
Guide to the Investment Regimes of the APEC Member Economies

**Fourth Edition
1999**



Asia-Pacific Economic Cooperation

APEC Committee on Trade and Investment

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FOREWORD TO THE FOURTH (4TH) EDITION

The Asian Financial Crisis in 1997 affected a substantial number of APEC member economies and the rest of the world. The fourth edition of the APEC Guidebook on Investment Regimes (the last version prior to the 4th edition was in 1996) carries within it the responses of some economies to the crisis.

The Guidebook also reflects each economy's Individual Action Plan on Investments as practised in their pronounced investment regimes.

It is recognized that transparency of investment procedures and regulations can assist investors in their investment decisions and serve to attract investments. With the limited investment capital resources and the wide range of investment opportunities available throughout the world, foreign investors need a comprehensive means to determine the benefits of investing in APEC economies as compared to other regions of the world. The Guidebook serves to provide that means.

The Guidebook covers the revised contributions of the 20 APEC member economies and the new ones from the new member economies of Peru and Viet Nam.

APEC member economies will find the newer edition helpful in getting to know the latest investment regimes of their co-member economies.

Ambassador Edsel T Custodio
Chair
APEC Committee on Trade and Investment

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. The response of the South Pacific Forum was provided to the APEC Secretariat by the Forum 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 21 APEC member economies and the South Pacific Forum 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
Singapore	Chinese Taipei	Thailand
United States	Viet Nam	

The response for the South Pacific Forum economies is at [Annex II](#).

[Annex III](#) contains a copy of the “non-binding investment principles” agreed to by APEC Leaders in November 1994 and a copy of the investment components of the Osaka Action Agenda.

AUSTRALIA

AUSTRALIA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

General

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

Notification

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

- acquisitions of **substantial interests** in existing Australian businesses with total assets over \$5 million (over \$3 million for rural businesses);
- establishment of new businesses involving a total investment of \$10 million or more;
- portfolio investments in the media of 5% or more and all non-portfolio investments irrespective of size;
- 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 valued at \$5 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 (certain specified categories are exempted by regulation under the FATA);
- takeovers of offshore companies whose Australian subsidiaries or assets are valued at \$20 million or more, or account for more than 50% of the target company's global assets; and
- proposals where any doubt exists as to whether they are notifiable. Note: Funding arrangements that include debt instruments having **quasi-equity** characteristics will be treated as direct foreign investment.

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

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

Examination by sector

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

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

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

The Government's approach to foreign investment policy is to encourage foreign investment consistent with the interests of the community. Overall the general stance of policy is welcoming, in recognition of the contribution that foreign investment has made and continues to make to the development of Australia, providing scope for higher rates of economic activity and employment than could be achieved on the basis of 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 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 *Foreign Acquisitions and Takeovers Act 1975* (the Act) to block proposals that are determined to be against the national interest. The Act also provides legislative backing for ensuring compliance with the policy.

In the majority of industry sectors, smaller proposals are exempt and larger proposals are approved unless judged contrary to the national interest. The screening process undertaken by the Foreign Investment Review Board 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 should not be 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) List and a summary of all relevant laws, regulations, administrative guidelines and policies pertaining to investment.

The FATA provides legislative backing for the Australian Government's foreign investment policy. Broadly stated, the Act empowers the Treasurer to examine proposals by foreign persons:

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

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

Section 26 makes it compulsory for a foreign interest to notify a proposal to acquire a substantial shareholding (i.e., 15% or more) of an Australian corporation, unless the total assets are below the \$5 million or \$3 million thresholds. Section 26A makes it compulsory for a foreign interest to notify a proposal to acquire an interest in Australian urban land. The section does not apply if the proposed acquisition is exempt under the *Foreign Acquisitions & Takeovers Regulations* ("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 Act but which are not subject to compulsory notification (for example, off-shore takeovers, takeovers of businesses by purchase of assets, or acquisitions of shareholdings in Australian companies that are less than substantial shareholdings).

Formal receipt of a notification of a proposal under sections 25, 26 or 26A (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 take action within 30 days and notify the parties of this action within a further 10 days, otherwise the Government loses the ability to either block the proposal or impose conditions on its approval. The normal 30 day examination period may be extended for up to a further 90 days by the issue of an interim order (sections 22 and 25(3)).

(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 any special conditions that apply to individual sectors.

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

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

- acquisitions of **substantial interests** in existing Australian businesses with total assets over \$5 million (\$3 million for rural properties);
- takeovers of Australian companies and businesses (total assets over \$5 million) by means other than the acquisition of shares, viz:
 - by the purchase of assets or interests in assets;
 - by agreements in relation to board representation or by alteration of the articles of association or other constituent documents of a company; or
 - by arrangements for leasing, hiring, managing or otherwise participating in the profits of a business.
- plans to establish new businesses involving a total investment over \$10 million;
- portfolio investments in the media of 5% or more and all non-portfolio investments irrespective of size;
- direct investments by foreign governments or their agencies irrespective of size;
- acquisitions of non-residential commercial real estate valued at \$5 million or more;
- acquisitions of residential real estate irrespective of size (unless exempt under the Regulations); and
- takeovers of offshore companies whose Australian subsidiaries or assets are valued over \$20 million or account for more than 50% of the target company's global assets.

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

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

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

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

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

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

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

COMMONWEALTH GOVERNMENT

Real Estate

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

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

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

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

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

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

Banking

Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *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.

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 airlines flying to Australia can generally expect approval to acquire up to 25% of the equity in a domestic carrier individually or up to 40% in aggregate provided the proposal is not contrary to the national interest. In special circumstances the Government is prepared to consider foreign equity proposals

in excess of these guidelines provided the proposal is not contrary to the national interest. All other foreign investors (including those which do not operate an airline service to Australia) may acquire up to 100% of a domestic carrier, or establish a new aviation business, unless judged contrary to the national interest.

International Services

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

Airports

Foreign investment proposals for acquisitions of interests in Australian airports are subject to case by case examination in accordance with the standard notification requirements. In relation to the airports offered for sale by the Commonwealth, the *Airports Act 1996* stipulates a 49% foreign ownership limit, a 5% airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane, and Perth airports.

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 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. In October 1997, the Government partially privatised Telstra through the sale of one third of its equity to institutional and individual investors. Aggregate foreign ownership in Telstra is restricted to 35% of that one third equity and individual foreign investors are only allowed to acquire a holding of no more than 5% of that one third 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.

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.

Northern Territory

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

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

Queensland

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

Mining and Resource Industries

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

Manufacturing

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

Urban Real Estate

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

Rural Sector

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

Tourism

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

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

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

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

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

South Australia

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

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

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

Victoria

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

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

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

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

Although the Liquor Control Act has no provisions restricting foreign ownership, the Department of 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 Act 1989*, foreign ownership in rock lobster processing is limited to 20%; restrictions are placed on non-residents becoming directors or office bearers in corporations undertaking rock lobster processing.

The State Government does not directly prohibit or restrict foreign investment in any other sector of the Western Australian economy. However, 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 Act 1983* and the *Transfer of Land Act*, prior authorisation is required from the Western Australian Government for the transfer of pastoral leases.

(c) Application/approval forms required for screening purposes. Summary of additional documentation that is required for review or approval processes.

Copies of the relevant notification forms required to give notice under the FATA can be obtained from the Foreign Investment Review Board (see section B(1)(2)(d) below for contact details). The information normally required to enable foreign investment proposals to be processed can also be obtained from the Foreign Investment Review Board.

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

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: <i>Foreign Investment Policy Division, Treasury</i> Executive Member (61) 26263 3755 General Inquiries (61) 26263 3795

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

The Foreign Investment Review Board seeks to ensure that proposals are dealt with quickly and efficiently. The time taken from the filing of a proposal to a decision varies, depending on the nature of the proposal and the contents of the submission. However, the majority of proposals are considered by the Board and decisions reached by the Government within thirty days of lodgement. While the legislation provides for a period of 30 days by which time a decision must be taken by the Treasurer, many proposals are completed before the expiry of 30 days. In 1997-98, 76% of applications were decided within 20 days of receipt of a completed application by the parties.

(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 required. Description of appeal processes and the average time for an appeal to be considered.

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

(g) Description of conditions that 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.

(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).

As stated in section B(1)(2)(f) above, there are no formal appeal procedures under the foreign investment legislation. The Foreign Investment Review Board 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.

(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.

The Foreign Investment Review Board is charged with monitoring compliance with the Government's foreign investment policy. There are substantial penalties for a number of offences against particular sections of the 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)). Failure to comply with an order made by the Treasurer is an offence (section 30) and provision of false or misleading information is also an offence (section 36A). The Treasurer may also make orders to block or unwind any schemes entered into for the sole or dominant purpose of avoiding the provisions of the Act (section 38A).

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

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

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

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

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

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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 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. The approach taken by ASIC is consistent with that taken by regulators in the United States and the United Kingdom.

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.

Non-resident staff of foreign firms require a temporary business entry visa which can provide for a stay of up to four years in Australia. Visas are valid for multiple entries.

Temporary business entry visas permit personnel from offshore companies to establish a business presence in Australia or participate in joint ventures.

(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

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

Short-stay business 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 countries through Electronic Travel Authority arrangements.

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 key personnel with no labour market testing normally required. Key personnel are normally executive, managerial or highly skilled specialists essential to the employer's business operations. These streamlined sponsorship arrangements extend to the entry of executives, senior managers and other highly skilled personnel, including specialists, for the purpose of overseas companies establishing a business presence in Australia. All prospective sponsors must meet certain prescribed criteria to attain approved sponsorship status.

A spouse and dependent children part of the family unit of the principal applicant are granted a visa with the same conditions as that of the principal. The period of validity of the visa granted would be the same and the spouse is also eligible to work while in Australia.

(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.

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 rights and obligations 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 or Workplace Agreements Act 1993)

Key elements are:

- There are two Acts, the *Workplace Agreements Act 1993* and the *Industrial Relations Act 1979*, which govern industrial relations within Western Australia. One type of agreement, the Workplace Agreement, is made under the *Workplace Agreements Act 1993*. Workplace Agreements have unions party to them. The federal tests are applied to workplace agreements.
- The Commissioner for Workplace Agreements approves Workplace Agreements and provides a report on them on a six-monthly basis.
- The other type of agreement, the Industrial Agreement, is made under the *Industrial Relations Act 1979*.

New South Wales (Industrial Relations Act 1996)

Key features include:

- A new Act governing industrial relations within New South Wales was introduced in 1996. 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 for approving agreements. The Act also provides for enterprise awards, which are consent arrangements between industrial parties. The public interest test is applied to enterprise awards.

Tasmania (Industrial Relation Act 1984)

Key features include:

- The original agreement-making stream within Tasmania provided for enterprise bargaining agreements and agreements made under section 55 of the *Tasmanian Industrial Relations Act*.

(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

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

Corporate Income Tax Rates

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

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

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

Indirect Taxes

The main indirect tax imposed by the Commonwealth Government is the wholesale sales tax (WST). WST is imposed upon the final wholesale sale of goods. WST is paid on the wholesale selling price of the goods or, where there is no wholesale sale, alternative values are used. A wide range of goods and all services are not subject to tax. A wide range of goods used as inputs are also exempt from tax. The general rate of tax is 22%. However, a range of household goods (such as whitegoods and furnishings) and certain foods and beverages (for example, confectionery and fruit juices) are taxed at the concessional rate of 12%; certain goods (including furs, jewelry, televisions and stereos) are taxed at 32%, and luxury cars are taxed at a marginal rate of 45%. Wine is taxed at 26%.

The other main Commonwealth indirect taxes are customs and excise duties; these are imposed on petroleum products, alcoholic beverages and tobacco.

State and Territory Governments generally levy taxes on payroll, land, financial transactions and land transactions, but currently rely heavily on Commonwealth government grants for their revenue needs. While they also relied on business franchise fees on tobacco, alcohol and petroleum products, the High Court ruled in 1997 that franchise fees on tobacco were unconstitutional – and by implication all State and Territory franchise fees.

On 6 August 1997, at the unanimous request of the States, the Commonwealth announced “safety net” arrangements to protect State finances. These arrangements provided for:

- an increase in the rate of Commonwealth customs and excise duty on tobacco and petroleum products and an increase in the rate of wholesales sales tax on alcoholic beverages; and
- a 100% windfall gains tax to protect the States from claims for refunds of past business franchise fee payments.

All revenue collected by the Commonwealth under these arrangements is returned to the States (less administrative costs) as revenue replacement payments.

Depreciation Arrangements

Plant and equipment is eligible to be depreciated at rates which are accelerated beyond effective life rates. The accelerated rates are particularly generous for assets with long effective lives. Taxpayers may choose prime cost or diminishing value methods of depreciation, although once depreciation has been claimed for an asset under one method it must continue to be depreciated under that method. The rates applying to plant and equipment acquired or commenced to be constructed after 26 February 1992 and the corresponding implied write-off lives are:

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

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

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.

Development Allowance

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

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

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

Research and Development (R&D) Tax Concession

A deduction of 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.

Certain research and development activities carried on outside Australia are eligible for the tax concession. The value of overseas research and development that qualifies for the concession is limited to 10% of the value of the research and development associated with the project.

Expenditure on plant, including pilot plant, used exclusively for research and development is deductible at the concessional rate over three years.

Infrastructure Borrowings Tax Offset Scheme

The Infrastructure Borrowings Tax Offset Scheme (IBTOS) provides a tax rebate to resident lenders against interest income earned from loans to providers of infrastructure projects. In return, the infrastructure providers are not entitled to claim tax deductions for those interest payments. The rebate is set at the company tax rate, presently 36%, and is available for up to five years from the time of the first loan to a project.

To be eligible for the IBTOS, the infrastructure projects, their providers and resident lenders must submit complying applications and be selected in a merit-based process against objective criteria. The IBTOS is only available to land transport projects and, as a transitional measure, to applicants under the Government's previous infrastructure borrowings tax concession. The cost to revenue of the IBTOS is capped at \$75 million a year.

The IBTOS is administered by the Commonwealth Department of Transport and Regional Services and the Australian Taxation Office.

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.

In December 1997, the Government announced that the range of entities eligible to register as OBUs would be extended and also an extension of the range of eligible OBU activities. Legislation is currently before the Parliament.

Double Taxation Agreements (DTAs)

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

Dividend Withholding Tax (DWT)

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

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

Interest Withholding Tax (IWT)

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

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

Legislation is currently before the Parliament which, if enacted, will extend the IWT exemption to bearer and non-bearer debentures issued by companies inside Australia (provided that the bearer debentures are issued only to non-residents).

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.

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 the proposed taxation system changes are:

- Under the proposed reform of taxation, WST will be replaced with a GST (VAT). Nine State and Territory government indirect taxes will be abolished. All the GST revenue will go to the States and Territories providing them with access to a secure and growing source of revenue, and grants from the Commonwealth will be reduced. The GST rate will be locked in at 10% and will only be able to be changed by a unanimous request from State and Territory Governments and agreement by the Commonwealth Government and both houses of Federal Parliament.
- Significant reductions in personal income tax through an increase in the tax free threshold and decreases in all marginal tax rates except the top rate. This will be worth around \$13 billion a year and mean over 80% of taxpayers will have a top marginal tax rate of 30% or less;
- A better interaction between the tax and social security systems so that there are increased work incentives. This will be achieved through a combination of reduced personal income tax rates on additional private income and a substantial easing in the income test for family payments as private income is increased;
- Increases in family assistance and a simpler structure and delivery of family assistance; and
- Consultations will be held with business to facilitate the introduction of the new system with the objective of reducing the company rate towards 30%;

It is proposed that the new tax system will begin in July 2000.

7. PERFORMANCE REQUIREMENTS

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

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

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

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

Regulations	Application and function
The Australian government controls the exportation of technologies from Australia under the Customs Act 1901 through the Customs (Prohibited Export) Regulations.	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

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

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

10. OTHER MEASURES

1. Briefly outline the competition policy regime.

Competition Laws

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

To counter the possibility of excessive profiteering under the proposed goods and services tax, legislation has been introduced in Parliament inserting a new Part VB into the Trade Practices Act, giving the ACCC special transitional powers to monitor prices. The transitional price oversight regime will begin on 1 July 1999 and will continue for three years. The ACCC will be required to monitor retail prices in order to identify instances where consumers have not fully benefited from reductions in the tax rate, or have been exposed to greater than necessary price rises.

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 the Year 2000 to ensure compliance with the principle. For the Federal Government, this commitment is implemented through the Legislation Review Schedule, which will review almost 100 pieces of legislation – of which around one half have been reviewed or are subject to reviews not yet completed.

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 Minister for Financial Services and Regulation. 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.

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 ad conciliation, expert determination and appraisal and so on.

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

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

(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, established in 1997, is the Federal Government's national investment agency. The agency provides a central contact and coordination point to promote, attract and facilitate investment in Australia.

Invest Australia provides a wide range of services to companies seeking to invest in Australia. Its responsibilities include:

- identifying and promoting investment opportunities in Australia;
- providing market information and advice on establishment costs;
- providing international benchmarking information on key operating costs;
- finding the right joint venture partner or strategic ally;
- providing information on relevant foreign investment regulations in Australia;
- providing advice on and connecting investors with the right Federal, State, Territory or local government contacts;
- assisting companies with the establishment of regional headquarters in Australia;
- assisting with grants to undertake pre-feasibility and feasibility studies for major investments; and

- a Major Projects Facilitation service which guides project proponents through government approvals processes quickly and efficiently and seeks removal of unnecessary impediments.

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.

<i>Invest Australia</i> 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	<i>National Investment Response Centre</i> Level 32, AMP Centre 50 Bridge Street SYDNEY NSW 2000 AUSTRALIA Telephone: (61 2) 9397 1600 Facsimile: (61 2) 9397 1666
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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.

<p><u>New South Wales</u> Executive Director Investment Division NSW Dept of State and Regional Development Level 43, Grosvenor Place 225 George Street SYDNEY NSW 2000 Telephone: (61 2) 9338 6634 Fax: (61 2) 9338 6728 Email: Warwick.Glenn@business.nsw.gov.au</p> <p><u>Queensland</u> General Manager Trade & Investment Development Dept of the Premier, Economic & Trade Development PO Box 185 ALBERT ST QLD 4002 Telephone: (61 7) 224 8573 Fax: (61 7) 835 1002</p> <p><u>South Australia</u> Mr John Cambridge Chief Executive State Development – South Australia State Administration Building 200 Victoria Square ADELAIDE SA 5000 OR GPO Box 2343 ADELAIDE SA 5001 Telephone: (61 8) 8226 2691 Fax: (61 8) 8226 2716 Email: cambridge.john@dpc.sa.gov.au</p>	<p><u>Victoria</u> Executive Director International Investment & Facilitation Department of State Development GPO Box 4509 RR MELBOURNE VIC 3001 Telephone: (61 3) 9651 9231 Fax: (61 3) 9651 9495</p> <p><u>Western Australia</u> Mr Steve Arnott Major Projects Negotiator Industry Development Division Department of Commerce and Trade 168-170 St George's Terrace PERTH WA 6000 Telephone: (61 8) 9327 5510</p> <p><u>Tasmania</u> Chief Executive Officer Department of State Development GPO Box 646 HOBART TAS 7001 Telephone: (61 3) 6233 5888 Fax: (61 3) 6233 5800</p> <p><u>Australian Capital Territory</u> General Manager Office of Business Development and Tourism Level 6, FAI House, 197 London Circuit Canberra ACT 2601 PO Box 1000, Civic Square Canberra ACT 2601 Telephone: (61 2) 6207-5111 Fax: (61 2) 6205-0577</p>
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Northern Territory

Assistant Secretary
Strategic Services
Department of Asian Relations, Trade and Industry
First Floor, Development House
76 The Esplanade
Darwin NT 0800 GPO BOX 4160
Darwin NT 0801
Telephone: (61 8) 8999-5210
Fax: (61 8) 8999-5106

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

State and Territory Incentives:

<p>State and Territory Incentives:</p> <p>Most State and Territory Governments offer incentives to encourage new investments. The provision of financial assistance is not an automatic right, however. The level of assistance offered</p>	<p>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 duties.</p> <p>Australia's competitiveness as a regional financial centre has been enhanced by the recent decision of the majority of States</p>
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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.

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.

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

Indicate if your economy is a party to any of the following agreements, the countries/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 countries with which Australia has entered into Investment Protection Agreements:

Country	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.

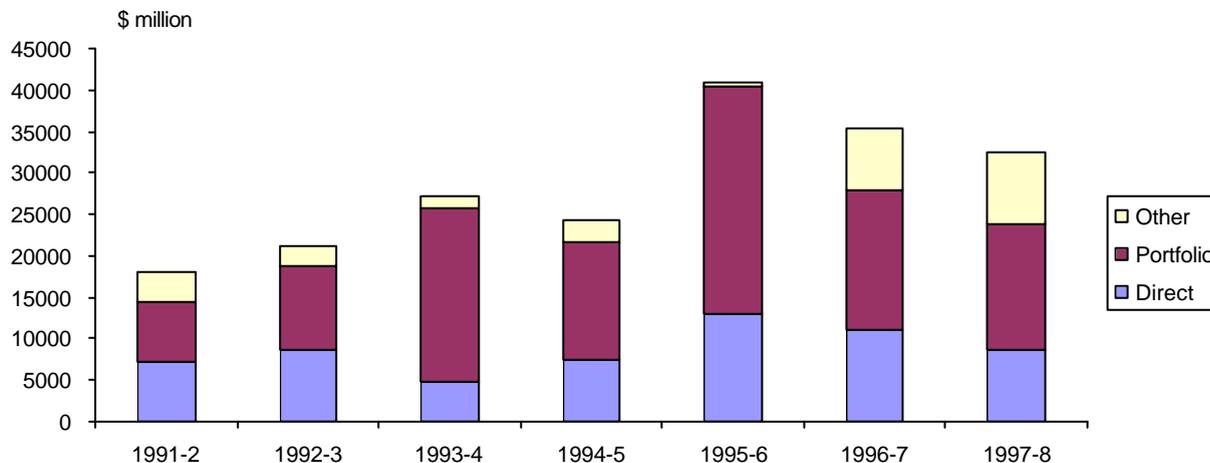
F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Foreign Investment in Australia

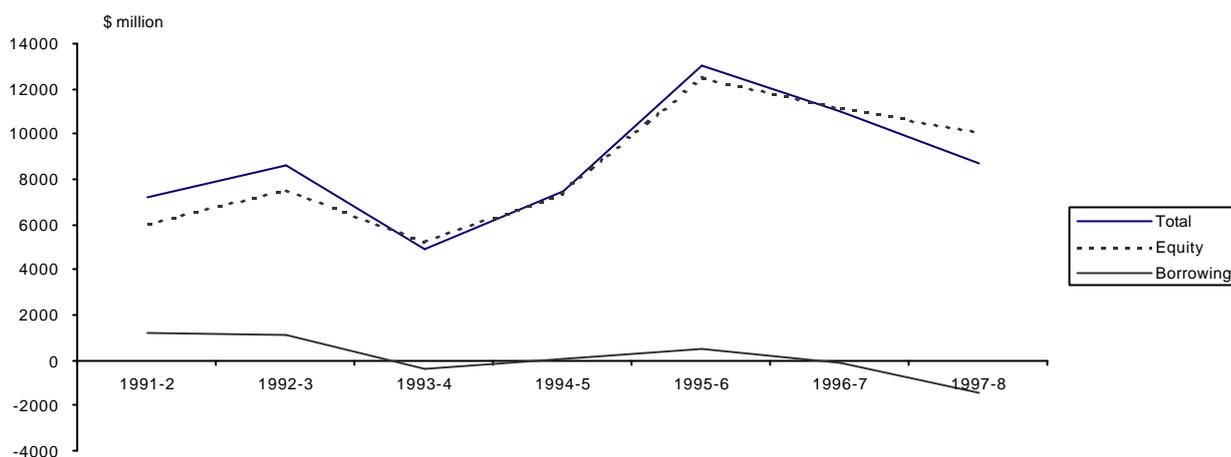
- Australia has traditionally been a net capital importer, drawing on foreign saving to help finance national investment expenditure, in the process sustaining a higher level of investment and growth than if reliance for financing had been solely on domestic sources.
- Foreign investment flows into Australia eased in 1996-97 and again in 1997-98 following a sharp increase in 1995-96 (Chart 1). The annual inflow of foreign investment has averaged just over \$29 billion in the past seven 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 in the last two years. Foreign direct investment flows into Australia have fluctuated between \$5 billion and \$13 billion.

CHART 1: FOREIGN INVESTMENT IN AUSTRALIA, CAPITAL TRANSACTIONS



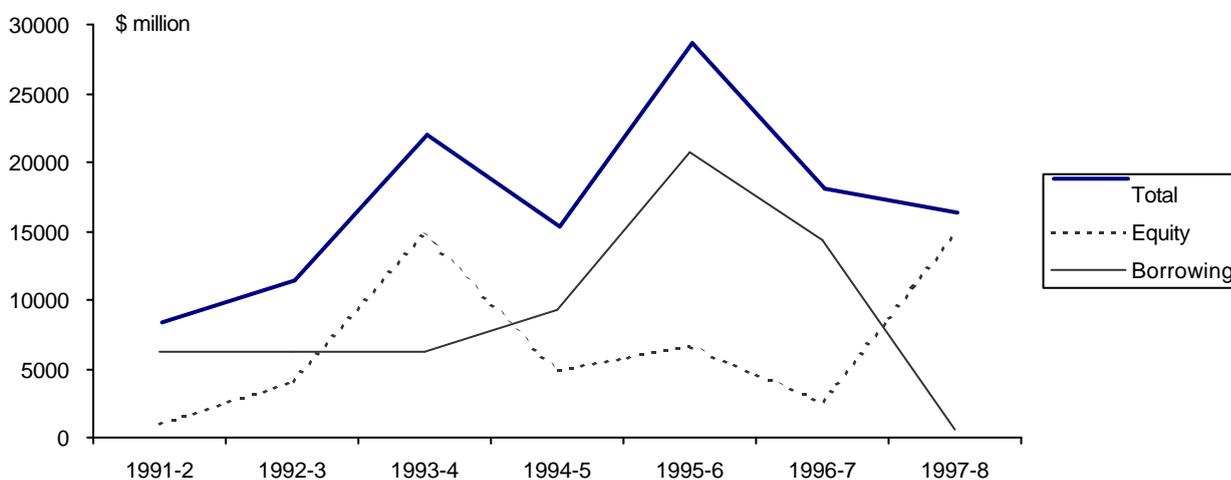
- Foreign direct investment flows into Australia in recent years have been largely accounted for by foreign equity investment (Chart 2). In contrast, there has been a small net outflow of direct foreign borrowing in 1993-94 and more recently.

CHART 2: FOREIGN DIRECT INVESTMENT IN AUSTRALIA, CAPITAL TRANSACTIONS



- Foreign portfolio investment flows into Australia have been volatile in recent years (Chart 3), reflecting volatility in both equity and borrowing.
 - Historically, portfolio borrowing has been the largest source of foreign investment in Australia, but it fell to near zero in 1997-98, possibly reflecting lower domestic interest rates.
 - The inflow of portfolio equity investment increased sharply in 1997-98, from \$2.6 billion to \$14.5 billion, broadly offsetting the sharp decline in portfolio borrowing.

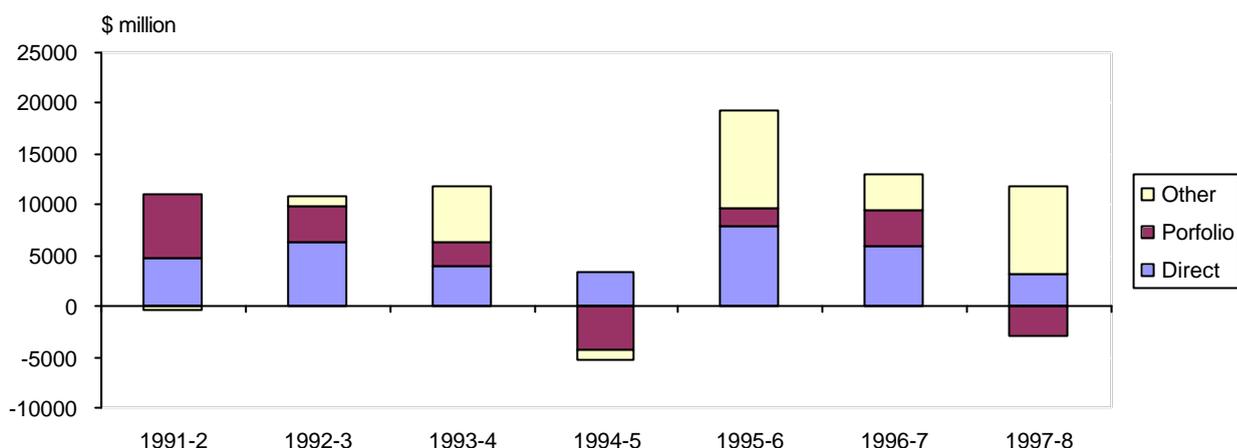
CHART 3: FOREIGN PORTFOLIO INVESTMENT IN AUSTRALIA, CAPITAL TRANSACTIONS



Australian Investment Abroad

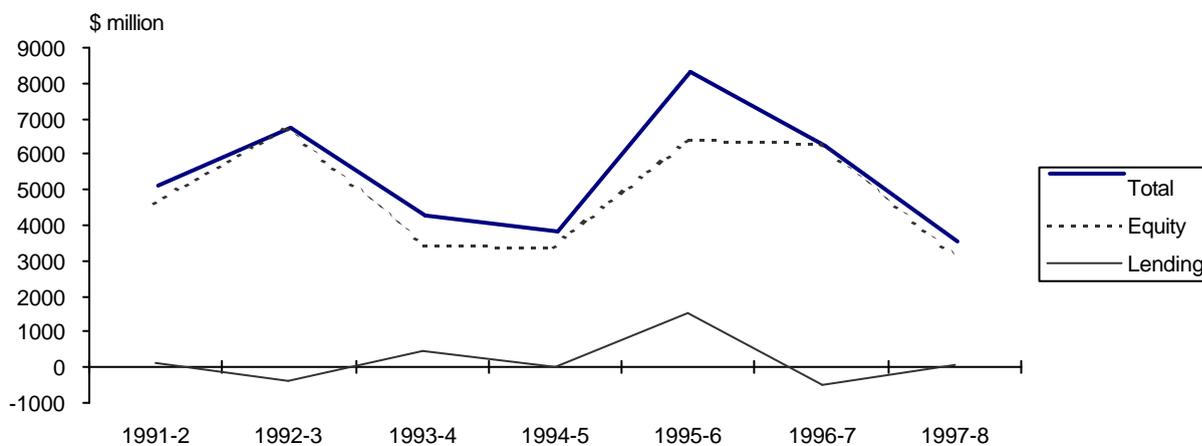
- Given the lumpiness of large overseas investments by major Australian companies, capital transactions for Australian investment abroad tend to be volatile, making it difficult to discern underlying trends. Nevertheless, aside from a fall in 1994-95 and a large increase in 1995-96, total outflows of Australian investment abroad have been relatively stable in recent years (Chart 4). The average annual outflow of Australian investment abroad over the past seven years was around \$10 billion.
- 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 past three years.

CHART 4: AUSTRALIAN INVESTMENT ABROAD, CAPITAL TRANSACTIONS¹



- 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 (Chart 5). Following strong outflows in the mid-1990s, direct equity investment eased back to the 1993-94 level in 1997-98.

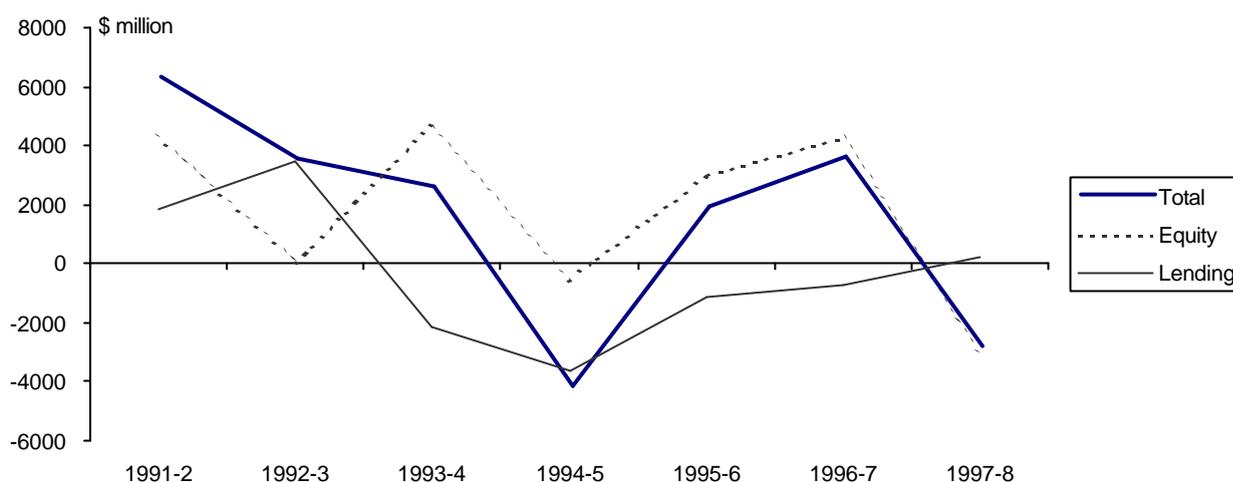
CHART 5: AUSTRALIAN DIRECT INVESTMENT ABROAD, CAPITAL TRANSACTIONS



- 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.

¹ Sign convention: a transaction that increases Australian Investment Abroad is shown to be positive.

CHART 6: AUSTRALIAN PORTFOLIO INVESTMENT ABROAD, CAPITAL TRANSACTIONS



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

- OECD countries are the main source of **foreign direct investment** flows into Australia. Based on the six years to 1996-97, the major sources of foreign direct investment flows are the United States, Japan, the United Kingdom, New Zealand, Switzerland and the Netherlands (Table 1).

TABLE 1: FOREIGN DIRECT INVESTMENT IN AUSTRALIA, CAPITAL TRANSACTIONS BY SOURCE (\$ MILLION)

	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97
United Kingdom	1000	1126	537	598	3657	3570
United States	1257	1581	1526	1046	5219	3350
New Zealand	-43	954	952	47	-511	1167
Switzerland	7	386	85	119	1235	417
Japan	620	-147	178	642	-81	-495
Netherlands	1529	776	142	155	163	-833
Other OECD	1113	1789	911	1215	4805	4962
Total OECD	4483	5339	3794	3224	10830	8568
Total non-OECD	408	-449	117	650	518	464
Other/unallocated	2292	3757	996	3635	1654	2250
Total	7183	8647	4907	7509	13002	11282

- The bulk of Australian direct investment abroad in the five years to 1996-97 was directed to the United Kingdom, the United States and New Zealand (Table 2).

TABLE 2: AUSTRALIAN DIRECT INVESTMENT ABROAD, CAPITAL TRANSACTIONS BY DESTINATION (\$ MILLION)

	<u>1991-92</u>	<u>1992-93</u>	<u>1993-94</u>	<u>1994-95</u>	<u>1995-96</u>	<u>1996-97</u>
United Kingdom	1371	548	3934	1338	2717	1041
United States	759	1422	1327	73	4201	784
New Zealand	-348	1007	-846	757	-176	304
Other OECD	887	452	-145	26	298	744
Total OECD	2669	3429	4270	2194	7040	2873
Total non-OECD	1000	604	477	415	503	1542
Other/unallocated	1070	2312	-837	819	392	1493
Total	4739	6345	3910	3428	7935	5908

BRUNEI DARUSSALAM

BRUNEI DARUSSALAM

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

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

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

His Majesty the Sultan of Brunei Darussalam, has proclaimed that:

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

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
Investment Incentive Act (Chapter 97)	<p>Investment Incentives Act (Cap 97) makes provision for encouraging the establishment and development of industrial and other economic enterprises, for economic expansion and incidental purposes. This Act provides tax relief for a company which is granted pioneer status.</p> <ol style="list-style-type: none">Pioneer Industry Companies awarded pioneer status are exempt from corporate tax, taxes on imported raw materials and capital goods for a period ranging from two to five years, depending on fixed capital expenditure with possible extension at the discretion of the relevant authorities.Expansion of Established Enterprise Enterprises which are given expansion certificates are given tax relief for a period between three to five years.Incentives for foreign lenders Approved foreign loans are exempt from paying the 20% withholding tax for interest paid to non-resident lenders.
Companies Act (Chapter 39)	<p>The Companies Act is the main Act which provides for the incorporation and registration of companies in Brunei Darussalam. It provides for the conditions under which companies incorporated outside Brunei Darussalam may carry on business in Brunei Darussalam. The Act also controls the functioning of companies within Brunei</p>

Citation	Summary
Business Name Act (Chapter 92)	Darussalam in related matters. Pursuant to section 138(2) of the Companies Act (Cap 39) two or not-less-than half of the number of directors (whichever is greater) shall be nationals of Brunei. Nationals of Brunei in this context do not include permanent residents. This Act provides for the registration of firms, individuals and corporations carrying on business under business names and not a company with liability. It further provides as to the names, styles, titles or designations under which business can be carried on and for purposes connected therewith.
Miscellaneous Licences Act (Chapter 127)	This Act provides for the licensing, regulation and control of certain commercial places and activities and for incidental purposes. Miscellaneous licences are renewable annually.
Equity requirements	To utilise local resources, domestic market access and government facilities, foreign investment must have at least 30% local participation. However, 100% foreign ownership is allowed if 100% of the product is exported with exception of the manufacturing of food related products and use of local resources.
Land code (Chapter 40)	Foreign land ownership is not allowed in Brunei Darussalam except with prior approval in writing of His Majesty in Council.

(2) Investment Review and Approval

(a) Details of proposals that are/are not (yes/no) subjects to screening.

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

Proposals	Guidelines/Conditions
Merger (Yes)	Mandatory if merger involves project already allocated in industrial, agriculture and fisheries sites. Proposal needs to be submitted to the Ministry of Industry and Primary Resources for notification and approval. Companies must also notify the Registrar of Companies and Business names under the Attorney General's Chambers for registration purposes.
Acquisitions (Yes)	Mandatory if acquisition involves project already allocated in industrial, agriculture and fisheries sites. Proposal needs to be submitted to Ministry of Industry and Primary Resources for notification and approval. Companies must also notify the Registrar of Companies and Business names under the Attorney General's Chambers for registration purposes.
Greenfield investment (Yes)	If project needs assistance from the Government either in obtaining local resources or land, project needs to be submitted to the Ministry of Industry for processing and screening which leads to His Majesty's approval/endorsement.
Real estate/land (Yes)	Mandatory, the project proposal needs to be submitted to the Land Department, Ministry of Development for processing/screening.
Joint venture (Yes)	If joint venture project needs assistance from the Government, either in obtaining local resources or land, proposal needs to be submitted to the Ministry of Industry and Primary Resources for processing/screening which leads to His Majesty's approval/endorsement.

Sector	Guidelines/Conditions
Agriculture (Yes)	Activities which are related to food security and those based on local resources must have some local equity participation and screening is

Sector	Guidelines/Conditions
	mandatory for all applications.
Manufacturing (Yes)	Screening is mandatory for all applications.
Fisheries (Yes)	Screening is mandatory for all applications.
Forestry (Yes)	Screening is mandatory for all applications.
Other: Tourism (Yes)	Screening is mandatory for all applications.
Telecommunication ()	Not available
Transport ()	Not available
Media (Yes)	Screening is mandatory for all applications. Applications from Electronic Media sectors should be made through Radio and Television Brunei (RTB), Prime Minister's Office. Application from Print Media sectors should be made through the Information Department, Prime Minister's Office.

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

When submitting a project proposal for agriculture, manufacturing, fisheries and forestry sectors, project proponents are required to submit cash flow analysis, management organisation chart and a bank statement or endorsement or letter of financial commitment.

Copies of the Guidelines for submitting project proposals can be obtained from the contacts listed in Section B(1) (ii) (4) below.

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

Agency	Address/Telephone/Fax
(Hj. Razali bin Mohd Yussof) Director of Brunei Industrial Development Authority (BINA)	Brunei Industrial Development Authority Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam. Tel: (673 2) 381687 / 383067 Fax: (673 2) 381667 E-mail: binaL1@brunet.bn

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

Two 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. Brief description of appeal processes and the average time for an appeal to be considered.

Agency	Address/Telephone/Fax
Brunei Industrial Development Authority (BINA)	Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam Tel: (673 2) 381687 / 383067 Fax: (673 2) 381667 E-mail: binaL1@brunet.bn

Agency	Address/Telephone/Fax
Agriculture Department	Ministry of Industry and Primary Resources Old Airport Berakas BB 3510 Brunei Darussalam Tel: (673 2) 380144 Fax: (673 2) 382226 E-mail: PHH@brunet.bn
Fisheries Department	Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam Tel: (673 2) 242067-8 / 243412 Fax: (673 2) 242069 E-mail: IkanLI@brunet.bn
Forestry Department	Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam Tel: (673 2) 222687 / 222450 Fax: (673 2) 241012 E-mail: Jphq@brunet.bn

(g) Brief description of what conditions 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.

Agency	Address/Telephone/Fax	Type of Complaint
Brunei Industrial Development Authority (BINA)	Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam Tel: (673 2) 381687 / 383067 Fax: (673 2) 381667 E-mail: binaLI@brunet.bn	Delays in processing of applications and licenses allocated in industrial, agriculture and fisheries sites.
Labour Department	Ministry of Home Affairs Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam Tel: (673 2) 380256 Fax: (673 2) 383244 E-mail: labour@brunet.bn	Complaint related to labour e.g. Wages, contract, recruitment of workers
Royal Customs and Excise Department	Ministry of Finance Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam	Complaint related to customs

Agency	Address/Telephone/Fax	Type of Complaint
	Tel: (673 2) 382333 Fax: (673 2) 382666	
Ministry of Finance	IBB Bldg. 7th Floor Bandar Seri Begawan BS 8710 Brunei Darussalam Tel: (673 2) 234501 Fax: (673 2) 241829	Complaint related to finance
Districts Office	Ministry of Home Affairs Old Airport Berakas BB 3510 Brunei Darussalam Tel: (673 2) 381581 Fax: (673 2) 380468	Complaint related to miscellaneous licenses on areas outside the authority of District Office
Municipal Board	Ministry of Home Affairs Bandar Seri Begawan BS 8810 Brunei Darussalam Tel: (673 2) 244151 Fax: (673 2) 229124	Complaint related to miscellaneous licenses on areas under the authority of Municipal
Ports Department	Ministry of Communication Muara BT 1728 Brunei Darussalam Tel: (673 2) 770222 Fax: (673 2) 770283	Complaint related to ports

(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 telephone/fax numbers for these agencies.

Agency	Address/Telephone/Fax	Functions
Agricultural Department	Ministry of Industry and Primary Resources Old Airport Berakas BB 3510 Brunei Darussalam Tel: (673 2) 380144 / 383145 -7 Fax: (673 2) 382226 E-mail: PHH@brunet.bn	Activities which are related to food security and those based on local resources must have some level of local participation and screening is mandatory for all applications.
Fisheries Department	Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910 Brunei Darussalam Tel: (673 2) 242067-8 / 243412 Fax: (673 2) 242069 E-mail: IkanLI@brunet.bn	Issuing licenses to trawlers and ensuring that no encroachment by fishermen given licenses to particular zones.
Forestry Department	Ministry of Industry and Primary Resources Jalan Menteri Besar Bandar Seri Begawan BB 3910	Issuing licenses to sawmills.

Agency	Address/Telephone/Fax	Functions
	Brunei Darussalam Tel : (673 2) 222687 / 222450 Fax: (673 2) 241012 E-mail: JPhq@brunet.bn	
Brunei Industrial Development Authority (BINA)	Beribi Gadong BE 1118 Brunei Darussalam. Tel: (673 2) 444121 Fax: (673 2) 423300 E-mail: Bina2@brunet.bn	To provide and manage industrial sites and with The One Stop Agency coordinates all industrial development activities and process application from local and foreign business ventures who wish to set up industrial activities requiring industrial sites, BINA also process application for the formation of cooperatives.
Attorney General's Chambers	The Law Building Km 1 Jalan Tutong Bandar Seri Begawan, BA 1910 Brunei Darussalam Tel: (673 2) 244872 / 244876 Fax: (673 2) 241428 E-mail: consec@brunet.bn	Registration of Companies and other related legal matters.
Department of Economic Planning and Development (DEPD)	Ministry of Finance Bandar Seri Begawan BS 8710 Brunei Darussalam Tel: (673 2) 240243 / 241991 Fax: (673 2) 242595 / 226132	Administers the Investment Incentives Act. The DEPD is also empowered to issue licenses for car dealership activity and petrol stations including places for storage of inflammable materials.

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

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

(k) Where applicable, the role of sub-national agencies in the approval process.

For projects located outside areas gazetted for industrial activities prior approval may need to be obtained by the following agencies:

Agency	Address/Telephone/Fax	Functions
Development Competent Control Authority (DCCA)	Town and Country Planning Department Ministry of Development Old Airport Berakas BB 3510 Brunei Darussalam Telephone : (673 2) 282591 Fax : (673 2) 383313	Process and issue approval for developing land and building construction in designated locations under the authority of Town and Country Planning Department.
Land Department	Land Department Ministry of Development	Monitor the special terms of land use and approve the land utilisation, development and

	Old Airport Berakas BB 3510 Brunei Darussalam Telephone : (673 2) 381181 Fax : (673 2) 380365	building construction under the authority of the Land Dept. In addition, the Land Dept. also determines the rate of estate rentals or tax.
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Agency	Address/Telephone/Fax	Functions
Municipal Board	Ministry of Home Affairs Bandar Seri Begawan BS 8810 Brunei Darussalam Telephone: (673 2) 244151 Fax : (673 2) 229124	Processes applications for land development and building construction in areas under the authority of Municipal.

2. MOST FAVORED NATION TREATMENT/NON-DISCRIMINATION BETWEEN SOURCE ECONOMIC

1. 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 sectors, threshold value or otherwise).

None

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

The Framework Agreement on the ASEAN Investment Area (AIA), signed on 7 October 1998, Manila

Under the Agreement, the AIA is to be realised by 1 January 2010 through implementation of cooperation and facilitation, promotion and awareness and liberalisation programmes.

AIA's main features includes (i) opening up all industries, with some exceptions, for investment for ASEAN investors by 2010 and to all investors by 2020, and (ii) granting of national treatment, with some exceptions, to ASEAN investors by 2010 and to all investors by 2020.

3. NATIONAL TREATMENT

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

Sector	Nature of Exception (e.g., prohibition, limitation, special conditions and special screening)
All sectors	To utilise local resources, domestic market access and government facilities, foreign investment must have at least 30% local participation. However, 100% foreign ownership is allowed if 100% of the product is exported with exception of the manufacturing of food related products and use of local resources.
Car dealership	100% equity must be owned by the local entrepreneurs.

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

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

4. REPATRIATION AND CONVERTIBILITY

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

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

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

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

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

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

5. ENTRY AND SOJOURN OF PERSONNEL

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

Foreign nationals require Visa to enter and visit Brunei Darussalam except:

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

Visas are also waived for visits of 14 days for nationals of:

Thailand	Indonesia	Republic of Philippines
Japan	France	Switzerland
Republic of Korea	Canada	The Netherlands
Fed. Rep of Germany	Luxembourg	Belgium
Sweden	Rep. of Maldives	New Zealand

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

Restrictions	Description
All visitors wishing to take up employers to obtain employment	Employment passes must be obtained prior to arrival. Spouses and children under 18 years age, of pass holders are required to obtain dependents passes.

Passes	
Work pass & identity cards	Employers are also required to submit work pass applications to the Immigration Department after they have fulfilled the requirements of the Labour Department. Foreign nationals above the age of twelve who are issued with passes exceeding 3 months are required to apply for identity cards which are issued by the same Department.
Bringing in Spouses and Children	Only foreign professional, technical / managerial personnel with monthly incomes not less than \$1,500 and who satisfy criteria such as living in their own accommodation can be considered to bringing in their spouses and family members.

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

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

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

All employers are expected to train employees to ensure that locals acquire the skills and expertise required to assume positions at all technical and management levels.

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

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

6. TAXATION

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

Taxation arrangements	Summary
Corporate taxation	Profits of a company considered as resident in Brunei Darussalam i.e., if the control and management of its business is exercised in Brunei Darussalam, is subject to 30% corporate tax.
Treatment of dividends	Dividends accruing in, derived from, or received in Brunei Darussalam by a corporation, are included in taxable income apart from dividends received from a corporation taxable in Brunei Darussalam. No tax is deducted at source on dividends paid by Brunei Darussalam's Corporation.
Allowable deductions	All expenses wholly or exclusively incurred in the production of taxable income are allowable as deductions for tax purposes. These deductions include: <ul style="list-style-type: none"> • interest on borrowed money used in acquiring income; • rent on land and buildings used in the trade or businesses; • cost of repair of premises, plant and machinery; • bad debt and specify doubtful debt, with any subsequent recovery being treated as income when received; and • employer's contributions to approved pension or provident fund.
Allowance for capital expenditure	Depreciation is not allowable expense and is replaced by capital allowances for qualifying expenditure. Taxpayer is entitled to claim wear and tear allowance calculated in a specific way on capital expenditure on industrial building as well as machinery and plant.
Loss carry forward	Losses incurred by a company can be carried forward for six years to be offset against future income, and can be carried back one year. There is no requirement regarding the continuity of ownership of the company, and the loss is not restricted to the same trade.

Taxation arrangements	Summary
Personal Taxation	Currently tax is not levied on income tax on individuals, partnerships and sole proprietors.
Stamp Duty	Stamp duties are levied on a variety of documents. Stamp duty is either an ad valorem duty or varies with the nature of the documents.
Withholding Taxes	Interest paid to non-resident companies under a charge, debenture or in respect of a loan, is subject to withholding tax of 20%.
Estate Duty	Estate duty is levied on an estate of over B\$2 million at 3% flat rate for a person who died on or after 15 December 1988.
Import duties	Foodstuffs, clothing, ready made garments, non-alcoholic beverages, and computers are non-dutiable items. Goods for industrial use under tariff items 15(B), 18(B), 32(B), 47(A), 56(A) & 57(B), Customs Import Duty Order 1973 are exempted from import duties subject to approval from the Controller of Customs.
Other taxes	There is no export, sales, payroll or manufacturing taxes.

7. PERFORMANCE REQUIREMENTS

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

Not practised.

8. CAPITAL EXPORTS

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

Not applicable

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

Not applicable

9. INVESTORS BEHAVIOR

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

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

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

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

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

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

Nil

2. SETTLEMENT OF DISPUTES

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 address and telephone/fax numbers of these agencies.

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

A I Civil Litigation

1. The normal recourse on the settlement of a commercial dispute will be through litigation process before the Judiciary consisting of hierarchy of courts exercising civil jurisdiction.
2. The Judiciary comes under the Prime Minister's Office for all administrative purposes only. The head of administration is the Chief Registrar. The entire judicial system is presided over and supervised by the Chief Justice.
3. The Courts consist of the Court of Appeals, the High Court, the Intermediate Courts and the Magistrates Courts in order of hierarchy. All these courts deal with both civil and criminal cases.
4. Most of the provisions are similar to the civil procedure under Singapore and Malaysian laws, which share the common heritage of English laws. They are contained in the Brunei High Court Rules.
5. A Magistrate's Court has jurisdiction to hear civil cases where the amount claimed or value of the subject matter in dispute does not exceed B\$10,000.00. Under the Subordinates Courts Act, the Chief Justice, with the approval of His Majesty, has increased the limit to cover matters not exceeding B\$20,000.00 for professionally qualified Magistrates and Senior Magistrates and matters not exceeding B\$30,000.00 for the Chief Magistrate.
6. The Intermediate Courts have jurisdiction on matters not exceeding B\$60,000.00. Any amount higher than previously mentioned will have to be brought before the High Court.

II Enforcement of foreign judgement

1. Under the Emergency (Reciprocal Enforcement of Foreign Judgements) Order 1996 judgements given by a superior court of a foreign country can be enforced in Brunei Darussalam subject to certain procedures as laid down the side order.
2. At the moment only judgements from Malaysia (High Court) and Singapore (High Court) are given the recognition which is based on the principle of reciprocity.

B. Domestic Arbitration within Brunei

1. The settlement of disputes outside the normal litigation or court process in Brunei Darussalam can be divided into Conciliation and Arbitration.
2. Settlement of dispute via this means is only legally permissible if there “an arbitration agreement” which under the 1994 Order is defined as “an agreement in writing (including an agreement contained in an exchange of letters, facsimiles or telegrams) to submit to arbitration present of future differences capable of settlement by arbitration whether an arbitrator is named therein or not”.
3. The courts will not normally interfere with the powers of the arbitrator and the award made will normally be final and binding on the disputing parties.

C. Arbitral Institutions

At present there is no arbitral institution or body existing in Brunei Darussalam outside the courts system. This however does not prohibit a person from being appointed as an arbitrator under the Emergency (Arbitration) Order 1994.

D. Internationally Recognised Arbitral Institutions

1. Brunei laws do not prohibit parties from entering into an arbitration agreement to settle their disputes before an internationally recognised arbitral institutions or using an internationally accepted arbitration rules and procedure. The courts will not interfere with such an agreement unless it has been proved that such arbitration agreement is “null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred”. Examples of such arbitral institutions include the ICC, International Court of Arbitration and the Permanent Court of Arbitration.
2. It is permissible to include a “submission to foreign arbitration” clause. Examples of such clause:

“All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed with the said Rules”.

E. Enforcement of Foreign Arbitral Awards

An award made in pursuance of an arbitration agreement in a State or territory, other than Brunei, which is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nation Conference on International Commercial Arbitration on 10 June 1958 is enforceable in Brunei Darussalam subject to certain procedures as laid down in Part IV of the Emergency (Arbitration) Order 1994.

The law on arbitration and conciliation within Brunei Darussalam can be found in the Emergency (Arbitration) Order, 1994. This law shall only apply if there is an arbitration agreement made before or after a dispute has arisen. In normal cases parties to a contract or agreement will have “an arbitration clause” inserted in the contract or agreement.

I. Conciliation

1. Under the above mentioned Order, the provisions on Conciliation shall only apply if there is an arbitration agreement providing for the appointment of a conciliator.
2. The High Court of Brunei Darussalam may appoint a conciliator on an application of any party to an arbitration agreement.
3. A conciliator appointed by virtue of an arbitration agreement may also act as an arbitrator if there is such agreement to this effect and cannot be prevented from so doing.
4. If parties to a dispute agree to settle their dispute by conciliation and have reached an agreement in settlement of their differences, the terms of the said settlement must be in writing and signed by both parties.
5. The settlement agreement made shall be treated as an award on the arbitration agreement. By leave of the High Court such award can be enforced in the same manner of a court order or judgement.

II. Arbitration within Brunei

The legal provisions on arbitration within Brunei Darussalam can be found in Part III of the Emergency (Arbitration) Order, 1994.

2. Has your economy signed or acceded to the ICSID Convention?

No.

D. INVESTMENT PROMOTION AND INCENTIVES

Brief description of any investment promotion 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 scheme, including address and telephone/fax numbers.

UNDER THE 1975 INVESTMENT INCENTIVES ACT (Cap 97)

PIONEER STATUS

INDUSTRIES GRANTED PIONEER STATUS	EXEMPTION FROM CORPORATION TAX										
	<p>The 30% corporate tax is exempted for a pioneer company for a basic period of two to five years depending on the level of fixed capital expenditure. The exemption commences on the first day of productions.</p> <p>The tax exemption period are as follows:</p> <table><thead><tr><th><u>Fixed Capital Expenditure Period</u></th><th><u>Tax Exemption</u></th></tr></thead><tbody><tr><td>Less than B\$250,000</td><td>2 years</td></tr><tr><td>B\$250,000 but less than B\$500,000</td><td>3 years</td></tr><tr><td>B\$500,000 but less than B\$1 million</td><td>4 years</td></tr><tr><td>B\$1,000,000 or over</td><td>5 years</td></tr></tbody></table>	<u>Fixed Capital Expenditure Period</u>	<u>Tax Exemption</u>	Less than B\$250,000	2 years	B\$250,000 but less than B\$500,000	3 years	B\$500,000 but less than B\$1 million	4 years	B\$1,000,000 or over	5 years
<u>Fixed Capital Expenditure Period</u>	<u>Tax Exemption</u>										
Less than B\$250,000	2 years										
B\$250,000 but less than B\$500,000	3 years										
B\$500,000 but less than B\$1 million	4 years										
B\$1,000,000 or over	5 years										

	<p>Tax exemption may be extended up to three additional years in certain circumstances</p> <p>EXEMPTION FROM TAXES ON IMPORTED CAPITAL GOODS</p> <p>A pioneer company is also exemption from customs duty on plant, machinery and equipment to be installed in the pioneer factory</p> <p>EXEMPTION FROM TAXES ON IMPORTED RAW MATERIALS</p> <p>A pioneer company is exempted from paying import duties on raw materials not available or produced in Brunei Darussalam intended for the production of the pioneer products</p>
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INDUSTRIES AND PRODUCTS IDENTIFIED TO BE GRANTED PIONEER CERTIFICATES	
<u>INDUSTRY</u>	<u>PRODUCTS</u>
Aircraft Catering Services	Various types of food for airlines
Cement Finish Mill	Cement
Pharmaceutical	Various types of medicines, vitamins, tablets, syrup etc.
Aluminum Wall Tile	Aluminum wall tiles and other decorative tiles
Rolling Mill Plant	Manufacturing/fabricating iron and steel, steel bars, angle iron, U-channel etc.
Industrial Chemical	Various types of chemicals for the oil and other industries including corrosion inhibitors, scale inhibitors, oxygen scavengers and detergents manufactured or blended in Brunei Darussalam
Shipyards	Ship repair and maintenance
Tissue Paper	Tissue paper and kitchen napkin
Textile	Various type of clothing
Canning, Bottling and Packaging	Various types of canned, bottled and packaged food and drinks
Furniture	Wooden, rattan, knock-down furniture
Glass	Sheet glass; scientific; laboratory; industrial glass-ware; optical and photographic glass; lighting and decorative glassware; glass products for household and automotive
Ceramic and Potteries	Tiles, sanitary ware, chinaware, stoneware, pottery ware, porcelain ware
Woodbase	Plywood and wooden construction elements
Plastic and Synthetic rubber	PVC tubing, pipes plastic bottles, container, various types of medical and surgical and household rubber products
Fertilizers and Pesticides	

Toys	Various types of fertilizers and pesticides
Gas	Mechanical, electronics, wooden, plastic and rubber toys
Sheet Metal-Forming	Various types of industrial gas
Manufacturing of Electrical Industrial Machinery and Apparatus	Roofing, metal-furniture, walling, fencing, roof trusses, frames, fitting and fixtures, ducting, containers for storage and transport, other related building materials
	The manufacture, renovation of electric motors, generators and complete turbine-generator and engine generator sets, transformers, switch gear and switchboard apparatus, rectifiers, other electrical transmission and distribution equipment, electrical industrial control devices such as motor starters and controllers, electro-magnetic clutches and brakes electrical welding apparatus other electrical industrial apparatus

The Department of Economic Planning and Development would also consider the followings:

- granting Pioneer Certificates to more than one company for any similar pioneer industry ; and
- granting Pioneer Certificates to any company/companies for industries which are not in the list of 20 industries identified as pioneer on the grounds that they are absolutely new, commercial scale and export-oriented industries

2. INCENTIVES FOR EXPANSION OF ESTABLISHED ENTERPRISES

Under this category, any established company which intends to incur new capital expenditure for manufacture or increased manufacture of an Approved Product may apply to the Department of Economic Planning and Development for an Expansion Certificate.

The company must fulfil the following requirements:

- A new capital expenditure in the purchase of productive equipment must exceed B\$1 million or not less than B\$100,000; and
- The productive equipment purchased is intended to increase the production or productivity.

The tax exemption periods are as follows:

New capital Expenditure Incurred	Tax Exemption Period
Up to B\$250,000	3 years
More than B250,000	5 years

3. INCENTIVES FOR PIONEER LOANS

There is a 20% withholding tax for the interest paid to non-resident lenders. However the government may grant tax exemption to any approved foreign loans, if:

- the loan is utilised for the purchase of productive equipment;
- the credit facilities are obtained through financial agreement with the foreign lending company; and
- the amount of loan is not than B\$200,000

OTHER INCENTIVES UNDER THE INCOME TAX ACT (Cap. 35)

Basic right and gurantees to investors

Repatriation of capital is not restricted. No restriction is imposed on the remittance of earnings, profits and dividends on investment.

Carry forward of losses

Losses arising from trade, business, profession or vocation in a basis period can be set off against the statutory income of that period. Carry forward of unabsorbed losses for five years is allowed.

Carry forward capital allowances during the relief period

Capital allowances which remain unabsorbed at the end of the tax relief period may be applied against post pioneer profits.

Deduction from taxable corporate income (depreciation allowance)

Depreciation is not an allowable expense and is replaced by capital allowances for qualifying capital expenditure. The taxpayer is entitled to claim wear and tear allowance calculated as follows:

- **Industrial buildings**
An initial allowance of 10% is given in the of expenditure, and an annual allowance of 2% of the qualifying expenditure is provided on a straight-line basis until the total expenditure is written off
- **Machinery and Plant**
An initial allowance of 10% of the cost is given in the of expenditure together with annual allowances calculated on the reducing value of the asset. The rates prescribed by the Collector of the Income Tax range from 3% to 25%, depending on the nature of the asset.

Exemption from capital gain tax

There is no capital gains tax in Brunei Darussalam.

Other exemption

There are no export, sales, payroll and manufacturing taxes in Brunei Darussalam.

INDUSTRIAL AREAS

1. As part of the industrialisation programme to attract local and foreign investors, the government continues its effort in providing industrial sites with its basic infrastructure such as roads, water, power and telecommunication facilities through out the country. The industrial areas are rented out to the potential investors on a lease basis.
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, telephone/fax numbers.
3. Where applicable, if there is a one stop facility foreign investor, details of this service and contact point(s), including address, telephone/fax numbers.

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

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

<i>Agreement</i>	<i>Provisions</i>
Friendship, Commerce and Navigation Treaties	
<i>Bilateral Investment Treaties</i>	<i>Provisions</i>
<p>Signed Treaties for the Promotion and Protection of Investments with</p> <p>The Federal Republic of Germany (March 1998)</p> <p>b. The Sultan of Oman (June 1998)</p>	<p>Non-discrimination on the treatment of investment made by investors of contracting Party in the territory of the other contracting party with treatment no less favourable than that granted to most favoured nation</p> <p>Protection against expropriation – investment of nationals or companies of any contracting party should not be subject to expropriation, the agreement provides for compensation amount to the market value of the investment affected</p> <p>Repatriation – Free transfer of any freely usable currency</p> <p>Dispute settlement – dispute settlement among contracting parties and with nationals of other contracting parties should first be settled amicably between parties. Unsolved disputes shall be settled through <i>ad hoc</i> tribunal and through ICSID if both parties are members to ICSID</p> <p>Avoidance of Double Taxation – Taxation matters are governed by avoidance of double taxation treaties between contracting parties</p>
<i>Regional or sub regional Investment Treaties</i>	<i>Provisions</i>
<p>a. Agreement among the Government of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand for the Promotion and Protection of Investment, Manila 15 December 1987</p> <p>(later acceded to by Viet Nam, Laos and Myanmar on their entry to ASEAN)</p>	<p>Similar to above except for Dispute Settlement – dispute settlement among contracting parties and with nationals of other contracting parties should first be settled amicably between parties. Unresolved disputes shall be submitted to the AEM for resolution and finally to the Regional Centre for Arbitration in Kuala Lumpur for conciliation and arbitration</p>
<p>b. Framework Agreement on the ASEAN Investment Area, signed 7 October 1998, Manila</p>	<p>National Treatment is extended to ASEAN investors by 2010 and to all investors by 2020, subject to the exceptions provided for under the Agreement.</p> <p>All industries are opened for investment to ASEAN investors by 2010 and to all investors by 2020, subject to the exceptions provided for under this agreement.</p>

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

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

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

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

CANADA

CANADA

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

The attitude of the Government of Canada to foreign investment was clearly articulated almost 10 years ago with the passage of the Investment Canada Act (ICA) in 1985, which replaced the more restrictive Foreign Investment Review Act (FIRA). The new attitudes represented a significant shift in government policy towards foreign investment.

Canada 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

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

Foreign investment in Canada is subject to multilateral obligations (e.g., through the Organisation for Economic Cooperation and Development (OECD) and the World Trade Organisation (WTO)) and, more recently, to obligations in regional and bilateral agreements (the North American Free Trade Agreement (NAFTA), the Canada-Chile Free Trade Agreement, and Foreign Investment Protection Agreements). 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. Under the Act, the establishment of a new business in Canada by an investor making its first investment in Canada or the establishment of a new business by an existing investor where the new business is unrelated to any existing business in Canada is subject to a straightforward notification procedure, but is not generally subject to review. There are some exceptions to this, outlined in this section and the section on restricted sectors (see section B(1)(ii)(1) and B(1)(ii)(2)).

In addition to the Investment Canada Act, there are a number of federal and provincial laws applying to

specific industry sectors. At the federal level, for example, there are the Bank Act, the National Transportation Act, and the Broadcasting Act. The Canada Business Corporations Act also provides for provisions related to management and equity in federally incorporated businesses.

(2) Investment Review and Approval

1. *Details of proposals and sectors that are/are not (yes/no) subject to screening.*
2. *Details of guidelines/conditions that apply for screening (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 important acquisitions of control of Canadian businesses by foreign investors and the establishment of new businesses in industries related to Canada's national identity or cultural heritage. 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 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 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 industrial, economic and cultural policies; and the contribution of the investment to Canada's ability to compete in world markets.

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

(ii) Notification Is Usually the Only Requirement

Foreign acquisitions of Canadian businesses with assets below the threshold (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

Proposals	Guidelines/Conditions
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<p>Merger/Acquisition (Yes - in specific limited circumstances)</p>	<p>Where either the non-Canadian investor or vendor is ultimately controlled in a World Trade Organization (WTO) country, only the direct acquisition of control of a Canadian business that has assets equal to or greater than \$184 million (1999) is a reviewable transaction. This figure is adjusted annually to reflect economic growth in Canada.</p> <p>Where both the non-Canadian investor and vendor are ultimately controlled in a non-WTO country, the direct acquisition of control of a Canadian business that has assets greater than \$5million is reviewable, and the indirect acquisition of control of a Canadian business with assets greater than \$50 million is reviewable. These review thresholds are fixed and are not adjusted.</p> <p>Acquisitions in which the Canadian business is in one of four other sectors (cultural industries, financial services, transportation services and uranium production) are subject to the lower thresholds regardless of nationality of the investor or vendor. Acquisitions in cultural industries (i.e., publication and distribution of books, magazines, videos, music recordings, etc.) below these thresholds and the establishment of new businesses in these cultural industries may be reviewable, if the Government so decides. Reviewable investments are allowed to proceed if they are likely to be of 'net benefit' to Canada. Since the establishment of the review system under the Act, no reviewable investment has been disallowed.</p>
Greenfield investment (no)	Review not required.
Real Estate/land (no)	Review not required.
Joint Venture (no)	Review not required.

General Restrictions	Guidelines/Conditions
<p>Boards of Directors</p> <p>Issue, transfer, ownership of shares</p>	<p>The Canada Business Corporations Act requires that a simple majority of the board of directors, or of a committee thereof, of a federally-incorporated corporation be resident Canadians. 'Resident Canadian' means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the Canada Business Corporations Act Regulations, or a permanent resident as defined in the Immigration Act other than one who has been ordinarily resident in Canada for more than one year after he became eligible to apply for Canadian citizenship.</p> <p>The Canadian Business Corporations Act permits corporations to 'constrain' the issue, transfer and ownership of shares in federally incorporated corporations.</p> <p>The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where such ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits.</p> <p>More information may be obtained by accessing the website at http://competition.ic.gc.ca/</p>

Sectoral Restrictions	Guidelines and Conditions
<p>Agriculture</p>	<p>Farm Credit Corporation (FCC) financing is available to individuals, partnerships, companies and co-operatives engaged in farming.</p> <p>Prior to loan disbursement, applicants must be either Canadian citizens or permanent residents as defined in the Immigration Act.</p> <p>Canadian corporations are eligible regardless of the shareholder's citizenship.</p> <p>An applicant must be of legal age in the province of jurisdiction to enter into a contract with the FCC.</p>
	Residency requirements exist for a number of professional business service

Sectoral Restrictions	Guidelines and Conditions
Business service industries	providers: <ul style="list-style-type: none"> • customs broker/brokerage; • duty free shop operator; • examiner of cultural property; and • some professions, i.e. lawyers.
Culture	<p>Industry Canada may review both new businesses and acquisitions of any size in areas involving cultural heritage or national identity, with the purpose of ensuring that they are of net benefit to Canada, including a contribution to Canadian cultural objectives. The following sectors are included:</p> <p>(a) book publishing and distribution. Direct acquisition by non-residents of Canadian-controlled businesses is not normally allowed. Foreign investment in new businesses are considered favourably provided the investment is through a joint venture with Canadian control.</p> <p>(b) newspapers, magazines, periodicals. The net benefit test is applicable.</p> <p>(c) film distribution. Acquisition of Canadian-controlled distribution companies by non-Canadians is not permitted. However, foreign investment is permitted if it is through a joint venture with Canadian control. Foreign investment in a new business is allowed if it is directly linked to the importation and distribution of proprietary product.</p> <p>(d) sound recording industry. The net benefit test is applicable.</p> <p>(e) music publishing. The net benefit test is applicable.</p>
Energy	<p><u>Uranium:</u></p> <p>A minimum level of resident ownership in individual uranium mining properties of 51% at the stage of first production is required. Exceptions to this limit may be permitted if it can be established that the property is in fact 'Canadian-controlled'. While these limits apply to the control of production, foreign investment is encouraged in exploration and development.</p> <p><u>Oil and Gas:</u></p> <p>(1) Under the <i>Canada Oil and Gas Operations Act</i>, 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.</p> <p>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.</p> <p>(2) The <i>Canada – Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> and the <i>Canada - Newfoundland Atlantic Accord Implementation Act</i> have the same requirement for a benefits plan but also require that the benefits plan ensure that:</p> <p>(a) 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;</p> <p>(b) expenditures be made for research and development to be carried out</p>

Sectoral Restrictions	Guidelines and Conditions
	<p>in the province, and for education and training to be provided in the province; and</p> <p>(c) 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>(3) Pursuant to the <i>Hibernia Development Project Act</i>, the Minister of Natural Resources Canada may enter into agreements on behalf of Her Majesty in respect of the Hibernia Development Project. The <i>Act</i> states that the agreements may include undertakings in relation to industrial and employment benefits. The actual legal agreements entered into by the Owners and Canada require the Owners to perform certain work in Canada and Newfoundland and to use their “best efforts” to achieve specific Canadian and Newfoundland “target levels” in relation to the provisions of any “benefit plan” required under the <i>Canada- Newfoundland Atlantic Accord Implementation Act</i>. 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.</p> <p>(4) Pursuant to the <i>Canada- Newfoundland Atlantic Accord Implementation Act</i>, 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 national or enterprise in Canada.</p>
<p>Financial services</p>	<p>No one person (Canadian or foreign) may own more than 10% of any class of shares of a Schedule I bank. The Canadian government removed the limits on foreign ownership of federally-regulated foreign banks must presently incorporate subsidiaries in Canada to undertake the business of banking. However, the Government has introduced legislation that would permit foreign banks to also branch directly into Canada.</p>

Sectoral Restrictions	Guidelines and Conditions
Fisheries	<p>Fish processing companies which have more than 49% foreign ownership are not permitted to hold Canadian commercial fishing licenses. There is no limit on foreign ownership of fish processing companies that do not hold fishing licences.</p> <p>Foreign fishing vessels are prohibited from entering Canada's Exclusive Economic Zone except under authority of a licence or under treaty. Foreign vessels are those which are not 'Canadian' as defined in legislation. The Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licenses.</p>
Broadcasting and Telecommunications	<p>a) Broadcasting:</p> <p>Broadcasting in Canada includes "over the air" broadcasting and cable television. Legislation (the Canadian Broadcasting Act) requires that the Canadian broadcasting system be effectively owned and controlled by Canadians. Foreign ownership of any given broadcasting licensee is limited to a maximum of 20%.</p> <p>b) Telecommunications common carriers:</p> <p>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.</p>
Transportation	<p>The <i>Canada Transportation Act</i>, in Section 55, defines "Canadian" in the following manner:</p> <p>"... 'Canadian' means a Canadian citizen or a permanent resident within the meaning of the Immigration 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..."</p> <p>(a) Air Transport</p> <p>Under the <i>Canada Transportation Act</i> and the <i>Canadian Aviation Regulations</i>, only "Canadians" may provide the following commercial air services:</p> <p>(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);</p> <p>(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</p> <p>(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.</p> <p>(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),</p>

Sectoral Restrictions	Guidelines and Conditions
	<p>subject to exemptions for the countries enumerated below, and under the conditions therein specified.</p> <p>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.</p> <p>Regulations made under the <i>Aeronautics Act</i> incorporate by reference the definition of “Canadian” found in the <i>Canada Transportation Act</i>. 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”.</p> <p>No foreign individual may own a Canadian-registered aircraft for private use.</p> <p>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.</p> <p>(b) Marine</p> <p>The <i>Coasting Trade Act</i> 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 <i>Canada Shipping Act</i>, (expected to enter into force on 1 April 1999) entitle any foreign corporation to own a Canadian-flag ship.</p> <p>The <i>Coasting Trade Act</i> 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 duty¹ 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.</p>

3. 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://investcan.ic.gc.ca/index.htm>. Hard copies of the relevant documentation can be obtained from the contacts listed in section below.

