principle of determining such compensation is fixed and the obligation is provided for to calculate the interest (for the amount of compensation) from the moment of expropriation and till the moment of payment of compensation at commercial rate, established on a market basis.

The provisions on nationalization, fixed in bilateral agreements of the Russian Federation, set forth in more detail the procedures of possible nationalization, the payment of compensation to the investor for the damage, inflicted on him, and the possibility of applying to judicial instances in connection with the acts of carrying out the nationalization.

According to the Constitution of the Russian Federation, the generally recognized principles and norms of the international law and the international agreements of the Russian Federation form the integral part of its legal system. Due to this reason, the provisions on nationalization, fixed in the agreements, mentioned above, have the priority nature as compared to the national legislation. This should be taken into account by foreign investors in Russia.

(b) Description of recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

2. SETTLEMENT OF DISPUTES

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

According to the Federal Law No. 160-FZ of 09.07.1999 "On Foreign Investments in the Russian Federation" (as amended on 21 March 2002, 25 July 2002) the dispute of foreign investor, which arose in connection with making the investments and carrying out the entrepreneurial activities on the territory of the Russian Federation, is settled in accordance with the international agreements of the Russian Federation and the federal laws at the court or arbitration court, or at the international arbitration court (arbitration tribunal).

The list of the institutions, for the consideration of which the investment dispute with participation of the Russian Federation may be referred to, is also contained in the Standard Agreement between the Government of the Russian Federation and the governments of foreign countries on encouragement and mutual protection of capital investments, approved by the Resolution No. 456 of the Government of the Russian Federation "On Conclusion of Agreements between the Government of the Russian Federation and the Governments of Foreign Countries on Encouragement and Mutual Protection of Capital Investments" of June 9, 2001. The Standard Agreement states as such institutions the following:

1) The competent court or arbitration of a Contracting Party, on the territory of which the capital investments have been made (the arbitration courts of the Russian Federation, the common law courts);
2) The arbitration court "ad hoc" in accordance with the Arbitration procedure of the UN Committee on the international trade law (UNCITRAL);
3) The international centre on settlement of investment disputes.

The selection of the instance for the consideration of the investment dispute is given by the Standard Agreement to investor.

The arbitration courts of the Russian Federation

The arbitration courts consider the cases with participation of foreign organizations, international organizations, foreign nationals, persons without citizenship, who carry out the entrepreneurial activities, organizations with foreign investments in the following cases:

1) If respondent stays or lives on the territory of the Russian Federation or the respondent's property is on the territory of the Russian Federation;
2) If the management body, subsidiary or representation of a foreign person are on the territory of the Russian Federation;
3) If the dispute arose from the agreement, under which its fulfillment should take place or took place on the territory of the Russian Federation;
4) In other cases, provided for by the Arbitration Procedural Code of the Russian Federation.

The system of the arbitration courts in the Russian Federation is composed of:

The Highest Arbitration Court of the Russian Federation;

The Federal Arbitration Courts of the Districts;

The Arbitration Courts of republics, territories, regions, cities of federal status (Moscow and Saint Petersburg), autonomous regions, autonomous districts.

The Highest Arbitration Court of the Russian Federation: 12 Maly Kharitonyevsky Pereulok , 101000, Moscow.

The Federal Arbitration Court of the Moscow region: 18 Akademika Sakharova Avenue, 107808 Moscow.

The Arbitration Court of Moscow: 10 Novaya Basmannaya St, 107802 Moscow.

The Courts of the Russian Federation

Along with the arbitration courts, the cases with participation of foreign nationals, persons without citizenship, foreign organizations, organizations with foreign investments, international organizations by virtue of the Civil Procedural Code may be considered by the common law courts.

Besides, the common law courts have the competence over the cases on recognition and enforcement of the decisions of foreign courts and foreign arbitration decisions.

The courts in the Russian Federation consider the cases with participation of foreign organizations, if the organization-respondent is located on the territory of the Russian Federation.

The courts in the Russian Federation are also entitled to consider the cases with participation of foreign persons, if:

1) The management body, subsidiary or representation of foreign person are located on the territory of the Russian Federation;
2) The respondent has the property, located on the territory of the Russian Federation;
3) In respect of the case regarding the reimbursement for the damage, inflicted on the property, if the action or other circumstance, which served as a reason for lodging the demand on the reimbursement for the damage, took place on the territory of the Russian Federation.
4) The claim results from the agreement, under which the fulfillment, in whole or in part, should take place or took place on the territory of the Russian Federation;
5) In other cases, provided for by the Civil Procedural Code.

The system of the common law courts is composed of:

The Supreme Court of the Russian Federation;

The Supreme Courts of the republics, the territorial and regional courts, the courts of the cities of federal status, the courts of autonomous regions and autonomous districts;

The district courts.

The Supreme Court of the Russian Federation: 7/3 Ilyinka, 103289, Moscow.
The Moscow City Court: 8 Bogorodsky Val, 107076, Moscow.

(b) Has your economy signed to the ICSID Convention?

Russia signed the ICSID Convention on 16 June 1992 but hasn't yet ratified it.

D. INVESTMENT PROMOTION AND INCENTIVES

1. Description of any investment promotion programs offered at both the national and sub-level (e.g., 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 Program.

2. Description of any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., tax incentives, grants) provide to foreign investors. Provide a summary of these programs including the nature of incentives offered and provide contact point(s) for these schemes, including address and telephone/fax numbers.

The Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation" of July 9 1999(as amended on 21 March 2002, 25 July 2002), extends to a foreign investor the national treatment conditions. The Article 4 of this Law it is fixed that the legal treatment conditions for foreign investors and utilization of profit, received from investments, cannot be less favourable than the legal treatment conditions for activities and utilization of profit, received from investments, extended to the Russian investors, except for the cases, established by the federal law.

The extension of the national treatment conditions to foreign investor and to his investments in principle equals the foreign and the domestic investors in granting them benefits and privileges. However, the same Article of the Federal Law also provides for that the exceptions of the stimulating nature in the form of benefits for foreign investors may be established in the interests of the social and economic development of the Russian Federation. The types of benefits and the procedure for their granting are established by the legislation of the Russian Federation.

The said Law envisages the possibility of granting the additional benefits and guarantees at the level of the entities of the Russian Federation. Thus, Article 17 of the Law formulates the provision that the entities of the Russian Federation and the bodies of local self-government may grant to the foreign investor, within their competence, the benefits and the guarantees, carry out the financing and give other forms of support of the investment project, implemented by a foreign investor, at the expense of the funds of the budgets of the entities of the Russian Federation and the local budgets, as well as the non-budget funds.

As an example of benefits, granted to a foreign investor at the federal level, one may give the granting to such investor of some customs benefits. Thus, the Russian legislation envisages that to enterprises with foreign investments, participating in the implementation of the priority investment projects, as well as in the product sharing agreements, the tariff benefits may be granted (duty-free import, reduction of the import tariff, return of the previously paid duty) in respect of the goods, imported to the territory of the Russian Federation as a contribution into the authorized capitals, as well as for individual types of goods of their own manufacture exported by them. At the same time, it is necessary that the imported products would relate to the basic production assets, would not be covered by the excise duty and the importation period would not exceed 1 year from the date of registration of the enterprise with foreign investment and in individual cases – during the payback period for foreign investments.

The participants in works under the product sharing agreements, including the foreign participants as well, are relieved of payment of the customs duties and taxes (excise duties, VAT) during the importation of goods, including those, provided on leasing conditions, and necessary for the performance of works under such agreements. The goods are also exempted from similar payments, which are brought out from the customs territory of the Russian Federation and which are owned by the investors. It is important to point out that for the participants of the product sharing agreements such payments are not cancelled at all – they are replaced with the sharing of the extracted or manufactured products (its cost equivalent).

Considerable set of customs benefits is granted to the participants of a special economic zone (SEZ), created in 1999 in the Magadan region. Briefly their essence is as follows: during the importation of foreign and Russian goods into the zone, the customs duties and taxes (associated with the customs clearance) are not levied. During the importation of goods from the territory of the SEZ to the remaining part of the customs territory of the Russian Federation and during the exportation of goods from the territory of the zone outside the boundaries of the Russian Federation, the customs duties and taxes are levied, depending on the origin of the moved goods.
The benefits, granted to a foreign investor at the sub-federal level are widely spread in Russia. However, taking into account the diversity of the practice, existing in 89 entities of the Russian Federation, it would be impossible to give in the present document the list of the numerous benefits and guarantees in the entities of the Russian Federation.

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

Within the structure of Russia's Ministry of Economic Development and Trade there is the Trade & Investment Promotion Agency the main purpose of which is to attract, facilitate and increase foreign investments into the Russian Federation.

Contact information:
Trade & Investment Promotion Agency
18/1, Ovchinnikovskaya Embankment
Moscow, Russia, 113324
Tel.: +7 (095) 950-9950
Fax: +7 (095) 230-2018
http://www.inves.ru
Contact person:
Mr. Alexander Safronov, Acting General Director

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

1. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement/

At present the Russian Federation has agreements on encouragement and mutual protection of capital investments with 36 countries, including 6 APEC-member countries (Canada, China, the Republic of Korea, Japan, the Philippines and Viet Nam). The bilateral relations on encouragement and mutual protection of capital investments facilitate the creation of the stable predictable conditions for the activities of foreign capital in Russia, assist in pursuing the policy of regulating the access of foreign capital investments to individual sectors of national economy. The bilateral agreements, while fixing the favorable conditions for the access of capital investments to the market and for activities in the market (the most favored nation treatment and the national treatment conditions) and providing the protection of capital investments (in respect of expropriation, subrogation, nationalization, procedure for settlement of disputes), also facilitate the export of the national capital. Such investments, in their turn, may be accompanied by export of goods and services. Taking this into account, Russia proceeds from the necessity of active continuation of the negotiations on bilateral agreements on protection and encouragement of capital investments, meaning the creation of conditions both for the increase in the influx of foreign capital investments into the Russian economy (while preserving the possibility for the application of regulatory measures in respect of such capital investments) and for the growth of the export of Russian capitals.

In connection with the alteration of conditions for the investment as a result of the improvement of the Russian legislation and the forthcoming of accession of Russia to the WTO, the views of the Russian Government on the contents of the bilateral agreements have undergone changes as well. The approaches of the Russian Federation, adapted to the new realities, have been formulated in the new Standard Agreement, approved by the Resolutions Nos. 456 and 229 of the Government of the Russian Federation of 9.06.2001 and 11.04.2002 respectively. In accordance with the provisions of the new Standard Agreement, the negotiations are being held on the conclusion of new agreements and on the introduction of alterations or revision of the previously concluded agreements with the whole number of states.

Apart from bilateral agreements, the process of investment of foreign capital in Russia is influenced by the action of some international agreements. First of all, this is the Agreement on Partnership and Cooperation between the Russian Federation and the European Union and the Agreement to the Energy Charter.

In the light of the future accession of Russia to the WTO, the provisions of the Agreement on Trade-Related Investment Measures (TRIMS) have great significance. In this connection, already now, during the revision, introduction of alterations or conclusion of new agreements, the Russian Side offers to fix the priority of the WTO provisions above bilateral agreements.

F. ASSESMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

The Russian Federation possesses tremendous potential in the sphere of attraction of foreign investments, which is evidenced by the notable improvement of its position in various credit and investment ratings, elaborated by the well-known rating companies. The growth in the influx of foreign capital investments into Russia in the recent years also confirms this. From 1995 to 2002 the volume of foreign investments, attracted by Russia, has increased almost 7-fold. In 2002, the record-breaking in their volume foreign investments have come into Russia in the past eight years, which equal to US$19,780 million against US$2,983 million in 1995.

The structure of foreign investments in Russia is dominated at present by the so-called "other" investments, consisting mainly of the various credits, followed by the direct investments and the list is closed by the portfolio capital investments.

During the period from 1995 to 2002, the volume of foreign direct investments, which came to Russia, has increased from 2,020 million dollars to 4,002 million dollars. In certain years it reached more significant values (4,429 million dollars in 2000 and 5,333 million dollars in 1997).

The portfolio investments in the total volume of foreign investments do not play so far the noticeable role in the investment process. They accounted in 2002 for only 2.1% of the total volume of the investments, attracted from outside. Nevertheless, as compared to 1995, their volume has increased 12-fold from 39 million dollars up to 472 million dollars. The volume of portfolio investments in the form of shares is growing particularly fast (from 11 million dollars up to 329 million dollars in 2001).

Among other investments (69% of the total volume of the attracted investments – 9,827 million dollars in 2001) the main sources of the earnings are the trade and other credits (99% in 2001).

The main objects of foreign investments in Russia are industry and trade. The industry accounted in 2002 for 7,332 million dollars of foreign investments (37.1%), and the trade and public catering accounted for 8,805 million dollars (44.5%), including the foreign trade, which accounted for 4,438 million dollars (22.4%). For comparison: in 1995, the industry accounted for 43.3% (1,291 million dollars), the trade and public catering accounted for 17% (567 million dollars).

Among the branches of industry, in the scope of the attracted foreign investments the first place in 2002 was occupied by the ferrous and non-ferrous metallurgy (2,469 million dollars or 33.7% of all foreign investments into the industry), the second place was occupied by the branches of the fuel and energy complex, the share of which was 27.4% of all foreign investments into the industry (2,007 million dollars), the third place was occupied in 2002 by the food industry (1,210 million dollars or 16.5%). The machine-building and metal-working industries accounted in 2002 for 490 million dollars (6.7% of all foreign investments, which were made into the Russian industry).

Traditionally, Moscow and Moscow region absorb the bulk of foreign capital investments. In 2002, the share of Moscow and Moscow region in the total influx of foreign investments was 46.3% (Moscow – 42.7%) and in the influx of foreign direct investments – 52.4% (Moscow – 37.5%). At the same time, it should be pointed out that there appeared a trend towards the reduction of the share of the Moscow region in the attraction of foreign investments. In 1996-2002 the share of the region decreased from 71.4% down to 46.3%. From other regions, as the most

attractive ones for the foreign investors the following should be noted (2002): the Siberian Federal District – 14.9% of all foreign investments, attracted into the Russian Federation, the Ural Federal District – 12.8%, the Privolzhsk Federal District – 7.3%.

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

In 1991-2002, the Russian economy received investments from almost 110 countries. In the beginning of 2003, in respect of the accumulated investments the following leading investors were among the ten countries: USA, Cyprus, the Netherlands, Great Britain, Germany, France, Italy, Switzerland, Sweden and Japan.

The list of countries, which accounted in 2002 for over 80% of investments into the Russian economy, is given below (% towards result):

1. Germany	20.2
2. Cyprus	11.8
3. Great Britain	11.5
4. Switzerland	6.8
5. Luxemburg	6.7
6. The Virgin Islands	6.6
7. France	6.0
8. The Netherlands	5.9
9. USA	5.7
10. Finland	3.0

SINGAPORE

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 lead Singapore's industrialization drive through investment promotion. The fundamental policy in Singapore is the "open-door" concept where foreign investors are free to own 100% equity, free to repatriate profits and free to bring in foreign skilled workers to operate their facilities. Over the years, Singapore has encouraged both manufacturing and services investments, especially those with higher value-added and skill-intensive content. A core of local industries, mainly in the supporting activities, has also developed. Singapore's twin engines of growth, its manufacturing and services sectors, has powered the drive into a knowledge-based economy in the 21st century. To sustain such broad-based knowledge-driven economy, Singapore has continued to build the necessary capabilities and infrastructure and to encourage and nurture talent. This is also important for the current emphasis on innovation in the economy best spearheaded by private-sector companies.

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

In a keynote speech at an investment seminar organized by Nomura Securities in Tokyo on 17 Oct 2002, the Deputy Prime Minister, BG Lee Hsien Loong, spoke of the need to improve our infrastructure and to attract companies that will benefit from the premium environment that we offer. In Singapore, conditions are stable and predictable, rules are transparent, intellectual property is protected, workers are hardworking, everything works and will continue to be so. However, given the current challenges, including globalization and uncertainties in the investment environment, Singapore had no choice but to restructure our economy. The changed situation called for a more comprehensive approach and hence the establishment of the Economic Review Committee in 2001. The Committee focused on improvements in the areas of macroeconomic competitiveness, entrepreneurship, human capital, manufacturing, services, domestic enterprises and coping with restructuring. The resulting policy changes and the ability to react quickly will offer an advantage to investors in Singapore.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) 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 register with the Registry of Companies and Businesses. The requirement also applies to any firm, individual or corporation conducting 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, there are no restrictions on foreign ownership of Singapore operations. Online registration is available at http://www.business.gov.sg.
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. Representative offices from the manufacturing, trading, trade logistics and trade-related services sectors may register with the International Enterprise Singapore. Representative offices from the finance-related industries may register with the Monetary Authority of Singapore.
Control of Manufacture	Investors intending to manufacture products listed in the Control of Manufacture Act must obtain a licence from the Registrar of the Act, the Chairman of the Economic Development Board. The products listed include air-conditioners, beer and stout, cigars, drawn steel products, firecrackers, pig iron and sponge iron, refrigerators, rolled steel products, steel ingots, billets, blooms and slabs, cigarettes, matches, chewing gum, bubble gum, dental chewing gum or any like substance, CD (compact disc), CD-ROM (compact disc - read only memory), VCD (video compact disc), DVD (digital video disc) and DVD-ROM (digital video disc - read only memory). The Control of Manufacture Act is under review towards the removal of some products from the list.

(2) Investment Review and Approval

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

(b) 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 special conditions that apply to individual sectors:

There is no screening of potential investments. Guidelines, conditions, laws and regulations apply to investors irrespective of nationality.

Proposals	Guidelines/Conditions
Merger	Guidelines for takeover process are included in the Companies Act and maintained by the Securities Industry Council.
Acquisitions	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. A person or legal entity with effective control of a public company (30% of voting rights) must make an offer for the balance of outstanding shares. Except in a few sectors, foreign buyers face the same rules as local ones.
Greenfield investment	No provision.
Joint venture	Joint ventures may take the form of equity investment in a limited liability company or unlimited partnership. The laws of companies or partnerships apply where appropriate.
Real estate/land	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 National Environment Agency. Online application for some licences is available at http://www.nea.gov.sg. 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	Liberalization of the telecommunications sector is in place. Licences for telecommunications dealers and radio communication stations are required from the Infocom Development Authority of Singapore. Online applications are available at http://www.ida.gov.sg.
Media	There is legislative control on the level of foreign equity in the newspaper publishing industry. Any single holding of more than 5% of voting shares of a newspaper company requires clearance.
Finance	Information on licenses required for financial institutions is available at the Monetary Authority of Singapore.

Sector	Guidelines/conditions
Transport	Free trade zones for seaborne cargo and air cargo exist. Within these zones, a wide range of facilities and services are available. Bilateral air services agreements are restructured to add more flights once traffic reaches a predetermined capacity.
Agriculture	For land zoning or environmental protection purposes, agriculture is restricted to certain districts. Allocation of zoned agricultural land for development into agro-technology parks is usually through open tenders.

(c) How to obtain application/approval forms required for screening purpose. Summary of additional documentation that is required for review or approval processes.

Potential investors 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(2)2 above, may be obtained from the respective organizations named in Section B 1(2)4 below.

(d) 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) 6227 8551 Fax: (65) 6225 1676 Website: http://www.gov.sg/rcb/information E-mail: rcb_feedback@rcb.gov.sg
International Enterprise Singapore	230 Victoria Street #09-00 Bugis Junction Office Tower Singapore 188024 Telephone: (65) 6337 6628 Fax: (65) 6337 6898 Website: http://www.iesingapore.com
Infocomm Development Authority of Singapore	8 Temasek Boulevard #14-00 Suntec Tower 3 Singapore 038988 Telephone: (65) 6211 0888 Fax: (65) 6211 2222 Website: http://isd.gov.sg E-mail: info@ida.gov.sg

Ministry of Information, Communications and the Arts	140 Hill Street #02-02 Mita Building Singapore 179369 Telephone: (65) 6270 7988 Fax: (65) 6837 9480 Website: http://www.mita.gov.sg Email: mita_pa@mita.gov.sg
National Environment Agency	40 Scotts Road Environment Building Singapore 228231 Telephone: (65) 6732 7733 Fax: (65) 6731 9456 Website: http://www.nea.gov.sg
Monetary Authority of Singapore	10 Shenton Way MAS Building Singapore 079117 Telephone: (65) 62255 5577 Fax: (65) 6229 9491 Website: http://www.mas.gov.sg

(e) 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.

(f) 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 consideration of an appeal.

Licence requirements, if any, stem mainly from special conditions of the specific sector. Reasons for rejection of a licence are given. An applicant can make an appeal for review with the same organization. For example, an applicant can appeal with the National Environment Agency to review an application for use of certain chemicals in a hazardous industry rejected by them. The respective agencies are listed in Section B 1(2)4 above.

(g) 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. There are no restrictions on investment except for national security purposes and in certain industries.

(h) 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) 6336 2288 Fax: (65) 6339 6077 Website: http://www.sedb.com	Complaints requiring investment facilitation and liaison with other government departments

(i) 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) 6336 2288 Fax: (65) 6339 6077 Website: http://www.sedb.com.	To consider applications for licence to manufacture items listed under the Control of Manufacture Act

(j) 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, employer federations, chambers of commerce and industry, government-to-government business councils and economic forums. Government agencies, including those with regulatory functions, maintain close interaction with the private sector and often consult with the private sector before making decisions.

(k) 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. Related government bodies work closely 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(2)4 above.

2. MOST FAVOURED NATION TREATMENT / NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

(a) 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).

There are no exceptions to most favoured nation treatment and no discrimination between source economies.

(b) 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 provisions for exception to MFN treatment and for discrimination between source economies.

3. NATIONAL TREATMENT

(a) 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).

Foreign investors are free to maintain 100% foreign equity and to make their own decisions on markets and technology licensing.

(b) Description of nature and scope of any limitations on foreign firms' access to sources of finance:

There are no limitations on access to sources of finance.

4. REPATRIATION AND CONVERTIBILITY

(a) 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.

(b) Brief description of the foreign exchange regime:

There are currently no exchange control regulations.

(c) 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

(a) 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 for the temporary entry and sojourn of key foreign technical and managerial personnel for engaging in activities connected with foreign investment. Entry visas are required for holders of travel documents issued by the governments of Afganistan, Algeria, Bangladesh, Cambodia, China, Egypt, Hong Kong (documents of identity) India, Iran, Iraq, Jordon, Laos, Lebanon, Libya, Myanmar, Commonwealth of Independent States, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Viet Nam and Yemen and holders of Refugee Travel Documents issued by the Middle East countries.

(b) 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 in Singapore. 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. P passes are for those seeking professional, administrative, executive or managerial jobs or who are investors. Q passes are for skilled workers and technicians. The Employment Pass Department of the Ministry of Manpower processes P & Q passes. Accompanying family members may apply for a dependent pass.
Work Permits	Foreign semi-skilled and unskilled workers earning not more than $2,500 a month are required to apply for work permits or R passes to work in Singapore. The Work Permits Department of the Ministry of Manpower processes these passes.

(c) 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:

There are no regulations relating to personnel management of foreign firms.

(d) List and summary of domestic labour laws that 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 that 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. Either party can refer disputes to the Labour Relations Department of the Ministry of Manpower for conciliation. If settlement fails, the parties may refer the disputes to the Industrial Arbitration Court for arbitration. Under the Trade Disputes Act, a strike or lockout action cannot take place when the Industrial Arbitration Court has taken note of the trade dispute. Either party may refer disputes related to wage increase arising from the implementation of guidelines recommended by the National Wages Council 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. With effect from Jan 2001, employers contribute monthly 16% of wages and employees 20%. The Fund includes provisions for retirement, medical benefits, education, home ownership and other investments.
Factories Act	The Act stipulated safety and health requirements.
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. It was set at 62 with effect from 1 January 1999. The Notification exempted certain classes of employees from the provisions of the Act.
Trade Disputes Act	The Act lays down the rules for industrial action e.g. strikes and lockouts.
Workmen's Compensation Act	The Act provides for payment of compensation to workers injured or afflicted with occupational diseases in the course of work.

6. TAXATION

(a) 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 pay a tax of 22% on income after deduction for expenses, depreciation allowances, trading losses and donations to approved charities. The rate will go down to 20% within 3 years from Year

	of Assessment 2003.
Avoidance of Double Taxation	Singapore has signed comprehensive agreements with 45 countries. These are Austria, Australia, Bangladesh, Belgium, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Malaysia, Mauritius, Mexico, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Romania, South Africa, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, Turkey, United Arab Emirates, United Kingdom and Viet Nam. Generally, the agreements allow for a tax credit for the foreign tax paid on the remitted income up to the amount of Singapore tax payable on the same income.
Skills Development Fund	The levy for training is 1% of total payroll for employees earning $1,000 or less a month.
Water	The levy to encourage water conservation is 30%.
Goods and Services Tax	The rate on the supply of goods and services in Singapore and on the importation of goods into Singapore is 4%. This is a tax on domestic consumption. It will go up to 5% from 1 Jan 2004.

7. PERFORMANCE REQUIREMENTS

(a) *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 laws or policies stating performance requirements. All contracts are commercial dealings.

Singapore does not practice any TRIMS.

8. CAPITAL EXPORTS

(a) List and brief description of any regulations/institutional measures that limit capital exports or the outflow of foreign investment:

There are currently no exchange control regulations. As part of the globalisation strategy, Singapore encourages her companies to invest abroad.

(b) List and brief description of any regulations/institutional measures that limit technology export:

There are no regulations/institutional measures to limit technology exports.

9. INVESTOR BEHAVIOUR

(a) 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(2)2 above.

10. OTHER MEASURES

(a) Brief outline of the competition policy regime:

There are no antitrust or other laws to regulate competition in Singapore. National competitiveness is desirable in the development of industries and services. There is now a process of privatisation of government services to stay ahead of competition.

(b) 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:

Singapore intellectual property rights laws are in line with WTO requirements. 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.

The Copyright Act provides for copyright protection without the need for registration or application. This has been in place since 1987. The Copyright Tribunal serves 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. Singapore has provided for relatively good protection of intellectual property with enforcements stepped up since the 1980s. Proactive efforts to fight copyright piracy include the establishment of a 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

(a) List and summary of laws and regulations relating to expropriation and compensation of foreign investment and summary of their application and function:

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 such land and for appeals against awards of compensation made by the Collector of Inland Revenue. Appeals Boards hear appeals from such awards.

(b) 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

(a) 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, research and training on 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 include the following:

(i) The UNCITRAL (UN's Commission on International Trade Law) Arbitration Rules, adopted in Singapore in 1994, 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.

(ii) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the New York Convention, ratified by Singapore in 1986, makes more effective the international recognition of arbitration agreements and foreign arbitral awards and the enforcement of the arbitration award.

(iii) The Convention on the Settlement of Investment Disputes between States and Nationals of other States, adopted in Singapore's local statutes, specifically the Arbitration (International Investment Disputes) Act (see 2 below).

Agency	Address/telephone/fax
Singapore International Arbitration Centre	3 St Andrews Road #03-00 City Hall Building Singapore 178958 Telephone: (65) 6334 1277 Fax: (65) 6883 0823 Website: http://www.siac.org.sg E-mail: sinarb@siac.org.sg

(b) 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 September 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 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.

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) 6336 2288 Fax: (65) 6339 6077 Website: http://www.sedb.com
Venture Capital Fund	Exemption of corporate tax on income from approved venture capital funds	
Technopreneur Investment	Deduction from taxable income for losses incurred from investments into high tech start-ups	
Development & Expansion	Corporate tax rate of 13%	
Investment Allowance	Exemption of taxable income of an amount equal to a specified proportion, not exceeding 50%, of new investment in productive equipment	
Operational Headquarters	Income arising from the provision of approved services in Singapore taxed at 10%	
Approved Royalties	Full or partial exemption of withholding tax on royalty payments	
Approved Foreign Loan	Full or partial exemption of withholding tax on interest payments	
Double Deduction for R&D Expenses	Double deduction of qualifying R&D expenses against income.	