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

4. Contact points to which applications should be made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Industry Canada monitors the performance of the investments that have been approved under its review system. Experience shows that the vast majority meets or exceed objectives. In the few instances where objectives are not met, the department will meet with the foreign investor.

If performance shortcomings are due to unavoidable factors (performance of the economy etc.) revised objectives can be negotiated.

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

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

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

Regulations made under the Investment Canada Act are published in the Canada Gazette.

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

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

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

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

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

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

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

Foreign investments are accorded national treatment and MFN status in accordance with international agreements signed by Canada that cover investment (e.g., WTO, the NAFTA, 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

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of

foreign investment and the nature of the exception (e.g., requirements for joint ventures, linkages between export ratios and equity participation, technology licensing).

Refer to section B(2).

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

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

4. REPATRIATION AND CONVERTIBILITY

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

There are no restrictions.

2. Brief description of the foreign exchange regime.

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

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

There are no restrictions.

5. ENTRY AND SOJOURN OF PERSONNEL

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

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

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

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

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 employment authorization. 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 an employment authorization. Generally an application for an employment authorization should be made at a visa office abroad before leaving for Canada. Application for extension can be made from within Canada. All foreign workers need to establish to the satisfaction of an immigration officer that their intent is temporary and not permanent.

There are over forty different mechanisms to permit temporary foreign workers to be issued with an employment authorization. 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 fulfil social, cultural or humanitarian objectives.

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

- Validation of offer of employment (a labour market assessment provided by Human - Resources Development Canada) 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 an employment authorization. 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 an employment authorization but are still subject to the requirement for a visitor 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 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 visitor 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.

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

Not applicable.

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

In Canada, responsibility for labour affairs is shared between the federal government and the governments of the ten provinces and two territories, with the majority of the workforce falling under provincial and territorial responsibility. Labour laws are generally divided into four areas: rules governing collective bargaining, minimum employment standards, occupational safety and health and workers compensation in respect of accident or disease.

Employment standards cover such topics as the minimum age for employment, minimum wages, equal pay, parental leave, other leave, hours of work and overtime pay, weekly rest-day, annual vacations with pay, general holidays with pay, notice of termination of employment, and recovery of unpaid wages. Minimum wages vary between the provinces.

Labour disputes and relations laws meanwhile seek to establish provisions to reduce the adversarial nature of collective bargaining.

Canadian labour laws would generally apply to all temporary foreign workers working in Canada. As well, all companies operating in Canada are subject to these laws.

Information on employment standards legislation and industrial relations legislation is available on the Internet at <http://labour.hrdc-drhc.gc.ca>.

6. TAXATION

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

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

There are no special tax rules for foreign investment.

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

7. PERFORMANCE REQUIREMENTS

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

8. CAPITAL EXPORTS

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

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

There are no restrictions.

9. INVESTOR BEHAVIOUR

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

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

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

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

Canada's principal laws aimed at the protection of competition are embodied in the federal Competition Act, R.S.C., 1985, c. C-34, as amended, which came into force on 19 June 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 offenses 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 offenses. 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.

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

Intellectual property is 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 Patent 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

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

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

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

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

2. SETTLEMENT OF DISPUTES

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

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

Canada is a party to the Convention on the Recognition and Enforcement of the Foreign Arbitral Awards (the “New York Convention”) done at New York 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, Que) offer services that may be accessed by foreign investors.

2. Signatory or accession to the ICSID Convention.

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

D. INVESTMENT PROMOTION AND INCENTIVES

1. Brief description of any investment promotion programs offered at both the national and sub-national level (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.

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

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.

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, programs and services designed to facilitate foreign investment, and on investment opportunities in Canada, is also available on the Government of Canada International Investment Website. Users can access an extensive collection of studies on the impact of FDI; read about Canada's Investment Promotion Strategy; and find detailed provincial and federal information on investing in Canada. This website may be accessed at the following address at <http://intinvest.ic.gc.ca>

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

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

International Agreement	Major Provisions
Foreign Investment Protection Agreements (FIPAs). Canada has agreements with the following countries; USSR (applies to Russia as a continuing State), Poland, Czechoslovakia (binds both the Czech Republic and Slovakia, and is considered two Agreements), Hungary, Argentina, Ukraine, Barbados, Thailand, Panama,	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.

International Agreement	Major Provisions
Egypt, Latvia, Trinidad and Tobago, Philippines, Ecuador, Venezuela.	
North American Free Trade Agreement (NAFTA) and Canada-Chile Free Trade Agreement (CCFTA)	<p>The NAFTA retained, for Canada, the negotiated balance of obligations contained in the Canada-U.S. FTA. In addition, it allowed for a number of significant improvements ranging from a broader definition of investment to the introduction of new provisions and procedures that should contribute to making North American trade and investment more open and secure. The Canada-Chile Free Trade Agreement, with a few exceptions, essentially paralleled the obligations undertaken in the NAFTA.</p> <p>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.</p> <p>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.</p> <p>The specific NAFTA/CCFTA provisions related to investment can be summarized as follows:</p> <ul style="list-style-type: none"> • NAFTA/CCFTA applies national treatment and most-favoured nation concept to investments. NAFTA/ CCFTA investments have a right to treatment no less favourable than the best treatment offered by the government in question to similar investments, regardless of nationality; • 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/Canada 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/Chile 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

International Agreement	Major Provisions
	<p>Mexican and Chilean investors;</p> <ul style="list-style-type: none"> • 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 must be paid promptly; • Certain disputes between an investor from a NAFTA country/Canada-Chile and a NAFTA/the Canadian-Chilean government may be settled, at the investor's option, by 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	<ul style="list-style-type: none"> • 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.
<p>OECD Codes on Investment (OECD Codes of Liberalization of Capital Movements and of Current Invisible Transactions and the OECD National Treatment Instrument (NTI).</p>	<p>While these instruments do not have the same origin and scope, taken together they cover all direct investment transactions, whether by non-resident enterprises or by established enterprises under foreign control. The two fundamental norms are the right of establishment and national treatment after establishment. The Codes have the legal status of OECD Council Decisions binding on all member countries. The NTI expresses only a policy commitment.</p>
<p>World Trade Organization Agreements (TRIMS, GATS)</p>	<p>The Trade-Related Investment Measures (TRIMs) Agreement prohibits a representative list of TRIMs (or performance requirements) which are in violation of GATT Articles III and XI. TRIMs in violation of the agreement must be listed by member countries and then phased out.</p> <p>The General Agreement on Trade in Services (GATS) establishes a comprehensive framework of multilaterally agreed rules and disciplines on government measures affecting trade in services. The agreement applies to all trade in services and to 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.</p>

Canada is currently participating in the discussions on investment issues within the Free Trade Agreement of the Americas (FTAA) process, in negotiations on a free trade agreement with countries of the European Free Trade Association (EFTA), 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 Direct Investment

Foreign company investment has more than doubled in the last 10 years with the stock of inward FDI reaching \$188 billion in 1997. This represents 22% of Canada's total Gross Domestic Product, up from 19% in 1985.

The 1990's have marked a significant resurgence of inward FDI flows to Canada. Inward FDI flows averaged \$8.8 billion per year between 1990 and 1997, almost 50% more than between 1983 and 1989.

Merger and acquisition activity has been a significant factor. In 1995, for example, foreign takeovers in Canada reached a record-level \$8.5 billion, representing nearly 60 percent of FDI inflows that year.

Canada attracts sizable amounts of FDI. Between 1983 and 1994, the stock (book value) of FDI in Canada more than doubled from \$73 billion to \$148 billion.

New investment (cross-border flows) accounted for 58% of the increase while 30% came from reinvested (retained) earnings. The balance was due to valuation adjustments.

Recent data indicate foreign multinationals invested a massive \$15.4 billion in Canada. About half the total was financed from profits earned and reinvested in Canada.

In the 1990s, 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 1985 and 1997, from \$57.2 billion to \$194 billion. The share of outward CDIA stock in Canada's GDP is up considerably, rising up to more than 22% in 1997.

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 67% to 103% between 1985 and 1997, suggesting the increasing internationalization of Canadian business.

Acquisitions of foreign companies by Canadian-based companies totaled \$6.4 billion in 1997, surpassing the record set in 1988 (\$4.7 billion)

Developing countries, particularly those in Latin America and the Asia-Pacific Rim, are becoming increasingly important to Canadians investing abroad. Their share of Canada's outward-bound investment has more than doubled from 14% between 1982-1989 to 31% between 1990-1997.

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

Sources of FDI	1997 \$ Billions	Destination of FDI	1997 \$ Billions
United States	130	United States	99.9
United Kingdom	15.6	United Kingdom	21.7
Japan	7.1	Ireland	6.9
France	5.5	Bahamas	4.5
Germany	4.7	France	3.8

CHILE

CHILE

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

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

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

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

1988	US\$845.3 million
1989	US\$969.7 million
1990	US\$1,319.9 million
1991	US\$980.6 million
1992	US\$995.6 million
1993	US\$1,725.4 million
1994	US\$2,517.9 million
1995	US\$3,021.4 million
1996	US\$4.800,5 million
1997	US\$5.041,2 million
1998	US\$5.997,7 million. This is a provisional figure.

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

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

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(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

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

- A. If investor is a corporation or any juridical entity:
- present an application to the Foreign Investment Committee. Specifically, the application is a blank form that contains relatively detailed data on the investor, the project and the capital.
 - the application must be submitted jointly with both the investor's procuration to his representative duly registered, in effect and legalized, and the investor's incorporation charter duly registered, in effect and legalized.
 - once the latter is done, relevant information about the investor entity must be presented.
- B. If it is an individual:
- at the moment the application is presented, the foreign investor should certify his foreign nationality.
 - if the person is Chilean, the investor shall prove his residence and domicile abroad through a consular certificate.

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

- C. If there is no requirement of further information, the Committee gives its approval. Investments which amount to less than US\$5million are approved by the Executive Vice-President of the Committee with the previous confirmation of the President of the Committee; those greater than that amount are approved within approximately 30 to 40 days.
- D. Once the investment is approved, the parties may state a date on which the contract will be signed. The contract shall stipulate the period of time within which the foreign investor is to bring such capital into the country. Such period shall not exceed eight years for mining investments and three years for other investments. Nevertheless, the Committee may, by unanimous agreement in the case of mining investments, extend the period up to 12 years when prior exploration is required.

Characteristics of the Decree law 600

I. Who the foreign investor can be

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

II. The company receiving the investment

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

The investor seeking association with a company which already exists can do so through:

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

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

III. Foreign investors' rights

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

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

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

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

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

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

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

(b) The right to transfer the capital as well as the net profits abroad through the formal exchange market

(i) The first part of Article 4 of Decree Law 600 reads as follows:

"Foreign investors shall be entitled to transfer abroad their capital and any net profits generated thereby. Remittances of capital may be made once one year has elapsed since the date of entry. Capital increases paid with profits eligible for remittance abroad may be remitted with no time

restrictions once tax obligations have been fulfilled. Remittances of profits shall not be subject to any time restrictions.”

In summary, the remaining part of this article states:

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

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

(ii) Right to access to the formal exchange market

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

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

(iii) Rights related to taxation

Taxation as a general matter and the aspects specifically related to foreign investment are treated in point N 6.

Decree Law 600 states an optional special tax regime for those investments that are subject to this regulation. The foreign investors have the right to opt for a fixed total income tax rate of 42% for a term of 10 years beginning with the initial activities instead of the normal tax rates.

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

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

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

5. Capitalization of foreign loans and debts in freely convertible currency, provided such contracts have been duly authorized. A previous agreement from the Central Bank Committee and a resolution from the Foreign Investment Committee are required, with those requirements the respective contract may be modified.
6. Capitalization of profits qualifying for remittance abroad. The profits must fulfill every tax obligation before requiring its capitalization, as if they were remitted abroad. Once capitalized, those amounts may be withdrawn as if they were profits, without term conditions. Capital can be repatriated after the completion of one calendar year from its internment. Profits can be transferred any time, without any limitation at all as to the amount of the transfer, following the payment of the respective Chilean taxes. Decree Law 600 is the instrument used by most of foreign investors to invest in Chile.

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

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

Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile

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

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

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

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

The basic difference between Chapter XIV and Decree Law 600 is that, under Chapter XIV, there is no contract to sign and, therefore, investors cannot apply for the tax invariability regime which is offered under Decree Law 600. Besides, under Central Bank provisions, investors can only bring foreign currency into Chile and cannot demand the advantages offered by Article 11 bis of Decree Law 600 (investments no less than US\$50 million).

In the case of capital investments, a simple registration of the investment amount in the Central Bank is required. This can be done through a commercial bank before selling that proves the registration.

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

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

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

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

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

Law 18.657 about Foreign Investment Capital Fund

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

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

(2) Investment Review and Approval

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

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

In accordance with Decree Law 600, Foreign Investment Statute, any investor that desires to enjoy the benefits of contract must submit a foreign investment application to the Foreign Investment Committee.

The Committee sets forth policies and procedures concerning foreign investment and has authority to approve or reject investment applications submitted. According to the provisions established in the regulations, to approve all investment applications for a total of more than US\$5 million or its equivalent in other currencies, a Committee agreement is required.

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

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

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

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

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

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

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

6. *List of agencies responsible for dealing with appeals (including addresses, telephone/fax numbers) in cases where a proposal is denied or a modification of the proposal is requested.*

Description of appeal processes and the average time for an appeal to be considered.

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

The same principle applies for a Chapter XIV application.

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

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

Decree Law 600 Foreign Investment Application

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

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

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

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

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

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

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

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

The documents depend on the legal nature of the investor.

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

- notarized copy of the Articles of Incorporation, By Laws or equivalent documentation.

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

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

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

Chapter XIV Application

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

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

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

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

Nevertheless, article 10 of Decree Law 600 states that in the event legal provisions are issued which the holders of foreign investments or the enterprises in whose capital the foreign investment has an interest should consider to be discriminatory, they may request that the discrimination be eliminated, provided not more than one year has elapsed since the provisions were issued.

The Foreign Investment Committee shall, within no more than 60 days after the date of presentation of the request, issue a decision rejecting the request or taking the appropriate administrative measures to eliminate the discrimination, or requiring the competent authorities to take such measures if they are beyond the powers of the Committee.

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

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

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

Addresses and phone/fax numbers for these agencies.

Considering the non-discrimination principle, compliance of law and regulations by foreign investors is in the hands of the same authorities that control local investors' activities. The compliance of Decree Law 600 regulations is 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 N0 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 (Superintendency of Securities and Insurance) Article 4 Law 18.657 on Foreign Investment Capital Fund, stipulates that the Fund and the management corporation of the Fund shall be subject to the supervision of the Superintendency of Securities and Insurance concerning its operations and to the investment of resources inside the country.	Teatinos 120, 1 Floor Santiago Chile Telephone: (562) 696 2194 Fax: (562) 698 7425

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

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

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

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

Functions

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

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

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

1. List and description of the scope of any exceptions to most favoured nation treatment in relation to the establishment, expansion and operation of foreign investment (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.

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

The bilateral investment treaties signed with Venezuela, Argentina, Ecuador, Paraguay, Sweden, Finland, Croatia, Czech Republic, United Kingdom, Romania, Ukraine, Portugal, Netherlands, South Africa, the

Philippines, Spain, France, Norway, Italy, Denmark, Malaysia and People's Republic of China, all in force, stipulate possible exceptions to MFN treatment.

These treaties establish that MFN clause will have no effect in respect to any advantage accorded to investors of a third state by the other contracting party based on an existing or future customs or economic union or free trade agreement to which either of the contracting parties is or becomes party. Neither shall such treatment relate to any advantage which either contracting party accords to investors of a third state by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation.

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

3. NATIONAL TREATMENT

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

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

The State of Chile, and its bodies, grant the foreign investor an equal treatment, or no less favorable than that granted to national investors. For the adequate protection of this right, the Decree Law 600 stipulates that legal or regulatory provisions applicable to the major part of a certain productive activity that exclude foreign investment, are considered to be discriminatory. Likewise, regulations that establish treatments of exception for sectors or areas to which foreign investment has no access, are 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	<p>Decree Law N 3059 on activities of National Merchant Navy, states that cabotage is reserved to Chilean ships. Cabotage means transport of passengers or freight through maritime waters, rivers or lakes between two harbors inside the national territory and between these and facilities located in the territorial sea or in the economic exclusive zone.</p> <p>Coastal trade, ocean, river or lacustrian cargo and passenger trade between locations in the national territory, and between these and naval devices installed in territorial sea or in the exclusive economic area, is reserved to Chilean shipping companies, except when it deals with cargo volumes over 900 tons, and after a public bidding has been held.</p> <p>Nevertheless, when the volume of the cargo is equal to or less than 900 tons and there are no vessels available under the Chilean flag, the maritime authority shall authorize shipments in foreign merchant vessels; and likewise, when dealing with exclusive transportation of passengers.</p> <p>The local appropriate Maritime Authority may exclude one or more foreign merchant vessels from the coasting trade when, according to his judgment, there are reasons to act accordingly.</p> <p>The transportation of empty containers does not constitute coastal trade for the effects of the cargo reserve considered. (Law 18.899, article 47, interprets article 3</p>

Sector	Nature of Exception (e.g. prohibition, limitation special conditions and special screening)
	<p>of Executive Decree 3059).</p> <p>The transportation of empty containers may only be performed by foreign shipowners when an identical authorisation 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.</p> <p>For the effects of ocean freights to and from Chile, the principle of reciprocity applies, in accordance with provisions in article 4 of Executive Decree 3059.</p> <p>For the effects of applying this law, it should be understood by Chilean Shipping Owner Chilean natural or legal entities that comply with the following requirements:</p> <p>(1) Legal entities or communities that comply with those requirements provided in article 11 of Executive Decree 2222 of 1978:</p> <p>(a) The company that owns the vessel should have its legal residence and real and effective headquarters in Chile; the chairman, manager and the majority of its Directors or administrators must be Chilean; and the majority of its equity should belong to Chilean natural or legal entities.</p> <p>(b) Owners' Community where the majority of its members are Chilean, who are domiciled and reside in Chile; their administrators must be Chilean, and the majority of the Community rights must belong to natural persons or legal entities.</p> <p>Legal entity partners of a company owning vessels or a member of a community owner of same, shall be considered to be Chilean when they comply with the above requirements and 75% of their capital is owned by Chilean citizens.</p> <p>(c) Special vessels belonging to natural persons or legal entities domiciled in the country, may be registered in Chile, provided that they have their business headquarters in Chile, or that carry out in the country a permanent industrial activity or profession.</p> <p>(2) Is dedicated to ocean transportation.</p> <p>(3) Is the owner or leases merchant vessels under Chilean registry and flag. In this respect, article 6 of Executive Decree 3059 refers to foreign hired vessels considered to be Chilean.</p>
Fishery activities	<p>Limitation on ownership of fishing ships and on development of fishing and aquicultural activities. The Fishery and Aquiculture Law No 18.892, published on 23 December 1989, states that most 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.</p> <p>Article 115 of the General Fishing Law, prohibits fishing extraction activities in internal waters, territorial sea or exclusive economic area, to vessels operating under a foreign flag, except if they have been specially authorized to perform research fishing.</p>
Non-Industrial Fishing	<p>Area exclusively reserved for non-industrial fishing: 5 mile strip of territorial sea and internal waters must be registered in the National Registry of non-industrial Fishermen. For this purpose, it is required to be a natural person or legal entity (constituted exclusively by natural persons who are non-industrial fishermen) and</p>

Sector	Nature of Exception (e.g. prohibition, limitation special conditions and special screening)
	<p>Chilean citizens or foreigners with definitive residence.</p> <p><u>Industrial Extractive Fishing Activity:</u> General access system in territorial sea, except 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.</p> <p><u>Natural person applicant:</u> Chilean or foreigner with definite residence.</p> <p><u>Legal entity applicant:</u> 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.</p> <p>The final clause of article 43 provides that Chilean fishing vessels with a national crew of at least 85%, and which perform extraction fishing activities exclusively in high seas or presential sea (beyond the exclusive economic area), are exempted to pay the fishing license.</p> <p>To perform industrial fishing activities it is necessary for vessels to be duly registered. The Law of Navigation, in the final clause of article 11, stipulates the principle of international reciprocity:</p> <p>Legal entities that own fishing vessels must be established with a majority of Chilean capital. Nevertheless, by applying the principle of international reciprocity, the maritime authority, prior certificate issued by the Ministry of Foreign Relations may, under equivalent conditions, release of such requirement those fishing companies established in Chile with a majority share of foreign capital.</p> <p><u>Aquaculture:</u> The following may only be aquaculture concessionaires or holders of an authorization to perform aquicultural activities:</p> <ul style="list-style-type: none"> • 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	<p>Article 1 of Decree Law 2564 states that aerial services can be supplied by national or foreign companies. Article 2 of Decree Law 2564 states that the aforementioned principle will operate if the state of the nationality of the foreign aerial company grants the same right to Chilean aerial companies.</p> <p>The inspiring principle of the Chilean law in this subject is the principle of international reciprocity. Law 18916, Aeronautical Code, stipulates freedom of circulation within the national territory for all Chilean airships, subject only to restrictions imposed by law. Circulation of foreign civil airships are subject to Chilean law and treaties where Chile is part thereof.</p> <p>The Aeronautical Code determines what kind of vessels may be registered in Chile:</p> <ol style="list-style-type: none"> (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

Sector	Nature of Exception (e.g. prohibition, limitation special conditions and special screening)
	<p>belong to Chilean natural persons or legal entities;</p> <p>(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</p> <p>(4) the aeronautic authority may register in Chile airships of foreign natural persons or legal entities, provided that they hold or perform in the country some permanent job, profession or industry, and also those operated, in any form, by Chilean air transport companies.</p>
Media	<p>Limitation on broadcasting grants. Law N 18.838, National Television Council Law and Law 18168. General telecommunication Law, state that television and radio broadcasting grants will be approved only with respect to Chileans older than 21 years old and legal entities formed under the Chilean law and established in Chile. Their chairmen, directors, managers administrators and legal representatives, must be Chilean.</p>
Media Press News Agency	<p>Limitations on ownership and management. Law 16643 on Advertising Abuses, stipulates that owners of any newspaper, magazine or periodic writing, whose editorial address is located in Chile, or national news agency, must be Chilean with domicile and residence in Chile.</p> <p>If such owner or concessionaire is a corporation or community, it will be considered to be Chilean provided that 85% of its equity or community rights belong to Chilean natural persons or legal entities. Legal entities that are partners or form part of the proprietary community or corporation, require also that 85% of its capital be held by Chileans. The Director, and those who replace him, must be Chilean and be domiciled and reside in the country. The nationality requirement will not apply to technical or scientific magazines, publications edited in foreign languages and international magazines printed in Chile and distributed in the country and abroad, even if their editorial address is in Chile. Neither will it will apply to foreign Missions accredited in Chile.</p> <p>To begin operations, newspapers, magazines and periodic writings, must submit a written declaration to the Director of the National Library or to the Division of Social Communication of the Government.</p>
Insurance Services	<p>Reserved to Chileans. Executive Decree 251 on insurance companies, corporations and stock exchange, states that business of insuring and reinsuring risks on a policy basis, may only be performed in Chile by national insurance and reinsurance corporations. Notwithstanding the above, any natural person or legal entity may freely contract abroad all kinds of insurance, except those that are compulsory according to law.</p>
Acquisition of frontier or border land	<p>Decree Law N 1939 states that only Chilean individuals or legal entities can obtain, through rent or by any other title, property within fiscal territories situated at a distance of up to 10 kilometers measured from the border (Article 6). On the other hand, Article 7 of the same Decree prohibits, for reasons of the national interest, the acquisition of the ownership of landed property situated on the frontier zones, by the citizens of the bordering countries where similar prohibitions or restrictions apply to Chilean citizens. This last aspect was modified through Law N 19.256 of 1993, which empowers the President of the Republic to exempt, through the Supreme Decree based on reasons of national interest, to expressly nominated citizens of the bordering countries affected by this prohibition and authorize said persons to acquire or transfer the ownership of property or other rights to determined properties situated on the frontier zones.</p> <p>Fiscal real estate located up to a distance of 10 km from the frontier, can only be acquired in property, leasing or in any other manner by Chilean natural or legal entities.</p> <p>The same rule applies to fiscal real estate located up to 5 km from the coast. This</p>

Sector	Nature of Exception (e.g. prohibition, limitation special conditions and special screening)
	<p>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.</p> <p>In no way may fiscal shore land, within a strip 80 metres 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 metre strip may be transferred to Chilean legal entities for non-profitable purposes, whose objective is to spread and cultivate letters or arts. To tax or transfer such land, totally or partially, is forbidden.</p> <p>Forestry reserves, National Parks and fiscal grounds whose occupation and work in any way compromises its ecological balance, may only be used or granted for use to State organizations or legal entities of private law, for non-commercial purposes (corporations and foundations exclusively), to preserve and protect the environment. Frontier real estate, for reasons of national interest, may not be acquired (ownership, other real rights, possession or tenancy) by native citizens of bordering countries. This prohibition extends to legal companies or entities with headquarters in the bordering country or if 20% or more of its capital belongs to citizens of the same country or in whose effective control it may be found.</p> <p>Exception: In reason of national interest, a well-founded authorization from the President of the Republic is required through an Executive Decree. This authorization expressly and nominatively exempts native citizens of a bordering country, either for acquiring or transferring ownership and other real rights, or possession or tenancy of said real estate.</p>

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

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

4. REPATRIATION AND CONVERTIBILITY

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

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

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

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

2. Brief description of the foreign exchange regime.

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

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

While all and any individuals and legal entities may enter into and perform foreign exchange transactions, this may seem at odds with Chile's exchange control system. The application of the Chilean exchange control system consists of numerous regulations enacted by the Central Bank, all of which form exceptions or restrictions to dealings in foreign currency.

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

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

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

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

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

5. ENTRY AND SOJOURN OF PERSONNEL

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

Short and long-term contracts for foreign personnel require compliance with certain special procedures. Besides a valid passport, a health certificate, a certificate issued by the local police and a contract visa are required.

Applicants interested in obtaining a resident on contract visa should apply to the Chilean Consulate in the applicant's country. However, this kind of visa can also be obtained in Chile. It is granted to foreigners and their families for up to a two-year period, renewable in Chile. The employer must be domiciled in Chile. The contract must contain a special clause whereby the employer undertakes to pay the return fares for the foreigner.

Temporary entry is defined in the Chilean legislation as a stay less than 90 days, without the intention of immigration or of participation in the labor market. Visas for temporary entry are simple to obtain and the information for it is available in Chilean Consulates abroad. For periods of more than 90 days and when the presence of a person is justified in the country, that person will get a renewable temporary residence for one year. 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.

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

See section B(5)(4) below.

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

See section B(5)(4) below.

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

The Labor Code

The Labor Code contains the main regulations about labor relations.

In general, foreigners working in Chile are subject to the same laws as Chilean employees. Notwithstanding the above, the Chilean nationality is demanded for chairmen, managers and the majority of directors or administrators in the following legal regulations:

Decree Law 3059 on Merchant Navy; Law 18.838 on the National Council of Television; Law 16.643 on Advertising Abuses; and

Law 18.916, Aeronautic Code. Likewise, the Navigation Law sets forth that in order to hoist the national flag, the Captain, Officers and crew of the vessel must be Chilean.

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

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

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

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

There are three broad types of individual contracts:

(a) Indefinite contract

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

(b) Fixed tenure contract

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

(c) Contract for specific work or service

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

The collective contract stems from the possibility of collective negotiation to which employees are legally entitled and are defined by law as that carried out between one or more with one or more unions or employees that decide to negotiate collectively, or combinations thereof, with the purpose of establishing even working and compensation conditions for a determined period of time. Collective contracts must exist

in writing and cannot have a duration of less than two years. Furthermore, the law establishes the minimum topics they must contain. In addition, the employees may negotiate collective agreements to complement the collective contracts. These agreements are not subject to special procedures and do not grant the prerogatives of formal collective negotiation.

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

- by mutual consent;
- by resignation of the employee.
- by death of the 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 Chilean pesos \$58,900, which is approximately US\$147.

The amount of the company's net income distributed to the employees is considered to be a part of the payment. For these purposes, the employer may choose between the following alternatives:

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

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

Law N 19.069 on Labor Unions

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

6. TAXATION

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

Taxes can only be created by law. The Chilean tax system may be separated into taxes related to foreign trade, which are supervised by the National Customs Service (the Service) and, on the other hand, internal

taxes which are supervised by the Internal Taxes Service (Servicio de Impuestos Internos, hereinafter 'SII'). With regard to the former, the Service can only verify if exported goods actually correspond to those declared in the respective documents. Concerning imports the service collects the respective customs duties.

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

I. Internal taxation

Comprises several taxes, the most important of which are:

(a) Income tax

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

- First Category Tax which affects capital income, business, agriculture, mining and transport.
- Second Category Tax which affects individual's work income.
- Global Complementary Tax, hereinafter GCT, which affects all individual's income from any source.
- Additional Tax which affects incomes of persons or entities who are not domiciled in Chile. It is a withholding tax of 35%.

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

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

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

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

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

(b) Value Added Tax

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

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

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

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

Actual taxpayers are, therefore, final consumers of either goods or services, because they don't sell goods or services.

Imports of capital goods, brought into the country as foreign investment under Decree Law 600, are not subject to VAT, whenever these goods are not included in a list made by the Ministry of Economy. Investors as well as receiving companies are subject to this exemption.

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

(c) Real Estate Tax

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

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

(d) Stamp Tax

All documents which contain money loans operations (including foreign loans), are subject to this tax. The tax varies from 0.1% to 1.2% according to the term agreed in the respective operation. This rate is calculated considering the amount involved in the operation.

To longer terms correspond 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, as Chapter XIV. If investors choose one of these two ways, they shall pay their taxes under the provisions of the common system.

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

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

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

Related to other kinds of taxes, under Decree Law 600, the holders of foreign investments shall be entitled to have 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

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

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

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

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

8. CAPITAL EXPORTS

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

For repatriation of investments made in Chile, see answer contained in section B0(4)(1) above.

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

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

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

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

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

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

9. INVESTOR BEHAVIOUR

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

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

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

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

There is no price control in Chile.

On the field of monopolies and antitrust, rules Decree Law N0 211 of December 1973, which declares against the law any act or agreement oriented to restrict free competition inside of the country made through price fixing arrangements, quotas of production, activities oriented to restrict production, transport or distribution or market areas.

It is also forbidden to interfere with free competition through contracts, negotiations or agreements oriented to reduce or stop production or through exclusive agencies for distribution of specific articles manufactured by different industries.

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

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

Regulations about patents, trademarks and industrial model rights are regulated through Law No019.039, 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.

A- Patents

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

Some specific items may not be patented, for instance:

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

B- Trademarks

The registration of a trademark, national or foreign, grants ownership for 10 years renewable for consecutive ten-year periods.

The items granted are classified and trademarks must be registered in each applicable group of items listed.

C- Industrial Models

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

Industrial property rights may be transferred through a public deed.

Chile signed the International Convention for the Protection of Industrial Property (The Paris Convention). The Paris Convention came into force in Chile 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. 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 favoured by all international conventions subscribed and ratified by Chile.

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

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

Laws/Regulations	Application and Function
Political Constitution of the Republic of Chile, 1980	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>

Law about Expropriatory Procedures, Decree Law N° 2186

This law regulates all the aspects related with expropriatory procedures, indemnification, immediate effects of expropriation, determination of indemnification, indemnification payment.

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

There have not been relevant expropriations during the last five years in Chile.

2. SETTLEMENT OF DISPUTES

1. Description of all means of dispute settlement and processing of grievances existing under laws, regulations or administrative procedures to which foreign investors have recourse.

List of agencies responsible for dispute settlement and addresses and telephone/fax numbers of these agencies.

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

- (a) Judiciary Litigation, where the competent authority is the Judiciary Power.
- (b) Arbitral Procedures, in these cases the judge is a private arbitrator appointed by the parties in conflict or by the Judiciary Power. The material enforcement of the sentence is in the hands of the Judiciary Power. These procedures are applicable to certain matters, specially those related to legal controversies about corporate issues.

The constitutional rights are protected by a special recourse named Protection Appeal. This appeal 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 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 Decree Law 600 mechanism and recipient enterprises of these investments, may use this recourse.

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

2. Signatory or accession to the ICSID Convention.

Chile signed the ICSID Convention on 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.

Chilean Economic Policy generally does not provide major incentives to foreign or domestic investment. Notwithstanding the above, foreign investors and receiving companies can enjoy the tax concession of VAT (Value Added Tax: 18%) for capital goods that form part of a foreign investment project, formally agreed to with the State, as provided in Decree Law 600. These goods must be included on a list that is to be established by decree and issued by the Ministry of Economy.

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

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

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

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

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

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

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

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

Bilateral investment treaties

In force:

Argentina, Denmark, France, Italy, Malaysia, Norway, People's Republic of China, Spain Croatia, Ecuador, Finland, Sweden, Czech Republic, United Kingdom, Romania, Ukraine, Paraguay, Portugal and Venezuela.

Approved by congress:

Belgium, Bolivia, Brazil, Uruguay, Poland.

Signed agreements

Cuba, Germany, Hungary, Philippines, Switzerland, Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua, Panama, Austria, Greece, Hungary, The Netherlands, Australia, Korea and South Africa.

Under negotiation:

New Zealand, Peru, Russian Federation, Singapore, Haiti, Dominican Republic, Latvia, Slovenia, Indonesia, Thailand, Vietnam, Israel, Egypt, Morocco, Tunes and Turkey.

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 favoured nation are consecrated;
- the principle of subrogation in benefit of the entities which have insured the investor is included; and future investments and also those made prior to the treaty are protected, but in the latter case, in reference to controversies arising, after the agreement goes in effect.

Regional or sub regional investment treaties

Not applicable.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Inward investment

In the last years, foreign investment into Chile has experienced a permanent increase, as the result of political and legal stability plus safety business environment and qualified human resources. In the last years, the mining sector has been the principal recipient sector of foreign investment flows. Mining sector success is the result of legal safety and comparative advantages as high degree of education of mining workers. Also, services and industry have experienced in the last years considerable growth as foreign investment recipient sectors, due to an open economy and well educated labor force.

Outward investment

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

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 countries/economies that are sources/receivers of FDI over recent years.*

Sources of FDI

Foreign investment materialized in Chile comes from 60 countries. Major countries with change to FDI investment through Decree Law 600, for the period 1974-1998 are:

United States	US\$10,879.9m
Canada	US\$5,201.2m
Spain	US\$3,674.5m
United Kingdom	US\$1,856.9m
South Africa	US\$1,341.1m
Australia	US\$1,259.2m
Japan	US\$1,153.8m
The Netherlands	US\$956,1m
Finland	US\$514,2m

Other APEC economies

New Zealand	US\$135,9m
People's Republic of China	US\$82.2m
Mexico	US\$55.5m
Papua New Guinea	US\$46.5m
Korea	US\$24.4m
Malaysia	US\$22.9m
Peru	US\$22.5m
Singapore	US\$4.3m

Destination FDI

Argentina	US\$9,091m
Colombia	US\$4,408m
Brazil	US\$2,776m
Peru	US\$2,562m
Cayman Islands	US\$1,096m
Panama	US\$567m
Bolivia	US\$366m
Channel Islands	US\$331m
British Virgin Islands	US\$306m
Venezuela	US\$296m
United States	US\$274m

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.

The Chinese government has made strategic arrangements on further expanding opening-up and the utilization of foreign investment. China will continue to highlight FDI as priority in its effort to utilize foreign investment more actively, rationally and effectively. It will take the following measures in order to reach that goal:

I. To further optimize the industrial structure of foreign investment. In light of the national industrial policies and the need of adjusting and upgrading industrial structure, China will encourage foreign investment in agriculture, hi-tech and basic industries, infrastructure, environmental protection, and export-oriented industries. Besides, China will actively direct foreign investment into technological renovation of traditional industries and old industrial bases, and into those labor-intensive projects consistent with industrial policies to bring China's comparative advantages into full play.

II. To continuously open up more areas to foreign investment and adapt to the needs of China's economic development and the rules of relevant international economic organizations. China will further open up competitive industries to foreign participation and strive to increase foreign investment in petrochemical and building industries. Services sector has been and will be progressively opened up, and pilot projects concerning the development of tourist resources and maritime transportation will be vigorously implemented. China will also expand the coverage of pilot projects on internal trade, foreign trade and travel agencies, further open up accounting, legal and consulting services, air transport and agent service to foreign participation. Pilot projects on financial and telecommunication services will be carried out in a progressive and measurable fashion and will be monitored by complete and effective regulatory regimes to be set up soon.

III. To rationalize the geographical distribution 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. At the same time, positive initiatives will be introduced to guide and encourage foreign investment into the central and western parts of the country. For industries and projects which have been approved by the state and on which the inland areas enjoy real advantages on, inland provinces, autonomous regions and municipalities may enjoy preferential policies applicable to projects listed in the encouraged category of the *Industrial Catalogue Guiding Foreign Investment*. Besides, these regions may enjoy greater flexibility in terms of establishment and extent of market openness for projects either restricted by the country or with limited foreign equity caps. The government will put some projects in agriculture, water conservancy, transport, energy, raw materials and environmental protection in the central and western regions, giving them the opportunity to attract foreign capital. The government will also increase support in terms of domestic supporting funds or other measures. The military-turned-civilian enterprises and large state-owned enterprises will be encouraged to use foreign capital for technical renovation. When foreign invested entities in the east re-invest in the central and western regions in projects with 25% or more of foreign capital, the new ventures will be regarded as foreign invested enterprises and entitled to all preferential treatment for foreign invested enterprises. In principle, sectors opened on trial basis and pilot projects permitted by the state should proceed in the east and central and western regions at the same time. Upon approval by the state, provincial capitals may experiment on the opening of internal and external trade and tourism.

IV. Foreign investment through multiple channels and by various means, and to implement the strategy of investment diversification. While continuing to draw capital from Hong Kong, China; Macao; Chinese Taipei; and Southeast Asia, we will work harder to absorb investment from Japan, the EU and other developed economies or regions in North America. By way of internationally prevailing investment models, we will continue to establish foreign invested share-holding companies and franchising projects and to experiment on the use of operating rights or rights to proceed in attracting foreign investment. Processing and compensation trade will be vigorously pursued to bring about high-range products with better economic returns. We will encourage large and medium-sized state-owned-enterprises to attract foreign capital by various means to carry out asset reorganization, tap asset stocks and to improve operating and management skills. Small state enterprises and collectively owned enterprises will be allowed to set up equity/contractual joint ventures or be offered for sale. Private entities will also be permitted to use foreign capital in their economic development.

V. To absorb and guide investment of multinational corporations with active and bold steps. With clear priorities, we will encourage cooperation between large state enterprises and transnational companies to promote the development of newly emerging and pillar industries. Similarly, China will encourage the establishment of joint research and development centers, with input from multinationals, to enhance China's capability of technology absorption and innovation. China hope, by cooperating with multinational corporations, related enterprises and industries will be well developed.

VI. To ensure successful operation of existing foreign invested enterprises in an earnest manner. Services to foreign invested enterprises will be improved to help them overcome all sorts of difficulties and problems in production and operation, and necessary credit support to them will be provided according to principles of credit provision. The Government will assist Chinese partners in joint ventures to effectively raise capital from the capital market by way of state asset stock reorganization, share and bond issuance and establishing investment fund, so as to enable Chinese partners to obtain the sources necessary for their share of investment.

VII. To improve investment environment and strengthen the administration of foreign invested enterprises according to relevant laws. While further improving the hardware environment, we should take major measures to optimize the software environment. Efforts will be primarily directed to the following aspects:

- Perfecting the framework of foreign-related economic laws. In light of the requirements of the socialist market economic system, we will, taking international rules and relevant agreements as a reference, accelerate the revision of regulations, and improve the legal framework governing foreign investment.
- Resolutely stopping all forms of inappropriate inspection, charges, apportionment and fines on foreign-funded enterprises. On the basis of rectifying all forms of charges, regulations will be formulated to clearly define items and standards of charges and introduce a declaration and regulation system, to make sure that competent entities will only collect charges according to law. These regulations will work both ways: to ensure the collection of legitimate charges or fees on one hand, and to give enterprises the legal basis for refusing unreasonable charges on the other.
- Concrete steps will be taken to ensure business autonomy of foreign invested enterprises and protecting the legitimate rights of all investing partners and workers from infringement according to relevant laws.
- Improving efficiency of government agencies, reducing management tiers and maintaining the openness and transparency of systems and policies. In conjunction with the deepening reform of investment and financing systems, the approval procedures will be revised for foreign-funded projects and examination procedures streamlined. The reform of customs port management will also be accelerated and improved.
- Accelerating the development of a uniform, open, competitive and orderly market, granting national treatment to foreign invested enterprises and severely cracking down on smuggling, counterfeiting, tax rebate fraud, exchange arbitrage and infringement of intellectual property rights.
- Strengthening supervision according to relevant laws and optimizing the annual joint inspection mechanism for foreign invested enterprises.

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 major 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 Cooperative Joint Ventures and its implementing regulations;
- Law of the People's Republic of China on Chinese-Foreign Cooperative 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;
- Provisional Regulations on Terms of Operation for Chinese-Foreign Equity Joint Ventures;
- Provisions for the Contribution of Capital by Parties to Chinese-Foreign Equity Joint Ventures;
- Provisional Regulations on the Ratio of the Registered Capital to the Total Amount of Investment of Chinese-Foreign Equity Joint Ventures;
- Regulations of the State Council on Encouraging Foreign Investment;
- Regulations of the People's Republic of China on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises;
- Regulations of the People's Republic of China on Labor Management in Chinese-Foreign Equity Joint Ventures;
- Measures of People's Republic of China on Control over and Taxation for Import and Export Commodities of Foreign invested enterprises;
- Provisional Regulation of Ministry of Foreign Trade and Economic Cooperation (MOFTEC) on Certain Issues Concerning the Establishment of Companies Limited by Shares with Foreign Investment;
- Company 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-funded enterprises in China fall into three categories: Chinese-foreign equity joint ventures, Chinese-foreign cooperative 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 capital. Each party to a joint venture may contribute cash, capital goods and other materials, as well as industrial properties, know-how and land use rights as its investment in the venture. The highest authority in a joint venture is the board of directors. 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 cooperative joint ventures are also termed as Chinese-foreign contractual joint ventures. Parties to such a venture shall agree in their cooperative venture contract on the conditions for investment, the ratio of the distribution, the sharing of risks, the form of operations and management and the ownership of the assets at the time of the termination of the venture. A cooperative joint venture may take the form of a limited liability company or an economic entity without having legal person status. Parties to the cooperative venture may not share risks and profits in proportion to their contribution to the total investment. The form of contribution, the amount of investment and the rights and responsibilities of all parties to the cooperative venture shall be specifically laid out in the contract. The profits as well as rights and liabilities of the parties shall be treated in accordance with the provisions of the contract. Cooperative joint ventures are more flexible than equity joint ventures.

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 extend 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 “Provisional Regulations on the Guidelines of Foreign Investment”.

Sector	Guidelines/Conditions
Telecommunications (Yes)	Pilot projects on telecommunication services will be carried out in a progressive and measurable fashion and will be monitored by complete and effective regulatory regimes to be set up soon.

Sector	Guidelines/Conditions
Media (Yes)	More foreign banks will be 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 will also be improved.
Transport (Yes)	Investment in transport infrastructure is encouraged, auto transport allowed, sea transport and air transport restrained (a) Agreed by the relevant industrial departments and then submitted for approval by MOFTEC. (b) Limit on the proportion of foreign investment: for sea transport, foreign investment proportion less than 49% of the total, for air transport, foreign investment proportion less than 35%.
Agriculture (Yes)	Encouraged by the government, especially explorative agriculture.
Foreign trade (Yes)	MOFTEC issued "Provisional Measures on the Establishment of Sino-Foreign Joint Venture Trading Companies" on a Pilot Basis in June 1996, which permitted foreign investors to establish Joint Venture Trading Companies in the field of foreign trade.
Tourist agency (Yes)	State Tourism Bureau and MOFTEC issued Provisional Measures on the Establishment of Sino-Foreign Equity Joint Venture Travel Agencies on a Pilot Basis in December 1998, which permitted foreign investors to establish Joint Venture Travel Agencies on pilot basis.

(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-funded enterprises are set up:

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

Copies of the relevant documentation can be obtained from the contacts listed in Section 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 Foreign Trade and Economic Cooperation (MOFTEC). Provincial and municipal commissions of foreign trade and economic relations. Agencies that assist investors to go through the review and approval formalities are Foreign Investment Service Center, consulting company and law firms.

<u>Contact Points of MOFTEC</u> Sun Peng, Qiu Guanglin,	<i>Foreign Investment Administration Department</i> Ministry of Foreign Trade and Economic Cooperation No. 2, Dong Chang An Street, Beijing, 100731, China Tel: (86 10) 6519 7301, (8610) 6519 7317 Fax: (8610) 6519 7322
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(e) Average period from the formal submission of all relevant/required documentation to final approval/rejection.

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

(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.

MOFTEC and its authorized agencies – local commissions of foreign trade and economic relations are responsible for dealing with appeals. Investors should first appeal to the original approval agency. If this fails, they may appeal to an agency at a higher level or MOFTEC 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).

MOFTEC 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, MOFTEC or local MOFTEC 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.

MOFTEC and provincial and municipal foreign trade and economic commissions are entitled to the responsibilities of administering foreign investment and supervising law enforcement (see section 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.

MOFTEC and provincial and municipal foreign trade and economic commissions and other law and regulation making departments often hold meetings or seminars to collect opinions from foreign investors.

(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 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 1, Nanwnazi Hutong, Nanheyan Da Jie, Dongcheng District, Beijing, 100006 Tel:	In charge of the examination and approval of land purchase.

Agency	Address/telephone/fax	Functions
	(86 10) 6512 4104Fax: (86 10) 6512 4104	
Regional city-planning administration departments.	e.g.: Beijing City-planning Administration Bureau Contact: Sun Chunlong 60, Nanlishi Lu, Xicheng District, Beijing, 100045Tel: (86 10) 2994Fax: (86 10) 6S53 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 4, Block 2, Shuang Yu Shu Nanli, Haidan District, Beijing, 100086Tel: (86 10) 6217 0718/6217 0738 Fax: (86 10) 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 Provisional Regulations of Guidance of Foreign Investment, foreign investment projects in the following areas are restricted:

- using technology that has already been developed in the PRC or introduced into the PRC, for which the existing production capacity in the relevant field can already satisfy domestic demand;
- experimenting industries of the State for absorption of foreign investment or under the monopoly industries by the State;
- exploring and exploiting rare or valuable mineral resources;
- industries subject to the overall arrangement and planning of the State; and
- other items stipulated as restricted by the State law and regulations.

Foreign investment projects are prohibited in following circumstances:

- jeopardizing national security or social and public interest;
- polluting environment, destroying natural resources or causing harm to public health;
- occupying large amounts of farm land and against the protection and exploitation of land resource, or

- harming the security and effectiveness of military appliances;
- manufacturing products with peculiar craft or technology which China owns; and
- other projects stipulated as prohibited by the State laws and regulations.

Laws or policies pertaining to the restricted sectors for foreign investment are, besides the above-mentioned guidance, mainly the Law of P.R.C. on Chinese-Foreign Equity Joint Ventures and its implementing regulations and the Law of P.R.C. on Wholly Foreign-Owned Enterprises.

Sector

- Construction and management of key water projects for comprehensive utilization of hydraulic resources
- Construction and management of city subways and light tracks
- Construction and management of public wharf facilities at port
- Construction and management of civil airports
- Coal mining and dressing by washing
- Construction and management of nuclear power stations
- Ethylene with an annual output of or exceeding 600,000tons
- Polyvinyl chloride resin
- Development and utilization of new technologies of tertiary oil recovery for the purpose of enhancing the rate of oil recovery.
- Construction and management of oil and gas delivery pipelines, as well as oil depots and oil wharves
- Manufacture of turbine compressor and combined power machine for the complete set of equipment for an annual output of or exceeding 300,000 tons of synthetic ammonia, 480,000 or more tons of urea, and 300,000 or more tons of ethylene
- Design and manufacture of civil airplanes
- Design and manufacture of aerial engines
- Design and manufacture of civil satellites
- Manufacture of payload of civil satellites
- Design and manufacture of civil carrier rocket
- Development and production of grain, cotton and oil seeds
- Construction and management of trunk railway lines
- Water transportation
- Air freight
- General aviation
- Automobiles and motorcycles
- Engines for automobiles and motor cycles
- Addictive narcotics drugs and psychiatric drugs
- Manufacturing of high-tech vaccines
- Ship-building industry
- Domestic Commerce
- Foreign trade
- Medical institutions
- Printing and publishing business
- Producing, publishing, distributing of audio and visual products

Nature of ExceptionWith Chinese partner taking the holding or leading position in equity.

Sector

- Construction and management of feeder railways, local railways, as well as bridges, tunnels and ferries thereof
- Mining of copper, lead and tin
- Mining of aluminum
- Manufacture of air communication control equipment
- Processing and export of precious varieties of logs
- In shore and continental-river fishing
- Cultivation of Chinese medicinal crops
- Cultivation of Chinese medicinal crops

- High-imitation chemical fibers and special fibers such as aryl fibers, carbon fibers
- Fiber level and non-fiber use polyester, acrylic fibers and polyurethane fibers
- Entry and exit transportation by automobiles
- Non-ferrous metal industry
- Thermal-power equipment
- Hydropower equipment
- Nuclear power set
- Power transmission and conversion equipment
- Crawler dozers below 320 horse power, wheel-type shovels loaders, and car cranes below 50 tons
- Satellite pilot and positioning receivers and key parts thereof
- Exploration, exploitation and processing of diamond, other natural gems and precious non-metals
- Inspection, examination and authentication business of import and export commodities.

Nature of Exception

With 100% foreign ownership not allowed

(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.

- According to document No.29 of 1998 promulgated by the State Administration of Foreign Exchange, 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-funded 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 investment 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.

- According to document No.92 of 1998 promulgated by the State Administration of 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.
- According to No.21 and No. 10 of 1998 promulgated by the State Administration of Foreign Exchange, 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.

- According to Article 26 of “Regulations on Exchange Control of the People’s Republic of China”, in case of expiration of foreign-funded 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.

China took a significant further step in reforming its foreign exchange administration system in 1994. It accepted Article No. 8 of IMF Agreement in 1996, and realized free convertibility of RMB under current account. Now it has established a framework of foreign exchange administration system described as “free convertibility of RMB under current account and strict control over exchange under capital account”.

(1) Free convertibility of RMB under current account

A. The adoption of selling foreign exchange income to banks for exchange under current account. Foreign exchange income under current account of organizations within China, must be transferred back to China and sold to designated foreign exchange banks in full amount and at market rates. All foreign invested enterprises and some of domestic enterprises satisfying certain conditions are allowed to maintain a certain amount of recurring foreign exchange income and open foreign exchange settlement accounts under current account at designated foreign exchange banks. In addition, Chinese-funded institutions may keep part of their non-trade foreign exchange income and open foreign exchange accounts.

B. Abolishing restrictions over foreign exchange payment under current account. Needs for foreign exchange under current account for organizations within China can be satisfied by purchasing foreign exchange at designated banks with RMB at market exchange rate with valid certificate or by paying from foreign exchange accounts. Individuals who need foreign exchange can purchase foreign exchange directly at banks with valid certificate within the prescribed limits. Any purchase beyond the limits shall be made at banks after authenticity audit at foreign exchange administrations with valid certificates.

From 1 January 1999, the customs examination network system for import and export declaration has been effected, thus facilitating the authenticity audit of sale, purchase and payment of foreign exchange under import and export transactions of enterprises.

(2) Strict administration on foreign exchange under capital account

Planning administration on foreign debt

Foreign debt is incorporated into the State planning administration. 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-funded 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.

(3) A continuously improving mechanism to form RMB exchange rates

Since 1 January 1994, the official exchange rate and market exchange rate have been merged, marking the set-up of a single, managed floating exchange rate based on market supply and demand. Each day, the People's Bank of China announces the medium exchange rate of RMB against major currencies – US dollar, HK dollar and Japanese Yen – according to the weighed average rate formed in the foreign exchange market on the last business day. All the designated foreign exchange banks calculate the cross-rates between RMB and other major currencies according to the basic exchange rates announced by the People's Bank of China, while taking into account the prevailing rates at the world exchange market. They can determine and make public the buying and selling prices for their clients within the margin set by the People's Bank of China. With a view to maintaining a stable RMB exchange rate and the equilibrium of the balance of payment, the People's Bank of China adjusts foreign exchange supply and demand by buying and selling foreign exchange at market.

On 4 April 1994, China Foreign Exchange Transaction Center was set up, forming an inter-bank foreign exchange market. The major transaction parties are designated foreign exchange banks. Before the end of 1998, foreign exchange swap centers in different cities of China continued to operate, mainly to provide service to foreign invested enterprises. On 1 December 1998, foreign exchange swap transactions came to an end. Organizations within China sell and purchase foreign exchange through designated foreign exchange banks (a kind of retail business of foreign exchange market).

(4) A continuous improvement on the macro administration system on 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, which consists of collaboration of indirect reporting through financial institutions with aggregate, 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-funded 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.

(4) According to document No. 2 issued by the State Foreign Exchange Administration, it is forbidden to purchase foreign exchange to invest in overseas equity or credit. Repurchasing stocks and credit in foreign currencies by purchasing foreign exchange is forbidden either.

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.

None

(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-funded 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-funded 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-funded 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-funded 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-funded 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-funded enterprises must make social insurance of endowment, medical treatment, unemployment, injury at work, bearing and so on for their employees. Enterprises and employees must pay full basic endowment insurance fee to designated social insurance organizations in time according to rules issued by local governments. Enterprises should pay unemployment insurance fee to unemployment insurance organizations of the labor 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 labor 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	According to "the Provisional Regulations of the PRC on Value-added Tax" promulgated by the State Council on 13 December 1994, value-added tax is levied over the sales of goods, provision of processing, repairs and replacement services, and the importation of goods within the territory of the PRC. For sales or importation of goods, there are two tax rates. One is 13%, applicable to 19 items of goods which are specified in the Regulations, for example, grain, cooking oil, running water, natural gas, books and magazines, fertilizer, etc. The other is 17%, applicable to all the rest of goods. For provision of processing, repairs and replacement services, the rate is also 17%.
Consumption tax	According to "the Provisional Regulation of the PRC on Consumption Tax" promulgated by the State Council on 13 December 1993, consumption tax is levied over the production, subcontracting for processing and the importation of consumer goods as certain items of tobacco, alcoholic drinks

Taxation arrangements	Summary
	<p>and alcohol, cosmetic, skin-care and hair-care products, precious jewellery 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. One of the purposes of consumption tax is to adjust the tax rate for cigarette and alcohol which was originally 60%-70%. The value-added tax for these two items now is only 17%. So by collection of consumption tax, the tax burden for cigarette and alcohol basically remains unchanged.</p>
Business tax	<p>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. At present, nine tax lines are installed with tax rates ranging from 3% to 20%.</p>
Enterprise income tax	<p>According to "Income Tax Law of the People's Republic of China for Foreign invested enterprises and Foreign Enterprises" and its implementation rules, any enterprise with foreign investment 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 income tax on foreign invested enterprises and income tax which shall be paid by foreign enterprises on the income of their establishments or places set up in China to engage in production or business operations shall be computed on the taxable income at the rate of 30%, and a local income tax shall be computed on the taxable income at the rate of 3%. With a view to encourage foreign investment, we have stipulated in the above tax law favorable tax treatment for foreign-funded enterprises, mainly as the following:</p> <p>Foreign invested enterprises can apply, according to their locations of different regions and sectors and industries they engage in, for reduced income tax levied at the rates of 24% or 15%. Foreign invested enterprises can apply for, according to their locations of different regions and sectors and industries they engage in, and started from the first profit-making year: income tax exemptions in the first and the second years and a 50% reduction in the third to the fifth years, or income tax exemptions in the first year and a 50% reduction in the second and the third years, or income tax exemptions in the first to the fifth years and a 50% reduction from the sixth to the tenth years.</p> <p>Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into that enterprise by increasing its capital, or uses the profit as capital investment to establish other foreign invested enterprises to operate for a period of not less than 5 years shall, upon approval, be refunded 40-100% of the income tax already paid on the reinvested amount.</p> <p>The exemption or reduction of local income tax on any enterprise with foreign investment which operates in an industry or undertakes a project encouraged by the State shall, in accordance with the actual situation, be at the discretion of the people's government of the province, autonomous region or municipality, directly under the central government.</p> <p>In addition, any foreign enterprise which has no establishments or place in</p>

Taxation arrangements	Summary
	<p>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. In order to attract foreign investment and introduce advanced technologies, we offer some tax exemption and reduction treatment as stipulated in the tax law mainly as the following:</p> <ol style="list-style-type: none"> 1. The profit derived by a foreign investor from an enterprise with foreign investment shall be exempted from income tax; 2. Income from interest on loans made to the Chinese government or Chinese State banks by international financial organizations shall be exempted from income tax; 3. Income from interest on loans made at a preferential interest rate to Chinese state banks by foreign banks shall be exempted from income tax; and <p>Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communication industries, agricultural, forestry and animal husbandry production, and the development of important technologies may, upon approval, be levied at the reduced rate of 10%. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.</p>
Individual income tax	<p>The individual income tax on foreign nationals working in the PRC is levied in accordance with “the Individual Tax Law”.</p> <p>When levying individual income tax on income from wages and salaries, a monthly deduction of 800 RMB Yuan shall be made. That part of monthly income in excess of 800 RMB Yuan shall be taxed at progressive rates in seven tiers. Monthly income of 800 RMB Yuan and less shall be exempted from tax; that part of monthly income from 801 to 1500 RMB Yuan shall be taxed at 5%; from 1501 Yuan to 3000 RMB Yuan, 10%; from 3001 to 6000 RMB Yuan, 20%; from 6001 to 9000 RMB Yuan, 30%; from 9001 to 12,000 RMB Yuan, 40%. However, since 1987, the above-mentioned taxable individual income has been enjoying a 50% individual income tax reduction.</p> <p>For income from compensation for personal services, royalties or lease of property, a deduction of 800 RMB Yuan shall be allowed for expenses if the amount in a single payment is less than 4000 RMB Yuan; for single payments in excess of 4000 RMB Yuan, a deduction of 20% shall be allowed and the balance after deduction shall be taxed by 20%.</p> <p>Individual income taxes of 205 will be levied on interest, dividends, bonuses and other kinds of income on each payment.</p>
House property tax	<p>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-funded enterprises, foreign enterprises, foreign nationals, overseas Chinese, compatriots from Hong Kong, China; Macao ;and Chinese Taipei at a rate of 1.2% on an annual basis according to standard house price or at a rate of 18% in line with the rental of housing property.</p>
Other taxes	<p>In addition, foreign investment enterprises are subject to land appreciation tax, resource tax, stamp tax, and slaughter tax.</p> <p>China has concluded Agreements for Avoidance of Double Taxation with 60 economies, and 51 of the agreements have come into effect.</p>

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).

Local content requirements for some industries are included in government policies, e.g. automobile.

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 country.

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 Planning Commission, the State Economy and Trade Commission, the Ministry of Foreign Trade and Economic Cooperation, the State Administration for Industry and Commerce.

In September 1993, the Law for Countering Unfair Competition was adopted and promulgated by the Standing Committee of the National People's Congress. The aim of the Law is to promote the healthy development of the socialist market economy, encourage and protect fair competition, and defend the rights and interests of operators and consumers. The Law has one chapter which lists all the acts of unfair competition, one chapter about the control and inspection of unfair competition acts by the concerned authorities, and one chapter about legal responsibility of operators who violate laws and regulations.

(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 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 1992, the State Council promulgated the Regulations on the Implementation of the International Copyright Treaty, providing specific regulations on protecting foreign authors' copyrights in accordance with the international levels of protection.

In 1993, China became a member state of the Convention for the Protection of Producers of Phonogram Against Unauthorized Duplication.

In 1993, China revised both its Trademark Law and the Rules for its implementation to expand the range of trademarks protected. All these regulations are consistent with the requirements of TRIPs.

In 1993, the Supplementary Regulations on Punishing Criminal Counterfeiting of Registered Trademarks were promulgated to further intensify punishment for such counterfeiting and other infringements.

In 1993, the Law on Combating Unfair Competition PRC came into force.

In 1994, China became a member state of the Patent Cooperation Treaty. The Patent Office of China is the agency dealing with cases involving the Treaty and performing international patent searches and preliminary examinations in China.

2. The law enforcement system for IPR in China

China has established a comprehensive judicature and administrative mechanism for enforcement:

(a) Any citizen, legal person or organization whose rights and interests are infringed may bring a lawsuit to the people's court and receive practical and effective judicial protection. The higher people's courts in provinces and cities have established IPR courts. A People's court is empowered to order the infringer to bear civil responsibility for the infringement. Furthermore, it is empowered to confiscate the infringer's illegal gains and/or adjudge the infringer to criminal detention or a fine. If the infringement of IPR constitutes a crime, the infringer's criminal responsibility is investigated and dealt with according to law.

When a people's court tries a case arising from IPR involving foreign nationals, it will handle the case in accordance with Chinese laws, relevant international conventions to which China is a party and the principle of equity and reciprocity.

(b) Administrative channels for IPR protection in China. In addition to judicature in accordance with international practices, China's system provides administrative channels for the protection of intellectual property rights. According to IPR laws and regulations, patent offices were established by various ministries and departments under the State Council, or by local governments. The State Copyright Administration and local copyright administrative organs were also established. Trademark administration calls for unified registration of trademarks by the various local governments. Trademark administrative departments have been established at the central, provincial, city and country levels. Recently China has further strengthened its efforts on the enforcement of IPR Protection and 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
<p>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. China has signed Bilateral Investment Protection Agreement with more than 90 economies by the end of year 1998.</p>	<p>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. 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.</p>

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

Not applicable.

2. SETTLEMENT OF DISPUTES

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

There are a number of means foreign investors are able to utilize. They are arbitration, conciliation and litigation.

(a) 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 ruling system is applied in arbitration. The Law has special provisions on foreign related arbitration that applies to all arbitration of disputes arising from foreign economic, trade, transportation or maritime matters.

With the promulgation of Arbitration Law in 1995, both China International Economic and Trade Arbitration Commission (CIETAC) 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.

(b) 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 judgement. 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 judgement. 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.

(c) Litigation

Foreigners, stateless persons or foreign organizations enjoy the same rights and obligations as Chinese citizens. Organizations when sue or be sued in a people's court. An intermediate people's Court has jurisdiction as courts of first instance over the cases with foreign factors. A people's court does not handle a case for which the disputing parties have concluded an arbitration agreement.

(d) Convention on the Settlement of investment Disputes Between States and Nationals of Other States

The Convention was signed and approved by the Government of China in July 1992. If there is any dispute concerning the amount of the compensation from nationalization or expropriation between foreign investors and the Chinese Government, the investors may bring the case to the ICSID for resolution.

Approved by the State Council, China signed, examined and approved MIGA in 1988.

(e) Bilateral Investment Promotion and Protection Agreements (BIPPA)

Since 1982, the first BIPPA was signed between China and Sweden; China has signed 90 BIPPAs with other economies by the end of 1998. All the BIPPAs 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

(f) The Regulations on Administrative Reconsideration

The aim of these regulations is to safeguard and supervise administrative agencies in exercising their functions and powers, prevent and correct any malfeasant or improper specific administrative act, and protect the lawful rights and interests of citizens, legal persons and other organizations.

According to Article 55 of these Regulations, foreigners, stateless persons, or foreign organizations enjoy the same rights and obligations as Chinese citizens, legal persons when engaged in administrative reconsideration. So if a foreign investor, company considers that a specific administrative act of an administrative agency has infringed upon its lawful rights and interests and it refuses to do such administrative acts, it may file an application to the competent administrative agency for reconsideration.

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.

Agency	Address/telephone/fax
China International Economic and Trade Arbitration Committee	East Beisanhuan Road, Beijing, 100028, ChinaTel: (86 10) 6466 4433Fax: (86 10) 6467 7335

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

China acceded to the ICSID Convention in 1992.

D. INVESTMENT PROMOTION AND INCENTIVES

1. *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.*

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 Department of MOFTEC.

Contact: Ms. Zhou Ming
Address: No. 2, Dong Chang An St., Beijing, 100731
Tel: (86 10) 65197886
Fax: (86 10) 65197839

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) Any productive enterprise with foreign investment scheduled to operate for a period of no less than 10 years shall, from the first profit-making year, be exempted from income tax in the first and the second years and allowed a 50% reduction from the third to the fifth year.
- (2) The productive enterprises established by foreign investors in China's open coastal economic areas can enjoy a preferential tax rate of 15%.
- (3) Importation of equipment for foreign-funded enterprises encouraged and supported by the State shall be granted tariff and import-stage value-added tariff exemption.
- (4) So long as a foreign-funded enterprise is subject to the category of Encouragement and category of Restriction (B) of the Catalogue, all the equipment imported for self-use within its aggregated investment, except for those listed in the Catalogue of Imports for Foreign-funded Projects not Entitled to Tariff Exemption, shall be exempted from tariff and import-stage VAT.

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.g. Shanghai Foreign Investment Commission	Room 1604, 55 Lou Shan Guan Road New Town Mansion, Shanghai, 200335, P. R. China Contact: Mr. Liang Gongjie Tel: (86 21)62753805 or 62752200-828/834 Fax: (86 21)62755190 Email: sfic@mail.shcei.co.cn
e.g. Xiamen Foreign Investment Commission	Building No.17, Zhenxing Mansion, Hu Bin Bei Lu, 361012 Xiamen, P. R. China Contact: Ms. Wen Xiaohong Tel: (86 592)5054856/5054865 Fax: (86 592)5054859 Email: xmfiec@public.xm.fj.cn

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

Agreement	Provisions
Friendship Commerce and Navigation Treaties	
<p>Bilateral Investment Treaties</p> <p>By 1998, China has signed Bilateral Investment Treaties with ten APEC members. They are Thailand, Singapore, Australia, Japan, Malaysia, Indonesia, Chile, New Zealand, the Republic of Korea and the Philippines.</p>	<p>The basic contents of the agreements are stated below.</p> <p>A contracting party shall grant MFN treatment to the investors from another contracting party.</p> <p>No contracting party shall take measures of expropriation, nationalization or other measures having the equivalent effects against investors of the other party unless the measures are for public purposes and reasonable compensation is indiscriminately granted in accordance with legal procedures.</p> <p>The two contracting parties shall guarantee the free transfer of capital and profit of investors from each other's country according to the respective laws and regulations.</p> <p>Disputes between the two contracting parties in connection with the interpretation and application of the agreement shall be settled through friendly consultations or through an ad hoc international arbitration tribunal. Disputes between investors of one contracting party and the other contracting party can be settled through the ad hoc international tribunal. However disputes are limited to those relating to the amount of compensation resulting from expropriation.</p>
<p>Regional or sub regional Investment Treaties</p> <p>The people's Republic of China became a party to the Convention on the Settlement Investment Disputes Between States and Nationals of Other States on 1 July 1992.</p> <p>Approved by the State Council, China signed.</p>	

Agreement	Provisions
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).

From January to December 1998, newly approved foreign-funded enterprises reached 19799, with 52.102 billion US dollars of contractual capital and 45.463 billion of paid-in investment. Although the Asian Financial Crisis has brought substantial impact on foreign investment in China, the country remains one of the most attractive places for investment in Asia as it enjoys political stability, sustained and sound national economic development and ever-improving investment environment. The Chinese government took macro economic adjustment measures in time to minimize the negative impact brought by the financial crisis and has received good result. By the end of last year, China altogether approved 324,620 foreign-funded projects, with US\$572.495 billion in contractual value and US\$267.109 billion actually in use.

In 1998, foreign investment was characterized by the following elements:

- Both contractual value and paid-in value increased and the latter set a new record, though the number of newly established foreign-funded enterprises fell.
- The average contract value of foreign capital continued to grow and industrial projects took a larger proportion of the total capital value.
- In the breakdown of investment sources, foreign investors from Asia showed a dramatic decrease in their investment while the investors from EU, the United States substantially increased.

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

Sources FDI:

The top five are: Hong Kong, China; and Macau; the British Virgin Islands; United States; Singapore and Japan

Destination FDI:

The top five are: Australia; New Zealand; Peru; United States; and Hong Kong, China

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 by:

- offering a level playing field to all investors, be they domestic or overseas, and to all types of investment;
- providing a world-class communication and transport infrastructure to facilitate business activities;
- keeping a low and simple taxation system;
- ensuring transparency in laws and regulations; and
- maintaining the rule of law and an impartial judicial system under which private ownership rights are guaranteed and protected.

In short, the HKSAR Government implements a proactive investment promotion programme to attract foreign investment into Hong Kong, China. The fruit of this policy can be seen in the sustained annual growth in external investment: 12.5% from 1994 to 1997. The total value of external investment in Hong Kong, China amounted to US\$95 billion in 1997. In 1998, the Heritage Foundation rated Hong Kong, China as the freest economy in the world for the fifth consecutive year since 1994.

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

The HKSAR Government highly values foreign investment in Hong Kong, China and pursues a free market economic policy. In his policy address to the then Provisional Legislative Council in October 1997, the Chief Executive reaffirmed the HKSAR Government's determination "to improve Hong Kong, China's position as a premier financial centre by maintaining a world-class supervisory regime without over regulation; by providing state-of-the art financial infrastructure and a well trained, adaptable workforce; and by maintaining the rule of law, a low and predictable tax regime, an open market and a level playing field".

The following statements from senior officials further elaborate on HKSAR Government's policy towards foreign investment :

In her speech at the dinner reception hosted by the Orange County World Affairs Council in Los Angeles in January 1998, the Chief Secretary for Administration highlighted the key attributes of Hong Kong, China's investment regime :

"What we ensure in Hong Kong, China is a level-playing field for both local and overseas players in the market place; an economy that operates within the framework of the rule of law and an independent judiciary which enjoys the confidence of the community and commerce; and a clean, politically-neutral civil service which believes it has a duty to maintain law and order and which regulates with a light but reassuring touch. We would like to keep the Government lean and small. The result is that we have an open, transparent and accountable system of government; a well-managed and well-regulated financial sector; and a reputation for playing by the rules."

In her speech at the Seminar on Economic Co-operation between the Hong Kong SAR, Shanghai and Osaka on 10 November 1997, the Secretary for Trade and Industry underlined HKSAR Government's commitment to uphold a free and open investment environment in Hong Kong, China :

“Hong Kong, China continues to practise a free trade and open market economic policy. We welcome businesses from all parts of the world to come to Hong Kong, China. As an open economy, we have no special approval procedure for foreign investments. We impose no conditions for admission. And we do not interfere with management of investments in Hong Kong, China. We also put no roadblocks before investment overseas by our own entrepreneurs or by others who wish to invest in other places through Hong Kong, China. It thus comes as no surprise that Hong Kong, China is the world’s fourth largest source of foreign direct investment and the largest external investor in the mainland of China.

As the world economy becomes increasingly globalized, Hong Kong, China believes the best way to attract and protect investment is to institute an investment regime that is free, open, transparent and stable. And these principles are firmly enshrined in the Basic Law, the constitution of the Hong Kong Special Administrative Region.

Rule of law is the vital guardian of a free and open investment regime, and the Basic Law stipulates the rule of law in Hong Kong, China.

Besides the rule of law, the practise of a level playing field is also vitally important to investors. In Hong Kong, China, anyone can start any legitimate business in Hong Kong, China – without hidden constraints, import duty or non-tariff barriers; without prejudice to the nationality of the owners of the business; be they Hong Kong, China residents, Mainland Chinese, Japanese or Americans; and without favouritism or partiality on the part of the Government. In Hong Kong, China, everyone has an equal opportunity to work, thrive and prosper.”

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

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

There are no special legislation, regulations and administrative guidelines regulating foreign investment in Hong Kong, China.

(2) Investment Review and Approval

(a) Details of proposals and sectors that are/are not subject to screening.

There are no approval requirements for the admission, screening or notification of foreign investment in Hong Kong, China.

(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) How to obtain application/approval forms required for screening purpose. Briefly summarise additional documentation that is required for review or approval processes.

Not applicable.

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

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 the appeal process 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 (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, and 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, and the nature of these processes.

Not applicable.

(k) Where applicable, the role for sub-national agencies in the approval process. List of the agencies (including their address and telephone/fax number) and their roles in the approval process (e.g. zoning, approvals of land purchase).

Not applicable.

2. MOST-FAVOURLED-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).

Not applicable. The open investment regime in Hong Kong, China offers a level playing field for foreign and local investors, on the basis of fairness and non-discrimination.

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

Hong Kong, China is a party to the Marrakesh Agreement Establishing the World Trade Organisation (WTO) and 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 exception (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	<p>The voting control of “unqualified persons” (essentially persons not ordinarily resident in Hong Kong, China) who hold ownership of commercial TV, subscription TV or video-on demand service licence companies is restricted to a maximum of 49% of the total voting control at a general meeting of the company. Upon the enactment of a new broadcasting ordinance, such restriction will be relaxed so that it will apply to “domestic free television programme service licences” only.</p> <p>As regards sound broadcasting licensees, the aggregate ownership of voting shares by “unqualified persons” in these companies is limited to a maximum of 49%.</p>
Banking	<p>Hong Kong, China has a three-tier banking system under which authorised deposit-taking institutions are classified into licensed banks, restricted licence banks and deposit-taking companies.</p> <p>For prudential reasons, the authorisation criteria for licensed banks differ between local and overseas applicants, in order to ensure the soundness and viability of the banking system and to maintain an adequate protection for the interests of depositors. Once licensed, all authorised institutions, whether local or foreign owned, are subject to the same supervisory regime.</p> <p>The entry requirements for foreign applicants as provided in the Banking Ordinance (Chapter 155) are set out below :</p> <p>(a) Banks incorporated outside Hong Kong, China may apply for a licence to operate a full licensed bank or a restricted licence bank in the form of a branch subject to the following conditions :</p> <ul style="list-style-type: none"> - Such banks may maintain (i) in only one building offices to which customers have access for the purpose of banking/deposit-taking business and/or other financial transactions (“offices” include automatic teller machines (ATMs) or similar terminal devices); and (ii) no more than two additional offices (other than ATMs or similar devices) to which customers have access for the purpose of any other types of business in a separate building or buildings. Such additional offices may consist of no more than one regional office and one back office. - The above condition does not apply to banks incorporated outside Hong Kong, China licensed before May 1978 in respect of full licensed banks and before April 1990 in respect of restricted licence banks.

Sector	Nature of Exception(s) to National Treatment
	<p>(b) Limited companies incorporated by banks outside Hong Kong, China may apply for a licence to operate as a full licensed bank, restricted licence bank or deposit-taking company in the form of a subsidiary with branching rights. In the case of an application for a full banking licence, the applicant must have been an authorised institution in Hong Kong, China for at least 10 years and be closely associated and identified with Hong Kong, China. Overseas banks may also acquire an existing locally incorporated bank with branching rights subject to the consent of the Hong Kong Monetary Authority (HKMA).</p> <p>(c) Banks incorporated outside Hong Kong, China may set up representative offices in Hong Kong, China, but such offices are prohibited from taking deposits and undertaking banking business in general.</p>
	<p>In addition, an authorised institution must appoint a chief executive and no less than one alternative chief executive, each of whom is subject to a residence requirement in Hong Kong, China.</p>

(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.

There are no limitations in Hong Kong, China 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 regulations in Hong Kong, China restricting 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 Hong Kong, China 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 Hong Kong, China, the monetary base comprises the Certificates of Indebtedness against which banknotes are issued, coins issued, the sum of clearing account balances held by banks with the 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. Since September 1998, the HKMA has undertaken to convert Hong Kong dollar in the Aggregate Balance into US dollar at the rate of HK\$7.75 to US\$1. The exchange rate under such Convertibility Undertaking will move by 1 pip (i.e. HK\$0.0001) per calendar day from 7.75 to 7.80 starting from 1 April 1999. It will take 500 days to complete the move, where the rate will stay thereafter. 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 Hong Kong, China 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.

Nationals of foreign countries can visit Hong Kong, China either visa-free or under visit visa/permits. During their sojourn in Hong Kong, China visitors are permitted to conduct legitimate business activities such as business negotiations and signing of contracts.

Foreign nationals need an employment visa to work in Hong Kong, China. They must possess special skills, knowledge, or experience of value to and not readily available in Hong Kong, China. They must have sponsors in Hong Kong, China, whose business activities are financially sound and are beneficial to the local economy. The sponsors can be local firms or foreign firms in Hong Kong, China.

(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 B.(5)(a) above also apply to foreign technical and managerial personnel. Immediate family members of foreign nationals who are on employment status are normally allowed to take residence in Hong Kong, China, subject to all other immigration requirements being met.

(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 Hong Kong, China 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 dependants 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 take out insurance policies to cover liabilities to pay compensation under the Ordinance and damages awarded by a local court.

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 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, arbitration, board of inquiry and other actions as necessary.
Employment Ordinance (Chapter 57)	<p>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.</p> <p>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.</p>
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 trade union 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 <i>ex gratia</i> 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.
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 take out a minimum amount of insurance to cover their liabilities under the Ordinance and damages at common law.

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.

Hong Kong, China operates a territorial basis of taxation under which taxes are only imposed on profits or income with a Hong Kong, China source. The Inland Revenue Ordinance (Chapter 112) imposes three separate taxes, namely, profits tax, salaries tax and property tax.

Taxation Arrangements	Summary
Profits tax	<p>The tax is charged on profits arising in, or derived from, Hong Kong, China from a trade, profession or business carried on in Hong Kong, China. 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.</p> <p>There are no taxes on capital gains or interest received by individuals and corporations from financial institutions.</p> <p>Generous allowances are available in respect of capital expenditure incurred on the construction of industrial and commercial buildings and structures, and on the provision of plant and machinery for the purpose of producing chargeable profits (see Section D.1 below for details).</p>
Salaries tax	Salaries tax is charged on income arising in or derived from Hong Kong, China from any office or employment, including income derived from services rendered in Hong Kong, China 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 Hong Kong, China 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.
Double taxation agreements	The HKSAR has an understanding with Mainland China on tax relief for Hong Kong, China's airlines and shipping companies and for avoidance of other cases of double taxation between the Mainland and the HKSAR. Hong Kong, China seeks to negotiate comprehensive double taxation agreements with selected countries to minimise the scope for double taxation and remove investment disincentives caused by double taxation. Hong Kong, China has also concluded limited arrangements on shipping profits (with the United States) and airline profits (with Belgium, Canada, Germany, Israel, Korea, the Netherlands, New Zealand and the United Kingdom).

7. PERFORMANCE REQUIREMENTS

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 Hong Kong, China.

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 Hong Kong, China.

(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 Hong Kong, China.

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 alike must abide by the laws and regulations in Hong Kong, China.

10. OTHER MEASURES

(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. Hong Kong, China'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.

(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.

Protection of Intellectual Property in Hong Kong, China

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 projects 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 Hong Kong, China enables both foreign nationals and local residents to exploit and protect their intellectual property rights.

Enforcement of Intellectual Property Rights

Intellectual property rights in Hong Kong, China 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

As a leading trading and financial centre, Hong Kong, China has a strong commitment to protecting intellectual property. The Intellectual Property Department (IPD) of the HKSAR Government carries out this commitment by advising the HKSAR Government on policies and legislation to protect intellectual property in Hong Kong, China; operating the HKSAR's trade marks, patents and registered designs registries; promoting intellectual property protection through public education.

Intellectual Property Categories

The following table sets out some general characteristics of different types of intellectual property protected in the HKSAR.

	Trade Marks	Patents	Copyright	Designs	Integrated Circuit Designs	Plant Varieties
<i>Types of subject-matter normally protected</i>	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
<i>Whether registration is required for effective protection in Hong Kong, China</i>	Yes	Yes	No	Yes	No	Yes
<i>Enforcement available in Hong Kong, China</i>	Civil, Criminal	Civil	Civil, Criminal	Civil	Civil	Civil

Trade Marks

Hong Kong, China has a time-honoured trade marks registration system 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 Hong Kong, China.

New legislation was introduced in 1998 to simplify the application and examination procedures for trade marks and to broaden the range of signs which can operate as trademarks.

Patents

There is no original grant of patent in Hong Kong, China. 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 Hong Kong, China, is a HKSAR patent independent of the United Kingdom, European or Chinese patent. The patent will be enforced by the courts in Hong Kong, China.

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 the HKSAR can enjoy Paris Convention priority.

Copyright

The Copyright Ordinance (Chapter 528) in force since June 1997, provides comprehensive protection for recognized 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 Hong Kong, China. Works of authors from any place in the world, or works first published anywhere in the world, qualify for copyright protection in Hong Kong, China.

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 World Trade Organisation.

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 Hong Kong, China can enjoy Paris Convention priority. Designs registered with the Chinese Patents Office or elsewhere in the world must be registered in Hong Kong, China 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 and Fisheries, 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. Summary of the application and function of these laws/regulations.

Article 105 the Basic Law of the HKSAR 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 telephone/fax numbers.

In Hong Kong, China, there are a variety of ways to resolve investment 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

Agency	Contact details
The District Court - its jurisdiction is limited to disputes involving a monetary value of up to HK\$120,000.	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\$15,000.	Wanchai Law Courts 4/F, Wanchai Tower 12 Harbour Road Hong Kong Tel : (852) 2582 4084 Fax : (852) 2587 9139
The Lands Tribunal - it has a specialised role with jurisdiction in matters of rating and valuation, and in assessing compensation when land is resumed by the government or reduced in value by development.	G/F, Lands Tribunal Building 38 Gascogne Road Kowloon Hong Kong Tel : (852) 2170 3821 Fax : (852) 2384 4896
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 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, which establishes the ICSID, is applicable in Hong Kong, China.

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.

Tax incentives and funding support are available to all investors in Hong Kong, China on a non-discriminatory basis.

Schemes / Measures	Details	Contact point
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Schemes / Measures	Details	Contact point
Concessionary corporate tax rate	A concessionary tax rate at 50% of the normal profits tax rate of 16% is allowed for the offshore business of professional reinsurance companies authorised in Hong Kong, China.	Profits Tax Unit Inland Revenue Department Revenue Tower 5 Gloucester Road Wan Chai Hong Kong Tel : (852) 187 8088 Fax : (852) 2877 1189 http://www.info.gov.hk/ird
Tax exemptions	Owners of Hong Kong, China registered ships are exempted from profits tax on international incomes derived from the operation of their ships.	Same as above.
Tax deduction	Tax deduction for research and development is allowed for expenditure on market research, feasibility studies and other research activities related to business and management sciences.	Same as above.
Depreciation allowances	<p>An immediate 100% write-off is allowed for new expenditure on plant and machinery specifically related to manufacturing, computer hardware and software.</p> <p>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.</p>	Same as above.
Industrial Support Fund	It provides funding support for projects beneficial to the industrial and technological development of Hong Kong, China.	The Secretariat Industry and Technology Development Council Industry Department Room 1445, 14/F Ocean Centre 5 Canton Road Kowloon, Hong Kong Tel : (852) 2737 2229 Fax : (852) 2377 0730 Website : http://www.info.gov.hk/id/tech/isf/isf.htm

Schemes / Measures	Details	Contact point
Services Support Fund	It provides funding support for projects beneficial to the overall development of Hong Kong, China as a service centre or for projects that contribute to the development of individual service sectors.	The Services Support Fund Secretariat Industry Department Room 1439, 14/F Ocean Centre 5 Canton Road Kowloon, Hong Kong Tel : (852) 2737 2278 Fax : (852) 2317 4852 Website : http://www.info.gov.hk/id/ssf
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 Industry Department 14/F, Ocean Centre 5 Canton Road Kowloon, Hong Kong Tel : (852) 2737 2206 Fax : (852) 2377 0730 Website : http://www.info.gov.hk
New Technology Training Scheme	It provides funding support of up to 75% of the cost for training staff in new technologies.	Technologist Training Unit Vocational Training Council 16/F, VTC Tower 27 Wood Road Wanchai Hong Kong Tel : (852) 2836 1715 Fax : (852) 2574 3759 Website : http://www.vtc.edu.hk/it/it.htm
Patent Application Grant	It provides a grant of up to HK\$100,000 to assist companies or individuals to apply patent for new inventions.	Industry Department 14/F, Ocean Centre 5 Canton Road Kowloon Hong Kong Tel : (852) 2737 2206 Fax : (852) 2377 0730 Website : http://www.info.gov.hk/id/develop.htm
Special Finance Scheme for Small and Medium Enterprises (SMEs)	The Scheme helps SMEs to cope with liquidity crunch problems. Under the Scheme, the HKSAR Government provides guarantees to assist SMEs to secure finance from participating lending institutions.	Industry Department 14/F, Ocean Centre 5 Canton Road Kowloon Hong Kong Tel : (852) 2737 2497 Fax : (852) 2317 4852 Website : http://www.info.gov.hk/id/sfs

Schemes / Measures	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.	The Hong Kong Industrial Estates Corporation Suite 107 Estate Centre Building 19 Dai Cheong Street Tai Po Industrial Estate New Territories Hong Kong Tel : (852) 2664 1183 Fax : (852) 2664 2481 Website : http://www.hkiec.org.hk

2. Brief description of any fiscal, financial, tax or other incentives offered at both the national 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.

Section D.1 above refers.

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

Agency	Address/telephone/fax
<p>The Industry Department of the HKSAR Government is the lead department responsible for inward investment promotion activities.</p> <p>The HKSAR's investment promotion programme is implemented through the "One-Stop Unit" of Industry Department and a network of seven Investment Promotion Units operating from the Hong Kong Economic and Trade Offices in Brussels, London, New York, San Francisco, Sydney, Tokyo and Toronto.</p> <p>The following services are provided to interested investors :</p> <ul style="list-style-type: none"> facilitate the preparation of investment plans and feasibility studies by providing up-to-date information on Hong Kong, China's: <ul style="list-style-type: none"> ? business environment and investment regime ? developments in particular industries ? government funding and other support for industries ? availability and cost of land, 	<p><u>Hong Kong, China</u> One-Stop Unit Industry Department 14/F, Ocean Centre 5 Canton Road, Kowloon Hong Kong Tel : (852) 2737 2434 Fax : (852) 2730 8712 E-mail : invest@id.gen.gov.hk</p> <p><u>Brussels</u> Hong Kong Economic and Trade Office Industrial Promotion Unit Avenue de Tervuren 188A 1150 Brussels Belgium Tel : (32-2) 775 00 88 Fax : (32-2) 770 09 80 E-mail : hkbru@innet.be</p> <p><u>London</u> Hong Kong Economic and Trade Office Investment Promotion Unit 6 Grafton Street London W1X 3LB England Tel : (44-171) 499 9821 Fax : (44-171) 495 5033 E-mail : hk@hketo.co.uk</p> <p><u>New York</u></p>

Agency	Address/telephone/fax
<p>factories, offices and human resources</p> <p>? business incorporation</p> <p>? taxation</p> <p>? work safety, environmental protection, import and export regulations, employment legislation and immigration requirements</p> <p>? living in Hong Kong, China</p> <p>? business contacts</p> <p>? government projects</p> <p>? relevant laws and regulations, and sources of finance</p> <ul style="list-style-type: none"> • identify potential local business partners to match the needs of interested investors and set up meetings for the two parties. • put together visit programmes in Hong Kong, China tailored to the needs of interested investors. These programmes often include meetings with potential business partners, site visits, company and factory visits, and calls on government departments and trade and industrial support organisations. • facilitate investors dealing with government departments in Hong Kong, China in areas like business incorporation, applications for work visa, import and export regulations, trade mark registration and fire and environmental protection requirements. • provide “after-sales” services on a continuous basis after companies are up and running in Hong Kong, China. 	<p>Hong Kong Economic and Trade Office Investment Promotion Unit 115E 54th Street New York, NY10022 U.S.A. Tel : (1-212) 752 3320 Fax : (1-212) 688 3155 E-mail : hketo@hketony.org</p> <p><u>San Francisco</u> Hong Kong Economic and Trade Office Industrial Promotion Unit 130 Montgomery Street San Francisco, CA94104 U.S.A. Tel : (1-415) 835 9300 Fax : (1-415) 392 2963 E-mail : hketosf@hongkong.org</p> <p><u>Sydney</u> Hong Kong Economic and Trade Office Industrial Promotion Unit 80 Druitt Street Sydney, NSW 2000 Australia Tel : (61-2) 9283 3222 Fax : (61-2) 9283 3818 E-mail : prhketo@ozemail.com.au</p> <p><u>Tokyo</u> Hong Kong Economic and Trade Office Investment Promotion Unit Hong Kong Economic and Trade Office Building 30-1, Sanbancho Chiyoda-Ku, Tokyo 102-0075, Japan Tel : (81-3) 3556 8961 Fax : (81-3) 3556 8960 E-mail : etotokyo@qa2.so-net.or.jp</p> <p><u>Toronto</u> Hong Kong Economic and Trade Office Industrial Promotion Unit 174 St. George Street Toronto Ontario M5R 2M7 Canada Tel : (1-416) 924 5544 Fax : (1-416) 924 3599 E-mail : etotor@hketo.ca</p>

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

1. Agreements to which member economy is a party, including details of the countries/economies with which the agreement has been entered into, and a brief summary of the provisions of the agreements.

Friendship Commerce and Navigation Treaties

Not applicable.

Bilateral Investment Treaties

The HKSAR Government has signed 14 Investment Promotion and Protection Agreements (IPPAs), namely with Australia, Austria, the Belgo-Luxemburg Economic Union, Denmark, France, Germany, Italy, Japan, Korea, the Netherlands, New Zealand, Sweden, Switzerland and the United Kingdom. The IPPAs generally contain the following undertakings on the part of each contracting party :

- not to subject investors of the other party to treatment less favourable than that which it accords to its own investors or investors of another country;
- to compensate, on the same basis as above, investors of the other party whose investments suffer losses owing to war or other armed conflict;
- not to deprive investors of the other 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 party; and
- to submit investment disputes which cannot be settled by bilateral consultation or negotiation within a given period 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

Based on the findings of surveys conducted by the HKSAR Government in 1998, the overall total of the stock of inward direct investments (at historical cost) in Hong Kong, China amounted to US\$95 billion at the end of 1997, an increase of 17% over 1996. The surveys also identified 7,804 companies in Hong Kong, China with overseas investment at the end of 1997, an increase of 25% over 1996.

These surveys revealed that the United Kingdom continued to be the leading source of external investment in Hong Kong, China, contributing 25% of the total value of investment at the end of 1997. The mainland of China (19%) was the second largest investor, followed by the United States (18%) and Japan (13%).

According to US official statistics, cumulative US direct investment (at historical cost) in Hong Kong, China has been increasing at an average annual rate of 20% from US\$11.1 billion in 1994 to US\$19.1 billion in 1997, making Hong Kong, China the third most important US investment destination in Asia Pacific after Japan and Australia.

According to statistics from the Japanese Ministry of Finance, cumulative Japanese direct investment in Hong Kong, China has been on the increase and reached US\$16.9 billion by end-September 1997. This represented the third highest amount of cumulative Japanese direct investment in Asia and Pacific, after Australia and Indonesia.

Outward Investment

According to the 1998 World Investment Report published by the United Nations, Hong Kong, China was the fourth largest source of outward direct investment in 1997.

Hong Kong, China is a major source of investment for many Asian economies. According to statistics published by the recipient countries, Hong Kong, China is the largest external investor in Mainland China, second largest in Thailand, third largest in the Philippines and Viet Nam, and fifth largest in Singapore. The Census and Statistics Department of the HKSAR Government is now compiling a full set of balance of payments statistics, including data on stock of outward investment, to be published in 2000 for the reference year 1998.

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

Source FDI	Destination FDI
The United Kingdom, the Mainland China, the United States and Japan	Mainland China and ASEAN countries

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 concerning share ownership in the foreign investment company, and the implementation of this regulation through the decree of Minister of Investment/Chairman of Investment Coordinating Board (BKPM) No. 15 of 1994 had been issued.

Essentially, the new foreign investment rule permits foreign parties to own 100% of the issued capital of a new established Indonesian company. In some areas, classified as particularly important to the people of Indonesia, the foreign parties could own 95% of the issued capital.

There is no longer 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 decided by the investing parties themselves.

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

President of the Republic of Indonesia, on many occasions related to economic affairs, has stated that 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 economic sectors. Besides that, due to the need for Indonesian development, the presence of FDI should be encouraged to support economic development.

The Minister of Investment/Chairman of BKPM stated that Indonesia always welcomes and encourages foreign direct investment inflow to Indonesia or other types of investment such as portfolio investment, subcontractor, et cetera. Accordingly, the Minister expressed that Indonesian Government will take any measures to create an attractive and conducive investment climate and should implement any new measures with transparency and consistency.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

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

Citation	Summary
1. Act No. 1 of 1967 on Foreign Direct Investment as amended by Act No. 11 of 1970	<ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (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.
2. Act No. 7 of 1983 on Income Tax as amended by Act No. 10 of 1994.	Tax rates had been substantially simplified and lowered. The income tax system in Indonesia is progressive and applied both to individual and corporations. The amount of tax payable is determined through the self-assessment method.
3. Act No. 1 of 1995 on Limited Liability Company (Perseroan Terbatas)	<ol style="list-style-type: none"> 1) Limited company should be established by at least 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. 5) 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.
4. Government Regulation No. 20 of 1994 on Share Ownership in foreign direct investment.	<ol style="list-style-type: none"> 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,

	<p>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 5% of the total issued capital on the out-set of the company.</p> <p>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.</p> <p>4) 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.</p> <p>5) 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 provided that the field of investment is open for foreign investment, as well as through the domestic capital market.</p>
5. 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.
6. Presidential Decree No. 96 of 1998 concerning List of Sectors that are Closed for Investment (Negative List)	<p>The list consists of:</p> <ol style="list-style-type: none"> 1) Sixteen sectors absolutely closed for investment activity, both for domestic and foreign investment; and 2) Nine sectors closed for investment activity where foreign citizen and/or foreign legal entity participate in company's capital ownership <p>These sectors can be seen at the table below.</p>
7. Presidential Decree No. 99 of 1998 concerning sectors reserved for small-scale business and sectors open for medium and large-scale business with partnership condition.	<p>This decree shows the Government commitment to encourage the growth of small-scale business along with medium-large scale ones. This decree reserves:</p> <ol style="list-style-type: none"> 1) 33 sectors only for small-scale business 2) 26 sectors for medium or large-scale business that required partnership with small-scale business. Medium-large scale businesses 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, that is: <ol style="list-style-type: none"> (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. <p>These sectors are listed in the table below.</p>

List of Sectors Closed For Investment

*) Closed for both domestic and foreign investment

(a) Business Sectors Absolutely Closed for Investment

1. Cultivation and processing of Marijuana and the like
2. Exploitation of Sponges
3. Contractors of forest logging
4. Uranium mining
5. Hazardous pesticides of Penta Chlorophenol, Dichloro Diphenyl Trichloro Ethane (DDT), Dieldrin, Chlordane
6. Production of pulp using sulphite processing and production of pulp with whitening chlor
7. Manufacturing of Alkaline Chloride using mercury process
8. Manufacturing of Chloro Fluoro Carbon (CFC/Freon)
9. Manufacturing of Cyclimate and Saccharine
10. Processing of mangrove wood to produce finished/semi-finished goods
11. Liquor/Alcoholic beverages
12. Firecrackers and Fireworks
13. Explosive materials and the like
14. Manufacturing of weapons and related components
15. Printing of valuable papers:
 - Postage stamps
 - Duty stamps
 - Commercial paper of Bank Indonesia
 - Passports
 - Stamped postage
16. Casino/Gambling.

(b) Business Sectors Closed for Investment in Which a Part of the Shares are Owned by Foreign Citizens and/or Foreign Legal Entities

(*) Even joint venture with local partner is not possible.

1. Freshwater fish and freshwater fish cultures
2. Forest utilization rights
3. Taxi/Bus transportation
4. Local shipping
5. Private television broadcasting, radio broadcasting services, newspaper and magazine
6. Operation of cinema
7. Spectrum management of radio frequency and satellite orbit
8. Trade services and its support services
Except for:
Retailer (mall, supermarket, department store, shopping center), Distributor/Wholesaler, Restaurant, Quality certification services, Market research services, and After sales services
9. Medical services: general clinics, delivery clinics, specialist clinics and dental clinics

List of Sectors Reserved for Small-scale Business

*) Closed for medium/large domestic as well as foreign enterprises

1. Agriculture: medical herbs, except for ginger
2. Plantation of: pepper, "melinjo", cinnamon, candlenut, vanilla, kapulaga (*amomum cardamomum*), nutmeg, "siwalan", palm sugar and leaf ("lontar")
3. Livestock: Non-pedigree chicken raising
4. Fishery, catching of:
 - 1) Mackerel, flying fish, a sea-fish and the like
 - 2) Shrimp
 - 3) Coral fish such as: sea bass, ribbon fish, grouper, sea perch and the like
 - 4) Squid, jelly fish, sea cucumber and the like, and also catching of ornamental freshwater fish and/or ocean fish

5. Food and Beverage industry:
 - 1) Fried shredded meat/jerked meat
 - 2) Salted/sweetened fruits, vegetables and eggs
 - 3) Salted/dried fish and the like
 - 4) Bakery, cookies and the like
 - 5) Brown sugar/coconut/palm
 - 6) Fermented soybean sauce (“tauco”)
 - 7) Fermented soybean (“tempe”)
 - 8) Tofu
 - 9) Bean chip
 - 10) Snacks of nuts (fried peanuts with crust, salted peanuts, large white beans)
 - 11) Chips
 - 12) Fish and shrimp paste
 - 13) Traditional cakes
 - 14) Processing of “siwalan”, palm sugar and leaf (“lontar”)
 - 15) Honey bee
6. Various grains’ flours industry:
 - 1) Rice flours
 - 2) Peanuts flours
 - 3) Cassava flours
7. Improved yarn industry by manual means:
 - motive yarn/tie dyeing
8. Textile industry and goods from textile:
 - 1) Weaving:
 - a) ATBM (non-mechanical) weaving industry
 - b) Traditional weaving industry (“gedogan”)
 - 2) Handmade batiks
 - 3) Knitting by manual means
 - 4) Traditional hat/cap
9. Fabric printing and finishing:
 - printing by manual means, except integrated with upstream industry
10. Raw rattan processing
11. Traditional medicine product and medical instruments for non-medic:
 - 1) Traditional medicine processing
 - 2) Medical instrument for non-medic industry
12. Lime and Lime products industry:
 - 1) Quicklime
 - 2) Hydrated lime
 - 3) Slaked lime
 - 4) Lime for agriculture
 - 5) Chalk
13. Clay ceramic goods for household uses industry:
 - 1) Unglazed household appliances
 - 2) Unglazed household ornaments
 - 3) Unglazed various types of flowerpots
14. Clay ceramic goods for building uses industry:
 - 1) Bricks
 - 2) Unglazed roof-tile
15. Agricultural tools:
 - 1) Hoe
 - 2) Shovels
 - 3) Plows
 - 4) Harrows
 - 5) Rakes
 - 6) Crowbars
 - 7) Hand sickles
 - 8) Scraper
 - 9) “Sarap/lempak/bawak”
 - 10) Reaping
 - 11) Stewed knife

- 12) Sprinkle
- 13) Hand sprayer
- 14) Manual paddy threshers
- 15) Manual maize threshers
- 16) Manual hullers
16. Hand cutters industry:
 - 1) Chopping knife
 - 2) Axes
 - 3) Big knife (“bendo”)
 - 4) Cutter for onion/cassava/chips
17. Hand tools industry:
 - 1) Cement trowel
 - 2) Wood planes
 - 3) Small planes
 - 4) Shackle used for house’s framework (“beugel-beugel”)
 - 5) Plaster planes
 - 6) Pulley block
 - 7) Clamps
 - 8) Handsaw
 - 9) Hammer (small type)
 - 10) Chisels
 - 11) Special knife used for handicrafts (“pangut”)
18. Plantation tools industry:
 - 1) Knife to tap rubber
 - 2) Cup to tap rubber
 - 3) Rubber freezing box
 - 4) Coffee peeler machine
 - 5) Cashew nut peeler machine
19. Maintenance and repair industry (workshop including the special one):
 - 1) Small workshop including mobile small workshop, tire repair, seat cover repair, railway workshop, ship maintenance workshop, wind pump, magic repair, and the like not using modern equipment.
 - 2) Electric household repair
20. Communication equipment industry:
 - Telephone connection box
21. Electric tools and other components industry:
 - Various kind of clamps
 - Armature and track armature
22. Professional, Science, Measuring equipments and electronic controller industry:
 - Water meter box
23. Traditional Indonesian musical instruments
24. Handicrafts industry:
 - 1) Handicrafts made from basic materials of plant
 - 2) Handicrafts made from basic materials of animal
 - 3) Artificial flowers and decorations
 - 4) Handicrafts from shells and the like
 - 5) Handicrafts from valuable marble stone
 - 6) Housewares made from bamboo and rattan
25. Tourism services:
 - Non-starred hotel (“hotel melati”)
26. Transportation services:
 - Land transportation
 - Rural transportation
27. Telecommunication services:
 - 1) Public phone (kiosks)
 - 2) Public phone shop (“wartel”)
28. People entertainment services:
 - 1) Traditional performance:
 - a) Play with horses of bamboo (“Kuda lumping”)
 - b) Wayang performance with real people, not with leather puppet (“wayang orang”)

- c) Play on legends, performed by persons (“Ketoprak”)
- d) Traditional Betawi/Batavia performance (“Lenong”) and the like
- 2) Merry-go-around and the like
- 29. Traditional health services:
 - 1) Acupuncture
 - 2) Reflection massage
 - 3) Midwife
 - 4) Traditional massage
- 30. Medical services:
 - 1) Individual medic practice
 - 2) Grouping medic practice
 - 3) Basic medical services
 - 4) Health research center
- 31. Environmental health services:
 - Pest control/fumigation
- 32. Medical support services:
 - 1) Pharmacy
 - 2) Licensed drug store
- 33. Informal trader/merchant:
 - 1) Door to door trader
 - 2) Sidewalk peddler
 - 3) Moving trader (“asongan”)
 - 4) Small merchant (“kelontong”)
 - 5) Moving carrying vendor (“bakul gendong”)
 - 6) Small shop
 - 7) Small eating place
 - 8) Depot
 - 9) Market shed
 - 10) Repair services
 - 11) Workshop
 - 12) Other informal traders

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. Agriculture:
 - 1) Cassava
 - 2) Maize
 - 3) Vegetables
 - 4) Fruits
 - 5) Ginger
- 2. Livestock:
 - 1) Chicken raising:
 - a. Broiler
 - b. Layer
 - 2) Beef cattle raising
 - 3) Sheep raising
 - 4) Goat raising
 - 5) Pig raising
 - 6) Duck raising
 - 7) Dairy cattle raising
- 3. Fishery:
 - 1) Shrimp larva culture (hatchery)
 - 2) Aqua culture of eel, escargot, frog and crocodile
- 4. Food and Beverage Industry:
 - 1) Milk processing
 - 2) Smoked fish and the like
 - 3) Fish flour
 - 4) Tea processing

- 5) Soy sauce
5. Processing and canning of fruits (except if integrated with plantation of fruits)
6. Processing of:
 - 1) Pepper
 - 2) "Melinjo"
 - 3) Cinnamon
 - 4) Vanilla
 - 5) Kapulaga (*amomum cardamomum*)
 - 6) Nutmeg
 - 7) Cloves
7. Various palm essence industry:
 - Sago essence
8. Rice milling and threshing
9. Copra industry
10. Sugar industry
11. Silk yarn spinning industry:
 - 1) Production of silk yarn of cocoon except for integrated silk textile industry
 - 2) Silk yarn (filament)
 - 3) Fiber decortication
12. Wood carving industry
13. Downstream industry of paper:
 - 1) Writing and printing papers
 - 2) Envelope
14. Rubber goods for industry uses:
 - Rubber roll
15. Agricultural machinery industry:
 - 1) Paddy thresher
 - 2) Reeper
 - 3) Hydro tiller
 - 4) Corn/maize stripper
16. Fluid machinery industry:
 - Manual water pump
17. Bicycle industry:
 - Bicycle equipment industry
18. Silver handicrafts industry
19. Mining:
 - Small-scale mining
20. Retailer:
 - 1) Factory agent and sales agent
 - 2) Purchasing agent
 - 3) Franchise
 - 4) Supplier
 - 5) Retail dealer
 - 6) Retailer without shop
21. Wholesaler:
 - 1) Main distributor
 - 2) Grosser
 - 3) Sub-distributor
 - 4) Main supplier
 - 5) Big dealer
 - 6) Brand holder/sole agent holding merk
22. Trading services and others:
 - 1) Modern market:
 - a. Mall
 - b. Supermarket
 - c. Shopping center
 - d. Department store
 - e. And the like
 - 2) Market services (including traditional auction market)
 - 3) Handicrafts shop and other general shops

<ul style="list-style-type: none"> 4) Duty free shop 5) Sales through media 6) Multi level marketing 7) Lease and purchase 8) Rent of machine and equipment 9) Rent a car 10) Photo studio 11) Beauty salon 12) Barber shop 13) Tailor 14) Franchisee 15) Cleaning service 16) Car cleaning service using modern equipment 17) Packaging services 18) Services bureau (land certificate, driving license, et cetera.) 19) Car shop (“Moko”), Car restaurant (“Mores”) 20) Collector merchants 21) Dormitory 22) Parking services 23) Nursery 24) Dry cleaning/Laundry services 25) Catering services
23. Restaurant
24. Construction for building very simple house (“RSS”)
25. Medical services: <ul style="list-style-type: none"> 1) General clinic 2) Maternity clinic 3) Specialist clinic 4) Dental clinic
26. Electricity supporting services: <ul style="list-style-type: none"> - Electric installment services

(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 Investment (Yes)	Submitting the application form Model I/ PMA with complete data/ information required to the Investment Coordinating Board. Evaluation or assessment of application will be conducted and confirmed against the criteria and prerequisites
Real estate/ Land (Yes)	For single house construction, the ratio between small, medium and luxury houses are 6 : 3 : 1. For flats, condominiums and apartments, the size of units is left to the investor to determine.
Joint Venture (Yes)	For the infrastructure projects such as ports, generation, transmission and distribution of electricity for public use, telecommunication, shipping, airlines, potable water supply, public railways, and nuclear electric power generation, the

Proposal	Guidelines/ Conditions
	<p>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.</p> <p>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.</p>

Sector	Guidelines/ Conditions
Telecommunications (Yes)	Basic telecommunication services should be operated with state-owned company (PT. Telkom and/ or PT. Indosat), in the form of joint venture or joint operation or management contract. In case of joint venture, the foreign partner has already conducted business in the basic telecommunication services.
Media (Yes)	Based on prevailing laws and regulations, foreign direct investment is not allowed to enter mass media activities.
Transport (Yes)	<ol style="list-style-type: none"> 1. Taxi/ bus operation is reserved only for domestic enterprise. 2. Domestic and international shipping: <ul style="list-style-type: none"> • 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. 3. Ferry transportation: <ul style="list-style-type: none"> • It is compulsory to own at least one vessel carrying Indonesian flag and fulfilling the sailing safety requirements and straits, and harbours technical specifications.
Agriculture (Yes)	<ol style="list-style-type: none"> 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. Only 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"
Electricity (Yes)	Before submitting the application Model I/ PMA to BKPM, investor should negotiate technical aspects with the Directorate General of Electricity and Energy Development with address : Jl. H.R. Rasuna Said Blok X-2 Kav. 07-08, Kuningan, Jakarta 12960, Indonesia.
Toll Road (Yes)	<p>Investor should negotiate technical aspects with state owned company, PT. Jasa Marga with address: Kantor Pusat Tol Plaza, Taman Mini Indonesia Indah, Jl. Tol Jagorawi, Jakarta 13350, Indonesia. Based on the negotiation with PT. Jasa Marga, investor submits the application Model I/ PMA to BKPM</p> <p>Toll road construction and management should be cooperation with PT. Jasa Marga, be in the form of joint venture, or BOO (Built, Operate and Own), or BOT (Built, Operate and Transfer).</p>

(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 g. 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 Homepage: http://www.bkpm.go.id E-mail : sysadm@bkpm.go.id

(e) *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 between 10 to 20 working days. Previously, it took about two until four weeks and this is apart of the Government commitments to improve investment climate.

(f) *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 Homepage : http://www.bkpm.go.id E-mail : sysadm@bkpm.go.id

To apply for the modification of an approved investment, investors are required to fill out the corresponding forms of applications. The average time for an appeal to be considered is two weeks.

(g) *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 Minister of Investment/Chairman of BKPM. The details of required documents and information are as follows:

- 1) By Foreign Participant:
 - Articles of Association of the company (akta notaris) in English or Indonesian language; or
 - Copy of valid passport for foreign individual
- 2) By Foreign Investment Company (PMA):
 - Articles of Association of the company and any amendments(s)
 - Permanent Business License (IUT)
 - Tax Registration Code Number (NPWP)

- 3) By Indonesian Participant:
 - Articles of Association of the company and any amendment(s) or Identity Card for Individual
 - Tax Registration Code Number (NPWP)
 - 4) (1) Flowchart of the production process and a raw materials
(2) Explanation of business activities or services sector
 - 5) Draft of Joint Venture Agreement between Indonesian and foreign partners outlining source of investment funds, share ownership, as well as number and composition of commissioners and directors, approved by all participants
 - 6) Power of Attorney to sign the application if the participant(s) are represented by another party
 - 7) 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).
 - 8) In the business sector required for partnership cooperation:
 - 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.
 - In the Draft of Joint Venture Agreement shall be included Small-scale Business as a shareholder, if partnership in the form of shareholders' participation.
 - Letter of 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.
- (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
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 Homepage : www.bkpm.go.id E-mail : sysadm@bkpm.go.id	Problems arising from the change in Government policy/ regulation. Problems of investment implementation. Problems with technical/ sectoral department. External problems of the enterprise.

- (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
Investment Coordinating Board. Attn.: Deputy Chairman for Supervision.	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 Homepage : www.bkpm.go.id E-mail : sysadm@bkpm.go.id	1. To conduct monitoring, guidance and controlling of investment implementation. 2. To provide services on problems faced in the investment implementation as well as provide alternative solutions.

(j) *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, et cetera.
- 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, et cetera.

All comments, views and suggestions will be adopted by the Government as input for policy formulation.

(k) *Where applicable, the role for sub-national agencies in the approval process.*

Agency	Address/telephone/fax	Functions
Kantor Pertanahan Kabupaten/Kotamadya (The Regional Land Affair)	Regional Land Affair Office in Regency concerned.	Issue 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 Penanaman Modal Daerah/ BKPM (Regional Investment Coordinating Board)	Capital city of province concerned. Addresses' list of Regional Investment Agencies (BKPM) please see below.	Issue Working Permits for Foreign Expatriates.

Addresses' list of Regional Investment Agencies (BKPM) are:

No.	BKPM	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.	Central Java	Jl. MGR. Soeripranoto No. 1 Semarang 50141	Tel. (024) 518383 (024) 547091 Telex. 22201 Fax. (024) 549560
4.	Special Territory of Yogyakarta	Jl. Tentara Rakyat Mataram No. 27-29 Yogyakarta	Tel. (0274) 513969 Telex. 25160 Fax.(0274) 563367
5.	East Java	Jl. Jagir Wonokromo No. 352 Surabaya	Tel. (031) 8410877 (031) 8418676 Telex. 31365 Fax. (031) 8412363
6.	Special Territory of Aceh	Jl. Jend. A. Yani No. 37 Banda Aceh 23122	Tel. (0651) 23170 Telex. 5432

No.	BKPMMD	Office Address	Tel/Telex/Fax
			Fax. (0651) 23171
7.	North Sumatera	Jl. Imam Bonjol No. 11 Medan	Tel. (061) 564447 Telex. 51400 Fax. (061) 564155
8.	Riau	Jl. Gajah Mada No. 200, Lt. III Pakan Baru	Tel. (0761) 33616 (0761) 33738 Telex. 56210 Fax. (0761) 20213
9.	West Sumatera	Jl. Rasuna Said No. 74 Padang	Tel. (0751) 51432 Telex. 55188 Fax. (0751) 51938
10.	Jambi	D/a Kantor Gubernur TK. I Jambi Jl. Jend. Ahmad Yani, Jambi	Tel. (0741) 60450 Telex. 27301 Fax. (0741) 60450
11.	Lampung	Jl. Sudirman No. 29 Tanjung Karang	Tel. (0721) 266184 Telex. 26130 Fax.(0721) 266184
12.	South Sumatera	Jl. Aerobik No. 4 Eks Kampus POM IX, Palembang	Tel. (0711) 355360 (0711) 356489 Telex. 27427 Fax.(0711) 367659
13.	Bengkulu	Jl. Pembangunan No. 1 Padang Harapan, Bengkulu	Tel. (0736) 21450 Telex. 27384 Fax. (0736) 21802
14.	West Kalimantan	Jl. St. Syahrir No. 17 Pontianak	Tel. (0561) 43491 Telex. 29153 Fax. (0561) 43491
15.	South Kalimantan	Jl. Lambung Mangkurat No. 7 Gedung BPD Lt. V, Banjarmasin	Tel. (0511) 59073 Telex. 39181 Fax. (0511) 59074
16.	East Kalimantan	Jl. Basuki Rahmat No.56 Samarinda 75117	Tel. (0541) 43235 Telex. 38178 Fax. (0541) 36446
17.	Central Kalimantan	Jl. Tjilik Riwut Km. 5,5 Palangkaraya 73112	Tel. (0536) 31414 (0536) 31456 Telex. 39377 Fax. (0536) 31454
18.	North Sulawesi	Jl. Martadinata No. 11 Manado	Tel. (0431) 863284 Telex. 74195 Fax. (0431) 863264
19.	Central Sulawesi	Jl. Pramuka No. 23 Palu	Tel. (0451) 21807 Telex. 75135 Fax. (0451) 24325
20.	South East Sulawesi	Jl. Pembangunan No. 40 Kendari	Tel. (0401) 23268 (0401) 24867 Telex. 75135 Fax. (0401) 23267
21.	South Sulawesi	Jl. Riburane No. 15 Ujung Pandang	Tel. (0411) 316042 Telex. 71236 Fax.(0411) 320321
22.	Bali	Jl. D.I. Panjaitan No. 5 Denpasar	Tel. (0361) 238274 Telex. 35117 Fax.(0361) 237991

No.	BKPM	Office Address	Tel/Telex/Fax
23.	West Nusa Tenggara	Jl. Udayana No. 4 Mataram	Tel. (0364) 32632 Telex. 35431 Fax. (0364) 34926
24.	East Nusa Tenggara	Jl. Teratai No. 10 Kupang	Tel. (0380) 33080 Telex. 35431 Fax. (0380) 33213
25.	Maluku	Jl. Pengerangan Pantai Waihaong Ambon	Tel. (0911) 42151 Telex. 73100 Fax. (0911) 53208
26.	Irian Jaya	Jl. Sam Ratulangi No. 32 Jayapura	Tel. (0967) 33600 Telex. 76210 Fax. (0967) 31332
27.	East Timor	Gedung Formento Lt. 11 Jl. Don Aleixo Corte Real No. 13 Dili	Tel. (0390) 21616 (0390) 23775 Telex. 35562 Fax. (0390) 21010
28.	Batam Industrial Development Authority	Sekupang, Batam	Tel. (0778) 322222 Telex. 58115 Fax.(0778) 322019/322537

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

(a) *List and description of the scope of any exception 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 Indonesian Government adopts “Most Favoured Nations/MFN” treatment where Indonesia is opened for all foreign investors who want to invest in Indonesia regardless of their origin economy, 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.*

Agreement on the ASEAN Investment Area/AIA, which includes, among others:

- National treatment is extended to ASEAN investors by 2003 and to all investors by 2020, subject to economy’s member specific reservations/exceptions
- All industries are opened for investment to ASEAN investors by 2003 and to all investors by 2020, subject to the economy’s member specific reservations/exceptions

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, potable water supply, public railways, and nuclear electric power generation (Government Regulation No. 20 of 1994).	Foreign investment company in these sectors should be in joint venture form in which at least 5% of the shares should be owned by an Indonesian partner.

Sector	Nature of Exception (e.g. prohibition, limitation, special condition and special screening)
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 1998).	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 of 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 Expatriate Utilization	Indonesia still needs expatriates, but they are limited to certain areas of expertise/ occupation which cannot be occupied by an Indonesian. Directors can be fulfilled by foreign citizens, except for Personnel Director. Commissioners can be fulfilled by foreign citizens as long

	as the whole or part of the company's shares are owned by foreign investor.
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(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 labour laws which apply to foreign firms in the context of labour disputes/ relations.*

Law	Summary
Act No. 22 of 1957 on Labour Disputes Settlement	In case of labour disputes, labour union shall discuss his intention to the employer. If the discussions fail to bring about agreement, the case should be submitted to the Regional Committee of Dispute Settlements in accordance with the procedure laid down to decide the settlement of labour disputes. The committee consists of the representative of labour union, the representative of management and official from Manpower Ministry. In case 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:

<u>Taxable income</u>	<u>Tax rate</u>
Income up to Rp. 25 million	10%
Income between Rp. 25 – 50 million	15%
Income over Rp. 50 million	30%

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(%)	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 (%)	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, 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:

- payments to Indonesian resident, the rate is 15%; and
- 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. Republic 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).

Automotive Industry

To support and encourage the development of the automotive industry in Indonesia, the Government of Indonesia provides incentives in differentiated import duty rates. In this case, the enterprises are allowed to enjoy certain incentives in the form of lower import duty rates for parts and/or components of motor vehicles, depending upon the percentage of local content. The import duty applied is set out in Article 2 and 3 of the Decree No. 223/ KMK.01/ 1995 dated 23 May 1995 of the Minister of Finance regarding the Relief of Import Duty on Import of Certain Parts and Components of Motor Vehicles for the Purpose of Assembling and/or Manufacturing of Motor Vehicles.

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.

1) Law No. 5 of 1999 on Prohibition on Monopoly Practice and Unfair Competition Business.

- The investment activities have to manage and avoid any monopolized practice and unfair practical business which could be harmful to the interests of public.

2) Law No. 23 of 1997 on Management of the Environment.

- The investment activities should manage, protect and preserve the environment. Environment regulations are applied consistently to domestic and foreign investment.

3) Law No. 1 of 1967 on Foreign Direct Investment.

- Foreign investment companies are required to conduct and/or provide regular and educational facilities in Indonesia and/or abroad for Indonesian manpower with the aim of gradually replacing foreign expatriates with Indonesians.
- Foreign investment companies are obliged to manage and control their companies in accordance with the principles of good business administration without harming the interests of the state.

10. OTHER MEASURES

(a) Brief outline of the competition policy regime.

Indonesia has enacted the Law No. 5 of 1999 on the Prohibition on Monopoly Practice and Unfair Competition Business. Under this law, the Government regulates and prohibits any monopolized practices and unfair practical business 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.

Criminal Law

Existing Indonesian law takes steps to protect consumers and businesses from the effects of certain types of unfair competition. Article 382 of the Criminal Code prohibits businesses from profiting unfairly from actions that mislead consumers. Under the terms of the law, anyone who, for the purpose of “gaining, conducting or expanding” the results of trade, undertakes to do so by engaging in “unfair actions” that mislead the public shall be considered guilty of “unfair competition” if such acts harm competitors¹. Persons found guilty of violating these provisions are subject to criminal sanctions (although the amount of the fine is no longer a significant sanction). Additionally, if the court determines that an individual is guilty of violating Articles 382 of the Criminal Code, the party injured by the unfair competition is entitled, under 1365 of the Civil Code, to compensation for his or her losses².

Intellectual Property Laws

On behalf of the Indonesian Government, the Minister of Trade signed the Marrakesh Agreement establishing the World Trade Organization (WTO) and its annexes on 15 April 1994. Legislation incorporating the Marrakesh Agreements into Indonesian Law was adopted by Parliament in October 1994³.

Pursuant to obligations under the Agreement of Trade-related Aspects of Intellectual Property Rights (TRIPs), one of the Uruguay Round Agreements, Indonesia has amended Patent Law, Copyrights Law, and Trademark Law in 1997 in compliance with the TRIPs Agreement.

A discussion of competition law and policy in Indonesia affects intellectual property laws in at least two ways:

- 1) As a matter of “fair competition” or prohibiting “unfair trade practices”, an economy’s intellectual property laws are intended to ensure a measure of consumer protection from counterfeit products that may be of inferior quality to that produced by the holder of the intellectual property right.
- 2) As a form of legally permissible monopoly, rights created under intellectual property laws are at least superficially contrary to the anti-monopoly aspects of competition laws. On closer analysis, however, it is clear that a “monopoly” afforded by intellectual property law does not (unless linked with abusive licensing methods or other anti-competitive measures) confer an economically damaging monopoly power, because alternative products may continue to be available. Moreover, both intellectual property and competition laws should have a common national goal: to promote innovation and encourage the efficient use of resources.

With respect to the first issue – the protection of intellectual property rights generally – Indonesia had introduced a series of measures to strengthen its legal framework. Indonesia has enacted the Patent Law 1997⁴ concerning the change on the Law No. 6 of 1989 on Patent. Generally, there are two kind of patents namely, Patent and Simple Patent upon a new product or process. This Patent Law gives protection for a period of 20 years for Patent and a period of 10 years for Simple Patent. A Patent Recipient has to pay

¹ Article 382 of the Criminal Code reads: “Those who, with the aim of gaining, conducting or expanding results of trade or their own respective companies or companies of other persons, undertake unfair actions for misleading the public or certain persons, shall be liable, due to unfair competition, to imprisonment for one year and four months.....or to a fine of thirteen thousand five hundred rupiah at the most, if such action can cause damage to the competitors of such persons or the competitors of such other persons”.

² Article 1365 of the Civil Code reads: “Each act violating the law and causing loss to the other persons, shall obligate person causes such laws by their fault to compensate for such loss”.

³ Law No. 7 of 1994.

⁴ Law No. 13 of 1997.

annual fee to the Government. If he does not pay within three consecutive years, the Patent will be revoked. A patent is subject to compulsory licensing and should be registered at the Patent Office. Moreover, the compulsory licensing is used only to fulfill the need of domestic market.

In 1997, the Government enacted Act No. 12 of 1997 concerning the change of Law No. 6 of 1982 on Copyrights as amended by Law No. 7 of 1987. This law protects people's creations on science, art and literature. The complete creation lists which are protected by this law are as follows: book, flyer, paper/write, seminar, lecture, speech, and the like, performance (music, Java traditional music/karawitan, drama, dance, people or puppet performance/pewayangan, pantomime, broadcasting creation used such as on TV, radio, video, and movie), choreography, created song or music with or without lyric, recorded voice or sound, arts (painting, statue), batiks arts, architecture, map, cinematography, photography, computer program, translation, interpret, and excerpt. Generally, the copyright term is given as long as the author's life and for a period of 50 years after his death.

The Government has enacted Law No. 14 of 1997 concerning the change of Law No. 19 of 1992 on Trademark. The changes were intended to provide greater protection for well-known foreign and Indonesian marks and to prohibit the use of deceptively similar marks. A trademark should be registered at the trademark Office/Ministry of Justice. Demand of registration a trademark which uses a priority rights as regulated by international convention which followed by Indonesia, should be submitted within six months since the received date of the demanded applied trademark firstly in other economy which also a member of the international convention. Deletion registered trademark from the general list of trademark can be undertaken either by the trademark holder initiative or by the trademark office if the trademark does not used within three years.

With respect to the second issue set-forth above, the monopoly or superficially anti-competitive aspects of intellectual property laws, it should be noted that Indonesia has attempted to reduce any such consequences with its requirements for compulsory licensing, use of technology and technology transfer. Moreover, under Article 40 of the TRIPs Agreement, member economies are expressly permitted to specify in their national legislation certain licensing conditions that "may in particular cases constitute an abuse of intellectual property rights having and adverse effect on competition". In certain circumstances, therefore, member economies may limit any negative non-competition elements arising in the case of strict enforcement of intellectual property rights, if this is required under a national competition law.

New Company Law

Indonesia's Law affecting competition in the economy were significantly strengthened with the adoption on 7 March 1995 of Law No. 1 of 1995. This law, which primarily sets out the economy's rules governing the creation and operation of companies, contains an express legislative statement⁵ 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"⁶. 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"⁷.

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-General⁸. If a request is considered reasonable by the Chairman of the District Court, the investigation will be conducted by experts appointed by the court⁹. This law is significant in that Indonesia has now clearly put in place a legal framework for the regulation of mergers with the intent of guarding against the negative impact of monopolies. The law calls for an investigation into 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

⁵ The 1984 Law on Industry and the 1995 Law on Small Business contain similar references.

⁶ Law No. 1 of 1995, Article 194 (1) b.

⁷ Elucidation, Law No. 1 of 1995, Article 104, Paragraph (1).

⁸ Law No. 1 of 1995, /article 110 (3) (c).

⁹ Ibid, Article 111 (2) and (3).

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 on patents as amended by Act No. 13 of 1997. 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 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 by Act No. 12 of 1997. This law protects people's creations on science, art and literature. complete creation list which are protected by this law, namely: book, flyer, paper/write, seminar, lecture, speech, and the like, performance (music, Java traditional music/karawitan, drama, dance, people or puppet performance/pewayangan, pantomime, broadcasting creation used such as on TV, radio, video, and movie), choreography, created song or music with or without lyric, recorded voice or sound, arts (painting, statue), batiks arts, architecture, map, cinematography, photography, computer program, translation, interpret, and excerpt. Criteria for getting the copyright is that it must be original and not yet published in Indonesia, or foreign copyrights of concerned foreign economy which has bilateral/multilateral copyright agreement with Indonesia. A copyright application is submitted in Indonesian language with sample of creation to the Minister of Justice, with the appropriate fee decided by Minister of Justice. The copyright is valid for:
 - As long as the author's life until 50 years from the date of the death of author: for book, flyer, paper/write, seminar, lecture, speech, and the like, performance (music, Java traditional music/karawitan, drama, dance, people or puppet performance/pewayangan, pantomime, choreography, created song or music with or without lyric, arts (painting, statue), batiks arts, architecture, map, translation, interpret, and excerpt. writing, works of arts, music and choreography.
 - 50 years from the date of the copyright notification: for broadcasting creation used such as on TV, radio, video, and movie, created song or music with or without lyric, recorded voice or sound, arts (painting, statue), cinematography, computer program.
 - 25 years from the date of copyright notification: for photography, computer programs, and cover design.

- 3) Act No. 19 of 1992 concerning trademark as amended by Act No. 14 of 1997. The trade mark protects trademarks in goods and services. The criteria for obtaining the trade mark are unique and not against the common rules. A trade mark application is submitted in Indonesian language to Government Trade Mark Office, with the appropriate fee decided by Minister of Justice. The trade mark is valid for 10 years from the date the trade mark application is received.

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.

Laws/ Regulations	Application and Function
	(b) Compensation <ul style="list-style-type: none"> • 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 Deputy 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 Homepage : http://www.bkpm.go.id E-mail : sysadm@bkpm.go.id
Badan Arbitrase 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	Nature of incentive	Contact point
National	<p>All investment projects approved by BKPM, in the framework of Foreign Direct Investment (PMA) as well as domestic investment (PMDN) are granted the following facilities:</p> <ul style="list-style-type: none"> • Exemption from import duty and levies: <ol style="list-style-type: none"> 1) On the importation of capital goods namely machinery, equipment, spare parts, and auxiliary equipment. 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. <p><u>Some incentives are provided for exporting Manufacturers</u></p> <ul style="list-style-type: none"> • 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. 	<p>Investment Coordinating Board, attention:</p> <ol style="list-style-type: none"> 1. Deputy Chairman for Services in Licensing and Facilities of Industrial Sector, or 2. Deputy Chairman for Services in Licensing and Facilities of Non Industrial Sector <p>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</p> <p>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</p> <p>Investment Coordinating Board, attn.:</p> <ol style="list-style-type: none"> 1. Deputy Chairman for Services in Licensing and Facilities of Industrial Sector, or 2. Deputy Chairman for Services in Licensing and Facilities of Non Industrial Sector. <p>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</p>

Regional	Some regional governments offer some additional incentives to investors by providing a reduction on regional levies or retribution fee.	Regional Investment Coordinating Board (BKPM) concerned.
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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																																													
National	<ul style="list-style-type: none"> For all investment projects, all expenses for: <ul style="list-style-type: none"> 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 could have incentives: <ul style="list-style-type: none"> Loss carried forward within 8-10 years. Depreciation rate for the depreciable assets: <table border="1"> <thead> <tr> <th>Physical Assets</th> <th>Useful Life (years)</th> <th>Method of Calculation</th> <th>Straight Line</th> <th>Declining</th> </tr> </thead> <tbody> <tr> <td colspan="5"><u>Non Building</u></td> </tr> <tr> <td>a. Group I</td> <td>4</td> <td>25%</td> <td>50%</td> <td></td> </tr> <tr> <td>b. Group II</td> <td>8</td> <td>12,5%</td> <td>25%</td> <td></td> </tr> <tr> <td>c. Group III</td> <td>16</td> <td>6,25%</td> <td>12,5%</td> <td></td> </tr> <tr> <td>d. Group IV</td> <td>20</td> <td>5%</td> <td>10%</td> <td></td> </tr> <tr> <td colspan="5"><u>Building</u></td> </tr> <tr> <td>a. Permanent</td> <td>20</td> <td>5%</td> <td></td> <td></td> </tr> <tr> <td>b. Non-permanent</td> <td>10</td> <td>10%</td> <td></td> <td></td> </tr> </tbody> </table> Investment activities located in eastern part of Indonesia are granted with special incentive i.e. 50% reduction of land and building tax (PBB) for eight years. For new companies in certain industries that are categorized pioneer, their companies' income tax could be borne by the Government for a maximum period of 10 years if located in Java and Bali Islands, and of 12 years outside Java and Bali Islands. These periods are accumulation of: <ul style="list-style-type: none"> A three years of <i>basic facility</i> for pioneer industries in Java and Bali Islands, and a five years outside Java and Bali One year of <i>additional facility</i> if could meet the following criteria: <ul style="list-style-type: none"> Employ at least 2000 workers At least 20% of its share owned by Co 	Physical Assets	Useful Life (years)	Method of Calculation	Straight Line	Declining	<u>Non Building</u>					a. Group I	4	25%	50%		b. Group II	8	12,5%	25%		c. Group III	16	6,25%	12,5%		d. Group IV	20	5%	10%		<u>Building</u>					a. Permanent	20	5%			b. Non-permanent	10	10%			<p>Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179</p> <p>Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179</p> <p>Director General of Taxation, Department of Finance. Jl. Gatot Subroto No. 40-42, Jakarta 12190 Tel. (62-21) 381-1179</p>
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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: 1. Deputy Chairman for Services in Licensing and Facilities of Industrial Sector, or 2. Deputy Chairman for Services in Licensing and Facilities of Non Industrial Sector.	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/ 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
<p><i>Friendship Commerce and Navigation Treaties</i></p> <p>Indonesia has concluded bilateral agreement on trade/ commerce and navigation with a number of economies.</p> <p><i>Regional or sub regional Investment Treaties.</i></p> <p>Indonesia has concluded regional agreement within ASEAN economies as well as within Organization of Islamic Conference.</p> <p><i>Bilateral Investment Treaties</i></p> <p>Indonesia has signed bilateral investment agreements concerning investment guarantees (IGA) with 50 economies, namely: Argentina, Australia,</p>	<p>The key provisions on the bilateral and regional agreement on investment guarantees are, among others:</p> <ul style="list-style-type: none"> - 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

Agreement	Provisions
Bangladesh, Belgium, Cambodia, Cuba, Czech, Denmark, Egypt, Finland, France, Germany, Hungary, Kyrgyz, India, Italy, Jamaica, Jordan, Lao PDR, Malaysia, Morocco, Mauritius, Mongolia, Mozambique, Netherlands, Norway, People's Republic of China, United Kingdom, Republic of Korea, Pakistan, Poland, Romania, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Suriname, Syria, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, 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 31 December 1998 foreign investment approvals had reached a total value of US\$ 216.5 billion with the number of 8,540 projects. The economic crisis since the mid 1997 had caused significant decrease of FDI in 1998, as seen at the figures:

<u>Years</u>	<u>Project</u>	<u>Value (US\$ billion)</u>
1994	451	27.4
1995	799	40.0
1996	959	30.0
1997	790	33.9
1998	1,035	13.5

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 economies.

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

The ten leading foreign investing economies in Indonesia are (Period of 1967 until 31 December 1998):

<u>Economy</u>	<u>Investment Value (US\$ million)</u>	<u>%</u>
Japan	42,720.2	19.73
United Kingdom	37,555.2	17.35
Singapore	20,221.5	9.34
Hong Kong, China	19,160.4	8.85
USA	15,089.5	6.97
Chinese Taipei	13,579.3	6.27
Netherlands	12,142.6	5.61
Republic of Korea	10,171.5	4.70
Germany	7,805.0	3.61
Malaysia	7,419.4	3.43

Destination FDI

Based on several sources of information, outflow of Indonesia investment has already existed in many economies, among others: Australia; the People's Republic of China; Hong Kong, China; France; India; Malaysia; Myanmar; the Netherlands; Philippines; Singapore; Chinese Taipei; Thailand; Tunisia; USA; United Kingdom; and Viet Nam,

JAPAN

JAPAN

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

As mutual dependence has increased among national economies in recent years, cross-border direct investment has attracted much attention from various areas of the world. International direct investment will contribute to the development of a well-balanced world economy by stimulating open economic activities in and among nations around the world, and thereby contribute as well to peaceful and cooperative international relations.

In order for direct investment to have a beneficial impact on the international economy, emphasis should be placed on private enterprise's own initiative. For this purpose, we also believe that each economy should make the utmost efforts to minimize restrictions and ensure fair and equitable access to each other's markets based on the principle of national treatment and MFN, in accordance with international rules and guidelines including the Organisation for Economic Cooperation and Development (OECD) Code for the liberalisation of Capital Movements and the WTO agreement. The Japanese Government considers it important to help foster an open international environment for cross-border direct investment, mainly through multilateral consultations at OECD and the WTO.

In particular, the Government of Japan acknowledges that increasing inward foreign direct investment (FDI) is important. This is because, in addition to the role of FDI in the world economy and a huge imbalance between inward and outward FDI, we have recently been focusing on the contribution of inward FDI to structural reform of the Japanese economy, such as enhancement of Japanese economic vitalization, creation of new business, reduction of the disparities between international and domestic prices, import expansion, through introduction of new technology, management know-how and various kinds of competition among domestic and foreign firms. Also, it will benefit Japanese consumers, creating a supply of less expensive and better goods and services as well as greater selection. Moreover, it further opens Japan's economy, society, and culture. Therefore, we are promoting various measures to increase the inward FDI, as will be mentioned in section D.

In order to publicize the Japanese Government's effort to promote FDI, the Japan Investment Council, whose members are Cabinet ministers, has issued the statement (see section A(2) for details).

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

Refer to the “statement of the Japan Investment Council –Toward the Promotion of Foreign Direct Investment in Japan –” and, “Statement of the Japan Investment Council on M&A”.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(i) Statutory (Legislative) Requirements

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

Citation	Summary
Foreign Exchange and Foreign Trade Law (the Foreign Exchange Law) (No. 228, 1 December 1949)	Investment in Japan by foreign investors is treated as “Direct Domestic Investment, etc.” under the Foreign Exchange Law (except for “portfolio investment”) and is subject, in general, to ex post facto report or, in certain cases, prior notification to the Minister of Finance and the competent Minister(s) in charge of the industry concerned in order to determine if an inquiry is necessary from a viewpoint of national security, any material adverse influence on the national economy, reciprocity and so on.
Cabinet Order concerning Direct Domestic Investments, etc. (Cabinet Order No. 261, 11 October 1980)	
Ordinance concerning Direct Domestic Investment, etc. (Ordinance No.1, 20 November, 1980)	
Public Notice. Notification (No. 1, 7 March 1994)	

(ii) Investment Review and Approval

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

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

Proposals	Guidelines/Conditions
Merger	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.
Acquisitions	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.
Greenfield investment	Japan does not categorize the proposals in the way prepared. Please see the contents of “other” in box below.
Real estate/land (No)	The Foreign Exchange Law requires prior notification of acquisition by a non-resident of any real property existing in Japan or rights related thereto only when it is acquired for the purpose of commercial activity. This prior notification is by no means review or screening. The Alien Land Law stipulates that any foreigner or any foreign juridical person could be imposed prohibitions, conditions or restrictions on the rights pertaining to land on a basis of reciprocity. However, there is no case so far in which such prohibitions, etc. were actually imposed based on this law, nor screening thus occurred.
Joint venture	Japan does not categorize the proposals in the way prepared. Please see the contents of "other" in box below.
Other: When “foreign investors” make “Direct Domestic Investment, etc.”, prior notification or ex post facto report is required. The definitions of these terms under the Foreign Exchange Law are contained in the right-hand box. For further details, please refer to the Foreign Exchange Law.	(1) Foreign Investors are: <ul style="list-style-type: none"> (a) non-resident individuals, (b) companies or entities established under foreign laws, (c) domestic companies in which shareholdings by (a) or (b) amount to 50% or more of the company's outstanding capital, and (d) domestic companies or entities in which either a majority of officers or officers having power of representative are nonresident individuals. (2) Direct Domestic Investments, etc. refer to: <ul style="list-style-type: none"> (a) acquisition of stocks or shares of an “unlisted domestic

Proposals	Guidelines/Conditions
	<p>company”</p> <ul style="list-style-type: none"> (b) 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) (c) 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”) (d) consent to a substantial change in the corporate objectives while holding one-third or more of the total shares (e) establishing a branch, factory, or other business office and substantially changing these objectives (f) medium and long term loans (more than 5 years) which amount to 100 million yen or more (g) 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
	<p>The Foreign Exchange Law basically requires an ex post facto report within 15 days after these investments are made, except for cases related to the following sectors:</p> <ul style="list-style-type: none"> (a) those which may conceivably be classified as related to national security, public order, or public safety (e.g., aircraft, arms, explosives, nuclear energy, space, electricity utility, drug, vaccines, security guard services,) (b) those where liberalization is not required under the OECD Capital Liberalisation Code (e.g., agriculture, forestry, fisheries, mining, petroleum, leather, maritime transport and air transport). <p>(Note) Under the Code, the mining industry in Japan is also protected from liberalisation but the Foreign Exchange Law was revised so that from April 1998, ex post facto reporting is adequate.</p> <p>Those making domestic direct investments in the above sectors are requested to make prior notification in general. Moreover, from a viewpoint of reciprocity, those sectors not listed in the regulation of the Foreign Exchange Law also require prior notification.</p>
Telecommunications (yes)	ex post reporting*
Media (yes)	ex post reporting*
Transport (yes) (air and marine transport)	According to (b) in the box above.
Agriculture (yes)	According to (b) in the box above.
Other: - mining (yes) - oil industry (yes) - leather/leather products manufacturing (yes) - forestry (yes) - fishery (yes)	<p>ex post reporting According to (b) in the box above. According to (b) in the box above.</p> <p>According to (b) in the box above. According to (b) in the box above.</p>

*With the amendments to the Foreign Exchange Law (enforced in April 1998), these industries are changed from the prior to the ex post notification type of business.