(2) Brief description of 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.

Program (National/sub-national)	Nature of incentive	Contact point
Initiatives in New Technology	Grants of fixed quantum per trainee per day to establish new capabilities	Economic Development Board 250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 6336 2288 Fax: (65) 6339 6077 Web site: http://www.sedb.com
Innovation Development Scheme	Grants of 30% to 50% of approved direct development costs	

(3) Details of one-stop facility service for foreign investors and contact point(s), including address, phone and fax number.

Agency	Address/telephone/fax
Economic Development Board (One-stop service to investors is available. This includes providing information and assistance in securing industrial land, suitable operational facilities and skilled labour. Foreign investors can also tap on the board's knowledge of Singapore's industrial capabilities to locate customers, suppliers, subcontractors and joint-venture partners.)	250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 6336 2288 Fax: (65) 6339 6077 Web site: http://www.sedb.com Overseas officers are in: New York, Boston, Washington DC, Chicago, Dallas, San Francisco, Los Angeles, London, Frankfurt, Milan, Paris, Stockholm, Tokyo, Osaka, Beijing, Jakarta, Hong Kong and Shanghai.

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 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	
International Finance Corporation	Stimulation of economic growth in developing countries by promoting private enterprise in those countries
Commission on Sustainable Development	Global programme of action on environmental protection
Council of the International Maritime Organization	Achievement of safe and efficient navigation and control of pollution caused by ships and crafts operating in the marine environment
International Civil Aviation Organization	Development of techniques of international navigation and planning and improvement of international air transport
International Telecommunication Union	World cooperation in the use of telecommunication to promote technical development and to harmonize national policies in the field
International Bank for Reconstruction and Development	Economic development of member nations by financing productive investments

International Atomic Energy Agency	Enlargement of contribution of atomic energy to peace, health and prosperity throughout the world
Bilateral Investment Guarantee Agreements	
IGAs signed with: ASEAN, Belarus, Belgo-Luxembourg Economic Union, Cambodia, Canada, China, Czech Republic, Egypt, France, Germany, Hungary, Mauritius, Mongolia, Laos, Latvia, Netherlands, Pakistan, Poland, Riau Archipelago, Slovenia, Sri Lanka, Switzerland, United Kingdom, United States of America, Viet Nam and Zimbabwe.	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.
Regional or Sub-regional Investment Treaties	
Association of South-east Asian Nations (ASEAN)	An intra-ASEAN investment agreement, focusing on economic cooperation, including trade and investment, and political and regional defence organisation
Framework Agreement on ASEAN Investment Area	Signed on 7 Oct 1998 as a concrete step towards liberalisation of investment regimes in ASEAN economies. Provides for national treatment and applied to direct investments in manufacturing, agricultural, fishery and mining industries.
Convention Establishing the Multilateral Investment Guarantee Agency (MIGA)	MIGA provides guarantees at the multilateral level against certain non-commercial risks for eligible investors. Singapore became a member in 1998.
Intellectual Property	
WTO TRIPS	TRIPS requires countries to put in place mechanisms for owners of intellectual property to enforce their rights.
World Intellectual Property Organization	WIPO promotes the protection of intellectual property throughout the world. Singapore became a member in 1990.
Paris Convention for the Protection of Intellectual Property	The Paris Convention provides, among others, the right of priority in patents, trademarks and industrial designs. Singapore became a party to this convention on 23 February 1995.
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	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.
Patent Cooperation Treaty (PCT)	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 1955.
Berne Convention	The Berne Convention extends copyright protection in over 100 member countries. Singapore acceded to this convention in 1998.
Free Trade Agreement	
FTAs signed with ASEAN, Japan, New Zealand, European Free Trade Association, Australia, US	To catalyze enhanced trade and investment flows and broader and deeper economic linkages

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$182 billion as at end 2000, as shown in 2 below. Financial and insurance services, manufacturing and commerce accounted for a large part of 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$69 billion as at end 2000. The financial (mainly holding companies) and manufacturing sectors were the main sectors that invested abroad.

(2) List of the major economies that are sources/receivers of FDI over recent years

Source of FDI ($Million)	**1996**	**1997**	**1998**	**1999**	**2000**
Japan	19,132	20,266	22,790	23,462	24,481
USA	15,776	20,679	19,177	25,488	33,921
Switzerland	8,643	10,419	13,347	15,379	15,667
UK	7,011	8,306	9,045	11,360	8,723
Netherlands	6,922	6,942	9,222	22,665	29,323
Hong Kong, China	4,172	3,772	4,339	4,409	5,590
Malaysia	3,869	4,656	5,499	5,458	4,800
All Economies	94,005	112,131	124,661	157,594	181,940

Destination of FDI ($Million)	**1996**	**1997**	**1998**	**1999**	**2000**
Malaysia	6,945	6,256	6,082	6,450	7,491
China	5,083	6,773	9,350	11,016	11,717
Hong Kong, China	4,683	5,620	5,373	7,214	4,499
UK	3,953	5,768	1,130	1,382	1,367

Indonesia	3,071	4,669	3,363	3,673	3,385
USA	2,274	2,599	2,706	3,722	5,505
New Zealand	1,363	1,284	504	402	760
All Economies	42,224	53,514	53,211	65,071	68,811

source: Ministry of Trade and Industry, Singapore

CHINESE TAIPEI

CHINESE TAIPEI

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of foreign investment policies including any recent policy changes.

Chinese Taipei has established a stable and comprehensive legal system under which multinational enterprises are protected and afforded the same rights as domestic enterprises. Foreign investment in Chinese Taipei, its protection, and any applicable restrictions on scope are handled mainly in accordance with the provisions of the Statute for Investment by Foreign Nationals. To further assure that administrative procedures take place in accordance with the law, an Administrative Procedures Law was implemented on January 1, 2001.

The primary objective of our investment policy is to maintain a highly liberalized, internationalized, transparent, and obstacle-free investment environment. Investments by foreign multinationals should obtain approval by the Investment Commission of the Ministry of Economic Affairs. With the exception of a few items involving national security or that would have an unfavorable influence on public health, about 99% of our manufacturing operations and 95% of its services have been opened to foreign investment, thereby achieving a high degree of liberalization. And, except for a small number of items, which are still subject to investment ratio restrictions, most investments are afforded national treatment.

Regulations for investment by foreign nationals and overseas Chinese are set forth in the Statute for Investment by Overseas Chinese and Statute for Investment by Foreign Nationals. These two statutes stipulate that investment is prohibited in industries that have an unfavorable influence on national security, public order, good moral habits, and national health, or in which investment is prohibited by law. In addition, for investments in industries in which investment is restricted by law or by orders established in accordance with legal authorization, the investor must obtain permission or agreement from the authority in charge of the target industry. The Negative List for Investment by Overseas Chinese and Foreign Nationals, which has been formulated in accordance with the above principles, is provided for the reference of investors in choosing industries in which to invest.

In November 2002, our highest executive authority approved a "Program for Priority Investment in Taiwan". The intent of this program is to encourage Chinese Taipei companies to carry out global deployment while, at the same time, strengthening investment in Chinese Taipei and taking Chinese Taipei as their global operations base; in addition, the program aims to continue building a favorable environment for the attraction of foreign investment so that foreign companies will expand their investment in Chinese Taipei. The goal in this is to maintain economic growth, create job opportunities, and upgrade long-term national competitiveness.

The concrete measures for implementation of this program include the enlivening of existing incentive measures, offering by the government of new investment opportunities, the vigorous attraction of investment, the building of a good investment environment, the strengthening of services to foreign companies, and the establishment of a designated responsible person system. In the area of foreign investment attraction, it includes the enhancement of the internationalization of investment information and regulations, strengthening of liaison and communication with foreign companies operating in Chinese Taipei, review of ratio restrictions on foreign investment, readjustment of foreign investment policy, and utilization of professionals to promote investment.

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

Under the policy of economic liberalization, internationalization, and systemization, Chinese Taipei is striving to improve its investment environment as well as formulate and revise investment laws and regulations in consideration of international norms in order to attract foreign investment, stimulate continuous domestic economic growth, and upgrade standards of industrial technology with the aim of coping with world economic development trends. Major current policies for the attraction of foreign investment include the following: improvement of the domestic investment climate; stimulation of the willingness of foreign companies to invest in Chinese Taipei; effective attraction of multinational enterprises to enter into strategic alliances with the Ministry of Economic Affairs and develop Asia-Pacific markets in cooperation with domestic companies; and the development of Chinese Taipei into a multifunctional global logistics center where multinational enterprises will engage in the development of production and marketing, research and development, funding, transshipping, and manpower training for high-tech, high-value-added products.

Regarding outward investment, in view of the help it provides in promoting economic cooperation in the Asia-Pacific area, as well as assisting in the export of capital and technology and expanding 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 providing potential investors with information on the investment climate and investment opportunities in the countries where they intend to invest, providing legal and taxation consultation services in areas where investment from Chinese Taipei is concentrated, and providing assistance to member economies holding investment seminars in Chinese Taipei.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) 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.
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 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 Executives 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.

(2) Investment Review and Approval

(a) Write yes or no next to any proposals and sectors that are/are not (yes/no) subject to screening. Add additional categories where appropriate.

(b) For each proposal identity 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
Mergers & acquisitions	yes	1.According to the provisions of the Fair Trade Law, The term “merger” means a situation:(1) where an enterprise and another enterprise are merged into one; (2) where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total

		capital of such other enterprise; (3) where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise; (4) where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or (5) where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise. 2.Provisions of the Fair Trade Law require notification to be filed with the central competent authority (The Fair Trade Commission, Executive Yuan, or FTC) in advance for the 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 exceeded the amount announced by the FTC. 3.In addition, this Law authorizes the FTC to distinguish between financial institutions and non-financial enterprises in prescribing and publishing the sales volume thresholds that trigger the pre-merger filing requirement.
Greenfield investment	yes	According to the provisions of the Statute for Investment by Foreign Nationals, foreign green-field investment must obtain the approval of the Investment Commission, MOEA.
Real estate /land	yes	According to the stipulations of the Land Law, lands of the following description may not be transferred or leased to aliens, nor may encumbrance on them be created in favor of aliens: forest lands, fisheries, hunting grounds, salt fields, lands with mineral deposits, sources of water, lands lying within fortified and military areas, and lands adjacent to the national frontiers. With the exception of the lands listed above, aliens may lease or purchase lands, or create encumbrances on lands in their favor, for any of the following purposes: residences, shops and factories, churches, hospitals, schools for the children of aliens, diplomatic and consular buildings, office buildings of organizations for the promotion of public welfare, and cemeteries.
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.

Sector		**Guidelines/Conditions**
Telecommunications	yes	Pursuant to the Telecommunications Act, the operation of telecommunications enterprises in Chinese Taipei shall meet the following requirements: a. A Type I (facilities-based) telecommunications enterprise shall not operate without a franchise and license issued by the Ministry of Transportation and

		Communications (MOTC). A Type I telecommunications enterprise shall be a company limited by shares incorporated pursuant to the Company Law. The chairperson of the Board of a Type I telecommunications enterprise shall be a national of Chinese Taipei. The total direct shareholding by foreigners in a Type I telecommunications enterprise (Chunghwa Telecom excluded) shall not exceed 49%, and the sum of direct and indirect shareholding shall not exceed 60%. b. A Type II (services-based) telecommunications enterprise shall apply to the Directorate General of Telecommunications (DGT) for an operating license, and may only commence its operation when the enterprise completes its company or business registration in accordance with the law and receives the operating license. There is no restriction on foreign investment in Type II telecommunications enterprises.
Motion pictures	yes	In accordance with the Motion Picture Law and its implementation by laws, 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.
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 and distribution of videotape programs, must meet minimum capital requirements and equipment standards.
The system operators of cable radio and television	yes	According to the Cable Radio and Television Law, foreigners investing in or operating cable radio and/or television systems in Chinese Taipei shall meet the following conditions: a. The organization operating a cable radio and/or television system shall be a company limited by shares, established in accordance with the Company Law. b. Foreign investment--both direct and indirect--in a company operating a cable radio and/or television system shall be less than sixty percent of the total shares issued by the company. Direct shareholding by foreigners is limited to legal entities, and the sum of shares held by foreigners shall not exceed twenty percent of the total shares issued. (Article 19)

		c. At least two-thirds of the directors and at least two-thirds of the supervisors of a company operating a cable radio and/or television system shall have Chinese Taipei citizenship. The chairman of the board of directors shall be a citizen of Chinese Taipei. (Article 20) d. The national regulatory agency may reject applications by foreign investors planning to establish or operate a cable radio and/or television system in Chinese Taipei, without resolution by the Review Committee, if it deems that the foreign investment would have an adverse effect on national security, public order, or social morals. e. Applications by foreigners for investment in a cable radio and/or television system, under any of the conditions described in the previous paragraph, or applications which violate Paragraph 3 of Article 19, shall be rejected. (Article 23)
Satellite broadcasting	yes	According to the Satellite Broadcasting Law, foreigners investing in or operating satellite broadcasting business in Chinese Taipei shall meet the flowing conditions: a. The organization of a satellite broadcasting business shall be in the form of a company limited by shares, established in accordance with the Company Law (Article 9). b. The total shares of a satellite broadcasting business directly held by foreign shareholders shall be less than 50% of the total shares issued by the said business (Article 10).
Transport	yes	Article 35 of the revised Highway Law reads "Non-Chinese Taipei Nationals or juristic persons may not invest in or operate motor vehicle transportation business within Chinese Taipei. However, a foreigner may apply to the Ministry of Transportation and Communications for approval to operate car rental services, freight trucking and container trucking business."
Agriculture	yes	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 or restricted 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 agricultural products wholesale market.

(c) Indicate all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

There are two 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:

--four 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 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.

For further information, refer to the following documents:

a. Directions on Preparation of Investment Applications (New Establishment);

b. Directions on Preparation of Investment Applications (Investment in Existing Enterprise and Re-investment).

(d) Identify the 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) 2351 3151 Fax: (886 2) 2396 3970

(e) Identify the availability of website information and whether there is that capacity to apply for approval on line.

Application information is available on the following web-sit: http://www.moeaic.gov.tw. Online application is not yet available

(f) Average period from the formal submission of all relevant/required documentation to final approval/rejection.

The average time required is approximately three days to two weeks.

(g) List 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 if necessary. 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 three days to two weeks.

Agency	**Address/telephone/fax**
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec. 1, Taipei Telephone: (886 2)2351 3151 Fax: (886 2)2396 3970 Web site: http://www.moeaic.gov.tw

(h) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

Foreign investment cases with an investment amount less than NT$500 million, and for which the category of investment is not included in banned or restricted investments, may be approved by the executive secretary of the Investment Commission alone without being subject to evaluation by a full meeting of the Investment Commission.

(i) Indicate 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 telephone/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) 2389 2111 Fax: (886 2) 2382 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) 2351 3151 Fax: (886 2) 2396 3970	The Investment Commission deals with Investment application appeals and cases regarding the hiring of foreign personnel of a specialist or technical nature.

(j) List 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 telephone/fax numbers for these agencies

Agency	**Address /telephone/fax**	**Functions**
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec.1, Taipei Telephone: (886 2)2351 3151 Fax: (886 2) 2396 3970	Compilation of statistics to gain an understanding of trends in foreign investment in Chinese Taipei, and in outward investment from Chinese Taipei; also, evaluation of the influence produced by such investments cases on the overall economy and society of Chinese Taipei.

(k) Describe any 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 Statute for Investment by Foreign Nationals was revised on Nov. 19, 1997 to effect greater internationalization and liberalization of foreign investment. The key points of the revision are as follows:

--A provision was added to the effect that reinvestment by overseas Chinese and foreign-invested enterprises will be subject to approval by the competent authority only when the overseas Chinese or foreign investor holds one-third or more of the equity in the enterprise concerned.

--The kinds of investment were relaxed.

--A provision was added to the effect that items of investment in which investment by overseas Chinese and foreign nationals is banned should conform to the trends of internationalization and liberalization.

--Restrictions on the rights of remittance for New Taiwan Dollar investment were eliminated, and obstacles to the inward and outward flow of capital were reduced.

We welcome, at any time, any suggestion oritted through any available channel, including going through foreign associations in Chinese Ta comment related to the improvement of foreign investment laws or systems. Such suggestions or comments can be submipei 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.

(l) If there is a 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 should apply to the Department of Commerce, MOEA for recognition of the foreign company and registration of the branch, then to the local country or city government office for profit-earning-enterprise registration. A foreign company setting up a representative office should report to the Department of Commerce, MOEA.

Agency	**Address/telephone/fax**	**Functions**
Commerce Department, MOEA	15 Fuchou St., Taipei Telephone: (886 2) 2321 2200 ext. 380 Fax: (886 2) 2394 2702 Web: www.moea.gov.tw	Handling of local company registration, foreign company recognition, and foreign liaison office registration.
Commerce Department, MOEA	15 Fuchou St., Taipei Telephone: (886 2) 2321 2200 ext. 770 Fax: (886 2)2341 4395 Web: www.moea.gov.tw	Receiving and examining the applications for Mixed Industrial/ Commercial Zones.
Central Taiwan Office, MOEA	4 Shen Fu Rd., Nanto, Taiwan Telephone: (886 4) 92359171 Fax: (886 4) 92350642 Web: www.moea.gov.tw	In charge of laws and regulations regarding factory construction permits and registrations; also provides consultation services.
Taipei City Government,	1 Shihfu Rd., N. Bldg. 1, Taipei Telephone: (886 2) 2720 8889 Fax: (886 2) 2759 8997 Web: www.taipei.gov.tw	Handles such matters as business and factory establishment permits and registrations in the Taipei area.
Kaohsiung City Government	9Fl., 2 Weisan Rd., Lingya District, Kaohsiung Telephone: (886 7) 336 8333 Fax: (886 7) 333 7633	Handles such matters as factory establishment permits and registrations in the

	Web: www.kcg.gov.tw	Kaohsiung area.
Yilan County Government	23 Chiucheng S. Rd., Yilan Telephone: (886 3) 936 4567 Fax: (886 3) 935 5483 Web: www.ilccb.gov.tw	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 Government	1 Yiyi Rd., Keelung Telephone: (886 2) 2420 1122 Fax: (886 2) 2422 2620 Web: www.klcg.gov.tw	Same as above.
Taipei County Government	32 Fuchung Rd., Panchiao, Taipei County Telephone: (886 2) 2960 3456 Fax: (886 2)2968 3235 Web: www.tpc.gov.tw	Same as above.
Taoyuan County Government	1 Hsienfu Rd., Taoyuan Telephone: (886 3) 337 6300 Fax: (886 3) 332 0542 Web: www.tyhg.gov.tw	Same as above.
Hsinchu County Government	10 Kuangming 6th Rd., Chupei City, Hsinchu County Tel: (886 3) 551 8101 Fax: (886 3) 551 3672 Web: www.hchg.gov.tw	Same as above.
Hsinchu City Government	120 Chungcheng Rd., Hsinchu City Tel: (886 3) 521 6121 Fax: (886 3) 521 6171 Web: www.hccg.gov.tw	Same as above.
Miaoli County Government	100 Hsienfu Rd., Miaoli City Telephone: (886 3) 732 2150 Fax: (886 3) 735 0908 Web: www.miaoli.gov.tw	Same as above.
Taichung County Government	136 Chunghsing Rd., Fengyuan City, Taichung County Telephone: (886 4) 526 3100 Fax: (886 4) 526 6128 Web: www.taichung.gov.tw	Same as above.
Taichung City Government	99 Minchuan Rd., Taichung Telephone: (886 4) 2228 9111 Fax: (886 4) 2229 1136 Web: www.tccg.gov.tw	Same as above.

Nantou County Government	136 Chunghsing Rd., Nantou City Tel: (886 4) 922 2106 Fax: (886 4) 923 8404 Web: www.nthg.gov.tw	Same as above.
Changhua County Government	416 Chungshan Rd., Sec. 2, Changhua Telephone: (886 4) 722 2151 Fax: (886 4) 726 1375 Web: www.chhg.gov.tw	Same as above.
Yunlin County Government	515 Yunlin Rd., Sec. 2, Touliu City Telephone: (886 5) 532 2154 Fax: (886 5) 532 9473 Web: www.yunlin.gov.tw	Same as above.
Chiayi County Government	1 Hsiangho 1st Rd., Hsiangho New Village, Taipao City, Chiayi County Tel: (886 5) 362 0123 Fax: (886 5) 362 0756 Web: www.cyhg.gov.tw	Same as above.
Chiayi City Government	1 Minsheng N. Rd., Chiayi Telephone: (885 5) 225 4321 Fax: (886 5) 222 7164 Web: www.chiayi.gov.tw	Same as above.
Tainan County Government	36 Minchih Rd., Hsinying City, Tainan County Telephone: (886 6) 632 2231 Fax: (886 6) 633 1410 Web: www.tnhg.gov.tw	Same as above.
Tainan City Government	1 Chungcheng Rd., Tainan Telephone: (886 6) 229 1111 Fax: (886 6) 298 3153 Web: www.tncg.gov.tw	Same as above.
Kaohsiung County Government	132 Kuangfu Rd., Sec. 2, Fengshan City, Kaohsiung County Tel: (886 7) 746 3390 Fax: (886 7) 747 6885 Web: www.ksg.gov.tw	Same as above.
Penghu County Government	32 Chihping Rd., Makung City, Penghu County Tel: (886 6) 927 4400 Fax: (886 6) 926 4060 Web: www.phhg.gov.tw	Same as above.
Pingtung County Government	527 Tzuyu Rd., Pingtung Telephone: (886 8) 732 0415 Fax: (886 8) 732 4864 Web: www.pthg.gov.tw	Same as above.

Taitung County Government	276 Chungshan Rd., Taitung City Telephone: (886 8) 932 6141 Fax: (886 8) 933 0559 Web: www.taitung.gov.tw	Same as above.
Hualien County Government	17 Fuchien Rd., Hualien Telephone: (886 3) 822 7171 Fax: (886 3) 822 4824 Web: www.hl.gov.tw	Same as above.
Kinmen County Government	60 Minsheng Rd., Chincheng Town, Kinmen County Telephone: (886 8)232 5644 Fax: (886 8) 232 8655 Web: www.kinmen.gov.tw	Same as above.
Lienchiang County Government	76 Chiehshou Village, Nankan Township, Matsu Telephone: (886 836) 25 125 Fax: (886 836) 25 021 Web: www.matsu.gov.tw	Same as above.

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

(a) List and describe 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).

Relations across the Taiwan Strait 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.

(b) List and description of any international agreements to which your economy is a party which provides any exceptions to MFN treatment.

Not applicable.

3. National Treatment

(a) Identify any 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)
1. Industries which may negatively affect national security, public order, good customs and practices, or national health; and 2. Industries which are prohibited by law.	The investor, who applies to invest in which investment is restricted by law or by an order given under the applicable law, shall obtain an approval thereof or a consent thereto from the competent authority in charge of the industry in question.

(b) Briefly describe the nature and scope of any limitations on foreign firms' access to sources of finance,e.g.are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

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 lent to any shareholder or other person except in cases where an inter-company or inter-firm business transaction calls for such lending arrangement; or where an inter-company or inter-firm short-term financing facility is necessary, provided that the amount of such financing facility shall not exceed forty percent of the amount of the net value of the lending enterprise. This stipulation also applies to foreign companies.

4. Repatriation and Convertibility

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Article 12 of the Statute for Investment by Foreign Nationals and the Statute for Investment by Overseas Chinese stipulate that investors may apply for exchange settlement against the interests accrued on their annual income, or against the profit surplus distributed to them from their investment. When investors are approved to transfer their shares, to withdraw or decrease their investment, they may apply for exchange settlement, in a lump sum, against the total amount of their investment as approved. The foregoing clause is also applicable to the capital gain realized from the investors' investment. The investors' application for exchange settlement against the payment of the principal and interest of their loan investment shall be governed by the agreed term and conditions approved by the Competent Authority.

Effective from March 1, 1996, the revised Regulations Governing Securities Investment by Overseas Chinese and Foreign Investors stipulate that foreign individuals and institutional investors may, after obtaining permission, invest directly in domestic securities. And the restriction of repatriation of the capital gain has been terminated since January 3, 1996.

(b) Briefly describe the foreign exchange regime.

The competent agency for Chinese Taipei's foreign exchange controls is the Central Bank. Foreign exchange controls are based on the following principles:

Remittances relating to goods and services transactions, and direct and portfolio investments approved by the competent authorities are completely liberalized.

Remittances not relating to goods and services transactions:

a. If not involving the conversion of New Taiwan dollars: completely liberalized.

b. If involving the conversion of New Taiwan dollars:

--Individuals who are local nationals or foreigners with Alien Resident Certificate and are over the age of 20 may freely settle up to US$ 5 million or an equivalent amount each year without prior approval.

--A company incorporated in Chinese Taipei and a foreign company registered in Chinese Taipei may freely settle up to US$ 50 million or an equivalent amount each year without prior approval.

--A non-resident is allowed to buy or sell up to US$100,000 or the equivalent against the NT dollar for each foreign exchange transaction.

c. The regulations for portfolio investments is as follows:

Except otherwise specified, there is no limit on the ratio of shares of a listed company held by any single foreign investor or all foreign investors.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds

Capital movements relating to outward investments or inward investments approved by the competent authorities are completely liberalized.

5. Entry and Sojourn of Personnel

(a) Identify any 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-exempt entry provision that applies to citizens of specified countries, or unless otherwise stipulated, all foreigners wishing to enter Chinese Taipei are required to obtain a proper visa prior to entry.

According to Article 12 and 13 of the Regulations for Issuance of Visas on Foreign Passports, a visitor visa may be issued to foreigners who intend 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 90 days, and may, if necessary, apply at the nearest city/county police headquarters for an extension up to 90 days (and if the duration of stay of visitor visa is 60 days, the holder may apply for a maximum of two extensions of up to 60 days each.). In principle, no extension will be granted to holders of visas that bear the restrictive stamp reading 'NO

EXTENSION WILL BE GRANTED', or a restrictive duration of stay of 14 or 30 days. Holders of the APEC Business Travel Card are entitled to multiple entries for stays of up to 90 days each time.

According to Article 10 of the Statute Regulations Governing Issuance of Visas on Foreign Passports, the competent government authority may invalidate or cancel the visa of any foreign national who falls under any of the following categories of excludable aliens who can be refused admission into Chinese Taipei.

(1) The foreign national has a criminal record within or outside of Chinese Taipei, or has previously ever been denied entry, ordered to leave or deported by the Authority.

(2) The foreign national has entered Chinese Taipei illegally.

(3) The foreign national has made false statements or withheld important facts relating to the purpose of entry as declared on the visa application.

(4) The foreign national has made a false statement or withheld a fact relating to the purpose of entry into Chinese Taipei as declared on the visa application.

(5) The foreign national has ever overstayed his or her visitor or resident visas or worked illegally in Chinese Taipei.

(6) The foreign national is believed through convincing evidence to be unable to support himself or herself financially or to intending to work illegally in Chinese Taipei.

(7) The foreign national holds a passport which is not recognized by the Authority, or his or her foreign status is not accepted by the Authority.

(8) The foreign national holds a passport or other travel document which is illegally obtained, forged or tampered with.

(9) The foreign national is believed through convincing evidence to be intending to come into Chinese Taipei in order to evade the law.

(10) The foreign national is believed through convincing evidence that he or she is detrimental to the national interest, public safety, public order, or good morals.

(b) List and briefly describe 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 fined not

	more than NT$10,000.
Time limit on Alien Resident Certificate	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.
Application for Temporary Resident Visa	Aliens essential to the execution of an investment project may apply for resident visas with a recruitment approval issued by the competent agency. White-collar foreign employees may be granted work permits valid for up to three years, extendable if necessary. If the foreign employees enter Chinese Taipei with visitor visas, they may apply for changing them into resident visas. Foreigners who already have alien resident certificates may apply for extension of these certificates.
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 reapply for a resident visa from the Bureau of Consular Affairs of the Ministry of Foreign Affairs or its branch office within 15 days after the actual change takes place, and only then apply for another term of residence from the Authority. Those who fail to apply for an extension will be fined not more than NT$10,000 and will be ordered to leave Chinese Taipei within a specified period of time.
Departure from and entry into Chinese Taipei during period of residence	Foreign nationals holding Alien Resident Certificates who need to exit and re-enter the territory of Chinese Taipei again during their period of residence must apply to the local police station at their place of residence for a Re-entry Permit. Re-entry Permits are divided into single and multiple re-entry types; their period of validity is the same as that of the Alien Resident Certificate and application for them can be made at the same time as application for the Alien Resident Certificate.

(c) Describe any regulations relating to personnel management of foreign firms, e.g., 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 qualification. 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, a foreign national to be employed in Chinese Taipei shall possess one of the following qualifications:

having obtained a doctor's degree in the relevant department of faculty.

having obtained a master's degree in the relevant department of faculty and engaged in the relevant operations for at least one year.

having obtained a bachelor's degree in the relevant department of faculty and engaged in the relevant operations for at least two years.

having graduated from the relevant department or faculty of a junior college or above and engaged in the relevant operations for at least three years.

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 a specified ratio of foreign to local employees.

(d) 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 mediation and arbitration decisions and disciplinary actions.

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes and double taxation agreements.

Taxation arrangements	**Summary**
Profit-seeking-enterprise income tax	The minimum taxable amounts, tax brackets and rates for the profit-seeking-enterprise income tax are as follows: 1. If the total taxable income of a profit-seeking enterprise is less than NT$50,000, the profit-seeking enterprise is exempt from tax. 2. If the total taxable income of a profit-seeking enterprise is less than NT$100,000, the income tax rate will be 15%. However, the income tax payable shall not exceed one half of that portion of taxable income in excess of NT$50,000. 3. If the total taxable income of a profit-seeking enterprise is more than NT$100,000, the income tax rate shall be 25% on the portion of taxable income that exceeds NT$100,000.
Indirect taxes	There are six indirect taxes levied in Chinese Taipei: value-added and non-value-added business tax (VANVABT), commodity tax, tobacco and alcohol tax, stamp tax, vehicle license tax, amusement tax and customs duties. The VANVABT is imposed upon the supply of goods and services within the territory of Chinese Taipei, as well as upon imported goods. The current tax rates are 5% for VAT business entities, 2% for Non-VAT enterprises engaged in banking, insurance, investment trust, securities, futures, commercial paper and pawn brokerage, and 0.1% to 25% for certain other Non-VAT businesses. The commodity tax is imposed on rubber tires, cement, beverages, flat-glass, oil/gas, electric appliances and vehicles. The tobacco and alcohol tax is imposed on tobacco products and alcoholic beverages.
Withholding taxes & double taxation agreements	1. Chinese Taipei's general policy toward tax treaties is to avoid double taxation, prevent fiscal evasion and strengthen substantive relations. . 2. As of July 31, 2002, Chinese Taipei has concluded double taxation

	agreements (DTAs) with Australia, Gambia, Indonesia, Macedonia, Malaysia, New Zealand, the Netherlands, Singapore, South Africa, Viet Nam, and Swaziland. In addition to this, international transportation income tax agreements have been signed with Canada, the European Union, German, Israel, Japan, Korea, Luxembourg, Macau, the Netherlands, Norway, Sweden, Thailand and the United States. 3. Chinese Taipei's withholding tax rates for various incomes are described in the following table. However, with respect to dividends, interest and royalties, reduced withholding tax rates of 5-15 % are provided for by DTAs.

Withholding Rates for Various Incomes (Non-treaty Economies)

Type of Income	**Withholding Rate**	
	Resident	**Non-Resident**
Dividends distributed by companies & profits distributed by cooperatives	–	1. 25% for profit-seeking enterprises and 30% for individuals; 2. 20% if the investment was approved under the Statute for Investment by Foreign Nationals or the Statute for Investment by Overseas Chinese
Profits paid to partners or to the owner of a sole proprietorship	–	1. 30%; 2. 20% if the investment was approved under the Statute for Investment by Foreign Nationals or the Statute for Investment by Overseas Chinese
Wages & salaries	10%; or withheld in accordance with the Regulations Governing the Withholding of Wages	20%
Commissions	10%	20%
Interest	1. 10%; 2. 20% to be taxed separately from ordinary income on interest from short-term commercial paper 3. 6% to be taxed separately from ordinary income on interest from securities issued under the Financial Asset Securitization Law	1. 20%; 2. 6% to be taxed separately from ordinary income on interest from securities issued under the Financial Asset Securitization Law
Rental	10%	20%

Royalties	15%	20%
Income from professional practice	10%	20%
Awards or prizes obtained from participation in contests, games, lotteries, etc.	1. 15%; 2. 20% to be taxed separately for a prize received from a lottery sponsored by the government if the prize exceeds NT $2,000 per ticket	1. 20%; 2. 0% if the prize is received from a lottery sponsored by the government and is below NT $2,000 per ticket
Income from the payments for retirement, severance, etc.	6% to be levied on the excess amounts prescribed by the Income Tax Law	20% to be levied on the excess amounts prescribed by the Income Tax Law
Other income	_	20%

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (TRIMs).

Chinese Taipei conforms to TRIMs requirements.

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

Regulations	**Application and function**
Statute Governing Foreign Exchange Regulations Governing the Reporting of Foreign Exchange Receipts and Disbursements or Transactions Guidelines for Authorized Banks on Assisting Customers to Declare Foreign Exchange Receipts and Disbursements or Transactions	(1) Capital movements relating to outward investments or inward investments approved by the competent authorities are completely liberalized (2) Individuals and groups whose foreign exchange payments, receipts, or transactions values do not exceed US$ 5 million or an equivalent amount in each year may apply to any authorized foreign exchange bank to make remittances. (3) A company incorporated in Chinese Taipei and a foreign company registered in Chinese Taipei may freely settle up to US$ 50 million or an equivalent amount in each year without prior approval. (4) A non-resident is allowed to buy or sell up to US$100,000 or the equivalent against the NT dollar for each foreign

	exchange transaction.
Regulations Governing the Screening and Handling of Outward Investment and Outward Technical Cooperation Projects	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$50 million need only be reported within six months after being implemented.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

Regulations	**Application and function**
Regulations Governing Export and Import of High-Tech Commodities	To conform to international norms, strengthen the protection of strategic technology, and prevent unauthorized shipment to prescribed countries, the Board of Foreign Trade has promulgated Export Control Lists for Strategic High-Tech Commodities. Commodities and technology which are included in the list can be exported only upon issuance of an export permit by the competent authorities.

9. Investor Behaviour

(a) Indicate 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:

a. Company Law

b. Commercial Registration Law

c. Securities and Exchange Law

d. Registration Regulations for Profit- Seeking Enterprises

e. Regulations for Factory Registration

(2) Labor:

a. Labor Standards Law

b. Employment Services Act

c. Worker Safety and Hygiene Law

(3) Environmental protection:

a. Air Pollution Control Act

b. Noise Control Act

c. Water Pollution Control Act

d. Waste Disposal Act

(4) Taxation:

a. Income Tax Law

b. Business Tax Law

c. Commodity Tax Law

d. Customs Law

e. Tax Collection Law

(5) Others:

a. Fair Trade Law

b. Consumer Protection Law

c. Statute for the Management of Foreign Exchange

d. Commercial Accounting Law

e. Commodity Labelling Law

10. Competition Policy

(a) Briefly outline the competition policy regime

The Fair Trade Law was promulgated on February 4, 1991 and implemented a year later 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 promote overall economic stability and prosperity. The entities subject to the regulation of this law include companies, industrial or commercial establishments 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 a wide range of anti-competitive behavior, including the anti-competitive practices of monopolies, oligopolies by dominant firms, collusion among firms, mergers and acquisitions and unfair trade practices such as vertical restraints, price discrimination, passing-offs and counterfeiting, false and misleading advertising, commercial disparagement, multi-level sale schemes (i.e. pyramid sales) and grossly unfair trade practices. The Law also

contains civil remedies to parties whose rights have been infringed, punitive provisions and their application, and supplementary provisions.

The Fair Trade Commission was established in 1992 by the competent authority to administer matters in respect of fair trade as set forth in the Law. The Commission has nine full-time Commissioners, each of them appointed to a three-year office. One of the Commissioners serves as the Chairperson, whose position is ministerial-level, and another as Vice-Chairperson. The Commissioners meet at least once every week to deliberate fair trade policies, laws and regulations related to fair trade, approvals and disciplinary actions and all other matters related to the enforcement of the fair Trade Law. Decisions of the Commission is made by majority vote of the Commissioners. All Commissioners should be free from any interference of political parties and exercise their authorities independently according to the Law.

In order to keep pace with the current social and economic circumstances as well as to anticipate future developments, there are two focuses of the current amendment of the merger regulations. The first was put into effect on 5 February 1999. Salient points of the amendment include: increasing pecuniary penalties to NT$50,000,000 (administrative fines) and NT$100,000,000 (criminal fines) to punish persons and enterprises that violate the Fair Trade Law, thus enhancing the Fair Trade Commission's ability to impose more significant fines on enterprises that do not comply with the Commission's directives and dispositions; requiring cases to be dealt with through administrative channels before the judicial system is resorted to except for those cases involving illegal multi-level sales schemes; and incorporating more stringent rules governing rights and obligations of enterprises and participants in multi-level sales activities. The second amendment to merger regulations was put into effect on 8 February 2002. The amendment replaces the current "prior approval system" with a "pre-merger notification system" to streamline the review process for mergers. In addition, a new provision is also added to authorize the Commission to distinguish between financial institutions and non-financial enterprises in prescribing and publishing the sales volume thresholds that trigger the pre-merger filing requirements.

11. Other measures

(a) List and briefly describe current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

Chinese Taipei is a WTO member effective Jan. 1, 2002; it has striven for more than a decade to afford IPR protection comparable with international standard, especially TRIPS. It went through an IP regulation review at the TRIPS Council meeting in September 2002. Chinese Taipei listens to opinions within its society while amending its IP regulations. For example, the opinions of industrial or commercial associations, including foreign chambers of commerce in Chinese Taipei, have been taken into account while undertaking the latest amendment of the Copyright Law.

The current IPR-related legislation of Chinese Taipei consists of: the Copyright Law, the Trademark Law, the Patent Law, the Optical Disk Law, the Integrated Circuits Layout Protection Act, the Trade Secrets Act, the Plant Seed Act, and the Tobacco and Alcohol Administration Law

for the protection of geographical indication of wine and spirits. Prior to the formal adoption of border measure provisions within the TRIPS Agreement, Chinese Taipei had already launched a Trademark Monitoring System (TMS) and an Export Monitoring System (EMS) to prevent the free circulation of pirated computer software.

Recent efforts regarding the amendment or enforcement of legislation:

1. Revisions to the Copyright Law, Patent Law, and Trademark Law to bring them into full compliance with TRIPS have been approved by the Legislature. The revised Copyright Law went into force on January 21, 1998, with retroactive protection provisions that take effect upon Chinese Taipei's accession to the WTO. The amended Trademark Law has been in force since November 1, 1998. The revised Patent Law took effect on January 1, 2002.

2. To effectively administer control of the geographical indication of alcoholic products, the Ministry of Finance enacted a "Regulation Governing the Labeling of Alcohol Products" on January 1, 2002.

3. Chinese Taipei's Trade Secrets Act and Integrated Circuit Layout Protection Act related to IPR protection were drafted to conform to TRIPS.

4. To combat counterfeiting and piracy activities, in particular regarding the pirated optical disks, the Optical Disk Law (ODL) was enacted and entered into force on November 16, 2001. The Joint Optical Disk Enforcement Task Force (JODE) – a team dedicated to combating counterfeiting and piracy – has been established to integrate the personnel and resources of relevant authorities to effectively crack down on counterfeiting and piracy.

5. Anyone can report a counterfeiting infringement to any district police office or the Anti-Counterfeiting Committee (ACC).

C. INVESTMENT PROTECTION

1.Expropriation and Compensation

(a) *Provide a 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.*

Laws/ Regulations	**Application and function**
Article 13 of Statute for Investment by Foreign	In cases where 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

Nationals	government acquires or expropriates the invested enterprise because of national defense reasons. The compensation under the preceding Paragraph shall be permitted for exchange settlement.
Article 14 of Statute for Investment by Foreign Nationals	In cases where 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.

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

2. Settlement of Disputes

(a) 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 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.

(b) Signatory or accession to the International Convention on the Settlement of Investment Disputes (ICSID).

No.

D. INVESTMENT PROMOTION AND INCENTIVES

1. *Briefly describe any investment promotion programs offered at both the national and sub-national level (e.g., 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.*

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 13%, 10%, or 5% of the total cost of the equipment or technology, 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 for spending for research and development, personnel training	Companies spending funds on research and development, or personnel training may claim an investment tax credit of 30 % 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, opt for exemption on business income taxes for a period of five consecutive years.	Management Committee, Development Fund Ministry of Finance; Ministry of Transportation and Communication Government Information Office; Energy Commission, MOEA; Industrial Development Bureau, MOEA; Department of Commerce, MOEA
	Important technology enterprises, important investment enterprises, and venture capital enterprises, upon establishment or expansion, are 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 Communication Government Information Office; Energy Commission, MOEA; Industrial Development Bureau, MOEA; Department of Commerce, MOEA
Investment tax credit for corporate investment in	To promote balanced regional development, companies investing in	County authorities of areas announced by the Ministry of

areas with scant natural resources or slow development	areas with scant 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.	Economic Affairs as having scant 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.	For energy-conserving equipment: Energy Council, MOEA; For other equipment: Industrial Development Bureau, MOEA
Tax exemption for creative works and inventions	50% of the 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.
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 utilize approved foreign patents, trademarks, or other special utilization rights for the purpose of improving	Energy Commission, MOEA; Industrial Development Bureau, MOEA

	product quality or reducing production costs, are exempt from taxes on royalty payments and payments for technical services.	

2. *Briefly describe 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. Provide a summary of these programs including the nature of incentives offered and provide 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 bureaus
Low-interest loans for the procurement of domestically produced automation equipment	Loans for the procurement of domestically produced automation equipment by general productive enterprises and warehousing enterprises are available at an interest rate 2.125 percentage points below the Chiao Tung Bank's prime rate.	Chiao Tung Bank, Taiwan Business Bank and other commercial banks.
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 rate 2.125 percentage points below the Chiao Tung Bank's prime rate.	Chiao Tung Bank, Taiwan Business Bank and other commercial banks.
Loans for the procurement of pollution control equipment by private	Loans for the procurement or improvement of pollution control equipment by private factories are available at an interest rate 2.50 percentage points	Chiao Tung Bank, Taiwan Business Bank and other

enterprises	below the Chiao Tung Bank's prime rate.	commercial banks.
Private sector participation in major government projects	Private-sector enterprises participating in major government projects in Kaohsiung city Kaohsing county, or Hualien county may enjoy exemptions or deductions of the land tax, house tax and deed tax.	Kaohsiung city government, Kaohsing county government, Hualien county government
Other tax benefits	Increased value resulting from revaluation of assets by a profit-seeking enterprise is not included in taxable income.	District tax bureaus

3. If there is a one stop facility for foreign investors, provide details of this service and contact point(s), including address, and telephone/fax numbers.

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.	8th Fl., 71 Kuan Chien Rd., Taipei, Taiwan Tel: (886 2) 2389 2111 Fax: (886 2)2382 0497 Web: www.idic.gov.tw
Economic Processing Zone Administration, MOEA provides services to export-oriented companies wishing to set up factories in economic processing zones.	600 Chiachang Rd., Nantzu District, Kaohsiung, Taiwan Tel: (886 7) 361 1212 Fax: (886 7) 361 4348 Web: www.epza.gov.tw
Kaohsiung Branch, Economic Processing Zone Administration, MOEA provides services to export-oriented companies wishing to set up factories in the economic processing zone.	2 Chungyi Rd., Chienchen District, Kaohsiung, Taiwan Tel: (886 7) 821 7141 Fax: (886 7) 831 0897 Web: www.kepz.gov.tw
Taichung Branch, Taichung County, Economic Processing Zone Administration, MOEA provides services to export-oriented companies wishing to set up factories in the economic processing zone.	1 Chienkuo Rd., Tantzu Township, Taichung County, Taiwan Tel: (886 4) 2532 2113 Fax: (886 4) 2532 2200 Web: www.epza.gov.tw/tepz
ChungKang Branch, Taichung County, Economic Processing Zone Administration, MOEA provides services to export-oriented companies wishing to set up factories in the economic processing zone.	6 Ta-kuan Rd., Wuchi, Taichung County, Taiwan Tel: (886 4) 26581215 Fax: (886 4) 26570103 Web: www.cepz.gov.tw.

Science-based Industrial Park Administration provides services to technology-oriented companies wishing to establish factories in the science-based industrial park.	2 Hsinan Rd., Hsinchu, Taiwan Telephone: (886 35) 773 311 Fax: (886 35) 776 222 Web: www.sipa.gov.tw

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

1. *Indicate if your economy is a party to any of the following agreements, economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).*

Agreement	**Provisions**
Free Trade Agreement	Not Applicable
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 Agreements Chinese Taipei has entered into investment protection agreements with 22 economies: the United States, Singapore, Indonesia, the Philippines, Panama, Paraguay, Nicaragua, Latvia, Malaysia, Viet Nam, Argentina, Nigeria, Malawi, Honduras, Thailand, El Salvador, Senegal, Swaziland, Burkina Faso, Dominica,	These agreements are based on the principle of non-discrimination(most-favored nation treatment and national treatment) ; 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 favorable investment

Belize, Costa Rica, Republic of the Marshall Islands, Macedonia, Liberia, Guatemala, Saudi Arabia, and India.	conditions.
Regional or sub-regional Investment Treaties	Not applicable.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. Provide an overview of recent trends in foreign investment [foreign direct investment (FDI) and portfolio]] over recent years (both inward and outward).

According to statistics from the Investment Commission of the Ministry of Economic Affairs, by the end of 2001, accumulative approved investment by overseas Chinese and foreign nationals in Chinese Taipei had reached 13,697 cases with a total investment value of US$49.69 billion. Of the total, overseas Chinese accounted for 2,661 cases with a total value of US$3.63 billion and foreign nationals for 10,929 cases worth a total of US$45.83 billion. The major source countries or areas for this investment are the United States; Japan; Hong Kong, China; British possessions in Central America (this refers primarily to the British Virgin Islands), and Singapore. Most of the investment has gone into electronic and electrical product manufacturing, chemical product manufacturing, services, basic metals and metal product manufacturing, international trade, machinery manufacturing, and banking and insurance.

In the area of outward investment, statistics from the Investment Commission of the Ministry of Economic Affairs show that approved outward investment up to the end of 2001 amounted to approximately 8,205 cases with a total value of US$31.34 billion. The biggest destinations for this investment were, in descending order, British territories in Central America (this refers primarily to the British Virgin Islands), the United States; Singapore; Malaysia; Hong Kong, China; and Thailand. The main target industries for this outward investment were banking and insurance, electronic and electrical product manufacturing, international trade, chemical product manufacturing, and services.

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

According to statistics from the Investment Commission, the major sources/receivers of FDI in 2001 were as follows:

Sources FDI	**Destination FDI**
British possessions in Central America; the United States;, Japan; Hong Kong, China; Singapore.	British possessions in Central America; the United States; Singapore; Malaysia; Hong Kong, China; Thailand.

THAILAND

THAILAND

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

The Thai Government recognizes 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 industrialization process. Over the recent years, a strong emphasis has been placed upon industrial decentralization to address economic imbalance between urban and rural areas. The investment promotion policies are then geared towards this goal.

Another major policy theme is liberalization and competitiveness enhancement. The Government continues to implement measures to encourage an active role of the private sector, both Thai and foreign.

Since early 1990s, 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. Explain 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 has recently reviewed the investment promotion policy which has become effective since August 1, 2000. The new policy focuses on:

(1) the enhancement of efficiency and effectiveness of tax privileges and good governance principles

(2) the encouragement of quality and production standard development

(3) the compliance with the international trade and investment agreement such as the abolishment of export and local content requirements

(4) the decentralization of investment to low income and disadvantaged region

(5) the promotion of small and medium industries

Apart from that, the BOI has revised the list of activities eligible for promotion which include some new activities to accommodate changes in today's technology and development.

Further references:

Foreign Business Act

Investment Promotion Act

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation	Summary
Foreign Business Act B.E. 2542 (1999)	This legislation is applied to natural persons not of Thai nationality or juristic persons with at least one-half of their capital owned by foreigner; or a limited partnership or a registered ordinary partnership having foreigner as a partner or manager. It sets out 3 categories of business activities where these foreign legal entities are (1) prohibited (2) permitted by the Minister with the Approval of the Cabinet; and (3) permitted by the Director-General of Commercial Registration Department with the approval of the Foreign Business Committee. No foreign equity participation restriction is imposed on activities not covered by this Law.
Investment Promotion Act, 1977	This legislation sets out principles and procedures for investment promotion including protection, guarantees, tax and non-tax incentives offered to investors in Thailand.

Board of Investment Announcement No. 1/2543 (2000)	This announcement replacing the Board of Investment Announcement No.1/2536 (1993) has become effective since 1 August 2000. It spells out the new policy and criteria in granting investment promotion, including joint-venture criteria and incentive schemes.
Industrial Estate Authority of Thailand Act, 1979	This legislation sets out the incentives granted by the Industrial Estate Authority of Thailand to those who have a factory or operation in the industrial estates.

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal, identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

Proposals	**Guidelines/Conditions**
Merger (No)	Unless involving business activities specified in List 1, 2 or 3 of the Foreign Business Act
Acquisitions (No)	Unless involving business activities specified in List 1, 2 or 3 of the Foreign Business Act
Greenfield investment (No)	Unless involving business activities specified in List 1, 2 or 3 of the Foreign Business Act
real estate/land (Yes)	Foreign ownership in entities involved in land trade must be lower than half of the registered capital.
Joint venture (No)	Unless involving business activities specified in List 1, 2 or 3 of the Foreign Business Act Only companies seeking investment promotion are subject to the following joint venture criteria of the Board of Investment. (Please refer to BOI homepage: www.boi.go.th for updated information) For investment projects in agriculture, animal husbandry, fishery, mineral exploration and mining and service business under List 1 of the Foreign Business Act of 1999, Thai nationals must hold shares totaling not less than 51% of the registered capital.

	For manufacturing business, foreign investors may hold a majority or all shares in promoted projects.
Others:	Please refer to the Foreign Business Act and the Board of Investment joint venture criteria.
Sector	**Guidelines/Conditions**
Telecommunications (Yes)	Depending on subsectors of telecommunications services.
Media (Yes)	For Newspaper business, radio broadcasting or television station business, foreign equity must be lower than half of the registered capital.
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.
Others:	Please refer to the Foreign Business Act, the Board of Investment joint venture criteria, and other specific laws.

(c) Indicate all application/approval forms required for screening purposes. Briefly summarize additional documentation that is required for review or approval processes.

Foreign Business License: Application Form and the required documents as follows:

- Affidavit of Company

- Memorandum of Association and Article of Association (By laws)

- Power of Attorney appointing a person as a representative of the head office to register, establish and manage a branch office in Thailand

- Copy of Passport

All the foregoing documents, except passport, must be authenticated by a notary public or certified by Thai embassies or consulates at the nation where the head office located.

Investment Promotion of the Board of Investment :

- 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.1.2 (d) below.

Industrial Estate Permission for manufacturing:

- The application and permission forms can be divided into 3 main categories, namely, application for land use and operation, application for construction, and application for operation. Additional documentation required varies from one form to another.

Identify contact point(s) to which applications should be made and provide addresses and the phone/fascimile numbers for contacts. Agency Address/Telephone/Fax

Agency	**Address/telephone/fax**
Department of Business Development, Ministry of Commerce	44/100 Sa Nam Bin Nam Road, Muang Nonthaburi 11000 Telephone: (662) 547-4419 to 20 Fax: (662) 547-4441 Home Page: http://www.moc.go.th/thai/dcr
Office of the Board of Investment (BOI)	555 Vipavadee-Rangsit Road, Chatuchak, Bangkok 10900 Telephone: (662)537-8111, 537-8155 Fax: (662) 537-8177 E-mail: head@boi.go.th Home Page: http://www.boi.go.th
One-Stop Service (OSS) of the Industrial Estate Authority of Thailand (IEAT)	618 Thanon Nikhom Makkasan, Ratchathewi, Bangkok 10400 Telephone: (662) 253-0561 ext. 2264, 1194, 1195 Fax.: (662) 253-2965, 650-0203 E-mail: ieat@ieat.go.th Home page: http://www.ieat.go.th

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on line.

Please refer to (d), approvals on line is not available.

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

Foreign Business License

Maximum time allowed for approving a foreign business license by the Department of Commercial Registration:

Types of Activities	Number of Working Days
1. Companies engaged in activities in List 2 and 3 and promoted by the Board of Investment	within 30 days from the submission of complete application and documentation
2. Companies engaged in activities in List 2 and 3	within 60 days from the submission of complete application and documentation

Investment Promotion Approval:

Actions	Number of working days
1. Investment Promotion Approval	a) For projects with investment up to 500 million baht, excluding land cost and working capital, within 60 days from the submission of complete documentation b) For projects with investment over 500 million baht, excluding land cost and working capital, within 90 days from the submission of complete documentation
2. Issuance of Promotion Certificate	within 10 days from the receipt of a letter accepting the terms of investment promotion approval and complete documentation from promoted companies.

Industrial Estate Permission for Manufacturing:

Actions	Number of working days
1. Land Use and Operation Permit	a) on the same day of application submission given complete documentation and compliance with the IEAT criteria b) within 30 days in case the application does not fully comply with the IEAT's criteria or the consideration of the IEAT Board is specified.
2. Building Construction Permit	within 2 days from the submission of complete documentation
3. Notification of Commencing	within 2 days from the submission of complete documentation

Operation Approval	

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

According to the Foreign Business Act of 1999, in case of refusal to grant a permit, applicants have the right to appeal by means of written submission to the Minister within 30 days of the date when the order of refusal is known.

According to The Board of Investment Announcement No. 1/1986, effective 7 March 1986, on the regulations of the Appeal Screening Subcommittee regarding appealing a Board decision, the applicant or promoted companies have the right to appeal a decision of the Office of the Board of Investment, of a subcommittee, or of the Board itself by means of submission of letter addressed to the Secretary General of the Board of investment, giving full details and specifying the reasons for the appeal within 60 days since the decision of the Board is notified to the applicant or promoted company. The Office of the Board of Investment will not reconsider an appeal which has been withdrawn, or on which a conclusion has been reached, except in cases where an appeal is resubmitted for projects which may be subject to changes of policy regarding the type and/or size of activity.

Agency	**Address/telephone/fax**
Ministry of Commerce	Department of Business Development 44/100 Sa Nam Bin Nam Road, Muang Nonthaburi 11000 Telephone: (662) 547-4432 Fax: (662) 547-4441 Home Page: http://www.moc.go.th/thai/dcr
Office of the Board of Investment	555 Vipavadee-Rangsit, Chatuchak Bangkok 10900 Telephone: (662)537-8111, 537-8155 Fax: (662) 537-8177 E-mail: head@boi.go.th Home Page: http://www.boi.go.th

(h) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

Please refer to Section B.1.2 (f)

(i) Indicate 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	All investment-related matters

(j) List 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	44/100 Sa Nam Bin Nam Road, Muang Nonthaburi 11000 Telephone: (662) 547-4432 Fax: (662) 547-4441	Granting foreign business licenses.
Office of the Board of Investment	555 Vipavadee Rangsit Rd Chatuchak Bangkok 10900	Administering investment promotion incentives.