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

Forms required under the terms of the Foreign Exchange Law. Copies of the relevant documentation can be obtained from the contacts listed in Section B(1)(ii)(4) below.

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

Agency	Address/telephone/fax
The Bank of Japan (Inward Direct Investment Section, International Investment Division, International Department)	2-1-1, Hongoku-cho Nihonbashi, Chuo-ku, Tokyo 103-8660 Japan Telephone: (81 3) 3279 1111

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

As mentioned in section B1.(ii)2., it is expected that an ex post facto report is sufficient in most cases. Regarding prior notification, about two weeks after the formal submission, the Bank of Japan, which is authorized to perform this task by the Japanese Government, accepts the investment unless an inquiry is necessary. In the case of suspension or modification, it takes five months at the longest.

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

If a demurral by an investor is filed against or a reinvestigation is submitted to a competent minister, the minister must grant such an investor the opportunity for a public hearing.

Agency	Address/telephone/fax
Ministry of Finance (International Finance Division, The International Bureau)	3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8940 Japan Telephone: (81 3) 3581 4131
Ministry(s) in charge of the industry concerned.	Fax: (81 3) 5251 2197

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

No special conditions apply.

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

Agency	Address/telephone/fax	Type of Complaint
The Secretariat of OTO (the Office of the Trade and Investment Ombudsman, Coordination Bureau, Economic Planning Agency)	3-1-1, Kasumigaseki, Chiyoda-ku, Tokyo 103 Japan Telephone: (81 3) 3581 0261 (ext.5253) (81 3) 3581 5469 (Direct) Fax: (81 3) 3581 9897	Complaints concerning market opening problems, including procedures of import of goods and service, direct investments to Japan, and government procurement.

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

No special law/regulation deals only with foreign investment other than the Foreign Exchange Law (see section B(1)(ii)(1)).

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

The Japan Investment Council, whose members are Cabinet ministers, was founded by Cabinet decision. The Council, including its expert subcommittee, is comprised of foreigners and prominent experts, bringing to light foreign criticism and requests concerning Japan's investment environment, striving to incorporate these into actual policy.

In the case of suspending or modifying a prior notification of "Direct Domestic Investment" (as mentioned earlier in section B), the Ministry of Finance and the competent Minister(s) in charge of the industry concerned must hear the opinions of the "Committee on Foreign Exchange and Other Transactions" under the Foreign Exchange Law.

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

No sub-national agency is involved in the approval process under the Foreign Exchange Law regarding "Foreign Direct Investment."

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

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

(1) Foreign Exchange Law

No exception to MFN treatment regarding establishment, expansion and operation of foreign investment other than the reciprocity principle which is mentioned earlier in section B.

(2) Other laws such as the following stipulate possible exceptions to MFN treatment.

(a) Banking and Securities Business

The establishment of branches or subsidiaries of foreign banks or foreign securities houses requires authorization and is subject to reciprocity considerations under certain conditions. Where reciprocity criteria are satisfied, establishment is permitted on the basis of equivalent treatment with domestic enterprises.

(b) International Freight Forwarding Services

An operation permit or governmental registration for international freight forwarding services is granted only to those firms of economies in which Japanese firms are eligible for such permit or qualified for such registration.

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

Not applicable.

3. NATIONAL TREATMENT

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

Apart from the regulations written in the Foreign Exchange Law (mentioned in section (B)(1)), certain other laws, such as the following, restrict FDI in Japan.

Sector	Nature of Exception (e.g., prohibition, limitation, special conditions and special screening)
Telecommunications	<p>A license to conduct telecommunications business through the establishment of telecommunication circuit facilities, except for the international telecommunications business between specific fixed points via relaying satellite radio stations, shall not be granted to:</p> <ul style="list-style-type: none"> (a) a person who is not a Japanese citizen; (b) a foreign government or its representatives; (c) a foreign juridical person or association; and (d) a juridical person or association which is represented by any of the above persons, or a third or more of whose voting rights are controlled by a foreigner. <p>Foreign participation in the share capital of Nippon Telegraph and Telephone corporation (NTT) is allowed to less than one-fifth.</p> <p>A license for a radio station used for telecommunications business, except for the international telecommunications business between specific fixed points via relaying satellite radio stations, shall not be granted to:</p> <ul style="list-style-type: none"> (a) a person who is not a Japanese citizen; (b) a foreign government or its representatives; (c) a foreign juridical person or association; and (d) a juridical person or association which is represented by any of the above persons, or a third or more of whose voting rights are held by a foreigner.
Broadcasting	<p>Foreigners or foreign-controlled enterprises (where any of the officers executing the business is a foreigner, or 20% or more of whose voting rights in aggregate are owned by foreigners) are not granted:</p> <ul style="list-style-type: none"> (a) licenses for broadcasting stations including AM, FM or television broadcasting stations; and (b) approvals as program-supplying broadcasters. <p>Foreigners or foreign-controlled enterprises (where any of the corporate representatives is a foreigner, or one third or more of whose voting rights in aggregate are owned by foreigners) are not granted:</p> <ul style="list-style-type: none"> (a) licenses for broadcasting stations of facility-supplying broadcasting; (b) licenses for broadcasting stations used for relay broadcasting to eliminate interference with reception; and (c) permission for the installation of cable television facilities. (The bills to remove restriction on FDI are under deliberation in the Diet.) <p>Remarks: The terms “foreigners” shall be taken to mean:</p> <ul style="list-style-type: none"> (a) any person who does not have Japanese nationality; (b) any foreign government or its representative; and (c) any foreign juridical person or association.
Air Transport	<p>A license to operate an air transport business shall not be granted to:</p> <ul style="list-style-type: none"> (a) a person who is not a Japanese citizen; (b) a foreign government or its representatives; (c) a foreign juridical person or association; and (d) a juridical person or association which is represented by any of the above persons, or a third or more of whose officers are such persons, or a third or more of whose voting rights are controlled by foreigners. Cabotage is reserved to national airlines.
Maritime Transport	<p>Transport of goods and passengers between Japanese ports is reserved to Japanese ships. Foreign ownership of Japanese ships can only occur through an enterprise incorporated in Japan in accordance with Ship Law.</p>

Sector	Nature of Exception (e.g., prohibition, limitation, special conditions and special screening)
Mining	<p>No one other than the Japanese people or the Japanese juridical person shall become a mining right owner: provided that this shall not apply when otherwise provided for by Treaty.</p> <p>Japan has no performance requirement nor regulation tied in any way to the export orientation of an investment proposal under the Foreign Exchange Law.</p>
Insurance	<p>Foreign insurers are required in all cases to lodge an initial deposit for the establishment of branches which is essentially equivalent to the share capital required of domestic companies. Initial deposits may be required of national insurers in some cases.</p>

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

National Treatment is given to financing for foreign firms which have been established in Japan.

4. REPATRIATION AND CONVERTIBILITY

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

Japan has no restriction on repatriation of such funds.

2. Brief description of the foreign exchange regime.

There are no restrictions on foreign exchange.

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

Not applicable.

5. ENTRY AND SOJOURN OF PERSONNEL

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

Japan has a visa category for foreign nationals who will stay in Japan with the status of residence, "Investor/Business Manager." There are two ways to get the visa. One is to go through the visa application at the nearest Japanese consular office with all necessary documents. The other is to get a certificate of eligibility for the status of residence, "Investor/Business Manager" at a local immigration office in Japan through the applicant's representative before getting the visa and apply for the visa with it. Generally speaking, the latter is more popular among applicants.

The status of residence, "Investor/Business Manager" includes operation and/or management of international trade, investment and other related activities. An applicant for the status must meet the following criteria:

- the facilities or offices are located in Japan;
- at least two full-time employees are engaged in the relevant business activities; 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 to study relevant courses on business at graduate school) and must receive no less in salary than 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, one year and six months, depending on the intended length of stay, the business record of the company concerned, the professional career of the person concerned and others. The duration decided at the time of entry into Japan can be extended at the applicant's nearest local immigration office in Japan.

There are no regulations or guidelines requiring a minimum number of local staff to be included in an investment proposal and/or operation of an investment. However, in some exceptional areas, such as mining and fisheries, any foreign individual or legal entity may not be able to enjoy mining or fishing rights.

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

Restrictions	Description
<p>Immigration Control and Refugee Recognition Act</p> <p>Criteria provided for by the Ministry of Justice Ordinance</p>	<p>Status of Residence: (1) - (5)</p> <p>(1) <u>Investor/Business Manager</u></p> <p>1. In cases where the applicant is to commence the operation of international trade or other business, the following conditions are to be fulfilled.</p> <ul style="list-style-type: none"> • The office is located in Japan with at least two full-time employees in Japan (including Permanent Residents, etc.). <p>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.</p> <ul style="list-style-type: none"> • The office is located in Japan with at least two full-time employees in Japan (including Permanent Residents, etc.). <p>3. In case an applicant is to engage in the management of international trade or other business in Japan, the following conditions are to be fulfilled.</p> <ul style="list-style-type: none"> • 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. <p>(3) <u>Engineer</u></p> <ul style="list-style-type: none"> • 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. <p>(3) <u>Specialist in Humanities/International Services</u></p> <p>1. In cases where the applicant is to engage in a job requiring knowledge in the humanities, the following conditions are to be fulfilled.</p> <ul style="list-style-type: none"> • 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.

Restrictions	Description
	<p>2. In cases where the applicant is to engage in a job requiring specific ways of thought or sensitivity based on experience with foreign culture, the following conditions are to be fulfilled.</p> <ul style="list-style-type: none"> • 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. <p>(4) <u>Intra-company Transferee</u></p> <ul style="list-style-type: none"> • 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. • In case an applicant engages in a job requiring specific ways of thought or sensitivity based on experience with foreign culture, a salary of at least 250,000 yen per month. <p>(5) <u>Dependent</u></p> <p>A dependent (a spouse and/or child(ren) supported by the applicant) of those mentioned above.</p>

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

(1) Labour Standards Law

This law provides the minimum standards of working conditions, such as wage and working hours, which each employer should guarantee. The purpose of this law is to make employers fulfill the standards by means of penal regulations and inspection.

(2) Minimum Wages Law

This law provides the minimum wage which each employer should pay. The purpose of this law is to stabilize the workers' living, raise the quality of 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.

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

Law	Summary
Trade Union Law	<p>On the ground of Article 28 of the Constitution of Japan, which guarantees workers "Three Rights of Labor"(including the right to strike), the Trade Union Law prescribes that all proper actions of trade unions, including proper strikes, are given criminal immunities (Article 1), civil immunities (Article 8) and the protection of the system against unfair labor practices (Article 7).</p> <p>In addition, no employer may discharge or give discriminatory treatment to a worker for the reason of having performed proper acts of a trade union (Trade Union Law Article 7).</p>
Labour Relations	In order to promote fair adjustment in the labor-management relationship and to

Law	Summary
Adjustment Law	prevent or settle labor disputes, the Labor Relations Adjustment Law has been established. It rules on adjustment procedures of labor disputes such as conciliation, mediation and arbitration, and the limitation and prohibition of labor disputes in certain cases.

6. TAXATION

- 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 corporate tax (national tax), corporate inhabitant tax (prefectural and municipal tax) and corporate enterprise tax (prefectural tax). While corporate tax and corporate inhabitant tax are not deductible, corporate enterprise tax is deductible.	Corporate tax rate-30.0% Corporate inhabitant tax rates: (prefectural tax) -5.0% of tax amount of corporate tax (municipal tax) -12.3% of tax amount of corporate tax Corporate enterprise tax rate (deductible) -9.6% *These rates are applied from the accounting year that starts after 1 April 1999.
Domestic 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 deriving from Japan.	Withholding tax rate-20% (or 15%) Double taxation agreements-Japan has 44 Tax Treaties, under which the above-mentioned withholding tax is mostly reduced.
Consumption tax is imposed on asset transfers by enterprises in Japan and foreign goods received from bonded areas.	Consumption tax rate-5% -Consumption Tax rate (national tax) 4% -Local Consumption Tax rate (prefectural tax) 1%

7. PERFORMANCE REQUIREMENTS

- Brief description of performance requirements that could impose limits on trade and investment and indicate any TRIMS.

Not applicable.

8. CAPITAL EXPORTS

- 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 principal, an investor who has made a foreign direct investment need only present the Minister of Finance, through the Bank of Japan, with a notification regarding the investment within 20 days of 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.

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

Regulations	Application and function
Foreign Exchange Control Order	<p>The Government of Japan examines the transfer of specific technology to specific destinations from the viewpoint of maintaining international peace and security.</p> <p>The law contains a governmental order: the Foreign Exchange Control Order. This governmental order includes lists of controlled technologies.</p>

9. INVESTOR BEHAVIOR

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

The Government of Japan has compiled guidelines on “Activities Expected of Japanese Firms Operating Abroad (10 items)” for Japanese firms on actively harmonizing with and contributing to the communities of investment recipient economies, and has disseminated them to the parties concerned.

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

Japan's competition policy is implemented with the vigorous enforcement of the Act Concerning the Prohibition of Private Monopoly and Maintenance of Fair Trade (the 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.

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

(a) Industrial Property

Japan protects technology, designs and trademarks under four industrial property laws: the Patent Law, Utility Model Law, Design Law and Trademark Law. Further, Japan protects designs and well-known trademarks which have the good will through the Unfair Competition Prevention Law.

Japan is a member of the major intellectual property agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Convention Establishing the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Trademark Law Treaty, 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.

(b) Copyright

The Copyright Law was revised in 1970. In addition, Japan concluded to the Convention Establishing the WIPO in 1975, the Paris Act of the Berne Convention in 1975, the Paris Act of the Universal Copyright Convention in 1977, the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms (Phonogram Convention) in 1978, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) in 1989 and the TRIPS Agreement in 1994.

Thus, foreigners' copyrights and related rights are generally protected in the same way as those of Japanese.

(c) Layout-designs (topographies) of integrated circuits

The Law concerning the Semiconductor Integrated Layout was established in 1985 in order to protect originally created circuit layouts of semiconductor integrated circuits. The same protection applies to foreigners as well as Japanese under the law.

(d) Trade Secret

Japan permits claims for damages and the right to request an injunction against the act of unfair acquisition, using or disclosing of trade secrets through the Unfair Competition Prevention Law. This Law gives the same protection to foreigners as Japanese.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

Laws/Regulations	Application and Function
Land Expropriation Act	The purposes of this law are to provide for the necessary conditions, procedures and effects concerning the expropriation and use of land, etc., needed for projects which benefit the public, and for compensation, etc., for the losses resulting thereof, to effect coordination between the promotion of public benefit and the private property, and thereby to make a contribution to the proper and reasonable utilization of the economy's land. Of course this law is applied to Japanese and foreigners indiscriminately.

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

Not applicable.

2. SETTLEMENT OF DISPUTES

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

Foreign investors may file against the competent minister (see section B(1)(ii)(6)).

Agency	Address/telephone/fax
Ministry of Finance (International Capital Division, International Bureau)	Address: 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8940 Japan Telephone: (81 3) 3581 3792
The Ministry(s) in charge of the industry concerned	Fax: (81 3) 5251 2141

2. Signatory or accession to the ICSID Convention.

Yes. The Government of Japan signed the ICSID Convention in 1965.

D. INVESTMENT PROMOTION AND INCENTIVES

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

*Finance and tax incentives will be described in section D(2).

Program	Nature of incentive	Contact point
1. The Japan Investment Council	The outline of the council was given in section B(10).	<p>Office for Market Access Improvement, Coordination Bureau, Economic Planning Agency:</p> <p>3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8970 Telephone: (81 3) 3581 9576 Fax: (81 3) 3581 9897</p> <p>International Business Affairs Division, Industrial Policy Bureau, Ministry of International Trade and Industry:</p> <p>1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8901 Telephone: (81 3) 3501 6623 Fax: (81 3) 3501 3638</p>
2. Japan External Trade Organization (JETRO) Activities to Promote Foreign Direct Investment in Japan	<p>(a) Invitation Program (Invest in Japan Program):</p> <p>JETRO invites private sector companies from abroad each year, providing information on the investment climate in Japan, as well as providing support for specific investment approaches by arranging private business discussions.</p> <p>(b) Investment Advisor Project:</p> <p>JETRO headquarters and overseas offices, which have investment advisors on staff and retain advisors on staff and also retain outside advisors, give advice related to investment in Japan.</p> <p>(c) Senior Investment Advisor Dispatching Program:</p> <p>Senior Investment Advisors are dispatched abroad in order to provide continued support to foreign investors identified by the above advisors, and to identify other potential investors.</p> <p>(d) Symposiums to promote foreign investment in Japan:</p>	<p>Investment-in-Japan Division, Investment Promotion Department, Japan External Trade Organization (JETRO)</p> <p>2-2-5 Toranomom, Minato-ku, Tokyo 105-8466 Telephone: (81 3) 3582 5571 Fax: (81 3) 3505-1854</p>

Program	Nature of incentive	Contact point
	JETRO dispatches investment promotion missions of specialists in foreign investment in Japan abroad, and provides interested companies with information on the investment climate in Japan.	

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 Law	<p>(1) <i>A Designated Inward Investor (*) could take the following incentives.</i></p> <p>(a) Tax incentives Extension of carry-over period for operating losses incurred within the first five years of business from 5 to 10 years.</p> <p>(b) Loan Guarantees by the Industrial Structure Improvement Fund Loan guarantees on up to 95% of the liability of business funds borrowed.</p> <p>(*) The conditions for being a “Designated Inward Investor” are as follows: – a branch or a subsidiary with at least one-third foreign equity (including 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.</p>	<p>Regional Bureaus of International Trade and Industry (International Business Affairs Division, Industrial Policy Bureau, Ministry of International Trade and Industry)</p> <p>1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Telephone: (81 3) 3501 6623 Fax: (81 3) 3501 3638</p>
(2) Loan program for the promotion of foreign direct investment in Japan by the Japan Development Bank, the North East Finance of Japan and the Okinawa Development Finance Corporation	<p>(2) <i>Company and Project Eligibility</i></p> <p><u>Companies:</u> (a) Japanese companies with at least $\frac{1}{3}$ foreign capital (b) Registered branches in Japan of non-Japanese companies</p> <p><u>Projects:</u> (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</p>	<p>(2)(a) International Department, Japan Development Bank</p> <p>1-9-1 Otemachi, Chiyoda-ku, Tokyo 100-0004 Telephone: (81 3) 3244 1772, Fax: (81 3) 3245 1938</p> <p>(b) Hokkaido-Tohoku Development Finance Public Corporation</p> <p>Koko Bldg., 1-9-3 Otemachi, Chiyoda-ku, Tokyo 100-0004 Telephone: (81 3) 3270 1652 Fax: (81 3) 3277 1955</p>

Program (National / sub-national)	Nature of incentive	Contact point
	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.) For further information, please have a contact with the contact point.	(c) Okinawa Development Finance Corporation Daito Bldg., 3-7-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-0013 Telephone: (81 3) 3581 3243 Fax: (81 3) 5511 8233
(3) Program of Providing the Specific Facilities to Promote Foreign Investment Exchange based on the Private Participation Promotion Law	(3) <i>Types of facilities:</i> Facilities for international training in which the employees of foreign enterprises will be able to study the Japanese language, society and economy. Facilities to support foreign business participation by providing rental incubator offices for their initial operation in Japan, and conference facilities, etc., for international use. Assistance measures: (a) subsidy of up to 5% of all construction costs. (b) investment and financing from the Japan Development Bank and so on. (c) special tax measures. (d) loan guarantees under the Industrial Structure Improvement Fund.	(3) International Business Affairs Division, Industrial Policy Bureau, Ministry of International Trade and Industry 1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100 Telephone: (81 3) 3501 6623 Fax: (81 3) 3501 3638

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 in Japan Development Corporation (FIND) Market entry services: FIND provides information for companies taking their first step toward establishing bases in Japan. Consulting services: FIND offers consulting services when foreign enterprises and foreign affiliates need expert services and individual and detailed consultation. Training and seminar services: FIND conducts training sessions, seminars and symposia to train the staff needed to handle the activities of foreign enterprises and affiliates, and provides up-to-date business information and related measures. M & A Consulting Services: FIND established an one-stop consultation unit for information on M & A between foreign and Japanese companies.	6F Akasaka Annex, 2-17-42 Akasaka, Minato-ku, Tokyo 107-0052 Telephone: (81 3) 3224 1203 Fax: (81 3) 3224 9871

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/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement.*

Agreement	Provisions
<p>Friendship, Commerce and Navigation Treaties</p> <p>Japan has concluded this kind of treaty with 47 economies including some of APEC member economies: Australia, Canada, Indonesia, Korea, Malaysia, Mexico, New Zealand, Philippines, Thailand and USA.</p>	<p>Generally Friendship, Commerce and Navigation treaties deal with a wide array of bilateral consular and commercial, as well as investment issues.</p> <p>Each treaty, except the treaty with the United States, includes provisions stipulating most favoured nation treatment with respect to business activity by nationals 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.</p>
<p>Bilateral Investment Treaties</p> <p>Japan has concluded Bilateral Investment Treaties with Egypt, Sri Lanka, China, Turkey and Hong Kong, China.</p>	<p>Each treaty includes provisions which stipulate that the most favoured nation treatment be accorded to nationals and companies of each Party in respect of the matters relating to the admission of investment. The four treaties also include provisions which stipulate that the most favoured nation treatment and national treatment be accorded to nationals and companies of each party in respect of investments, returns and business activities in connection with the investment.</p>
<p>Regional or Sub-Regional Investment Treaties</p>	<p>Not applicable.</p>

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

(1) Inward FDI

After peaking at 589.6 billion yen (about \$4.4 billion) in FY 1991, the reported inward FDI based on the Foreign Exchange Law showed a declining tendency, but in FY 1996 rebounded to 770.7 billion yen (about \$7.1 billion), equivalent to a 108.5% increase as against FY 1995. In terms of number of projects, emphasis in investment is shifting to the non-manufacturing sector due to the high potential for sales in Japan. It amounted 678.2 billion yen (about \$5.6 billion) in FY 1997, a decrease of 12.0% as against FY 1996.

(2) Outward FDI

Japanese FDI abroad peaked at 9,033.9 billion yen (about \$67.5 billion) due to the progress of the yen after the Plaza Accord. After it decreased to 4,431.3 billion yen (about \$34.1 billion) in FY 1992, it turned into increasing trend. It amounted to 6,622.9 billion yen (about \$54.7 billion) in FY1997, an increase of 22.4% as against FY1996, achieving increase in yen base for the fourth consecutive year.

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

Sources FDI	Destination FDI
<p>(1) United States: Cumulative (FY 1951-1994)- 40.4% (FY 1995) - 47.9% (FY 1996) - 31.0% (FY 1997) - 22.4%</p> <p>(2) Japan*: Cumulative (1951-1994) - 10.9% (FY 1995) - 6.3% (FY 1996) - 13.0% (FY 1997) - 12.4%</p> <p>(3) Netherlands: Cumulative (FY 1951-1994) - 8.2% (FY 1995) - 14.5% (FY 1996) - 10.4% (FY 1997) - 21.6%</p> <p>(4) Singapore: (FY 1996) - 13.9% (FY 1997) - 2.8%</p>	<p>(1) United States: Cumulative (FY 1951-1994)- 41.9% (FY 1995) - 44.1% (FY 1996) - 45.8% (FY 1997) - 38.5%</p> <p>(2) United Kingdom: Cumulative (1951-1994) - 7.3% (FY 1995) - 6.7% (FY 1996) - 7.2% (FY 1997) - 7.6%</p> <p>(3) Australia: Cumulative (1951-1994)- 5.2% (FY 1995) - 5.2% (FY 1996) - 1.6% (FY 1997) - 3.1%</p> <p>(4) China: (FY 1995) - 8.7% (FY 1996) - 5.2% (FY 1997) - 3.7%</p>

* Japan refers to FDI made by affiliates of foreign businesses in Japan

REPUBLIC OF KOREA

REPUBLIC OF KOREA

A. BACKGROUND OF FOREIGN DIRECT INVESTMENT REGIME

1. *Brief description of foreign investment policy including any recent policy changes.*

(1) Basic direction of foreign direct investment policy

Foreign investment will play a major role in making the Korean Economy more efficient and allow for further integration with the global economy.

Foreign investment, first and foremost, provides stable long term foreign capital, which is so vital to Korean economy at this time. Foreign investment will also help stimulate corporate restructuring, alleviate unemployment, and induce advanced technologies and managerial skills.

Recognizing the importance of foreign investment and open economic system, the newly inaugurated “Government of the People” has made a strong commitment to creating a most favorable environment for foreign direct investment. Recent liberalization measures are as follows:

(2) Evolution of Korea's foreign investment regime

Five-Year Foreign Investment Liberalization Plan (June 1993)

This plan was introduced to open up 210 businesses, 132 of which were newly liberalized and 78 that were further liberalized from July 1993 to January 1997. This will boost the overall foreign investment liberalization ratio to 93.4% in 1997 from 85.1% in 1993.

Simplification of investment procedures (March 1994)

Landmark simplifications have been made in foreign investment procedures through the revision of the Foreign Capital Inducement Act:

- (a) Delegation of notification acceptance related tasks to foreign exchange banks for the convenience of applicants;
- (b) Reduction of processing period for acceptance of notifications to within three hours; for approval of foreign investment applications, 5 or 15 days;
- (c) Simplification of documents required to be submitted;

(d) Enhancement of transparency through minimization of criteria for denial of notification acceptances.

The Foreign Direct Investment Environment Improvement Plan (September 1995)

This plan differed from previous plans in that it is designed to improve the current system so that it is consistent with the international investment standards such as the OECD code of liberalization.

This plan aimed reduce and simplify relevant regulations for procedures such as post-screening by taking factors such as national treatment into account.

Five-Year Liberalization Plan for Foreign Direct Investment (November 1995)

The 1995 Five-Year FDI Liberalization Plan was implemented in order to open up 57 of the 105 businesses (including 51 businesses that are partially liberalized) that were restricted in the current Five-Year Foreign Investment Liberalization Plan by 1 January 1997.

As a result, a total of 152 businesses were newly liberalized or be subjected to increases in their scope of liberalization between 1996 and 2000, including those businesses eligible for liberalization under the current Five-Year Foreign Investment Liberalization Plan.

Out of those 152 businesses, the liberalization of 128 businesses took place particularly in 1996 and 1997.

The establishment of the new foreign investment regime (since November 1997)

Enactment of the New “Foreign Investment Promotion Act”

The Korean government has now, 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 paradigm of policies. The new paradigm is symbolized in the new Foreign Investment Promotion Act (hereinafter “the new Act”).

As the new Act was passed on 2 September 1998 by the National Assembly, it will become effective on 17 November 1998, subsequently abolishing the previous Act on Foreign Direct Investment and Foreign Capital Inducement. The new FDI regime is based on two major principles.

The Two Major principles of the New FDI Regime

1. Formulating policies to design the most supportive and convenient FDI system possible for foreign investment from the perspective of the foreign investor
2. Establishing a FDI system in which local governments, in efforts to advance regional development,

play the central role in competitively courting FDI

To this end, the new Act has been developed to create a more transparent and liberalized system, abolish the cumbersome regulations and augment incentives, and to provide One-Stop service through the Korea Investment Service Center. It incorporates seven major objectives.

The Seven Major Objectives of the Foreign Investment Promotion Act

- A. Liberalization and protection of FDI
- B. Augmentation of tax Incentives
- C. Enhancement of Property Incentives and Subsidies
- D. Simplification of Procedures
- E. Provision of One-Stop Service
- F. Establishment of Foreign Investment Zones (FIZs)
- G. Establishment of the Commission on Foreign Direct Investment Policy

Through extensive restructuring, Korea is transforming its economy into a truly open and market-based system with increased efficiency that is able to compete and cooperate with the rest of the world.

In this context, the government has recently taken significant steps toward liberalizing capital flows as well as establishing a simple and transparent legal framework of foreign investment.

Measures Completed to Promote Foreign Investment

- **Market Liberalization**
 - Liberalization of business sectors
 - Full Liberalization of cross-border M&As
 - Capital market liberalization
 - Full opening of the real estate market
- Enactment of the New “Foreign Investment Promotion Act”

These measures to open capital markets and lower barriers to foreign investment are critical steps to improving the investment environment, and the restructuring process now taking place in Korea is indicative of the economy’s commitment to forming long-lasting international investment partnerships.

Liberalization of Business Sectors

The government has made significant progress to date in the implementation of measures to attract foreign direct investment. In 1998, seven sectors were fully liberalized in of April, including rental of residential buildings, and eleven sectors were liberalized in May. In January 1999, eight sectors were fully liberalized. Further liberalization in other sectors will continue.

- Only 22 sectors remain closed or partially open to foreign investors out of the total of 1,148 sectors. **This means, 99.4% of all industries are open to foreign investment.**

Full Liberalization of Cross-Border M&As

The government fully liberalized the mergers with or the acquisitions of domestic firms by foreign corporations in May of 1998.

- Foreign investors are now allowed to purchase 100% of the targeted company's outstanding stock without the consent of its board of directors (previously required until May 1998).
- Previously, any investor who wished to purchase 25% or more of a publicly-traded company's shares was obliged to make a tender offer bid (T.O.B.) to purchase more than 50% of the company's shares. This regulation has now been abolished.
- The government has also revised the assessment criterion for corporate purchases to enable smooth mergers or acquisition between foreign and domestic companies, while introducing a corporate divestiture system to facilitate spilt-ups and restructuring of business sectors within a company. Tax incentives to this end have been expanded accordingly.

Capital Market Liberalization

The Korean government has recently expanded the opening of its capital market to attract more foreign capital.

Measures Taken to Liberalize the Capital Market

- The ceilings on aggregate foreign equity ownership and individual foreign ownership were eliminated
- All limits on foreign investment into the government, corporate, and special bond markets have been lifted. According to the action, foreigners can invest without limit in the gamut of bonds available
- Foreign purchases of the short term financial instruments issued by corporate and financial institutions such as corporate paper, commercial paper, trade bills, CDs, repurchase agreements (RPs), notes and cover bills, etc., have been fully liberalized

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

Turning challenge into opportunity

The Korea of today is a completely different economy following the onset of instability in the foreign exchange market in November 1997. It is an economy that has recognized and addressed the fundamental weaknesses created during the rapid economic development of the past four decades.

Korea, now, in looking to the next millennium, embraces a new paradigm of development based on the principles of the free market competition and democracy, and seeks further integration with the global economy.

To go beyond the simple correction of past mistakes and regain the confidence of international investors, the Korean economy is undergoing a comprehensive reform and restructuring process. The process focuses on four major areas of change: *financial sector restructuring*, *corporate sector restructuring*, *labor market reform*, and *public sector reform*. Through this large initial step, in a series of changes to come, the Korean economy will bring business standards to the highest international levels.

Today, as a result of the strict implementation of necessary adjustments, the fundamentals of Korea's market economy have been enhanced and recovery is being pursued.

At the end 1998, Korea displayed significant signs of improvement and making great strides toward economy recovery. Usable foreign exchange reserves grew to a record high of \$48.8 billion, and the won/dollar exchange rate stabilized around the 1,200 level. Three-year corporate bond yields, a benchmark for long-term interest rates, dropped below 10%, less than the pre-crisis level. Aided by a stable foreign exchange and financial markets, Korea repaid \$2.8 billion of its rescue loans to the IMF Supplementary Reserve Facility in December. In line with such indicators, international credit rating agencies, like Standard and Poors and Fitch IBCA, announced back-to-back the upgrading of Korea's credit rating and the IMF now forecasts 2% growth in 1999.

Despite such signs of returning economic stability, however, there still remain many major concerns to be settled, such as unemployment through the comprehensive reform and restructuring process.

As such, Korea grasps this challenge of today as an opportunity to change and improve. Under the strong democratic leadership of President Kim and with the whole-hearted public support from the entire Korean population, the Korea of today continues to stand strong in its uncompromising commitment to reform and restructure its economy and economic practices. Embodied in President Kim's "Second Nation Building" commemoration address on the 50th Anniversary of the Republic, the lessons of times past will be firmly embraced and Korea shall work ever-harder to successfully overcome and re-emerge as another symbol of history that proves difficult times lead to new and better days.

Reinventing the Economy through Reforms and Restructuring

In order to address the fundamental causes of the economic difficulties and to revitalize the economy, the Korean government has taken bold and decisive measures towards comprehensive structural reform.

Restructuring and related institutional reforms are being carried out in a swift and prudent manner, with strict adherence to market principles and democratic due process.

Financial Sector Restructuring

Structural defects and distorted practices in the financial sector have been at the root of the current crisis. For this reason, financial sector reform has been the highest priority among economic reforms.

To this end, the Korean government has established a four-point agenda for financial sector reform. This agenda obviously presumes the full liberalization of the financial markets.

The first objective is the restructuring of the troubled financial industry. The second objective is a re-engineering of the financial institutions toward commercial orientation, shifting away from the past practices of exploiting them as instruments of industrial policy. The third objective involves the empowerment of human capital in the financial sector, which is an absolute necessity of advanced banking practices and management. The fourth objective is the strengthening of prudential regulation and supervision. The first agenda, the restructuring of the troubled financial industry, has been the most pressing issue of reform efforts. As such, 94 financial institutions, including five commercial banks, have thus far been either closed or suspended.

Most recently, the first major round of financial restructuring with a primary focus on the banking sector was completed. Viable financial institutions cleaned up their balance sheets and were recapitalized. Six large banks voluntarily merged in order to increase their scale economies and efficiency. Many Korean banks have now obtained a sound bank status, with BIS ratios of 10% to 13%.

For non-bank financial institutions, rehabilitation under the initiative of major shareholders is now being encouraged. However, this process is being monitored closely by the Financial Supervisory Commission. If rehabilitation steps are deemed inadequate, the institutions will either be subjective to corrective actions or have to face closure.

In order to support financial sector restructuring, the Korean government will mobilize fiscal resources of 64 trillion won, or approximately \$50 billion. Out of this total, about 34 billion has already been allocated as fiscal support to viable institutions for the disposal of non-performing assets and recapitalization, as well as depositor protection.

It should be noted, however, that the government's support is only being provided as a supplementary measure to these institutions' own restructuring and financing plans, preventing moral hazard.

Corporate Sector Restructuring

The objectives of restructuring the corporate sector are two-fold. The first is the reduction of corporate debt, while the second involves improving management transparency and governance structure. The

government's role centers on instituting the proper institutional framework to facilitate and monitor the restructuring process.

To date, 55 corporations, most of which are subsidiaries of business conglomerates, or chaebols, have been classified by creditor banks as non-viable corporations, no new credit has been extended by their creditor banks. Furthermore, any financial assistance across affiliate companies for the purpose of bailout has been disallowed.

At present, more than 200 financial institutions have signed the "Corporate Restructuring Agreement" to carry out corporate workouts with financially weak but viable chaebol subsidiaries and large non-chaebol corporations. The scope of workout programs will be expanded so as to include small and medium sized enterprises.

With regard to the issue of corporate governance, transparency and accountability are being facilitated by a number of recent measures. No new cross-debt guarantees have been allowed as of 1 April 1998. Associated efforts will be given to the early resolution of cross-debt guarantees. Average debt-equity ratios will be lowered to approximately 200% by the end of 1999 while existing cross-debt guarantees are set to be eliminated by the year 2000. Consolidated financial statements will be required as of this year, shareholder's voting rights have been strengthened, and all listed companies are required to appoint outside directors. These new standards continue to be strictly enforced.

Also, in the first quarter of this year, a Corporate Governance Enhancement Committee, consisting of such individuals as professional managers and representative institutional investors, will be established to develop and foster a "Code of Best Practices." The committee will work out a six-month action plan for instilling a climate of clean management in leading corporate entities.

In order to enhance corporate transparency, an organization comprised of members from the private sector will begin setting accounting standards in June. Also, a pilot program for providing information such as corporate and audit reports, via computer, will become operational in March of this year.

Enhancing Labor Market Flexibility

An efficient labor market is directly related to the productivity of the Korean economy. Recognizing this, the Korean government seeks a labor market in which labor allocation and wage determinations are efficiently governed through market mechanisms by enhancing labor market flexibility and establishing stable labor-management relations.

With the revised Labor Standard Act, passed in February 1998, labor market flexibility was legally instituted and this amendment is facilitating necessary corporate sector restructuring and will allow firms to rebound more competitively. The Korean government will continue to work toward increase of labor

market flexibility by strictly enforcing legal standards and labor practices.

In order to maintain social stability over the reform process, the Korean government has already launched a second round tripartite dialogue so that all sectors of the Korean society are equally represented with respect to burden-sharing. And the government is expanding the social safety net, including adjustments in unemployment insurance. More fiscal resources are being allocated for unemployment benefits that are commensurate with the needs of displaced workers.

Public Sector Reform

Public sector reform is important to lead the whole process of reform by setting a good example on the one hand, and by saving financial resources needed for the adjustment process on the other. Without the leading role of the government, it is difficult to persuade people to accept the pains of restructuring and higher tax burdens.

Public sector reform is being geared toward a small but efficient government. In this regard, restructuring and reduction of central and local government has been implemented, and state-owned enterprises and other government-funded institutes will be restructured or privatized so as to increase efficiency.

On the basis of ongoing management diagnosis of the public sector, government organizations will be reshuffled according to core functions of each government body. Emphasis will also be given to the operating systems, as well as the prevailing culture of the public sector.

In addition, the government will formulate a medium-term public finance plan for the soundness and transparency of the fiscal sector. This plan encompasses the introduction of a performance-based budgeting system, the streamlining of fiscal resource allocation between special accounts and public fund, and the informationization of the budget management system. Also in store is the reform of tax administration. Tax organization, currently based on respective taxes will be reorganized vis-à-vis functions such as notification, survey, and information management. Furthermore, the government will expedite the privatization of public enterprises, and outsourcing will be encouraged.

Prospects For the Korean Economy

With the challenges presented by the economic difficulties of today, Korea's government, businesses, and people are rallying together, under the leadership of President Kim, to overcome the economic hardships in the process of restructuring and reform.

Korea acknowledges that there continues to be a possibility of a decrease in economic growth in 1998 due to contractions in domestic and international demands, a domestic credit crunch, and the impact of restructuring efforts. However, in 1999, Korea, like that of the IMF, expects the real GDP growth rate to

be 2%, as the benefits of restructuring and economic reforms are borne, and confidence and domestic demand return.

The current account surplus in 1998 will be about US\$37 billion. The size of the surplus will be reduced in 1999 to around US\$18 billion, due to rise in imports. Inflation is also expected to be subdued in 1999 to about 5% by dint of exchange rate stabilization.

By 2000, the structural reforms will be largely completed, and the economy should resume its potential growth rate. In particular, financial restructuring will allow more credit at lower interest rates, thereby promoting domestic demand through private consumption and fixed investment. Furthermore, the sustained current account surplus will significantly improve Korea's foreign debt position and further stabilize the exchange rate. With financial market stability restored, the economy is predicted to grow to its potential.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory Requirements

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

“Foreign direct investment” is defined in the foreign Investment Promotion Act as subscribing to or holding stock or shares by a foreigner in an enterprise run by a juridical person of the Republic of Korea or a national of the Republic of Korea in accordance with the Act.

Out of a total of 1,148 business categories, 1,060 categories are subject to notification, 81 to approval, and the remaining seven categories are fully restricted for foreign investment as of 1 April 1999.

Notification (1,060 businesses)

In the event that a foreign investor intends to invest in Korea, he shall need to notify the foreign exchange banks in advance.

Approval (81 businesses)

If the investment project falls under the categories of business subject to approval, foreign investors shall need to obtain an approval of the competent minister.

The business categories subject to approval are only Defense Industries.

Liberalization of FDI in Principle

In order to promote further global integration, Korea has continued to liberalize FDI. With the joining of the OECD, on 12 December 1996, previously restrictive regulations on FDI were drastically streamlined and brought to the internationally accepted level. After the onset of the foreign exchange crisis of late 1997, further efforts have been made.

The new Act proclaims that all the sectors, in principle, are liberalized and brings Korea's FDI regime to the highest international standards. Restrictions on FDI now only apply in cases where the sustainments of national security, public order, public health, environmental preservation, or social morals are threatened.

Category	1997	1998	January 1999
Total businesses	1,148		
Partially opened sectors	26	31	15
Closed	27	21	7
Liberalization ratio	97.6%	98.2%	99.4%

❖ *Liberalization ratio: Number of business fully and partially opened / Total business sectors x 100*

Currently, as out of a total classified 1,148 sectors, only seven remain closed to FDI, **99.4% of Korea's economy is open to the world.** The present 16 partially opened sectors will be further liberalized in the near future.

The 15 sectors partially restricted to FDI

Businesses	Liberalization Contents
1. Growing of cereal grains	Fully liberalized, except for rice and barley
2. Gambling	Fully liberalized, except for casinos Casinos are set to be fully liberalized May 1999
3. Publishing of newspapers	Less than 30% liberalized
4. Publishing periodicals	Less than 25% liberalized FDI ratio scheduled to expanded to less than 50% in 1999
5. Coastal water passenger Transportation	Less than 50% liberalized
6. Coastal water freight transportation	Less than 50% liberalized
7. Scheduled air transportation	Less than 50% liberalized
8. Non scheduled air transportation	Less than 50% liberalized
9. Wire telegraph and telephone	33% liberalized
10. Wireless telegraph and telephone	33% liberalized FDI ratios to be expanded on 1 January 1999 and 1 January 2001
11. Telecommunications n.e.c.	33% liberalized in the telecommunications satellite service sector
12. Domestic banking	Commercial banking sector is completely liberalized
13. Trust and trust companies	Securities investment trust businesses are completely

Businesses	Liberalization Contents
	liberalized
14. Cable broadcasting	33% liberalized
15. Electricity power generation	Fully liberalized, except for the public power generation sector The public power generation sector is liberalized up to less than 50%

The Seven Sectors Closed to FDI

- | |
|---|
| <ol style="list-style-type: none"> 1. Raising of cattle (FDI ratio to be expanded to less than 50% in January 2000) 2. Inshore fishing 3. Coastal fishing 4. Wholesale meat (FDI ratio to be expanded to less than 50% in January 2000) 5. Radio broadcasting 6. Television broadcasting 7. News agency activities (FDO ratio to be expanded to less than 25% in January 2000) |
|---|

(2) Investment Review and Approval

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

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

Proposals

(1) Merger and Acquisition (NO)

There are no set regulations governing merger activities. The government fully liberalized the mergers with or the acquisitions of domestic firms by foreign corporations in May 1998.

- Foreign investors are now allowed to purchase 100% of the targeted company's outstanding stock without the consent of its board of directors (previously required until May 1998).
- Previously, any investor who wished to purchase 25% or more of a publicly-traded company's shares was obliged to make a tender offer bid (T.O.B.) to purchase more than 50% of the company's shares. This regulation has now been abolished.
- The government has also revised the assessment criterion for corporate purchases to enable smooth mergers or acquisition between foreign and domestic companies, while introducing a corporate divestiture system to facilitate spilt-ups and restructuring of business sectors within a company. Tax incentives to this end have been expanded accordingly.

(2) Greenfield Investment/Joint Venture (NO)

Greenfield Investment and Joint Venture are treated in the same manner. Accordingly, an investor, who desires to operate a business which is subject to notification, should merely submit a notification to the Foreign Investment Notification and Registration Institutions: as described above without acceptance of the government.

(3) Real Estate/Land (NO)

The government has changed the paradigm of the real estate policies on the basis of free market principles and has completely opened the real estate market to the global community, recognizing anti-speculative measures in 1970s and 1980s have proven to be inconvenient to business activities and investment.

The Korean government has amended the “Foreigner's Land Acquisition Act” and has now completely abrogated foreign land acquisition limits from 26 June 1998. Accordingly, under the new Act, foreigners, including nonresidents, are now given national treatment in the acquisition of land, without any limits such as land use and land size.

Entity	Before 26 June 1998	After 26 June 1998
Foreign Individual	<ul style="list-style-type: none">• Only foreigners of more than five years' residence in Korea with a visa were allowed to acquire land• Foreigners were allowed to acquire under 660m² land for residence and under 165m² land for commerce	<ul style="list-style-type: none">• All foreigners including nonresidents are allowed to acquire land• All limits on foreign land acquisition are abrogated
Foreign Corporation	<ul style="list-style-type: none">• Land acquisition was allowed only for business purposes, such as for factories, offices, and warehouse	<ul style="list-style-type: none">• Land acquisition is allowed even for non-businesses purposes• All limits on foreign land acquisition were abrogated

In the prior “Foreigner's Land Acquisition Act”, all purchasing of land by foreigners had to be approved before the conclusion of a contract. The new Act doesn't require approval any more except “military installation reservations, cultural properties and ecological reserves.” All foreigners may simply report their purchases upon the conclusion of a contract.

Now, businesses related to the real estate, which were closed to foreigners previously, have already been fully open. Businesses related to the real estate:

- The “building rental and lotting-out /sale business” has been completely liberalized as of 1 April 1998
- The “land lease and land development/sale business” has been completely liberalized as of 8 May 1998

Simplification of the FDI Notification and Reporting Procedures

Prior to the new Act, there were the four regulatory and administrative required steps to make a foreign direct investment.

- Government acceptance of FDI
- Report of the arrival of foreign capital
- Approvals for business activities
- Registration of FDI

Notification procedures simplified

- Step 1 (the government's acceptance of a FDI notification) is no longer required, except for in the case of investments in the defense industry. Under the new Act, all forms of foreign direct investment, allowed under law, simply need to be notified to the government via a Foreign Investment Notification and Registration Institution (FINRI).

* Foreign Investment Notification and Registration Institutions:

- Branches and headquarters of the all banks in Korea dealing with foreign exchange (hereinafter Foreign Exchange Bank)
- The overseas offices, local offices, and the headquarter of KOTRA's Korea Investment Service Center (KISC)
- The requirement that non-residents appoint a resident of Korea as proxy to submit notification applications of FDI to the government have also been abolished with step 1 (the government's acceptance of a FDI notification).
- Now anyone may submit notification forms to the government. To make facilitate this process, notification forms to be submitted to the government have been published in English and Korean. Previously, notification forms were only available in Korean.
- Under Technology Inducement Contract, the government's acceptance of an induced technology is no longer required. Under the new Act, notification is only required in cases of: (1) technologies eligible for tax reduction or exemption, (2) aviation related technologies, and (3) defense related technologies

Abolishment of the requirement to report the arrival of induced foreign capital

- Step 1, the requirement to report the arrival of induced foreign capital to the Minister of Finance and Economy within one month from its date of entrance, has been abolished.
- Through the abolishment of steps 1 and 2, the new foreign investment system has been simplified into two major steps.
- Under the new Act, all foreign investors have to do, in making a FDI in Korea, is notify the

government of the FDI and register the FDI to a FINRI.

Permission in advance: Foreign investors acquiring existing shares of the corporation which is operated by the defense industry designated by the Presidential Decree

Differences between the Acceptance of Notification System and the Simplified Notification System:

The previous Acceptance of Notification System had difficulties in prompt settlement since it inspects the detailed contents of the report, however, Simplified Notification System, as regulated by the law, only inspects the formal contents of the report so prompt settlement is possible

Reduction of Disposal Period

Civil Application	Disposal period
Foreign investment in notification for acquisition of newly issued stock	Promptly
Foreign investment in notification for the acquisition of out standing stock Report	Promptly
Registration for foreign invested enterprise	1 day
Notification of dividend investment	Disposed as notification of the acquisition of newly issued stock
Notification for a change in content of foreign investment	Promptly
Notification for stock or shares acquisition	Promptly
Notification for stock conversion	Disposed as notification of the acquisition of newly issued stock
Notification for foreign capital disposition	Promptly
Application for tax reduction or exemption	20 days
Application for exemption from custom duty	3 days
Notification for business commencement	7 days
Notification for transfer or reduction of stock or shares	Promptly
Application for reduction or exemption in national property rental fee	21 days
Notification for loan contract	Promptly
Application capital goods	Promptly
Application for confirmation of tax exemption application in advance	20 days

The Comprehensive Annual Announcement on FDI Restrictions

Under the new Act, 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 Finance and Economy.

The announcement will henceforth be made every year on a yearly basis. The first comprehensive annual announcement has been made in January 1999.

Actions to address and correct restrictive regulations in annual announcements which are deemed as not meeting international standards or unnecessarily hampering FDI will be taken as immediately.

Contact points to which applications should be made:

Domestic banks	
1. Korea Development Bank	16. Kwang Ju Bank
2. Industrial Bank of Korea	17. Cheju Bank
3. Kookmin Bank	18. Kyeong Kie Bank
4. Korea Housing Bank	19. Kang Won Bank
5. Cho Heung Bank	20. Kyeong Nam Bank
6. Hanvit Bank of Korea	21. Jeon Buk Bank
7. Korea First Bank	22. Korea Long Term Credit Bank
8. Bank of Seoul	23. National Agricultural Cooperative Federation
9. Korea Exchange Bank	24. National Federation of Fishery Cooperatives
10. Shin Han Bank	25. National Livestock Cooperative Federation
11. KorAm Bank	
12. Hana Bank	
13. Peace Bank of Korea	
14. Taegu Bank	
15. Pusan Bank	

Foreign Banks with Branch Office in Seoul	
1. Citibank, N.A. Seoul Branch	21. Credit Lyonnais Bank, Seoul Branch
2. Bank of America, Seoul Branch	22. Banque Paribas
3. The First National Bank of Chicago	23. Societe Generale
4. Chemical bank	24. Standard Chartered Bank
5. First National Bank of Boston, Seoul Branch	25. Royal Bank of Canada
6. Bank of Hawaii	26. National Bank of Canada
7. Bank of New York, Seoul Branch	27. Internationale Nedurlanden Bank
8. The bank of Tokyo, Seoul Branch	28. Australia and New Zealand banking Group
9. Dai-Ichi Kangyo Bank	29. National Australiza Bank
10. The Sakura Bank	30. The Development Bank of Singapore
11. Sumitomo Bank	31. Deutsche Bank, Seoul Branch
12. The Fuji Bank	32. Hong Kong and Shanghai Banking, Seoul Branch
13. The Sanwa Bank	33. Bank of China
14. The Daiwa Bank	34. Arab Bank
15. The Asahi Bank	35. The Chase Manhattan Bank
16. Mitsubishi Trust and Banking	36. ABN.AMRO Bank
17. Yasuda Trust & Banking	37. U.B.A.F Bank
18. The Tokai Bank	38. The Bank of Nova Scotia

19. Yamaguchi Bank	39. Nationas Bank
20. Banque Indosuez	40. Metro Bank

Competent ministries in charge of foreign investment post-screening process:

Ministry	Telephone No. (fax)	Address
Ministry of Health and Welfare	82-2-503-6233 (82-2-504-6418)	1, Chungang dong, Kwachon, Kyungki Province
Ministry of Commerce, Industry and Energy	82-2-500-2568 (82-2-503-9438)	“
Ministry of Construction and Transportation	82-2-504-9065 (82-2-503-7304)	“
Ministry of Agriculture, Forestry and Fisheries	82-2-503-7294 (82-2-507-2095)	“
Ministry of Culture and Sports	82-2-722-8413 (82-2-733-2322)	82-1, Chongro-ku, Sejongro
Ministry of Education	82-2-722-8413 (82-2-733-2322)	77-6 Chongro-ku, Sejongro
Ministry of Information and Communication	82-2-750-2313 (82-2-750-2317)	116, 1-ka, Shinmunro, Chongro-ku
The Korea Maritime and Port Administration	82-2-744-4731 (82-2-765-2475)	112-2, Incdong, Chongro-ku
The National Police Agency	7(82-2-313-0701 (82-2-313-0702)	209, Mijodong, Seodaemunku
The Office of National Fisheries Administration	82-2-753-5026 (82-2-753-8331)	541, 5-ga, Namdaemunro, Chong-ku

Establishment of Expedited Approval or Authorization Procedures for FDI One-Stop Service

Newly Adopted Systems to Expedite FDI Procedures

- **The Comprehensive System** – the simultaneous approval of various applications
- **The Automatic Approval System** – the automatic approval of applications when a decision is not made within the specified time period stipulated by law
- **The Prior Approval System** – the prior approvals of applications in cases where main documents are completed and only a few minor documents remain to be submitted

In order to provide further convenient services for foreign invested enterprises, has been provided with new measures to ensure more transparent and expedited approval or authorization procedures. Approvals for business activities have been simplified through the following measures:

(a) The Organizational Process

- Under the new law, all FDI related civil applications are now classified into three categories and settled according to respective procedure.
 - *Regular applications*: application settled through appropriate procedures required in the settlement of civil matters.
 - *Immediate settlement applications*: applications settled on the spot at the Korea Investment Service Center (KISC) by representatives dispatched from various administrative institutions.

- *Comprehensive settlement applications*: applications settled through the Comprehensive Process System.

(b) The Comprehensive Process System

- Under the new Act, a “Comprehensive Process System” for approval or authorization has been established. Under the Comprehensive Process System, when a foreign investors simply submits a comprehensive settlement application to the Korean Investment Service Center (KISC), KISC operates as a proxy for the foreign investor through the whole procedure with relevant administrative institutions until a decision on approval is provided.
- In the Comprehensive Process System, if the main approval (e.g. Factory Establishment Permit) in a certain comprehensive process application (e.g. approvals in relation to the Factory Establishment Permit) is approved, then remaining supplementary applications (e.g. 26 approvals pertaining to 16 laws) are automatically approved.

TYPES OF COMPREHENSIVE APPLICATIONS AND THEIR MAJOR SUPPLEMENTARY APPROVALS

The 5 Comprehensive Process Packages	Major Approval	Supplementary Approvals
(1) Approvals in Relation to the Factory Establishment Permit	Factory Establishment Permit	26 approvals pertaining to 16 laws
(2) Approvals in Relation to the Small- Medium Company Start Up Permit	Medium and Small Company Establishment Business Plan Permit	26 approvals pertaining to 14 laws
(3) Approvals in Relation to the Construction Permit	Construction Permit	30 approvals pertaining to 18 laws
(4) Approvals in Relation to Environmental Permits	Sewage Disposal Facility and/or Air Pollution Control Facility Permit	7 approvals pertaining to 6 laws
(5) Approvals in Relation to the Use of Constructed Materials Permit	Use of Constructed Materials Permit	12 approvals pertaining to 6 laws

- The Comprehensive Process System minimizes the time and procedures needed to receive various approvals and authorizations from related administrative institutions.

(c) The Automatic Authorization System

- Under the Automatic Authorization System, if there is no response to an application of approval or authorization related to FDI within the time period stipulated by Presidential Decree, approval or authorization shall be automatically granted.
- In the event of an automatic approval, a certificate of Approval or Authorization shall be presented to the foreign investor or foreign invested enterprise upon request.

(d) The Prior Approval System

- Under the new Act, with respect to comprehensive applications, prior approvals will be made in case of approvals where main documents are completed and only a few minor documents remain to be submitted, on the condition that remaining documents be submitted within the time frame stated by Presidential Decree.

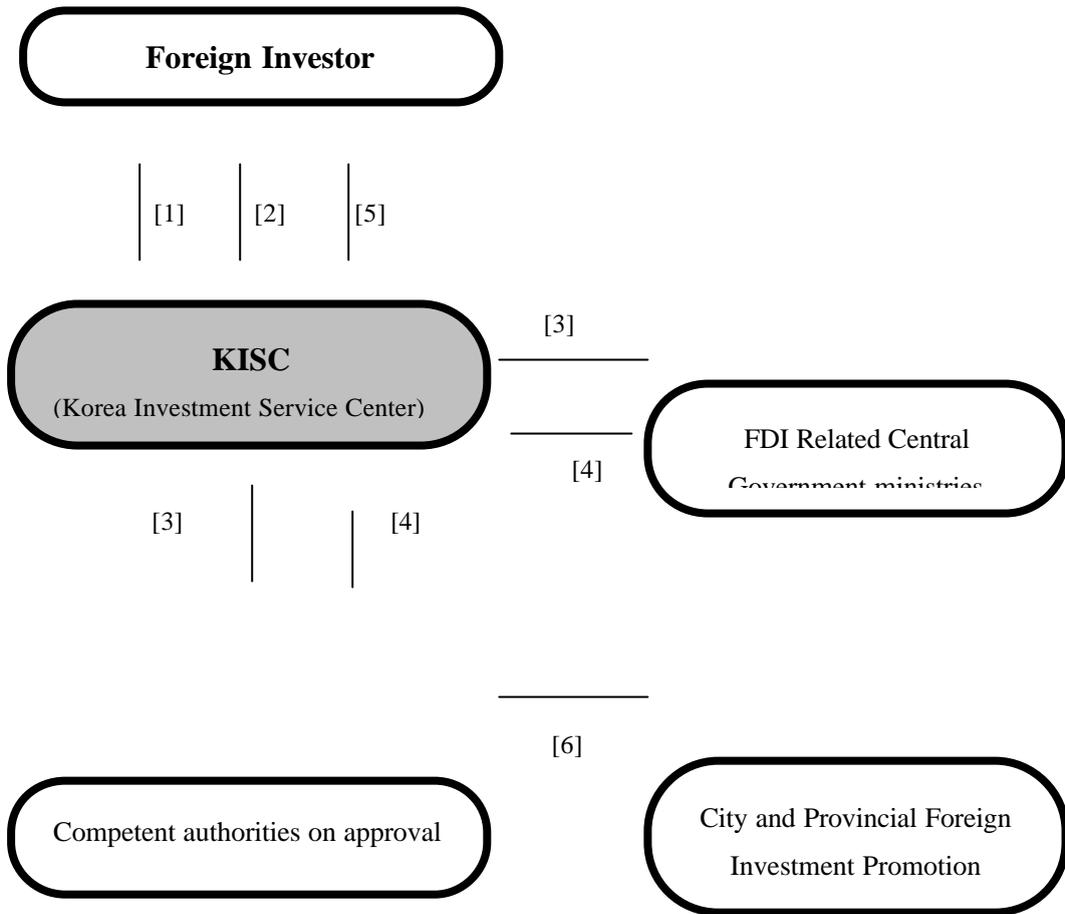
(e) Minimization of documents to be submitted

- Various documents needed for notification, approval, and authorization have been reduced by approximately **50%**.

(f) Transparency of the approval or authorization system

- Under the new Act, when an approval or authorization is rejected by an administrative institution, the reasons and legal basis of the rejection must be informed to the applicant. If the applicant corrects the reasons for rejection approval or authorization, approval or authorization must be granted.

One-Stop Service at KISC



[1] Submission of applications

[2] Immediate settlement applications directly settled on the spot

[3] Substitute settlement of approval or authorization applications (proxy request of settlement)

[4] Approval or Non-approval of applications (automatic approval upon lapse of time period determined by law)

[5] Notification of the settlement (Approval or Non-approval / other services)

[6] Monitoring and encouragement of settlement procedures related to FDI

Provision of One-Stop Service at the Korea Investment Service Center (KISC)

Establishment of the Korea Investment Service Center

One of the grievances often cited by foreign investors was that there were too many contact points and administrative procedures, which often lead to red tape and delay. To solve this grievance, the Korean

government launched the KISC at KOTRA as of 30 April 1998, for the purpose of eliminating this friction and supporting foreign investors through all stages of investment, from consulting to after-service.

KISC is staffed by experts from various authorities, including representatives of the Ministry of Finance and Economy, Ministry of Commerce, Industry, & Energy, Ministry of Justice, National Tax Administration, Korea Customs Service, Small and Medium Industry Promotion Corporation, and local governments.

Investment Promotion Activities by KISC

KISC operates as a proxy for the foreign investor through the whole procedure until approval is issued. In such cases, 90% of procedures concerned with foreign investment, except only a few matters of particular gravity, are to be undertaken by KISC. KISC's services are provided free of charge.

KISC will save foreign investors a great deal of time and energy formerly consumed by administrative procedures.

Worldwide Network of KISC

Head Office

159 Samsung-dong, Kangnam-gu, Seoul, Korea

Tel: 82-2-551-4333/4337/7378 Fax : 82-2-551-4313/7381

URL: <http://www.kisc.org>

MELBOURNE

39 Belford Road, Kew East, Melbourne, Victoria 3102

Tel: (61-3)9859-7947 Fax: (61-3)9859-7974

SYDNEY

Suite 1811, Tower Bldg, 264 George Street, Sydney, NSW 2000, Australia

Tel: (61-2)9247-3369 Fax: (61-2)9251-5826

TOKYO

Yurakucho Bldg., No. 10-11-Chome, Yurakucho, Chiyoda-ku, Tokyo, Japan

Tel: (81-3)3214-6951/4 Fax : (81-3)3214-6950

OSAKA

7th Floor, Sakaisuji Honmachi Center Bldg., 1-6, 2-Chome, Honmachi, Chuo-Ku, Osaka, Japan

Tel: (81-6)262-3831 Fax: (81-6)262-4607

FUKUOKA

7th fl. Daiichiseimei Bldg, 1-4-1 Hakataekimae, Hakata-Ku, Fukuoka, Japan

Tel: (81-92)473-2005/6 Fax: (81-92)473-2007

NGOYA

9th fl., Nagoya International Center Bldg., 47-1 Nagono 1-Chome, Nakamura-Ku, Nagoyya, Japan.

Tel: (81-52)561-3936 Fax: (81-52)561-3945

HONG KONG, CHINA

Korea Trade Center Bldg. 2nd fl. 119-121, Connaught Rk., Hong Kong China

G.P.O. Box 5573 Hong Kong

Tel: (85-2)2545-9500 Fax: (85-2)2815-0487

CHINESE TAIPEI

Tel: (886-2)2725-2324/2343

Fax: (886-2)2757-7240

SINGAPORE

16 Raffles Quay #18-02A, Hong Leong Bldg., Singapore 048581

Tel: (65)221-3055/6 Fax: (65)223-5850

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65 Queen St. West, Suite 600, Box 9, Toronto, Ontario, Canada M5H 2M5

Tel: (1-416)368-3399 Fax: (1-416)368-2893

VANCOUVER

Suite 1710, One Bentall Center, 505 Burrard St., Vancouver, B. C, Canada V7X 1M6

Tel: (1-604)683-1820, 687-7322 Fax: (1-604)687-6249

MONTREAL

50, Boul, Cremaze Ouest, Suite 727, Montreal Quebec, Canada H2P 2R4

Tel: (1-514)383-3590 Fax: (1-514)383-1601

NEW YORK

460 Park Ave. Suite 402, New York, NY 10022 U.S.A.

Tel: (1-212)826-0900 Fax: (1-212)888-4930

LOS ANGELES

4801 Wilshire Blvd., Suite. 104 Los Angeles, CA 90010, U.S.A.

Tel: (1-323)954-9500 Fax: (1-323)954-1707

CHICAGO

111 East Wacker Drive, Suite 2229, Chicago, Illinois 60601, U.S.A.

Tel: (1-312)644-4323/4 Fax: (1-312)644-4879

DALLAS

12720 Hillcrest Road, Suite 390, Dallas, Texas 75230-2040, U.S.A.

Tel: (1-972)934-8644 Fax: (1-972)239-4191

WASHINGTON

D.C. 1126 20th St. NW. Suite 410 Washington D.C. 20036, U.S.A.

Tel: (1-202)857-7919 Fax: (1-202)857-7923

SAN FRANCISCO

1California St., 19th Fl., Suite 1905, San Francisco CA 94111, U.S.A.

Tel: (1-415)434-8400 Fax: (1-415)434-8450

ATLANTA

Marquis One

Tower, Suite 2802, 245 Peachtree Center Ave., Atlanta, GA 30303, U.S.A.

Tel: (1-404)524-2424 Fax: (1-404)524-2234

MIAMI

One Biscayne Tower, Suite 1620 Miami, FI 33131, U.S.A.

Tel: (1-305)374-4648 Fax: (1-305)375-9332

SEATTLE

6136 147th Av. SE, Bellevue, WA 98006 U.S.A.

Tel: (1-425)603-9067 Fax: (1-425)603-9086

DETROIT

Michigan Plaza Building, 1200 Sixth Street, 20fl., Detroit, Michigan 48226, U.S.A.

Tel: (1-313)256-3119, 256-3121 Fax: (1-313)256-3123

VIENNA

Mariahilferstrasse 77-79, 1/3 (Generali Center, 3rd Fl.) A-1060, Vienna, Austria

Tel: (43-1)586-3876/7 Fax: (43-1)586-3979

BRUSSELS

Comm. Section of Embassy of R.O.K., Blvd. Emile. Jacqmain 162, B 14, 1000 Brussels, Belgium

Tel: (32-2)203-2142 Fax: (32-2)203-0751

COPENHAGEN

The Commercial Section of the Embassy of the Republic of Korea,
Holbergsgade 14 DK-1057, Copenhagen K Denmark

Tel: (45)3312-6658/8039 Fax: (45)3332-6654

PARIS

36, Avenue Hoche 75008 Paris, France

Tel: (33-1)4225-0957 Fax: (33-1)4225-0950

FRANKFURT

Mainzer Landstr. 27-31, 60329 Frankfurt/M. Federal Republic of Germany

Tel: (49-69)242-9920 Fax: (49-69)25-3589

BERLIN

(Im Internationalen Handelszentrum) 4th Fl., Zi-Nr. 405 (Box-Nr. 11) Friedrichstrasse 95, D-10117 Berlin,

Federal Republic of Germany

Tel: (49-30)2096-2637/40 Fax: (49-30)2096-2635

HAMBURG

Heidenkampsweg 66, 20097 Hamburg Federal Republic of Germany

Tel: (49-40)23-2235 Fax: (49-40)23-3998

MUENCHEN

TAL 14, 80331 Muenchen, Federal Republic of Germany

Tel: (49-89)2916-8564 Fax: (49-89)2916-8566

HELSINKI

Kauppiaankatu 3 B 11, Fin-00160 Helsinki, Finland

Tel: (358-9)638122 Fax: (358-9)638611

MILANO

Via Larga 31-20122 Milano, Italy

Tel: (39-2)79-5147,5813 Fax: (39-2)79-8235

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(Commercial Section of Korea Embassy) Okrnvein 145 0580 Oslo 5, Norway Okern 0510 Oslo Norway

Tel: (47)2272-1155/6 Fax: (47)2272-1151

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Tegenergatan 34. 4tr Box 45188 S-104 30 Stockholm, Sweden

Tel: (46-8)30-80-90 Fax: (46-8)30-61-90

AMSTERDAM

Strawinskylaan 767, 1077XX Amsterdam, the Netherlands

Tel: (31-20)673-0555 Fax: (31-20)673-6918

LONDON

5th Floor, 39 St, James Street, London SW1A 1JD, United Kingdom

Tel: (44-171) 491-8057 Fax: (44-171)491-7913

ZURICH

Claridenstrasse 36, CH-8002 Zurich, Switzerland

Tel: (41-1) 202-1250/1 Fax: (41-1)202-4318

TelAVIV

8th Fl., Beit Amot Bituach, 46-48 Derech Petah Tiqva., Tel-Aviv 66184, Israel

Tel (972-3)639-6488 Fax: (972-3)639-6489

Online Services

Information concerning the KISC and its services, as well as the related ministries and organizations, can be easily accessed on the Internet. Foreign investors can find information on the foreign direct investment administration in Korea, the investment climate and other data. The Korean government also provides an area on its web sites to address grievances.

The Ministry of Finance and Economy whose homepage is located at <http://www.mofe.go.kr>, offers a up-to-date economic information of Korea. The site contains information on Korea's investment climate, policies regarding foreign direct investment, trade statistics and responses to grievances lodged by foreign investors.

KOTRA, for its part, operates a homepage called "Digital KOTRA" at <http://www.kotra.co.kr>, where inquirers can click on buttons such as "The Korean Economy" and "Korean Investment Guide." In these sections, KOTRA offers information on the investment climate as well as on-line information on trade and foreign direct investment.

Services Provided By KISC

- Settlement for applications as a proxy for foreign investors
- Information and data for investment feasibility studies
- Consultation on policy, procedures, and incentives for investing in Korea
- Matchmaking with potential Korean joint venture of M&A partners
- Searches for locating for suitable plant sites and acting on behalf of foreign investors for procedures required for factory establishment
- Follow-up service for businesses after establishment
- Meeting coordination and arrangement for foreign investors with relevant government agencies, institutions, and local companies
- Online services
- Settlement of grievances and difficulties for foreign investors through the Ombudsman Institution
- Other forms of administrative support, e.g., extension of the sojourn period of foreign invested company personnel

The Establishment of the Ombudsman Institution at KISC

Under the new Act, an Ombudsman institution has been established within the Korea Investment Service

Center to address the grievances and difficulties of foreign investors and foreign invested enterprises.

Upon receiving a grievance from a foreign investor or foreign invested enterprise, the Ombudsman Institution will act immediately to remedy the situation by acting as middle man between the said related administrative institutions and foreign investor or foreign invested enterprise. The Ombudsman institution, by its own accord, will also be able to make direct investigations of the grievances of foreign investor.

The Ombudsman is empowered to request cooperation from related administrative institution. Related administrative institutions, which receive a Request of Cooperation from the Ombudsman Institution, must, by law, immediately address the said issue and present a plan to solve the addressed issue within seven days of receiving the Request.

Introduction of Foreign Investment Promotion Offices

Foreign Investment Promotion Offices have been established in local governments at metropolitan cities and provinces for the FDI inducement activities at the local level and to support for the settlement of comprehensive applications.