(k) Describe any 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.

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 (JPPCC); Joint-Standing Committee on Commerce, Industry and Banking-JSCCIB which comprises the Board of Trade of Thailand, the Federation of Thai Industries, and the Thai Bankers' Association; Foreign Chamber of Commerce including each country's Chamber of Commerce; and several ad-hoc working groups consisting of representatives from public agencies and private sector institutions. Memorandum of Understanding (MOU) had been signed among private sector organizations and served as guidelines for bilateral and multilateral cooperation on Trade & Investment Promotion as well as barriers elimination. Public hearing is a common channel through which the opinions of the private sector are aired. Moreover, the private sector has representatives in the Board of Investment, which is responsible for establishing investment promotion policies and considering investment projects applying for promotion.

(l) *If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g. zoning, approvals of land purchase).*

Regional offices of various agencies responsible for investment operations i.e. the Office of the Board of Investment (Investment and Economic Centers), Ministry of Industry (Provincial Industrial Offices) and Ministry of Commerce (Provincial Trade Offices) 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 Region Investment and Economic Center 112 Airport Business Park Tower 90 Mahidol Road., Haiya District, Amphor Muang, Chieng Mai 50100 Tel.: (66 53) 203-400 Fax: (66 33) 203 404 E-Mail: chmai@boi.go.th Northeastern Investment and Economic Center 1 2112/22 Mittraphap Road, Amphor Muang, Nakhon Ratchasima 30000 Tel.: (66 44) 213-184 Fax: (66 44) 213-182 E-Mail: korat@boi.go.th Northeastern Investment and Economic Center 2 213 Aupalisarn Road, Amphor Muang, Ubon-Rachathani 34000 Tel.: (66 45) 240-127 to 9 Fax: (66 45) 240-130 E-Mail: ubon@boi.go.th Eastern Region Investment and Economic Center 46 Moo 5, Sukhumvit Road, Leam Chabang Industrial Estate, Tambon Toongsukhla, Sriracha District, Chonburi 20230 Tel.: (66 38) 490-477, 491-820 Fax: (66 38) 490-479 E-Mail: chonburi@boi.go.th	Administer investment incentives and provide information services.

	Southern Region Investment and Economic Center1 7-15 Chaiyong Tower, Jootee-Uthit 1 Road, Haad Yai, Songkhla 90110 Tel.: (66 74) 347-161 to 5 Fax: (66 74) 347-160 E-Mail: songkhla@boi.go.th Southern Region Investment and Economic Center 2 49/21-22 Surat-Phunphin Road, Tambol Makamtia, Amphor Muang, Surat Thani 84000 Tel.: (66 77) 284-622, 284-637 Fax: (66 77) 284-638 E-Mail: surat@boi.go.th	

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

(a) List and describe 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).

The Foreign Business Act of 1999 is not applicable to foreigners 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 services sectors is on a reciprocal basis.

(b) Identify and describe any international agreements to which your economy is a party which provides any exception to MFN treatment.

Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America.

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

Foreign Business Act of B.E. 2542 (1999):

Sector	Nature of Exception (e.g., prohibition, limitation, special conditions and special screening)
List 1: The businesses not permitted for foreigners to operate due to special reasons: (1) Newspaper business, radio broadcasting or television station business (2) Rice farming, farming or gardening (3) Animal farming (4) Forestry and wood fabrication from natural forest (5) Fishery for marine animals in Thai waters and within Thailand specific economic zones (6) Extraction of Thai herbs (7) Trading and auctioning Thai antiques or national historical objects (8) Making or casting Buddha images and monk alms bowls (9) Land trading.	Foreign equity participation must be lower than half of the registered capital.
List 2: The businesses related to the national safety or security or affecting arts and culture, tradition, folk handicraft or natural resource and environment: Group 1: National safety/security-related businesses (1) Production, selling, repairing and maintenance of (a) Firearms, ammunition, gun powders, explosives (b) Accessories of firearms, ammunition and explosives (c) Armaments, ships, air-crafts, or military vehicles (d) Equipment or components, all categories of war materials (2) Domestic land, waterway, or air transportation, including domestic airline business Group 2: Businesses affected to culture, traditional and folk handicrafts (1) Trading antiques or art objects being Thai arts and handicraft (2) Production of carved wood (3) Silkworm farming, production of Thai silk yarn, weaving Thai silk or Thai silk pattern printing (4) Production of Thai musical instruments (5) Production of goldware, silverware, nielloware,	Foreign equity participation must be lower than half of the registered capital except permission by the Minister with the approval of the Cabinet Foreigners operating business under this list must meet the following two qualifications: 1. At least 40% of all the shares must be held by Thai persons or juristic persons that are not foreigners.(Given reasonable cause, the minimum may be lowered to 25% by the Minister with the Cabinet's approval.) 2. The number of Thai directors shall not be less than two-fifths of the total number of directors.

bronzeware and lacquerware (6) Production of crockery of Thai arts and culture Group 3: Businesses affecting natural resources or environment (1) Manufacture of sugar from sugarcane (2) Salt farming, including underground salt (3) Rock salt mining (4) Mining, including blasting or crushing (5) Wood fabrication for furniture and utensil production	
List 3: The businesses which Thai nationals are not yet ready to compete with foreigners: (1) Rice milling, and flour production from rice and farm produce (2) Fishery specifically marine animal culture (3) Forestry from forestation (4) Production of plywood, veneer board, chipboard or hardboard (5) Production of lime (6) Accounting services business (7) Legal services business (8) Architecture service business (9) Engineering service business (10) Construction except for: (a) Construction rendering basic services to the public in public utilities or transport requiring special tools, machinery, technology or construction expertise having the foreigner's minimum capital of 500 million Baht or more (b) Other categories of construction prescribed by the ministerial regulations (11) Broker or agency business, except: (a) Being broker or agent for underwriting securities or services connected with future trading of commodities or financing instruments or securities (b) Being broker or agent for trading or procuring goods or services necessary for production or rendering services amongst affiliated enterprises (c) Being broker or agent for trading, purchasing or distributing, or seeking both domestic and foreign markets for selling domestically manufactured or imported goods in the manner of international business operations having the foreigner's minimum	Foreign equity participation must be lower than half of the registered capital except in case of permission granted by the Director-General with the approval of the Committee.

capital 100 million Baht or more (d) Being broker or agent of other category as prescribed by the ministerial regulations (12) Auction, except: (a) Auction in the manner of international bidding not being the auction of antiques, historical artifacts or art objects which are Thai works of arts, handicraft or antiques or having the historical value (b) Other categories of auction as prescribed by the ministerial regulations (13) Internal trade connected with native products or produce not yet prohibited by law (14) Retailing all categories of goods having the total minimum capital less than 100 million Baht, or less than 20 million Baht per shop (15) Wholesaling all categories of goods having the total minimum capital of each shop less than 100 million Baht (16) Advertising business (17) Hotel business, except for hotel management service (18) Guided tour (19) Selling food or beverages (20) Plant cultivation or propagation business (21) Other categories of service business except that prescribed in the ministerial regulations	

(b) Briefly describe the nature and scope of any limitations on foreign firms' access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

There is no limitation on firms' access to sources of finance on the basis of their nationality.

4. Repatriation and Convertibility

(a) Identify and describe any regulations, which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

Repatriation of investment funds can be remitted freely upon submission of supporting evidence.

(b) Briefly describe the foreign exchange regime.

The Bank of Thailand has been entrusted by the Ministry of Finance with the responsibility of administering foreign exchange. Under a managed-float regime, since 2nd July 1997, the value

of the Thai baht is predominantly determined by market forces and moves in line with economic fundamentals. The Bank of Thailand will intervene in the market only when necessary.

All foreign exchange transactions are to be conducted through authorized banks . Authorized persons (money changers) can only buy foreign notes and traveller's cheques and sell foreign notes.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

There is no restrictions related to foreign investment. However, both capital and loans must be surrendered to an authorized bank (or deposited in a foreign currency account) in Thailand within 7 days from receipt.

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe 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 8 types of visas, namely, diplomatic, official, tourist, transit, non-immigrant, immigrant, non-quota immigrant and visa on arrival. Non-resident staff of foreign firms must obtain a non-immigrant visa. There are 10 categories of non-immigrant visas, that is, Business(B), Official(F), Education(ED), Mass Media of Communication(M), Investment through BOI(IB), Investment through Ministry(IM), Religion(R), Research and Science(RS), Expert(EX) and Other(O). Business visa can be obtained from Thai embassies and consulates in respective countries. Business visa holders(category B) are entitled to stay in Thailand for at least 90 days. As a part of the efforts to facilitate foreign investment, non-immigrant visas under the Investment through BOI category(IB) are 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.

To facilitate foreign nationals, Thailand has introduced a multiple re-entry visa which will entitle holders of non-immigrant visa to multiple entries with a validity of one year.

To speed up the process of the issuance of visas, work permits and re-entry permits, One-Stop Service Center for Visas and Work Permits was established in June 1997 to handle all aspects of visa extensions and issuance of work permits, including work permit extensions, issuance of re-entry permits, and changes in type of visa to non-immigrant, the process of which will be completed within three hours, assuming all necessary supporting documents are provided. Since 1999, the One-Stop Service Center for Visas and Work Permit has expanded its scope of services to better the facilitation of foreign investors. The issuance of visas is now open to all nationalities and the issuance of visas and work permits are open to foreign officers of

foreign bank branches, BIBF offices of foreign banks and foreign bank representative offices certified by the Bank of Thailand.

One-Stop Service Center for Visas and Work Permits

Krisda Plaza, 3-5th floors, 207 Rachadapisek Road, Dindaeng, Bangkok 10310

Telephone: (662) 693-9333-9

Fax: (662) 693-9340

(a) List and briefly describe 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 prohibited to aliens.

(b) Describe any regulations relating to personnel management of foreign firms, e.g. minimum wage laws, minimum requirements for training or employment of local staff.

Minimum Daily Wage Rates, effective January 1, 2003	Baht
Bangkok, Nakon Pathom, Pathum Thani, Samut Prakan	169
Phuket	168
Nonthaburi	167
Samut Sakhon	165
Chonburi	150
Saraburi	148
Nakhon Ratchasima	145
Chiang Mai, Pang Nga, Ranong	143
Rayong	141
Ayutthaya	139
Krabi, Angthong	138
Chachoengsao, Lamphun, Sukhothai	137
Khonkaen, Buriram, Phetchaburi	136

Kanchanaburi, Kalasin, Kamphaengphet, Chanthaburi, Chumphon, Chainat, Trad, Nakhonphanom, Narathiwat, Prachinburi, Phetchabun, Ratchaburi, Songkhla, Singburi, Suratthani, , Nongbualamphu, Uhthai thani	135
Nakhonayok	134
Chiangrai, Chiyaphum, Trang, Tak, Nakhonsithamarat, Nakhonsawan, Nan, Prachuapkhirikhan, Pattani, Phayao, Phitsanulok, Phichit, Phrae, Phatthalung, Mahasarakham, Mukdahan, Mea Hong Song, Yasothon, Roi Et, Lopburi, Loei, Lampang, Sisaket, Sakonnakhon, Satun, Samutsongkhram, Srakaew, Suphanburi, Surin, Nongkhai, Udonthani, Uttaradit, Ubon ratchathani, Amnatcharoen	133

Source: Ministry of Labor and Social Welfare

Overtime Regulations 1998	
Overtime on regular working days	Time and a half
Regular work on public holidays	Double time
Overtime performed on public holidays	Triple time
Daily workers working more than 8 hours	Time and a half
Severance Payment Entitlement 2002	
Workers employed for:	
More than 120 days but less than one year	30 days
More than one year but less than three years	90 days
More than three years but less than six years	180 days
More than six years but less than ten years	240 days
Ten years and up	300 days

Source: Ministry of Labor and Social Welfare

There is no requirement as to the minimum number of local staff that foreign firms have to hire or train.

(c) List and provide a summary of domestic labour law which applies 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 out 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.
Social Security Act of 1990	This Act governs the social security fund and labor compensation benefits.
Labor Protection Act of 1998	Protection such as working hours and holidays; wages, overtime and holiday pays; female labour and child labour; severance pay; work safety; occupational hygiene and environmental conditions ; employee assistance fund and welfare.

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

Taxation arrangements

Summary

Taxation Arrangements	Summary	
	Resident	**Nonresident**
Corporate Income Tax	• Resident companies are subject to tax at the rate of **30 per cent** of net profit with a foreign tax credit for tax paid offshore.	• Nonresident companies are subject to tax at the rate of 30 per cent of net profit.
	• Resident companies engaged in Bangkok International Banking Facilities(BIBF) and Provincial International Banking Facilities (PIBF) are subject to tax at the rate of **10 per cent** of net profit.	• Same as resident companies.
	• Resident foundations and associations are exempt from tax if they do not perform in a commercial manners or for profits (as specified by the ministerial notifications published in the Government Gazette). Otherwise,	• Same as resident foundations and associations if they do not perform in a commercial manners or for profits (as specified by the ministerial notifications published in the Government Gazette). Otherwise, they are subject to tax at the rate of 30 per

	they are subject to tax at the following rates of (1) **10 per cent** of gross receipts except income which are registration fee, maintenance of membership, properties received as donation or gifts. (2) **2 per cent** of gross income under Section 40(8) of the Revenue Code. • Resident transport companies are subject to tax at the rate of **30 per cent** of net profit. (An exemption with conditions of Corporate Income Tax to resident marine companies is according to the Notification of the Director-General of Revenue on Income Tax No. 72).	cent. • International transport companies are subject to tax at the rate of **3 per cent** of gross income. (Under the Double Taxation Agreement, airline is exempt and shipping is reduced to one-half of the rate applicable thereto.)
Withholding Tax	• Dividend is subject to withholding tax at the rate of **10 per cent** if it is not received by a registered company.	• Dividend is subject to withholding tax at the rate of **10 per cent**. • Interest, royalties are subject to withholding tax at the rate of **15 per cent**. • Profit remitted abroad is subject to withholding tax at the rate of **10 per cent** of the amount remitted. • Under the Double Taxation Agreement, passive income is subject to lower rates depending on the provisions provided thereto, (Please refer to the related tax treaties.)
Value Added Tax	Value added at every stage of production is subject to Value Added Tax. It is normally levied at the rate of **10 per cent** for any sales of goods or provision of services, except on exports which are zero-rated and a number of exempt goods and services, e.g. basic groceries, education and health care. However, during the period of 1 April 1999 until 30 September 2003, the 10 per cent value added tax is reduced to **7 per cent**.	

Specific Business Tax	Specific Business Tax is imposed in lieu of Value Added Tax for the following business: - commercial banking and similar businesses - at the rate of **3 per cent**; - finance companies and credit fonciers - at the rate of **3 per cent**; - life insurance companies - at the rate of **2.5 per cent** (insurance against loss is subject to VAT) - pawnbroking - at the rate of **2.5 per cent**; - real estate – at the rate of **3 per cent**; - sale of securities in a stock exchange - at the rate of 0.1 per cent; and - other business specified by a Royal Decree.
Double Taxation Agreement	Thailand has concluded Double Taxation Treaties with **43** countries, namely Australia, Austria, Bangladesh, Belgium, Bulgaria,Canada, Cyprus,Czech Republic, China, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Laos, Luxembourg, Malaysia, Mauritius, Nepal, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Romania, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, United Arab Emirates,United Kingdom and Northern Ireland, United States of America, Uzbekistan and Vietnam. The method of eliminating double taxation varies by treaties which mostly is the method of Ordinary Credit with Tax Sparing Credit.

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade Related Investment Measures (TRIMS).

Regarding the local content requirement, 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. In order to comply with the TRIMs Agreement, the Board of Investment has announced the abolishment of local content conditions previously enforced in three industries, namely, **milk and dairy processing, car engines and motorcycle manufacturing** for both existing and new projects. This announcement is effective from 1 January 2000 onwards.

More recently, the BOI has launched the new investment promotion policy which has lifted the export and local content conditions so that the promotion criteria will be in line with the WTO obligations. The new policy is effective from 1 August 2000 onwards.

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

Regulations

Application and function Regulations	**Application and function**
Foreign Exchange Control	Direct foreign investments by residents or lending to their affiliated companies abroad not exceeding US$ 10 million yearly do not require authorization.

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

Regulations

Application and function

Not applicable.

9. Investor Behaviour

(a) *Indicate 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

(a) Briefly outline the competition policy regime.

The government has enacted the 2 new laws, namely:

(1) The Price of Goods and Services Act B.E. 2542 (1999)

(2) The Trade Competition Act B.E. 2542 (1999)

to replace the Price Fixing and Anti-Monopoly Act, B.E. 2522 (1979) which has been used for 20 years.

Trade Competition- According to Trade Competition Act B.E. 2542(1999) which has come into effect since 30 April 1999, the objective of this Act is to encourage and promote fair business practices by prohibiting abuse of market dominant as well as creating opportunities for new entrants to gain access into the markets. The enforcement and implementation of this Act is under the responsibility of the Committee on Competition which is chaired by the Minister of Commerce. Trade Competition Commissioner Office established in the Department of Internal Trade has the Director-General as the Secretary- General.

Price Control- According to the Price of Goods and Services Act B.E. 2542(1999) which has come into effect since 1 April 1999, the objective of this Act is to protect consumer interests from unfair price of goods and services by fixing the price of goods and services or to design any trade practices and conditions, anti-profiteering and anti-hoarding to goods. There shall be the rearrangement of necessary method at least once a year and anti-hoarding method shall be enforced only in abnormal situation. The enforcement and implementation of this Act is under the responsibility of the Committee on Price of Goods and Services which is chaired by the Minister of Commerce. Office of Central Committee established in the Department of Internal Trade has the Director-General as the Secretary-General.

(*b) List and briefly describe 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(Amended by Trademark Act of 2000)

The Trademark Act of 1991 was amended by the Trademark Act of 2000 which came

into force on 30 June 2000.

The Trademark Act governs registration and provides protection for trademarks,

service marks, certification marks and collective marks. The amended Act expands the definition of trademark to include "the combination of colors" and "figurative elements" and seeks to create more effective means to enforce trademark owner's rights by widening the power of search in the sense that the designated official under the Act could search and seize infringing items or any other evidence at any time, during daytime or nighttime, according to the provisions set forth in the Act. The owner may also claim compensation for any damages caused by the infringer. Trademark protection is effective for a period of 10 years and renewable every 10 year.

Patent Act of 1992(Amended by the Patent Act of 1999)

The Patent Act protects both invention and industrial designs. Patents are valid for

periods of 20 and 10 years from the date of application in case of inventions and industrial designs respectively. The amended Act expands the provision concerning petty patent that valid for periods of 6 years from the date of application and may extend twice, two years for each extension.

Copyright Act of 1994

The Copyright act of 1994 became effective on March 22, 1995, replacing the

Copyright Act of 1978. It protects work of authorship such as literary, dramatic, audiovisual, cinematographic and artistic works for a certain period of time. It is unlawful to reproduce, adapt, communicate to the public, give benefits deriving from the work or license such works without the

owner's consent, to rent the original or the copies of a computer program, an audiovisual work, cinematographic work and sound recordings. This Act complies with the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Act of the Berne Convention. A copyright in literature, dramatic, artistic and musical work is valid throughout the life of author plus another 50 years. Computer programs are also protected as literary work under the Copyright Act. In case that author is a juristic person, the copyright shall be valid for 50 years from the date of its creation or from the date of its first publication. A copyright in photographic works, audiovisual works, cinematographic work, sound recordings or audio and video broadcasting works are valid for 50 years as from the date of its creation or from date of its first publication. The copyright in works of applied art is valid for 25 years from the date of its creation or the date of its first publication. Performer's rights on his performance are also protected under the Copyright Act of 1994. The performer has the exclusive rights regarding sound and video broadcasting or communication to the public; recording the performance which has not been recorded; and reproduction of the recording material of the performance which has been recorded without his consent. His rights lasts for 50 years as from the last day of the calendar year in which the performance takes place or from the last day of the calendar year in which the recording of the performance takes place.

The Act on the Protection of Layout-designs of Integrated Circuits of 2000

The Act on the Protection of Layout-Designs of Integrated Circuits provides protection for creators of layout-designs of integrated circuits by granting them the exclusive right to prohibit others from reproducing, importing, selling or distributing the protected layout-designs for commercial purpose in the Kingdom. The Act was promulgated in the Government Gazette on 12 May 2000 and came into force on 10 August 2000.

Enforcement:

Thailand has taken comprehensive approach to eliminate and deter infringement. The

Central Intellectual Property and International Trade Court and the special Department of Intellectual Property and International Trade Litigation (under the Office of Attorney General) were established and started their operation since 1 December 1997. In addition, the government of Thailand uses following actions to deal with IPRs enforcement:

1) **Joint Committee on the Suppression of Intellectual Property Rights Infringement (JCIP)** was established on 1 April 1997, consisting of representatives from various IP-related agencies such as Royal Thai Police, DIP and Ministry of Foreign Affairs. The main responsibilities are to conduct regular suppression of counterfeit and pirated goods in retail and wholesale outlets as well as in warehouses.

2) **Working Group on Coordinating and Monitoring of the IPRs Infringement Suppression** was set up on 29 July 1998 under the chairmanship of the Deputy Minister of Commerce responsible for intellectual property. The principal aim is to ensure effective deterrence against and suppression of IPRs infringement undertaken by all agencies concerned in cooperation with the right holders.

3) **Clean CD Plant Project** was set up to ensure that known 11 CD manufacturing plants in Thailand do not run illegitimate business. This has been superseded by the efforts to draft a comprehensive law on the content of optical disk manufacturing.

4) **Public Awareness Campaign:**

- Conducting intensive media campaign to create understanding of intellectual property rights and their importance for national economic and social development
- Arranging trainings and seminars.
- Coordinating with both the Ministry of Education and Ministry of University Affairs to include IP courses in the curriculum in school and colleges.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) Provide a list of and a summary of all laws and regulations relating to expropriation and compensation of foreign investment. Briefly summarize 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: - nationalization; - competition from new state enterprises; - monopolization of sales of similar products; - price control; - export restriction; and - duty-free imports by government agencies or state enterprises.

Thailand has enacted the Act to accommodate the operation of Multilateral Investment Guarantee Agency (MIGA) which has been announced in the Government Gazette on 28 April 2000 and become effective since 29 April 2000. Thailand has become MIGA's 154th member and is now eligible for MIGA's political risk coverage for Thai investment going overseas as well as other member countries' investment going into Thailand.

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

Not applicable.

2. Settlement of Disputes

(a) Describe 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 the following order:

Agency

Address/telephone/fax

In most cases, the settlement of disputes between the Contracting Parties concerning the interpretation of an application of the agreement which is submitted to the Arbitration Institute shall be initiated by consultation or negotiation. If the disputes cannot be settled within, in most cases, 6 months, it shall be submitted to an arbitral tribunal. 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, if the consultation does not result in a solution, the disputes can be submitted to the Arbitration Institute under the arbitration clause in the agreement that the Arbitration Institute may conduct the arbitration of dispute and apply the Arbitration Rules of the Arbitration Institute to the dispute or the competent courts of the Contracting Party in the territory of which the investment has been made.

Domestic Laws and Procedures Available for Arbitration in Thailand

- Arbitration Act, 1987

- Arbitration Rule of the Arbitration Institute, Ministry of Justice, 1990

- Conciliation Rule of the Arbitration Institute, Ministry of Justice, 1990

- Thai Commercial Arbitration Rules, Office of the Arbitration Tribunal, Board of Trade of Thailand, July 1, 1968.

- Petroleum Act of 1971, Ministry of Industry.

It should be noted that more and more foreign parties are now resorting to 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, and the Thai Commercial Arbitration Rules which are administered by the Board of Trade of Thailand.

Agency	Address/telephone/fax
Arbitration Institute	Ministry of Justice Office 1: Criminal Court Bldg., 5th Floor, Rachadaphisek Road, Chatuchak, Bangkok 10900 Telephone: (662)541-2298-9, 541-2271 Fax: (662)541-2298-9 Office 2: Bangkok Insurance Bldg., 12th Floor, 25 South Sathorn Rd., Sathorn, Bangkok 10120 Telephone: (662) 677-3955-8 Fax: (662) 677-3959
Board of Trade of Thailand	150/2 Rajbopit Road, Bangkok 10200 Telephone: (662)622-1860 to 70 Fax: (662)225-3995, 226-5563 E-mail: bot@tcc.or.th

(b) Signatory or accession to the ICSID Convention.

Ministry of Finance has set up the working group to draft the Implementing Act regarding International Center for Settlement of Investment Disputes (ICSID). The draft Implementing Act for the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and concerned ministerial regulations are now under improvement.

D. INVESTMENT PROMOTION AND INCENTIVES

1. *Briefly describe any investment promotion programs offered at both the national and sub-national level (e.g., 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.*

Program

Nature of incentive

Contact point

Program	Nature of incentive	Contact point
Investment promotion schemes provided by the	Tax and non-tax incentives are granted to local and foreign investors on a	Office of the Board of Investment 555 Vipavadee-Rangsit Road,

Office of the Board of Investment (BOI)	non-discriminatory basis. Present incentive scheme is geared towards industrial decentralization, resulting in the division of the country into 3 zones. The incentives granted vary according to project locations: the further, the greater the incentives. Projects located in zone 3 or Investment Promotion Zone receive maximum incentives. 1) 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 subnational level. 2) Non-tax incentives include permission to bring in foreign technicians and experts, permission to own land and permission to remit foreign currency abroad. The Board of Investment has recently revised the investment promotion policy and incentives to ensure that they satisfy the needs of both investors and the government and that they suit prevailing economic situation. This new policy which has become effective since 1 August 2000 increases efficiency in granting tax incentives, relaxes the joint-venture criteria for promoted projects and repeals export and local content requirements in line with WTO agreements.	Chatuchak, Bangkok 10900 Tel: (662) 537-8111, 537-8155 Fax:(662) 537-8177 E-mail: head@boi.go.th Home Page:http://www.boi.go.th
Investment Promotion schemes provided by the Industrial Estate Authority of Thailand (IEAT)	Tax and non-tax incentives granted by the IEAT are 1) Tax incentives: exemption of import duty, VAT and Excise Tax on imported machinery, components, etc. and material imported for factory construction; exemption of import duty, VAT and Excise Tax on raw materials; exemption of Export Duty, VAT and Excise Tax for exported	Industrial Estate Authority of Thailand 618 Thanon Nikhom Makkasan, Ratchathewi, Bangkok 10400 Tel: (662) 253-0561 Fax.: (662) 253-4086, 253-2965, 650-0203 E-mail: ieat@ieat.go.th Home Page:http://www.ieat.go.th

	goods; and exemption or refund of duties and VAT for local goods utilized for production 2) Non-tax Incentives: foreign land ownership; work permit for foreign technicians and experts, re-entry visa for foreign technicians, experts and spouse or dependents; and foreign currency remittance	

2. *Briefly describe 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. Provide a summary of these programs including the nature of incentives offered and provide contact point(s) for these schemes, including address and telephone/fax numbers.*

Please refer to Section D.1.

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

Agency

Address/telephone/fax

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 8177
One-Stop Service Center for Visas and Work Permits	Krisda Plaza, 3-5th floors, 207 Rachadapisek Road, Dindaeng Bangkok 10310 Telephone: (662) 693-9333-9 Fax: (662) 693-9340
One-Stop Service (OSS) of the Industrial Estate Authority of Thailand (IEAT)	618 Thanon Nikhom Makkasan, Ratchathewi, Bangkok 10400 Telephone: (662) 253-0561 ext. 2264, 1194, 1195 Fax.: (662) 253-2965, 650-0203 E-mail: ieat@ieat.go.th Home page: http://www.ieat.go.th

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

1. *Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).*

Agreement

Provisions

Friendship Commerce and Navigation Treaties

Bilateral Investment Treaties

Regional or sub regional Investment Treaties

Agreements	Provisions
Bilateral Investment Treaties - Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America - Agreement for the Promotion and Protection of Investments with 27 countries, namely, Argentina, Bahrain, Cambodia, Canada, China, Czech, Egypt,Finland, Germany, Hungary, India, Indonesia, Korea, North Korea, Laos, Netherlands, Peru, Philippines, Poland, Romania, Slovenia, Sri Lanka, Sweden, Switzerland, Taiwan, United Kingdom and Vietnam	
Regional or sub regional Investment Treaties - ASEAN Agreement on the Promotion and Protection of Investments - ASEAN Investment Area(AIA)	

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

1. *Provide an overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward and outward).*

During the past two years, Thailand has experienced a sharp decline in foreign direct investment (FDI), from around US$6-7 billion in 1998 and 1999, to merely US$3-4 billion in 2000 and 2001,

the decreasing trend still carries on to this year, with the 9 month cumulative FDI registered at merely US$ 0.2 billion. Such a reduction in FDI in Thailand along with other countries in the region was largely affected by a decline in investment by world's major investors such as the United States and the European Union due to global economic slowdown and weakening business confidence.

Sector which hosted the largest stake of FDI was the industrial sector, the majority of capital went to machinery & transportation equipment and chemical products, Non-Industry sectors which also received considerable amount of FDI were service sector, whereas trading business and non-bank financial institutions seemed to experience a sharp decline in FDI. Major Investors were still Singapore and Japan.

Overseas direct investments by residents decreased tremendously in 2000 and 2001 especially in USA and Singapore. Apart from these, there were also outflows of loan extended to overseas affiliated companies.

Portfolio Investment slightly decreased in 2000 and the situation became worse in 2001. Investment from the USA; EU; Singapore; and Hong Kong, China significantly dropped in 2001 compared to 1999 and 2000.

Further information on foreign investment is available on Bank of Thailand's website:http://www.bot.or.th/BOTHomepage/databank/Econdata/Timeseries/index.htm.

Net Flows of Thai Equity Investment Abroad Classified by Economy

(Million USD)

Economies	1996	1997	1998	1999	2000	2001p
JAPAN	**0**	**0**	**0**	**2**	**2**	**-1**
USA	**76**	**54**	**11**	**-9**	**-66**	**3**
EU	**34**	**-23**	**26**	**30**	**-4**	**26**
Austria	0	0	0	1	0	0
Belgium	0	1	0	1	0	0
Germany	1	-22	3	0	0	25
Denmark	0	1	0	0	0	0
Spain	0	0	0	0	0	0
Finland	0	0	0	0	0	0
France	0	-9	10	0	-1	0
U.K	33	1	-13	16	-3	2
Greece	0	0	0	0	0	0
Ireland	0	0	26	12	0	0
Italy	0	0	0	0	0	0
Luxembourg	0	5	0	0	0	0
Netherlands	0	0	0	0	0	-1
Portugal	0	0	0	0	0	0
Sweden	0	0	0	0	0	0
ASEAN:-	**120**	**137**	**-33**	**225**	**20**	**46**
Brunei Darussalam	0	0	0	0	0	0
Indonesia	33	18	-1	0	2	3
Malaysia	2	2	0	0	1	3
Philippines	73	10	12	4	0	1
Singapore	12	107	-44	208	9	43
Cambodia	31	20	1	3	0	1
Laos	56	1	0	0	1	-12
Myanmar	8	7	2	3	0	5
Viet Nam	53	53	14	7	7	2
Hong Kong, China	**159**	**7**	**56**	**31**	**27**	**9**
Chinese Taipei	**1**	**4**	**0**	**7**	**9**	**3**
Korea	**0**	**0**	**2**	**0**	**0**	**0**
China	**96**	**37**	**12**	**12**	**8**	**13**
Canada	**0**	**0**	**3**	**-2**	**0**	**0**
Australia	**10**	**8**	**2**	**0**	**0**	**-1**
Switzerland	**-21**	**-2**	**0**	**0**	**0**	**0**
Others:-	**167**	**143**	**17**	**38**	**42**	**1**
TOTAL	**790**	**446**	**113**	**334**	**38**	**99**

Source: BOP & International Statistics Team- Bank of Thailand, as of December 2002

Net Flows of Foreign Direct Investment in Thailand Classified by Economy*

(Millions of Baht)

Economies	1996	1997	1998	1999	2000	2001p
Japan	**13,250**	**42,370**	**60,477**	**18,560**	**35,493**	**60,974**
USA	**10,870**	**25,836**	**51,798**	**24,137**	**25,575**	**2,735**
EU	**4,257**	**10,713**	**37,568**	**51,943**	**20,968**	**8,492**
Austria	95	13	0	15	187	220
Belgium	1,430	-106	1,296	-1,379	-670	96
Germany	1,064	2,102	4,073	10,973	4,003	1,429
Denmark	49	41	118	364	344	144
Spain	1	5	21	170	64	44
Finland	39	135	1,596	70	151	-97
France	761	-36	10,927	8,984	1,272	4,485
U.K	1,433	3,692	4,816	7,010	16,702	14,759
Greece	1	0	0	0	1	8
Ireland	2	-56	27	-16	-4	2,223
Italy	58	93	176	406	349	236
Luxembourg	103	-206	39	418	198	-899
Netherlands	-1,025	4,425	13,836	24,584	-3,179	-16,996
Portugal	0	0	0	0	8	9
Sweden	245	610	643	344	1,542	2,829
ASEAN:-	**7,804**	**10,670**	**24,052**	**21,350**	**16,338**	**71,457**
Brunei Darussalam	2	0	1	0	0	0
Indonesia	249	204	112	46	171	10
Malaysia	532	373	709	1,043	836	1,863
Philippines	53	249	320	122	19	130
Singapore	6,969	9,851	22,673	20,048	15,019	69,413
Cambodia	0	-90	57	54	90	31
Laos	103	41	125	21	168	3
Myanmar	0	1	5	2	26	0
Viet Nam	0	41	50	14	9	7
Hong Kong, China	**5,444**	**14,817**	**16,571**	**8,862**	**13,355**	**7,266**
Chinese Taipei	**3,492**	**4,605**	**4,072**	**4,581**	**6,286**	**2,439**
Korea	**628**	**913**	**2,799**	**204**	**-167**	**1,094**
China	**99**	**-283**	**217**	**-80**	**306**	**46**
Canada	**28**	**52**	**128**	**114**	**370**	**163**
Australia	**864**	**3,824**	**1,526**	**490**	**1,112**	**163**
Switzerland	**1,316**	**3,942**	**3,079**	**2,266**	**1,338**	**1,735**
Others:-	**9,420**	**236**	**7,601**	**2,165**	**-5,688**	**11,100**
TOTAL	**57,472**	**117,696**	**209,888**	**134,592**	**115,286**	**167,664**

Source: BOP & International Statistics Team- Bank of Thailand, as of December 2002

Note: * - Excluding Thai direct investment and banking sector

Direct Investment = Equity Investment plus loans from related companies

Net Flows of Foreign Direct Investment in Thailand Classified by Economy*

(Millions of USD)

Economies	1997	1998	1999	2000	2001p
Japan	**1,348**	**1,485**	**489**	**869**	**1,374**
USA	**780**	**1,284**	**641**	**617**	**57**
EU	**360**	**912**	**1,369**	**507**	**178**
Austria	0	0	0	3	4
Belgium	-3	29	-38	-16	3
Germany	59	101	289	104	32
Denmark	1	3	8	8	2
Spain	0	0	4	1	0
Finland	4	43	2	3	-3
France	2	277	241	27	102
U.K	123	103	183	401	329
Greece	0	0	0	0	0
Ireland	-2	0	-1	-1	49
Italy	2	3	9	8	5
Luxembourg	-8	1	11	5	-23
Netherlands	156	333	644	-73	-384
Portugal	0	0	0	0	0
Sweden	22	15	10	37	62
ASEAN:-	**297**	**576**	**572**	**387**	**1,607**
Brunei Darussalam	0	0	0	0	0
Indonesia	6	2	1	3	0
Malaysia	12	18	27	20	43
Philippines	7	8	3	0	2
Singapore	271	541	537	358	1,563
Cambodia	-5	0	1	2	0
Laos	2	3	0	4	0
Myanmar	0	0	0	0	0
Viet Nam	1	0	0	0	0
HONG KONG, CHINA	**444**	**395**	**233**	**333**	**162**
Chinese Taipei	**133**	**106**	**122**	**159**	**57**
Korea	**31**	**72**	**4**	**-5**	**23**
China	**-8**	**5**	**-2**	**6**	**1**

Canada	**1**	**2**	**3**	**11**	**2**
Australia	**120**	**35**	**13**	**30**	**7**
Switzerland	**120**	**73**	**60**	**34**	**38**
Others:-	**4**	**200**	**57**	**-135**	**253**
TOTAL	**3,627**	**5,143**	**3,562**	**2,813**	**3,759**

Source: BOP & International Statistics Team- Bank of Thailand, as of December 2002

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

Sources of FDI:

Japan, United States of America; EU; Singapore; Hong Kong, China, Chinese Taipei

Destination of Thai FDI

United States of America; Singapore; Hong Kong, China; People's Republic of China; Viet Nam

Net Flows of Portfolio Investment in Thailand (Equity Securities)

(Millions of Baht)

Economies	1996	1997	1998	1999	2000	2001p
Japan	**562**	**1,317**	**-78**	**197**	**24**	**685**
USA	**1,204**	**-19,848**	**-21,057**	**-23,547**	**-4,074**	**12,261**
EU	**3,799**	**34,417**	**2,472**	**2,207**	**10,196**	**-1,600**
Austria	-2	0	0	-3	151	344
Belgium	853	2,165	-1,020	3,256	1,959	-127
Germany	197	1,082	1,496	-2,697	5,867	-253
Denmark	-1	-60	99	-2	-2	2
Spain	-10	-23	23	-2	12	0
Finland	5	0	-1	-46	5	-3
France	770	744	470	1,129	345	-1,582
U.K	4,507	32,966	1,989	-1,734	2,199	323
Greece	0	0	0	1	0	0
Ireland	0	-50	-23	-12	0	0
Italy	-46	47	0	2	5	-160
Luxembourg	202	-434	175	261	-134	-145
Netherlands	-2,676	-2,133	-802	2,054	-215	94
Portugal	0	0	0	0	0	-3
Sweden	0	113	66	0	4	-90
ASEAN:-	**26,270**	**65,923**	**30,095**	**16,448**	**14,501**	**-8,087**
Brunei Darussalam	0	-5	3	59	-70	0
Indonesia	3	-93	187	96	8	91
Malaysia	-1	50	115	10	7	15
Philippines	-10	59	-9	-658	-14	0
Singapore	26,278	65,912	29,799	16,941	14,570	-8,196
Cambodia	-25	6	-10	0	0	2

Laos	0	0	0	0	0	0
Myanmar	0	-3	-3	0	0	1
Viet Nam	0	-2	7	0	0	0
Hong Kong, China	**-4,465**	**38,127**	**1,259**	**40,948**	**5,029**	**-3,617**
Chinese Taipei	**84**	**775**	**346**	**-412**	**76**	**104**
Korea	**10**	**16**	**-3**	**-7**	**-3**	**11**
China	**-60**	**17**	**1**	**-11**	**-182**	**52**
Canada	**14**	**-85**	**15**	**-119**	**162**	**79**
Australia	**653**	**430**	**133**	**34**	**164**	**2,301**
Switzerland	**1,007**	**596**	**311**	**-308**	**145**	**-995**
Others:-	**-616**	**617**	**783**	**159**	**9,257**	**-599**
TOTAL	**28,437**	**122,303**	**14,271**	**35,589**	**35,295**	**595**

Source: BOP & International Statistics Team- Bank of Thailand, as of December 2002

Net Flows of Portfolio Investment in Thailand (Equity Securities)

(Millions of USD)

Economies	1997	1998	1999	2000	2001p
Japan	**27**	**0**	**4**	**1**	**15**
USA	**-405**	**-514**	**-640**	**-108**	**6**
EU	**1,056**	**16**	**57**	**261**	**-27**
Austria	0	0	0	4	9
Belgium	95	-32	84	47	0
Germany	34	35	-73	155	0
Denmark	-2	3	0	0	0
Spain	-1	0	0	0	0
Finland	0	1	-2	0	0
France	28	12	29	10	-29
U.K	983	12	-43	54	-2
Greece	0	0	-1	0	0
Ireland	-1	0	0	0	0
Italy	2	0	0	0	-4
Luxembourg	-15	4	6	-3	-2
Netherlands	-69	-20	57	-6	1
Portugal	0	0	0	0	0
Sweden	2	1	0	0	0
ASEAN:-	**2,042**	**698**	**441**	**375**	**-206**
Brunei Darussalam	0	0	3	-2	0
Indonesia	-6	2	2	0	2
Malaysia	1	1	0	0	0
Philippines	4	0	-17	0	0

Singapore	2,043	695	453	377	-208
Cambodia	0	0	0	0	0
Laos	0	0	0	0	0
Myanmar	0	0	0	0	0
Viet Nam	0	0	0	0	0
Hong Kong, China	**1,190**	**30**	**1,102**	**132**	**2**
Chinese Taipei	**25**	**9**	**-12**	**2**	**2**
Korea	**0**	**0**	**0**	**0**	**0**
China	**1**	**0**	**0**	**-5**	**1**
Canada	**-2**	**1**	**-3**	**4**	**0**
Australia	**16**	**3**	**1**	**4**	**49**
Switzerland	**16**	**5**	**-8**	**4**	**-23**
Others:-	**21**	**17**	**4**	**227**	**-15**
TOTAL	**3,987**	**265**	**946**	**897**	**-196**

Source: BOP & International Statistics Team- Bank of Thailand, as of December 2002

UNITED STATES OF AMERICA

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, 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 an open, transparent and, for the most part, non-discriminatory investment climate. 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, and unparalleled infrastructure.

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

N/A

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(i) Statutory (legislative) requirements

(a) 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.

Selected Laws That Affect Domestic and Foreign Investment Differently

(a) Laws that protect national security

The Omnibus Trade Act of 1988 contains a provision, the Exon-Florio Amendment, authorizing the President to suspend or prohibit foreign acquisitions, mergers, and takeovers in the United States if he determines that the foreign investor might take action that would threaten to impair national security and if existing laws, other than the International Emergency Economic Powers Act and the Exon-Florio Amendment itself are not, in the president's judgment, adequate or appropriate to protect national security. The law provides a framework for review of notified transactions: a 30-day initial review, and extended 45-day period, if necessary, to do an investigation, and 15 days for the President to announce his decisions. Under the Exon-Florio Amendment, the Committee on Foreign Investment in the U.S. has reviewed a relatively small portion, less than ten percent, of foreign acquisitions in the U.S., of which 20 have gone to investigation.

(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

(a) Details of proposals and sectors that are/are not subject to screening.

(b) 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 and provided foreign investors 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.

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

Not applicable.

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

Not applicable.

(e) Average period from the formal submission of all relevant/required documentation to final approval/rejection.

Not applicable.

(f) 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.

(g) Description of conditions that need to be met for an expedited review of a foreign investment proposal.

Not applicable.

(h) 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.

(i) 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.

(j) 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.

(k) 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

(a) 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).

(b) 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).

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

(Responses to all three of the preceding questions are grouped together in the following pages.)

Atomic Energy – Aliens and entities owned, controlled or dominated by aliens, foreign corporations or foreign governments may not engage in operations involving the utilization of atomic energy.
Authority: Atomic Energy Act of 1954. 42 U.S.C. §§2011 et seq.

Customs Brokers – Only U.S. citizens may obtain a customs broker's license to conduct customs business on behalf of another person. A corporation, association, or partnership established under the laws of any state may receive such a license if at least one of the corporations or associations, or one member of the partnership, holds a valid customs broker's license.

Authority: *Tariff Act (1930), 19 U.S.C. §1641(b).*

Radiocommunications – The United States reserves the right to restrict ownership of radio licenses in accordance with *47 U.S.C. §310 and the Foreign Participation order, 12 FCC Red. 23841 (1997).* Radiocommunications consists of all communications by radio, including broadcasting.

Authority: *47 U.S.C. §310; Foreign Participation order. 12 FCC Red 23841 (1997)*

One-way Satellite Transmission of Direct-To-Home (DTH) – The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting (DBS) television services and digital audio services.

Authority:

Subsidies or Grants Including Government Supported Loans Guarantees and Eligibility for Overseas Private Investment Corporation (OPIC) financing – OPIC insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

Authority: *22 U.S.C. §§2194, 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 National and Most-Favored-Nation treatment obligations of the NAFTA. The NAFTA exempts all measures at the state and local levels that were in effect on 1 January 1994 from the national and most-favored-nation treatment obligations of the NAFTA.

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 Transportation, and Related Activities – Only air carriers that are "citizens of the United States may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air services as U.S. air carriers. A "citizen of the United States" means (1) an individual who is a U.S. citizen; (2) a partnership in which each member is a U.S. citizen; or (3) a U.S. corporation in which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, and at least 75 percent of the voting interest in the corporation is owned or controlled by U.S. citizens. Non-U.S. citizens must obtain authority from the Department of Transportation (DOT) to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft).

Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the DOT finds that it is in the public interest to do so. "Foreign civil aircraft" also require authority from the DOT to conduct specialty air services in the territory of the United States. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States.

Authority: *49 U.S.C. subtitle VII, Aviation Programs; 14 C.F.R. Part 297 (foreign air freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators; 49 U.S.S. 41703; C.F.R. Part 375.*

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, but 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.*

Securities – Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.
Authority: *Securities Act of 1933; 15 U.S.C. §§77c(b), 77f, 77g, 77h, 77j, 77s(a); 17 C.F.R. §§230-251, and 230-405; Securities Exchange Act of 1934; 14 U.S.C. 378l, 78m, 78o(d), 78w(c); 17 C.F.R. 3240.12b-2.*

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. 15 U.S.C. § 77jjj(a)(1)*

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 undertaken 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.

Mining – Aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines across on-shore federal lands, or leases or interests in certain minerals, such as coal or oil, on on-shore federal lands such as coal or oil. 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 on-shore 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. Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States.

Authority: *Mineral Land Leasing Act of 1920. 30 U.S.C. 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 onshore 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

(a) 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. As of April 15, 2003, Treasury Department regulations impose restrictions on transactions involving the governments or nationals of Cuba; the governments of Libya and Sudan; certain terrorists who threaten to disrupt the Middle East peace process; designated persons who commit, threaten to commit or support terrorism; designated narcotics traffickers; Slobodan Milosevic, his close associates, and persons indicted by the International Criminal Tribunal for the former Yugoslavia; designated persons who threaten international stabilization efforts in the Western Balkans; and designated persons undermining

democratic processes or institutions in Zimbabwe. 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 or through Cuban, Sudanese, and Libyan financial institutions or to entities owned or controlled by these governments. The United States government is in the process of amending the restrictions on transactions with Iraq and on transfers of funds to and through Iraq, with a view toward lifting them entirely once a duly constituted Iraqi governing authority is in place.

(b) 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. There are no taxes or subsidies on purchases or sales of foreign exchange.

(c) Restrictions on the convertibility of currencies for the overseas transfer of funds.

See section B(4)(1) above.

5. ENTRY AND SOJOURN OF PERSONNEL

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

(b) 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 aliens may apply for entry to work in the United States. The United States has four entry categories applicable to the temporary entry of business persons: business visitors, traders and investors, intra-company transferees, and professionals.

Business Visitors

Most nonimmigrants are temporary visitors coming for business or pleasure. A temporary visitor for business or pleasure must establish that he or she has a residence abroad which he or she does not intend to abandon; is coming to the United States for a definite temporary period; will depart upon the conclusion of the visit; has permission to enter a foreign area after his or her stay in U.S.; and has access to sufficient funds to cover expenses of the visit and return passage.

"Business" does not generally include gainful employment (although there are exceptions), but it does include almost any other legitimate commercial activity. A business visitor may come to consult with business associates, negotiate a contract, buy goods or materials, settle an estate,

appear as a witness in a court trial, participate in business or professional conventions or conferences, or undertake independent research. Spouses and dependent children are not permitted derivative status based on the principal alien, and must qualify for entry on their own.

Visa Waiver Program

The Visa Waiver Program (VWP) enables citizens of certain countries to travel to the United States for tourism or business for 90 days or less without obtaining a visa. As of this writing (May 2003), 27 countries participate in the VWP.

To enter the U.S. on Visa Waiver program, travelers from participating countries must:

- Be seeking entry for 90 days or less, as a temporary visitor;
- Be a citizen (not merely a resident) of the Visa Waiver country;
- Have a valid passport issued by the participating country. Additionally, starting October 1, 2003, the passport presented at the U.S. port of entry must be a machine readable passport;
- If entering by air or sea, have a round-trip transportation ticket issued on a carrier that has signed an agreement with the U.S. government to participate in the VWP, and arrive in the United States aboard such a carrier.
- Hold a completed and signed Nonimmigrant Visa Waiver Arrival-Departure Record,
- Form I-94W, on which he/she has waived the right of review or appeal of an immigration officer's determination about admissibility, or deportation. These forms are available from participating carriers, from travel agents, and at land-border ports-of-entry. (Travelers should consult carriers to verify which ones are participating before making travel arrangements.)
- Entry at a land border crossing point from Canada or Mexico is permitted under the Visa Waiver Program. Travelers who apply for entry at a land border crossing point are not required to present round-trip transportation tickets or arrive at the border entry point aboard a carrier who has signed an agreement with the U.S. to participate in the Visa Waiver Program. All other Visa Waiver Program requirements apply to such travelers.

Traders and Investors

The entry categories for treaty traders and treaty investors are also made available to nationals of countries which are parties to Treaties of Friendship, Commerce and Navigation with the United States. Nationals of countries who are parties to certain other agreements, including free trade agreements and bilateral investment treaties may also qualify. The treaty trader entry category 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 partner. The treaty investor entry category 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 investor must have committed or be in the process of committing a substantial amount of capital to the investment. If an employee of the firm, the applicant must be employed in a supervisory or executive capacity, or possess highly specialized skills essential to the efficient operation of the firm. Ordinary skilled or unskilled workers do not qualify. Spouses and

dependent children are permitted to enter the United States along with the principal alien. Spouses of treaty traders and treaty investors are permitted to work in the United States.

Intra-company Transferees

U.S. law provides for the temporary entry of managers, executives, and employees of a multinational firm with specialized knowledge to the United States. In order to qualify for entry, the employer must file a petition with the Department of Homeland Security, demonstrating that the employee has been employed overseas by the transferring organization for at least one year within the past three years and he or she will be performing duties in the U.S. for the same employer or a subsidiary or affiliate. Upon approval of the petition, the alien may apply for the requisite non-immigrant visa. Spouses and dependent children are permitted to enter the United States along with the principal alien. Spouses of intra-company transferees are permitted to work in the United States.

Professionals

Citizens of Mexico and Canada may be able to qualify for entry to the United States as professionals under the North American Free Trade Agreement (NAFTA). Under the NAFTA, a citizen of a NAFTA country in a professional occupation may work in another NAFTA country, provided that the profession is on the NAFTA list (NAFTA Chapter 16, Appendix 1603.D.1), the alien possesses the specific criteria for that profession, the prospective position requires someone in that professional capacity, and the alien is going to work for a U.S. employer.

For Mexican citizens, the Department of Homeland Security must approve a petition classifying the Mexican as a professional under NAFTA. Following the approval of the petition, the Mexican professional must receive a visa from a U.S. consulate overseas. In addition, the United States has imposed a limit of 5,500 on the number of approvals of initial applications by Mexican citizens each year. That limit and the petition requirement will expire on December 31, 2003. Spouses and dependent children of NAFTA professionals are permitted to enter the United States along with the principal alien. Spouses are not permitted to work in the United States.

Citizens of other countries may qualify to enter as a temporary worker. The United States allows for the entry of temporary workers in a specialty occupation. A specialty occupation is defined as one that requires the theoretical and practical application of a body of highly specialized knowledge, licensure, completion of a bachelor's or equivalent degree in the specialty, or experience equivalent to such a degree. U.S. employers must complete an attestation of compliance with U.S. labor laws with the Department of Labor. Following that, the employer must file a petition with the Department of Homeland Security. Once the petition has been approved, the alien may apply for a visa at a U.S. consulate overseas. The United States has an annual numerical limit on the number of approvals of applications temporary workers that varies according to the classification. Spouses and dependent children are permitted to enter the United States along with the principal alien. Spouses of temporary workers are not permitted to work in the United States.

Visas

Under U.S. law, a visa is simply permission to apply for entry into the United States. Persons issued a visa are subject to inspection at the port of entry by officials of the department of Homeland Security (DHS). DHS officers allow entry to the great majority of applicants with visas, but they also have authority to deny admission. The validity of a visa issued at a consular post abroad is not related to the length of stay that INS may authorize to the alien upon his or her entry, nor is it related to the length or number of extensions of stay that INS may grant subsequently. The basis of reciprocity, the treatment that the applicant's country affords to American citizens traveling there (for the same purpose), determines the maximum number of entries and the maximum period of the visa's validity.

(c) 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

(d) List and 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 an 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

(a) 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, as are partnerships that elect to be taxed as corporations.

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 permanent 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 federal income tax rate is 35%, which begins at $311,950 (for 2003 and indexed annually for inflation) of taxable income (income less personal exemptions and either the standard deduction or allowable "itemized" deductions).

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 amount of the credit is limited to the U.S. tax liability attributable to the taxpayer's net income from foreign sources. 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 an 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 income subject to these taxing regimes is passive investment income (such as interest and dividends), and certain other 'mobile" income.

3.1.5 Alternative minimum tax

The United States imposes an alternative minimum tax (AMT) on individuals and corporations. 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%. 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% (or lower treaty rate) 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. 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 graduated rates ranging from 15% (for income up to $50,000) to 35% (for income over $10,000,000). The intermediate rates are 25% and 34%. The benefit of graduated rates is phased out.

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 75 shareholders (individual U.S. resident or citizen shareholders, certain tax-exempt organizations, and certain trusts and estates) 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 foreign tax credit

Corporations are allowed the same foreign tax credit (direct credit) as individuals, subject to the same limitations.

Corporations also are allowed a foreign tax credit for the foreign income taxes paid by foreign subsidiary companies in which they have at least a 10% direct interest (or 5% indirect interest in certain instances) (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 to the extent their minimum tax liability exceeds their regular tax liability. The AMT is imposed at the rate of 20% of alternative minimum taxable income (AMTI) in excess of a $40,000 phased-out exemption amount. AMTI is the taxpayer's regular taxable income increased by certain preferences and adjustments. In computing AMT, the use of prior years' losses and the foreign tax credit are subject to certain limitations. Small corporations are not subject to the AMT.

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% (or lower treaty rate) 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

The United States imposes a 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 of a foreign corporation at the same effective rate by imposing a 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 treaty rate) to the portion of 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 was 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 (generally taxable income plus depreciation).

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. The comments are analyzed and considered in the rule-making process.

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

(a) 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 Organization.

8. CAPITAL EXPORTS

(a) List and brief description of regulations/institutional measures that limit capital exports or the outflow of foreign investment.

See section B(4) above.

(b) List and brief description of any regulations/institutional measures that limit technology exports.

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 pursuant to International Traffic in Arms Regulations (Title 22, Code of Federal Regulations (C.F.R.), Parts 120-130). The Department of Energy controls technology related to the production of Special Nuclear Material pursuant to section 57b of the Atomic Energy Act (implemented at 10 C.F.R. Part 810). In addition, the Department of Commerce processes export license applications for sensitive dual-use commodities and technologies pursuant to the Export Administration Regulations (15 C.F.R. Parts 730-774). 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

(a) 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

(a) 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 Act (1890) prohibits all contracts, combinations and conspiracies that unreasonably restrain the interstate or foreign trade or commerce of the United States. Certain such restraints, characterized as "hard core" cartel conduct, such as agreements among competitors to fix prices, rig bids and allocate customers, are prosecuted criminally. The Act also makes it illegal to monopolize any part of interstate or foreign trade or commerce.