Foreign Investment Promotion Offices work to settle the approval and authorization application of their respective city and provincial governments and cooperate to settle applications requested by KISC and relevant administrative institutions

Contact Points of Local Governments

	Tel. Number	Fax. Number	Address
Seoul	82-2-750-8351	82-2-733-7905	31, 1-ka, Taepyungro, Chung-ku, Seoul, Korea
Pusan	82-51-460-2081	82-51-460-3029	20, Kaekyo dong 2-ka, Youngdong-ku, Pusan, Korea
Taegu	82-53-429-2482	82-53-429-2484	1, DongIn dong, Chung-ku, Taegu, Korea
Inchon	82-32-426-4154	82-32-437-5279	San 50, Guwol dong, Namdong-ku, Inchon, Korea
Kwangju	82-62-224-4652	82-62-225-8839	505-900, Kerim-dong, Dong-ku, Kwangju, Korea
Teachon	82-42-250-2081-2	82-42-222-0262	499-1, Kaehung 2dong, Chun-ku, Dacchon, Korea
Kyungki	82-331-253-4745	82-331-253-7405	1-3-ka, Maesanro, Suwon, Kyongki Province, Korea
Kangwon	82-361-57-6443	82-361-55-3311	15, Bongidong, Chunchon, KangWon Province, Korea
Chungbuk	82-431-220-3227	82-431-220-3229	89 Munhwadong, Chunju, Chungbuk Province, Korea
Chungnam	82-42-251-2171-2	82-42-255-9104	32, Sunhwa-dong, Chung-ku, Taechon, Korea
Chonbuk	82-652-80-3225	82-652-232-9970	1, 4-ka, Chungang-dong, Chunju Chombuk Province, Korea

	Tel. Number	Fax. Number	Address
Chonnam	82-62-224-2282	82-62-228-4117	13, Kwangsan-dong, Dongku, Kwangju, Korea
Kyungbok	82-53-950-2174	82-53-943-2304	1443-5, Sankyok-dong, Buk-ku, Taegu, Korea
Kyungnam	82-551-70-2081	82-551-79-2079	1, Sarim-dong, Changwon, Kyungnam Province, Korea
Cheju	82-64-40-1681	82-64-47-4993	312-2 Yon-dong, Cheju, Cheju Province, Korea

2. MOST FAVORED NATION TREATMENT AND NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES

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

There is no discrimination between source economies. All of the relevant laws, regulations, and administrative guidelines are stipulated in the “Regulations on Foreign Investment” in a transparent manner and there is no policy or agreements which may cause discrimination between source economies.

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

Not applicable.

3. NATIONAL TREATMENT

Unless otherwise provided in the laws, foreign investors and foreign invested companies are accorded equal treatment as the nationals or corporations of the Republic of Korea.

Foreign invested companies may obtain the necessary funds from Korean financial institutions without any discrimination from domestic companies.

4. REPATRIATION AND CONVERTIBILITY

Full Liberalization of the Foreign Exchange Market

The Korean government has taken additional and significant steps toward liberalizing foreign exchange and capital flows as well as establishing a simple, transparent legal framework.

This process involves abolishing the old “Foreign Exchange Control Act” and replacing it with new “Foreign Exchange Transactions Act,” which is expected to fully liberalize the current cumbersome set of regulations on foreign exchange transaction.

As the new Act was approved by the National Assembly on 2 September 1998, the regulatory framework for foreign exchange flows has been revised from the partial positive-list system to a new full negative-list system. Furthermore, the old system of *ex-ante* and direct regulations has been transformed into one of *ex-post facto* management centered on prudential supervision.

The liberalization plan is scheduled to be implemented by two stages. The first was implemented on 1 April 1999. The second-stage of liberalization measures is planned to be completed by the end of 2000. However, even before the enactment of the new Act, some urgent liberalization measures have already gone into effect from 1 July 1998, where legal amendments were not needed, in order to increase foreign capital inflow, promote the recently sluggish exports, and provide business enterprises broader access to international capital markets.

These reforms will strengthen prudential regulatory and supervisory standards for financial institutions, and also ensure that firms behave according to market principles, primarily through improvements in corporate transparency and governance.

Liberalizing Financial Transactions between Companies and Banks from 1 April 1999

The new Foreign Exchange Transaction Act fully liberalized the current cumbersome set of regulations on foreign exchange transactions. The government anticipates that this new act will revitalize the sluggish foreign exchange market by enhancing foreign investor's confidence. The resulting competition by the liberalization is expected to eliminate from the marketplace ailing financial institutions that lack the financing techniques essential to survive in a globalized, market-based economy.

Liberalization Completed from 1 April 1999

Capital account liberalization
All domestic foreign exchange transactions, including forward transactions involving foreign currency or domestic currency, were exempt from "the real demand principle" requirement. Thus businesses no longer have to prove business purpose to purchase forward currency. This will promote the development of an efficient domestic foreign exchange forwards market and allow for the hedging of Korean investment risks.
All derivative transactions through foreign exchange banks were also be permitted.
Firms' short-term overseas borrowings with maturities of less than one year were liberalized (Borrowings with maturities of one year and above have been liberalized.)
Non-residents were permitted to open domestic won deposit accounts with maturities of more than one year, and to freely withdraw funds from those accounts.
Institutional investors (such as securities companies, insurance companies, and pension funds) were also be permitted to extend overseas loans without limit (US\$300,000 currently).
In order to support their global activities, business firms and financial institutions were permitted to pursue foreign direct investment in the financial services industry in areas such as banking, insurance,

leasing and finance companies. Business firms and financial institutions were also be permitted to freely open overseas branches.

Business firms and financial institutions, other than individuals, were permitted to make foreign direct investment in real estate as well.

Offshore transactions in the won were liberalized, permitting non-residents to issue won-denominated securities abroad, which is expected to contribute to the internationalization of won.

Expansion of foreign exchange banks and exchange bureau

In order to reduce inefficiencies stemming from the selective licensing of foreign exchange banks, financial institutions which meet certain conditions (maintenance of an effective ex-post transaction management system) were permitted to engage in foreign exchange businesses.

More specifically, the current approval system for foreign exchange banks was replaced by a less onerous registration system.

To lower entry barriers in the money exchange bureau business, the current approval requirement was also replaced by a less stringent registration requirement. However, participants was required to check customers' identification and report *ex post* in order to prevent problems such as money laundering.

Upgrading Standards to International Levels by the End of 2000

By the end of 2000, the government will have upgraded prudential regulatory and accounting standards to international levels, and market surveillance will have been established. This will allow substantial liberalization of capital account transactions.

At this stage, by meeting 85 of the 91 standards in the OECD Liberalization Code of Capital Movements, Korea's capital account liberalization ratio will be brought to the mid-group level of OECD member economies. The government's setting the ultimate target schedule for the second stage liberalization represents its determination to expedite the process.

Liberalization to be Completed by the end of 2000

- Non-residents will be permitted to open domestic won deposit accounts (including trust accounts) with maturities of less than one year
- Firms and financial institutions will be permitted to deposit or extend credits abroad without restriction.
- Resident individuals will be permitted to deal in derivative transactions directly with overseas financial institutions.

Full liberalization of capital account transactions of resident individuals, including investments in overseas deposits (currently permitted up to US\$50,000) and overseas real estate (currently permitted up to US\$300,000).

5. ENTRY AND SOJOURN OF PERSONNEL

The entry and departure procedures of the Republic of Korea are similar to that of many other economies in the world. Many convenient measures are provided especially to those who work for foreign invested

companies.

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

(1) Entry and Departure

Passport

Foreigners who wish to enter Korea must hold a valid passport. Citizens of economies that have no diplomatic relations with Korea and stateless persons who reside in those economies can enter Korea with an Entry Permit for Foreigners issued by a Korean embassy or consulate in lieu of a passport.

Visa

When foreigners wish to enter Korea, they must apply, in principle, for a visa from a Korean embassy or consulate. However, the following foreigners can enter Korea without an entry visa.

- Those who enter Korea with a valid re-entry permit.
 - Citizens of economies that concluded a visa exemption agreement with Korea.
 - Those allowed to enter Korea without a visa for the purpose of international friendship and tourism.
- Those who have an Entry Permit of Foreigners.

Visa exemption

Citizens of economies that concluded a visa exemption agreement with Korea are allowed to enter Korea without a visa. The content of the agreement differs slightly from economy to economy. In general, visa exemption under the agreement applies to short-term visitors who enter Korea not for the purpose of work or profit making but for the purpose of touring and visiting for less than three months.

Economies with which Korea has signed visa exemption agreements

(As of 31 October 1998)

Total	Types of Passports	Economies and Exception Period	
69 Economies	Diplomatic, official (12 economies)	The Philippines (unlimited) Iran (3 months, Diplomatic: During their term of office) Ecuador (Diplomatic: Unlimited, Official: 3 months) Paraguay (90 days), Uruguay (90 days), Mongolia (30 days), Romania (90 days), Benin (90 Days), Venezuela (30 days), Brazil (90 days), Egypt(90 days), Viet Nam (during their term of office)	
	Diplomatic, Official, Ordinary (57 economies)	30 days (1 economy)	Tunisia
		60 days (3 economies)	Lesotho, Italy, Portugal

		3 months (53 economies)	Greece, Austria, Thailand, Switzerland, Liechtenstein, Peru, Malta, Costa Rica, Colombia, Singapore, Dominican Republic, Liberia, Pakistan, Bangladesh, Ireland, France, Grenada, St Vincent and the Grenadines, Haiti, St Lucia, St Kitts-Nevis, Hungary, Commonwealth of Dominica, Morocco, Jamaica, Sweden, Denmark, Norway, UK, The Netherlands, Belgium, Iceland, Luxembourg, Germany, Spain, Finland, Surinam, New Zealand, Malaysia, Bahamas, Barbados, Trinidad Tobago, Antigua Barbuda, Turkey, Israel, Bulgaria, Slovak, Czech Republic, Poland, Nicaragua, El Salvador
	Ordinary(1 economy)	3 months (1 economy)	Mexico

Entry without a Visa

All foreigners are allowed to enter Korea without a visa for less than 30 days for the purpose of tour or transit. However, such a policy does not apply to citizens of economies with which Korea has no diplomatic relations, stateless persons or citizens of economies specially designated by the Korean Minister of Justice. Canadian citizens are allowed to enter Korea for six months without a visa on the basis of reciprocity.

Visa status

Foreigners are allowed to carry out certain activities in Korea according to their visa status. It is shown on the visa stamp. During their stay in Korea, foreigners should conduct activities in compliance with their visa status, and the duration of their stay is decided accordingly.

Certificate for Confirmation of Visa Issuance

In order to simplify the visa issuance procedure and shorten the time for the visa issuance, Korea adopted a system to issue a Certificate for confirmation of Visa Issuance at the request of an invitor in Korea, before the foreign invitee applies for a visa at an embassy or consulate outside of Korea.

To receive the Certificate for confirmation of Visa Issuance, the invitor must apply for it at the immigration office in his area.

Submitting the visa application form attached to the Certificate for confirmation of Visa Issuance to a Korean embassy or consulate, foreigners can immediately receive a visa. Currently, the system applies to almost all LONG TERM STAY VISAS (duration of stay exceeds 91 days) and citizens of economies specially designated by the Korean Minister of Justice. It is expected to enlarge the scope of beneficiaries of the system.

2. List and description of any restrictions by law or regulation on the entry/sojourn of foreign

technical/managerial personnel and their accompanying family members.

Professionals who work in the field of management of foreign invested companies and their families are given special consideration in visa issuance and period of sojourn.

In most cases, a long-term stay visa (duration of stay exceeds 91 days) is issued with the approval of the Minister of Justice. But the head of diplomatic or consular offices can issue a visa for the stay of less than one year to those in the management of foreign invested companies and their families.

Foreigners who wish to receive a visa to work at a foreign invested company should attach the following documents to a visa application form and submit them to a Korean embassy or consulate:

- Dispatch order or a document that certifies he or she is working for the company (eg, Resume).
- A copy of the foreign investment approval or registration (certificate) of the invested company.
- An attested copy of a register or a copy of the business registration (certificate) (e.g. References (Notarized))

When employees of a foreign invested company wish to stay longer than the original duration of their stay, they should submit an application form for a visa extension with references and work certificate to the Comprehensive Assistance Center for Foreign Investment at the Ministry of Finance and Economy.

3. Summary of domestic labor laws which apply to foreign firms in the context of labor disputes/relations.

Reshaping Labor Market Flexibility

Increasing labor market flexibility, strengthening unemployment measures and the social safety net, and establishing stable labor-management relationships are essential to recovering corporate competitiveness, regaining economic vitality, and supporting foreign direct investment.

In February 1998, Korea made a bold move in establishing and legally instituting greater labor market flexibility by revising the Labor Standard Act (LSA). The revision, reached through the First Tripartite Commission's production of the historical Social Compromise for Overcoming the Economic Crisis, legally allows layoffs to facilitate corporate restructuring and represents the government's firm stance to not tolerate illegal or inappropriate labor practices. Along this line, labor market reform measures will be institutionalized.

Today, the Second Tripartite Commission, which was launched on 3 June 1998, is discussing labor-management-government cooperative measures to further enhance flexibility in the labor market, strengthen the social safety net, and implement measures agreed upon at the First Tripartite Commission. The dialogue encourages fair burden sharing among business, labor and government.

Major Issues	Key Contents
Ensuring labor market flexibility	<ul style="list-style-type: none"> • Legalization of employment adjustment due to managerial reasons • Legislation of acts to protect dispatched workers
Augmenting the social safety net	<ul style="list-style-type: none"> • Expansion of the application of the Employment Insurance Act • Livelihood protection for workers who have accumulated wages in arrears
Guarantee of basic labor rights	<ul style="list-style-type: none"> • Guaranteed the basic labor rights of public officials and teachers • Guaranteed the basic labor rights of the unemployed to join industrial or regional unions

Promoting Labor Market Flexibility

The Korean government to fully support the enhancement of labor management flexibility is taking four major measures.

Measures Taken to Enhance Labor Market Flexibility

- **Introduction of Layoffs**
Enhancing the flexibility of the Korean labor market
- **The Flexible Work -Hour System**
Lowering labor costs and encouraging part-time work
- **The Dispatch of Employees**
Enhancing the efficiency of human resource management
- **The Improved Legal Retirement Pay System**
Payment is made in advance for the period of continuous employment of the worker before the previously set date of retirement

The significant rise in unemployment and reduced real wages clearly demonstrate that the employment adjustment is occurring in Korea at this time.

Major Examples of Increased Labor Flexibility

- Even with wage bargaining during the year, agreed wages decreased by 2.7% as of December 1998
- Of 5,476 work places which have concluded wage bargains, 94.2%, or 5,156 workplaces, have agreed on wage freezes and 980 workplaces even agreed on wage cuts
- The real wage is predicted to have decreased by more than 10% this year as inflation is expected to be around 8%

The Korean government will continue to work towards increasing labor market flexibility by strictly enforcing laws regarding illegal strikes and labor practices.

Major Cases of Korea's increased Labor Market Flexibility

Hyundai Motor Co.

In the first test application of the revised LSA allowing layoffs in August 1998, the Hyundai Motor Co. strike was settled peacefully and Hyundai was able to achieve its targeted employment adjustment through layoffs, unpaid leave, and early retirement. For Koreans, who have taken lifetime employment for granted, it represented a dramatic step away from traditional business practices.

The fact that the labor officially accepted the actual implementation of the new layoff law is significantly stepping stone toward a more flexible labor market and will go far toward facilitating future economic restructuring efforts.

Mando Machinery

The government took stern action and immediately ended the illegal strikes at Mando Machinery, one of the largest auto parts producers in Korea, in September 1998.

Nine Leading Banks

Nine leading banks and their labor unions peacefully reached an agreement in 1998 on reducing their workforce by a combined 3%.

As Korea became the 29th member of the OECD in December 1996, since January 1997, the Ministry of Labor has both explained labor-management relation reform measures, e.g. the enactment and revision of Korea's labor-related laws, and built understanding of Korea's labor situation through its active participation in the Employment, Labor, and Social Affairs Committee (ELSAC) of the OECD.

In the future, Korea will continue to advance Korea's labor administration by comparing and using the advanced systems and various resources of OECD economies and close consultation with other member states.

Data on Labor Market Flexibility

Type of Flexibility	Division	By Economy
Employment flexibility	Turnover ratio	Korea 34.3, Japan 14.0, USA 41.0, Germany 25, France 14
	Average tenure (by year)	Korea 5.3, Japan 10.9, USA 6.7, Germany 10.4, France 10.1
	Ratio of workers with average tenure of less than one year	Korea 19.8, Japan 9.8, USA 28.8, Germany 12.8, France 15.7
	Ratio of part-time workers	Korea 7.0, Japan 20.1, USA 18.6, Germany 16.3, Sweden 24.3
Wage flexibility	Minimum wage rate in comparison average wage	Korea 34.2, USA and Canada 35, France and Netherlands 50
	Wage system (1)	Korea 20.0, USA 69.0, UK 58.0, Italy 39, Germany 34.0
	Degree of wage income inequality (2)	Korea 23.1, Japan 15.7, USA 25.0, Germany 13.3, France 13.3
System flexibility	Union density	Korea 13.3, Japan 24.2, USA 15.8, Germany 38.4, France 14

Type of Flexibility	Division	By Economy
	Negotiation structure	Korea, Japan, USA: by corporation Germany and France: by industry
	Employment protection (3)	USA <UK <Japan (Korea) <Germany <Sweden <France <Italy

(1) Ratio of wage in comparison to the result

(2) Ratio of the total labor force whose wage is less than 2/3 of median wage

(3) By comparison of the systems of major OECD economies

Strengthening of Unemployment Measures and the Social Safety Net

Unemployment problems, which inevitably occur in the process of structural reform, are being addressed with the highest priority to ensure that social cohesion and societal support for the overall reform process is not undermined.

Although it is predicted that business will recover gradually throughout 1999, the unemployment rate is expected to increase further due to the time lags between continuing structural reform, economic recovery, and job creation. Unless active countermeasures for the looming unemployment problem are established, social stability will be undermined, and structural reform efforts will fail.

Therefore, comprehensive unemployment policy measures focusing on strategic job creation, protection of the unemployed and expansion of the social safety net have been established.

The Korean government to this end, has identified four major categories to promote and solidify: job creation and preservation, enhancement of employability, expansion of the social safety net, and the establishment of an employment service network to efficiently promote unemployment policy measures.

Four Major Labor Market Policies

- Build a foundation for job creation to prevent long-term unemployment
- Enhance employability in preparation for knowledge and information based society
- Expand the social safety net to counter the lengthening of an unemployment period
- Establish the employment service network to efficiently promote unemployment policy measures

Major Unemployment Policies to be Adopted

Policy	Main Content	Result
Job creation and preservation	<ul style="list-style-type: none"> • Implementation of active macroeconomic policy measures and streamlining of restructuring process • Creation of an environment for the growth of the service industry 	<ul style="list-style-type: none"> • 400,000 - 500,000 jobs will be created in 1999

Policy	Main Content	Result
	<ul style="list-style-type: none"> • Early implementation and expansion of social overhead capital • Financial supports for small and medium size companies and start-ups • Stimulation of housing and construction industries • Active promotion of FDI • Facilitation of overseas job placement program • Supporting efforts to stabilize employment 	
Enhancement of employability	<ul style="list-style-type: none"> • The temporary unemployment period will be taken advantage of to provide vocational on a demand-oriented basis to enhance re-employability • Vocational training designed to produce new intellectuals • Efficiency of training institutes will be monitored by evaluations of curriculums 	<ul style="list-style-type: none"> • 320,000 individuals will be trained
Expansion of the social safety net	<ul style="list-style-type: none"> • Universal extension of unemployment benefits coverage • Expansion of public works project (injection of 1,500 billion won) • Strengthening livelihood stabilization support for vulnerable groups: loans for the unemployed. Provision of lunches to children who cannot afford them, and exemption from school expenses • Encouragement of private projects for aiding the unemployed 	<ul style="list-style-type: none"> • Unemployment benefits will apply to 530,000 people • Temporary livelihood protection will apply to 530,000 • Public works projects will employ 570,000 people • School tuition exemption will cover 300,000 children • School meal provision initiative will cover 120,000 children • Loans will be provided to 70,000 people
Establishment of a service network to efficiently promote unemployment policy measures	<ul style="list-style-type: none"> • A foundation for the implementation of active labor market policies will be established • Policy measures appropriate for the unemployed will be implemented through the establishment of a database and profiling system • Building a labor market information system (LMI) 	

The Korean government has and continues to provide targeted support to facilitate the readjustment of the labor market. The government used a total of 10.1 trillion won in 1998 to alleviate unemployment. This total unemployment budget, equivalent to 2.5% of the GDP, is very generous in comparison with other OECD economies. In 1999,

Improving Labor-Management Relations

The Korean government has been pursuing reforms through mutual understanding and participation of labor leaders, business leaders, and public officials to create a labor market in which labor allocation and wage determination are efficiently governed through market mechanisms.

As the First Tripartite Commission accorded 90 detailed measures that have been introduced to enhance corporate governance transparency, and to increase unemployment benefits and labor market flexibility, the second round is presently engaging in more detailed and extensive discussions to solidify the Accord of the first round.

The Tripartite Commission, drawing lessons from the recent settlements of labor disputes (such as the three examples provided above), is devising measures for enhancing a new labor-management culture. Such cooperation will help to reach a social consensus on burden-sharing and facilitate successful restructuring.

6. TAXATION

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

Tax Structure

The Korean tax system comprises both national and local taxes. National taxes are divided into internal taxes, customs duties, education tax and special tax for rural development. Internal taxes which are in force at present consist of six direct and seven indirect taxes.

- National taxes
 - Direct tax : Income Tax, Corporate tax, Excessively-Increased Value of Land Tax, Inheritance Tax, Gift Tax, Assets Revaluation Tax, Excess Profits Tax
 - Indirect Tax : Value Added Tax, Special Excise Tax, Liquor Tax, Telephone Tax, Stamp Duty, Securities Transaction Tax
 - Others : Customs Tariff, Education Tax, Traffic Tax, Special tax for Rural Development

- Local Taxes

- Province tax
 - Provinces (Do): Acquisition Tax, Registration Tax, License Tax, Race Tax, Commonly Facility Tax, Regional Development Tax
 - a) Metropolitan Cities : Acquisition Tax, Registration Tax, Inhabitant Tax, Automobile Tax, Farmland Tax, Tobacco Consumption Tax, Butchery Tax, Race Tax, City Planning Tax, Community Facility Tax, Regional Development Tax

- City & Economy Tax
 - Inhabitant Tax, Property Tax, Aggregate Land tax, Automobile Tax, Farmland Tax, Tobacco Consumption Tax, Butchery tax, City Planning Tax, Workshop Tax

- District tax
License tax, Property Tax, Aggregate Tax, Workshop tax

Major Taxes among Present Tax System

- Corporate tax

A corporation having its head office or its main office in Korea is liable to corporation tax applicable to the income of each business year.

Rates for Corporate Tax is calculated in a two-tier progressive method:

Annual taxable income :		Tax on	Tax rate on
Over (A)	Less than	Amount A	Excess over A
0	100 -----		16%
100	-----	16	28%

Domestic corporations (those with their head office in Korea) pay corporation tax on both domestic and foreign incomes. Foreign corporations pay on income of domestic origin only.

<i>Type of Tax</i>		<i>Corporate tax on business income</i>	<i>Special tax on capital gains</i>	<i>Corporate tax on income from liquidation</i>
<i>Type of corporation</i>				
Domestic corporation	Profit corporation	All income generated both at home and abroad	Capital gains from real properties, security, and stock transactions	Liquidation income generated from dissolution or merger
	Nonprofit corporation	All income generated only from profit making business sources at home and abroad		
Foreign corporation	Profit corporation	Only domestically-generated income		Not subject to taxation
	Nonprofit corporation	Domestically-generated income only from profit-making business sources		

- Income Tax

Income tax is levied on individuals, not companies or organizations. An individual is taxed either as a resident or as a non-resident. A resident is an individual who either has a permanent Korean address or who has resided in Korea for over a year. Residents are taxed on income from both domestic and foreign sources. For non-residents, tax is levied on income of domestic origin.

Tax rates are divided into four categories as follow (unit: 1,000won):

Annual tax base		Tax on Amount A	Tax rate on Excess over A
Over(A)	Less than		
0	10,000		10%
10,000	40,000	1,000	20%
40,000	80,000	7,000	30%
80,000		19,000	40%

- Income tax on Capital Gains and Dividends

Income tax on capital gains is levied on capital gains from the disposition, transfer, and exchange of land, buildings, and stocks. Tax rates on capital gains are 30-50% in the case of land or buildings, 75% in the case of asset transfer without registration, and 20% in the case of shares in an unlisted company.

Income tax on dividends is levied on dividend income, at the rate of 25%, but where a foreign economy has signed a tax convention with Korea, the convention prevails.

- Local taxes

The Constitution of the Republic of Korea lays down the principle of local autonomy. Under this principle, local government is given the right to assess and collect local tax. Local taxes include acquisition taxes, registration taxes, property taxes, aggregate land taxes, etc.

Acquisition taxes are levied on acquisition of real estate, motor vehicles, heavy equipment, etc. A tax rate of 2% is applied to the value of the acquired articles.

Tax Incentives

Measures for corporate restructuring sector reform

Restructure Type		Incentive
Structural Re-Organization	Mergers	<ul style="list-style-type: none"> • Deferral of the corporations tax on gains from mergers • Exemption of the registration tax
	Divisions	<ul style="list-style-type: none"> • Deferral of the corporations tax and the additional tax on capital gains • Exemption of the acquisition and registration taxes
	Incorporations	<ul style="list-style-type: none"> • Deferral of the capital gains tax (additional tax on capital gains)
	Transfer of Firms	<ul style="list-style-type: none"> • Recognition of shareholder expenses on the undertaking of guaranty liabilities • Exclusion from corporations' gross incomes any gains resulting from the exemption of debt
	Transfer of Businesses	<ul style="list-style-type: none"> • 50% reduction of the additional tax on capital gains in regard to transferors

Business Re-Organization	Exchange of Assets	<ul style="list-style-type: none"> • Exemption of the acquisition and registration taxes in regard to transferees • Deferral of the corporations tax and the additional tax on capital gains • Exemption of the acquisition and registration taxes
	Conversion of Businesses	<ul style="list-style-type: none"> • Deferral of the capital gains tax (additional tax on capital gains) • 50% reduction of the income and corporations taxes for 5 years
Improvement of Financial Structure	Debt Repayment	<ul style="list-style-type: none"> • Exemption of the additional tax on capital gains on disposal of real estate for the purpose of debt repayment
	Sale of Assets	<ul style="list-style-type: none"> • 50% reduction of the capital gains tax (additional tax on capital gains) on disposal of real estate for the purpose of all types of restructuring
Restructuring of Financial Institutions	Mergers	<ul style="list-style-type: none"> • Exclusion of taxes on constructive dividends and income from liquidation • 50% reduction of the additional tax on capital gains on transfers of any redundant assets resulting from mergers • Deferral of the additional tax on capital gains on transfers of entire businesses

Restructure Type	Incentive
Bridge Loans	<ul style="list-style-type: none"> • Exclusion from gross incomes any gains resulting from the exemption of debt • Recognition of expenses in relation to financial institutions
Tax Incentives related to Securities Investment Firms (Mutual Funds)	<ul style="list-style-type: none"> • Deduction from incomes of securities investment firms any dividends paid out to shareholders of that firm
Tax Incentives related to Securities Investment Firms financing Corporate Restructuring	<ul style="list-style-type: none"> • Recognition of expenses incurred in relation to the establishment of reserve funds for securities investment losses (within 50% of the investment) • Exclusion of the acquisition tax where the firm is the majority shareholder holding 51% or more of the shares • Exclusion of the capital gains tax on profits made from transfers of shares, and separate taxation of dividend incomes, in relation to investors

Supplementary Incentive Measures

Restructure Type	Incentive
Divisions	<ul style="list-style-type: none"> • Clarification of taxation methods and tax incentives according to type of division • Deferral of taxation, as for mergers, where there are fixed conditions
Tax Incentives in relation to “Big Deals”	<ul style="list-style-type: none"> • Exemption of the corporations tax and the additional tax on capital gains on profits made by shareholders from the transfer of shares • Exemption of the acquisition and registration taxes for transferee businesses acquiring assets
Tax Incentives in relation to Holding Companies	<ul style="list-style-type: none"> • Exemption of the corporations tax and capital gains tax on profits made from the transfer of shares and assets • Exemption of the corporations tax on the received dividends of holding companies • Exemption of the acquisition tax liability arising as a result of the holding company having become a majority shareholder holding 51% or more of the shares

7. PERFORMANCE REQUIREMENTS

1. Description of any performance requirements that could impose limits on trade and investment and indicate any TRIMS

Since the abolition of the performance requirement on foreign investment in 1989, there has not been any performance requirement such as export obligation or local contents that are inconsistent with the WTO TRIMs Agreement.

8. CAPITAL EXPORTS

1. *List regulation/institutional measures that limit capital exports or the out flows of foreign investment.*

With the liberalization plan of foreign exchange transaction as of 1 April 1999, the Korean government has simplified the outward direct investment process and deregulated the restrictions substantially.

- There are no restricted businesses for outward direct investment (ODI)
- In principle, outward direct investment is possible with designated foreign exchange bank accepting notification for ODI
- However, if the outward direct investment amount exceed \$10 million which corresponds to the following items, notification to the Ministry of Finance and Economy is required:
 - When the capital of the investor is completely encroached
 - When the foreign subsidiary records deficit for five years or more, or when ½ or more than \$100 million of the foreign subsidiary capital is encroached

2. *Brief description of any regulations/institutional measures that limit technology exports.*

There are no regulations, guidelines or measures of any sort that restrict or limit technology exports.

9. INVESTOR BEHAVIOR

1. *An indication of any law, regulation or administrative guideline/policy, of which the observance by foreign investor is of particular concern to the member economy.*

None.

10. OTHER MEASURES

1. Trade-related laws

External Trade Law: A primary law which regulates exports and imports and includes a range of provisions regarding overseas trade, trade agency, export and import permits, impact of import on industry, and maintenance of the trade structure.

Foreign Exchange Law: A law which regulates credits and liabilities in relation to foreign exchange and other overseas transactions. Enacted in 1961, it has been amended five times as of December 1995, To promote foreign investment it changed to a law named “foreign exchange transactions Act” which is expected to fully liberalize the current set of regulations. The liberalization plan is scheduled to be

implemented in two stages. The first is scheduled to start on 1 April 1999. The second stage of liberalization measures is planned to be completed by the end of 2000.

Customs Tariff Law: A law which regulates all goods imported and exported through customs. Its objective is to contribute to the development of the national economy and obtain income from tariffs, by levying and collecting tariffs and also to ensure appropriate control over import and export items.

2. Export-import approval system

In principle the export and import system of Korea is free trade, but there are restrictions on the amounts of certain items for import and export, and goods' quality and trade systems are under government control in order to achieve specific strategic goals. An export and import business requires a license, which is granted to those who meet necessary qualifications.

Liberalization of trade business (effective 1 January 1997)

As the overseas credit rating and self-regulation of the Korean trading industry have improved greatly, the Korean government has decided to abolish regulating systems such as the licensing or registration of trade business starting in 1997, through the amendment of External Trade Law.

Accordingly, no restrictions will apply when an individual or a corporation wishes to participate in trade.

In addition, the approval system, which regulates individual import and export items, has been reformed to a “negative system,” only a limited number of excepted areas will be subject to regulation.

Registration of a trade and agency business: As a means to maintain the overseas credit rating of Korea at a desirable level overall and supervise the trade industry, trading companies are required to obtain licenses under the notification system for trading companies.

The Minister of Trade, Industry and Energy has the principal authority to grant the license; however, in practice the authority is delegated to the Korea International Trade Association.

Registration & Information

Member Services Office, Korea International Trade Association

(Trade Tower Center 1F) 159-1 Samsung-dong, Kangnam-gu Seoul

Tel : 02-551-5334~9 Fax : 02-551-5130

The trade business is largely divided into the “offer” trade business and the “buying” trade business, by the criteria of registration and the scope of import and export activities.

Offer trade business: The scope of import and export activities is not limited, and includes agency

activities. The corporation with company capital of 10 million won or more, and the individual who has maintained a daily account balance of 10 million won or more consecutively for at least the last month are eligible to register.

Buying trade business: The buying trade business is restricted to the import of raw materials and machinery for one's own use in the manufacture of goods for domestic sale or export. Eligible for registration are those engaged in the fields of manufacturing, mining, fisheries, in-shore fisheries, military supplies, agriculture and forestry.

Registration of trade business: An individual as well as a corporation, regardless of company size, can be an applicant for an offer or buying trade business license. The applicant makes the decision whether to apply for an offer or buying license, depending on the proposed scope of import and export business and qualification requirements. All applications must be made directly to the main office or regional branch of Korea International Trade Association.

Registration of trade agency: Trading agents may purchase goods to be exported, negotiate trade deals, and conduct similar activities, on behalf of overseas importers and exporters. The agency is mainly divided into offering agent and buying agent.

Registration & Information

Korea Foreign Trade Agent Association

218, 2ga Hankangro, Yongsan-gu Seoul, Korea

Tel: 02-792-1581 Fax: 02-798-5461

Offering agent: This is the agent delegated by the overseas exporter who wishes to export to Korea or the Korean branch or agency of the overseas exporter whose functions are primarily the issuance of sales offers on behalf of the overseas exporter and secondarily the negotiation of export items.

Only those defined as above are eligible for registration as offering agents. Registration is made at the Korea Foreign Trade Agent Association.

Buying agent: This is the agent delegated by the overseas importer or the Korean branch or agency of the overseas importer, whose main activities include purchasing and negotiating goods to be exported and conducting market surveys. Registration is made at the Korea Export Buying Office Association.

Export Approval System

Endorsement for export and advance approval If the item to be exported is listed as restricted in a government-issued public notice, the exporter requires endorsement from the relevant export association. If the item is restricted by a special law, other than public notice based on External Trade Law, the

exporter should acquire an advanced export approval or endorsement from the relevant government office before applying for the export permit.

All the items not listed in the public notice restricting export & import items are designated as automatic approval items which only require a permit issued by a bank, without any additional

Import/Export Notice In compliance with the external trade law, the Minister of Trade, Industry & Energy is required to make public a notice containing distinction between import & export items requiring approval or permit and restricted items, restrictions on the amounts of import & export, the ceiling amount of transactions, standards and trading economies, and requirements such as recommendation or confirmation regarding the said restrictions.

Even automatic approval items may be restricted and required by other laws to meet certain criteria. There are a total of 49 applicable laws including the Cosmetics and Medical Instruments Law and the Food Sanitation Act, which put forward different restrictions and requirements. For this reason the Minister of Trade, Industry & Energy collects relevant information and issues a public notice, called a general notice, so that the tax offices, trade-related organizations and trade companies can easily find out which restrictions apply to a specific item.

In case the item to be exported is restricted by a set quota, the exporter must obtain endorsement for export from the relevant authority, and the necessary visa for customs clearance at the importing economy, which is then dispatched together with shipping documents to the buyer.

If a company not entitled to a quota wishes to export an item restricted as a quota item, the company should first check by which export association the regulates proposed item and whether any quota is currently available. If no quota is available, the company may negotiate with another company with a quota to assign the quota or to become the exporting agent for the item.

Quota Information Centers

Organization	Telephone	Facsimile	Remarks
Export Division, Ministry of Commerce, Industry & Energy	503-7171	503-9438	Operation of the quota system, allocation of quota, General information, GATT Textiles Agreement, Endorsement for export, issuance of visa, etc.
International Affairs Department, Korea International Trade Association	551-5324	551-5181	
Apparels Industry Association	551-1512	551-1479	
Korea Export Association of Textiles	551-1885	551-1867	
Korea Consumer Goods Export Association	551-1867	551-1870	

Export approval In principle the exporter is still required to get a permit for each export item, even though he/she has already obtained an export license. The exporter must comply with the requirements as

instructed in the course of acquiring export approval. Export items are inspected at the time of customs clearance, and the receipt of payment is confirmed by the corresponding bank.

Automatic approval items may be exported without export approval, if the payment is made with an irrevocable documentary bill payable at sight letter of credit or the payment does not exceed US\$ 30,000.

Export approval authorities External trade law empowers the Minister of Trade, Industry & Energy to issue export permits; however, the power is delegated to the heads of foreign exchange banks in order to simplify and speed up the export process.

Export Approval Authorities

Type of transaction	Relevant authority
<ul style="list-style-type: none"> • General export 	<ul style="list-style-type: none"> • Foreign exchange bank
<ul style="list-style-type: none"> • Export of strategic items <ul style="list-style-type: none"> - general industrial goods - defense-related items - nuclear and related items 	<ul style="list-style-type: none"> - Ministry of Commerce, Industry & Energy - Ministry of Defense - Ministry of Science & Technology
<ul style="list-style-type: none"> • Intermediate trade 	<ul style="list-style-type: none"> • Foreign Exchange Bank
<ul style="list-style-type: none"> • Trade between North & South Korea (restricted approval items) 	<ul style="list-style-type: none"> • The Board of National Unification (Exchange Division II)
<ul style="list-style-type: none"> • Export of industrial facilities <ul style="list-style-type: none"> - financial assistance on deferred payment basis - outsourcing method - others 	<ul style="list-style-type: none"> - Export-Import Bank of Korea - Ministry of Commerce, Industry & Energy - Foreign Exchange Bank

Effective term of export approval The effective term of export approval is determined so as to facilitate exports and maintain credit overseas; Once export approval is obtained, the exporter must carry out the planned export and collect payment within the set period.

In general, the term is set at one year starting from the approval issuing date. However, for the following exceptions, it may be increase to a maximum of 20 years:

- if the total time required is expected to exceed one year when including time taken for the manufacture and processing of export items,
- if the total time required is expected to exceed one year when including time required for shipping and the agreed date of payment,
- if the head of the relevant approving authority considers it necessary to allow more than a year, for example, when imports and exports take place concurrently or consecutively.

Exemption of export approval The exporter must obtain an export license, and apply for export approval for each transaction. However, license and permit requirements may be exempted in special cases of a non-commercial nature. Simplified inspection by the superintendent of Customs will suffice. Exempted items

are as follows:

- free samples or promotional goods
- goods to make up for deficiency in an export transaction, repaired goods being returned to the owner, goods sent abroad for repair or examination,
- unsatisfactory imported items being returned to the seller, or
- reusable materials which are used for the transportation of container cargo.

Export Approval Information Centers

Relevant office	Telephone	Facsimile
Trade Policy Division, Ministry of Commerce, Industry & Energy	503-9432/3	502-1754
Certification Section of Each foreign Exchange bank	-	-
Trade promotion Division, Korea International Trade Association	551-5203-7	551-5237
Trade Inquiry Office, Korea International Trade Association	551-5343/8	551-5161

Approval (authorization) of the terms of payment Currently the negative system is employed to define the terms of payment for import & export. No additional approval or permission is required unless the items are specified as exceptions that require certification from the head of a foreign exchange bank, or permission from the Governor of the Bank of Korea or the Minister of the Ministry of Finance and Economy.

Import of raw materials to be manufactured for export

Assistance in purchasing raw materials for re-export As a strategic measure to minimize the financial burden of exporting manufacturers regarding purchase of raw materials and thus strengthening the international competitiveness of Korean products, financial, commercial and tax benefits are given to manufacturing companies when they purchase raw materials not for domestic consumption but for the manufacture of export goods.

- Under this provision, except in few special circumstances, it is possible to import raw materials which are restricted in the public notice or by regulations.
- Trade-related financial assistance
- Rebate on customs tariff

The scope of raw materials entitled to financial assistance Raw materials (including packaging materials) used to produce goods for export; raw materials used to produce military supplies with a foreign currency increment rate of over 30%; raw materials required for overseas construction and services; raw materials used to manufacture goods which are defined in International Trade Administration Regulation as earning foreign currencies; raw materials needed for the repair and after-sales service of goods which have been manufactured for export with the raw materials as defined above, and for which payment has already been received.

Restrictions in the import of raw materials to be manufactured for export Appropriate procedures need to be taken for the following items to be approved for import; selected items the import of which is restricted in order to promote replacement industries, and restricted items specified in general notice, such as agriculture, forestry & fishery produce, narcotics, and hemp.

Import approval and approving authority The Minister of Trade, Industry & Energy is the authority empowered to issue import approval; however the power is delegated to the head of foreign exchange banks, except in exceptional cases such as trade with North Korea which is placed under the jurisdiction of the Minister of The Board of National Unification.

Information about the import and purchase of raw materials

Authority	Telephone	Fax	Inquiries
Trade Policy Division, Ministry of Commerce, Industry & Energy	503-9433	502-1754	Import approval, purchase approval form, recommendation of import
The Office or Customs Administration and each customs office	512-2301	512-0046	Customs clearance of imported goods, customs tariff.
The Bank of Korea Industrial Fund Division	759-4495	759-4490	Trade-related finance
International Business Division of each foreign exchange bank	-	-	Opening of the letter of credit, import approval, local L/C, purchase approval form, negotiation, post-management, export related financing
Each Export Association	-	-	Recommendation of import
Trade Inquiry Office, Trade Association	551-5354	551-5161	Approval procedures, consultation

Import approval system

The licensed importer is still required to obtain import approval from relevant authorities for each import transaction. This import approval system is designed to ensure proper supervision of import activities and the performance of the obligation of the overseas seller (i.e., the transfer of goods to the importer).

Recommendation of import, and advance approval The importer must obtain recommendation from the relevant government office if restricted by special laws, or from the relevant organization if restricted in import/export notice or general notice, before applying for import approval.

Import Approving Authorities

Type of import	Approving authority
Trade with North Korea (Restricted approval items) general imports	The Board of National Unification Foreign Exchange Banks

Effective period of import approval Once import approval is granted, the contracted goods must be received and payment made as agreed within the effective period of import approval. Under the current

external trade law, the period is set at 1 year, which may be extended up to 20 years when deemed necessary to take into consideration, for example, the delivery time and the date of payment.

Exemption of import approval For speedy, smooth import process, import approval is exempted for small transactions and samples which are believed to generate no problems regarding the management of foreign exchange.

Inquiries on Import Approval

Relevant Office	Telephone	Fax	Inquiries
Trade Policy Division, Ministry of Commerce, Industry & Energy	503-9433	502-1754	Applicable laws, and authoritative interpretation
International Finance Division, Ministry of Finance and economy	500-5361	503-9262	Methods of payment
Foreign Currency Division, Bank of Korea	759-5742/8	759-5736	Method of payment
Trade Promotion Division, Korea International Trade Association	551-5204/6	551-5237	Suggestion related to I/L, inquiries on applicable laws
Trade Inquiry Office, Korea International Trade Association	551-5354/8	551-5161	Consultation
I/L Certification Section of each foreign exchange bank	-	-	Application for and extension & modification of I/L

Authorization (approval) of the methods of payment The approval system has been restructured into a negative system from the previous positive system, effective as of 1 September 1992. In other words, no specific approval or permission is required as to the methods of payment, unless the imported goods are included in the negative list, which are those that require approval or authorization from the head of a foreign exchange bank, the Governor of the Bank of Korea, or the Minister of the Ministry of Finance and Economy.

Payment of customs tariff and related taxes

The tax system of Korea is basically payment by self-assessment. Payment must be made within 15 days from the date of income tax returns. Calculation method for customs duties and tax Taxes levied on imported goods are customs dues, special excise tax, liquor tax, education tax, special tax for rural development, and value-added tax.

Types of customs tariff The tariff rates currently employed in Korea are the statutory (national) tariff and the conventional tariff.

Order of priority of customs tariffs 1) Dumping Prevention Duties, retaliatory tariff, Emergency Duties, Countervailing Duties, Special Emergency Duties, 2) Benefit Duties, International Cooperation Duties, 3) Adjustment Duties, Price Stabilization Duties, Seasonal Duties, Quota Duties, 4) Provisional Tax Rate, 5) Basic Tax Rate (basic tariff)

Calculation of customs duties

Items subject to tariff ad valorem: Sales price (normally CIF price) X applicable exchange rate = provisional Price Provisional price X tariff rate = customs duty
Items subject to specific commercial tariff: Quantity of imported goods X fixed amount (specified in the tariff rate table) = customs duty

Calculation of Tax

Special excise tax : (taxable price + customs duty) X special excise tax rate Liquor tax: spirits ki X 57,000 won/kl (add 600 won per degree of alcohol content exceeding 95) alcoholic beverages (taxable price+customs duty) X liquor tax rate Education tax : 30% of special excise tax or liquor tax (10% of liquor tax if the liquor tax rate is below 80% for the item subject to liquor tax) Value-added tax : (taxable price+customs duty+special excise tax or liquor tax) X VAT rate (10%) Special tax for rural development : 20% of tax reduction if tariff reductions are given or 10% of special excise tax for a selected list of item subject to special excise tax
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Determination of taxable price for imported goods The most widely employed method to determine taxable basis is to calculate the taxable basis based on the actual value paid; i.e., by adding to or subtracting from the actual price to pay several adjusting elements, and then adding freight charge and insurance.

3. Trade financing

Trade financing Financial assistance for exporting is arranged to contribute to export growth.

Eligibility for loans The holder of commercial papers or documents which affirms an export transaction in progress, such as export letter of credit, D/P, D/A, contracts drawn up in foreign currency about the supply of goods (e.g., export of industrial supplies).

Types and time of loans Loans are available for manufacture, import of raw materials, purchase of raw materials, and general financing. Financing on the security of the L/C is available for the acquisition of raw materials, and financing based on past export performance, which is not limited to the acquisition of raw materials, is normally arranged within 15 days of the issuance of the certificate of export performance by the corresponding foreign exchange bank.

Financing process

Financing based on the L/C: On an individual basis, an application for a loan will be processed and the amount of loan will be determined on the basis of documentary evidence submitted with each application,

within the loan limit calculated in reference to previous export performance.

Financing based on past performance: Financing is arranged within the loan limit calculated in reference to previous export performance, regardless of the presence of the L/C or other materials. This financing method, used by most trading companies (90%), is designed to provide simplified loan application, for loan application and evaluation becomes complicated as companies expand in size and exports grow.

Amount of loan for manufacturing image

Loan for production fund based on past performance : amount assessed in the certificate of export performance X average increment rate X loan unit per US dollar
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Loan for production fund based on the L/C : (Agreed amount in the L/C (FOB price) – import price of raw materials (CIF) – purchase price of raw materials) X loan unit per US dollar
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Period of loan

Financing based on past performance: Maximum 90 days, but only 60 days will be given when the recipient of the loan is importing raw materials from economies like Japan, Hong Kong, China, Chinese Taipei and the Philippines from which the sea trip takes on average not more than 10 days.

Financing based on the L/C: Maximum 180 days. The period of loan is calculated by adding seven days to the shipping date or the date of delivery, where applicable, and determined within the effective period of the L/C.

Loan Repayment: The loan financing export activities must be repaid when the payment for the exported goods is received or when the note issued on the security of the L/C is sold. In the case of financing based on past performance, the loan is repaid at the date of loan maturity.

Protecting Intellectual Property Rights

The government has made and will continue to make concerted efforts to enhance the protection of intellectual property.

The Korean government revised its IPR-related laws in 1995 to bring them into conformity with the WTO/TRIPs Agreement and continue to push to further enhance IPR laws to ensure the protection of the newly emerging fields, such as IPR on internet and trade secrets.

The Protection of IPRs

Type	Definition	Term of Protection	Relevant Office
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Type	Definition	Term of Protection	Relevant Office
Patent	A highly advanced technological idea based on the laws of nature (major invention)	20 years from the filing date	Korean Industrial Property Office
Utility Model	A technological idea based on the laws of nature (minor invention)	15 years from the filing date	Korean Industrial Property Office
Industrial Design	A shape, pattern, color, or any combination of an article which produces an aesthetic impression in the sense of sight	10 years from the date of registration	Korean Industrial Property Office
Trademark	A sign, character, figure, three dimensional shape, or any combination thereof, with its colors, which is used on goods or services in order to distinguish their identify	10 years from the date of registration (the protection will be semi-permanent if renewal is made every 10 years)	Korean Industrial Property Office
Semiconductor Chip Layout Design	-	10 years from the date of registration	Semiconductor Division of the Korean Industrial Property Office
Computer Program	-	50 years	Korea Computer Program Protection Foundation
Copyright	Creative works in the literary or artistic domain	The lifetime of the rightholder and 50 years posthumously	Copyright Division of the Ministry of Culture and Tourism

Source: The Korea Industrial Property Office

Korea has joined numerous international agreements to protect the intellectual property rights.

International agreements relevant to Industrial Property Rights:

- 1979: World Intellectual Property Organization (WIPO)
- 1980: Paris Convention for Protection of Industrial Property
- 1984: Patent Cooperation Treaty (PCT)
- 1988: Budapest Treaty International agreements relevant to Copyrights

International agreements relevant to Industrial Copyrights:

- 1987: Universal Copyright Convention (UCC)
- 1996: Berne Convention

The Korea Industrial Property Office (KIPO) is planning to join the Strasbourg Agreement Concerning International Patent Classification and the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of Registration of Marks to meet the international standardization of the patent and trademark systems within this year. By joining these agreements, Korea will have a regime

of intellectual property rights more transparent to foreign investors and regulate itself according to international standards.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

Compensation for expropriation: The purpose of expropriation, range of public purpose, and procedures and compensation for expropriation are stipulated concretely in the Land Expropriation Act (for a general expropriation) and the Special Act for Acquisition and Compensation for Losses and from Land for Public Use.

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

Not applicable.

2. SETTLEMENT OF DISPUTES

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

According to bilateral investment agreements contracted between Korea and other economies, most foreign investors can submit the disputes to the ICSID.

2. Signatory or accession to the ICSID convention. Korea has signed the agreement to join the ICSID convention.

D. INVESTMENT PROMOTION AND INCENTIVES

1. AUGMENTATION OF TAX INCENTIVES

To further promote FDI, the new Act augmented the scope of businesses subject to tax education/exemption incentives, and the ratio and period of tax reduction/exemption incentives.

Businesses Subject to Tax Reduction/Exemption Incentives

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- Advance-technology businesses
- Service businesses that support the international competitiveness of domestic industry
- Businesses located in a Foreign Investment Zone

Previously, the Korean government provided tax reduction/exemption incentives for 265 types of advanced-technology businesses. Under the new Act, to further support FDI, the number of types of advanced-technology businesses eligible to receive tax reduction/exemption incentives has been expanded from 265 to 436. In addition, 97 types of service businesses that support the international competitiveness of domestic industry are to also receive tax reduction/exemption incentives.

All in all, now, the number of types of business that may receive tax reduction/exemption incentives has increased more than double fold from 265 to 533.

Number of Business Subject to Tax Reduction/Exemption Incentives

Type of Business	Past	Present
Advance-technology business	265	436
Service business that supports the international competitiveness of domestic industry	0	97
Total	265	533

Tax Reduction/Exemption Ratio and Period

Under the new Act, tax reduction/exemption incentives for corporate and income taxes have been expanded from eight years (five years at 100%, then three years at 50%) to 10 years (seven years at 100%, then three at 50%).

To support the establishment of a FDI system in which local governments play the central role in courting FDI, local governments are empowered to provide tax reduction and exemption incentives for local taxes - property taxes, acquisition taxes, aggregate land taxes, and registration taxes - for 8 to 15 years as they see fit. The minimum required tax reduction/exemption by law is eight years (five years at 100%, then three years at 50%).

Customs duties, special excise tax, and value added tax, with respect to capital goods imported for three from the date of notification of FDI for the purpose of operating a business of a foreign invested enterprise, are exempted.

Tax Incentives for Foreign Invested Enterprises

Type of Tax	Past	Present
<ul style="list-style-type: none"> • Corporate tax • Income tax 	<ul style="list-style-type: none"> • Full exemption for the first 5 years • 50% reduction for 3 years thereafter 	<ul style="list-style-type: none"> • Full exemption for the first 7 years • 50% reduction for the 3 years thereafter
<ul style="list-style-type: none"> • Corporate tax on dividends • Income tax on dividends 	<ul style="list-style-type: none"> • Full exemption for the first 5 years • 50% reduction for 3 years thereafter 	<ul style="list-style-type: none"> • Full exemption for the first 7 years • 50% reduction for the 3 years thereafter
Local taxes <ul style="list-style-type: none"> • Acquisition tax • Property tax • Aggregate land tax • Registration tax 	<ul style="list-style-type: none"> • Full exemption for the first 5 years • 50% reduction for 3 years thereafter ❖ <i>Registration tax is not reduced/exempted</i> 	<ul style="list-style-type: none"> • Local tax incentives can be granted from 8 to 15 years • The minimum required by law is: <ul style="list-style-type: none"> - Full exemption for the first 5 years - 50% reduction for the 3 years thereafter ❖ <i>Registration tax is newly included</i>
<ul style="list-style-type: none"> • Customs duty • Special excise tax • Value added tax 	<ul style="list-style-type: none"> • Full exemption on imported capital goods 	<ul style="list-style-type: none"> • Full exemption on imported capital goods

Tax Exemption Incentives on Royalties

Corporate and income tax of royalties on induced advanced technologies are fully exempted for 5 years. Applications for exemptions must be submitted to the government.

Introduction of the Tax Reduction or Exemption Checking System

Foreign-invested businesses eligible for tax incentives, which make investment in Korea for the first time, should request reduction/exemption of corporate tax or income tax before the end of the fiscal year in which the date of business opening falls. In the case of additional investment, such a request may be made within two years from the date of notification of FDI. Tax exemption can also be requested at the time of notification of the foreign investment.

Under the new Act, a “Tax Reduction or Exemption Checking System” has been introduced. Foreign investors or foreign invested enterprise may check with the government if their businesses are eligible for tax reduction or exemption incentives prior to deciding to invest.

If the contents of business are not changed when the notification of FDI is made, the tax reduction/exemption incentives apply according to the check made with the government prior to the notification.

Requested tax reduction/exemption incentives are decided upon by the Minister of Finance and Economy after consultation with the authorities concerned.

Application for tax exemption or reduction

Foreign invested companies applying for tax exemption must submit an application to the Minister of Finance and Economy. Companies who fail to apply for tax exemption will not receive the benefit. The application shall be submitted before the end of the tax year for income tax and corporate tax in which the date of business commencement is included.

Decision of tax exemption or reduction

The Minister of Finance and Economy shall decide whether to grant tax exemption or reduction within 20 days of the application via consultation with the relevant Minister, Minister of Home Affairs and Minister of Trade, Industry and Energy.

Abolishment of Metropolitan Clause

In order to further support and facilitate FDI, the previous regulation barring the provision of tax

reductions or exemptions of foreign invested enterprises located in metropolitan regions has been abolished. Now, under the new Act, all foreign invested enterprises, regardless of location, may receive tax reductions or exemptions if the stipulated criteria are met.

Tax Conventions

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.

If the tax conventions are in conflict with the domestic laws of the signing economy, the tax conventions take precedence over the latter.

Current Economies the Have Signed a Tax Convention with Korea

Austria, Australia, Bangladesh, Belgium, Brazil, Bulgaria, Canada, China, Czech Republic, Denmark, Egypt, Fiji, Finland, France, Germany, Great Britain, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Luxembourg, Malaysia, Mexico, Mongolia, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Russia, Rumania, Singapore, Spain, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, USA, Viet Nam

2. ENHANCEMENT OF PROPERTY INCENTIVES AND SUBSIDIES

Extension of the Rental Period

Under the new Act, the rental period of central and local government properties have been expanded from 20 years up to 50 years. Rental periods may be renewed continuously up to 50 years at a time.

With respects to purchasing central government properties, payment may be delayed for one year and installment payments up to a maximum of 20 years are possible. In respect to purchasing of local government properties, local governments will determine to time frame of payments. Interest rates applicable to installment payments shall not exceed 4% per annum.

Rental Fee Reduction/Exemption for Government Property

Under the new Act, specific foreign invested enterprises eligible to receive rental fee reduction incentives for central government properties.

Rental Fee Reduction or Exemption Ratios for Central Government Property

- Rental fee reductions up to 100% are provided for:
 - Foreign invested enterprises located in an Foreign Investment Zone (FIZ)
 - Companies with advance-technology making a FDI over \$1 million located in one of the three Industrial Parks for foreign invested enterprises
- Rental fee reductions up to 75% are provided for:
 - Manufacturing companies located in one of the three Industrial Parks for foreign invested enterprises making a FDI over \$10million
 - “Companies to be determined eligible by the Commission on Foreign Direct Investment Policy” – companies which contribute to the augmentation of social overhead capital, support industrial restructuring, or support the financial independence of local governments from the central government
- Rental fee reductions up to 50% are provided for:
 - Foreign invested enterprises located in a National Industrial Park (35 parks) with advanced-technology making a FDI over \$1 million or manufacturing companies making a FDI over \$10 million

Under the new Act, in the process of renting, local governments have the autonomous power to grant rent reduction or exemption incentives and determine rent rates as they see fit.

Reduction or Exemption of the Land Conversion Fee

Under the new Act, in the case a foreign invested enterprise seeks to convert a farm or forestry land into a factory site, the conversion fee is reduced or exempted. The current farm or forestry conversion fee is 20% of the land value.

Central Government Support for Local Government Efforts to Promote FDI

Under the new Act, in order to establish a FDI system in which local governments, in efforts to advance regional development, play the central role in competitively courting FDI, the central government supports the following type of local government efforts to promote FDI:

- Development of FIZs, FIZ infrastructure (such as roads), and FIZ medical, educational, and housing facilities
- The purchase of land to be rented to foreign invested enterprises
- The provision of funds to make up the loss local government incurs by reducing or exempting purchase or rental fees of property for foreign invested enterprises
- Public subsidies for various purposes, such as job training

Through such measures, local governments will:

- Become competitive with one another in inducing FDI
- Be more capable to induce FDI
- Eventually, offer various and better incentives to foreign investors

3. ESTABLISHMENT OF FOREIGN INVESTMENT ZONES (FIZS)

To develop large-scale FDI projects, the Korean government has introduced the establishment of Foreign Investment Zones.

Under the previous system in which the location of industrial parks for foreigners were pre-designated by the government. Under the new Act, FDI will be further supported and facilitated, as a foreign investor now collaborate and negotiate with a local government to designate an FIZ in locations of choice. The criteria to designate an FIZ are the amount of FDI and the number of jobs created by the foreign invested enterprise.

An FIZ is a single designated area for a single foreign invested enterprise, which matches the specified criteria.

Eligibility Criteria to Designate a FIZs

For manufacturing companies, advanced-technology businesses, and service businesses that support the international competitiveness of domestic industry:

In the case of establishing a new FIZ

- A company making an FDI over \$100 million
- A more than 50 percent foreign owned company that creates more than 1000 new jobs
- A company making an FDI over \$50 million that creates more than 500 new jobs

In the case of establishing a new FIZ within a pre-existing industrial park

- A company making an FDI of \$30 million that creates more than 300 new jobs

Tourism businesses – limited to new FDIs notified by the end of 2000 and inducing foreign capital by the end of 2002 (2003 for resorts):

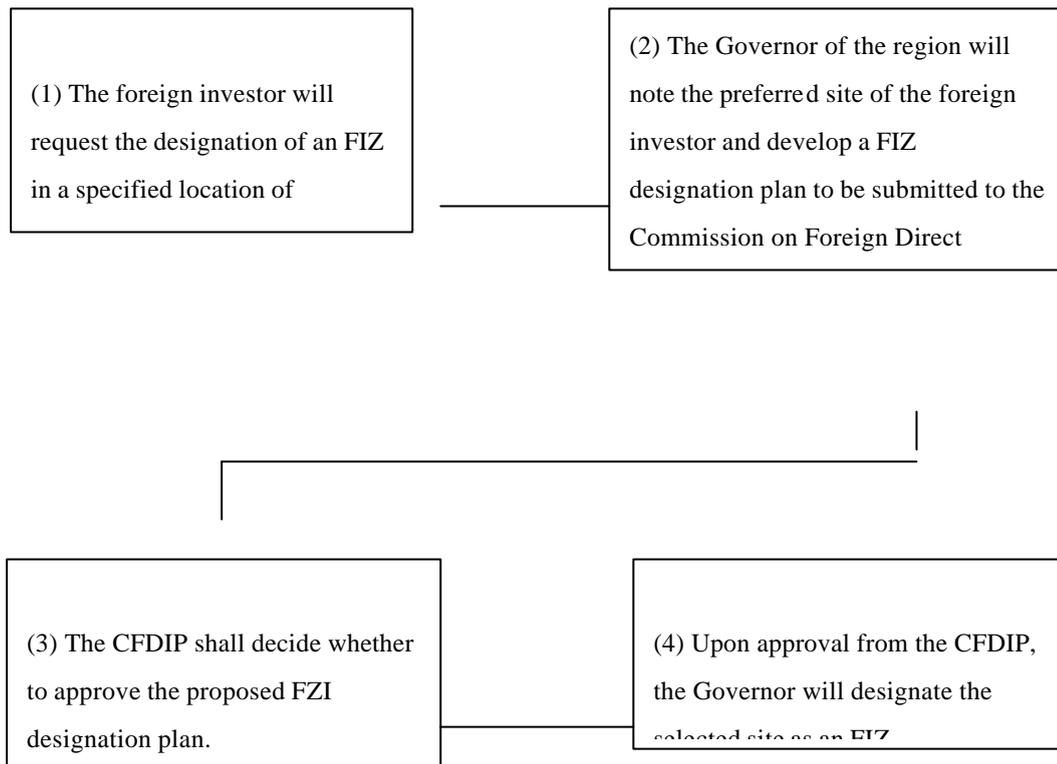
In the case of establishing tourist hotels and international conference centers

- A company making an FDI over \$30 million

In the case of establishing a resort

- Amount: over \$50 million
- Location: Cheju Island and the 9 other designated tourism complexes

Designation Procedure of a FIZ



Government Support for Foreign Invested Enterprises Located in FIZs

- **Tax reduction or exemption incentives**
 - Corporate tax, and income tax on dividends: the first 7 years at 100% and the remaining 3 years at 50%
 - Local taxes (acquisition tax, property tax, aggregate land tax, and registration tax): 8 to 15 years
 - Custom duties: exemption
- Exemption from the mandatory fee for the creation of traffic congestion due to the establishment of a building/factory
- Providing support for medical facilities, housing, and educational facilities (to be determined by the Commission on Foreign Direct Investment Policy)
- Allowing all firms to engage in sectors previously restricted solely for small and medium sized companies
- Exception from the requirement to employ National Meritorious Persons (e.g., war veterans and their family) till 2003
- Granting automatic approval of imports and exports business operations and deregulation of restrictions on imports and exports, such as import diversification

- Allowing the omission of the mandatory approval of the Mayor when dividing land in an FIZ

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

Korea has signed a bilateral “agreement on investment promotion and protection” with 67 economies. But Korea has not yet signed any “friendship commerce and navigation treaties”, nor any multilateral investment agreements as a party.

Economies that have enforced the agreement with Korea (50)	
Germany (15 January 1967)	Peru (20 April 1994)
Tunisia (28 May 1975)	Spain (19 July 1994)
Switzerland (7 April 1971)	Turkey (4 June 1994)
Netherlands (1 June 1975)	Romania (30 December 1994)
Belgium & Luxembourg (3 September 1976)	Czech Republic (16 March 1995)
France (4 November 1976)	Tajikistan (13 August 1995)
UK (4 March 1976)	Greece (4 November 1995)
Sri Lanka (15 July 1980)	Nigeria (1 February 1999)
Senegal (2 September 1985)	India (7 May 1996)
Denmark (2 June 1988)	Finland (11 May 1996)
Bangladesh (6 October 1988)	Laos (14 June 1996)
Hungary (1 January 1989)	Portugal (11 August 1996)
Malaysia (31 March 1989)	Argentina (24 September 1996)
Thailand (29 September 1989)	Philippines (25 September 1996)
Thailand (29 September 1989)	Kazakhstan (26 December 1996)
Poland (2 February 1990)	Latvia (26 January 1997)
Pakistan (15 April 1990)	Cambodia (12 March 1997)
Mongolia (30 April 1991)	Egypt (25 May 1997)
Russia (10 July 1991)	Bolivia (4 June 1997)
Austria (1 November 1991)	South Africa (6 Jun 1997)
Italy (26 June 1992)	Sweden (18 June 1997)
Uzbekistan (20 November 1992)	Hong Kong, China (30 July 1997)
China (4 December 1992)	Belarus (9 August 1997)
Paraguay (6 August 1993)	Ukraine (3 November 1997)
Viet Nam (4 September 1993)	
Lithuania (9 November 1993)	
Indonesia (10 March 1994)	
Economies that have signed the agreements with Korea (8)	
Zaire (19 July 1990)	Morocco (27 January 1999)
Chile (6 September 1996)	Israel (7 February 1999)
El Salvador (t July 1998)	Brazil (1 September 1995)
Iran (31 October 1998)	
Tanzania (18 December 1998)	
Economies that have initialed the agreement with Korea (9)	
Jamaica (21 June 1997)	Algeria (10 August 1997)
Congo (12 October 1993)	Saudi Arabia (25 August 1997)
Kyrgyzstan (2 June 1997)	Qatar (1 October 1997)
Guatemala (6 July 1998)	Albania (9 November 1998)
Nicaragua (6 July 1998)	
Total : 69 Economies	

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

The Steady Increase of Foreign Direct Investment

In response to Korea's continued efforts to offer a favorable investment environment, foreign investment has sharply increased by an average of nearly 50% each year since 1993. Especially, the increase in 1997 (see table) is traced to be a result of joining the OECD and liberalizing the Korean market to OECD standards.

In 1998, despite the fact that the outbreak of the foreign exchange crisis in late 1996 brought the temporary downfall of FDI, foreign investment recorded a high amount beginning with a re-emerging steady increase in February.

In 1998, there were 1,398 committed (hereinafter "committed" means the foreign investor's notification to the government of the decision to invest) cases of FDI that equaled a historic record high total committed amount of \$8.852 billion. This is a 32.5 % increase in the total number of cases and a 27 % increase in the total amount of FDI in comparison to 1997 (1,055 committed cases of FDI that equaled a total committed amount of \$6.971 billion). Especially to be noted, December 1998's 159 cases of FDI that equaled a total amount of \$1.943 billion is the largest single month amount of FDI ever recorded. (The previous largest single month amount of FDI was in April 1997 for \$1.565 billion.)

Observers in government and industry are ascribing the favorable trend in FDI to President Kim's successful summit diplomacy, including ASEM and APEC, and efforts to promote FDI, the recovery of international confidence in the Korean economy pursuant to domestic restructuring efforts, and the improvement of the investment environment through the enforcement of the new Foreign Investment Promotion Act on 17 November 1998.

Trend of FDI by Year in Korea since 1993

	1993	1994	1995	1996	1997	1998
Amount	1,044	1,317	1,941	3,203	6,971	8,852
Increase in percentage*	16.8	26.1	47.4	65.0	117.6	27.0

* In comparison to the previous year

Source: Ministry of Finance and Economy

With the solidification of presently being pursued corporate restructuring, economic recovery, and foreseeable rise in sovereign credit rating, a drastic increase in foreign investment in 1999, for more than \$15 billion, is predicted with a focus on the finance, tourism, and petrochemical sectors.

Trends of FDI by Month since January of 1998

(Units: \$1 million)

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
Amount	130	199	243	567	659	663	1,235	407	534	894	1,378	1,943
Change in percentage*	-85.1	-45.2	-72.6	-63.8	170.1	24.9	203.4	128.7	23.3	147.6	1,414	87.4
Number of Cases	86	87	135	107	137	126	100	96	145	91	129	159
Change in percentage*	6.2	38.1	20.5	28.9	57.5	48.2	16.3	5.5	79.0	5.8	69.7	28.2

* in comparison to the same month of 1997

Source: Ministry of Finance and Economy

FDI by Major Regions

The chief contributions in FDI have come mainly from advanced nations, such as the US, Japan, and the economies of the European Union. Since 1996, when the three economies accounted for their lowest total of 68% of all FDI in Korea, their share has drastically risen to record 84% in 1997 and 71.9% for this year. In 1998, FDI from the US accounted for 33.6% of the total recorded amount of FDI. Especially, in December, many large-scale (over US\$ 100 million) FDIs from the US were recorded. In 1998, FDI from the EU accounted for 32.6% of the total recorded amount of FDI. The total recorded amount of FDI for 1998 from the EU equaled \$2.889 billion. This is a 25.3% increase in comparison to 1997 (\$2.305 billion). In 1998, FDI from Japan equaled \$503 million. This is an 89.1% increase in comparison to 1997 (\$266 million). FDI from Japan saw an increase in the form of small-medium size investments and outstanding-stock acquisitions of pre-established foreign invested enterprises.

Trends of FDI by Major Regions

(Unit: \$1 million)

Region	1997	1998	Growth or Decline
Japan	266	503	89.1%
U.S.A.	3,190	2,976	-6.7%
E U	2,305	2,889	25.3%

Source: Ministry of Finance and Economy

Increase of M&As

A salient feature of the overall pattern of FDI in 1998 was that M&A related investments via acquisition of shares of existing Korea companies increased substantially. In 1998, there were 232 cases, equaling \$1.241 billion, of FDI made in the form of acquisition of out-standing stock of domestic companies. As a result, FDI made in the form of acquisition of out-standing stock of domestic companies equaled 14% of all FDI made in 1998.

Ratio of FDI through Acquisition of Out-standing Stock

(Unit: \$1 million, %)

	1997	1998
Total FDI (A)	6,971	8,852
Acquisition of Outstanding Stock (B)	699	1,241
(B/A)	10%	14%

Source: Ministry of Finance and Economy

Including, however, the 18 cases, equaling a total of \$3.461 billion, of FDI made in the form of a acquisition of a factory or a business sector, FDI in the form of M&As, equaled an astounding 53.1% of the total recorded amount of FDI for 1998.

At this time, as corporate restructuring becomes more solidified, FDI in the form of M&As is predicted to further increase.

Increase of FDI in the Manufacturing Sector

In terms of business sectors, the percentage of FDI made in the manufacturing sector increased. In 1998, there were been 575 cases of FDI in the manufacturing sector equaling a total amount of \$5.735 billion. FDI in the manufacturing sector accounts for 64.8 % of the total amount of FDI for 1998. This is a much higher than the 1997 percentile of 33.4%.

Percentage of FDI made in the Manufacturing Sector

1995	1996	1997	1998
45.5%	60.3%	33.7%	64.8%

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, in view of the fact that it recognises the contribution of foreign direct investment (FDI) to industrial economic performance and international competitiveness. FDI is sought not only as a source of capital funds and foreign exchange, but more importantly, as a means of securing the much needed industrial technology, managerial expertise, and marketing know-how and network to achieve higher levels of growth, employment, productivity and export performance.

Malaysia promotes both FDI and domestic investment (DI) in the manufacturing sector as a source of economic growth. Over the years, various policies and measures have been introduced to promote investment in the sector. Among these are liberal policies, which allow 100% foreign equity ownership in export-oriented projects. The liberal policies, practical strategies and dynamic promotional efforts on FDI have been successful in attracting a large number of export-oriented projects into the manufacturing sector.

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 basically a primary producer to an industrialised economy.

In the early 1960s, foreign investors were largely involved in developing import-substitution industries such as food, beverages and tobacco, printing and publishing, building materials, chemicals and plastics. In the late sixties, as the limited domestic market placed constraints on continued rapid industrial development, and with the increasing number of school leavers entering the labour market, the economy was faced with a growing unemployment problem.

To overcome these problems, the development of export-oriented and labour-intensive industries were encouraged. The 1970s saw an influx of foreign investments primarily in the electrical, electronics and textile industries, utilising Malaysia's abundant labour, free zone and other facilities. This launched Malaysia into an era of export-orientation. In the late 1980s, following the further liberalisation of foreign investment policies, provision of attractive incentives/facilities, intensification of promotional efforts and favourable external factors, (of which the increasing production costs in Japan and the Asian newly industrialised economies (NIEs) was a major push factor), FDI flows into the manufacturing sector increased significantly.

Beginning from the early 1990s, the investment and industrial policies are geared towards encouraging capital and technology intensive industries. Towards this end, projects which embody high technology, high value-added and skill intensity which create industrial linkages and which have greater export potential, are being promoted. Focus will also be given to the development of specific industry clusters.

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
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 and incentives for some sectors.
Free Zones Act, 1990	Enables operations in the zones to enjoy minimum custom control and formalities in their import of raw materials, parts, machinery and equipment as well as in the export of their finished goods.
Exchange Control Act, 1953	Provides for the recording, monitoring and supervision of payments to non-residents, and also to protect the economy's foreign exchange position should the need arise.

Note. (1) *There is no legislation specific to foreign investors.*

(2) *An investment guidebook entitled "Malaysia-Investment In the Manufacturing Sector - Policies, Incentives and Facilities" can be obtained from the Malaysian Industrial Development Authority (MIDA) (for contact details see section B(1)(ii)(4)).*

(2) Investment Review and Approval

1. Details of proposals and sectors that are/are not subject to screening.

2. Details of guidelines/conditions that apply for screening (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.

Guidelines on Foreign Investments

Manufacturing

The Malaysian Government welcomes foreign investment, especially in the manufacturing sector.

Foreign equity participation has been governed by the level of exports. Effective from 31 July 1998, the equity policy has been liberalised for the manufacturing sector. The guidelines on foreign equity participation in greenfield investment in the manufacturing sector are as follows:

- (i) Foreign investors can hold 100% equity irrespective of the level of exports. This relaxation is applicable for all applications received from 31 July 1998 until 31 December 2000 to set up manufacturing projects with the exception of specific activities and products where Malaysian small and medium scale companies have the capabilities and expertise. These activities and products are paper packaging; plastic packaging (bottles, films, sheets and bags); plastic injection moulded components; metal stamping, metal fabrication and electroplating; wire harness; printing and steel service centres. For these activities and products, the prevailing specific equity guidelines are applicable.
 - All projects approved under this policy will not be required to restructure their equity after the period.
 - This policy will be reviewed after 31 December 2000.
- (ii) Companies which have been licensed before 31 July 1998 have to comply with the equity condition as stated in the licence. However, for existing companies undertaking expansion or diversification, the equity policy as stated in (i) applies to the expansion and diversification projects.

The Government encourages greater levels of industrial linkages and domestic sales. To encourage this, the government has relaxed the export conditions imposed on manufacturing companies effective from 1 January 1998 to 31 December 2000. With this relaxation, all existing companies with export conditions can now apply to Ministry of International Trade and Industry for an approval to sell up to 50% of their output in the domestic market.

The products which are eligible to be considered for increased domestic sales are as follows:

- All products with nil duty.
- All products with import duty which are not available locally or in inadequate local supply.

The above temporary relaxation of export condition will not affect the current equity structure and incentives of existing companies.

Multimedia Super Corridor (MSC)

The MSC is a 15-by-50 kilometer (9-by-30 mile) zone extending south from Malaysia's present national capital and business hub, Kuala Lumpur. The MSC is a perfect environment for companies wanting to create, distribute, and employ multimedia products and services.

Companies with MSC Status are entitled to operate tax free for up to 10 years or receive a 100% investment tax allowance, and enjoy other incentives and benefits backed by the Malaysian Government's Bill of Guarantees:

- Provide a world-class physical and information infrastructure;
- Allow unrestricted employment of knowledge workers from overseas;
- Ensure freedom of 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, and no duties on the import of multimedia equipment;
- Become a regional leader in intellectual property protection and cyberlaws;
- Ensure no censorship of the Internet;
- Provide globally competitive telecommunication tariffs;
- Tender key MSC infrastructure contracts to leading companies willing to use the MSC as their regional hub; and
- Provide a high-powered implementation agency to act as an effective one-stop super shop to ensure the MSC meets company needs.

Acquisitions, Mergers and Takeovers

The acquisition of assets or any interests, mergers or takeovers of companies and businesses are governed by the Foreign Investment Committee (FIC) Guidelines. The guidelines are as follows:

- (a) Against the existing pattern of ownership, the proposed acquisition of assets or any interests, mergers or takeovers should result directly or indirectly in a more balanced Malaysian participation in ownership and control.
- (b) The proposed acquisition of assets or any interests, mergers or takeovers should lead directly or indirectly to net economic benefits in relation to such matters as the extent of Malaysian participation, particularly Bumiputera participation, ownership and management, income distribution, growth, employment, exports, quality, range of products and services, economic diversification, processing and upgrading of local raw materials, training efficiency, and research and development.
- (c) The proposed acquisition of assets or any interests, mergers or takeovers of companies and businesses should not have adverse consequences in terms of national policies in such matters as defence, environmental protection or regional development.
- (d) The onus of proving that the proposed acquisition of assets or any interests, mergers or takeovers of companies and businesses is not against the objectives of the New Economic Policy is on the acquiring parties concerned.

The above guidelines will be applied to the following:

- (a) any proposed acquisition by foreign interests of any substantial fixed assets in Malaysia;
- (b) any proposed acquisition of assets or any interests, mergers and takeovers of companies and businesses in Malaysia by any means, which will result in ownership or control passing to foreign interests;
- (c) any proposed acquisition of 15% or more of the voting power by any one foreign interest or associated group, or by foreign interests in the aggregate of 30% or more of the voting power of a Malaysian company or business;
- (d) control of Malaysian companies or businesses through any form of joint-venture agreement, management agreement and technical assistance agreement or other arrangement;
- (e) any merger or take-over of any company or business in Malaysia whether by Malaysians or foreign interests; and
- (f) any other proposed acquisition of assets or interests exceeding in value of RM5 million whether by Malaysians or foreign interests.

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

Copies of the relevant documentation can be obtained from the contact points listed in section B (1)(ii)(4) below.

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

Agency	Address/telephone/fax	Types of Applications
1. Director-General Malaysian Industrial Development Authority (MIDA)	6th Floor, Wisma Damansara Jalan Semantan P.O. Box 10618 50720 Kuala Lumpur Tel: (60 3) 255 3633 Fax: (60 3) 255 7970 Website: http://www.mida.gov.my E-mail: mida@mida.gov.my	1. Manufacturing licence 2. Incentives for Manufacturing 3. Matters on Post Licencing raw material 4. Duty Exemption on Raw Material And Machinery And components 5. Expatriate posts relating to manufacturing 6. Technology transfer agreement
2. Ministry of Finance	Block 9, Government Office Complex Jalan Duta 50592 Kuala Lumpur Tel: (603) 2582000 Fax: (603) 2556264 Website: http://www.treasury.gov.my E-mail: webmaster@treasury.gov.my	1. Approvals for training programme/training institution for purpose of double deduction. 2. Approval for 'approved research companies status'.
3. Secretary Foreign Investment Committee (FIC)	Economic Planning Unit Prime Minister's Department Jalan Dato' Onn 50502 Kuala Lumpur Tel: (603) 230 0133 Fax: (603) 238 2955	1. Acquisitions 2. Mergers 3. Takeover
4. Registrar of Companies	11th-17th Floor, Putra Place 100 Jalan Putra 50622 Kuala Lumpur Tel: (603) 443 3366 Fax: (603) 443 7505/449 2313 Website: http://www.kpdnhq.gov.my/.roc	1. Registration of Companies
5. Royal Customs & Excise Department	Block 11, Government Offices Complex, Jalan Duta 50596 Kuala Lumpur Tel: (603) 651 6088/651 9088	1. Service Tax Licence 2. Sales Tax Licence 3. Excise Manufacturing Licence 4. Licensed Manufacturing

Agency	Address/telephone/fax	Types of Applications
	Fax: (603) 651 2548 Website: http://www.customs.gov.my E-mail: kastam@hq.rced.gov.my	Warehouse
6. Ministry of Human Resources	Level 204, Block B (North) Jalan Damanlela Pusat Bandar Damansara 50530 Kuala Lumpur Tel: (603) 255 7200 Fax: (603) 255 4700 Website: http://www.jaring.my/ksm E-mail: mhr@po.jaring.my	1. Applications on human resources development
7. Secretary-General Ministry of International Trade and Industry (MITI)	15th Floor, Block I 0 Government Offices Complex Jalan Duta 50622 Kuala Lumpur Tel: (60 3) 651 6022 Fax: (60 3) 651 0827 Website: http://www.miti.gov.my	1. Import licence 2. Export licence 3. Production of Pioneer Certificate
8. Director-General Inland Revenue Board	15th Floor, Block 11 Government Offices Complex Jalan Duta 50600 Kuala Lumpur Tel: (60 3) 651 7055 Fax: (60 3) 651 3798 Website: http://www.hasilnet.org.my E-mail: lhdn@hasilnet.org.my	1. Company Tax 2. Personal Income Tax 3. Real Property Gain Tax
9. Executive Chairman Employees Provident Fund (EPF)	7th Floor, KWSP Building Jalan Raja Laut 50350 Kuala Lumpur Tel: (603) 294 6566 Fax: (603) 294 8433 Website: http://www.kwsp.gov.my E-mail: ephbhea@po.jaring.my	1. Withdrawals of EPF
10. Multimedia Development Corporation Sdn. Bhd. (MDC)	MSC Headquarters 63000 Cyberjaya Selangor Darul Ehsan Tel: (603) 818 8477 Fax: (603) 818 8520/818 85212 Website: http://www.mdc.com.my E-mail: info@mdc.com.my	Multimedia applications: 1. Electronic government 2. Telemedicine 3. Smart School 4. Multipurpose card 5. R&D clusters 6. Worldwide Manufacturing webs 7. Borderless marketing centres
11. Immigration Department	Level 1-7, Block 1 Damansara Town Centre 50550 Kuala Lumpur Tel: (603) 253 9181/254 5096/254 5108 Fax: (603) 256 2340 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

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

Approvals for Manufacturing Licence or Incentives usually require eight weeks from date of application.

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

Ministries/Agencies are listed section B (1)(ii)(4) above.

7. Brief description of what conditions need to be met for an expedited review of a foreign investment proposal.

To ensure expeditious review, all applications should provide complete information as required.

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

Complaints/appeals should be submitted to the relevant organisations as indicated in section B(1)(ii)(4) above.

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

Agencies responsible are as indicated in section B (1)(ii)(4) above.

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

Comments/proposals can be submitted directly to the relevant Ministries or agencies or through the various Chambers of Commerce, Federation of Malaysian Manufacturers, Business Councils, etc.

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

Approval for industrial land is under the jurisdiction of the state governments. Enquiries can be submitted through MIDA.

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

1. List and description of the scope of any exceptions to 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.

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

Not applicable.

3. NATIONAL TREATMENT

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

The present guidelines on foreign investment especially in the manufacturing sector, is liberal that foreign investors can hold 100% equity irrespective of the level of exports. This relaxation is applicable for all applications received from 31 July 1998 until 31 December 2000. However, there are seven activities that require Malaysian participation. These activities and products are paper packaging; plastic packaging (bottles, films, sheets and bags); plastic injection moulded components; wire harness; printing and steel service centres. For these activities, Malaysian SMEs have the capabilities and expertise.

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

Domestic Borrowing by Non-Resident Controlled Companies Operating in Malaysia

Non-resident controlled companies (NRCCs) operating in Malaysia do not face difficulties in obtaining domestic credit facilities to finance their business in Malaysia.

Specific exchange control approval is required only for loans exceeding an aggregate of RM10 million, for any purpose. Permission is readily given for such loans in order 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 RM10 million credit limits. However, foreign investors are expected to be adequately capitalised and bring in a reasonable amount of funds of their own. As a general rule, NRCCs which borrow in excess of RM10 million in Malaysia are required to ensure that their domestic borrowings do not exceed their capital funds by more than three times. This is to ensure that NRCCs bring in sufficient amount of their own funds to finance projects in Malaysia as a long-term proposition, and not merely as a venture for quick profits without any long-term commitment to the economy. Irrespective of the amount of domestic borrowing, at least 60% of the short-term trade financing facilities and 60% of other types of credit facilities obtained from the banking institutions (licensed banks, licensed merchant banks and licensed finance companies) should be allocated to Malaysian-owned banking institutions. The above rules are, however, implemented pragmatically and flexibly to ensure that NRCCs have ready access to banking facilities at competitive prices to meet their financial requirements.

Non-residents who have valid work permits are also permitted to obtain domestic borrowing to finance up to 60% of the purchase price or the construction cost of one residential property in Malaysia for their own accommodation. Malaysians with permanent resident status abroad are permitted to obtain one residential property loan if they do not individually or jointly own any other residential property in Malaysia. Applications from non-residents to obtain domestic financing for pure property acquisition and property development purposes are usually not approved. They are encouraged to bring in their own funds from abroad to finance such purposes.

Foreign Currency Credit Facilities and Ringgit Credit Facilities

Residents are freely allowed to obtain credit facilities in foreign currency up to the equivalent of RM5 million in aggregate from the licensed banks, licensed merchant banks and non-residents. In addition, residents may obtain from licensed banks and licensed merchant banks any amount of short-term foreign currency trade financing facilities with a tenure not exceeding 12 months and guarantee facilities in foreign currency. Guarantee facilities in Ringgit or foreign currency may also be obtained from the Licensed Offshore Banks in Labuan IOFC or in foreign currency from non-residents who are individuals, or shareholders, related or associate companies which are not financial institutions. These credit facilities are not included in the computation of an equivalent of RM5 million limit on foreign currency credit facilities.

Permission is given readily for all foreign loans raised on reasonable terms to finance productive activity in Malaysia, especially projects which generate sufficient income in foreign exchange to service all the external debt so created.

Borrowing in Ringgit of any amount from non-residents in general requires the prior permission of the Controller. 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

1. List and description of regulations which restrict the repatriation of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidation. See section B(4)(3) below:

2. Brief description of the foreign exchange regime.

Exchange Control Policy

Exchange control is administered by Bank Negara Malaysia (Central Bank) in accordance with the provisions of the Exchange Control Act, 1953.

The present exchange control regime in Malaysia is liberal and applies uniformly to transactions with all economies, except Israel, Serbia and Montenegro against which special restrictive rules apply. The main Exchange Control rules, which are of direct relevance to foreign investors, are as outlined in section B (4)(3) below.

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

Direct Investment

No permission is required from the Controller of Foreign Exchange (or “the Controller”) for a non-resident to undertake direct investment in Malaysia.

Remittances Abroad

Payments to economies outside Malaysia may be made in any foreign currency other than the currencies of Israel, Serbia and Montenegro.

All payments in foreign currency to non-residents for the repatriation of capital, profits, dividends, interest, rental and commissions are freely permitted. Payments for imports of goods and services are also freely permitted but must be made in foreign currency. The commercial banks are authorised to effect such payments.

For investment abroad and payments under guarantee for non-trade purposes, prior approval of the Controller is required if the amount exceeds the equivalent of RM10,000.

Export Proceeds

A simple form (KPWX) must be completed for all exports, the value of which exceeds RM100,000 F.O.B. per shipment. This form does not require any authorisation and is given to customs authorities at the time of shipment. However, exporters which declare their exports through Electronic Data Interchange (EDI) are exempted from completing the form with effect from 1 January 1997.

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 a portion of the proceeds in foreign currency provided these are deposited in foreign currency accounts with designated banks in Malaysia.

Inter-Company Account

No permission is required from the Controller for a company in Malaysia to maintain inter-company accounts with associated companies, branches or other companies outside Malaysia, provided monthly returns are 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 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

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

Passport Requirements

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry into Malaysia.

Those who are in possession of passports which are not recognised by Malaysia must apply for a document in lieu of a passport and visa which is issued by Malaysian missions abroad.

Visa Requirements

Commonwealth citizens (except India, Bangladesh, Pakistan and Sri Lanka), British protected persons or citizens of the Republic of Ireland and citizens of Switzerland, Netherlands, San Marino and Liechtenstein do not need a visa to enter Malaysia.

Citizens of Austria, Belgium, Denmark, Finland, Germany, Iceland, Japan, Republic of Korea, Luxembourg, Norway, Sweden, Saudi Arabia, Tunisia, Turkey, Italy, United Arab Emirates and USA do not require a visa for a visit not exceeding three months.

Citizens of ASEAN economies, Argentina, France, Poland and South Africa do not need a visa for a visit not exceeding one month.

Citizens of Afghanistan, Iran, Iraq, Libya and Syria do not need a visa for a visit not exceeding two weeks.

Citizens of North Korea, Cuba, Viet Nam, the People's Republic of China and holders of Hong Kong Certificate of Identity, Myanmar and Chinese Taipei are allowed to enter Malaysia subject to their application for a visa being approved.

Application For Visa

Application for visa 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, application should be made to the nearest British High Commission or Embassy.

Entry Into Malaysia

(a) Passes to be Obtained at Point Of Entry

A visit pass for the purpose of a social or tourist visit or business may be issued at the point of entry if the visitor can satisfy the immigration authority at the point of entry that he has a valid passport and visa (wherever applicable).

The types of passes issued are as follows:

(i) Visit Pass (Social or Tourist)

Visit passes (social or tourist) are issued solely for the purpose of a social or tourist visit. A person who has been issued with a social or tourist visit pass is not permitted to take up employment, business or professional work while in Malaysia.

(ii) Visit Pass (Business)

Visit passes (business) are issued to foreign visitors who enter Malaysia for purposes of conducting business negotiation or inspection of business houses. These passes cannot be used for the purposes of employment or for supervising the installation of new machinery or the construction of a factory.

(iii) Conversion of Passes

Foreign visitors who have entered Malaysia on social or tourist visit passes may apply to the Immigration Department for converting their social or tourist passes into business visit passes. This ruling is designed to assist foreign visitors who wish to undertake business activities.

All applications for converting social or tourist visit passes into business passes must be submitted to the Immigration Department with a letter of recommendation from the Ministry of International Trade and Industry.

(b) Passes to be Obtained Upon Arrival in Malaysia

Other than applications for entry for the purpose of tourist, social or business visits, all applications for passes of the types mentioned below must be made upon arrival in the 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 any person who enters 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. The validity of the pass varies but does not exceed 12 months at any one time.

(iv) Dependant's Pass

This is issued to the wife and children of any person who has been issued with an Employment Pass. This pass is not issued to the wife and children of a person who enters the economy on any pass other than an Employment Pass. The wife and children of any person who enters the economy 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.

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

It is the Government's policy to see that Malaysians are eventually trained and employed at all levels of employment. Notwithstanding this, foreign companies are allowed to bring the required personnel in areas where there is a shortage of trained Malaysians to do the job. In addition to this, foreign companies are also allowed certain "key posts" to be permanently filled by foreigners.

Companies should make every effort to train more Malaysians so that the employment pattern at all levels of the organisation will reflect the multi-racial composition of the economy.

Guidelines on Employment of Expatriate Personnel

Any company with foreign paid-up capital of US\$2 million and above will automatically be allowed five expatriate posts including key posts. Additional expatriate posts will be given when necessary upon request.

Any company with foreign paid-up capital of less than US\$2 million will be considered for expatriate posts on the basis of the following:

- (i) key posts can be considered where the foreign paid-up capital is at least RM 500,000. This figure is only a guideline and the number of key posts allowed depends on the merits of each case;
- (ii) for executive posts which require professional qualifications and practical experience, expatriates may be employed up to a maximum period of 10 years subject to the condition that Malaysians are trained to eventually take over the posts; and
- (iii) for non-executive posts which require technical skills and experience, expatriates may be employed up to maximum period of five years subject to the condition that Malaysians are trained to eventually take over the posts.

Other conditions relating to expatriate employment are as follows:

- (i) a new expatriate officer replacing another expatriate officer is required to obtain a fresh employment pass;
- (ii) all employment passes are valid for the period of time as approved for the post. However, for key posts holders, the employment passes will be given on a 5-year renewable basis; and
- (iii) all holders of employment passes will be issued with multiple entry visas valid for the corresponding period that the employment pass is valid.

Applications for Expatriate Posts

Applications for expatriate posts (including key posts, executive and non-executive posts) can be submitted to the Malaysian Industrial Development Authority (MIDA) at the same time as the company's application for approval of its projects.

The above procedure applies to expatriate personnel required by:

- (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 of expatriate personnel at the time of the submission of his application for approval of his project, he may submit his expatriate personnel requirements at a later stage.

Applications for Foreign Workers

Application for foreign workers can be submitted to the Foreign Workers Division in the Immigration Department. An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed. To ensure foreign labour is employed when necessary, an annual levy on foreign workers is imposed.

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

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, including the notice period required to terminate it.
- (ii) Wages earned must be paid not later than the seventh day after the last day of any wage period. A pay slip is required for all wages less lawful deductions.

- (iii) Female employees are not permitted to work in any industrial or agricultural undertakings between the hours of ten o'clock in the evening and five o'clock in the morning, unless with the prior written approval of the Director-General of the Labour Department.
- (iv) Female employees are entitled to 60 days paid maternity leave for up to five surviving children. They shall be paid their ordinary rate of pay, subject to a minimum rate of RM6.00 per day.
- (v) Normal hours of work shall not exceed eight hours in one day or 48 hours in one week.
- (vi) Paid holiday on at least ten gazetted public holidays in any one calendar year.
- (vii) Eight days of paid annual leave for employees with less than two years of service, 12 days of paid annual leave for employees with two or more years but less than five years of service, and 16 days of paid annual leave for those with over five years of service.
- (viii) Fourteen days of paid sick leave for employees with less than two years of service, 18 days of paid sick leave for employees with two years or more years but less than five years of service and 22 days paid sick leave for those with over five years of service per calendar year and where hospitalisation is necessary, up to a maximum of 60 days paid sick leave per calendar year.
- (ix) 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.
- (x) Every agriculture or industrial undertaking or any establishment where any commerce, trade/profession or business is carried on that employs or is likely to employ employees, must give written notice to the nearest Labour Department within 90 days of commencing operations.

Employees Provident Fund (EPF)

The Employees Provident Fund Act, 1991 provides for a compulsory contribution for employees within the definition of the Act. All employers and employees are required to contribute to the Employees Provident Fund (EPF) and the rates are approximately 12% and 11% respectively of the employees' monthly wages.

However, both employers and employees are encouraged to contribute at a rate higher than this mandatory contribution.

Effective from 1 August 1998, all foreign workers earning less than RM2,500 per month are required to contribute 11% of their monthly wages while the employers are required to contribute RM5 per employee per month.

All employers must register their employees with the EPF within seven days of employment.

Self-employed persons, expatriates (with monthly wages of RM2,500 and above) and domestic servants, that is, persons who are employed to work in or connected with work in a private dwelling house, including a valet and gardener, and who are paid from the private account of the employer, are exempted from compulsory contributions. They can, however, choose to contribute to the Fund.

Employees' Social Security Act, 1969

The Social Security Organisation (SOCSO) administers the Employment Injury Insurance Scheme and the Invalidity Pension Scheme, as provided for under the Employees' Social Security Act, 1969.

All establishments, including factories, employing workers earning wages not exceeding 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% of the wages of an employee.

The Invalidity Pension Scheme provides a 24-hour coverage to employees against invalidity and death due to any cause before the age of 55 years. The total contribution is about 1% of the wage of an employee and is shared by the employer and the employee equally.

Employment of Foreign Workers

The employment of foreign workers is allowed in the construction, plantation, service (domestic servants, hotel industry, trainers and instructors) and manufacturing sectors.

Labour Costs

There is no national minimum wage law applicable to the manufacturing sector in Malaysia. Basic wage rates vary from locations and from industrial sectors.

Salary rates and fringe benefits offered for management and executive level personnel vary according to the industry and employment policies. In addition to salaries most companies also provide fringe benefits such as free medical treatment, personal accident and life insurance coverage, free or subsidised transport, annual bonus, retirement benefits and enhanced contributions to the Employees Provident Fund (EPF).

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

Trade Unions

In line with the Government policy to encourage the growth of responsible trade unions, the Trade Union Act, 1959 and Trade Union Regulations, 1959 have been enacted. Under this legislation:

- (i) trade unions should confine their membership to employees within a particular trade, occupation or industry;
- (ii) all trade unions must be registered;
- (iii) a union cannot organise a strike without first obtaining the consent by secret ballot of at least 2/3 of its total members; and
- (iv) all unions are inspected regularly to ensure compliance with the laws.

Industrial Relations Act, 1967

The Industrial Relations Act, 1967 provides for the regulation of relations between employers and workmen and their trade unions, and the prevention and settlement of trade disputes. Some of the main features of the Act are:

- (i) protection of the legitimate rights of employers and workmen and their trade unions;
- (ii) 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 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 for further action.

6. TAXATION

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

Generally, all income of companies and individuals accrued in, derived from or remitted to Malaysia are liable to tax. However, income remitted to Malaysia by resident companies (other than companies carrying on the business of banking, insurance, air and sea transportation), non-resident companies and non-resident individuals are exempted from tax.

Apart from income tax, there are other direct taxes such as real property gains tax, and indirect taxes such as Sales tax, service tax, excise duty and import duty.

Currently, income tax is assessed on the income earned in the preceding year according to the Official Assessment System.

As a measure to modernise and streamline the tax administration system, the assessment of income tax will be changed to the current year assessment from the year 2000. The present Official Assessment System will be changed to the Self-Assessment System in stages as follows:

Group	Year of Implementation
Companies	2001
Businesses, partnerships and cooperatives	2003
Salaried group	2004

To facilitate the changeover, all income received in 1999 will be waived from income tax and losses incurred 1999 will be allowed to be carried forward.

Source of Income Liable to Tax

The following sources of income are liable to income tax:

- gains and profits from trade, professional and business;
- salaries, remunerations, gains and profits from an employment;
- dividends, interests or discounts;
- rents, royalties or premiums;
- pensions, annuities or other periodic payments; and
- other gains or profits of an income nature not mentioned above.

Chargeable income is arrived at after adjusting for expenses incurred wholly and exclusively in the production of the income. Specific provisions or reserves for anticipated losses or contingent liabilities are not tax deductible. No deduction for book depreciation is allowed although capital allowances are granted. Unabsorbed losses may be carried forward indefinitely for set off against future income.

Company Tax

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is not subject to tax, except in the case of 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 on the Board of Directors are held.

A tax rate of 28% is applicable to both resident and non-resident companies. In the case of a company carrying on petroleum production, the applicable tax rate is 38%.

Personal Income Tax

All individuals are liable to tax on income accruing or derived from Malaysia. An individual's resident status is determined by reference to the duration of stay in the economy.

Resident Individuals

A resident individual is taxed on his total income at graduated rates from 2 to 30% after the deduction of personal reliefs. However, individuals with chargeable income of less than RM2,500 is exempted from paying tax.

Non-resident Individual

Generally, a non-resident individual is liable to tax at the rate of 30% and he is not entitled to any personal relief. However, for the following types of income, non-resident individuals are subject to a withholding tax, which is a final tax.

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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.

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%
Disposal in the 3rd year	20%
Disposal in the 4th year	15%
Disposal in the 5th year	5%
Disposal in the 6th year and thereafter	
- Company	5%
- Individual	NIL

For individuals who are citizens or permanent residents, gains from disposal of real property held after five years are not subject to this tax. They are also entitled to an exemption of RM5,000 or 10% of the gains, whichever is the greater. In addition, they also enjoy a one-time tax exemption on the gains arising from the disposal of one private residence.

Sales Tax

This is an ad valorem single stage tax imposed at the import and manufacturing levels. 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%. 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% while cigarettes and liquor are taxed at 15%. 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 and reading materials are also exempted.

Withholding Tax

Withholding tax is imposed on payments to non-residents in respect of the following:

Royalties, payments for know-how and specified services,	10%
payments for use of moveable property	
Interest	15%

Double Taxation Agreements

Double taxation agreements provide for the avoidance of incidence of double taxation on international income, such as business profits, dividends, interests and royalties, that are derived in one 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.

Under double taxation agreements, business profits are taxed only in the economy in which the enterprise is situated. Where the enterprise carries on business through a permanent establishment situated in the other contracting economy, tax is levied in the other economy on so much of the profits as is attributable to or derived by the permanent establishment in the economy where the permanent establishment is situated.

Under most double taxation agreements, profits from shipping and air transport operations in international traffic are taxed only in the economy where the management and control of the enterprise is exercised.

In most double taxation agreements, which Malaysia has entered into, economies of residence accord tax sparing credit. A tax sparing credit is a credit given if no tax or a lower rate of tax is paid in the host economy. In case of dividends paid by companies exempted from tax under the Promotion of Investments Act 1986, the recipients are also exempted from Malaysian income tax on such dividends. If the recipients are also taxed in their economy of residence on the dividends, then the economy of residence will give credits as if Malaysian tax has been paid.

Under some of the agreements, interests on approved loans, approved industrial or technical royalties derived from Malaysia by residents of other economies, having agreement with Malaysia, are exempted from tax in Malaysia. However, there is a provision for credit to be given by the economy of residence for the tax spared by Malaysia in respect of such interests, royalties and income exempt from tax in Malaysia under the Promotion of Investments Act 1986.

Malaysia has double taxation agreements with 53 economies, namely:

<u>Economies</u>	<u>Date of Signing Agreement</u>
1. Singapore	26.12.1968 / 6.7.1973 (Supplementary Agreement)
2. Japan	30.1.1970
3. Sweden	21.11.1970
4. Denmark	4.12.1970
5. Norway	23.12.1970
6. Sri Lanka	16.9.1972
7. United Kingdom	30.3.1973 / 10.12.1996 (New Agreement)
8. Belgium	24.10.1973
9. Switzerland	30.12.1974
10. France	24.4.1975
11. New Zealand	19.3.1976 / 14.7.1994 (Protocol)
12. Canada	16.10.1976
13. India	25.10.1976
14. Federal Republic of Germany	8.4.1977
15. Poland	16.9.1977
16. Australia	20.8.1980
17. Thailand	29.3.1982 / 10.2.1995 (Protocol)
18. Republic of Korea	20.4.1982
19. Philippines	27.4.1982

20.	Pakistan	29.5.1982
21.	Romania	26.11.1982
22.	Bangladesh	19.4.1983
23.	Italy	28.1.1984
24.	Finland	28.3.1984
25.	People's Republic of China	23.11.1985
26.	Russia	31.7.1987
27.	Netherlands	7.3.1988 / 4.12.1996 (Protocol)
28.	United States of America	18.4.1989 (Restricted)
29.	Hungary	24.5.1989
30.	Austria	20.9.1989
31.	Indonesia	12.9.1991
32.	Mauritius	23.8.1992
33.	Islamic Republic of Iran	11.11.1992
34.	Papua New Guinea	20.5.1993
35.	Saudi Arabia	18.7.1993 (Restricted)
36.	Sudan	7.10.1993
37.	Republic of Albania	24.1.1994
38.	Zimbabwe	28.4.1994
39.	Turkey	27.9.1994
40.	Jordan	1.10.1994
41.	Mongolia	27.7.1995
42.	Viet Nam	7.9.1995
43.	Malta	3.10.1995
44.	United Arab Emirates	28.11.1995
45.	Republic of Fiji	19.12.1995
46.	Czech Republic	8.3.1996
47.	Kuwait	8.4.1997
48.	Egypt	14.4.1997
49.	Republic of Namibia	28.7.1997
50.	Argentina	3.10.1997 (Restricted)
51.	Uzbekistan	6.10.1997
52.	Myanmar	9.3.1998
53.	Ireland	28.11.1998

7. PERFORMANCE REQUIREMENTS

1. 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. The Government encourages the use of local materials in manufacturing and, in this regard, local content is one of the factors taken into account in the granting of investment incentives examples Pioneer Status and Investment Tax Allowance. Incentive can still be granted without it. A local materials content policy for the automotive industry encourages the automotive assembly industry to increase the level of local content and to achieve upgrading of engineering and technical skills in the domestic component parts industry with a view to achieving international competitiveness.

8. CAPITAL EXPORTS

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

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

Not applicable.

9. INVESTOR BEHAVIOUR

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

Not applicable.

10. OTHER MEASURES

1. Brief outline the competition policy regime.

Malaysia is in the process of drafting legislation on competition policy.

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

Intellectual Property Protection

Patents Act 1983

Patent protection in Malaysia is governed by the Patents Act 1983 and the Patents Regulations 1986. It gives protection to inventions, which may relate to a product or a process. An invention is patentable if it is new, involves an inventive step and is industrially applicable.

The period for patent protection is 15 years from the date of grant. The proprietor of the patent has the right to exploit the patented invention, to assign and to conclude licence contracts. Malaysia is a signatory of the Paris Convention thus providing further safeguards in the field of industrial property.

Trade Marks Act 1976

Trademark protection in Malaysia is governed by the Trade Marks Act 1976 and the Trade Marks Regulations 1997. The Act, modelled along the Acts of some of the developed economies, provides effective and adequate protection for registered trademarks in this economy. If a trademark is registered, no person or enterprise other than its owner or authorised users may use it, otherwise infringement actions can be taken against them. The protection of a trademark is not limited in time, provided its registration is periodically renewed. Amendments have also been made to the Act to provide for the registration of Service Marks.

Copyright Act 1987

Copyright protection in Malaysia is governed by the Copyright Act 1987. The Act provides for a comprehensive protection of copyright. It outlines the nature of works eligible for copyright (which include computer software), the scope of protection and the manner in which the protection is accorded. The duration of copyright protection in literary, musical or artistic works is the life of the author and 50 years after his death, while the duration of protection in sound recordings, broadcasts and films is 50 years after it was first published or made. A unique feature of the Act is the inclusion of provisions for enforcing the Act which include such power to enter premises suspected of having infringing copies and contrivances, and the appointment of a special team of officers to enforce the Act. Malaysia is a signatory of the Berne convention. Foreign works of non-Berne member economies are also protected if they are made in Malaysia or published in Malaysia within 30 days of their first publication in the economy of origin.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

Investment Guarantee Agreements

The purpose of the Investment Guarantee Agreements (IGAs) is to ensure against non-commercial risks such as expropriation, nationalisation and to allow for remittances of capital and repatriation of capital. For a developing 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. It is generally considered that the IGAs, which prevent arbitrary action on the part of a recipient economy, will generate confidence in foreign investors.

Coverage

The IGA normally covers the following:

- (a) a guarantee that there shall be no expropriation or nationalisation except for a public purpose and with prompt and adequate compensation; and
- (b) a permission to remit or repatriate in any usable convertible currency profits or capital on investment.

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 economies.

- (a) In most of the IGAs that Malaysia has signed, it is provided for that disputes on the interpretation or application of the agreement shall be settled by consultations through diplomatic channels with the view towards arriving at an amicable solution. Where a dispute fails to be settled in the above manner, it will be submitted to an arbitration tribunal for settlement.
- (b) Disputes in connection with the investment between the national or company (investor) and the host economy 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 DC 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 | 34. Republic of Namibia |
| 2. Federal Republic of Germany | 35. Kingdom of Cambodia |
| 3. Canada | 36. The Argentina Republic |
| 4. Netherlands | 27. Jordan |
| 5. France | 38. Republic of Bangladesh |
| 6. Switzerland | 39. Republic of Croatia |
| 7. Sweden | 40. Bosnia-Herzegovina |
| 8. Belgo-Luxembourg | 41. Spain |
| 9. United Kingdom | 42. Islamic Republic of Pakistan |
| 10. Sri Lanka | 43. Kyrgyz Republic |
| 11. Romania | 44. Mongolia |
| 12. Norway | 45. Republic of India |
| 13. Austria | 46. Oriental Republic of Uruguay |
| 14. Finland | 47. Republic of Peru |
| 15. Kuwait | 48. Republic of Kazakstan |
| 16. Organisation of Islamic Conference (OIC) | 49. Republic of Malawi |
| 17. Association of South-East Asian Nations (ASEAN) | 50. Czech Republic |
| 18. Italy | 51. Republic of Guinea |
| 19. South Korea | 52. Republic of Ghana |
| 20. People's Republic of China | 53. Republic of Egypt |
| 21. United Arab Emirates | 54. Republic of Botswana |
| 22. Denmark | 55. Republic of Cuba |
| 23. Viet Nam | 56. Uzbekistan |
| 24. Papua New Guinea | 57. Macedonia |
| 25. Republic of Chile | 58. North Korea |
| 26. Lao People's Democratic Republic | 59. Yemen |
| 27. Chinese Taipei | 60. Turkey |
| 28. Republic of Hungary | 61. Lebanon |
| 29. Republic of Poland | 62. Burkina Fuso |
| 30. Republic of Indonesia | 63. Republic of Sudan |
| 31. Republic of Albania | 64. Republic of Djibouti |
| 32. Republic of Zimbabwe | 65. Republic of Ethiopia |
| 33. Turkmenistan | 66. Republic of Senegal |

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

Not applicable.

2. SETTLEMENT OF DISPUTES

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

See section C (1) above.

2. Signatory or accession to the ICSID Convention.

Yes. Signed on 22 October 1965. Ratified on 8 August 1966.

D. INVESTMENT PROMOTION AND INCENTIVES

1. Brief description of investment promotion programs offered at both the national and subnational level (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 MIDA.

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.

Incentives on inward investment are as follows:

Pioneer status

Companies in the manufacturing, agriculture and tourism sectors that participate in a promoted activity or produce promoted products under the Promotion of Investments Act, 1986 may be granted pioneer status incentive. The incentive is given by way of an abatement of 70% of the statutory income for five years. The remaining 30% of the statutory income will be taxed at the prevailing corporate tax rate. The income abated are exempt from tax and will be available for distribution as tax-free dividends.

In the following cases, the general rule of tax abatement and period of incentive is varied:

- a company carrying out a project of national and strategic importance involving heavy capital investment and high technology will be granted full income tax exemption for 10 years;
- a high technology company engaging in a promoted activity or in the production of a promoted product in areas of new and emerging technologies will be fully exempt from tax on its profits for a period of five years; and
- company with projects eligible for pioneer status which are located in the Eastern Corridor states of Peninsular Malaysia and in Sabah and Sarawak will be granted an abatement of 85% of their statutory income for five years.

Investment tax allowance

As an alternative to Pioneer Status, a company may be granted investment tax allowance (ITA) of 60% in respect of qualifying capital expenditure incurred on a factory or plant and machinery used for the purposes of an approved manufacturing, agricultural, hotel, tourist or other industrial or commercial activity (other than one granted pioneer status). ITA is granted on capital expenditure incurred for a period of five years; for an integrated agricultural activity, ITA of five years may be granted to the agricultural activity and of five years to the processing activity.

The amount of investment tax allowance to be utilized for each year of assessment is restricted to a maximum of 70% of the statutory income, while the balance of 30% is taxed at the prevailing corporate tax rate.

Unused allowances may be carried forward indefinitely for set-off against future profits of the business. Dividends paid out of exempt profits are not liable to tax in the hands of shareholders.

The ITA incentive is enhanced for the following types of projects:

- a company carrying out a project of national and strategic importance may be granted ITA for five years at a rate of 100% (as an alternative to pioneer status of 10 years) and would be able to utilise the amount of ITA granted for set-off against its profit without restriction;

- a high technology company may be granted ITA at the rate of 60% on qualifying capital expenditure incurred within five years and the amount of ITA would be available for full set-off against its statutory income; and
- a company granted ITA in respect of a project located in the Eastern Corridor states of Peninsular Malaysia and Sabah or Sarawak would be granted ITA at a rate of 80%, and the amount of ITA which could be utilised for each year would be restricted to a maximum of 85% of the statutory income.

Industrial adjustment allowance

A manufacturing company that undertakes an approved industrial adjustment program may be granted an industrial adjustment allowance (IAA) of up to 100% of capital expenditure on factory, plant and machinery incurred within a period of five years.

Industrial adjustment means any activity undertaken to restructure by way of reorganisation, reconstruction or amalgamation within that particular sector with a view to strengthening industrial self-sufficiency, improving industrial technology, increasing productivity, and enhancing the efficient use of natural resources and the efficient management of manpower.

Currently, existing companies in operation before 31 December 1990 and engaged in certain subsectors of the wood-based, textile and machinery and engineering industries are eligible for IAA. The IAA provides for an allowance of up to 100%, depending on the activity and type of industry undertaken by such corporations. The amount of profits equal to the IAA is exempt from tax and may be distributed to shareholders as tax-exempt dividends.

Reinvestment allowance

A company that embarks on a program to expand, modernise or diversify its existing manufacturing or processing business is entitled to a reinvestment allowance of 60% of capital expenditure incurred on a factory or plant and machinery used for the expansion, modernisation or diversification activity. The allowance will be abated from the statutory income. The utilisation of the allowance for each year will be restricted up to 70% of statutory income. The balance of statutory income will be taxed at the prevailing rate. Any unabsorbed allowance will be allowed to be carried forward until it is fully utilised. Companies that reinvest in the Eastern Corridor of Peninsular Malaysia and Sabah or Sarawak will be allowed to utilise the allowance fully to set off against the statutory income for the year.

Venture capital company

Gains derived by an approved venture capital company from the disposal of shares in a venture company are exempt from tax provided that the disposal does not take place three years after the shares of the venture capital company are listed in the stock exchange. Such exempt gains are available for distribution to shareholders as tax-exempt dividends. The loss arising from the disposal of shares in a venture company or on liquidation of a venture company is deductible against other income of the venture capital company and any unutilized losses are available to be carried forward to subsequent years. The venture company must be incorporated in Malaysia and is involved in high-risk ventures or new technology in relation to a product or activity that enhances the economic or technological development of Malaysia.

Operational headquarters company

An operational headquarters company (OHQ) that provides qualifying services to its offices and related companies outside Malaysia may be granted approved OHQ status.

The income derived by an approved OHQ from the provision of qualifying services is taxed at the reduced rate of 10% for a period of five to ten years. The income after tax may be distributed to shareholders as tax-exempt dividends

Research and development (R&D)

Companies which provide research and development services to third parties are eligible for pioneer status with full exemption of its profits for a period of 5 years. As an alternative, such companies may be granted ITA at the rate of 100% on qualifying capital expenditure incurred within a period of 10 years. The ITA

can be utilised to offset against 70% of the statutory income in the year of assessment. The ITA incentive may also be granted to companies undertaking research and development for its group companies.

Companies undertaking in-house research and development projects would be eligible for ITA at the rate of 50% on the qualifying capital expenditure incurred within a period of 10 years. Double deduction is granted for expenses incurred on approved research and development projects as well as for cash contributions made to approved research and development companies.

Buildings used for approved research and development activities qualify for industrial building allowance in the form of an initial allowance of 10% and an annual allowance of 2%.

Training

A company which provides technical and vocational training in Malaysia may be granted ITA of 100% of qualifying capital expenditure incurred within a period of 10 years and the maximum amount of ITA which could be utilised each year is restricted to 70% of the statutory income. There is a double deduction for approved training expenditure incurred on the training of employees under an approved training program.

Shipping

Tax-resident corporations and individuals carrying on shipping business are exempt from tax on income derived from the operation of Malaysian ships. Dividend distributions of a company qualifying for the above incentive are exempt from tax in the hands of the shareholders.

Labuan - an international offshore financial centre

The Labuan Offshore Financial Services Authority (LOFSA) is the 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 offshore financial services industry and undertake research and development works as well as to draw up plans for further growth and efficiency of the Labuan IOFC.

LOFSA administers major offshore operations in the area of banking, insurance, securities trust and fund management, and incorporation/registration of companies.

To date, more than 1,600 offshore companies had set up operations in Labuan. These include trust companies, offshore banks and insurance and insurance related 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% 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 exempt from tax up to an amount equivalent to 65% of the statutory income from that source. This exemption is applicable from the Year of Assessment 1992 to the Year of Assessment 2000. Qualifying professional service means legal, accounting, financial or 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% 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% of the gross income from that employment. This exemption applies from the Year of Assessment 1992 to the Year of Assessment 2000.
- (f) Exemptions from tax for:
 - (i) Dividend received by an offshore company from a Malaysian resident 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.

Deduction for export expenses

A corporation is entitled to double deduction for expenditure incurred on the promotion of exports, such as overseas advertising, free samples, export market research, participation in trade exhibitions, preparation of tenders, travel expenses, and maintenance of overseas sales office.

Export credit refinancing facility

The ECR facility is aimed at promoting the export of goods by providing credit facilities to exporters of eligible goods manufactured in Malaysia. Eligible exports which have at least 20% of domestic value added and 30% of domestic resource content will be eligible for ECR refinancing for a maximum period of four months for pre-shipment and six months for post-shipment.

Tariff protection/Import restriction

Tariff protection can be considered for deserving infant industries which can supply a major portion of the domestic market. Tariff protection would be granted based on the degree of utilisation of domestic raw materials, level of local value added and level of technology of the industry. Tariff protection granted will be reviewed periodically.

Free zones and licensed manufacturing warehouses

Free Zones (FZs) previously known as Free Trade Zones, are categorized into Free Industrial Zones (FIZs) and Free Commercial Zones (FCZs).

FIZs are areas designed for export orientated manufacturing establishments so as to enable them to enjoy minimum customs control and formalities in the import of raw materials, parts, machinery and equipment.

FCZs are areas specifically designed for establishments engaging in trading, breaking bulk, grading, repacking, relabelling and transit. Within a FCZ, goods are allowed to be imported without customs duties provided the processed goods after the activities of breaking bulk, grading, repacking and relabelling are ultimately exported.

Where the establishment of a particular industry in an FIZ is not practical, the government has allowed for the setting up of Licensed Manufacturing Warehouses which provide similar facilities as those available in a FIZ.

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

Agency	Address/telephone/fax
Malaysian Industrial Development Authority (MIDA)	G,3-6,9, 11th Floors, Wisma Damansara, Jalan Semantan 50720 Kuala Lumpur Telephone: (60 3) 255 3633 Fax: (60 3) 255 7970

MIDA is the one-stop agency for foreign investors. Investors need only to approach MIDA to obtain most of the approvals required at the Federal level in respect of manufacturing, and for the granting of tax incentives in respect of manufacturing, R&D, integrated agriculture, hotels and tourist projects. The main functions of MIDA are to receive, process and convey decisions on the following:

- (a) applications for Manufacturing Licences under the Industrial Coordination Act 1975;
- (b) applications for tax incentives under the Promotion of Investments Act 1986 and Income Tax Act 1967;
- (c) post licencing matters pertaining to licensing and incentives except equity.
- (d) applications for expatriate posts and extension of business visit pass relating to manufacturing;
- (e) applications for tariff protection;
- (f) applications for exemption from import duty on raw materials, component and parts, machinery and equipment;
- (g) approvals of technology transfer agreements; and
- (h) requests for verification or amendment of tariff codes.

Contact details of senior officials from various ministries, departments and relevant corporations to assist foreign investors, can be obtained from MIDA's Advisory Services Centre.

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

1. Agreements to which economy is a party, including details of the economies/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 TreatiesSee answer to Section C. Investment Protection

Regional Investment Treaties

- Asean Agreement for the Promotion and Protection of Investments
- Framework Agreement on the ASEAN Investment Area
- Investment Guarantee Agreement with the Organisation of Islamic Conference (OIC)

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

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

Inward Investment**Approved Inward Manufacturing Projects (1993-1998)**

		1993	1994	1995	1996	1997	1998
Number		686.0	870.0	898.0	782.0	759.0	844.0
Potential Employment		94,592.0	136,487.0	117,607.0	91,891.0	73,421.0	83,241.0
Proposed Called-up Capital	(RM mil.)	4,851.4	7,788.6	6,524.1	12,184.9	8,185.1	6,886.1
Malaysian Equity	(RM mil.)	2,408.1	3,678.7	3,331.3	5,972.3	4,471.4	3,945.9
- Bumiputera Equity#	(RM mil.)	1,059.5	1,436.9	1,548.0	1,599.6	1,991.7	1,484.7
- Public Corporations	(RM mil.)	34.7	582.8	67.1	100.2	571.0	1,084.3
- Non-Bumiputera Equity	(RM mil.)	1,313.9	1,659.0	1,716.2	4,272.5	1,908.7	1,376.9
Foreign Equity	(RM mil.)	2,443.3	4,109.9	3,192.8	6,212.6	3,713.7	2,940.2
Loan	(RM mil.)	8,901.3	15,162.7	14,345.0	22,072.7	17,635.5	19,466.3
- Local	(RM mil.)	5,057.4	7,933.5	8,394.2	11,228.9	9,876.3	9,343.0
- Foreign**	(RM mil.)	3,843.9	7,229.2	5,950.8	10,843.8	7,759.2	10,123.3
Total Proposed Capital Investment	(RM mil.)	13,752.7	22,951.3	20,869.1	34,257.6	25,820.6	26,352.4
- Local	(RM mil.)	7,465.5	11,612.2	11,725.5	17,201.2	14,347.7	13,288.9
- Foreign @	(RM mil.)	6,287.2	11,339.1	9,143.6	17,056.4	11,472.9	13,063.5

Bumiputera equity includes equity subscribed by Trust agencies and Bumiputera institutions/individuals.

** Loan attributed to foreign interest is apportioned from the total loan according to the percentage of the foreign share in the equity of each project

@ Foreign investment = Foreign equity + loan attributed to foreign interest.

Source: MIDA

FDI into Malaysia in the manufacturing sector remained high in 1998 with total foreign proposed capital investment of RM13,063.5 million.

The proposed total foreign capital investment in projects granted approval in 1998 was RM13,063.5 million, an increase of 14% compared with RM11,472.9 million registered in 1997. The top four investing economies were USA (RM6,433.3 million), Japan (RM1,896.5 million), the Chinese Taipei (RM1,001 million) and Singapore (RM961.9 million). These economies together constituted RM10,292.7 million or 78.7% of the total.

In 1998, USA, Japan, Chinese Taipei and Singapore continued to remain the leading investing economies as in the previous year. USA took the lead with an increase in investment by 168.4% from RM2,397 million in 1997 to RM6,433.3 million in 1998. However, for the other economies investment declined compared to the previous year. Japan recorded a lower level of investment from RM2,164.2 million in 1997 to RM1,896.5 million in 1998. Chinese Taipei's investment fell 25.6% to RM1,001 million from RM1,345.1 million in 1997. As for Singapore, the investment also fell by 24.9% to RM961.9 million from RM1,281.4 million in 1997.

Outward (reverse) Investment

Outward investment by Malaysian residents abroad includes equity investment, purchase of real estate abroad and extension of loans to non-Residents. 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 amounted to RM7,538 million in 1998. The concentration of Malaysian overseas investments in 1998 were in economies such as Singapore (RM2,081 million), United States (RM1,650 million), United Kingdom (RM812 million), Thailand (RM537 million) and Netherlands (RM266 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.

Mexico is now in the process of establishing the pattern of a new era of social progress and economic growth. At the center of the process there is a comprehensive policy aimed towards modernization of the economy through the application of sound principles that recognize the vital roles to be played by international trade and the private sector in the achievement of a consistent and productive development.

Mexico has taken definitive measures to make the most of its human and natural resources, capitalize its strategic geographic position: a 3,300 kilometer border with the United States; coastlines facing the Pacific and the Atlantic oceans; the gateway to all of Latin America.

Macroeconomic Elements

- During the last decade Mexico has implemented several economic reforms in order to abandon the import substitution model with protected markets, restrictions to foreign investment and a large public sector.
- By opening and stabilizing its economy, liberalizing its investment regulations, and structuring a climate for private investment that assures enterprises a solid and supportive environment in which to operate, Mexico aims to win the confidence of foreign investors.
- December 1994 represented a pause to the abovementioned economic improvements since the country fell into a financial crisis originated by the devaluation of the peso. This crisis has not modified Mexico's commitment to open markets and stable macroeconomic policies, and encouragement of its integration to the world economy.
- In order to respond to the crisis in the short term, the Mexican government implemented a programme in order to reduce the excessive reliance on short-term debt, shrink the current account deficit, stabilize the exchange rate and restrain the inflation rate.
- Since the mid-1980's, Mexico has undertaken several measures to increase capital flows to the country as a means to obtain non-debt finance.
- The long term strategy to face the financial crisis calls for exports to be the engine of growth. Such strategy is based in the attraction of foreign productive capitals and in the maintenance of the exchange rate at competitive levels.

Foreign Investment Policy

- Prior to the mid-1980's, foreign direct investment (FDI) played a relatively small role in Mexico's total external financing.
- As a result of its long-standing restrictive foreign investment policy, Mexico had a very low share of FDI.
- In May 1989, in order to support trade liberalization and complement domestic savings, the Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment were issued, which provided greater certainty by establishing clear investment rules for classified activities. The Regulations also included the "automatic procedure" in which prior approval of the National Commission of Foreign Investment (NCFI) was not required for Investments under 100 million dollars in manufacturing plants outside the three largest metropolitan areas. In addition, the 1989 Regulations allowed foreign investors to participate in the Mexican stock market through a neutral investment mechanism.
- Foreign direct investment grew rapidly after 1989, stimulated additionally by a 3.5% GNP growth in the 1989-1992 period, the macroeconomic environment and the prospect of the North American Free Trade Agreement (NAFTA).

- The former Administration's estimates on foreign investment inflows were USD 24 billion to be accumulated over a six-year term. Nevertheless, in the period 1994-1998, the accounted FDI reached an amount of 57 billion dollars thus exceeding the expected amount. This reflected an investor's growing confidence in Mexico.
- In recent years, companies with FDI have become an important source of hard currency for Mexico and continue to be a factor for increasing trade. Mexico's policy is that of an open economy. In order to enhance economic development, policies concerning FDI are mainly directed towards the following basic objectives:
 - creation of more and better remunerated jobs;
 - allowance for the participation of fresh capital into the economy;
 - allowance for higher quality of domestic production through increased competition;
 - transfer of technology and training of human resources;
 - assistance to encourage international competitiveness;
 - promotion and increase of non-oil exports; and
 - contribution to the economy and social programs through the payment of taxes.

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

The National Plan of Development 1995-2000, states that the strategy related to economic growth, will be based on:

- growth of productive factors, by means of **investment**, and
- increasing the productivity of these factors.

Investment constitutes the link between savings, economic growth and employment. Mexico will assure the liberalization of trade and will subscribe new trade agreements with other countries, so that the access of our products to more dynamic economies will be guaranteed. The challenge is to make inflows a support instrument for our development and avoid the risks derived of an excessive dependence of short-term capitals. For this purpose we will search for:

- Stability conditions in the financial and economic evolution.
- Stability on the exchange rate and a short term financial balance of the current account in the balance of payments.
- Stable and attractive real income of investment in Mexico.
- FDI will receive the same treatment as domestic investment.
- Orientate foreign resources towards productive direct investment.
- Promote the conditions that encourage longer terms for the financial capture.
- Provide legal security and certainty to productive direct investment (foreign and domestic).

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

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

Foreign Investment Law

Summary

- In December 1993, Mexico adopted a new Foreign Investment Law ("FIL").
- The FIL liberalized several activities with specific regulations; today, foreign investment may participate in 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 are related to the establishment, operation or expansion of an investment.
- Thus, the FIL came to extend to all foreign investors, the commitments of liberalization and of no imposition of performance requirements, undertaken by Mexico under the NAFTA.
- Further, the new legal framework removes the restriction for Mexican companies without a foreigners' exclusion clause to acquire real estate within the restricted zone for non-residential purposes. Foreign individuals and foreign corporations may acquire real estate located within the restricted zone through a trust for 50 years after which duration may be extended.
- The neutral investment mechanism allows Mexican companies to issue shares with no voting rights or with limited corporate rights, which grant their holders only pecuniary rights or limited corporate rights. Such participation is not computed to determine the foreign investment percentage in the capital stock of Mexican corporations.
- Under the current legislation, FDI is welcomed in almost all sectors of the economy. Of the 704 activities listed in the Catalogue of Economic and Productive Activities, FIL allows up to 49% of FDI in 19 activities, and up to 100% in 12 activities with prior approval of the NCFI; and, only 17 activities are prohibited to foreign ownership or control.
- Concerning infrastructure investment, a favourable resolution of the NCFI was required in order to hold more than 49% of the capital stock in construction, building and installation of public works. However, since 1 January 1999, foreign investment may participate up to 100% in the capital stock of Mexican corporations engaged in said activities, without requiring such resolution.
- New regulations to the Foreign Investment Law (08/09/98). With the entry into force of the FIL of 1993, the Regulations to the FIL of 1989 resulted inapplicable hence impractical. As a consequence, it was required to design an auxiliary 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 favorable conditions for the entrance of capital flows. It reflects the economic deregulation as part of the federal economic deregulation process, describes the liberalized activities as a result of the amendments in specific laws by reason of transparency and consistency, and establishes the economic survey requirement and the requirement to notify investments through the concept of reinvested earnings and inter-company loans.

Up to January 1999, the following activities have been liberalized:

- 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 12 May 1995, derogated the FIL's abovementioned 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 authorization of the NCFI.
- ii. On 11 May 1995 the Decree that Amends and Adds several provisions of the Regulatory Law of Article 27 of the Mexican Constitution regarding Petroleum was enacted. Under Article 4 of such Decree, private investment may participate in the sectors of transport, storage and gas distribution. Likewise, the private sector may build, operate and own pipelines, installations and equipment for the use or the exploitation of gas. Currently, unrestricted FDI is allowed in companies involved in the transportation, storage and distribution of natural gas. Authorization 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 involving 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 liberalization 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. According to the General Ways of Communication Law, the control, inspection and vigilance of airports and heliports were activities reserved to the Mexican State. With regard to the administration, building and operation of airports and heliports, as well as the providing of services of air navigation, foreign investment is allowed to participate up to 49 %. To participate up to 100%, an authorization 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 specialized air transportation. Respect to the fuel and lubricants supply for vessels and airplanes and railroad equipment, with foreign investment participate up to 49 %. Also, for concessionaire or permissionaire enterprises of public services on airdromes, a favorable 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, provided previous authorization 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 7°, III, x, authorizes 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,
- 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.

v. Foreign investment may now participate up to 49% 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 earths, mineral gems, rock salt, products derived from the decomposition of rocks, mineral materials or organic materials which may be used as fertilizers, 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 favorable resolution from the NCFI.

vii. As with the port related services, reforms have been implemented to allow foreign capital participation up to 100%, with prior authorization of the NCFI; and, in integral port administration, up to 49 %.

viii. **Financial Services.** 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 specialized 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. 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 this 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 grant the right to receive a preferential and cumulative dividend).

In January 1999 the Law of Credit Institutions and the Law to Regulate Financial Groups had suffered several amendments 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.

(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 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 Organizations), 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 Organizations 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 organization social capital. The foregoing shall not apply to the acquisition of shares made by affiliates of foreign financial institutions. Exceptionally, Ministry of Finance and Public Credit (MFPC) or National Commission on Banks and Securities (BSNC), depending on the competence, shall authorize 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 Organizations Law and article 9 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 8° of FIL– prior authorization 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 may participate up to 49% of the capital of Mexican companies, without prejudice of the terms of the Decree for the Fostering and Modernization of the Automotive Industry. As of 1 January 1999, foreign investment may participate up to 100% of the capital of Mexican companies, without the need of obtaining a favorable resolution from the NCFI (article 7 transitory, FIL).
- x. Construction activities** Previously, a favorable 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 1 January 1999 foreign investment may participate in up to 100% of the capital of Mexican companies engaged therein, without favorable resolution of the NCFI (Article 9 transitory, FIL).
- Mexico is strengthening its efforts to attract more business partnerships and direct investment in capital goods, new factories, communications and transportation infrastructure, through the continuation of the privatization process.

In general, all Mexican laws must be observed by foreign companies.

(2) Investment Review and Approval.

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

2. For each proposal identify guidelines/conditions that apply for screening (eg. 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 article 9 provides that favourable resolution from the NCFI is required for foreign investment to acquire assets or shares in Mexican companies, regardless of the activity they engage in only whose total asset value, at the time of acquisition, exceeds the amount established annually by said Commission, and provide said acquisition implies that the direct or indirect participation of foreign investment in the capital of the companies in question exceeds 49% thereof.
Greenfield investment (No)	
Real estate/land (Yes)	Mexican companies with foreigners exclusion clause or that has executed the agreement to which section I of the Article 27 of the Political Constitution of the United Mexican States refers, may acquire ownership of real estate in Mexico only to be destined to a non-residential activity. A trust is necessary in order to acquire ownership of real state for residential purposes.
Joint venture (No)	

Sector	Guidelines/Conditions
Telecommunications (Yes)	Under the FIL, the satellite communications sector was also classified as an activity reserved to the State. The Federal Law on Telecommunications was published in the Official Gazette on 7 June 1995. Article 12 thereof provides that foreign investment in the satellite communications sector may participate up to 49%. Only on cellular telephony foreign investment may participate up to 100%.
Media (Yes)	According to Federal Law on Telecommunications maximum percentage on foreign investment can only rise to 49%.
Transport (Yes)	<p>FIL in its article 6 reserves exclusively to Mexicans or Mexican companies with foreigners exclusion clause several activities including National surface transportation of passengers, tourism and freight, excluding messenger and package delivery service. Also, Transitional Article Six establishes that international land transportation of passengers, tourism and freight between points within the territory of Mexico and administration services of bus stations for passengers and auxiliary services are reserved exclusively to Mexicans or Mexican companies with foreigners exclusion clause. However, foreign investment may participate in the above activities pursuant to the following provisions:</p> <p>I. Beginning on 18 December 1995, in up to 49% of the capital of Mexican companies;</p> <p>II. Beginning on 1 January 2001, in up to 51% of the capital of Mexican companies; and</p> <p>III. Beginning on 1 January 2004, up to 100% of the capital of Mexican companies without need of obtaining favourable resolution from the Commission.</p>
Agriculture (Yes)	FIL in article 7, section III, part r), provides that foreign investment may participate up to 49% of the assets or shares series T that Mexican companies holds or the capital stock designated to acquire agricultural, ranching of forestry lands.
Construction (No)	Since 1 January 1999 foreign investment may participate in up to 100% of the capital of Mexican companies engaged therein, without favourable resolution from the NCFI (Article Ninth transitory, FIL).
Automotive industry parts (No)	As of 1 January 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 Seventh transitory, FIL).

3. *Application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.*

Guide for the constitution and registration of a Mexican corporation with foreign investment or the establishment of branches in Mexico

I. Automatic Procedure or via the National Commission of Foreign Investment.

(a) Automatic Procedure

In accordance with article 4 of the Foreign Investment Law (FIL), foreign investors may participate in any proportion in those activities not regulated thereby, without the need of a favourable resolution of the Commission nor authorization by the Ministry of Commerce and Industrial Development.

(b) National Commission of Foreign Investment (NCFI)

1. Procedure: Apply for an authorization in order to invest in the country, for the projects that cannot be implemented through the automatic procedure and intend to accomplish the activities

or acquisitions subject to specific regulation pursuant to articles 8, 9 and ninth of the Transitorial Articles of the FIL.

2. **Requirements:** General information.
Exhibition of a questionnaire (NCFI).
3. **Resolution:** 45 business days

II. Secretariat of Interior (SI)

1. **Procedure:** Apply for authorization in order to demonstrate the legal stay in the country and to appear before a Notary.
2. **Requirements:** Non-Immigrant Visitant Form or business immigrant.
Passport in force.
General information.
3. **Resolution:** 4 business days

III. Secretariat of Foreign Relations (SFR)

1. **Procedure:** A permit from the SFR is required for the creation of companies.
2. **Requirements.** Present a SR-1 form, mentioning three different names for the corporation.
3. **Resolution:** 3 business days
4. **Cost:** Article 25, paragraph I and IX of the Federal Duties Law.

IV. Notary Public

1. **Procedure:** protocolizing the Articles of Incorporation.
2. **Requirements:** Present the applicable authorization to demonstrate the corporation's representatives legal stay in the country.
Authorization for the creation of companies.
Official letter of authorization from the NCFI in case favorable resolution was required.
Establish the general operation rules of the new company.
3. **Resolution:** 5 to 10 business days

Note: the role of the Notary Public in the establishment of a corporation is essential, because of its legal authority to attest documents.

V. Secretariat of Finance and Public Credit

1. **Procedure:** Registration of the company before the Treasury Office
2. **Requirements:** Present : HRFC-1 Form.
Register of the account system that would be used by the company.
Copy of the Articles of Incorporation.
3. **Resolution:** 1 business day

VI. Public Registry of Property and Commerce

1. **Procedure:** Registration of the Articles of Incorporation.
2. **Requirements:** Present the authorization for the establishment of the company (SFR)
3. **Resolution:** 8 to 10 business days

VII. Ministry of Commerce and Industrial Development

1. **Procedure:** Inscription before the National Registry of Foreign Investment.
2. **Requirements:**
General information and documents
SECOFI-02-001-1, 2 and 3 Form, as required.
3. **Resolution:** 20 business days

VIII. Others

IMSS (Social Security), **INFONAVIT** (Housing Institution), **SAR** (Retirement Pensions Fund), **INDEUR** (National Institute of Urban Development), **SEDESOL** (Secretariat of Social Development), **SS** (Health Secretariat).

Those are the main steps that have to be accomplished for the establishment of a corporation in Mexico. However, it is important to contact a lawfirm, specialized in the field of corporate law, since they are the experts in this field. They would handle the establishment procedures from the first step, the correspondent permits of the Foreign Relations Secretariat, as well as all subsequent requirements that can arise during the operation of the corporation (labor issues, tax issues, special permits, etc.).

4. 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
Directorate General for Foreign Investment National Registry of Foreign Investment Control Department or Investment Facility	Av. Insurgentes Sur No. 1940 PB Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. Tel: 525 229 61 00 ext 3530 Fax: 229 65 07.
Directorate General for Foreign Investment National Commission of Foreign Investment Project Evaluation or Investment Facility	Av. Insurgentes Sur No. 1940 PB Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. Tel: (525) 229 61 00 ext 3551 and 3552 Fax: (525) 229 65 07.
SECOFI's Federal delegations or subdelegations.	

5. What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?

(a) Establishing foreign corporation:

According to FIL, Article 17-A, any application to obtain an authorization for establishing a foreign corporation in Mexico must be approved by the Ministry of Commerce and Industrial Promotion within 15 business days following the date of its filing. If the Ministry gives no response to the application to obtain an authorization in the term set forth in the FIL, the authorization 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).

6. 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 Commerce and Industrial Promotion. Directorate General of Foreign Investment Legal Directorate	Insurgentes Sur 1940, 8th floor. Tel: (52 5) 2-29-61-00 ext. 3505 Fax: (52 5) 2-29-65-07

Elaborate a script to be presented before the Directorate General of Foreign Investment, soliciting an appeal attended by the Undersecretary of International Commercial Negotiations. The appeal process should not be longer than four months.

7. 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 **legalized by the corresponding Mexican Consul or Apostille, according to The Hague Convention of 1961.**

b) Neutral Investment Applications

Elaborate a script to be presented before the Legal Directorate, including general information about the project, specifically required percentage of neutral investment and limited corporate rights that this new shares of stock will bring to shareholders.

8. 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 Commerce and Industrial Development. Directorate General of Foreign Investment	Av. Insurgentes Sur No. 1940 8th floor Col. Florida C.P. 01030 Delegación Alvaro Obregón México D.F. Tel: (525) 229 61 00 ext 3505 Fax: (525) 229 65 07.	Any type of complaint

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

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. Tel: (525) 229 61 00 ext 3505 Fax: (525) 229 65 07.	The General Directorate for Foreign Investment is in charge of the coordination, evaluation, authorization and screening of projects involving FDI. The Directorate for the NCFI and Juridical Affairs has the following functions: (a) 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. Tel: (525) 229 61 00 ext 3509 and 3510 Fax: (525) 229 65 07	The Directorate for the NRFI has the following functions: (a) Authorize 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.

10. 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.

Up to January 1999, the following activities have been liberalized:

- 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 12 May 1995, derogated the FIL's abovementioned 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 authorization of the NCFI.
- ii. On 11 May 1995 the Decree that Amends and Adds several provisions of the Regulatory Law of Article 27 of the Mexican Constitution regarding Petroleum was enacted. Under Article 4 of such Decree, private investment may participate in the sectors of transport, storage and gas distribution. Likewise, the private sector may build, operate and own pipelines, installations and equipment for the use or the exploitation of gas. Currently, unrestricted FDI is allowed in companies involved in the transportation, storage and distribution of natural gas. Authorization 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 involving 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 liberalization 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. According to the General Ways of Communication Law, the control, inspection and vigilance of airports and heliports were activities reserved to the Mexican State. With regard to the administration, building and operation of airports and heliports, as well as the providing of services of air navigation, foreign investment is allowed to participate up to 49 %. To participate up to 100%, an authorization 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 specialized air transportation. Respect to the fuel and lubricants supply for vessels and airplanes and railroad equipment, with foreign investment participate up to 49 %. Also, for concessionaire or permissionaire enterprises of public services on airdromes, a favorable 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, provided previous authorization 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 7°, III, x, authorizes 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,
 - 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.

- v. Foreign investment may now participate up to 49% 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 earths, mineral gems, rock salt, products derived from the decomposition of rocks, mineral materials or organic materials which may be used as fertilizers, 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 favorable resolution from the NCFI.
- vii. As with the port related services, reforms have been implemented to allow foreign capital participation up to 100%, with prior authorization of the NCFI; and, in integral port administration, up to 49%.
- viii. **Financial Services.** 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 specialized 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. 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 this 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 grant the right to receive a preferential and cumulative dividend).

In January 1999 the Law of Credit Institutions and the Law to Regulate Financial Groups had suffered several amendments 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.

(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 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 Organizations), 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 Organizations 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 organization social capital. The foregoing shall not apply to the acquisition of shares made by affiliates of foreign financial institutions. Exceptionally, Ministry of Finance and Public Credit (MFPC) or National Commission on Banks and Securities (BSNC), depending on the competence, shall authorize 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 Organizations Law and article 9 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 8° of FIL – prior authorization 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 may participate up to 49% of the capital of Mexican companies, without prejudice of the terms of the Decree for the Fostering and Modernization of the Automotive Industry. As of 1 January 1999, foreign investment may participate up to 100% of the capital of Mexican companies without need of obtaining a favorable resolution from the NCFI (article 7 transitory, FIL).
- x. Construction activities.** Previously, a favorable 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 1 January 1999 foreign investment may participate in up to 100% of the capital of Mexican companies engaged therein, without favorable resolution of the NCFI (Article 9 transitory, FIL).
- Mexico is strengthening its efforts to attract more business partnerships and direct investment in capital goods, new factories, communications and transportation infrastructure, through the continuation of the privatization process.