The Clayton Act (1914 and heavily amended in 1950) is a civil statute which prohibits mergers or acquisitions that are likely to substantially lessen competition. Such substantial lessening of competition is usually reflected in increased prices to consumers or other reductions in consumer choice. 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. In addition to anticompetitive mergers and acquisitions, the Clayton Act also prohibits unreasonable vertical restraints between buyers and sellers, unjustified price discrimination and interlocking directorates. You might consider adding the above text as written in this e-mail.

The Federal Trade Commission Act (1914) created the Federal Trade Commission (FTC), an independent regulatory commission which enforces the Federal Trade Commission Act (FTCA) and the Clayton Act. Section 5 of the FTCA, as amended, prohibits unfair methods of competition

and unfair or deceptive acts or practices in or affecting commerce (interstate and foreign). Although the FTC cannot directly enforce the Sherman Act, the courts have interpreted "unfair methods of competition" to cover Sherman Act violations, and conduct that falls short of, but might ultimately lead to Sherman Act violations. The FTC is empowered to issue cease and desist orders and may apply to federal district court for the imposition of civil penalties, injunctions and other equitable relief if a final cease and desist order is violated and in certain other circumstances.

(b) 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 WIPO Copyright Treat, the WIPO Performances and Phonograms Treaty, 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, geographical and plant varieties. The United States provides Berne Convention consistent copyright protection for literary and artistic works (including computer programs and data bases). For works created after 1978, duration is life of the author plus 70 years; or where the work is anonymous, pseudonymous or a work for hire, 95 years from first publication or 120 years from creation, which expires first. 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

(a) 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.

(b) 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). 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 pursuant to 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, reasonable 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).

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 Acreas 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 considered opinions by qualified experts, the values of comparable properties, the price paid 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. §3114, the interest rate is linked to the interest rate payable on Treasury securities. However, the right to interest in eminent domain proceedings does not depend on the existence of a statutory provision.

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 an adequate venue for obtaining compensation, that statutory remedy is exclusive.

2. SETTLEMENT OF DISPUTES

(a) 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. Such disputes are generally resolved in domestic courts, although arbitration may be available depending on local law and practice and the wishes of the parties to the dispute. Investor-state disputes are generally resolved in domestic courts where available, although U.S. bilateral investment treaties and investment chapters in free trade agreements permit investors to opt for international arbitration in certain disputes. Under some U.S. bilateral investment 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.

(b) 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 $1million 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, Chinese Taipei and Hong Kong, China.

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 nonprofit 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 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 AND REGIONAL INVESTMENT AGREEMENTS

U.S. bilateral investment agreements take three basic forms: treaties of Friendship, Commerce and Navigation (FCNs); bilateral investment treaties (BITs) and investment provisions in free trade agreements (FTAs); 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 non-investment 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 U.S. BITs include:

- the right of nationals and companies of a party to establish investments on a basis no less favorable than that available to nationals and companies of the other party, or nationals and companies of any other country (national and most-favored nation (MFN) treatment);
- the right to operate those investments, once established, also on the basis of national and MFN treatment;
- 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 a 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 a 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 parties to U.S. BITs take exceptions to these basic obligations are specified in an annex to the BIT. Such exceptions are generally few in number and based on national legislation.

Since the inception of the BIT program, the United States has signed BITs with 45 countries. Of these, 38 are in force (Albania, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bulgaria, Cameroon, Democratic Republic of the Congo (Kinshasa), Republic of the Congo (Brazzaville), Croatia, Czech Republic, Ecuador, Egypt, Estonia, Georgia, Grenada, Honduras, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Morocco, Panama, Poland, Romania, Senegal, Slovakia, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, and Ukraine). Four BITs have been ratified by both sides but await exchange of instruments of ratification before going into force (Belarus, El Salvador, Jordan, Uzbekistan). Two BITs (Mozambique and Russia) have been ratified by the United States but not by the other parties. One BIT has been ratified by the other party but not by the United States (Nicaragua). In addition, the United States is in negotiations with several other countries.

North American Free Trade Agreement (NAFTA)

The NAFTA creates a free trade area comprising the United States, 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 intellectual property rights, and to address environmental concerns. The NAFTA countries are meeting these objectives by adhering to principles such as national treatment, most-favored nation treatment and procedural "transparency." NAFTA's investment chapter (Chapter 11) provides investors of the parties, when investing in the territory of another party, and subject to limited exceptions specified in an annex, with the following 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;
- 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 performance requirements; and
- to seek international arbitration of claims for monetary damages or restitution for any

violations of these rights.

Other Free Trade Agreements

The United States has concluded the negotiation of comprehensive free trade agreements with Chile and with Singapore. The Singapore FTA has been signed by the President. Each FTA investment chapter includes obligations similar to those in U.S. BITs and NAFTA, with clarifications on matters such as expropriation and the minimum standard of treatment. The investor-state dispute resolution procedures of the new FTAs also incorporate new procedural provisions, including the opportunity for non-disputing parties to submit amicus briefs, transparency requirements, binding interpretations by the Parties, interim review by the disputing parties of draft arbitral awards, and expedited procedures for claims that do not meet the standards of the agreement.

Future Agreements

The investment chapters of the Chile and Singapore FTAs will serve as a template for U.S. negotiating proposals for future FTAs and BITs, including FTA negotiations recently begun with Australia, Morocco, five countries in Central America, and the member countries of the Southern African Customs Union. The United States has also tabled key investment provisions adapted from the Chile and Singapore FTAs in the ongoing negotiations on a Free Trade Area of the Americas.

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 advise 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 that address the treatment of 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 with respect to the establishment of investments, while the NTI exhorts member states also to provide national treatment to such investments in post-establishment operations. Exceptions to the national treatment obligation may be taken, but, in general, such exceptions should not be intensified, and, if liberalized, should be "frozen" at the new level.

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 Organization (WTO)

The Uruguay Round Trade Agreement was signed in April 1994 and went into force on 1 January 1995, with some provisions phased in over a ten-year period. The WTO TRIMs Agreement prohibits measures such as local content requirements and trade balancing requirements, and mandated that any such measures existing as of the date of its entry into force be formally notified and then eliminated. Developed countries were given two years to bring notified measures into conformity with the Agreement, developing countries had five years, and the least-developed countries had 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. The commitments made by WTO members are contained in schedules, which are similar to their tariff schedules. The Council for Trade in Services oversees implementation of the GATS and reports to the WTO General Council.

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. In 2000, roughly 56% 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 $4 in sales by U.S. companies abroad is earned by American sales affiliates or wholesaling companies that have established local facilities. 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 2001, 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 6.8% and 8.8% respectively on a historical cost basis. The slower rates of growth in 2001 partly reflected slowdowns in economic growth in the U.S. and in a number of European and Asian countries. The economic slowdowns affected growth by contributing to a drop in M&A activity in 2001 and depressed earnings and thus, reinvested earnings.

Capital flows, the major component of the change in the positions, were $114.0 and $124.4 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, reflecting both acquisitions of new U.S. affiliates and contributions of equity to existing U.S. affiliates.

2. Major 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 $1.4 trillion at year end 2001. The positions in the United Kingdom – at $249.2 billion, or 18% of the total – and in Canada – at $139 billion or 10% of the total – remained by the far the largest of any country. In 2001, the position increased $88.2 billion, or 7%, the lowest increase since 1988. In the three previous years there was double-digit growth ranging between 10% and 17%.

The $88.2 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 half of the increase in the overall position. However, the position in Europe grew at a slower pace than the positions 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 $1.3 trillion at the end of 2001. The United Kingdom had the largest position – $217.7 billion, or 16% of the total. Japan's position was the second largest – $159.0 billion, or 12% – and the Netherlands position was the third largest – $158.0 billion, or 12%.

In 2001, the position increased $106.8 billion, or 9%, the lowest rate since 1992. This was significantly lower than the 27% and 23% increases in 2000 and 1999, respectively. In 1998-2000, much of the M&A activity was concentrated in petroleum, in telecommunications and related industries, and in financial services (including asset management, insurance, and banking). In 2001, however, the merger an acquisition activity in these industries declined. In telecommunications, rapid technological change and deregulation had spurred both merger and acquisition activity and investment spending in 1998-2000. In 2001, business conditions for telecommunications companies and manufacturers of telecommunications networks and other infrastructure resulted in excess capacity and large debt obligations, so acquisitions in these industries slowed substantial.

Reflecting the effect of the drop in merger and acquisition activity on FDIUS, equity capital inflows, which are mainly used to acquire U.S. firms, were substantially lower than in 2000, but the were still higher than in any year prior to 1998. Weak economic conditions in many of the countries that are historically major sources of FDIUS – including France, Germany, the Netherlands, Canada, and Japan – contributed to the slowdown in the expansion of foreign multinational companies (MNCs) into the United States.

VIET NAM

VIET NAM

A. BACKGROUND OF THE FOREIGN INVESTMENT REGIME

Overview of the economy

Viet Nam has been carrying out economic reforms since 1986 under the "Doi Moi" (Renovation) policy, focusing on market oriented economic management; restructuring to build a multi-sectoral economy; financial, monetary and administrative reform; and the development of external economic relations. One of the most important aspects of economic reform in Viet Nam is the encouragement of domestic and foreign direct investment. The Enterprise Law (which replaced the Company Law and the Law on Private Enterprises) has had a profound impact on the development of the private sector in Viet Nam. The Law on Foreign Investment was promulgated in 1987 and amended in 1990, 1992, 1996 and 2000. The Law is now considered among the most liberal investment laws in the region.

The 1992 Constitution (as amended on 25 December 2001) reaffirms that the State of Viet Nam undertakes a policy of treating equally economic sectors in various forms regardless of the various types of ownership. Accordingly, all economic sectors are integral parts of the socialist oriented market economy, and organizations and individuals of all economic sectors are entitled to manufacture and do business in the sectors which are not prohibited by law, and to develop for the long term, collaboratively, equally and competitively under the law.

Since 1986 Viet Nam has recorded important achievements in socio-economic fields. During the period of 1991-1995, GDP grew by 8.2% per annum on average. Between 1996 and 2000, despite adverse impacts caused by the regional financial crisis, GDP growth continued to reach nearly 7%. As a result, GDP in 2000 doubled that of 1991. This greatly helps to improve people's living conditions and to take the country to a higher level of development.

Principal economic sectors

GDP Growth Rate by economic sectors

	1996	1997	1998	1999	2000	2001	2002*
GDP	**9.3**	**8.1**	**5.8**	**4.8**	**6.7**	**6.8**	**7.0**
Agriculture – forestry & fishery	4.4	4.0	3.5	5.2	4.0	2.7	5.0
Industry & construction	14.4	13.5	8.3	7.7	10.1	10.4	12.2
Services	10.6	10.0	5.1	2.3	5.6	6.1	6.7

Sources: General Statistic Office

* *Estimated*

Achievements during the past few years include the following highlights:

- ***Agriculture has continued to maintain its relatively good development with an annual growth rate of over 5.7%.*** This has contributed to maintaining socio-economic stability of the country and providing improved support to the hunger eradication, poverty alleviation and employment creation programs. The cropping structure has changed and per hectare agricultural productivity has increased in many regions. Aquaculture and fishing have increased rapidly, and now account for 15% of the total value of agricultural production, and export income from aquatic products has increased considerably.

- ***Difficulties and challenges in industrial sector have been overcomes, bringing about positive results.*** Industrial growth averaged 13.5% over the last five years. In 2001 alone, the industrial production value increased by 14.5%, with a relatively good growth rate of 19.5% in private business. This is attributed to the policies and positive impacts of the Enterprise Law.

Production capacity has risen in several industries, not only ensuring adequate food, clothing, shelter, transport, education and other fundamental consumer needs, but also being available for increased exports. Growth has also been recorded in several key strategic products, which has had a major impact on high growth economic sectors.

The industrial structure has changed considerably, developing some leading products, some industrial areas, and some industrial zones that utilize modern production technologies. The mining industrial accounted for 15% of the total value of industrial production, of which oil and gas alone accounted for 11.2 %; manufacturing accounted for 79%, of which the food processing industry accounted for 23.6%; and power supply and distribution and water supply accounted for 6.0%, of which power supply accounted for 5.4 %.

Industrial growth (% increase on 1994 price)

	Total	By ownership		
		State	Non-state	FDI
1996	14.2	11.6	11.5	21.7
1997	13.8	10.8	9.5	23.2
1998	12.5	7.7	7.5	24.4
1999	11.6	5.4	10.9	21.0
2000	15.7	12.3	18.3	18.6
2001	14.2	12.7	20.3	12.1

Sources: General Statistic Office

- ***The services sector has developed its operations despite serious difficulties, and has improved its quality, meeting the demands of economic growth and the people.***

Trade has been growing relatively well. Markets are more open and transparent with the participation of all economic sectors. Business methods have become more diversified, and there has been an annual average increase of about 12.7% in total retail sales.

Further progress has been recorded in the tourism industry. Numerous tourist centres have been upgraded and renovated and types of tourism have diversified, resulting in an average increase in total tourism revenue of 9.7% per year.

Transport service basically has met the demands of cargo and passenger transportation. The physical infrastructure of the transport sector improved considerably. The volume of cargo and passengers transported annually increased by 12% and 5.5% respectively.

Post and telecommunications services have developed rapidly. The basic telecommunications network has been modernized. Many modern communication modes to the international network have taken shape, meeting the public's initial communication and trading requirements. Growth in revenue has averaged more than 15% per year.

The insurance services market has been formed with the participation of domestic and foreign enterprises from all economic sectors. Significant renovation has been achieved in financial and banking services. Other services, like legal, scientific and technical consulting services, have started growing.

External trade

During period of 1996-2000, total export revenue increased by 21.5% per year, three time that of 1991-1995. Both the structure and quality of exports are much improved. The proportion of industrial products, especially handicraft exports, has risen considerably. Total import increased 13.3% per year. The trade deficit decreased from 49.6% in 1995 to 6.3% in 2000. Export revenue reached US$ 186 per capita in 2000. While this is still slow, Viet Nam is classified as an economy with a developed foreign trade system.

Despite a downturn in the global market in 2001, and sharply reduced price for many goods, such as rice and coffee, export revenue for 2001 increased by 8%, and the trade balance is improving, creating balance of payments stability and an increase in foreign exchange revenue.

Official Development Assistance (ODA)

Since 1993, Viet Nam has received considerable assistance from the international community for socio-economic development. ODA has played an important role in helping to create opportunities for Viet Nam to achieve economic growth, alleviate poverty, and improve living standard.

Up to now, Viet Nam has established strong development cooperation relations with some 25 bilateral and 15 multilateral donors and 482 non-government organizations (NGOs). Eight Consultative Group Meeting (CG Meetings) for Viet Nam have been organized successfully since 1993, with the international donor community committing to provide Viet Nam with US$ 19.94 billion.

To utilise committed ODA, the Government of Viet Nam and donors have signed detailed agreements with a total ODA value of US$ 14.3 billion from 1993 to 2001. About US$ 12.0 billion (83.9%) of total ODA has been provided as loans and about US$ 2.3 billion (16.1%) as grant aid.

Foreign direct investment

Current status:

Since the introduction of the Law on Foreign Investment in 1987, there has been 3,770 licensed foreign investment projects with more than US$41 billion registered capital. Leaving aside projects which have expired or been withdrawn, there are 3,047 active licensed projects with a total US$38.9 billion registered capital.

Up to now investors from more than 70 economies and territories have invested in Viet Nam. Asia accounts for 64%, Europe 21% and South American and Caribbean countries 13%. The top five are Singapore; Chinese Taipei; Japan; Hong Kong, China; and Korea. These five economies and territories have invested in 2,250 projects (59.7% of the licensed projects) with total investment capital of US$22 billion (53.5% of the total foreign investment capital of Viet Nam). The next five economies and territories are France, British Virgin Islands, England, Russia and the USA. These "top ten" countries and territories account for over 3/4 of the total licensed projects and foreign registered capital in Viet Nam.

From 1996 to 2002 there has been a tendency towards investment in producing goods for export, construction of infrastructure, producing import substitutes and in labor-intensive industries. There are more than 2,500 projects in the manufacturing and construction industries with a total capital of about US$26 billion, accounting for 67% of the registered capital. Foreign investment projects are allocated in most provinces and cities in Viet Nam. However most foreign investors invest in the key economic areas in the South such as Ho Chi Minh City, Dong Nai, Binh Duong, Ba Ria Vung Tau, and in the North in Hanoi, Hai Duong, Hai Phong and Quang Ninh, but particularly in Hanoi and Ho chi Min City, which have more developed infrastructure, higher purchasing power and a more skillful labor force.

The key economic area in the South of Viet Nam accounts for about 60% of the licensed projects and 53% of the total registered capital, whereas the Northern one accounts for 19.4% of the licensed projects and 26.4% registered capital.

In recent years there has also been an increase in projects in the 100% foreign owned form. These projects now account for 61% of the total licensed projects and 32.8% of the registered capital, while the projects in the joint venture form make up 34.2% and 53% respectively. There are also 6 BOT projects in operation in Viet Nam (water supply plants and electricity plants) with a total registered capital of US$1.3 billion.

The foreign invested sector has seen rapid growth, gradually asserting itself as a dynamic component of the economy, and has made an important contribution to enhancing the competitiveness and efficiency of the economy. In recent years, the foreign invested sector has accounted for a quarter of the country's total investment, for 34% of industrial output, for 23% of the national export (excluding oil and gas), and for 13% of the GDP of Viet Nam.

FDI Contribution to GDP (%)

	1996	1999	2000	2001
GDP	**100.0**	**100.0**	**100.0**	**100.0**
State	39..9	38.7	39.0	39.0
Non State	52.7	49.1	47.7	48.0
FDI	7.4	12.2	13.3	13.0

Sources: General Statistic Office

B. REGULATORY FRAMEWORK

1. Investment Procedures

Selection of an Investment Project

Based on the socio-economic development planning and orientation for each period, the Ministry of Planning and Investment shall issue: *(i) a list of specially encouraged investment projects; (ii) a list of encouraged investment projects; (iii) a list of regions in which investment is encouraged; (iii) a list of sectors in which licensing of investment is conditional; and (iv) a list of sectors in which investment will not be licensed.*

Leaving aside sectors in which licensing of investment is conditional or in which investment will not be licensed, any investor may on its own initiative select investment projects, investment partners, the form of investment, the locality, the duration of investment, the markets for the sale of products and its legal capital contribution proportion in accordance with the provisions of the Law on Foreign Investment and other related legal instruments.

The Ministry of Planning and Investment publishes a *List of National Projects Calling for Foreign Investment*. *M*inistries, branches and provincial people's committees also publish *Lists of projects calling for foreign investment* for their respective industries and localities. In principle, when above Lists are published from time to time, the projects included on those Lists are regarded as complying with current planning

Project classification and licensing bodies

For the purpose of allocation of management functions between Government agencies, investment projects are principally classified into the following groups:

Group A projects comprises:

- Projects in the following sectors, irrespective of invested capital:

- Infrastructure construction of urban areas; BOT, BTO and BT projects;
- Construction and operation of seaports and airports; operation of sea and air transportation;
- Oil and gas;
- Post and telecommunication services;
- Publishing, printing service (except projects for printing of technical materials, printing of packaging, labels of goods, and printing on textiles), press; radio and television broadcasting; advertising services; cinematic activities, artistic performance; conducting games with prizes; medical examination and treatment establishments; education and training (including secondary education, tertiary, undergraduate and post graduate training or equivalent levels); scientific research and production of medicine for human diseases;
- Insurance, finance, auditing and inspection;
- Exploration and exploitation of rare and precious natural resources;
- Construction of residential houses for sale;
- Import services and domestic distribution services;
- Deep sea fishing and exploitation of sea-products
- National defence and security projects;

➢ Projects with invested capital of at least forty (40) million US$ in the following fields: electricity, mining, metallurgy, cement, mechanical engineering manufacture, chemicals, hotels, apartments for lease, tourism-entertainment sectors;

➢ Projects using at least five (5) hectares of urban land or at least fifty (50) hectares of land of other categories, except for the projects for construction of infrastructure facility of industrial zones, export processing zones and high-tech zones using less than 50 hectares of land

Group B projects comprise projects that are not included in the above Group A.

A project with foreign invested capital in Viet Nam is approved in the form of an investment licence which is usually issued by the Ministry of Planning and Investment in a unified standard form. However with decentralization, the People's Committees of Hanoi and Ho Chi Minh city are delegated with authority to issue an investment license for the project of up to US$10 million; the rest of other provincial people's committee are delegated with such authority for the project of up to US$5 million; Management Board of IZs and EPZs also have authority to grant licenses for the projects up to US$40 Million.

Licensing procedures and timing:

- **Registration for the issue of an investment licence within 15 working days** for a project satisfying the following conditions: (i) not belonging to the list of Group A projects (see above); (ii) conforming with approved planning for product; (iii) not belonging to the list of projects in respect of which an environmental impact assessment report is required; and

0. satisfying one of the following conditions: (i) will export at least 80% of products; (ii) belongs to the manufacturing sector with an investment capital of up to US$ 5 million and with at least 50% of its products exported.

- **Evaluation for the issue of an investment licence within 45 days** applies to all other projects.

Application documents must be prepared in Vietnamese language and in another prevailing foreign language in accordance with a standard form introduced by the Ministry of Planning and Investment, and they must be submitted to the competent agencies for issuing investment licence. Depending on the form of investment, an application will include:

	Registration for issue of an investment licence	**Evaluation for issue of an investment licence**
Business Cooperation Contract (BCC)	- Application for registration of investment licence; - Contract;	- Application for investment licence; - Contract;
	- Document verifying the legal status and financial position of investors; - Documents relating to technology transfer (if any).	- Economic - technical explanation; - Document verifying the legal status and financial position of investors; - Documents relating to technology transfer (if any).
Joint Venture Enterprise	- An application for registration of investment licence; - Joint venture contract and charter; - Document verifying the legal status and financial position of investors; - Documents relating to technology transfer (if any).	- Application for investment licence; - Joint venture contract and charter ; - Economic - technical explanation; - Document verifying the legal status and financial position of investors; - Documents relating to technology transfer (if any)

100 % foreign owned capital enterprise	- An application for registration of investment licence; - Charter; - Document verifying the legal status and financial position of investors; - Documents relating to technology transfer (if any).	- Application for investment licence; - Charter; - Economic - technical explanation; - Document verifying the legal status and financial position of investors; - Documents relating to technology transfer (if any).

On a case by case basis, and consistent with the nature of the project for which the application for issuance of an investment licence is made, the investment licence-issuing body may request the investor to provide a number of supplementary and related documents

2. Bilateral Investment Protection and Promotion Agreements

LIST OF AGREEMENT ON INVESTMENT PROMOTION AND PROTECTION

No	Economies/Territories	Date of signing
1.	Italy	18 May, 1990
2.	Australia	5 March 1991
3.	Thailand	30 October 1991
4.	Belgium and Luxembourg	24 January 1992
5.	Malaysia	24 January 1992
6.	Philippines	27 February 1992
7.	Germany	3 April 1992
8.	France	26 May 1992
9.	Switzerland	3 July 1992
10.	Belarus	8 July 1992
11.	Indonesia	25 October 1992
12.	Singapore	29 October 1992
13.	P.R. China	2 December 1992
14.	Armenia	13 December 1992
15.	Chinese Taipei	21 April 1993
16.	Republic of Korea	13 May 1993
17.	Denmark	25 August, 1993
18.	Sweden	8 September 1993
19.	Finland	13 September 1993
20.	Netherlands	10 March 1994
21.	Ukraine	8 June 1994
22.	Russia	16 June 1994

23.	Hungary	26 August 1994
24.	Poland	31 August 1994
25.	Rumania	1 September 1994
26.	Austria	27 March 1995
27.	Latvia	27 September 1995
28.	Cuba	12 October 1995
29.	Litva	6 November 1995
30.	Laos	14 January 1996
31.	Uzbekistan	28 March 1996
32.	Argentina	3 June 1996
33.	Bulgaria	19 September 1996
34.	Algeria	23 October 1996
35.	India	8 March 1997
36.	Egypt	6 September 1997
37.	Czech	25 November 1997
38.	Tatgikixtan	19 January 1999
39.	Chile	16 September 1999
40.	Mongolia	17 April 2000
41.	Myanmar	12 May 2000
42.	Cambodia	26 November 2001
43.	P.D.R Korea	3 May 2002
44.	United Kingdom	1 August 2002
45.	Iceland	20 September 2002

The Viet Nam - United States Bilateral Trade Agreement (BTA)

The BTA was signed on July 13, 2000 in Washington D.C and entered into force on December 10, 2001. It contains the following highlights:

Trade in goods

- Upon ratification, Viet Nam has enjoyed "normal trade relations" which will reduce the tariffs on Vietnamese goods entering the United States from an average of 40% to an average of around 4%. On its part, Viet Nam commits to MFN tariff treatment for all U.S. imports (it imposes a 50% surcharge on countries with whom it does not have MFN relations). It will also reduce tariffs on certain imports from the United States by one-third over a period of 3 years, and eliminate its quantitative restrictions on many agricultural and industrial products over 3 -10 years.

- For the first time, the right to import and export will be granted to U.S invested companies, over a 3-6 year period, subject to certain restrictions.

- On the basis of WTO rules, Viet Nam commits: (i) to eliminate all discretionary import lisencing, (ii) to phase in valuation method based on GATT principles for customs valuation,

and to limit custom fees to cost of services rendered, over a two year period, (iii) to apply technical standard, sanitary, and phytosanitary measures on a national treatment basis.

Intellectual Property Rights

- Viet Nam agrees to comply, within 12-18 months, with the obligations on protection of intellectual property rights in accordance with the provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement (i.e. patent and trademark protection, and copyright and trade secret protection).

- In addition, Viet Nam agrees to take measures in several other areas, including encrypted satellite signals, patent protection for plants and animals, and protection of confidential test data submitted to governments. Protection for satellite signal protection will be phased in within 30 months.

Trade in services

- In respect of its general commitments, Viet Nam agrees to comply with WTO General Agreement on Trade in Services (GATS), including obligations on MFN, National Treatment, and disciplines on domestic regulations. Viet Nam has also committed to phase out its lisencing regime in most sectors.

- Specifically, with some restrictions and within a certain period, Viet Nam commits to grant market access and National Treatment to U.S service providers in 8 service sectors that contain 54 sub-sectors, including: (i) professional services (legal, accounting, architecture, engineering, computer, advertising, market research, management consulting); (ii) telecommunication services (value added telecom, basic telecom, voice telephone, audio, visual); (iii) construction services; (iv) distribution services (wholesale and retail distribution); (v) educational services; (vi) financial services (insurance, banking and related financial services); (vii) health services; (viii) tourism services.

Development of Investment Relations:

Upon entry into force of the BTA, Viet Nam has committed to:

- General obligations on granting the better of MFN or National Treatment to investment of U.S. nationals and companies;

- Non-nationalization and expropriation of investment of U.S nationals and companies;

- Granting to U.S. nationals and companies the better of National Treatment or MFN with respect to all transfers into and out of Viet Nam;

- Providing U.S. nationals and companies with an effective means of asserting claims and enforcing rights with respect to investments;

- Ensuring transparency of its laws, regulations and administrative procedures of general application that pertain to or affect investments;

- Permitting U.S. nationals and companies to transfer employees of any nationality, subject to its laws relating the entry and sojourn of aliens;

- Non-application of conditions for transfer technology except when applying generally applicable environmental laws;

- Phasing out of requirements on trade balancing, and foreign exchange controls on imports in accordance with WTO agreement on Trade Related Investment Measures (TRIMs).