11. If there is a role for sub national agencies in the approval process, please indicate the agency (including their address and telephone/fax number) and their role 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	SEE ANNEX	These agencies can issue registry forms and receive the

Investment and the Directorate for the NCFI and Juridical Affairs can also be presented at SECOFI's federal delegations and subdelegations.		documentation regarding approval. However, the resolution /approval process only takes place at the Directorate General for Foreign Investment.
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2. MOST FAVOURED NATION TREATMENT/NON-DISCRIMINATION BETWEEN SOURCE ECONOMIES.

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

Mexico only grants most favoured nation treatment to those countries with which we have a treaty that establishes such treatment, such as:

NAFTA

Reservations for Existing Measures and Liberalization Commitments

Sector: Fishing

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Investment With respect to an enterprise established or to be established in the territory of Mexico performing coastal fishing, fresh water fishing and fishing in the Exclusive Economic Zone, investors of another Party or their investments may only own directly or indirectly, up to 49% of the ownership interest in such an enterprise.

With respect to an enterprise established or to be established in the territory of Mexico performing fishing on the high seas, prior approval of the NCFI is required for investors of another Party or their investments to own, directly or indirectly, more than 49% of the ownership interest in such an enterprise.

Phase-Out: None

Sector: Professional, Technical and Specialized Services

Sub-Sector: Professional Services

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Except as provided for in this reservation, only lawyers licensed in Mexico may have an ownership interest in a law firm established in the territory of Mexico.

Lawyers licensed in a Canadian province that permits partnerships between those lawyers and lawyers licensed in Mexico will be permitted to form partnerships with lawyers licensed in Mexico.

The number of lawyers licensed in Canada serving as partners, and their ownership interest in the partnership, may not exceed the number of lawyers licensed in Mexico serving as partners, and their ownership interest in the partnership. A lawyer licensed in Canada may not practice or advise on Mexican law.

Phase-Out: None

Sector: Transportation

Sub-Sector: Water Transportation

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Investment Prior approval of the NCFI (Comisión Nacional de Inversiones Extranjeras) is required for investors of another Party or their investments to own, directly or indirectly, more than the 49 % of the ownership interest in an enterprise established or to be established in the territory of Mexico operating foreign-flagged vessels providing international maritime transport services.

Phase-Out: None

Reservation for Future Measures

Sector: Communications

Sub-Sector: Entertainment Services (Broadcasting and Multipoint Distribution Systems (MDS))

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Cross-Border Services and Investment Mexico reserves the right to adopt or maintain any measures relating to investment in, or provision of, broadcasting, multipoint distribution systems, uninterrupted music and high-definition television services. This reservation does not apply to measures relating to the production, sale or licensing of radio or television programming.

Sector: Communications

Sub-Sector: Telecommunications

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Cross-Border Services and Investment Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, air traffic control, aeronautical meteorology, aeronautical telecommunications, and other telecommunications services relating to air navigation services.

Sector: Communications

Sub-Sector: Telecommunications Transport Networks

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Cross-Border Services and Investment Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, telecommunications transport networks and telecommunications transport services. Telecommunications transport networks include the facilities to provide telecommunications transport services such as local basic telephone services, long-distance telephone services (national and international), rural telephone services, cellular telephone services, telephone booth services, satellite services, trucking, paging, mobile telephony, maritime telecommunications services, air telephone, telex, and data transmission services. Telecommunications transport services typically involve the real time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, whether or not such services are offered to the public generally.

Sector: Professional, Technical and Specialized Services

Sub-Sector: Professional Services

Type of Reservation: Most-Favored-Nation Treatment (Article 1103)

Description: Cross-Border Services and Investment Subject to Schedule of Mexico Annex VI, Mexico reserves the right to adopt or maintain any measure relating to the provision of legal services and foreign legal consultancy services by persons of the United States.

Activities Reserved to the State

(Please refer to ANNEX III of the NAFTA)

Exceptions from Most-Favored-Nation Treatment

Mexico takes an exception to Article 1103 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of the NAFTA.

For international agreements in force or signed after the date of entry into force of the NAFTA, Mexico takes an exception to Article 1103 for treatment accorded under those agreements involving:

- (a) aviation;
- (b) fisheries;
- (c) maritime matters, including salvage; or
- (d) telecommunications transport networks and telecommunications transport services (this exception does not apply to measures covered by Chapter Thirteen (Telecommunications) or to the production, sale, or licensing of radio or television programming).

With respect to state measures not yet set out in Annex I pursuant Article 1108(2), Mexico takes an exception to Article 1103 for international agreements signed within two years of the date of entry into force of the NAFTA

For greater certainty, Article 1103 does not apply to any current or future foreign aid programs to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the Organization for Economic Cooperation and Development (OECD) Agreement on Export Credits.

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

North America Free Trade Agreement (NAFTA), Group of the Three (Colombia, Venezuela and Mexico) Free Trade Agreement, Bolivia-Mexico Free Trade Agreement, Economic Cooperation Agreement Chile-Mexico, Costa Rica-Mexico Free Trade Agreement and Nicaragua-Mexico Free Trade Agreement. Bilateral Investment Treaties with Spain, Switzerland and Argentina.

3. NATIONAL TREATMENT

1. Identify any sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg. requirements for joint ventures, linkages between export ratios and equity participation, technology licensing). In your response briefly list laws, regulations and policies which provide for those exceptions.

Sector	Nature of Exception (eg. prohibition, limitation, special conditions and special screening)
<p>FOREIGN INVESTMENT LAW OF THE UNITED MEXICAN STATES Article 5.</p> <p>I. Petroleum and other hydrocarbons;</p> <p>II. Basic petrochemicals;</p> <p>III. Electricity;</p> <p>IV. Generation of nuclear energy;</p> <p>V. Radioactive minerals;</p> <p>VI. (Repealed)</p> <p>VII. Telegraph;</p> <p>VIII. Radiotelegraphy;</p> <p>IX. Postal service;</p> <p>X. (Repealed)</p> <p>XI. Bank note issuing;</p> <p>XII. Minting of coins;</p> <p>XIII. Control, supervision and surveillance of ports, airports and heliports; and</p> <p>XIV. Others as expressly provided by law.</p>	<p>The functions determined by the laws in the following strategic areas are reserved exclusively to the State.</p>
<p>Article 6.</p> <p>I. Domestic land transportation for passengers, tourism, and freight, not including messenger and package delivery service;</p> <p>II. Retail trade in gasoline and liquid petroleum gas;</p> <p>III. Radio broadcasting service and other radio and television services different from cable television;</p> <p>IV. Credit unions;</p> <p>V. Development banking institutions, pursuant to the provisions of the law governing the matter; and</p> <p>VI. Supply of professional and technical services expressly set forth in the applicable legal provisions.</p>	<p>These economic activities and corporations are reserved exclusively to Mexicans or to Mexican companies with an Exclusion of Foreigners Clause.</p> <p>Foreign investment may not participate in the listed activities and corporations in this article directly or through trusts, agreements, corporate or shareholder pacts, pyramid schemes, or any other mechanism that grants it any control or equity participation whatsoever, except as provided by title Fifth (Neutral Investment) of the FIL.</p>

2. Briefly describe the nature and scope of any limitations on foreign firms' access to sources of finance, eg. Are there any restrictions on offshore financing, inter-company loans, or issuance of corporate bonds.

In broad terms, Mexican law does not distinguish between domestic and foreign companies with regard to limitations on sources of finance; as long as foreign companies operate through a permanent establishment or a fixed base in Mexico (or a subsidiary in the case of financial services), they are generally treated as resident corporations.

With regard to offshore financing, there are no general limitations, since the country does not maintain foreign exchange controls. Specific sectors, such as the financial sector, have their own particular regulations. Banks, for instance, are limited in the amount of foreign currency financing they can acquire.

Both foreign and domestic companies can issue securities in the Mexican Stock Market, as long as they comply with the conditions and regulations set forth in the Securities Law (Ley del Mercado de Valores).

Inter-company loans between related parties are regulated by the Federal Income Tax Law, particularly with regard to transfer pricing. Special laws also apply to the financial sector. Securities firms, for instance, have limitations regarding their source of financing.

4. REPATRIATION AND CONVERTIBILITY

1. 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.

2. 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.

3. Identify any restrictions on the convertibility of currencies for the overseas transfer of funds.

None

5. ENTRY AND SOJOURN OF PERSONNEL

1. 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 authorized to issue the corresponding visas.

The most usual visas are for “business visitor”, “investor visitor” and “professional visitor”. The characteristics of each visa are as follows:

A. Business Visitor

Purpose: To help foreigners to identify investment opportunities and to make direct investments.

Conditions: Letter of invitation issued by trade chambers, public agencies, companies, or financial institutions, and to produce evidence, by bank letter, of no less than 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.

2. 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
<p>Article 7 of the Federal Labor Law</p> <p>Mexican Constitution, Article 25. Cooperative Societies General Law, Title I Chapter I, Title II, Chapter II.</p> <p>Religious Associations and Public Cult Law, Title II, Chapters I, II.</p> <p>Foreign Investment Law; Title I; Chapter III, Civil Aviation Law; Chapter I, III, IV and IX; among others.</p>	<p>“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 specialty, in which case the employer may employ foreign workers, in a proportion that does not exceed ten per cent of those of the specialty. The employer and the foreign workers shall be obliged to train the Mexican workers in such specialty. Doctors working for enterprises shall be Mexicans. Directors, Managers and General managers are excepted from this Article.</p> <p>There are nationality restrictions for every sector. No more than 10% of the members of a cooperative society of Mexican production may be foreigners. Foreigners may not have direction or general management posts in such enterprises.</p> <p><u>For fire arms:</u> Foreigners may not designate or be designated members of the board of directors or occupy top direction posts of such enterprises.</p> <p><u>For religious services:</u> The representatives of religious associations must be Mexican nationals.</p> <p><u>For aerial transportation:</u> The president, at least two thirds of the board of directors and two thirds of top direction posts of such enterprises shall be Mexican nationals.</p>

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

The Labor Legislation provides a maximum 48-hour work week. Day shifts are eight hour long, while night shifts are seven hours long. However, workers usually work between 40 and 45 hours per week. There is a possibility to work overtime for two or three times the normal hourly wages per hour, depending of the corresponding number of hours. Double wages are paid for nine hours per week (three hours per day three times per week) and any additional overtime is paid three times the 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 Labor Law. The most common agreements are: the Collective Labour Contract whose clauses are agreed upon between the union and the company and the Individual Labour Contract, where these process take place between worker and the employer.

Wages are reviewed every year based on the official target of inflation and the worker's productivity growth. The resulting level cannot, by Law, be lower than the minimum wage.

The mandatory social benefits are the contributions made to the social security system, the housing fund and the retirement savings system, as well as paid vacations, the vacation premium and the year-end bonus. In the case of a worker with one-year seniority these benefits account on average for a cost of 29% of the wages paid.

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

Law	Summary
Labour Federal Law	Applies to national and foreign firms in the context of labour disputes/relations.

6. TAXATION

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

Please note that the information hereby provided is intended to serve only as a guide for those interested in investing in Mexico. For the actual payment of taxes, interested parties should seek the proper accounting and legal advice and/or consult the appropriate authorities and/or legislation.

The following summary of the Mexican Tax System pertains only to Federal Taxes. State and local authorities do not levy income taxes, but only taxes on salaries and real property.

MEXICAN TAXATION

Since 1984 the Mexican Tax System has undergone a substantial transformation. The current income tax system recognizes the effects of inflation and generally avoids double taxation of income. In broad terms, profits are only taxed once at the corporate level; distribution of after-tax profits to shareholders is virtually tax-free.

A- Regulatory Framework

Laws & Regulations - The Fiscal Code (Código Fiscal de la Federación) establishes the rights and obligations of taxpayers, the power of fiscal authorities, as well as all matters related to tax penalties, collection and litigation. The income Tax Law (Ley del Impuesto sobre la Renta) regulates federal income taxes. Other taxes, such as the value-added tax and the asset tax, have their own specific regulations.

Enforcement - The Ministry of Finance (Secretaría de Hacienda y Crédito Público) is currently the governmental agency in charge of applying, interpreting and enforcing income tax laws.

B- Definitions of Taxpayers

Residents- (a) Individuals - Mexican residents must report all their worldwide income, regardless of their nationality, but are granted a foreign tax credit on foreign source income. Individuals that reside in Mexico for more than 183 days in a calendar year may be considered residents. Income is taxed at graduated rates with a maximum rate of 35%.

(b) Corporations - Foreign entities with a permanent establishment or a fixed base in Mexico are treated as resident corporations. Resident corporations are taxed on their worldwide income, but can reduce double taxation on foreign source income through the use of foreign tax credits; tax treaties further reduce double taxation. The current corporate income tax rate is a 35% 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 35% 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 uncollectible. Depreciation. Only allowed on a straight-line basis. Depreciation basis can be indexed using the national CPI. One-time lump-sum deductions are permitted in certain cases.
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.

Taxation arrangements	Summary
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 recognized 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

Taxation arrangements	Summary
	Mexico City) in an individual employee bank account.
F- Withholding taxes & double taxation agreements (Please also refer to the tables below)	<p>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.</p> <p><u>List of some of the most common withholding taxes on payments to non-residents:</u></p> <p>Income tax must be withheld from payments to non-residents (both corporations and individuals), by resident corporations and individuals. The withholding rate applies to gross income, with no deductions (taxpayers may, in some instances, elect the option to be taxed on net income, particularly with regard to the sale of real estate). The following list, unless otherwise stated, does not consider withholding tax rates negotiated under tax treaty provisions:</p>

	Withholding tax rate
Wages, salaries and other remuneration for services rendered in Mexico paid by a Mexican employer	Graduated scale of 0%, 15% or 30% depending on the amount.
Dividends	0% if paid from net taxable income account.
Sale of shares of Mexican companies, financial derivative transactions	20% or 0% if transaction is done through the Mexican Stock Exchange.
Interest: Paid to foreign government financial entities, foreign banks and other duly registered entities On publicly traded securities, such as bonds and debentures Paid to duly registered tax exempt pension and retirement plans Financial leases Other type of interest	15% or 4.9% if country has a tax treaty currently in force 15% or 4.9% if country has a tax treaty currently in force 0% 15% 35%
Royalties: Authors' royalties for scientific, artistic or literary work; technical assistance and transfer of technology Use of trademarks, patents, commercial names and advertising	15% 35% or 15% if technical assistance is provided.
Leases: Leasing of condominiums or timeshares Leasing of other real property Leasing of containers and railroad cars, ships and airplanes operated under a federal transportation concession Leasing of scientific, commercial or industrial equipment Leasing of other personal property	35% 21% 5% 15% 21%
Sale of real property located in Mexico	20%
Debt for Equity swaps	20%

7. PERFORMANCE REQUIREMENTS

1. Briefly describe any performance requirements that could impose limits on trade and investment and indicate any TRIMS.

Under the current Foreign Investment Law no performance requirements are imposed. On 31 March 1995, the notification of some legal instruments, authorized by the World Trade Organization (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 1 January 2004.

On the other hand, foreign investment is now allowed to have an 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 favorable resolution from the NCFI.

AUTOTRANSPORT VEHICLES

According to the Decree with dispositions for autotransport vehicles (entered into force on 1 January 1994), "manufacturer of autotransport vehicles" is an enterprise operating in Mexico, constituted or organized under the Mexican legislation and in compliance with the other three requirements. The obtained benefit consists of complementing the offer of autotransport vehicles of certain enterprise in the domestic market, through the import of such vehicles.

The decree does not have a clause settling a phase-out. However, NAFTA establishes that Mexico can adopt or maintain prohibitions or restrictions to the imports of autotransport vehicles until 1 January 1999. Nevertheless, the Decree remains into force in all of its dispositions that are not contrary to NAFTA.

8. CAPITAL EXPORTS

1. List and briefly describe any regulations/institutional measures that limit capital exports or the outflow of foreign investment.

In Mexico there are no exchange rate controls and no limitations with regard to the export of capital, repatriation of profits or any type of remittances in foreign currency.

2. List and briefly describe any regulations/institutional measures that limit technology exports.

There are no such regulations.

9. INVESTOR BEHAVIOUR

1. 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. OTHER MEASURES

1. Briefly outline the competition policy regime.

1. Competition laws of general application

The Federal Law on Economic Competition (FLEC) was enacted on 23 June 1993 creating at the same time the Federal Competition Commission, as the agency in charge of enforcing the law. The principal objective of this new antitrust statute is to protect the process of competition in the Mexican market, and enhance economic efficiency.

Principal Provisions of the Statute:

The Federal Competition Commission was designed to function as an autonomous and decentralized administrative body of the executive branch within the Mexican Secretariat of Commerce (Secretaría de Comercio y Fomento Industrial). The President of the Republic appoints a panel of five commissioners, including the president, to form a plenary session with decisions made by majority vote. The Commission is empowered to:

- conduct investigations of competition violations initiated at the request of interested parties or by the Commission itself;
- issue administrative rulings and assess penalties for such violations (and for contempt of the Commission);
- render advisory opinions regarding competition policy questions; and
- participate in the negotiation of international agreements regarding competition policy.

This antitrust statute consists of 39 articles that establishes economic and legal regulations for all economic agents in Mexico. This includes all government agencies or entities, individuals, private companies, state owned companies or companies with government participation, associations, professional organizations, trusts and the like. Article 1 and 3 of the FLEC state the general application of Mexico's antitrust policy;

Article 1: This law regulates Article 28 of the Constitution regarding economic competition, monopolies and free market participation. Its observance is binding in the entire Republic and applies to all sectors of economic activity.

Article 3: All economic agents are subject to the provisions of this law, whether they are individuals or corporations, agencies or entities of the federal, state, municipal, public administration, associations, professional groups, trusts or any other form of participation in economic activities.

Restrictive Agreements:

The fourth paragraph of Article 28 of the Federal Constitution reserves several areas of economic activity, considered to be "strategic areas" for the state. Under the new FLEC these particular areas are not considered to be monopolies. Nevertheless, any state enterprise is subject to FLEC outside of the strategic sectors. Article 28 of the Constitution: The functions of the state which manage exclusively strategic areas shall not constitute monopolies. These include: 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 organizations and enterprises it requires for the efficient management of strategic areas it is in charge of and for the activities which are a priority where according to the law, it participates by itself or with the social and private sectors.

Dominant Positions/Monopolies

The FLEC prohibits all absolute monopolistic practices, referred to as "per se" practices. According to the law, agreements among competitors to fix prices or quality, rig public bidding, divide distribution of goods or services, or allocate market shares violates article 9 of the statute, regardless of the size of the agent involved, or the characteristics of the market.

Relative Monopolistic Practices

Relative Monopolistic Practices are evaluated under a rule of reason approach to determine whether they have pro or anti-competitive effects in the market. The principal relative practices considered in the FLEC are the following: 1. Vertical Market Division; 2. Vertical Price Maintenance; 3. Tied Sales; 4. Exclusive Dealing; 5. Refusal to Deal; and 6. Others with similar consequences in the market. According to the FLEC, in order to determine whether a given practice is illegal or not, the Commission must first define the relevant market and determine whether agents carrying out the practice have “substantial power” in the relevant market.

Merger control

The laws approach is basically preventative. There is a pre-merger notification procedure to aid the Commission in detecting uncompetitive mergers. This procedure gives a maximum period for investigation and deliberation of 45 days. The FLEC establishes in Article 20 that the Commission must be notified of all “concentrations” involving firms under the following conditions:

- 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);
- 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
- 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 is covered by the FLEC, unless noted below.

Article 5: Associations of workers formed in accordance with relevant legislation to protect their interests do not constitute monopolies. Privileges granted to authors and artists for the production of their work for a determinable period of time and those granted to inventors and individuals perfecting an improvement for the exclusive use of their inventions do not constitute monopolies.

Article 6: Associations or cooperatives that sell their products directly abroad do not constitute monopolies provided that:

- (a) The products are the principal source of wealth produced in the region, or are not of dire need;
- (b) They are neither sold nor distributed in Mexico;
- (c) Membership is voluntary and members are free to join or resign;
- (d) Permits or authorizations issued by agencies or entities of the Federal Public Administration, are neither granted nor distributed by such associations or cooperatives; and
- (e) In each case, incorporation is authorized by the legislature that corresponds to their corporate domicile.

Electricity: The Mexican Constitution states that the generation, transmission and distribution of electricity are “strategic areas” reserved for the state. This exclusivity, however refers only to electricity for public consumption; the Constitution allows for the private provision of electricity for a company’s own use. Currently, the law clearly defines the frontiers of private and public service is allowing for private investment in electricity generation. Specifically, the regulatory changes exclude generation for self-consumption, co-generation, and independent power production from the concept of “public service”. As a result, private parties are now permitted to produce electricity for their own use and by allowing them to sell power to The Federal Electricity Commission (publicly owned electric utility) they reduce the government agency's investment costs and encourage expansion of our infrastructure. Private parties can also export and import electricity for their own use, and may have access to public electricity sources under some circumstances. *Ocean Shipping, including ancillary services like harbor towage, stevedores, etc.* The recently approved Federal Law on Ports (1991) allows for the complete operation of a port by a private corporation as well as the privatization of the associated infrastructure. The new law on ports along with the newly enacted law on Maritime Transportation, now serve as the basic regulatory

framework for a wide-ranging program to privatize the nation's ports, a process that has already begun with the privatization of dredging operations, and is slated to move forward with additional divestiture of port infrastructure.

3. Partial Exclusions

There are no partial exclusions within the statute of the FLEC. All economic agents are subject to equal coverage under the auspices of the law.

4. Special Rules

Crisis/depression cartels, rationalization cartels: The FLEC does not propose any special rules for cartels that include “depression”, “ecological”, “sanitation” or any other versions. The constitutional text does not recognize any exceptions in reference to cartels.

5. Persons connected with the Mexican State

All economic agents are subject to Constitutional decree and the antitrust statutes with the exception of “strategic areas” and areas mentioned in articles 5 and 6 of the FLEC. In addition, the Constitution establishes specific laws concerning state regulations in articles 117 and 118.

Article 117. The states may not, in any case:

1. Make an alliance, treaty or coalition with another state, or with any foreign power;
2. Deleted;
3. Coin money, issue paper money, stamps, or stamped paper;
4. Levy duties on persons or goods passing through their territories;
5. Prohibit or levy duties directly or indirectly, upon the entrance into or exit from their territories of any domestic or foreign goods;
6. Tax the circulation of domestic or foreign goods by imposts or duties, the exaction of which is made by local customhouses, requiring inspection or registration of packages or documentation to accompany the goods;
7. Enact or maintain in force fiscal laws or provisions that relate to differences in duties or requirements by reasons of the origin of domestic or foreign goods, whether this difference is established because of similar production in the locality or because among similar production there is a different place of origin;
8. Issue bonds of public debt payable in foreign currency or outside the national territory; contract loans directly or indirectly with the governments of other nations, or contract obligations in favor of foreign companies or individuals, when the bonds or securities are payable to bearer or are transferable by endorsement;
9. States and municipalities may not negotiate loans except for the execution of works intended to produce directly an increase in their own revenues; and
10. Levy duties on the production, storage, or sale of leaf tobacco in a manner distinct from or with quotas greater than those authorized by the Congress of the Union.

Article 118: States shall not, without consent from the Congressional Union establish ship tonnage dues or any other port charges, or levy imports or taxes on imports or exports.

The FLEC is responsible for regulating and developing articles 117 and 118 of the Constitution, and for the application of Mexican Antitrust Laws:

Article 14 of the FLEC: Pursuant to Article 117, Section V, of the Political Constitution of the United Mexican States, acts performed by the state authorities motivated directly or indirectly to prohibit the entry or exit of goods or services from state territory, of domestic or foreign origin, shall have no legal force or effect. Article 15 of the FLEC: The Commission may investigate ex-officio or at the request of an interested party, whether the acts referred to in the preceding article develop and, in such case, declare their existence. The declaration shall be published in the Official Gazette of the Federation and may be contested by the state authority before the Supreme Court of Justice of the Nation.

6. Persons connected with foreign states or the European Union

According to the FLEC there are no special exclusions for:

- Foreign public authorities;
- Foreign publicly-owned enterprises;
- Persons acting under the compulsion, encouragement or authorization of foreign states or the European Union;
- Persons granted monopoly
- Persons soliciting or agreeing to solicit action by foreign states.

All individuals are subject to the FLEC.

7. Small and Medium Sized Enterprises and Economically insignificant activities

The FLEC makes no distinctions between small and medium sized enterprises as opposed to large enterprises.

8. Intra-firm agreements and practices

The FLEC does not contain exclusions or special rules applicable to agreements made between parts of a single enterprise or group, or to practices which are internal to a single enterprise or group. These agreements are analyzed under the same merger control guidelines indicated in question one.

9. Import and Export Related Activities

The Constitution and Article 6 of the ECL regulates and defines associations and cooperatives that sell their products directly abroad. However, the above mentioned are not defined as “export cartels”.

10. Restriction of remedies and policies of non-enforcement

In relation to illicit concentrations and monopolistic practices, the Federal Competition Commission can impose the following sanctions (Article 35):

- i. Order of suspension, correction or elimination of the practice or concentration in question;
- ii. Order of partial or total deconcentration of what has been improperly concentrated, regardless of the fine that may be applicable in such cases;
- iii. Fine of up to seven thousand five hundred times the minimum general wage prevailing in the Federal District for having made false statements or for having submitted false information to the Commission, regardless of any criminal liability to which the responsible party may be subject;
- iv. Fine of up to 375,000 times the minimum general wage prevailing in the Federal District for having engaged in an absolute monopolistic practice;
- v. Fine of up to 225,000 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 225,000 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 100,000 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 7,500 times the minimum general wage prevailing in the Federal District to individuals or corporations who engage directly in monopolistic practices or illicit concentrations.

In case of a repeated offense, an additional fine of twice the initial amount may be imposed.

According to Article 38 of the FLEC:

The economic agents that prove during the antitrust proceedings that they have sustained economic damages and loss as a result of a monopolistic practice or illicit concentration, may file a legal claim to obtain compensation for damages and loss. In such case, the court may take into consideration the

damage and loss as estimated by the Federal Competition Commission. No judicial or administrative action based on this law will proceed, unless established herein.

11. Regional Competition Laws

There are no state laws that regulate competition regarding a regional context. The FLEC presides over the entire federation of Mexican States.

12. Other factors with the practical effect of limiting the scope of application of the competition laws

Under the Constitution any monopolistic practices or concentrations existing before the new law was established, shall not be investigated retroactively. However, if such monopolistic practices continue to have anticompetitive effects after 22 June 1993, they can be investigated and penalized by the Federal Competition Commission.² *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.

- Industrial Property Law of 1991, as amended in 1994. Published in the Official Journal on 2 August 1994, effective 1 October 1994, effective 1 October 1994. Amended and added in 1997 published in the Official Journal on 26 December 1997, effective 1 January 1998.
- Regulations under the Industrial Property Law, of 1994. (Published in the Official Journal on 23 November 1994).
- 3. Customs Law, of 1995. (Published in the Official Journal on 15 December 1995, effective 1 April 1996).

II. Industrial Property Law

The Law on Promotion and Protection of Industrial Property (as amended on August 1994), which entered into effect on 1 October 1994. The Regulations of this Law were enacted on 23 November 1994, repealing the Regulations under the Law of Inventions and Marks of 1988. Afterwards, amended on 26 December 1997, which entered into effect on 1 January 1998. Some of the most important objectives of the reforms contained in the Law are the following:

- a) To harmonize the Mexican Law in accordance with the provisions established under the Intellectual Property Chapter (17) of the NAFTA, the Trade Related Intellectual Property Rights Agreement (TRIPS) and the annex to the Agreement establishing the WTO
- b) To consolidate the Mexican Institute of Industrial Property (MIIP) as the administrative authority to prosecute and to grant industrial property rights and to prevent or to sanction infringements.

Protection Provisions

These reforms contain numerous elements that substantially improve the Mexican Law, among the highlights are the following:

- Inventions that do not refer to: essential biological processor for the production, reproduction and propagation of plants and animals; biological and genetic material as found in nature; animal breeds; human body and alive parts forming it and vegetable varieties, shall be patentable.
- The disclosure of an invention will not constitute a loss of its novelty, when within 12 months prior to the filing date of the patent applications or, if such is the case, of the recognized priority, the inventor or his assignee had made the invention known.
- Absolute novelty will be a requirement for granting a utility model or an industrial design.

- Definition of when a trademark is well-known in Mexico, when a determined sector of the commercial circles of the country, knows the mark as a consequence of the commercial activities developed in Mexico or abroad, as well as the knowledge of existence of the mark in the territory, as a result of the promotion or advertising of the same.
- A trademark registration will lapse when the mark had not been used during 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, authorizations, 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 be 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 10 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 commercialization or use of products infringing any right; to order the seizing or securing of goods; to order the presumptive infringer the suspension or the ceasing of the acts that constitute an infringement to the provisions of the Law; and, to order or postpone the renderance of the service or the closing of the commercial establishment, when the measures mentioned before, are not sufficient to prevent or impede the infringement to the rights protected by the Law.
- In order to determine the practice of the measures referred to in the preceding paragraph, the Institute shall require that the affected person grants sufficient bond to respond of the damages and prejudices that could be caused to the person against whom the measure had been requested, and to furnish the necessary information for the identification of the goods, services or commercial establishments through which or where the infringement to the rights of industrial property is committed.
- When the subject matter of the patent is a process for the creation of a product, in the proceeding for the administrative declaration of an infringement, the presumptive infringer must prove that the product was manufactured under a different process when the product obtained by the patented

process is new and there is a significant probability that the product had been manufactured through the patented process and the owner of the patent had not been able, even though having tried, to establish the process really used.

- The reparation of material damages or injury or the compensation for damages and prejudices caused by the infringement of rights granted by the Law, in no case shall be less than forty percent of the price of sale to the public of each product or of the price furnishing of the services implying an infringement or any or some of the industrial property rights.

The Mexican Institute of Industrial Property has faculties to grant and/or to substantiate the procedures of rejection, nullity, expiration and cancellation of industrial property rights; to carry out the investigation of supposed administrative infringements, to order and practice visits of inspection; to request information and data; to order and execute the provisional measures to prevent or to cause ceasing the violation of industrial property rights; and to impose the corresponding administrative sanctions in industrial property matters. Also the Institute may act as an arbitrator, when the parties accept it in a private dispute.

Enforcement Provisions at the Border.

In 1995, a Customs Law was promulgated. This Law incorporates provisions to ensure enforcement of intellectual property rights at the border. Particularly, Articles 144 to 150 incorporate the provisions established on NAFTA, from which the most important measure is to enable a right holder, who has valid grounds for suspecting that the importation of a counterfeit trademark may take place, to file an application before the authorities, for suspension by customs administration of the free circulation of such goods. 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 facilitate and promote investments and technology transfer from foreign countries.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

1. 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, second paragraph of the Constitution points out: "Expropriations will only proceed by public utility cause and through compensation."
Expropriation Law	The amount of compensation is calculated in the following manner: I. According to the Expropriation Law: the value of the expropriated property will be equivalent to the fixed commercial value, which may not be less than the fiscal value that figures at the census or collecting offices, nevertheless, the affected person may claim the fixed value recourring to the judicial instance. The amount of the compensation shall be covered by the State when the expropriated thing passes under its ownership. The term for the payment of compensation shall not exceed one year from the declaration of expropriation. The payment shall be done in national currency, or it could be agreed to realize it in kind.

	II Notwithstanding what is provided for in the Expropriation Law, it is possible that in international agreements which Mexico is part of, or widely accepted arbitral agreements celebrated, expropriation may be ruled by different mechanisms.
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2. Briefly describe recent instances (last five years) of expropriation and compensation of foreign investment.

Not applicable.

2. SETTLEMENT OF DISPUTES

1. 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.

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

2. Has your economy signed or acceded to the ICSID Convention?

Mexico is not member of ICSID.

D. INVESTMENT PROMOTION AND INCENTIVES

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

Program	Nature of incentive	Contact point
Mexico has promoted foreign direct investment in its territory through the use of clear rules that channel foreign capital into the country's productive activities, and through the negotiation of international agreements which grant more juridical security to the investors of the member States.	Transparency Juridical security to foreign investors.	SECOFI Directorate General for Foreign Investment.
The Mexican government has initiated a more liberal policy: new sectors of the Mexican economy have been recently opened to national and foreign private	Liberalization	SECOFI Directorate General for Foreign Investment.

Program	Nature of incentive	Contact point
<p>investors (electricity, gas, communications, railroad and financial services, amongst others); bilateral investment treaties are currently being negotiated with the governments of our major investment-exporting countries, and new instruments for investment protection are being analyzed to be implemented in the short term.</p> <p>Our membership to the OECD, as well as the disciplines contained in NAFTA guarantee the application of the highest international standards on a long-term basis.</p> <p>Mexico has three programs for products manufacture and export that benefit national and foreign investors, such as:</p> <ul style="list-style-type: none"> • Decree for the Promotion and Operation of the Maquiladora for Export Industry; (In-Bond Industry) • Decree for the Promotion and Operation of Highly Exporting Enterprises (“ALTEX”), and • Decree that establishes Programs for the Temporary Importation to manufacture export goods, (“PITEX”). 	<p>Bilateral Investment Treaties.</p> <p>Highest international investment standards.</p> <p>These programs grant facilities for the temporary importation free of duties for goods and equipment utilized for the production of export goods, and in the immediate devolution of the Aggregate Value Tax.</p>	<p>SECOFI Directorate General for Foreign Investment.</p> <p>SECOFI Directorate General for Foreign Trade Services.</p>

2. Briefly describe any fiscal, financial, tax or other incentives offered at both the national and sub-national level (eg. tax incentives, grants) provided to foreign investors. Provide a summary of these programs including the nature of incentives offered and provide contact point(s) for these schemes, including address and telephone/fax numbers. See number 1 above.

There are special incentives, such as accelerated depreciation schedule, for certain type of investments, but these apply equally to domestic and foreign investors. Certain activities such as publishing, agriculture, livestock, fishing and forestry have special income tax reductions. SECOFI has implemented a series of programs with incentives to promote the export of manufactured goods. Export incentives apply to both domestic and foreign firms, and include both tax and non-tax incentives. At the regional level, some states grant property tax reductions to new industries.

Programs to promote national and foreign investment:

Program (National/sub-national)	Nature of incentive	Contact point
PITEX.- Program for Temporary Importation to Manufacture Export Goods.	<p>Beneficiaries of PITEX program are:</p> <ul style="list-style-type: none"> • Juridical persons established in national territory, producing non-petrol goods, which export directly or indirectly, and, • Foreign trade enterprises (ECEX) whose 	SECOFI Directorate General for Foreign Trade Services.

Program (National/sub-national)	Nature of incentive	Contact point
	<p>register in SECOFI remains effective, which could adhere to PITEX program in its modality of a specific project of exportation.</p> <p>Benefits: PITEX program is an instrument to promote exports, which allows merchandises' producer to import temporarily diverse goods to be utilized on the manufacture of export products, without paying import taxes, value added tax and compensatory quota.</p> <p>There are different categories of these goods:</p> <ul style="list-style-type: none"> • Raw materials, parts and components totally assigned to integrate export merchandises • Containers, packing material and truck boxes which are totally utilised for export merchandises, (Raw materials and packing materials may remain in the country for 18 months since their date of entrance while containers and truck boxes until two years) • Combustible products, lubricants, auxiliary materials, spare parts and equipment totally spent in the manufacture process of export merchandises, (Combustible products and auxiliary materials may remain in the country for 18 months since their date of entrance). • Machinery, equipment, instruments, molds and other goods used to produce export goods (Spare parts, machinery and equipment may remain in the country for five five years, or otherwise settled in the Tax Income Law as a term for their depreciation) <p>Commitments: In order to enjoy the benefits of PITEX program, the following requirements of exportation must be fulfilled:</p> <ul style="list-style-type: none"> • 10% of annual total sales or 500,000 dollars annual in case temporary imports corresponding to raw materials, packing materials, combustible products and spare parts are required • 30% of annual total sales in case of temporary imports of machinery and equipment are required 	
ALTEX.- Program for Highly Exporting Enterprises	Beneficiaries of ALTEX programme are natural or juridical persons that: a) Produce non-petrol merchandises, and	SECOFI Directorate General for Foreign Trade Services.

Program (National/sub-national)	Nature of incentive	Contact point
	<p>demonstrate direct exports for 2 million dollars or exports equivalent to 40% of their total sales in a one year period,</p> <p>b) Produce non-petrol merchandises and demonstrate annual indirect exports equivalent to 50% of their total sales,</p> <p>c) Foreign trade enterprises (ECEX) whose register in SECOFI remains effective.</p> <p>Direct and indirect exports may fulfill the requirement of exports for 40% or 2 million dollars by adding both kinds of exports, but indirect exports shall be considered on the 80% of their value.</p> <p>Benefits:</p> <ul style="list-style-type: none"> • Devolution of remmants of value added tax in 5 business days. • Free access to the System of Commercial Information, managed by SECOFI, • Exemption on the requirement of second revision of export merchandises in customhouses (simplified system of customs dispatch) • Faculty to design a proxy for diverse customhouses and products. 	<p>SECOFI Directorate General for Foreign Trade Services.</p>
<p>Import Duty DRAW-BACK.</p> <p>In-Bond (MAQUILADORA) Industry.</p>	<p>The Drawback program grants to its beneficiaries the possibility to recover the general tax on import paid for the goods incorporated to export merchandises (raw materials, parts and components, containers, packing material, combustible products, lubricants, auxiliary materials and others) or for merchandises returned in the same conditions.</p>	<p>SECOFI Directorate General for Foreign Trade Services.</p>

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 countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (only provide details for those agreements that have entered into force).

Agreement	Provisions
<p>Bilateral Investment Treaties</p> <p>Spain: Signed on 22 June 1995, and approved by the Senate on 16 November 1995. Entry into force: 19 March 1997.</p> <p>Switzerland: Signed on 10 July 1995, and approved by the Senate on 16 November 1995. Entry into force: 20 August 1998.</p> <p>Argentina: Signed on 13 November 1996 and approved by the Senate on 24 April 1997. Entry into force: 28 August 1998.</p>	<p>Protection and promotion of investments. National and most favoured nation treatment, transfers, expropriation and compensation. Mechanisms for disputes settlement.</p>
<p>Regional or sub regional Investment Treaties</p> <p>North American Free Trade Agreement (NAFTA).</p> <p>Free Trade Agreements with Bolivia, Costa Rica, G-3, and Nicaragua; and Economic Complementation Agreement with Chile.</p> <p>Organization for Economic Cooperation and Development (OECD).</p>	<p>The principles governing Chapter XI (Investment) of the Agreement are:</p> <ul style="list-style-type: none"> • Treatment: National Treatment, Most Favoured Nation Treatment, Non-discrimination Treatment; • Abolition of Performance Requirements; • Transfers; • Expropriation and compensation; • Mechanism for the Settlement of Disputes. <p>Include the same framework and principles contained in NAFTA's Chapter XI.</p> <p>Code of Liberalization of Capital Movements. Code of Liberalization of Current Invisible Operations. National Treatment Instrument.</p>

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 countries/economies that are sources/receivers of FDI over recent years.

FOREIGN INVESTMENT (Annual Flows in millions of dollars)

Concept	1994	1995	1996	1997	1998 ^{P/}	Acc. 1994-1998
FDI						
Composition of Foreign Investment (Annual Flows)	14,898.5	9,398.7	9,635.9	12,829.5	10,237.6	57,000.2
Notified FDI	9,598.3	6,710.8	5,979.9	9,115.3	2,360.1	33,764.4
NRFI not notified yet					1,724.3	1,724.3
In Bond Industry	894.8	1,366.3	1,416.5	1,680.3	2,110.5	7,468.4
Reinvestment earnings	2,366.6	1,572.0	2,589.7	2,150.0	2,864.0	11,542.3
Intercompany-loans	2,038.8	-250.4	-350.2	-116.1	1,178.7	2,500.8
Stock Market	4,083.9	519.4	4,049.8	3,215.2	-942.4	10,925.9
Total Foreign Investment (FDI+Stock Market)	18,982.4	9,918.1	13,685.7	16,044.7	9,295.2	67,926.1
By economic destiny	10,493.1	8,077.1	7,396.4	10,795.6	4,470.6	41,232.8
Transformation Industry	6,063.7	4,672.4	4,508.8	6,695.5	3,530.0	25,470.4
Services	3,084.4	2,336.1	2,072.2	2,237.7	485.6	10,216.0
Commerce	1,249.4	978.5	704.1	1,751.9	438.4	5,122.3
Extraction Industry	87.6	79.0	82.8	100.7	12.2	362.3
Agriculture, fisheries and livestock	8.0	11.1	28.5	9.8	4.4	61.8
By country of origin	10,493.1	8,077.1	7,396.4	10,795.6	4,470.6	41,232.8
United States of America	4,825.1	5,265.4	4,966.5	6,460.6	3,153.4	24,671.0
United Kingdom	593.4	213.5	74.4	1841.3	109.5	2,832.1
Netherlands	745.6	738.0	477.6	241.0	438.3	2,640.5
Canada	740.4	168.7	482.0	202.5	123.2	1,716.8
Germany	305.0	548.5	193.9	467.6	130.2	1,645.2
Japan	630.9	155.7	139.3	342.3	84.6	1,352.8
Spain	145.1	41.6	59.8	263.5	113.5	623.5
France	90.5	119.5	118.9	59.0	47.6	435.5
Switzerland	53.9	200.2	76.1	28.7	10.1	369.0
Sweden	9.3	61.1	96.6	7.2	9.6	183.8
Italy	2.7	10.4	18.2	26.6	11.9	69.8

^{P/} Preliminary amounts up to February. For the concept of currency flows, amounts up to March.

Others	2,351.2	554.5	693.1	855.3	238.7	4,692.8
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ANNEX

SECOFI'S SUBNATIONAL DELEGATIONS

STATE	ADDRESS	PHONE NUMBER	FAX
Aguascalientes	Av. Tecnológico 106 Ex-Hda Ojo Caliente Col. 4o. Centenario C.P. 20190	49 702501	49 702502
		49 702503	
		49 702504	
		RED 000 001	
Baja California	Palacio Federal Centro Cívico, Cuerpo A Piso 3 C.P. 21000	65 554513	65 554520
		65 554514	
		65 554516	
		65 554517	
		65 554519 RED 002 003	
Baja California Sur	Calle de Acceso al Cicimar- cet del Mar No. 325 Fraccionamiento Benito Juárez C.P. 23090	112 29487	112 20280
		112 27592	
		112 28056	
		112 21117	
		112 26328 RED 005 006	
Campeche	Planta Baja Palacio Federal. Av. 16 de Septiembre S/N	981 63365	981 62130
		981 62130	
		981 11425	
		RED 007 008	
Coahuila	Av. Mariano Abasolo Norte Núm. 3565 Fraccionamiento Alpes C.P. 24000 (Bld. V.Carranza No.2230 Col.Jardín)	84 167212	84 167152
		84 167092	
		84 167484	
		RED 009 010	
Colima	Calzada Pedro Galván Sur Núm. 225 Col. Centro C.P. 28000	331 23766	331 22567
		331 21343	
		RED 013 014	
Chiapas	Palacio Federal Piso 3 Col. Centro C.P. 29000	961 26298	961 20398
		961 21241	
		961 31255	
		RED 015 016	
Chihuahua	Calle 18 de Marzo Núm. 3107 Edif. Plaza Chihuahua Piso 2 Col Centro C.P. 31000	14 108079	14 1087081
		14 108836	
		14 108964	
		14 153446	
		RED 018 019	
Durango	Anillo de Circunvalación Núm. 99 Edif. Plaza Guadiana C.P. 34070	181 20 905	181 28580
		181 22775	
		181 20310	
		181 28198	
Guanajuato	Prol. Blvd. Campestre 1519 piso 3° Col. Valle del Campestre C.P.37150	47 185502	47 185539
		47 185557	
		47 185588	
		47 731037	
		RED 027 028	
Guerrero	Av. Costera Miguel Alemán No. 54-1 Costa Azul	74 845651	74 845595 74 845651
		74 849071	
		74 845596	
		74 845628	

STATE	ADDRESS	PHONE NUMBER	FAX
Hidalgo	Ignacio Allende No.603 2° y 3er Pisos Col. Centro C.P. 42000	RED 030 031	771 55010
		771 52281	
		771 52303	
		771 55106	
		771 53848	
Jalisco	Circunvalación Agustín Yañez No. 2575 Col. Arcos Vallarta Sur	RED 033 034	3 616 3012
		3 616 6123	
		3 616 6126	
		3 616 9735	
		3 616 2820	
		3 616 2710	
México	Paseo Tollocan No. 504 Pte. Col. Universidad C.P. 50130	3 616 2749	72 195701
		72 195580	
		72 195660	
		72 195162	
		72 195152	
Michoacán	Agustín Melgar No. 214 Col. Chapultepec Norte C.P. 58260	RED 024 025	43 156 832
		43 156601	
		43 156284	
		43 156772	
		43 156598	
Morelos	Mar de Cortes s/n Unidad Habit. Teopanzolco C.P.62350	43 156726	73 27487
		RED 037 038	
		73 227605	
		73 227486	
		RED 039 040	
Nayarit	Av. Del Parque No.15 Fracc. Ciudad del Valle C.P. 63157	32 165956	32 123054
		32 120040	32 131050
		32 125082	
		RED 041 042	
		32 130799	
		32 130986	
Nuevo León	Av. Fundidora 510 Edif.Cintermex Planta Baja Local 87 y 88 Col. Obrera C.P.64000	32 131078	8 3696487
		8 3696480	
		8 3696487	
		8 3696481	
		8 3696483	
		8 3696482	
		8 3696484	
RED 043 044			
Oaxaca	1ª Priv. De Emiliano Zapata No.108 Col. Reforma C.P.68050	951 54881	951 59669
		951 54833	
		951 55052	
		951 55002	
		951 59300	
Puebla	Calle Sur No.3910 Col. Del Carmen Huexotitla C.P.72530	RED 045 046	22 379374
		22 379371	
		22 379373	
		22 379379	
		22 403907	
		22 404520	
		RED 048 049	

STATE	ADDRESS	PHONE NUMBER	FAX
Querétaro	Wenceslao de la Barquera 13 Col. Villas del Sur C.P. 76040	42 143656 42 143868 42 143643 42 144666 42 120399 RED 050 051	42 125101
Quintana Roo	Av. Héroes 21 "A" Piso 2 Edif. Plaza Caracol C.P.77000	983 23056 983 28204 983 29181 983 28226 983 28180 RED 052 053	983 26729
San Luis Potosí	Av. Venustiano Carranza 2055 Col. Jardín C.P. 78230	48 113566 48 117977 48 117978	48 114568
Sinaloa	B.Benito Juárez 58 Pte.Piso 2 Col. Centro C.P.80000	67 139200 67 139250 67 139316 67 139292	67 139377
Sonora	Periférico Pte.No.310-A, Edif.Ocotillo Col. Las Quintas C.P. 83200	62 183176 62 605934 62 605935 62 605936 62 605937	62 161990
Tabasco	Av. Paseo Tabasco No.1129 Col. Rovirosa C.P. 88050	93 159077 93 159078 93 159080 93 159081	93 159079
Tamaulipas	Bldv.Morelos No. 990 Piso 2 Col. San Ricardo C.P. 88690	89 264843 89 264847 89 264432 89 264861	89 263128
Tlaxcala	Porfirio Díaz No. 20 Col. Centro C.P.90000	246 21065 246 25690 246 25726 246 24964 246 25725	246 26976
Veracruz	Betancourt No. 10 Col. Centro C.P. 91000	28 172661 28 183396 28 178839 28 172030 28 177442	28 172030
Yucatán	Av. Colón 501-C Desp.301 Edif. Plaza Colón C.P.97000	99 258822 99 256911 99 256500 99 256641	99 256933
Zacatecas	Arquitectos 103 Col. Dependencias Federales Guadalupe, Zac. C.P.98600	492 36800 492 36801	492 36950

NEW ZEALAND

NEW ZEALAND

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

A key aspect of the New Zealand Government's growth strategy is the development of strong international linkages; this includes both outward and inward investment. New Zealand has a very welcoming and open attitude towards inward foreign direct investment (FDI) which is frequently reiterated in public statements by Government ministers and officials. New Zealand welcomes and encourages foreign investment from all countries without discrimination. This is reflected in the facilitatory nature of the Government's foreign investment policy regime.

With regard to outward investment, there are no impediments at all to prevent companies investing offshore. As New Zealand is a net capital importer with on-going requirements for capital, the Government is more active in promoting inward rather than outward investment.

No national plan has been established or priorities set which condition the environment for foreign investment in particular sectors or regions. It is at the discretion of the individual investor as to where to invest.

The Ministry of Forestry and the New Zealand Tourism Board are active in promoting foreign investment into their respective sectors, including the production of promotional sectoral material.

The Government's foreign investment policies are administered by the Overseas Investment Commission (OIC) which acts under powers delegated from the Treasurer, and in the case of land, from the Minister for Food, Fibre, Biosecurity and Border Control. The OIC and Minister's the Overseas Investment Regulations 1995. It deals with all non-land applications and applications involving land which is less than ten hectares and not sensitive under delegated authority. All other land applications are referred to the Treasurer, and the Minister for Food, Fibre, Biosecurity and Border Control, for their joint consideration. The Reserve Bank of New Zealand provides the secretariat for the OIC.

A non-New Zealand entity is described in the regulations as being an "overseas person". An "overseas person" is:

- A company formed overseas and any of its subsidiaries;
- Any individual who is not a citizen of, nor ordinarily resident in, New Zealand;
- A New Zealand company with 25% or more of its share or voting power held by overseas persons;
- A trust where 25% or more of:
 - the trustees are overseas persons; or
 - the persons having power to appoint the trustees are overseas persons; or
 - the trust property is held for the benefit of overseas persons;
- A partnership or joint venture containing 25% or more overseas persons or where overseas persons control 25% or more of the voting power;
- A unit trust where the manager or trustee is an overseas person or where overseas persons hold 25% or more of the beneficial interests; and
- Any other entity owned or controlled more than 25% by overseas persons.

An overseas person must obtain the consent of the OIC to:

- Establish a new business where the total expenditure to be incurred in setting up the
- Business exceeds \$10 million;

- Acquire 25% or more of the ownership or control of a new zealand company where the consideration for the transfer or the value of the offeree's assets (as set out in the latest accounts) exceeds \$10 million;
- Increase the proportion of ownership or control of a new zealand company where:
- The consideration for an acquisition of the securities exceeds \$10 million, or the value of the offeree's assets exceed \$10 million;
- The total value of all the securities issued or allotted exceeds \$10 million, or the consideration payable on a new issue or allotment exceeds \$10 million; unless the total overseas shareholding is less than 25%;
- Acquisition of the assets of an existing business where the consideration for the acquisition exceeds \$10 million;
- Acquisition of any land or any estate or interest in land regardless of the land's value;
- Acquisition of securities in any person that owns or controls any land or any estate or interest in land, regardless of the dollar value involved, that will result in:
 - The land owning person being owned or controlled by overseas persons;
 - The overseas person acquiring 25% or more of the ownership or control of the land owning person or increase their ownership or control if the overseas person already has 25% or more ownership or control.

The 25% threshold as it relates to overseas persons is not an indication of preferred levels of investment; it is merely a trigger point for OIC involvement.

2. Summary of significant public statements which most accurately describe and define philosophies, policies and attitudes toward foreign (inward and outward) investment.

Excerpt from the booklet “Invest in New Zealand: The Right Choice”, 1999:

New Zealand has one of the most attractive economies in the world in which to do business. Since undertaking a far-reaching and comprehensive programme of economic reform in the 1980s, New Zealand stands out as a country well adapted for long-term competitiveness. New Zealand offers an extensively deregulated, low-cost and resource-rich environment, ensuring its attractiveness as a place to do business.

International investment has contributed significantly to the development of New Zealand's economy. New Zealand offers investors the potential to thrive in an attractive, open business environment:

- Minimal and transparent regulations make investing in New Zealand a straightforward process.
- A broad-base, low-rate tax regime supports investors who are here for the long term.

New Zealand has a consistent and fair political environment where overseas investors are treated on the same basis as domestic investors. Our open, fair business environment provides a rare and valuable level of certainty for prospective investors.

Competitive labour costs, spare resource capacity and the efficient infrastructure help maintain New Zealand's low-cost commercial environment. It has excellent, long-standing trading links with countries and organisations all over the world. We have a uniquely international and outward-looking perspective, with a sound understanding of European, Asian and other nationalities.

New Zealand has extensive experience in transportation, and one of the world's most efficient, cost-effective and up-to-date transportation structures. The transport sector is intensively competitive. It also has long been a world leader in agriculture and forestry research and development (R&D). Today, its R&D activities extend across a much wider range of industries including electronics, telecommunications technology, information technology, food and beverages, environmental technologies, medicine and pharmaceuticals, biotechnology and energy production and advanced engineering.

Today's international companies require global, cost-competitive, comprehensive telecommunications systems. New Zealand offers leading-edge technology, a sophisticated market, a substantial, innovative software industry and extensive high-level engineering skills.

New Zealand is a young, vibrant and dynamic country where state of the art technology is standard in business practice and communications. New Zealanders are quick to embrace and use new concepts in a sophisticated domestic marketplace and in the wider international arena. A highly skilled and enthusiastic workforce strives for nothing short of excellence in product development and service. The New Zealand management style is one of "getting on with the job", with a focus on flexible and innovative quality management.

New Zealand's education system, attitudes and values produce highly skilled, highly motivated people. With a high number of people undertaking tertiary education, New Zealand has a considerable skills advantage. Our skills and adaptability have had impressive results in new areas such as niche manufacturing.

Our multi-cultural society is the result of over 150 years of migration. Our business community reflects and reinforces this diversity - and continues to welcome talent, skills and achievement in people from other countries.

Internationally renowned for its stunning natural beauty, New Zealand also combines a healthy balance of city lifestyle opportunities with access to some of the best in leisure facilities.

Copy of a Letter of 21 December 1995 from the Minister of Finance and the Minister of Lands to the Chairman of the OIC:

Office of The Minister of Finance
Parliament House
Wellington,
New Zealand
Telephone 4719 - 991 Fax 4733 - 587

21 December 1995

Chairman
Overseas Investment Commission
PO Box 2498
WELLINGTON

Dear Mr Stannard

Overseas Investment Policy, Delegation and Criteria

- 1 The Minister of Lands and the Minister of Finance have decided a number of matters relating to the Government's general policy approach to overseas investment and to what decisions under the legislation should be delegated to the Overseas Investment Commission and its staff as from the commencement date of the new legislation of 15 January 1996.

General Policy Approach

- 2 The Government's welcoming policy on foreign direct investment recognises that the inflow of such investment normally provides a net benefit to the New Zealand economy. Section 9(2) of the Overseas Investment Act 1973 requires the Overseas Investment Commission to "comply with the general policy of

the Government ... transmitted in writing ... by ... the Minister and the Minister of Lands." We wish to convey the following general policy of the Government in relation to the functions of the Commission:

- a. The Government's policy of welcoming foreign direct investment is to continue.
- b. The general policy approach is to continue to be based on the premise that proposals from overseas investors should be approved unless good reason exists, in terms of the legislative criteria, to decline an application.
- c. The existing approach, of interpreting the criteria applications should continue in a way which facilitates rather than hinders investment.

Delegation

- 3 The Minister of Finance hereby delegates to the Overseas Investment Commission and its staff the power to determine applications under Part II of the Overseas Investment Regulations 1995.
- 4 Both Ministers hereby delegate to the Overseas Investment Commission and its staff, in relation to Part III of the Regulations:
 - a. their powers to determine land applications involving land of less than 10 hectares which do not involve sensitive land (being land in the Schedule of the Act involving islands, foreshores, lakes, reserves and historic areas) where the cost of the land is less than \$1 million.
 - b. their powers to determine land applications which are part of a purchasing programme previously approved in principle by them under the new Regulations or which has previously been approved under the Overseas Investment Regulations 1985 or the Land Settlement Promotion and Land Acquisition Act 1952 where each acquisition is consistent with any conditions established for the programme.
- 5 We also delegate the following related matters:
 - a. our powers under Regulation 12 to specify information and particulars to be supplied by applicants;
 - b. our powers in Regulations 14 and 16 in respect of applications that have been delegated;
 - c. our powers in Regulation 16 in respect of adding entities to or deleting entities from the Schedules to the Overseas Investment Exemption Notice 1995;
 - d. our powers in Regulation 17 in respect of any matter delegated;
 - e. our powers in Section 15 of the Act in respect of applications that have been delegated;
 - f. in each case where the power has been delegated, the power of delegation under section 16 of the Act.

Criteria

- 6 In considering any applications under delegation the Commission must take into account the matters provided for in section 14A of the Overseas Investment Act 1973.

Rt Hon W F Birch
Minister of Finance

Denis Marshall
Minister of Lands

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(1) Statutory (legislative) requirements

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

Citation	Summary
Overseas Investment Act 1973	Establishes the OIC, sets up the administrative structure,

Citation	Summary
	outlines the functions and powers of the Commission. The OIC is the Government appointed agency responsible for administering New Zealand's foreign investment policy.
Overseas Investment Regulations 1995	Defines the circumstances in which a foreign entity needs to gain the approval of the OIC prior to making an investment in New Zealand.
The Fisheries Amendment Act No.34, 1986	Contains provisions to restrict the purchase of New Zealand fishing quota by foreign entities.

(2) Investment Review and Approval

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

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

Proposals	Guidelines/conditions
Merger: 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 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

Sector	Guidelines/Conditions
	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

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

The OIC does not use application or approval forms. Application is made by letter. The Commission produces a “guide” which sets out the information required by the Commission in order for it to consider an application.

Investments by foreigners that require the consent of the OIC are assessed on a case by case basis in terms of the criteria as set out in section 14(A) of the Overseas Investment Act 1973. For example, the development of new export markets or increased market access is one of the economic benefit criteria. The general policy approach is based on the premise that proposals should be approved unless good reason exists in terms of the legislative criteria to refuse an application. Over the eight calendar years 1990-1997 approval was given to 1,866 applications, compared with 13 applications refused.

The OIC assesses investments in all sectors. The domestic private sector has neither a formal or informal role in screening. The investment is determined on its own benefits.

The Overseas Investment Commission “Criteria for Overseas Investment” and a description of land requiring consent under the Overseas Investment Regulations 1995 appear below.

CRITERIA FOR CONSENT

The principal Act is hereby amended by inserting, after section 14 (as substituted by section 7 of this Act), the following section:

A.(1) Where, pursuant to this Act or regulations made under this Act, the approval, consent or permission of the Minister or the Minister and the Minister of Lands, as the case may be, is required to an overseas person undertaking an overseas investment, the Minister or the Minister and the Minister of Lands shall grant that approval, consent, or permission only if satisfied that:

- (a) The overseas person has, or, where the overseas person is not an individual, the individuals exercising control over the overseas person have, business experience and acumen relevant to that overseas investment; and
- (b) The overseas person has demonstrated financial commitment to the overseas investment; and
- (c) Every person who will have not less than a 25% beneficial interest in the overseas investment is, or, where the overseas person is not an individual, the individuals exercising control over the overseas persons are, of good character and no such person is a person of the kind referred to in section 7 (1) of the Immigration Act 1987; and

- (d) Where the application for such approval, consent, or permission relates to the ownership or acquisition of, or control over:
- (i) Land or any estate or interest in land in New Zealand; or
 - (ii) Securities or rights or interests in securities of any company or body corporate that owns or controls directly or indirectly any land or any estate or interest in land in New Zealand,-

the overseas investment would be in the national interest.

(2) For the purposes of subsection (1)(d) of this section, the Minister and the Minister of Lands shall have regard only to the following matters:

- (a) Whether the overseas investment will or is likely to result in:
- (i) The creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or
 - (ii) The introduction into New Zealand of new technology or business skills; or
 - (iii) The development of new export markets or increased export market access for New Zealand exporters; or
 - (iv) Added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
 - (v) The introduction into New Zealand or additional investment for development purposes; or
 - (vi) Increased processing in New Zealand or New Zealand's primary products:
- (b) Where land is currently being used for agricultural purposes,-
- (i) Whether experimental or research work will be carried out on the land;
 - (ii) The proposed use of the land by the applicant;
 - (iii) If the overseas person is an individual, whether the overseas person intends to farm the land for his or her own use and benefit and is capable of doing so:
- (c) Whether the overseas person or, if the overseas person is not an individual, any individual who exercises control over the overseas person, intends to reside permanently in New Zealand:
- (d) Such other matters as may be prescribed:
- (e) Such other matters as the Minister and the Minister of Lands, having regard to the circumstances of the particular overseas investment, think fit.

Land as Defined in The First Schedule Of The Overseas Investment Regulations 1995

Land over 5 hectares

Any land that, together with any associated land, exceeds 5 hectares in area.

Islands

Any land that is, or forms part of, an island (other than an island listed below).

Any land that, together with any associated land, exceeds 0.4 hectares in area and that forms part of the following is: Arapawa Island, Best Island, Great Barrier Island, Great Mercury Island, Jakkett Island, Kawau Island, Matakana Island, Mayor Island, Motiti Island, Motuhua Island, Rakino Island, Rangiwaia Island, Slipper Island, Stewart Island, Waiheke Island, Whanganui Island, any land that is, or that forms part of, any island of the Chatham Islands.

Foreshores, lakes and reserves

Any land that, together with any associated land, that exceeds 0.4 hectares in area and that includes or adjoins:

- (a) The foreshore; or
- (b) Any lake the bed of which exceeds 8 hectares in area; or

- (c) Any land that exceeds 0.4 hectares in area and is:
- (i) provided as a reserve;
 - (ii) held for a conservation purpose;
 - (iii) deemed a heritage or historic area.

Other land

Any land, other than land specified above if the consideration for the land exceeds \$10,000,000.

Associated land means any land that is contiguous or adjacent to the land being acquired or, where that land forms part of an island, any land on the same island in which any estate or interest is owned or controlled by that overseas person or any overseas person.

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

<p>The Secretary Overseas Investment Commission PO Box 2498 Wellington</p>	<p>Telephone: (64 4) 471 3838 Fax: (64 4) 471 3655 Internet: http://www.oic.govt.nz E-mail: oic@oic.govt.nz</p>
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5. Average period from the formal submission of all relevant/required documentation to final approval/rejection.

The average period of time involved in processing an investment application, by the Commission under delegated authority, is 10 working days or less. The average period of time involved in processing an investment application requiring Ministerial consideration is 20 to 30 working days.

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

The decisions of the Commission may be appealed through the High Court.

Agency	Address/telephone/fax
<p>High Court Of New Zealand</p> <p>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.</p>	<p>Contact the nearest High Court.</p>

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

At the Commission's discretion an application may be expedited if it can be shown that an urgent decision is required. The Commission endeavours to meet all reasonable requests in respect to application deadlines. Please note that it is difficult to expedite applications that require the joint approval of the Ministers.

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

Not applicable.

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

Agency	Address/telephone/fax	Functions
Overseas Investment Commission	PO Box 2498 Wellington Telephone: (64 4) 471 3838 Fax: (64 4) 471 3655 Internet: http://www.oic.govt.nz E-mail: oic@oic.govt.nz	Post consent monitoring

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

In recent years successive governments have tended to continue the basic policies of their predecessors. Recent changes to the regime have essentially been effected through modification of the existing legislative and regulatory framework. The creation of new legislation or the amendment of existing legislation is carried out subject to the usual constitutional, consultative and political processes. Significant changes to the foreign investment regime would normally be at the instigation of the Treasurer (who is the minister responsible for foreign investment).

An opportunity would be available for public comment if the Overseas Investment Act were amended or revoked. As is the practice in New Zealand, law changes are published in "The Gazette".

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

Regulation of foreign direct investment is applied only at the level of the national government.

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

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

Not applicable.

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

Not applicable.

3. NATIONAL TREATMENT

1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (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)
Financial Reporting Act	Non-exempt companies must comply with certain financial reporting standards. Overseas companies are non-exempt, along with issuers, companies with subsidiary companies, companies that are subsidiaries, companies with assets over \$450,000 and

	companies with an annual turnover of over \$1 million.
Sectors that have special conditions are detailed in section B(1)(ii)(2).	

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

Domestic capital markets are open to non-residents and there are no restrictions against offshore financing, inter-company loans, or insurance of corporate bonds other than normal securities market legislation and taxation requirements.

4. REPATRIATION AND CONVERTIBILITY

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

Not applicable.

2. Briefly description of the foreign exchange regime.

The New Zealand dollar has floated freely since March 1985. There has been no intervention since this date.

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

Not applicable.

5. ENTRY AND SOJOURN OF PERSONNEL

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

Work Visa/Permit requirements

Everyone wishing to undertake employment in New Zealand needs a work visa which enables a person to enter or re-enter New Zealand for single or multiple journeys. A work visa is an endorsement in your passport. On entry into New Zealand if you have a work visa you may be granted a work permit. A work permit is also an endorsement in your passport, which allows you to work in New Zealand. 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?

- 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.

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

See answer to section B(5)(1) above.

3. Description of regulations relating to personnel management of foreign firms, 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 Contracts Act 1991 gives employers, employees and their representatives the freedom to negotiate terms and conditions of employment directly relevant to their particular circumstances, subject to certain statutory minima. Employees also have the right under the Act to decide whether they wish to belong to a union (or other employee organisations) and if so, which one. The freedoms provided by the Employment Contracts Act have been underpinned by clear statutory protection for employees. These protections are provided by both the Employment Contracts Act and a range of supporting legislation. The protections are generally known collectively as the minimum code, and guarantee all employees:

- I. Access to personal grievance procedures in the event that an employee believes they have been unjustifiably dismissed; subject to unjustifiable action by their employer which disadvantages them in their job or work conditions; suffered discrimination; been sexually harassed; or, subjected to duress relating to their membership or non-membership of an employee's organisation (Employment Contracts Act 1991);
- II. Access to dispute procedures to resolve disputes over the interpretation, application, or operation of an employment contract (Employment Contracts Act 1991);
- III. Three weeks annual leave after twelve months of service (Holidays Act 1981);
- IV. Eleven statutory holidays per year if the holiday falls on a day on which the employee would otherwise have worked (Holidays Act 1983);
- V. Five days special leave for sickness or bereavement or domestic reasons after six months of service for the next 12 months (Holidays Act 1983);

- VI. A minimum wage for adult employees (aged 20 years or more) of \$7.00 per hour, \$56 for an eight hour day, or \$280 for a 40 hour week. A minimum youth wage (for 16 - 19 year olds) of \$4.20 per hour, \$33.60 for an eight hour day, or \$168 for a 40 hour week (Minimum Wage Order 1997 made pursuant to the Minimum Wage Act 1983).ⁱ
- VII. Protection from deductions from wages without the written consent of the employee (Wages Protection Act 1983);
- VIII. Equal pay for men and women doing the same or substantially similar work (Equal Pay Act 1972);
- IX. Unpaid parental leave of up to twelve months on the birth or adoption of a child (Parental Leave and Employment Protection Act 1987);
- X. The right to enforce an employment contract through the Employment Tribunal (Employment Contracts Act 1991);
- XI. Redress from the Employment Tribunal if the employment rights provided by their contract or legislation are found to have been breached (Employment Contracts Act 1991);
- XII. Access to the Employment Court to have either part or all of their employment contract set aside if they believe that their employment contract contains harsh and oppressive conditions or was obtained in a harsh and oppressive manner (Employment Contracts Act 1991);
- XIII. The right to be represented in matters relating to their employment (Employment Contracts Act 1991); and
- XIV. The right to belong or not to belong to an employee's organisation (Employment Contracts Act 1991).

Information about these provisions is made issued free of charge by the Industrial Relations Service of the Department of Labour on request, and through a range of publications issued free of charge by the Industrial Relations Service on request. The Labour Inspectorate of the Department of Labour has the power to investigate alleged breaches and enforce the rights and obligations set out in the Holidays Act 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.

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

Law

The domestic labour laws relating to labour disputes/relations are contained in the Employment Contracts Act 1991. As noted above all firms operating in New Zealand operate within the same legal and economic framework.

Summary

A strike is lawful if it relates to the negotiation of a collective contract or health and safety issues. A strike is unlawful during the term of a collective contract, or in relation to personal grievances, disputes about the interpretation, application or operation of a collective contract, freedom of association or whether a collective contract will bind more than one employer. Where a strike is not lawful, an employer can apply for an injunction to stop a strike or prevent a threatened strike. In addition, an employer can seek a compliance order to ensure the terms of an injunction are complied with. An employer may also apply for an award of damages along with, or in addition to, applying for an injunction.

Firms can obtain this protection by applying to the Employment Court. The Employment Court, which was established along with the Employment Tribunal under the Employment Contracts Act, has sole jurisdiction over all remedies in relation to unlawful strikes.

The Employment Contracts Act also requires that all employment contracts must contain effective procedures for the settlement of disputes about the interpretation, application or operation of the contract(s) and effective procedures for dealing with personal grievances. As noted above, this ensures that all parties have access to disputes and personal grievance procedures. The Act contains standard procedures which are included in any contract which does not provide effective alternative disputes or personal grievance procedures. If the dispute or personal grievance is not resolved by discussion between the parties, the parties are able to access the Employment Tribunal, which may provide mediation and/or adjudication assistance in resolving the dispute or personal grievance.

6. TAXATION

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

Non-residents can engage in a wide range of economic activities in New Zealand, directly or indirectly, through various mechanisms including companies, partnerships and trusts. Non-residents are subject to New Zealand tax on all New Zealand sourced income.

Equity Investment

There are two distinct layers of New Zealand tax that can be imposed on the income that non-residents derive from equity invested in a New Zealand company:

- the New Zealand company pays 33% company tax on the profit made by the company; and
- non-resident withholding tax (NRWT) is applied to any dividends distributed offshore to the non-resident.

Dividends paid by a company, unlike interest, are not deductible in determining its tax liability. Therefore, the income that non-residents derive from equity investments in New Zealand can be subject to both the rate of company tax when that income is derived by a New Zealand company in which they have invested and the rate of NRWT when that income is distributed in the form of dividends.

A New Zealand resident shareholder in a New Zealand company receives credit for company tax through the imputation system. For non-resident shareholders, relief for double taxation is provided through the foreign investor tax credit described below.

NRWT on dividends

The rate of NRWT applying to dividend income is 30%, except where the non-resident resides in a country with which New Zealand has negotiated a double tax agreement (DTA). The usual rate of NRWT on dividends set by DTAs is 15%. Additionally, the NRWT rate on payment of fully-imputed dividends is 15% regardless of whether a DTA applies.