With some exceptions and within a certain period, Viet Nam commits to:

- Phase out export performance requirements for certain industrial products over a 7 year period;

- Shift to a registration regime for investment licesing including simplified procedures over a 2,6 or 9 year period with exception in certain sectors;

- Eliminate restrictions on legal capital contribution, and capital transfers of U.S. nationals and companies, over a 3 year period;

- Eliminate restrictions on management structure and organization of a U.S joint venture enterprise over a 3 year period;

- Phase out all discriminatory pricing to U.S. investors including goods and services under the State control (e.g. electricity and water supply, telecommunication services, airfare, etc.) immediately or over a 2-4 year period.

Business facilitation:

Viet Nam commits to facilitate business operations by allowing U.S investors to import and use office and other equipment in connection with the conduct of their activities; to provide access to and use of office space and living accommodations; to allow the engagement of agents, consultants and distributors based on prices and terms mutually agreed between the parties; to allow advertising for investors' products and services; and to allow the stocking of adequate supply of samples and replacement parts for after-sales service.

Transparency

Viet Nam commits to publish all laws, regulations and general administrative procedures and to the extent possible permit public comment regarding the formulation of such measures. In addition, Viet Nam commits to provide access to economic and trade data and enforce measures that are published. It will designate an official journal for the publication of all measures of general application and administer measures in a uniform, impartial and reasonable manner. Viet Nam

will maintain administrative and juridical tribunals for the prompt review of administrative action related to the agreement and permit the right to appeal an adverse decision.

3. Investment forms and foreign ownership

Investment forms and facilities for business and investment

- **Business Cooperation Contract (BCC)**

A BCC is a document signed by a Vietnamese party and a foreign party for the purposes of conducting investment and business in Viet Nam without creating a legal entity.

- **Joint Venture Enterprise (JVE)**

This is a limited liability company established on the basis of a joint venture contract signed by a Vietnamese party and a foreign party for the purpose of conducting investment and business in Viet Nam. In special circumstances, a JVE may be established on the basis of an agreement signed by the Government of Viet Nam with the government of another country.

- **100 % Foreign Owned Enterprise (FOE):**

A 100% FOE is established as a limited liability company, wholly owned by the foreign investor which manages the business itself and takes full responsibility for its business results.

In the course of operation, subject to certain restrictions where investment sectors require certain forms of investment to be used, investors may convert their forms of investment or reorganize their licensed enterprises (i.e. by division, demerger, merger or consolidation).

- **Other facilities for investment and/or business presence**

Investing in industrial zones (IZs), export processing zones (EPZs) and high-tech zones (HTZs): Foreign investors may invest in these zones in any of the above investment forms for the production of exports, industrial goods, conduct of export activities, and the provision of services for these activities.

Investing under the forms of Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO) and Build-Transfer (BT) contract:

The construction and commercial operation of an infrastructure facility can be conducted using the form of a BOT, BTO and BT contract signed between foreign investors and an authorized Vietnamese State body.

In addition, foreign individuals and companies may establish other forms of business in Viet Nam which are not governed by the Law on Foreign Investment, including:

- *Representative offices*: A foreign business wishing to seek and promote opportunities for its investment and/or commercial activities in Viet Nam may apply for a representative

office licence from the local People's Committee. Such a representative office is not allowed to conduct any profit-making activities.

- *Branch of a foreign company*: Foreign banks and foreign law firms may set up their branch in Viet Nam to provide banking and legal services respectively. In addition, a foreign can apply for a branch licence from the Ministry of Trade. However, such a branch is only established for the purpose of exporting a limited number of goods stipulated by the Government such as handicrafts, and processed agricultural products (except rice or coffee in any form), industrial consumer goods, and meat from cattle and poultry and processed food stuffs.

- *Foreign contractors*: A foreign business may engage in construction services and have a management contract with a Vietnamese legal entity. In the contract, it will act as a foreign contractor operating on a project basis for a fixed period of time which may be extended as required.

Equity acquisition in a domestic enterprise: As provided for in the Law on Encouraging Domestic Investment, foreign investors may acquire no more than 30% of a domestic enterprise's registered capital. However, foreign shareholdings in such enterprises are allowed only in some areas as stipulated by the Government.

Restrictions on foreign ownership

The establishment of a 100% foreign owned enterprise is not allowed in the following sectors: (i) telecommunications service (only allowed in the form of a BCC); (ii) exploration and exploitation of oil and gas, and precious and rare minerals; (iii) consultancy services (except for technical consultancy); (iv) air, rail and sea transportation; public passenger transportation; airport and port construction (only allowed for BOT, BTO and BT projects); (v) production of industrial explosives; (vi) afforestation; (vii) travel tours; and (viii) culture.

The legal capital of a foreign owned enterprise must be at least 30% of its investment capital and cannot be reduced during the investment term. There is no ceiling on the foreign capital contribution to the legal capital of a joint venture enterprise but it must not be less than 30%.

4. Foreign Exchange Regime

Banking and Foreign Exchange

Vietnamese credit institutions comprise State owned credit institutions, joint stock or shareholding institutions, and cooperative credit institutions. Foreign credit institutions such as joint venture banks, foreign bank branches, and non-banking credit institutions with 100% foreign capital may be set up. To date, over 50 joint stock banks and 4 major State owned commercial banks are operating in Viet Nam with branches countrywide. In addition, there are 24 licenced foreign banks operating 29 branches, and along with local banks, these institutions are financing State and privately owned enterprises and foreign owned enterprise in local and foreign currencies.

Under the Law on Foreign Investment, foreign owned enterprises may open bank accounts in both Vietnamese currency and foreign currency at Vietnamese banks, joint venture banks or foreign bank branches established in Viet Nam. In special cases where approved by the State Bank of Viet Nam, an enterprise with foreign owned capital is allowed to open an overseas account.

The latest amendments to the Law on Foreign Investment has cancelled the former strict provision requiring foreign owned enterprises and parties to BCCs to self-balance their foreign currency requirements; they may now purchase foreign currency from banks authorised to trade in foreign currency in order to meet the demands of their current transactions and other permitted transactions in accordance with current foreign exchange control regulations.

A Government guarantee of balancing foreign currency is granted to especially important investment projects investing in accordance with Government programs in any one period. The Vietnamese Government also gives an assurance of assistance in balancing foreign currency for projects investing in the construction of infrastructure facilities and some other important projects.

5. Entry and Stay of Personnel

Entry and exit visa

In addition to a passport, a visa is necessary to visit Viet Nam from most countries, although there are some countries whose tourists do not now require visas. Tourists and business visas are usually obtained from Vietnamese embassies and consulates abroad. People coming to live and work in Viet Nam usually obtain a visa through a sponsoring agency, providing them with personal details - full name - date and place of birth - citizenship - passport number, date and place of issue, expiry date - date and point of entry to Viet Nam.

The sponsor will send these particulars to Vietnamese immigration and security authorities, who will in turn give approval to the relevant embassy. Once this is approved, send your passport and two completed application forms with an attached photograph to the appropriate Vietnamese Embassy or consulate. The visa will be stamped into the passport.

For a tourist visa, complete two application forms, attach one photo to each and forward with your passport and the required fee to the relevant embassy. Your passport will be returned with a visa stamped inside.

For business visas, the fee varies depending on the length of the visa and ranges from US$25.00 to US$100.00 for multiple entry visa. For a tourist visa, the fee is US$25.00 for a single entry or US$40.00 for a multiple entry visa.

6. Taxation

Tax & investment incentives

	SCOPE OF APPLICATION	TAX RATES AND INCENTIVES
Corporate Income Tax (CIT)	Corporate Income Tax is levied on the net income earned by joint venture enterprises, 100% foreign owned enterprises, foreign parties to business cooperation contracts and joint venture banks. Note: Domestic enterprises, branches of foreign companies (including foreign bank branches) and foreign contractors are subject to separate regulations.	❖ **Standard rate:** 25%. Oil and gas and rare and precious natural resources projects are taxed at higher rates ranging from 32% to 50%. ❖ **Preferential rates** of 10%, 15% and 20% apply for 15 years, 12 years and 10 years respectively starting from the commencement of operating activities where certain investment encouragement criteria are satisfied. Some specially-encouraged projects are entitled to preferential rates during the whole duration of the project. ❖ **Tax holidays** in the form of a full exemption from CIT for a fixed period (1-8 years) starting from the first profit making year apply for projects subject to preferential tax rates. The tax holiday is usually followed by a period (up to 4 years) where a 50% tax reduction is available. ❖ **Refund** of a portion or all of the tax paid on the income reinvested for at least 3 consecutive years is available if certain specific conditions are met.
Value Added Tax (VAT)	2. VAT applies to all goods and services used for production, trading and consumption in Viet Nam, other than those items which are specifically exempted under the VAT Law. Businesses	❖ **VAT rates**: 0%, 5%, 10% (common rate), and 20% depending on the nature of the goods and services. ❖ **VAT exemptions** are granted for some specific goods and services,

	SCOPE OF APPLICATION	TAX RATES AND INCENTIVES
	engaged in the production or trade of goods/services subject to VAT must charge VAT on the value of the goods or services supplied. 3. VAT also applies at the import stage. The importer must pay VAT to the customs office at the same time as it pays import duties. Import VAT may be exempted for certain imported goods.	including goods/services subject to Special Sales Tax. Where a business provides goods/services which are exempt from VAT, the business cannot claim input VAT. ❖ **VAT refunds**, generally, are available where the input VAT exceeds the output VAT on a quarterly basis.
Import Duties	4. Generally, all imports are subject to duty in accordance with the Law on Export and Import Duties.	❖ **Import duty rates** fall into 3 categories: - **Preferential rates** are applicable to goods imported from countries which enjoy MFN treatment from Viet Nam; - **Ordinary rates** (which are equal to 150% of the respective preferential rate) are applicable to goods imported from countries which do not enjoy MFN treatment from Viet Nam; - **Specially preferential rates** apply to goods imported from countries which have a special preferential agreement with Viet Nam (e.g. ASEAN/CEPT). ❖ **Exemptions from import duty** are generally applicable to machinery, equipment, special means of transport and construction materials forming fixed assets of foreign invested projects which are not yet able to be domestically produced; and raw materials imported

	SCOPE OF APPLICATION	TAX RATES AND INCENTIVES
		for processing goods for export, or for implementing BOT, BTO and BT projects.
Export Duty	- In principle, all exports are subject to export duty. - However, in practice, export duty is only imposed on a few items, mainly natural resources, minerals, forest and marine products & scrap-metal.	❖ **Standard rates:** 0% to 45% ❖ **Exemptions** from export duty are applicable to goods exported from an EPZ.
Profits Remittance Tax (PRT)	5. **PRT is levied on the profits remitted overseas by foreign investors.**	❖ **Tax rates:** 3%, 5%, 7% depending on the size of the capital contribution to legal capital of foreign invested enterprises or capital to implement business cooperation contracts (over US$ 10 mil, between US$ 5 mil and US$ 10 mil, and less than US$ 5 mil, respectively). ❖ **Special rate** of 3% or 5% regardless of the size of capital contribution applies to certain encouraged projects, such as projects in IZs, EPZs, HTZs, etc.
Capital Assignment Tax	6. Levied on the net gain derived by foreign investors from the assignment of capital or an interest in a foreign invested enterprise or a business cooperation contract.	❖ **Standard tax rate:** 25% ❖ Exemption from capital assignment tax if the assignee is a State-owned enterprise ❖ 50% reduction if the assignee is a Vietnamese enterprise other than State-owned enterprises

	SCOPE OF APPLICATION	TAX RATES AND INCENTIVES
Personal Income Tax (PIT)	Levied on: 7. the world-wide income of foreigners who stay in Viet Nam for more than 182 days in a tax year (i.e. tax residents); 8. Viet Nam-sourced income of foreigners who stay in Viet Nam for between 30-182 days in a tax year (i.e. non-residents); 9. World-wide income of Vietnamese citizens either living in Viet Nam or working overseas. Both regular income and irregular income are subject to tax.	❖ **Tax rates for regular income** 10. Flat rate of 25% applicable to Vietnamese non-residents 11. Progressive tax rates vary from 10% to 50% in respect of monthly income exceeding VND 3 mil of Vietnamese citizens and foreigners settling permanently in Viet Nam; 12. Progressive tax rates vary from 10% to 50% in respect of monthly income exceeding VND 8 mil of foreigners who are Vietnamese tax residents and Vietnamese citizens working overseas; ❖ **TAX RATES FOR IRREGULAR INCOME** 13. Progressive tax rates: 10% to 30% applicable to both Vietnamese citizens and foreigners. ❖ **PIT exemptions** are applicable to some types of income such as hardship allowances, severance retrenchment allowances, etc. Dividends, interest and capital gains are currently not subject to PIT.

It should be noted that apart from the above-mentioned taxes, depending on the nature and area of investment, there are several other taxes or financial obligations that may affect certain investors and/or foreign invested enterprises, including special sales tax, natural resources tax, and foreign contractor withholding tax.

C. INVESTMENT PROTECTION

1. Investment Guarantee

Under its laws and international obligations, the Vietnamese government provides a wide range of investment guarantees to foreign investors, including:

- guarantee of fair and equitable treatment between foreign investors and progressively phasing in non-discriminatory treatment for foreign investors and domestic investors;
- guarantee that the capital and other lawful assets of foreign investors will not be expropriated by administrative measures, except in the public purpose, under due process of law, on a non-discriminatory basis and with prompt, adequate and effective compensation;
- non-retrospective application in the event that the interests of investors are damaged by a change in the provisions of any law of Viet Nam;

guarantee of ability to transfer profits derived from business operations, payments received from the provision of technology and services, the principal of, and interest on, any foreign loan obtained during the course of operation, investment capital, and other sums of money and assets lawfully owned.

2. Settlement of Disputes

Generally, disputes arising out of civil, commercial and economic transactions in Viet Nam may be resolved at Vietnamese courts and arbitration centers, including:

- Civil Courts and Economic Courts under the People's Court system containing a court of first instance and an appeal court;
- Economic Arbitration Centers established as social and professional organizations to resolve disputes arising: (i) from economic contracts; (ii) between a company and its members or between its members; (iii) from the establishment, operation and dissolution of a company; or (iv) from sales or purchases of shares or debentures;
- Viet Nam International Arbitration Center (VIAC) established as a non-government organization belonging to the Viet Nam Chamber of Commerce and Industry to resolve disputes relating to international economic relations, including foreign trade contracts, international investment contracts, tourism, transport, technology transfer, and international insurance, credit, payments etc

Specifically, foreign investment legislation provides that disputes between parties to a joint venture enterprise (JVE) or a business cooperation contract (BCC), disputes between foreign owned enterprise and foreign organizations or individuals, and disputes between foreign

parties to a JVE or BCC with Vietnamese economic organizations shall be first attempted to be resolved through negotiation and conciliation. Where conciliation fails, the disputing parties may agree on the selection of one of the following dispute resolution alternatives:

- a Vietnamese court;
- a Vietnamese arbitration body, a foreign arbitration body or an international arbitration body;
- an arbitration tribunal established by agreement between the parties.

However, disputes between two FOEs or disputes between FOEs and Vietnamese economic organizations shall be resolved by Vietnamese arbitration organizations or by Vietnamese courts in accordance with Vietnamese laws.

According to its international arrangements and Government regulations on FDI under the form of BOT, BTO and BT contracts, Viet Nam recognizes the mechanism for dispute resolution between the State and the investors of other States, under which administrative tribunals, courts of the host country, foreign arbitration centers, UNCITRAL and other methods agreed to in the contract, as the case may be, are used to resolve those disputes. Viet Nam will commit to using the ICSID mechanism when Viet Nam accedes to the 1965 Washington Convention on this matter. Since 1995, Viet Nam has been a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

D. INVESTMENT PROMOTION AND INCENTIVES

1. Investment sectors and locations

Foreign investors may invest in any sector of Viet Nam's economy other than the sectors or regions that may have an adverse effect on national defence, national security, cultural and historical heritage, customs and traditions, or the ecological environment. In particular, the Vietnamese government encourages FDI in the following sectors and regions:

- ❖ production of exports;
- ❖ animal husbandry, farming and processing of agricultural produce, forestry, and aquaculture;
- ❖ utilization of high technology and modern techniques, protection of the ecological environment and investment in research and development;
- ❖ labour intensive activities, processing of raw materials and efficient utilization of natural resources in Viet Nam;
- ❖ construction of infrastructure facilities and important industrial production establishments;
- ❖ regions with difficult and specially difficult socioeconomic conditions.

However, the Vietnamese laws also provide for a list of sectors in which licensing of investment is allowed subject to compliance with certain conditions. Except for those sectors included in such a list, an investor may on its own initiative select investment projects, investment partners, the form of investment, the locality, the duration of investment, the markets for the sale of products and its legal capital contribution ratio.

2. Investment in Industrial Zones, Export Processing Zones and High-Tech Zones

In 1991 The Vietnamese Government introduced the policy to develop these special zones in an effort to geographically diversify investment attraction, accelerate export, and to create more jobs.

- *An Export Processing Zone* is an industrial zone specializing in the production of exports and the provision of services for the production of exports and export activities with specified boundaries established, or permitted to be established, by the Government.
- *An Industrial Zone* is a zone which specializes in the production of industrial goods and the provision of services for industrial production established, or permitted to be established, by the Government.
- *A high-tech zone* is a zone for high-tech industrial enterprises and enterprises providing services for high-tech development, including scientific-technological research and application and training and related services. Such zones have fixed geographical boundaries and are established pursuant to decisions of the Government or the Prime Minister. Export processing enterprises may be located in high-tech zones.

During the past few years, the system of industrial zones has been developed all over the country, playing an important role in attracting the foreign investment to Viet Nam. To date, 71 industrial zones have been established. The details of infrastructure construction for IZs are that one IZ was built by a 100% foreign owned project, 14 by joint venture enterprises, and 56 by Vietnamese enterprises. The total areas of industrial zones are more than 12,000 hectares, 35% of which have

been leased out. In addition the Dung Quat Economic Zone, which is located in the Central Vietnam with an area of 14,000 hectares has been developed for oil refinery and petro-chemistry.

To date there have been 870 foreign investment projects with a registered capital of US$ 9 billion operating in the industrial zones, accounting for 23% of the total foreign investment in Vietnam. Most of these projects are textiles, garment, shoes, electronic assembly, mechanical manufacturing, plastic, and food processing enterprises. About 85% of projects in industrial zones are 100% foreign owned companies.

Advantages of locating in IZs and EPZs

Investors which decide to locate in almost any IZ, EPZ or HTZ in Viet Nam may enjoy these advantages:

- Pro-business environment with strong support and commitments from the local authorities, and special investment incentives granted by the Government, including:
- Corporate income tax rates: 10%, 15%, 20% applied for whole project duration;
- Profit remittance tax rate: 3% of profits transferred abroad regardless of capital contribution scale.
- Comprehensive infrastructure and superior environment; high competitiveness in investment cost.
- Concentrated location of factory and office buildings, easy for management.
- One- stop services to obtain an investment license simply and quickly, with the post- lisence services
- High quality work force available with specialists of management, engineering and language.
- Diversified services provided by professional business people.

E. VIET NAM's FUTURE DIRECTIONS AND SOLUTIONS FOR FDI ATTRACTION

On 28 August, 2001, for the first time, the Vietnamese Government issued a separate Resolution on further attracting and improving the efficiency of FDI. The Resolution has set out the following objectives, orientation and solutions for FDI attraction in the period of 2001-2005:

1. Objectives:

- *Registered capital of newly licensed projects: Approximately US$12 billion*
- *Disbursed capital: Approximately US$11 billion*
- *By 2005, capital contribution of around 15% of GDP, 25% of the total export turnover, and approximately 10% of the total budget revenue for the whole country (excluding petroleum).*

2. Directions:

- *To strongly encourage the attraction of foreign direct investment to processing industries, to industries producing export goods, and to industries servicing agricultural development and the rural economy; to strongly encourage projects applying informatics technology, biotechnology, petroleum, electronics, new materials, telecommunications, the production and development of socio-economic infrastructure, and the modern technology industries in which Viet Nam has a competitive edge, creating more jobs and helping to transform them into an economic structure.*

- *To continue to attract foreign direct investment to geographical areas with resources which can be harnessed. To provide maximum incentives to foreign direct investment in areas with difficult socio-economic conditions, and to promote infrastructure construction in such areas with other funding in order to facilitate the foreign direct investment activities. To attract foreign direct investment especially into the industrial zones which have already been built in accordance with the approved planning.*

- *To attract foreign direct investors from all countries and territories into Viet Nam, especially those with substantial financial backing and those from countries which have developed advanced technology, and to continue to attract foreign direct investors from the region.*

3. Solutions:

- *Further improvement of the legal system in respect of foreign investment, making it more attractive, open, transparent and stable, subsequently, to establish a common legal ground for both foreign and domestic investors.*
- *Development of a policy system to improve the competitiveness of the business environment with the following directions: (i) to continue to reduce fees and charges of certain services; (ii) to improve the land, foreign exchange and tax regulations to facilitate the implementation of the licensed projects; (iii) to adopt more incentives for the businesses producing exports and the businesses manufacturing spare parts and/ or components.*
- *Diversification of the form of investment to deploy more investment options, experimental equitisation of selected foreign enterprises. Gradually opening the real-estate market, service and commercial sector to be in line with world economic integration.*
- *Improvement of State management capability at all levels, expanding the authorities and responsibilities of local authorities in order to resolve problems of investors in a timely manner.*
- *Simplifying administrative procedures to save time and costs of businesses, strengthening the confidence of investors. Reviewing and eliminating unnecessary regulations and licenses that are obstructing business activities. Expanding the list of projects that are required only to register for investment licenses.*
- *Further improvement of and investment in infrastructure such as the supply of electricity, water, information, etc., as well as improving the quality of banking, financial and technological services to make it more favorable for business activities.*

- *Improving the supply of information on investment environment and policies, and strengthening investment promotion activities.*

ANNEXES

Annex I

SURVEY QUESTIONNAIRE

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

1. Provide a brief description of your foreign investment policy including any recent policy changes.

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

Complete the following cover sheet that indicates all documents attached for this question.

COVER SHEET list documents attached.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. Transparency

(1) Statutory (legislative) requirements

(a) Provide a list of and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

Citation

Summary

(2) Investment Review and Approval

(a) Write Yes or No next to any proposals and sectors that are/are not subject to screening. Add additional categories where appropriate.

(b) For each proposal identify guidelines/conditions that apply for screening (e.g., mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Provide details of any special conditions that apply to individual sectors.

Proposals

Guidelines/Conditions

merger ( )

acquisitions ( )

greenfield investment ( )

real estate/land ( )

joint venture ( )

other:-

Sector

telecommunications ( )

media ( )

transport ( )

agriculture ( )

other:

(c) Indicate all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

COVER SHEET list documents attached

(d) Identify the contact point(s) to which applications should be made, and provide addresses, and the phone/facsimile numbers for contacts. Agency Address/telephone/fax

(e) Identify the availability of website information and whether there is that capacity to apply for approvals on line.

(f) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

(g) List 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. Briefly describe appeal processes and the average time for an appeal to be considered.

(h) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.

(i) Indicate 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).

(j) 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.

(k) Describe any 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.

(l) If there is a role for sub national agencies in the approval process, please indicate the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g., zoning, approvals of land purchase).

Agency

Address/telephone/fax

Functions

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

(a) List and describe 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).

(b) Identify and describe any international agreements to which your economy is party which provides for a possible exception to MFN treatment.

3. National Treatment

(a) Identify any 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). In your response briefly list laws, regulations and policies which provide for those exceptions. Sector Nature of Exception (e.g. prohibition, limitation, special conditions and special screening)

(b) Briefly describe the nature and scope of any limitations on foreign firm's access to sources of finance, e.g., are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

4. Repatriation and Convertibility

(a) Identify and describe any regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation.

(b) Briefly describe the foreign exchange regime.

(c) Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

5. Entry and Sojourn of Personnel

(a) Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction.

(b) List and briefly describe any restrictions by law or regulation on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

a) Restrictions

b) Description

(c) Describe any regulations relating to personnel management of foreign firms, e.g., minimum wage laws, minimum requirements for training or employment of local staff.

(d) List and provide a summary of domestic labour law which apply to foreign firms in the context of labour disputes/relations in the following order:

Law

Summary

6. Taxation

(a) Provide a brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements in the following order:

Taxation arrangements

Summary

7. Performance Requirements

(a) Briefly describe any performance requirements that could impose limits on trade and investment and indicate any Trade-Related Investment Measures (TRIMS).

8. Capital Exports

(a) List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment in the following order:

a) Regulations

b) Application and function

(b) List and briefly describe any regulations/institutional measures that limit technology exports.

a) Regulations

Application and function

9. Investor Behavior

(a) Indicate any law, regulation or administrative guideline/policy, of which the observance by foreign investors is of particular concern to the member economy.

10. Competition Policy

(a) Briefly outline the competition policy regime.

11. Other measures

(a) List and briefly describe current intellectual property protection laws and recent enforcement efforts that have contributed to the security of the legal environment for foreign investment.

C. INVESTMENT PROTECTION

1. Expropriation and Compensation

(a) Provide a 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.

a) Laws/Regulations

b) Application and function

(b) Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

2. Settlement of Disputes

(a) Describe all means of dispute settlement and processing of grievances existing under laws, regulations and 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 the following order:

Agency

Address/telephone/fax

(b) Has your economy signed or acceded to the ICSID Convention?

D. INVESTMENT PROMOTION AND INCENTIVES

1. Briefly describe any investment promotion programs offered at both the national and sub-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.

Program

Nature of incentive

Contact point

2. Briefly describe any fiscal, financial, tax or other incentives offered at both the national sub-national level (e.g., 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 these schemes, including address and telephone/fax numbers.

Program (National/sub-national)
Nature of incentive

Contact point

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

Agency

Address/telephone/fax

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

1. Indicate if your economy is a party to any of the following agreements, the economies with which the agreement has been entered into and brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Agreement including Free Trade Agreement

Provisions

Friendship Commerce and Navigation Treaties

Bilateral Investment Treaties

Regional or sub regional Investment Treaties

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

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

Sources FDI

Destination FDI

APEC NON-BINDING INVESTMENT PRINCIPLES

Jakarta, November 1994

In the spirit of APEC's underlying approach of open regionalism,

Recognising the importance of investment to economic development, the stimulation of growth, the creation of jobs and the flow of technology in the Asia-Pacific region,

Emphasising the importance of promoting domestic environments that are conducive to attracting foreign investment, such as stable growth with low inflation, adequate infrastructure, adequately developed human resources, and protection of intellectual property rights,

Reflecting that most APEC economies are both sources and recipients of foreign investment,

Aiming to increase investment. including investment in small and medium enterprises, and to develop supporting industries,

Acknowledging the diversity in the level and pace of development of member economies as may be reflected in their investment regimes, and committed to ongoing efforts towards the improvement and further liberalisation of their investment regimes,

Without prejudice to applicable bilateral and multilateral treaties and other international instruments,

Recognising the importance of fully implementing the Uruguay Round TRIMs Agreement,

APEC members aspire to the following non-binding principles:

Transparency

- Member economies will make all laws, regulations, administrative guidelines and policies pertaining to investment in their economies publicly available in a prompt, transparent and readily accessible manner.

Non-discrimination between Source Economies

- Member economies will extend to investors from any economy treatment in relation to the establishment, expansion and operation of their investments that is no less favourable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.

National Treatment

- With exceptions as provided for in domestic laws, regulations and policies, member economies will accord to foreign investors in relation to the establishment, expansion, operation and protection of their investments, treatment no less favourable than that accorded in like situations to domestic investors.

Investment Incentives

- Member economies will not relax health, safety, and environmental regulations as an incentive to encourage foreign investment.

Performance Requirements

- Member economies will minimise the use of performance requirements that distort or limit expansion of trade and investment.

Expropriation and Compensation

- Member economies will not expropriate foreign investments or take measures that have a similar effect, except for a public purpose and on a non-discriminatory basis, in accordance with the laws of each economy and principles of international law and against the prompt payment of adequate and effective compensation.

Repatriation and Convertibility

- Member economies will further liberalise towards the goal of the free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidations, in freely convertible currency.

Settlement of Disputes

- Member economies accept that disputes arising in connection with a foreign investment will be settled promptly through consultations and negotiations between the parties to the dispute or, failing this, through procedures for arbitration in accordance with members' international commitments or through other arbitration procedures acceptable to both parties.

Entry and Sojourn of Personnel

- Member economies will permit the temporary entry and sojourn of key foreign technical and managerial personnel for the purpose of engaging in activities connected with foreign investment, subject to relevant laws and regulations.

Avoidance of Double Taxation

- Member economies will endeavour to avoid double taxation related to foreign investment.

Investor Behaviour

- Acceptance of foreign investment is facilitated when foreign investors abide by the host economy's laws, regulations, administrative guidelines and policies, just as domestic investors should.

Removal of Barriers to Capital Exports

- Member economies accept that regulatory and institutional barriers to the outflow of investment will be minimised.

EXCERPT FROM THE OSAKA ACTION AGENDA

INVESTMENT

OBJECTIVE

APEC economies will achieve free and open investment in the Asia-Pacific region by:

(a) liberalizing their respective investment regimes and the overall APEC investment environment by, inter-alia, progressively providing for MFN treatment and national treatment and ensuring transparency; and

(b) facilitating investment activities through, inter-alia, technical assistance and cooperation.

GUIDELINES

Each APEC economy will:

(a) progressively reduce or eliminate exceptions and restrictions to achieve the above objective, using as an initial framework the WTO Agreement, the APEC Non-Binding Investment Principles, any other international agreements relevant to that economy, and any commonly agreed guidelines developed in APEC; and

(b) explore expansion of APEC's network of bilateral investment agreements.

COLLECTIVE ACTIONS

APEC economies will:

(a) increase, in the short term, the transparency of APEC investment regimes by (i) updating the *APEC Guidebook On Investment Regimes* as appropriate to reflect changes in regimes; (ii) establishing software networks on investment regulations and investment opportunities; and (iii) improving the state of statistical reporting and data collection;

(b) promote, in the short term, an on-going mechanism for dialogue with the APEC business community on ways to improve the APEC investment environment;

(c) identify, in the short term, on-going technical cooperation needs in the Asia-Pacific region and organize training programs which will assist APEC economies in fulfilling APEC investment objectives;

(d) establish, in the short term, a dialogue process with the Organization for Economic Cooperation and Development (OECD) and other international fora involved in global and regional investment issues;

(e) define and implement, in the short term, follow-on training to the Uruguay Round implementation seminars;

(f) undertake an evaluation of the role of investment liberalization in economic development in the Asia-Pacific region;

(g) study, in the medium term, possible common elements between existing sub-regional arrangements relevant to investment;

(h) refine, in the medium term, APEC''s understanding of “free and open investment”; and

(i) assess, in the long-term, the merits of developing an APEC-wide discipline on investment in the light of APEC’s own progress through the medium term as well as developments in other international fora.

Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies - For Voluntary Inclusion in Individual Action Plans

APEC leaders and ministers at Bogor, Osaka, Subic, and Vancouver have committed their economies to create free and open investment by 2010 and 2020. They endorse Individual Action Plans (IAPs) as a core instrument in this process. They have called for transparency in, and the annual improvement of IAPs. ABAC has also called on APEC economies to make progress in the investment area.

In response to both government and business, the Investment Experts Group, at St. Johns, Canada, undertook to compile a "menu of options" for helping economies to identify policy measures that member economies may include unilaterally in their IAPs for implementation of this objective. There was a consensus that the project should focus on concrete measures, rather than on continued philosophical debate. APEC ministers endorsed the "menu" initiative at Vancouver.

With these instructions in mind, the following document is a non-exhaustive *"master menu"* of investment-liberalizing and business-facilitating measures from which economies may voluntarily select any of a number of *options* to make progress toward creating a free and open investment regime. It is intended as a *reference tool* that economies may refer to when updating their IAPs.

The APEC approach to liberalization and facilitation of trade and investment, as reiterated by APEC Leaders at Vancouver, recognizes the diversity that exists among APEC economies. This "menu of options" is consistent with this recognition of diversity, providing members with a broad range of choices suitable for different circumstances. The items are not prescriptive and, where chosen, may be modified to suit particular circumstances. The menu is not designed to set out the steps in the liberalization process and will evolve over time.

The IEG intends to update this menu on a regular basis, starting in 1999, so as to capture the benefit of APEC economies' increasing experience and changing views.

Item No.	Description
GENERAL	
1.01	Broaden definitions of investment and foreign investment in existing legislation, regulations and administrative procedures to permit the widest variety of forms of investment and allow for newly emerging forms to be covered, without a need for future changes in domestic legislation/ regulations. -- The definition might include – illustratively - not just new ("green field") investments, but also acquisition of shares of domestic enterprises, management contracts, long-term leases, all forms of business organization (e.g. wholly owned, subsidiaries, partnerships, branches, joint ventures, smart partnerships, strategic alliances, venture capital), certain kinds of debt instruments, intellectual property, etc.
1.02	Permit and promote all forms of investment through means other than, or additional to, broadening the definitions of investment and foreign investment in existing

	legislation, regulations and administrative procedures.
1.03	Commit to locking in current treatment for investors in specific sectors (i.e. standstill on restrictions).
On prior authorization requirements:	
1.04	Eliminate or phase out prior authorization requirements. If appropriate, replace them with post-establishment notification.
1.05	Make approval within any existing prior-authorization mechanism automatic except in limited specified situations.
1.06	Raise the threshold (value of an investment) above which prior authorization is required. If appropriate, announce progressive raising of the threshold, according to a schedule with a certain date to eliminate most or all prior authorization requirements.
1.07	Limit the requirement for prior authorization to selected sectors. If appropriate, replace it with post-establishment notification.
Involving other economies:	
1.08	Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional, and/or multilateral agreements or arrangements for the protection of investment that provide commitments to the current level of protection and openness for investors/ investment.
1.09	Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional and/or multilateral agreements or arrangements for the protection of investment with enhanced protection and openness for investors/ investments (e.g. fewer restricted sectors of an economy, fewer restrictions within sectors, stronger mechanisms for resolving disputes).
TRANSPARENCY	
2.01	Make available to investors timely updates of changes to investment regimes, including via the APEC Secretariat (who will use it for the APEC investment guidebook).
2.02	Publish and/or make widely available through other means, on a timely basis, information on an economy's investment code, investment laws and regulations, and procurement procedures, with an eye to ensuring transparency in the administration of investment laws, regulations and procedures at federal/central, provincial/state and local authority levels.
2.03	If screening is used, publish and/or make widely available through other means the guidelines for evaluating and scoring projects for their approval.
2.04	Conduct briefings (in appropriate fora) on the current investment policies and future directions to be undertaken by the government.
2.05	Give advance notice of proposed regulations and laws, and provide an opportunity for public comment.
2.06	Clarify procedures and practices regarding application, registration, government licensing and procurement by: -- Publishing (and widely disseminating) clear and simple instructions, and an

	explanation of the process (the steps) involved in applying/bidding/registering; -- Publishing (and widely disseminating) definitions of criteria for assessment of investment proposals; -- Publishing (and widely disseminating) contact points for inquiries on standards, technical regulations, and conformity requirements; -- Conduct periodic reviews of prior authorization requirement procedures to ensure they are simplified and transparent; -- Make available to investors all rules and information relating to investment promotion schemes.
NON-DISCRIMINATION Related to MFN	
3.01	Commit to MFN treatment economy-wide, except in a few limited cases as may be specified by individual member economies, immediately or over a publicly announced period of time.
3.02	For economies that have already committed to MFN treatment, review where MFN exceptions to it taken in the past can be eliminated or reduced (in other words, review whether the "few limited cases" of exceptions to MFN can be narrowed even further).
Related to National Treatment or both MFN and National Treatment *Sectors*	
3.03	Extend national treatment now (or starting on a particular date) in one or more sectors.
3.04	Extend national treatment economy-wide except in a few limited cases now, or starting on a certain date; or
3.05	Progressively extend national treatment to one more sectors.
3.06	Open additional sectors to participation by foreign investors, or permit foreign investment economy-wide with only limited exceptions. In other words, reduce the size of the list of sectors that are closed or partially restricted to foreign investment.
3.07	Eliminate or phase out sectoral restrictions on a foreign investment.
3.08	Review existing agreements, treaties, and laws to see if any exceptions to national treatment can be eliminated.
Ownership	
3.09	Allow all investors to choose their form of establishment within legislative and legal frameworks.
3.10	Update regulations to eliminate joint venture requirements for establishment.
3.11	Permit greater foreign equity ownership in sectors partially opened to foreign investment, or permit greater foreign equity ownership economy-wide. -- Prepare a schedule now for future increases in foreign equity ownership. -- Accelerate implementation of dates for liberalizing sectors where possible.
3.12	Eliminate or phase out conditions for foreign ownership in relation with export ratios or domestic sales.
3.13	Reduce areas with joint-venture criteria under investment promotion schemes to

	allow greater foreign participation.
3.14	Implement (and announce) a policy of not requiring the divestiture or dilution of the ownership of investments on the basis of nationality. Eliminate or phase out requirements to transfer ownership to local firms over a period of time.
3.15	Eliminate or phase out restrictions for foreign investors on the establishment of local branches.
3.16	Eliminate or phase out restrictions for foreign investors to diversity operations.
3.17	Eliminate or phase out restrictions on foreigners with respect to operational permits and licenses.
3.18	Where a time period for foreign investors to find local partners is specified, extend the period of time.
Finance and Capitalization	
3.19	Update regulations to reduce or eliminate restrictions on foreign borrowing by corporations.
3.20	Liberalize foreigners' access to domestic financial instruments (e.g. money market instruments, corporate bond markets).
3.21	With respect to the entry of foreign investment, eliminate or phase out requirements to deposit certain guarantees for foreign investors.
3.22	Reduce, reduce progressively, or eliminate minimum capitalization requirements in sectors where such capitalization requirements are not needed for prudential reasons.
3.23	Eliminate or phase out subsequent additional investment or reinvestment requirements for foreign investors.
3.24	Open existing investment incentive programs to participation by foreign investors, so they are equally available to domestic as well as foreign investors.
Other Measures	
3.25	Eliminate or ease discriminatory restrictions on imports needed to support foreign investment.
3.26	Change policies, guidance, regulations, or laws to eliminate pricing by state-designated monopolies that is discriminatory on the basis of nationality.
3.27	Change policies, guidance, regulations or laws to eliminate discriminatory access to local raw materials and inputs.
EXPROPRIATION AND COMPENSATION	
4.01	Consistent with international law standards/principles, limit permissible expropriation to cases involving a public purpose where expropriation is undertaken in a non-discriminatory manner, under due process of law, and accompanied by payment of prompt, adequate and effective compensation. -- Take steps to amend expropriation laws and regulations based on the above-mentioned standards/principles of international law with respect to expropriation.
4.02	Included in bilateral, regional or multilateral investment treaties, agreements, and/or

	arrangements a commitment on compensation in cases of expropriation.
4.03	To improve transparency, define, publish and disseminate to investors the relevant investment treaties and arrangements.
PROTECTION FROM STRIFE AND SIMILAR EVENTS	
5.01	Decide - and, as possible, commit in investment agreements/arrangements between governments and private investors and in bilateral/multilateral government-to-government treaties, agreements, and/or arrangements - that the government will
	accord treatment that is non-discriminatory on the basis of nationality to investments with respect to losses that investments may suffer in the government's territory that are due to war, other armed conflict, revolution, national emergency, insurrection, civil disturbance, or other similar events.
TRANSFERS OF CAPITAL RELATED TO INVESTMENTS	
6.01	Remove or reduce restrictions on the transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidations - all in a freely convertible or a freely usable currency. -- Eliminate or phase out restrictions that impede recovery of profit, such as ceilings on royalties, technical assistance fees or special taxes, restrictions on access to foreign exchange, and control over the allocation of foreign currencies.
6.02	Make a binding commitment, in treaties, agreements or arrangements, to eliminate or progressively reduce restrictions on the transfers of funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidation - all in freely convertible or freely usable currencies.
6.03	Guarantee the right to transfer capital related to an investment in and out of an economy, without delay and at market rates of exchange, with only limited exceptions.
PERFORMANCE REQUIREMENTS	
7.01	Publish and implement a phase-out plan for WTO TRIMs-inconsistent programs identified on TRIMs illustrative list.
7.02	Reach consistency with WTO TRIMs' illustrative list by 2000. Take steps to accelerate implementation of phase-out plans where possible.
7.03	Eliminate, phase out, or relax unilaterally and/or through government-to-government agreements and treaties, on an economy-wide or sectoral basis, requirements such as: -- local hiring requirements, -- local training requirements, -- requirements to manufacture locally, -- local sales requirements, -- required technology transfer, -- required local research and development, -- export requirements (e.g. those expressed as requirements to generate foreign exchange or achieve a particular export target).
ENTRY AND STAY OF PERSONNEL	

8.01	Consistent with an economy's visa laws regarding the entry and stay of personnel, allow the temporary entry and stay of personnel needed to establish, develop, administer or advise on the operation of an investment of theirs (i.e. investor and key managerial or technical personnel and advisers).
8.02	Offer visas for investors that facilitate entry and reentry (or identify other ways, consistent with domestic laws and policy, to facilitate investors' ability to enter and reenter for investment purposes).
8.03	Take steps to permit investors/project sponsors to hire the top managerial advisory talent of their choice, regardless of nationality.
8.04	Take steps to permit investors/project sponsors to hire the top technical. and/or advisory talent of their choice, regardless of nationality.
SETTLEMENT OF DISPUTES	
9.01	Develop effective mechanisms for resolving disputes and mechanisms for enforcing the solutions found to those disputes.
9.02	Take steps to become a member of the International Convention on the Settlement of Investment Disputes (ICSID) and/or other widely recognized international arbitration bodies.
	Note: We defer to the APEC Dispute Mediation Experts Group for specific menu options for IAPs related to improvements in dispute mediation.
INTELLECTUAL PROPERTY	
10.01	Develop adequate protection for intellectual property.
10.02	Provide protection for intellectual property that at least meets the standards established in the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS).
10.03	Provide adequate and effective enforcement measures, including as appropriate, administrative, civil, and criminal, against infringement of intellectual property rights. -- Increase cooperation among agencies responsible for the administration and enforcement of intellectual property matters and between IPR agencies and those responsible for regulatory issues. -- Provide and streamline, as appropriate, judicial and administrative procedures to ensure timely processing of enforcement actions.
	-- Increase public education about the importance of intellectual property and its role in the economy as well as the need for effective and efficient enforcement of intellectual property rights. -- Enhance cooperative relationship between different law enforcement agencies. -- Ensure close and efficient cooperation between enforcement agencies and the right holders.
10.04	Develop and implement programs that require official agencies in member economies to respect intellectual rights in their operations, such as by using only legitimate software in an authorized manner. -- To the extent possible, provide an adequate budget for purchase of legitimate software.

10.05	Develop/further improve intellectual property regimes: -- Where possible, give effect to international norms for intellectual property protections. -- To the extent possible, cooperate with other nations in international for a.
Note: We defer to the APEC Intellectual Property Rights(IPR) Group for specific menu options for IAPs related to IPR improvements.	
AVOIDANCE OF DOUBLE TAXATION	
11.01	Sign, where appropriate, bilateral avoidance of double taxation agreements that are in conformity with international norms. Expand coverage of such agreements as appropriate.
COMPETITION POLICY AND REGULATORY REFORM	
12.01	Ensure consistency between investment policies and competition and regulatory reform policy.
Note: We defer to the APEC Competition Policy Group for specific menu options for IAPs related to improving competition.	
BUSINESS FACILITATING MEASURES TO IMPROVE THE DOMESTIC BUSINESS ENVIRONMENT	
13.01	Reduce discriminatory use of bureaucratic discretion, by means such as: -- preparing and distributing written in-house guidelines for administrative practices related to the handling of applications, registrations, licensing, etc. -- establishing in-house decision appeal mechanisms, as well as appeal mechanisms available to the public.
13.02	Streamline application, registration, government licensing and government procurement procedures by: -- simplifying forms; -- simplifying the submission (e.g. permitting electronic submission, or centralizing approval offices in a "one-stop shop"); -- shortening processing time of such applications/registrations, and -- reducing unnecessary steps.
13.03	Take positive steps to assist investors by measures such as: -- establishing an office to serve as a clearinghouse (one-stop agency/unit) for interested investors to learn market opportunities and potential investment partners; -- providing a network of all the government agencies that the investors or businesspersons have contact with in doing investments; -- establishing/designating one government agency to handle investors' complaints (e.g. investment ombudsman).
13.04	Examine the role and effects of investment incentives at all levels of government: federal/central, state/provincial and local.
13.05	Offer incentives which are voluntary, non-discriminatory, and limited in duration, such as: -- tax breaks, -- loans guarantees, -- grants, subsidies and industrial development bonds, -- employment training programs, -- programs aimed at helping companies achieve greater efficiency,

	-- WTO-consistent export promotion programs, -- small business development, -- high technology development programs, -- measures to support development of new industries,
	-- industrial linkage programs, -- mobilization of domestic resources.
13.06	Introduce measures to assist companies seeking to achieve greater efficiency such as:
	-- zero inventory -- just in time program -- other related programs
13.07	Establish legal and taxation systems in areas such as stock exchanges, corporate division and mergers and acquisitions to enable flexible corporate reorganization.
13.08	Introduce accounting and financial reporting systems that follow internationally accepted accounting standards.
13.09	Develop and streamline bankruptcy law systems that facilitate corporate reorganization.
13.10	Establish a financial system that enables a variety of financing and capital raising methods.
13.11	Strengthen and promote improved standards of corporate governance.
13.12	Develop a labor market that facilitates domestic labor mobility, taking into account national labor market conditions and policies.
13.13	Improve standards of professional services, such as legal and accounting services.
TECHNOLOGY TRANSFER	
14.01	Improve the transparency of related laws and regulations.
14.02	Reduce the restrictions on the transfer of technology consistent with the protection of essential security interests (for example by modifying as appropriate existing laws and regulations) to facilitate the flow of technology for the economic development of member economies.
14.03	Develop legislation, regulations and measures for the adequate and effective protection of technology and related interests arising from technology transfer.
VENTURE CAPITAL AND START-UP COMPANIES	
15.01	Introduce measures to assist businesses in different stages including start-up companies seeking equity funding, such as: -- establishment of a legal and taxation systemto assist the development of the venture capital industry and investment banking; and -- establishment of sound and transparent initial public offering (IPO) markets for small and medium enterprises (SMEs).

ACRONYMS

AALCC	Asian-African Legal Consultative Committee
ACCC	Australian Competition and Consumer Commission
AEM	Asean Economic Ministers
AIA	ASEAN Investment Area
AIG	American International Group
AIL	Approved Issuer Levy
AIRC	Australian Industrial Relations Commission
ALTEX	Program for Highly Exporting Enterprises
AMT	Alternative Minimum Tax
APRA	Australian Prudential Regulation Authority
ASEAN	Association of South-east Asian Nations
ASIC	Australian Securities and Investments Commission
AWAs	Australian Workplace Agreements
BCC	Business Cooperation Contract
BINA	Brunei Industrial Development Authority
BIPPA	Bilateral Investment Promotion and Protection Agreements
BIR	Bureau of Internal Revenue
BITs	Bilateral Investment Treaties
BOI	Board of Investments
BOO	Built, Operate and Own
BOP	Balance of Payments
BOT	Built, Operate and Transfer
BSNC	National Comission on Banks and Securities
BSP	Bangko Sentral ng Pilipinas
BTRCP	Bureau of Trade Regulation and Consumer Protection
CAs	Certified Agreements
CCFTA	Canada-Chile Free Trade Agreement
CD	Compact Disc
CDC	Clark Development Corporation
CDIA	Canadian Direct Investment Abroad
CDP	Car Development Program
CD-ROM	Compact Disc - Read Only Memory
CEPRI	Special Privatization Committees
CETICOS	Centers of Exportation, Transformation, Industry, Commercialization and Services
CIETAC	China International Economic and Trade Arbitration Committee
CIF	Cost-Insurance-Freight
CIPO	Canadian Intellectual Property Office
CMAC	China Maritime Arbitration Commission
COMSAT	Communications Satellite Corporation
CONITE	National Commission on Foreign Investment and Technology
COPRI	Privatization Commission
CPI	Consumer Price Index
CVDP	Commercial Vehicle Development Program
DAR	Department of Agrarian Reform
DCCA	Development Competent Control Authority
DENR	Department of Environment and Natural Resources
DI	Domestic Investment
DND	Department of National Defense
DOLE	Department of Labor and Employment
DTA	Double Taxation Agreement

DTI	Department of Trade & Industry
DTT	Double Taxation Treaty
DVD	Digital Video Disc
DVD-ROM	Digital Video Disc - Read Only Memory
DWT	Dividend Witholding Tax
ECC	Emigration Clearance Certificate
ECR	Export Credit Refinancing
ECZ	Exclusive Economic Zone
EDA	Economic Development Administration
EDB	Economic Development Board
EDC	Export Development Council
EEZ	Exclusive Economic Zone
EFF	Export Finance Facility
EFTA	European Free Trade Association
ELSAC	Employment, Labor, and Social Affairs Committee
EPDU	Economics, Planning and Development Unit
EPF	Employees Provident Fund
ESCAP	Economic and Social Council of Asia and Pacific
FATA	Foreign Acquisitions and Takeovers Act 1975
FCC	Federal Communications Commission
FCNs	Friendship, Commerce and Navigation
FCZ	Free Commercial Zone
FDI	Foreign Direct Investment
FIA	Foreign Investment Act
FIAC	Foreign Investment Approval Certificate
FIC	Foreign Investment Committee
FIL	Foreign Investment Law
FIND	Foreign Investment in Japan Development Corporation
FINRI	Foreign Investment Notification and Registration Institution
FIPA	Foreign Investment Protection Agreement
FIRA	Foreign Investment Review Act
FITC	Foreign Investors Tax Credit
FIZ	Free Industrial Zone
FIZs	Foreign Investment Zones
FLEC	Federal Law on Economic Competition
FNPF	Fiji National Provident Fund
FOE	Foreign Owned Enterprise
FSM	Federated States of Micronesia
FTAA	Free Trade Area for the Americas
FTC	Federal Trade Commission
FTIB	Fiji Trade and Investment Board
FZs	Free Zones, previously known as Free Trade Zones
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GIFA	Governing International Fisheries Agreement
GRT	Gross Revenue Tax
GSP	Generalised System of Preferences
GST	Goods and Services Tax
HIRO	Inland Revenue Ordinance
HKMA	Hong Kong Monetary Authority
HKOSU	Hong Kong Government Industry Department
HKSAR	Hong Kong Special Administrative Region
HLURB	Housing and Land Use Regulatory Board
HS	Health Secretariat

IAA	Industrial Adjustment Allowance
IAC	Inter-Agency Committee
IBTOS	Infrastructure Borrowings Tax Offset Scheme
ICA	Investment Canada Act
ICSID	International Center for Settlement of Investment Disputes
IDF	Investment Development Fund
IEAT	Industrial Estate Authority of Thailand
IGA	Investment Guarantee Agreement
IMPI	Mexican Institute of Industrial Property
IMSS	Social Security
INDECOPI	The National Institute of Defense of Competition and Protection of Intellectual Property
INDEUR	National Institute of Urban Development
INFONAUTT	Housing Institution
IOFC	International Offshore Financial Centre
IPA	Investment Promotion Authority
IPAs	Investment Protection Agreements
IPC	Investment Partnerships Canada
IPD	Intellectual Property Department
IPO	Initial Public Offerings
IPO	Intellectual Property Office
IPPAs	Investment Promotions and Protection Agreements
IPR	International Property Rights
IRC	Internal Revenue Commission
ITA	Investment Tax Allowance
IWT	Interest Withholding Tax
JETRO	Japan External Trade Organization
JIC	Japan Investment Council
JV	Joint Venture
KDD	Kokusai Denshin Denwa
KIPO	Korea Industrial Property Office
KISC	Korea Investment Service Center
KOTRA	Korea Trade-Investment Promotion Agency
KPF	Kiribati Provident Fund
L/Cs	Letters of Credit
LDA	Less Developed Areas
LMD	Lands Management Division
LMI	Labor Market Information system
LOFSA	Labuan Offshore Financial Services Authority
LSA	Labor Standard Act
LSD	Lands and Survey Division
MARC	US Market Access and Regional Competitiveness Program
MDP	Motorcycle Development Program
MFAT	Ministry of Foreign Affairs and Trade
MFN	Most Favored Nation
MFPC	Ministry of Finance and Public Credit
MIDA	Malaysian Industrial Development Authority
MIGA	Multilateral Investment Guarantee Agreement
MIIP	Mexican Institute of Industrial Property
MITI	Ministry of International Trade and Industry
MLCI	Ministry of Labour, Commerce and Industries
MOEA	Ministry of Economic Affairs
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
MOTC	Ministry of Transportation and Communication

MSC	Multimedia Super Corridor
MSG	Melanesian Spearhead Group
MTDS	Medium Term Development Strategy
NAFTA	North American Free Trade Agreement
NASDA	National Association of State Development Agencies
NCC	National Competition Council
NCFI	National Commission of Foreign Investment
NCTB	Native Card Trust Board
NIES	Newly Industrialised Economies
NLRC	National Labor Relation Commission
NRCCs	Non-Resident Controlled Companies
NRWT	Non-Resident Withholding Tax
NTI	National Treatment Instrument
NTT	Nippon Telegraph and Telephone Corporation
OBU	Offshore Banking Units
ODI	Outward Direct Investment
OECD	Organisation for Economic Cooperation and Development
OHQ	Operational Headquarters Company
OIC	Organisation of Islamic Conference
OIC	Overseas Investment Commission
OPIC	Overseas Private Investment Corporation
OSAC	One Stop Action Center
OSINERG	Supervising Agency of Investment in Energy
OSIPTEL	Supervising Agency of Private Investment in Telecommunication
OTO	Office of the Trade Investment Ombudsman
PATCRA	Papua New Guinea Australia Trade and Commercial Relations Agreement
PCIE	Philippine Chamber of Industrial Estates
PCT	Patent Cooperation Treaty
PDF	Pooled Development Funds
PDL	Petroleum Development License
PEZA	Philippine Economic Zone Authority
PHILEA	Philippine Industrial Estates Association
PIA	Philippine Immigration Act
PITEX	Program for Temporary Importation to Manufacture Export Goods
PNP	Philippine National Police
PPL	Petroleum Exploration License
R&D	Research and Development
RTB	Radio and Television Brunei
RTF	Revolving Trade Facility
RWT	Royalty Withholding Tax
SAP	Structural Adjustment Program
SAR	Retirement Pensions Fund
SBMA	Subic Bay Metropolitan Authority
SDAs	State Economic Development Agencies
SEC	Security & Exchange Commission
SEDESOL	Secretariat of Social Development
SFR	Secretariat of Foreign Relations
SI	Secretariat of Interior
SIC	Small Industries Center
SII	Servicio de Impuestos Internos
SIRV	Special Investors Resident Visa
SITE	Securities Investment Trust Enterprises
SMEs	Small to Medium sized Enterprises
SOCSO	Social Security Organisation

SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement
SPF	South Pacific Forum
SRC	Special Return Certificate
SSS	Social Security System
SUNASS	National Superintendence of Drinking Water and Sewage Systems
TCP	Town and Country Planning
TFF	Tax Free Factory
TFZ	Tax Free Zone
TOB	Tender Offer Bid
TRIMS	Trade Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UCC	Universal Copyright Convention
UNCITRAL	United Nations Commission on International Law
VAT	Value Added Tax
VCD	Video Compact Disc
VSAT	Very Small Aperture Terminal
WAIPA	World Association of Investment Promotion Agencies
WIPO	World Intellectual Property Organization
WST	Wholesale Sales Tax
WTO	World Trade Organisation