The amount of NRWT on dividends is reduced, however, by credits for foreign dividend withholding payments levied on foreign sourced dividends derived by New Zealand resident companies.

Foreign Investor Tax Credit

The foreign investor tax credit (FITC) regime provides a credit of company tax to New Zealand companies with non-resident shareholders. The credit is calculated as 67/120 of the imputation credits attached to the dividends paid to non-resident shareholders. The credit is paid to companies, which are

required to pass it on to non-resident shareholders through the payment of a supplementary dividend. The supplementary dividend is also subject to NRWT.

With the FITC, the maximum total New Zealand tax (combining company tax and NRWT) on non-resident equity investment in New Zealand is 33%, the same as the standard New Zealand company tax rate.

Taxation of Income from "Direct" Investment

Non-residents can engage in direct investment in New Zealand either through a branch (that is, an unincorporated "fixed establishment") or a New Zealand subsidiary.

Non-residents may establish a branch of their business operations in New Zealand. For example, a non-resident individual can operate a branch factory in New Zealand. Similarly, a non-resident company can establish an office in New Zealand to administer its operations here.

A New Zealand branch of a non-resident company is taxed at 33% of its New Zealand-sourced income. There is no additional tax for repatriation of branch profits.

Non-resident investment may also take place by the establishment by a foreign company of a subsidiary in New Zealand. New Zealand tax law does not "look through" a company to its shareholders to determine where a company is resident. A subsidiary of a non-resident company is treated as a New Zealand resident and taxed by New Zealand on its world-wide income if:

- The subsidiary company is incorporated in New Zealand; or
- It has its head office in New Zealand; or
- It has its centre of management in New Zealand; or
- Control of the company by its directors is exercised in New Zealand.

In addition, interest or dividends paid from a New Zealand resident subsidiary to its offshore parent would generally be New Zealand sourced income derived by the parent and subject to the tax treatment discussed in this section.

Debt Investment

Generally, interest income derived by a non-resident from debt investment in New Zealand *will be deemed to have a New Zealand source and therefore be subject to NRWT* in cases where a non-resident: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 minimum rate of withholding tax on dividends is 15% of the gross amount of the dividend, and on interest and royalties the maximum rate is generally 10% of the gross amount of the payments. A non-resident from a country with which New Zealand has a DTA is taxed on business profits only if it has a permanent establishment in New Zealand.

Goods and Services Tax

Goods and Services Tax (GST) is a broadly based consumption tax on goods and services supplied in New Zealand and is chargeable by registered persons on taxable supplies at the rate of 12.5%. Registered persons are able to deduct input tax in calculating GST payable. GST applies to all goods and services supplied in New Zealand other than exempt financial transactions and domestic housing and rental accommodation. Exports of goods and certain services are zero-rated.

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

1. Brief description of performance requirements that could impose limits on trade and investment and indicate any TRIMS.

There are no specific performance requirements under Overseas Investment Regulations, although the Commission does request more detailed information for investment applications involving a “specified business”. The criteria used are the same however. The Commission is able to impose conditions on any consent given. Conditions normally imposed:

- 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

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

Not applicable.

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

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 BEHAVIOUR

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

Not applicable.

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

Competition policy in New Zealand derives from the Government’s overall economic objective for the economy. That objective is to establish, implement and monitor legislative frameworks for the fair and efficient conduct of business and the operation of markets, which rewards innovation, promotes efficiency and enhances investor confidence.

The Government’s approach for achieving this objective is to rely on market processes and competition where possible. Thus, as a general rule, the Government avoids statutory and regulatory barriers to entry and does not intervene in detailed decisions regarding production, investment and resource allocation.

In order to protect the process of competition from conduct that does not support these overall efficiency aims, New Zealand has a modern prohibition-model competition law, the Commerce Act 1986.

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

New Zealand has a comprehensive system of protection for intellectual property rights both through legislation – patents, trade marks, industrial designs, plant variety rights and copyright (which includes related rights) and through the common law. In addition, competition and fair trading legislation provides additional protection for intellectual property rights.

Enforcement of intellectual property rights is undertaken primarily by:

- Intellectual property rights holders enforcing their rights, through the courts if necessary.
- Customs action in respect of imported goods which may be infringing the intellectual property rights of another party or where goods are counterfeit.

In addition, there can be action by the government to maintain the integrity of the intellectual property rights system, for example, where there is a claim of registration or grant of an intellectual property right when in fact none exists.

Foreign interest in investment is likely to be encouraged by some recent developments in respect of New Zealand's system of intellectual property rights protection:

- In 1994 new copyright, layout designs, and geographical indications legislation was passed. The new Copyright Act reflects a comprehensive reform of the legislation in this area as well as meeting TRIPS Agreement obligations. Amendments were also made to other legislation including that on patents and 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

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

Laws/regulations

None except the provisions in the Investment Protection and Promotion Agreements with China and Hong Kong, China.

Application and function

See section E(1).

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

Not applicable.

2. SETTLEMENT OF DISPUTES

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

There are a variety of dispute settlement procedures available in New Zealand, all of which are available equally to New Zealanders and non-New Zealanders. Investors and potential investors can appeal decisions of the OIC to the High Court. They can also seek judicial review of Minister's decisions and have access to non-litigious methods of dispute resolution.

In New Zealand, statutory arbitration procedures are contained in the Arbitration Act 1908. The common law is also relevant in several respects. Provision for the arbitration and mediation of disputes has also been made in the Employment Contracts Act 1991 and the Resource Management Act 1991.

There are several other private dispute resolution organisations now active in New Zealand such as LEADR (Lawyers Engaged in Alternative Dispute Resolution) and the Arbitrators' and Mediators' Institute of New Zealand. Both organisations can provide lists of available mediators.

Agency	Address/telephone/fax
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

2. *Signatory or accession to the International Convention on the Settlement of Investment Disputes (ICSID).*

Yes. New Zealand is a signatory to the ICSID convention.

D. INVESTMENT PROMOTION AND INCENTIVES

1. *Brief description of investment promotion programs offered at both the national and sub-national level (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.*

The New Zealand Government promotes foreign direct investment primarily through two bodies; the Ministry of Foreign and Trade Affairs (MFAT), and the Government's trade promotion agency, the New Zealand Trade Development Board (Tradenz).

Other Government agencies, such as the Tourism Board and the Ministry of Forestry, are also active in promoting foreign investment in their respective sectors.

Generic Investment Promotion

MFAT is responsible for generic promotion of New Zealand as a destination for foreign investment. Resources are available from New Zealand's overseas posts and from MFAT. Contact details are:

Ministry of Foreign Affairs and Trade
Economic Division
Private Bag 18 901
Wellington
Telephone: (64 4) 494 8500
Fax: (64 4) 499 8518

The Ministry of Forestry provides forestry investment information for individuals and companies wishing to invest in the New Zealand forest industry (growing and processing). The Ministry of Forestry also participates at international events and provides guidance to international investors. Contact details are:

Ministry of Forestry Investment Unit
100 Symonds St
CPO Box 39
Auckland
Telephone: (64 9) 303 3269
Fax: (64 9) 303 2558

Investor referral service

Tradenz's investment services include an investor "help desk", providing information on business sectors in New Zealand, investment procedures and a comprehensive catalogue of investment opportunities. The help desk also provides a referral system which will introduce individual investors to investment professionals and local economic development agencies in New Zealand best able to facilitate this interest. These services may be accessed directly through any New Zealand diplomatic mission or Tradenz regional office. Contact details are:

Tradenz Investment Services
PO Box 10341
Wellington
New Zealand
Ph: (64 4) 499 2244
Fax: (64 4) 473 3193

Or nearest New Zealand diplomatic post.

Assistance to Small Businesses

The BIZ – Business Development Programme programme, introduced in 1999, aims at helping small to medium sized enterprises (SMEs) build their business capability. The programme will deliver a series of courses, workshops and initiatives aimed at:

- improving the performance of SMEs in an increasingly competitive business environment;
- promoting understanding of the value of seeking relevant external assistance.
- Encouraging SMEs to take responsibility for seeking out advice and assistance, as well as improving their capabilities; and
- improving the coverage and range of management assistance available to SMEs.

Contact details are:

Business Information Service:
32 BIZinfo Centres nationwide
Phone: 0800 4 BIZ INFO
Website: <http://www.bizinfo.co.nz>

BIZ – Business Development Unit
Operations and Risk Management Branch
Ministry of Commerce
PO Box 1473
Wellington
Fax: (64 4) 474-2992

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
East Coast Rescue Programme	Grants are available on a case by case basis for landowners in the Gisborne District Council region to plant forest on eroding and erodable land. There is no distinction between New Zealanders and non-New Zealanders.	Randolph Hambling PO Box 2122 Gisborne Phone: (64 6) 867 3158 Fax: (64 4) 867 9843

The New Zealand Government does not underwrite private sector risk or offer any other fiscal incentives to overseas investors.

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

Not applicable.

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

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

Agreement	Provisions
A Trade and Investment Framework Agreement with the USA; 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 part of the package of the Uruguay Round negotiations.	
<i>Friendship commerce and navigation treaties</i>	None.
<i>Bilateral investment treaties</i>	(a) Transparency: If the domestic investment regime in the partner

Agreement	Provisions
<ul style="list-style-type: none"> • an Investment Protection and Promotion Agreement with China; • an Investment Protection and Promotion Agreement with Hong Kong; 	<p>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.</p> <p>(b) Repatriation: A key objective is to ensure that investors are permitted to repatriate the capital and returns from any offshore investments.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
<i>Regional or sub regional investment treaties</i>	None.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Historically, inflows of investment capital have exceeded outflows from New Zealanders. This trend has continued in recent years.

The Department of Statistics (Statistics New Zealand) collects data on inward and outward investment as part of its Balance of Payments series.

The latest available statistics (31 March 1998) show that levels of foreign investment in New Zealand increased from \$113.0 billion at 31 March 1997 to \$124.7 billion at 31 March 1998, mainly due to an increase in direct investment (up \$10.3 billion). The level of direct investment has increased to \$50.8 billion at 31 March 1998, almost double the level of 1993.

Net FDI was \$3.6 billion in the year to March 1998, a 30% increase from net FDI recorded in 1997. In 1997 and 1998 net FDI flows were 3.2% and 4.1% of GDP respectively. Net DIA to March 1998 was \$641 million, compared with disinvestment of \$2.4 billion to March 1997.

The average FDI flow to New Zealand over the 5 years to 1998 has been 5% of GDP. However, the 1997 and 1998 figures dropped to 3% and 4% respectively of GDP. DIA averaged 1.9% of GDP. During this period, FDI and DIA in New Zealand were respectively second and seventh highest among OECD countries as a percentage of GDP.

Portfolio investment (FPI) in New Zealand as at 31 March 1998 was a net disinvestment of \$1.8 billion compared with a net investment of \$2.2 billion for 1997. The large disinvestment occurred in 1998 due to reduced non-resident holdings of government bonds and by a general reduction in the total level of treasury bills available on the market. Over the last five years, portfolio investment in New Zealand overall has been on a downward trend, and became disinvestment in 1998.

New Zealand portfolio investment abroad (PIA) to 31 March 1998 was a net \$2.9 billion. This compares with \$0.7 billion net outflow for 1997.

Table 1: Net Foreign Investment in New Zealand and New Zealand Investment Abroad (\$NZ million)

	FDI	DIA	FPI*	PIA*
1984/85	456	349		
1985/86	745	166		
1986/87	402	949		
1987/88	238	938		
1988/89	725	226		
1989/90	2824	3961	158	89
1990/91	2932	2546	577	219
1991/92	2026	728	-396	82
1992/93	4405	-2093	1087	3
1993/94	4449	3702	5645	653
1994/95	4538	3400	5582	699
1995/96	4100	2662	1459	-57
1996/97	5360	-1827	3205	576
1997/98	2766	-2424	2218	670
1998/99	3609	641	-1770	2875

Source: Statistics New Zealand balance of payments statistics (March years)

* Series begins in 1990

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

Sources FDI	Destination FDI
Net FDI Inflows to New Zealand 1993-1998 (total \$24.4 billion) in percentage terms: Australia: 44% North America 24% United Kingdom 20% Singapore 5% Japan 1%.	Net FDI Outflows from New Zealand 1993-1998 (total \$2.4 billion) by value: Australia 4.2 billion The Caribbean \$834 million Hong Kong, China \$208 million Singapore \$208 million Netherlands -\$1.4 billion Canada -\$469 million.

Source:

Statistics New Zealand; *Hot of the Press* (1998)

International Investment Position - 30 Oct 98;

Direct Investment Statistics by Country and Country Groupings - 19 Nov 98;

Please note that Statistics New Zealand up-dates on FDI figures are available at <http://www.oic.govt.nz>.

ⁱ 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.

ⁱⁱ 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.

ⁱⁱⁱ 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.

^{iv} 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.

^v Because interest is deductible in determining company tax, there is no net tax imposed on profits distributed as interest.

^{vi} 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.

^{vii} 33% company tax less FITC credit which amounts to approximately 12% of distributed profits.

^{viii} 2% AIL less effect from 0.66% company tax deduction for net 1.34% effective cost of AIL.

^{ix} 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%.

^x 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 FOREIGN INVESTMENT REGIME

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

Introduction

Papua New Guinea (PNG) possesses tremendous potential for development. This potential provides the astute overseas investor with some excellent business opportunities in an uncrowded business field.

PNG's vast natural resources mean that the main opportunities for investment are in the primary sector (mining, petroleum, forestry, fisheries and agriculture).

The country has vast reserves of copper, gold, oil and gas, and further mineral exploration is continuing. There are opportunities in agricultural investment of a type common to other developing countries. There is room for upgrading production of tropical tree-crops by replanting old colonial plantations and spreading into new areas. The seas around the coasts are rich in tuna, as well as other common species, and provide considerable scope for development. The country has vast reserves of virgin forest, containing large quantities of little known but high quality hardwood timber. There are specialised opportunities for manufacturing, particularly for the downstream processing of PNG's natural resources.

Government Policy

Papua New Guinea encourages and welcomes foreign investment. The Government of Papua New Guinea has recently 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 investment incentives and establishing a one-stop-shop for investment in the Investment Promotion Authority (IPA).

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

The National Investment Policy (August 1998)

The 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 is needed in order to provide the **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 is needed in order to make investment policy consistent with:

- The Government's overall strategy for development – as set out in the Medium Term Development Strategy (MTDS);
- The Government's on-going commitment to greater participation in the global economy, through trade liberalisation – exemplified by Papua New Guinea's membership of 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 a 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 and 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 organisations, 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 to establish the IPA as the co-ordinating agency and focal point for investment promotion and facilitation;
- 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;
- 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;
- Review investment procedures, under specific pieces of sectoral legislation and make the procedures and requirements consistent with a liberal approach to investment;
- Amend the Employment Act to allow enterprises flexibility in payment of piece-rate wages, particularly for export-oriented industries;
- Reduce the cost of doing business, by improving the supply of infrastructure and through greater participation of the private sector in infrastructure;
- Improve domestic availability of skilled labour and management, by promoting the delivery, both public and private, of technical and vocational education;
- Increase incentives for exports, by streamlining and expediting customs clearance and aligning procedures with the new simplified tariff structure.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

1. *Details of proposals and sectors that are/are not subject to screening.*

2. 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.

(1) Investment Review and Approval

The Investment Promotion Authority (IPA) has been created by legislation in recognition of PNG's need to generate more rigorous investment activity. The IPA is tasked with the promotion and facilitation of foreign and domestic 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, as well as lobbying on behalf of investors to obtain necessary approvals.

All businesses must be registered with the Registrar of Companies (at the IPA). In addition foreign businesses must obtain an investment approval in the form of a certification for the Business and Investment Facilitation Division at IPA. Foreign Businesses are defined as those with 50% or more foreign ownership.

Government Departments in different economic sectors have their own procedures for approving foreign investment in their field of responsibility. However, the IPA will provide investors with all relevant information and contacts and facilitate in the approval process.

Mining and Petroleum

For projects in the mineral and gas sectors, the Government has initiated the Development Forum process. This approach engages local landowners, provincial and national government representatives, and the developer in a co-operative process aimed at arriving at agreements that serve all interests and thereby guaranteeing the stability and security of a project.

The relevant stages of the approval process for the petroleum sector are summarised in the table below:

Stage 1	Application for Petroleum Exploration License (PPL) from the Department of Petroleum and Energy. Negotiation and execution of Petroleum Agreement
Stage 2	Exploration phase, from reconnaissance to definition of a commercially viable project, including declaration of location.
Stage 3	Application for Petroleum Development License (PDL) and other licenses from the Department of Petroleum and Energy
Stage 4	Negotiation of Memoranda of Agreements with Provincial and Local-Level Governments and project area landowners.
Stage 5	Granting of PDL and other licences leading to the construction and operation of projects.

Forestry

Foreign enterprises interested in the forestry sector are required to register with the PNG Forest Authority. The issuance of log export licences come under the control of the Department of Foreign Affairs and Trade on the recommendation of the Minister for Forest, who then issues an Export Permit.

Fisheries

Foreign investors interested in the fisheries sector are required to apply for a Fishing Licence with the National Fisheries Authority. Those interested in exporting fish are also required to apply for an Export Licence from the Fisheries Authority.

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

Copies of the relevant applications for certification and variation can be obtained from the IPA.

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

Agency	Address
Investment Promotion Authority Attention: Business and Investment Facilitation Division	PO Box 5053 Boroko, NCD Papua New Guinea Tel: (675) 321 7311 Fax: (675) 321 2819 / (675) 320 0262

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

IPA pursues strict quality controls and will process applications for foreign business certificates within 35 working days.

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

In the first instance, the IPA is the relevant agency to contact with regard to queries or complaints concerning applications for investment approvals.

In respect to approval procedures contained in the Investment Promotion Act, investors may appeal to the Minister for Commerce and Industry if their investment proposal is rejected by the IPA Board or if the investor objects to any imposed terms and conditions. The Minister is required to respond to the appeal within 35 days. IPA must then comply with the Minister's direction.

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

All applications should provide complete and accurate information as required.

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

Complaints may be lodged with the IPA, however complaints relating to specific sectors should be lodged with the agencies concerned (addresses are contained in the Business Guide to PNG or can be obtained from IPA.)

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

The agencies are:

- Investment Promotion Authority
 - Department of Foreign Affairs and Trade
 - Department of Employment and Youth
 - Bank of Papua New Guinea
- (Addresses are contained in the Business Guide to PNG or can be obtained from IPA.)

10. *Opportunities for comment (foreign and domestic) on existing foreign investment*

Comments can be submitted through:

- Chambers of Commerce and Industry

- Chamber of Mining and Petroleum
- Manufacturer's Council
- Business Council of PNG
- Other related NGOs on sectoral interests

(Addresses are contained in the Business Guide to PNG or can be obtained from IPA.)

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

Approval of land is a National Government Function under the auspices of the National Land Board and Land Titles Commission involving customary and alienated land. Further inquiries can be made through IPA.

(2) Statutory Requirements

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

Legislation

Citation	Summary
Investment Promotion Act 1992	1. Promotes and facilitates investment. 2. Certifies foreign enterprises. 3. Administers legislation relating to businesses.
Companies Act 1997	Provides guidelines and registration procedures for all companies conducting business in Papua New Guinea.
Trade Marks Act	Allows for the registration and protection of trademarks.
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	Provide 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.
National Institute of Standards and Industrial Technology Act 1993	Establishes and coordinates a National Standards System in PNG that is consistent with international Primary Measurement Standards and maintains harmony and transparency with the International Standards Organisation.
Income Tax Act 1959	Contains tax laws and administers incentives for some sectors.
Value Added Tax Act 1998	Sets out the law governing the VAT.
Customs Act (101)	Sets out the law 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.
Employment of Non-Citizens Act	Administered by the Department of Industrial Relations containing regulations on restricted and unrestricted occupations and the issuance of work permits.
PNG Migration Act 1978	Containing regulations and guidelines on entry by non-citizens.
Mining Act 1992	Provides regulations and guidelines on applications for mining

Citation	Summary
	tenements.
Oil and Gas Act 1998	Provides the licensing and regulatory regime governing the exploration for and production of petroleum (including oil and gas).
Forestry Act 1991	Contains guidelines and regulations for enterprises intending to, or actively participating in this sector.
Fisheries Management Act 1994	Provides powers for licensing and regulation of fishing, fish exports and management of fisheries resources.
Land Registration Act 1981	Provides for the registration of land
Land Act 1996	Provides for the transfer of titles and leases

Company Structure

Business operations in Papua New Guinea may be conducted through the normally recognised types of commercial enterprise.

Company Legislation and Administration

The laws relating to companies in PNG are contained in the Companies Act 1997. The Registrar of Companies administers the requirement of the Act. The Government formulates policy in regard to changes in the legislation and the courts decide on any questions of law.

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

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

Not applicable

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

Not applicable

3. NATIONAL TREATMENT

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

Reserved Activities

Certain business activities are restricted to citizen and national enterprises. However, this list is currently under review and is being phased out.

A list of Reserved Activities can be obtained from the IPA.

Access to Land

Whilst land is abundant, it is relatively under utilised for much-needed economic activities. Papua New Guineans own 97 % of land in communal tenure.

Government has acquired land from customary landowners; either for its own use or private development. This alienated land is in urban areas or is in the form of plantations.

Under current arrangements, customary and alienated land will not be sold but leased under conditions and for long term periods, however this does not generally present any problems for investors.

In order to facilitate access to land, the Government has developed an Industrial Centres strategy. There is currently an industrial centre Lae (Morobe Province) and one under construction in Kokopo (East New Britain Province.)

Investors involved in manufacturing operations will not usually face difficulties with land availability. Those involved in resource or large agricultural projects should appreciate that access to land may be difficult. In such cases investors should approach Government for assistance.

Further information on Industrial Centres can be obtained from the IPA.

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

Refer to section of B.5.2 on the Foreign Exchange Regime.

4. REPATRIATION AND CONVERTIBILITY

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

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.

2. Brief description of the foreign exchange regime.

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, rather than commercial banks, deals with all exchange controls relating to the mining, 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 the non-resident shareholder's funds; defined as retained profits, paid up share capital and overseas borrowing. Such domestic borrowing is reviewed annually.

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

Taxation clearance certificates are not required for the purchase of goods and services, but are required for the transfer of capital, or payment of dividends in excess of K50,000 per calendar year. The exception

to this rule is the transfer of fund to tax haven (again only for the above purposes), when a clearance certificate is required regardless of the amount to be remitted.

5. ENTRY AND SOJOURN OF PERSONNEL

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

Papua New Guinea welcomes people from overseas and the Department of Foreign Affairs facilitates entry, offering a variety of permits to meet the different needs of non-citizens.

The main types of entry permit are summarised in the table below.

Visitors Entry Permit	Tourists 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 Port Moresby International Airport
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. Applicants are required to obtain a Work Permit from the Department of Employment and Youth.

The Immigration Section of the Department of Foreign Affairs will issue residency or employment visas:

- To foreign company directors or shareholders provided they can produce an IPA certificate in the name of the company concerned; or
- To foreign owners of a business provided they can produce an IPA certificate in their own name; and
- They must also provide produce proof of the registration of a company or business name as the case may be.

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

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 Prohibited List of Occupations administered through the Department of Employment and Youth.

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

Basic conditions of employment are covered by the Employment Act and minimum wages of pay are determined by the Minimum Wages Board; currently K22.96 (US\$9.65) per week. However, this is below the market wage rate in urban areas, where wages generally start at K35 (US\$14.70) per week.

Employers are required to take out a policy of insurance for all employees and a compulsory system of super annuation fund payments has been introduced, through the National Provident Fund Act, for companies with more than 25 staff.

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

The Department of Employment and Youth administers a range of laws which cover all aspects of employment, recruitment, dispute settlement, arbitration and so on.

6. TAXATION

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

Income Taxes

Any person or business, employing one or more employees in PNG and paid more than K123 per fortnight must register as a Group Employer with the Internal Revenue Commission.

The rates of personal income tax are as follows:

Resident (Kina)	Non-resident (Kina)	Marginal Tax Rate
0-4,000		0%
4,000-5,000	0-2,000	10%
5,000-10,000	2,000-7,000	20%
10,000-20,000	7,000-17,000	30%
20,000-60,000	17,000-60,000	35%
60,000-80,000	60,000-80,000	37%
80,000-100,000	80,000-100,000	42%
Exceeding 100,000	Exceeding 100,000	47%

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	35%
Resident mining companies with mining lease	25%
Petroleum companies , resident and non-resident	50%
Gas companies , resident and non resident	30%

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, Republic of Korea, Germany and Fiji.

Those under consideration listed in order of priority: USA, Japan, New Zealand, Philippines, Indonesia, Chinese Taipei and Thailand.

9. INVESTOR BEHAVIOUR

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

Not applicable

10. OTHER MEASURES

1. Brief outline of the competition policy regime

Papua New Guinea is in the process of drafting a Competition Policy.

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

Papua New Guinea currently has no copyright law, although trademarks can be registered with the Registrar of Trademarks at the IPA. Draft legislation on Intellectual Property Rights has been finalised and is expected to be tabled in Parliament.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

The Investment Promotion Act guarantees that the property of a foreign investor will not be nationalised or expropriated; except in accordance with the law, for a public purpose (defined by law). In such cases compensation will be paid.

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

Not applicable

2. SETTLEMENT OF DISPUTES

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

The IPA administers the Investment Promotion Act in respect of the Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes.

2. Signatory or accession to the International Convention on the Settlement of Investment Disputes (ICSID)

The Investment Disputes Convention Act seeks to encourage greater flows of international investment by providing facilities for the conciliation and arbitration of disputes between governments and foreign investors. Papua New Guinea recognises this Convention under the Investment Promotion Act.

The Department of Foreign Affairs and Trade administers the Investment Promotion Protection Treaties.

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.

The Government promotes and facilitates investment through the IPA. The IPA produces, and continually updates, a wide range of information materials for the interested 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: Trade and Business News Update*, A monthly newsletter
- Sector Manuals on: fisheries, forestry, agriculture and tourism (Also available on CD-ROM)

Information on investment opportunities in PNG can also be accessed through IPA's web site at <http://www.ipa.gov.pg>.

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.

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. These include a wage subsidy provision, which is a 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.

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 plants;

Other Incentives

The other current incentives are:

- The wage subsidy

- The training levy

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

The IPA is working towards establishing a one-stop shop facility for foreign investors. This will be known as the Business and Investment Facilitation Centre.

E. SUMMARY OF INTERNATIONAL INVESTMENT AGREEMENTS

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

Agreement	Provisions
Bilateral Investment Treaties	<p>PNG has investment protection agreements with Australia, Canada, China, Germany, Malaysia, Thailand and the United Kingdom. These accord reciprocal state assurances or guarantees against nationalisation or expropriation of investment in respective territories. They also cover taxation aspects.</p> <p>PNG has bilateral fisheries agreements with Korea, Chinese Taipei, the Philippines and Vanuatu.</p>
Regional or Sub-Regional Investment Treaties	<ul style="list-style-type: none"> • South Pacific Forum – This covers treaties relating to fisheries agreements with the United States.
Trade Agreements	<ul style="list-style-type: none"> • Melanesian Spearhead Group (MSG) - provides mutual cooperation on trade and investment between PNG, Vanuatu, Solomon Islands and Fiji. • Lome Convention- a non-reciprocal agreement providing preferential access to the EU 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 change. • World Trade Organisation (WTO) - Papua New Guinea is a member of the World Trade Organisation (WTO), which is committed to removing barriers to trade. • Generalised System of Preferences (GSP) - Papua New Guinea has preferential access to the markets of developed nations for some specified goods. • Bilateral Trade Agreements - Papua New Guinea has bilateral trade agreements with Fiji and Australia.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Total foreign investment and employment (created by that foreign investment) for the years 1993-1996 are shown in the table below:

Sector	Investment (K millions)	Investment (Percent)	Employment (National)	Employment (Expatriate)
Mining and Quarrying	1,593	37	593	78
Petroleum	1,559	37	453	251
Construction	263	6	2514	240
Forestry	258	6	1,095	286
Wholesale and Retail	221	5	5,129	18
Manufacturing	101	2	2,679	167
Financial	94	2	188	129
Transport Storage and Communication	57	1	1,058	72
Business	42	1	1,337	353
Others	81	2	2,481	269
Total	4,268	100	17,527	1862

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

	1994	1995	1996	1997	1998
Western Europe	1.4	0.5	1.2	6.3	2.2
North America	16.3	3.3	2.9	55.2	17.1
Australia and New Zealand	30.1	21.5	24.0	18.5	17.2
Asia	40.8	40.6	27.4	19.5	63.3
Other	11.3	34.1	44.6	0.5	0.1
Total	100	100	100	100	100

G. CONTACTS FOR FURTHER INFORMATION

Investment Promotion Authority
 PO Box 5053, Boroko, NCD
 Papua New Guinea
 Tel: (675) 321 7311
 Fax: (675) 321 2819
 Internet: <http://www.ipa.gov.pg>
 Email: iepd@ipa.gov.pg

Department of Employment and Youth
 PO Box 5644
 Boroko, NCD
 Papua New Guinea

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

Internal Revenue Commission (IRC)
 PO Box, Port Moresby, NCD

Tel: (675) 301 3109

Papua New Guinea
Tel: (675) 322 6600
Fax: (675) 321 4249

Indirect Taxation

Papua New Guinea is committed to 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.

A VAT has many advantages over the previous system of using import tariffs to generate revenue. In particular it increases transparency and reduces distortions. Countries, which have introduced Value Added Tax, have become more efficient and more able to compete in the world market. This in turn has created more business opportunities.

The Government has embarked on a seven-year tariff reform program, commencing July 1999 with the removal of all Provincial sales taxes and the removal of import duties of 11% on thousands of household items. Most other import duties will be reduced and these have been replaced with a single rate of VAT of 10%.

Some import duties (at a reduced level) have remained to protect local industries and some luxury items are subject to excise duties.

Table 1: Time schedule for the Tariff Reform Program

	1999-2001	2001-2003	2003-2006	2006
VAT	10%	10%	10%	10%
Import Duty				
Free	0%	0%	0%	0%
Input rate	0%	0%	0%	0%
Basic rate	0%	0%	0%	0%
Intermediate rate	30%	25%	20%	15%
Protective rate	40%	35%	30%	25%
Prohibitive rate	55%	50%	45%	40%

Further information on VAT and Tariff Reform can be obtained from the IPA or the Internal Revenue Commission.

7. PERFORMANCE REQUIREMENTS

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

Not applicable

8. CAPITAL EXPORTS

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

Resident or non-resident individuals and business entities may purchase foreign currency up to K500,000 per annum for any purpose subject to taxation clearance where appropriate. Applications to enter into foreign currency transactions beyond this annual entitlement should be submitted to the Bank of Papua New Guinea.

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

Not applicable

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.*

The Peruvian Government encourages growth of national and foreign private investment, under the same conditions, in order to reach the economic development of the country. Structural reforms of the Peruvian economy, started in 1990, and enabled the establishment of a market economy where the State promotes private investment through free competition and free access to economic activities in any production sector.

Foreign investment treatment is provided with full-freedom policy measures, free access and competition in all economic activity included those entrepreneurial activities carried out before by the State. The privatization process started by the Peruvian Government has generated the increase of foreign investment between 1993 and 1998. It is also worth to mention that in the recent years, the confidence and safety climate offered by Peru to foreign investment made it possible for the channeling of important investments. Those were directed to capitalize and strengthen companies already existing in the country and to set up and generate new ones.

In the juridical context, foreign investment in Peru has an appropriate legal framework based on the non-discrimination principle. Thus, it provides security and protection mechanisms to invest through the subscription of Law Stability Agreements, and, in the external field, through multilateral and bilateral instruments. 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.

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.*

In application of the transparency principle, the Peruvian Government provides mechanisms of legal stability to foreign investment, through the approval, issuance and validity of laws, regulations and administrative guidelines on investment matters, which are publicly known and of easy access.

The legal framework in force for the treatment of foreign investment in Peru does not set any restrictions or include activities limited to national investment. Hence, foreign investors have full access to any productive activity and to different economic sectors of the country. Notwithstanding, the Political Constitution sets forth that foreign citizens are not allowed to acquire or possess under any title, within fifty kilometers from the borders, mines, land, forests, waters, fuels or energy sources, whether directly or indirectly, individually or in association, under penalty of losing, to the benefit of the State, the right thus acquired. Although, if a case of public need is expressly declared by Supreme Decree and approved by the Cabinet, then the investment is allowed.

Legal Structure for Foreign Investment Treatment in Peru is mainly based on the following laws:

Political Constitution of the State approved in 1993.

Title II on Economic Regime of the Political Constitution of Peru, sets forth free private initiative; guarantees the property right for nationals and foreigners, non-discrimination principle between national and foreign capitals, and allows foreign investment in any economic activity.

Foreign Investment Promotion Law (Legislative Decree N° 662)

It sets forth the basic legal framework that governs foreign investment in Peru. It also provides mechanisms to guarantee foreign investors law and tax stability, free availability of foreign currency, and non-discriminating treatment in order to encourage the development of foreign capital flows. The Promotion Law recognizes freedom for commerce and industry activities, as well as free exportation and importation. It establishes the types of investment, as well as the establishment of companies of any type allowed by law, and rights and guarantees granted by the State to foreign investors.

Likewise, it establishes that foreign investment shall be registered with the National Commission on Foreign Investment and Technology – CONITE, after executed.

Private Investment Framework Law (Legislative Decree N° 757)

It is the framework law for the growth of private 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.

Law for the Promotion of Private Investment in State-Owned Companies (Legislative Decree N° 674)

It appointed the Privatization Commission (COPRI) as the agency in charge of conducting the privatization program. It also outlines COPRI's duties for the implementation and execution of the privatization process of State-owned companies. Special Privatization Committees (CEPRI), in Spanish, have been created in order to work at company level. Likewise, Law N° 26250 authorizes the payment of the sale price of public companies to be privatized. The mechanism used therefore is the combination of part of the payment with cash money; and, the other part with eligible obligations (titles of external debts of short, medium and long term, indebted by the Republic of Peru, that met some requirements).

Law for the Promotion of Private Investment in Infrastructure and Public Utilities (Legislative Decree N° 758 and its Regulations, Supreme Decree N° 070-92-PCM)

It guides and regulates the promotion of private investments in infrastructure and public utilities, through a concession system which transfers to the concessionaire the construction, operation, working and administration of the works. Ownership of the works is not transferred, thus, at the end of the concession term, the property returns to the State, including the assets generated.

(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 100%). Provide details of any special conditions that apply to individual sectors.*
- (c) Indicate all application/approval forms required for screening purposes. Briefly summarize additional documentation that is required for review or approval processes.*
- (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) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?*

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

Policy and Guidelines on Administrative Procedure for Investment

No selection mechanism or performance requirement is applicable or required for foreign investment in Peru. Investments enjoying benefits from Law Stability Agreements are excepted.

Foreign investment has free access to any economic activity generating income and may freely exist in any entrepreneurial form and investment type agreed by Peruvian legislation.

The legislation in force does not establish amounts or minimum investment percentages in economic activities. In the case of investments addressed to national or foreign companies of the Financial System, the **General Law of Financial and Insurance System in force (Law N° 26702)** sets forth **minimum capital amounts to set up financial companies, banks, leasing companies and investment banks**. Likewise, it sets forth the authorization mechanism for the opening and start up of operations of financial companies (prior authorization of the **Superintendence of Banking and Insurance**).

In order to set up non-financial companies and start activities some requirements, besides the respective organization costs, are established. The requirements are: accounting requirements, operation license formalities (**mainly before Municipal Governments, Ministries of production activities such as Ministry of Industry, Tourism, Integration and International Trade Negotiations, Ministry of Agriculture, Ministry of Energy and Mines, Ministry of Fisheries**), registration with the Taxpayers Registry (**National Superintendence of Tax Administration**) and registration with other institutions (**Public Registry**, to register real estate property, corporate bodies, individuals and goods and chattels).

Administrative formalities carried out by investors with State entities are procedures characterized by elimination of administrative restrictions and delays, as set forth by Title IV of Legislative Decree N° 757.

In case of non-fulfillment of such provisions, foreign investors are entitled to resort to the following:

- **Nation's Public Prosecutor:** in case of non-fulfillment or distortions in transparency of administrative formalities, as established in Chapter III of Legislative Decree N° 757, the interested party may lodge a claim.
- **Public Ministry:** Investors from whom any public officers or employees request any grant, promise or any improper advantage in order to favor, perform or omit any procedure may report such facts to the internal control body of the respective entity and/or to the Public Ministry (Attorney General).
- **Tax and Customs Tribunals:** When appropriate, companies or their investors are entitled to object payment of tax, contribution, rates, tolls, registration fees, duties, and other rights.

National Agency of Defense of Competition and Protection of Intellectual Property – INDECOPI: It is the competent body in case foreign investors lodge a claim for actions that affect the right participation of economic agents in the market. It also considers distortions in loyal and honest competition between suppliers of goods and services, distortions in accessing or leaving the market, actions against the respect of intellectual property rights, copyrights and patent rights.

2. MOST FAVORED 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 a party which provides any exceptions 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.*

The legal framework for the treatment of foreign investment in force in Peru is based on the non-discrimination principle. Foreign investors receive equal treatment than national investors as to the establishment, growth and protection of their investments in all sectors of productive activity. At the moment, there are neither sectoral restrictions for foreign investments nor activities reserved to national investment.

The text of Bilateral Agreements on Reciprocal Promotion and Protection of Investments concluded by Peru with various countries of Europe, Asia and the Americas, include the National Treatment and Most Favored Nation principle for investments made in the country. There is no exception that could be considered as a precedent on foreign investment matters.

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.*
- (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.*

- (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:*

Legislative Decree N° 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.

Hiring of foreign personnel is supported by some mechanisms according to specific requirements of each company. Hiring of foreign personnel is based on Legislative Decree N° 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.

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*

Principal taxes applicable to investors and the companies where they participate are:

- **Income Tax:** It is applied annually 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. Taxable income is classified as follows: First category: Income earned from real estate properties leasing, subleasing and transfer of goods; second category: other capital incomes (interests, royalties, etc.); third: income from commerce, industry and other activities as provided by law; fourth: income derived from personal independent services; fifth: income earned from personal dependent work. Rates applied to third-category income of corporate bodies, partnerships and joint ventures shall be determined by applying 30% over their net income.
- **Extraordinary Tax on Net Assets:** This tax, which rate is 0.5%, applies on taxpayers receiving third-category income (companies). Branches, agencies and other permanent establishments of non-domiciled companies are included. Associations, partnerships, joint ventures, consortia and any other contract of business collaboration, which keeps bookkeeping independent from their parts, shall assess that tax and attribute it to each of their integrating parts regarding their equity participation. Each part, as the real taxpayer, shall add said amount to the tax to be paid, if the case may be.
- **General Sales Tax:** This tax applies to domestic sale of goods and chattels; domestic rendering or use of services; construction contracts; the first sale of real estate property made by its constructor, and the further sale made by enterprises economically linked with the constructor, whenever the real estate has been acquired directly from those enterprises economically linked with the 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 goods (such as cigarettes, alcoholic beverage, mineral and carbonated water, other luxury articles), fuels, gambling and bets. The current rate runs between 2% and 18%, according to the type of good or service.
- **Customs Duties:** Those applied to the importation of supplies and/or products are:
 - a) Ad Valorem duties: Two rates apply: 12% and 20% of CIF values listed in the Peruvian Schedule of Customs Duties.
 - b) Overrates:
 - b.1. Temporary additional overrate 5% Ad-Valorem CIF.

CUSTOMS DUTIES

RATE	NO. OF TARIFF ITEMS	%
25% (20% + 5% OVERRATE)	284	4,35
20%	729	11,16
17% (12% + 5% OVERRATE)	47	0,6
12%	5,467	83,9

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: Regulations, Application and function

TRANSFER OF EARNINGS AND CAPITAL EXPORTS

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.

According to the current legislation, foreign investors are entitled to remit abroad the following, without prior authorization:

- The full amount of their capital generated from investments registered with the competent agency (National Commission on Foreign Investment and Technology – CONITE), including the sale of shares, participation of rights, capital reduction or partial or total wind-up of the companies; and,
- The full amount of verified dividends or net profits generated from their investments, as well as the payment for the use or usufruct of goods physically located in the country and registered with the national competent agency (CONITE), and the royalties for the use or transfer of technology.

Remittance of dividends and royalties are directly channeled through the banking system.

There is no restriction or control on investments from abroad.

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

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. OTHER MEASURES

(a) Briefly outline the competition policy regime.

The Peruvian State fosters and spreads free competition, promoting the appropriate participation of economic agents in the market, encouraging loyal competition between suppliers of goods and services, and, defending the respect of free competition in the international market. The National Institute of Defense of Competition and Protection of Intellectual Property (INDECOPI) created by Decree Law N° 25868, is the agency in charge of avoiding the existence of monopolistic practices and restrictive measures of competition in production and commercialization of goods and rendering of services. Likewise, it protects copyrights and the quality of products, under the current legal provisions.

With the purpose of regulating free competition in public utilities the following institutions have been created:

- Supervising Agency of Private Investment in Telecommunication – **OSIPTEL**
- National Superintendence of Drinking Water and Sewage Systems – **SUNASS**
- Supervising Agency of Investment in Energy – **OSINERG**

(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.

Intellectual Property and Acquisition of Technology

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 N° 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 N° 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.

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

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.

An expropriation case, solved in August 1993, is the Belco Petroleum Company that started before 1990. The Peruvian government concluded a Compensation Agreement for seven years with the American International Group (AIG), for the expropriation of BELCO assets.

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?

Peruvian government encourages arbitration as a way to facilitate the settlement of disputes through the Law of Arbitration, approved in 1992. 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.

Peru has signed with the International Center of Settlement of Investment Disputes Convention (ICSID).

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.*
- 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.*
- 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.*

The principal incentive to attract bigger foreign investment flows to Peru is the stability climate provided to foreign investors. Implementation of coherent policies in the economic and legal context have been the key to consider Peru as a safe and reliable place where important flows of foreign investments can be channeled.

The Foreign Investment Promotion Law (Leg. Decree N° 662) empowers foreign investors¹ to conclude Law Stability Agreements with the Peruvian State. Those Agreements have contract-law status and grant contractual benefits of law stability before the investment is made. For ten years, from their subscription, foreign investors and the companies where they participate are guaranteed tax stability. Foreign investors are guaranteed that the amount to be paid as income tax shall not be higher than that agreed to the date of subscription.

Companies receiving foreign investment are guaranteed that the tax to be paid in each fiscal year, even when modified, shall be the same. The same rate than that applicable the date of subscription shall be applied.

The National Commission on Foreign Investment and Technology (CONITE) acts on behalf of the Peruvian State for the subscription of Law Stability Agreements with foreign investors, for purposes of implementation of the law stability regime.

The subscription of Law Stability Agreements under the Investment Promotion Law does not affect or limit the right of investors to enjoy special regimes prepared by sectoral legislation on promotion of investments in mining, electricity and hydrocarbons sectors.

As to **tax incentives** granted in different productive activities of the country, where national and foreign investors have access, the current legislation grants certain incentives that include some exceptions and/or

¹ This regime was also given to national investors through Legislative Decree N° 757 – Framework Law for Private Investment

reductions. For example, industrial companies set up in the Peruvian Amazon region are exempt (for a specific period) from income tax, excise tax and general sales tax.

The Promotion Law for Investments in the Amazon Region (Law N° 27037) grants some **incentives for many economic activities to be carried out in the Peruvian Amazon**. Those incentives are aimed at increasing investment levels in order to contribute to the development of that region. For that purpose, as of 1999, the Peruvian Government will construct roads, ports, energy systems, drinking water and sewage systems, and, basic utilities. Activities related to commerce in general, production, transformation of products such as coffee, cacao and oil palm will enjoy certain tax incentives. Agriculture, transformation or processing of products, qualified as native or alternate culture in the Peruvian jungle, enjoys exemption from the income tax. Fuels are not levied with General Sales Tax and Excise Tax in Loreto, Madre de Dios and Ucayali Departments. Likewise, companies working in the jungle that reinvest in their own business will be exempt from the income tax.

Companies established in the Centers of Exportation, Transformation, Industry, Commercialization and Services – **CETICOS, located in the coastal towns of Ilo, Matarani, Tacna and Paita**, are exempt from the income tax, general sales tax, and excise tax.

The Peruvian government is implementing a fiscal mechanism in order to **encourage the execution of large projects of exploration and exploitation of natural resources** (companies concluding agreements with the Peruvian State under sectoral laws), and the concession of infrastructure and utilities works (companies concluding concession contracts with the Peruvian State). That instrument enables long-term projects to recover in advance the tax paid for importation and/or local acquisition of new intermediate goods, new capital goods, services and construction contracts, directly used in the execution of the project, matter of contract, through a Supreme Resolution, prior fulfillment of the requirements.

On the other hand, the following activities are exempt from the General Sales Tax (GST):

- Exportation of goods
- Adjudication, at exclusive title, of goods obtained for the execution of contracts of entrepreneurial collaboration.
- Assignment of resources, goods, services and construction contracts made by the contracting parties, consortia, joint ventures or another form of contract of entrepreneurial collaboration, which do not keep independent accounting for the execution of the common business.

In relation to **exceptions for the payment of customs duties, as promotional a measure for production sectors**, the industrial sector has the benefit of progress payment of custom duties for the importation of capital goods. In the Agroindustry sector, the State assumes customs duties on importation of inputs and capital goods (seeds, technical irrigation equipment, etc.).

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 countries/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 25 Bilateral Agreements with Germany, Argentina, Bolivia, Colombia, China, Denmark, Spain, El Salvador, France, Finland, Italy, Malaysia, Norway, Netherlands, Paraguay, Portugal, United Kingdom, Czech Republic, Korea, Romania, Sweden, Switzerland, Thailand and Venezuela. Those Agreements are fully in force. Besides, Peru has concluded a Financial Agreement on incentives for OPIC investments.

Investment and 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 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.

Another bilateral investment initiative is within the framework for the subscription of the **Partial Commercial Agreement between Peru and Mexico**, which includes an investment chapter, which is currently being negotiated.

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 countries/economies that are sources/receivers of FDI over recent years.*

Sources of FDI

Destination of FDI

ANNEX

I – Directory of Principal Sectoral Institutions and Administrative Competent Agencies for Foreign Investors

National Commission on Foreign Investments and Technology (Comisión Nacional de Inversiones y Tecnologías Extranjeras-CONITE)

Jirón Miro Quesada 320- piso 4- Lima 1
Telephone (511) 428-9358
Fax (511) 427-7696

Ministry of Foreign Affairs (Ministerio de Relaciones Exteriores)

Jirón Ucayali 363
Telephone (511) 427-3860
Fax (511) 426-2365

Ministry of Agriculture (Ministerio de Agricultura)

Av. Salaverry S/N
Telephone (511) 433-3034 (511) 433-2271
Fax (511) 432-6784

Ministry of Fisheries (Ministerio de Pesquería)

Calle Uno Oeste S/N Urb Corpac- pisos 2 al 7, San Isidro
Telephone (511) 224-3336
Fax (511) 224-3237

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

Ministry of Industry, Integration, Tourism and International Trade Negotiations (MITINCI) (Ministerio de Industria, Integración, Turismo y Negociaciones Comerciales Internacionales)

Calle Uno Oeste N° 50 Urbanización Corpac, San Isidro
Telephone (511) 224-3347
Fax (511) 224-3144

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

Commission on Promotion of Private Investment - COPRI (Comisión de Promoción a la Inversión Privada)

Paseo de la República 3361- Piso 9 Lima 27
Telephone (511) 221-7008
Fax (511) 221-2941

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 N° 250-270 Miraflores
Telephone (511) 446-9696 (511) 446-1219
Fax (511) 447-5406

National Agency of Defense of Competition and Intellectual Property
(Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual- INDECOPI)
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.

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)	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.

Citation	Summary
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 qualifying 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 on Build-Operate-Transfer projects, 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	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.
10. (Republic Act No. 7888, 1995)	

(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 of up to 40% only on public land. No

Proposals	Guidelines/Conditions
	limitation of foreign equity if private land is used.
Other	
- mining (Yes)	Subject to the provisions of the Revised Mining Act of 1995
- infrastructure (Yes)	Subject to the provisions of P.D. 1594 and BOT Law.

(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 – Dir. Dennis R. Miralles	Industry and Investment Bldg. 385 Sen. Gil J. Puyat Ave. Makati City Telephone: (63 2) 896-7884 Fax: (63 2) 895-8322 Email: boiosac@mnl.sequel.net
2. One-Stop-Action Center (OSAC) Contact Person – Ms. Adelina E. Batallones	Board of Investments Telephone: (63 2) 896-7884 / 896-7342 Fax: (63 2) 895-8322 Email: boiosac@mnl.sequel.net
3. Securities and Exchange Commission (SEC) Contact Persons - Dir. Sonia M. Ballo Corporate and Legal Dept. Atty. Benito Cataran Foreign Investments Division	SEC Building E. de los Santos Ave. Mandaluyong City Telephone: (63 2) 727 2011 Fax: (63 2) 724 1319
4. Philippine Economic Zone Authority (PEZA) Contact Person - Dir. General Lilia B. De Lima	Roxas Boulevard cor. San Luis St. Pasay City Telephone: (63 2) 551-3436 / 551 3438 Fax: (63 2) 891-6380/891-6382
5. Bases Conversion Development Authority Contact Person – Mr. Rogelio Singson	2nd Floor, Rufino Building Ayala Avenue, Makati City Telephone: (63 2) 551-3006 Fax: (63 2) 551-5122/551-1817
6. Bureau of Internal Revenue (BIR) Contact Person – Director Virginia L. Trinidad Revenue Region VIII, Makati City	Atrium Building Makati City Telephone: (63 2) 811-4393 / 811-4448 Fax: (63 2) 811-4055
7. Bangko Sentral ng Pilipinas (BSP) Contact Person – Managing Dir. Gregorio R. Suarez Foreign Investment Department	A. Mabini Street, Ermita Manila Telephone: (63 2) 523-7792 Fax: (63 2) 521-8162

Agency	Address/telephone/fax
8. Social Security System (SSS) <i>Contact Person –</i> Carlos A. Arellano President, Chairman and CEO	SSS Bldg., East Avenue, Diliman Quezon City Telephone: (63 2) 921-2022 Fax: (63 2) 924-8470
9. Subic Bay Metropolitan Authority (SBMA) <i>Contact Person -</i> Felicito Payumo Chairman/Administrator	SBMA Office Building 229 Subic Bay Freeport Zone, Olongapo City Telephone: (63 4 7) 252-72 62 Fax: (63 4 7) 252-7788
10. Clark Development Corporation (CDC) <i>Contact Person –</i> Atty. Cynthia Marigondon	Bldg. 2127, E. Quirino Ave. cor. C.P. Garcia Ave., Clark Field, Pampanga Telephone: (63 45) 599-3454 to 55 Fax: (63 45) 599-2506 to 07

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

Regular Processing

Under the 1987 Omnibus Investments Code, the BOI will render its decision within 20 working days after official acceptance of the application for registration.

Express Lane

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 15 working days. The DTI-NCR in cases of sole proprietorship, shall act on the same within the same period.

In case of PEZA, the processing and evaluation of application by the appropriate department usually takes two weeks and the decision on the project is made during the bi-monthly meetings of the PEZA board.

The SEC is a government agency responsible for the registration, licensing, regulation and supervision of all corporations and partnerships organized in the Philippines, including foreign corporations licensed to engage in business or to establish branch/representative offices in the Philippines. The processing of the papers and the approval thereof should take 15 working days from official acceptance of the application.

- Partnership/corporation – under the Express Lane, two days
- Those with more than 40% foreign equity –15 days

(f) *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, Corporate and Legal Department.	Upon advice on the applicant.	SEC Building, EDSA near Ortigas, Mandaluyong City Tel: (63 2) 726-9245 Fax: (63 2) 724-1319

(g) 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.

(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
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 Fax: (63 2) 890-9363	Violation of consumer protection of sole proprietorship
Office of the Resident Ombudsman	Old NAWASA Bldg., 176 Arroceros St., Manila <i>Contact Person:</i> Abelardo L. Aportadera Assistant Ombudsman Tel. No.: (63 2) 528-0992 Fax: (63 2) 528-1463	Violation of the Anti-graft and Corrupt Practices Act

(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.

Agency	Contact Person/ Address/ Telephone/Fax	Functions
1. Board of Investments (BOI)	Atty. Leticia V. Ibay Executive Director Industry & Investments Bldg. 385 Gil J. Puyat Ave., Makati City Tel: (63 2) 896-7895 Fax: (63 2) 895-3978 Email: boitsg@mnl.sequel.net	Implementation of the Omnibus Investments Code (E.O. 226)
2. Department of Trade and Industry-National Capital Region	Atty. Elmo Triste 3rd Floor, OPPEN Bldg. 361 Sen. Gil Puyat Ave., Makati City Tel: (63 2) 892-9964 Fax: (63 2) 892-9961	Licensing
3. Securities and Exchange Commission (SEC)	Atty. Sonia Ballo SEC Bldg., EDSA, Mandaluyong City Tel: (63 2) 727-2011 Fax: (63 2) 724-1319	Implementation of the Foreign Investments Act of 1991 (R.A. 7042)
4. Philippine Economic Zone Authority (PEZA)	Atty. Jesus I. Sirios Deputy Director General Roxas Boulevard cor. San Luis St., Pasay City Tel (63 2) 551-3436/3428/3429 Fax: (63 2) 891-6380 / 891-6382 E-mail: PEZA@webquest.com	Implementation of the Special Economic Zone Act (R.A. 7916)
5. Subic Bay Metropolitan Authority (SBMA)	Atty. Chito M. Cruz Head, Legal Department	Implementation of the Bases Conversion and Development

Agency	Contact Person/ Address/ Telephone/Fax	Functions
	Building 229, Waterfront Road, Subic Bay Freeport Zone, Olongapo City Tel: (63 47) 252-7262 Fax: (63 47) 252-7788 Email: promo@subic.com.ph	Act of 1992 (R.A. 7227)
6. Export Development Council (EDC)	Emalita Z. Mijares 6/F, New Solid Building 357 Sen. Gil J. Puyat Ave. Makati City Tel: (63 2) 890-4809 Fax: (63 2) 890-4645 Email: edc@dti.gov.ph	Implementation of the Export Development Act (R.A. 7844)
7. Clark Development Corporation (CDC)	Atty. Cynthia Marigondon Bldg. 2127, E. Quirino Ave. cor. C.P. Garcia Ave. Clarkfield, Pampanga Tel: (63 45) 599-3454 Fax: (63 45) 599-2506	Implementation of the Bases Conversion and Development Act of 1992 (R.A. 7227)
8. Office of the Resident Ombudsman	Abelardo L. Apotadera Assistant Ombudsman Old NAWASA Bldg. 176 Arroceros St., Manila Telephone: (63 2) 528-0992 Fax: (63 2) 528-1463	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.

(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.

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.

(k) 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 <i>Contact Person:</i> Ms. Belen Ceniza Telefax: (63 2) 924-3389	Issues certificate of registration and license to sell for condominium and subdivision developers.
Department of Agrarian Reform (DAR)	Elliptical Road, Diliman Quezon City <i>Contact Person:</i> Mr. Carlito T. Anonuevo Assistant Secretary Telephone: (63 2) 927-3135 Fax: (63 2) 927-9135	Issues certificate for land-use conversions on individual landholdings.

Agency	Address/telephone/fax	Functions
Department of Environment and Natural Resources (DENR)	Visayas Avenue, Diliman Quezon City <i>Contact Person:</i> Mr. Sabado Batcagan Assistant Secretary Telephone: (63 2) 920-1761 E-mail: pps@denr.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 Third Regular Foreign Investment Negative List (Executive Order No. 11 dated 11 August 1998), 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 Engineering
 - ii. Agricultural Engineering
 - iii. Chemical Engineering
 - iv. Civil Engineering
 - v. Electrical Engineering
 - vi. Electronics and Communication Engineering
 - vii. Geodetic Engineering
 - viii. Mechanical Engineering
 - ix. Metallurgical Engineering
 - x. Mining Engineering
 - xi. Naval Architecture and Marine Engineering

- xii. Sanitary Engineering
- 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

(Article XIV, Section 14 of the Constitution, Section 1 of RA No. 5181)

- 3. Retail Trade (Section 1 of RA No. 1180)
- 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)¹
- 10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines)¹
- 11. Manufacture of firecrackers and other pyrotechnic devices (Section 5 of RA No. 7183)

Up to 25 Percent Foreign Equity

- 12. Private recruitment, whether for local or overseas employment (Article 27 of Presidential Decree No. 442)
- 13. Contracts for construction and repair of locally-funded public works 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 (Commonwealth Act No. 541; Presidential Decree No. 1594; Letter of Instruction No. 630; Section 2a of RA No. 7718)

¹ Domestic investments are also prohibited (Article II Section 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory)

Up to 30 Percent Foreign Equity

14. Advertising (Article XVI, Section 11 of the Constitution)

Up to 40 Percent Foreign Equity

15. Exploration, development and utilization of natural resources (Article XII, Section 2 of the Constitution)²
16. Ownership of private lands (Article XII, Section 7 of the Constitution; Chapter 5, Section 22 of Commonwealth Act No. 141)
17. Operation and management of public utilities (Article XII, Section 11 of the Constitution; Section 16 of Commonwealth Act No. 146)
18. Ownership/establishment and administration of educational institutions (Article XIV, Section 2 of the Constitution)
19. Engaging in the rice and corn industry (Presidential Decree No. 194)
20. 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)
21. 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)
22. Operation of deep sea commercial fishing vessels (Section 27 of RA No. 8550)
23. Adjustment Companies (Section 323 of Presidential Decree No. 612 as amended by Presidential Decree No. 1814)
24. Ownership of condominiums (Section 5 of RA No. 4726)

Up to 60 Percent Foreign Equity

25. Financing companies regulated by the Securities and Exchange Commission (SEC) (Section 6 of RA No. 5980 as amended by RA No. 8556)³
26. Investment houses regulated by the SEC (Presidential Decree No. 129 as amended by RA No. 8366)³

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 used in the manufacture thereof 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:
 - i. Chlorates 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

² Full foreign participation is allowed through financial or technical assistance agreement with the President (Article XII, Section 11 of the Constitution)

³ 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).

- xi. Toluene
- f. Telescopic sights, sniperscope and other similar devices

(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 ordnance and parts thereof (e.g., torpedoes, mines, depthcharges, 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

(RA No. 7042 as amended by RA 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 they impose 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.

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 4 of *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.

Loans Not Requiring Prior Bangko Sentral Approval

The following loans may be granted without prior approval of the Bangko Sentral:

- (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.
1. 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.
 2. Short-term loans of the private sector in the form of export advances from buyers abroad.
 3. 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 fund 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.

4. 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. Drawn 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.
5. 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.
 - 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.
 - 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.

(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 likewise enjoy full and immediate repatriation of capital, remittance of profits, dividends, and other earnings subject to the availability of foreign exchange outside of 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.

(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, provide indicative guidance and ensure 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\$10,000.

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) 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.

Any alien, except nationals classified restricted by DFA 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 contagious disease;
- he/she had not been institutionalized for any mental disorder or disability; and,
- he/she is willing and able to invest the amount of at least US\$75,000 in the Philippines.

The holder of the special visa has the privilege to reside in the Philippines for as long as his/her investment exists. He shall be entitled to import his used household goods and personal effects tax and duty-free as an alien coming to settle in the Philippines for the first time under Sec. 105(h) of the Tariff and Customs Code of the Philippines. Further, the investor's spouse and unmarried children under 21 years of age who are joining him in the Philippines may be issued the same visa.

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.

5. 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.

6. 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 of Multinational Companies.

7. 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

Instances/Cases	Positions
3. Subic Bay Freeport enterprises may employ foreign nationals upon prior approval of the Subic Bay Metropolitan Authority for a period of five years extendible from year to year.	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.

Law	Summary
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

Taxation arrangements	Summary
1. Individual Resident Foreigners	Income derived from all sources (Philippines and foreign sources) is taxed from 5-33% for 1999 and 5-32% for 2000 and henceforth on gross compensation income (arising from an employer-employee relationship); and net on non-compensation (business and other) income. <ul style="list-style-type: none"> • 20% on royalties, prizes, winnings (final tax). • 20% on interest accruing from bank deposits, and on substitute arrangement (final tax). • 6% capital gains tax on sale of realty (final tax).
2. Foreigners engaged in trade or business in the Philippines	Income derived from Philippine sources is taxed from 5-33% for 1999 and 5-32% for 2000 and henceforth on gross compensation income. 20% tax rate is imposed on royalties, interest and dividends, etc.
3. Non-resident foreigners not engaged in trade or business in the Philippines	Income derived from Philippine sources is taxed at a flat rate of 25% on gross Philippine income
4. Foreign Corporations engaged in trade or business in the Philippines	Income derived from Philippine sources is taxed at a flat rate of 33% for 1999 and 32% for 2000 and henceforth on net income.
5. Foreign Corporations not engaged in trade or business in the Philippines	Income derived from Philippine sources is taxed at a flat rate of 33% in 1999 and 32% in 2000 and henceforth on gross income. Interest income earned on foreign loans is subject to a 20% tax.
6. Non-resident foreign cinematographic film owners, lessors, or distributors	Taxed at the rate of 25% on gross income.
7. Foreign international carriers	Taxed at the rate of 2.5% of their gross Philippine Billings.

Philippine Tax Treaties with other countries on the avoidance of double taxation:

1. Australia
2. Austria
3. Belgium
4. Brazil
5. Canada
6. Denmark
7. Finland
8. France
9. Germany
10. Hungary
11. India
12. Indonesia
13. Israel
14. Japan
15. Kingdom of Great Britain and Northern Ireland
16. Kingdom of Netherlands
17. Kingdom of Spain
18. Malaysia
19. New Zealand
20. Norway
21. Pakistan
22. Republic of Italy
23. Republic of Korea
24. Romania
25. Russia
26. Singapore
27. Sweden
28. Thailand
29. 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. Local content requirement under the Car Development Program (CDP), Commercial Vehicle Development Program (CVDP), and Motorcycle Development Program (MDP).

The local content requirement under the Motor Vehicle Development Programs is aimed to develop a viable automotive parts and components manufacturing sector. Participants of the CDP, CVDP, and MDP are required to 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.

B. Foreign exchange requirement for the importation of components/sub-assemblies for assembly of motor vehicles under the Car Development Program, Commercial Vehicle Development Program and the Motorcycle Development Program.

Aside from local content, 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.

C. 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.

A review of the Executive Order is now being undertaken to align it with the WTO rules.

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 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 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 Revised Securities Act which prescribes manipulation of security prices and insider trading;
- 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.

(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.*

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) Layout Design of Integrated Circuits

At present, identical bills on this subject matter are pending before both Houses of the Philippine Congress. The law is expected to be passed within 1999.

g) 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 Presidential Inter-Agency Committee on Intellectual Property Rights (PIAC-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).

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.

INTERNATIONAL TREATIES

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)

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)

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.

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), and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Disputes Between Private Parties

Existing laws on disputes between private parties include:

R.A. 876 - An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies and for Other Purposes.

E.O. 1008 - Creating an Arbitration Machinery in the Construction Industry of the Philippines.

(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 the position of president, general manager and treasurer (or their equivalent) of foreign-owned registered enterprises for 10 years from date of registration.

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.*

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 (BSP), Securities and Exchange Commission (SEC), Department of Labor and Employment (DOLE), Department of Tourism (DOT) and Garments and Textile Export Board (GTEB). There is also private sector involvement: Philippine Industrial Estates Association (PHILEA) and Philippine Chamber of Industrial Estates (PCIE).

Recently, full circle investment servicing was launched by the Investment Promotion Unit (IPU) Network members with services, which now include:

IPU Member Unit	Investment Services
1. Bureau of Immigration (BI) Extension Office G/F, Industry & Investment Bldg. 385 Gil Puyat Ave., Makati City Tel. No.: (63 2) 897-5335 Contact Person: Ms. Elena Ang Assistant Executive Director	<ul style="list-style-type: none"> • Conversion of all types of visas • Issuance of ACR/ICR/ECC/SRC • Issuance of SWP/PPW • Extension/Cancellation of visas

2. Department of Labor and Employment (DOLE) One-Stop-Action Center (OSAC) 385 Sen. Gil Puyat Avenue Makati City Telephone No.: (63 2) 895-8322	<ul style="list-style-type: none"> • Acceptance of applications for Alien Employment Permit (AEP) • Conducting interviews to AEP applicants • Issuance of AEP
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Available Frontlines	
Agency	Address/telephone/fax
1. Board of Investments (BOI) Contact Person – Dir. Dennis R. Miralles One-Stop-Action Center (OSAC) Contact Person – Ms. Lina E. Batallones	Industry and Investments Bldg. 385 Sen. Gil Puyat Ave., Makati City Telephone: (63 2) 896-7884/896-7342 Fax: (63 2) 895-8322 Email: boiosac@mnl.sequel.net
2. One-Stop Export Processing Center International Design Center Complex	Roxas Boulevard, Pasay City Telefax: (63 2) 831-5238 Contact Person: Ms. Gigi Digal
3. One-Stop Import Processing Center Bureau of Import Services (BIS)	349 Sen. Gil Puyat Ave., Makati City Telephone No.: (63 2) 895-9211 Fax: (63 2) 890-5491 Contact Person: Mr. Chito Catibayan
4. One-Stop Shop Tax Credit Center Department of Finance (DOF)	3/F, Executive Tower BSP Complex, Roxas Boulevard Manila Telephone No.: (63 2) 526-1515 Fax: (63 2) 526-7516 Contact Person: Mr. Alberto Salanga
5. One-Stop Action Garments Export Assistance Center	3/F, New Solid Building 357 Sen. Gil Puyat Avenue Makati City Telephone: (63 2) 890 4646 Fax: (63 2) 890 4653 Contact Person: Chona Felix

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 countries/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. Australia 2. Bangladesh 3. Belgium 4. Canada 5. Chile 6. China 7. Chinese Taipei 8. Czech Republic 9. Denmark	<p>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.</p> <p>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.</p>

Bilateral Investment Guarantee Protection Agreements	
10. Finland 11. France 12. Germany 13. Iran 14. Italy 15. Myanmar 16. Netherlands 17. Republic of Korea 18. Romania 19. Russia 20. Spain 21. Switzerland 22. Thailand 23. Turkey 24. United Kingdom of Great Britain and Northern Ireland 25. Viet Nam	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. 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

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).*

A. 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 pace of 49%. The low point in investment trend 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 to a net outflow of \$406 million, the first deficit to be recorded in portfolio 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.

B. 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 1990 –1998 (In Million US Dollars)									
Item	1990	1991	1992	1993	1994	1995	1996	1997	1998 /p
Investments	480	654	737	812	1558	1609	3517	762	1672
A. Non-Resident Investments in the Phils.	498	681	931	2135	2492	2944	3621	843	2016
Direct Investments	550	556	776	1238	1591	1459	1520	1249	1752
Placements	550	556	776	1238	1591	1459	1520	1249	1752
New Foreign Inv't in the Phils.	171	130	234	547	930	1300	1074	1073	1531
Of which: Privatized Assets	-	-	-	-	563	295	146	72	72
Fort Bonifacio	-	-	-	-	-	50	16	0	0
National Steel	-	-	-	-	-	245	130	72	72
Petron	-	-	-	-	532	-	-	-	-
Philseco	-	-	-	-	31	-	-	-	-
Assigned Capital of									
Foreign Banks	-	-	-	-	-	186	76	0	50
BOT Schemes	-	-	-	-	134	216	195	164	126
Reinvested Earnings	28	34	42	43	29	23	44	56	85
Bond Conversions					45	46	277	114	38
Debt Conversions	226	273	269	193	2	0	0	0	0
Technical Fees and Others									
Converted to Equity	22	50	41	5	36	22	0	0	0
Imports Converted into Inv'ts	2	6	5	0	1	6	0	6	...
Others	101	63	185	450	548	62	125	0	0
Withdrawals
Portfolio Investments	-52	125	155	897	901	1485	2101	-406	264
Placements	152	227	566	2257	2979	3861	6687	6947	4297
Withdrawals	204	102	411	1360	2078	2376	4586	7353	4033
B. Less: Resident Investments Abroad	18	27	194	1323	934	1335	104	81	344
Direct Investments	22	27	101	374	302	98	182	136	160
Placements	22	27	101	374	302	98	182	136	160
Residents' Investments Abroad	4	2	24	323	112	98	182	136	160
Others	18	25	77	51	190	0	0	0	0
Withdrawals	-	-	-	-	-	-	-	-	-
Portfolio Investments	-4	0	93	949	632	1237	-78	-55	184
Placements	0	15	115	1061	1338	1864	119	184	184
Withdrawals	4	15	22	112	706	627	197	239	...
Residents' Withdrawal of of Foreign Inv'ts Abroad	4	15	22	112	706	627	197	239	...

... Less than one million U.S. dollars

p/ Preliminary

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

SOURCES OF FDI (In Million US Dollars)			
Country	January – December		Growth Rates (%)
	1997	1998	
1. USA	2,783.889	1,268.350	-54.440
2. Singapore	1,069.457	743.252	-30.502
3. Hong Kong, China	1,888.570	565.905	-70.035
4. United Kingdom	3,190.492	395.549	-87.602
5. Switzerland	278.265	277.231	-0.372
6. Luxembourg	346.508	195.930	-43.456
7. Japan	683.847	195.071	-71.474
8. Netherlands	56.476	122.443	116.805
9. Germany	248.341	113.645	-54.238

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 spearhead Singapore's industrialisation drive through investment promotion. The fundamental policy in Singapore is the "open-door" concept where foreign investors are allowed to own 100% equity, freedom to repatriate profits and freedom 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 activities. A core of local industries, mainly in the supporting activities, has also been developed. In addition the Economic Development has launched its blueprint to take the Singapore economy into the 21st century. In this blueprint, Singapore's twin engines of growth, its manufacturing and services sectors, will power Singapore's transition into a knowledge-based economy. Singapore will continue to build the necessary capabilities, infrastructure and systems and also encourage and nurture talent so that businesses would flourish.

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

Dr Tony Tan Keng Yam, Deputy Prime Minister and Minister for Defence in his speech at the closing of the Plenary of the World Economic Forum on 14 October 1998, said "in the case of Singapore, our view is best served by our maintaining an open economic and financial system with minimum restrictions on the free flow of capital, goods and services. Singapore will continue to practice predictable, transparent and market-friendly economic policies which will enhance our attractiveness to investors and strengthen our role as a manufacturing and services hub for the region."

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 be registered with the Registry of Companies and Businesses. The requirement also applies to any firm, individual or corporation which carries on business as a nominee, trustee or agent for any foreign corporation. The Ministry of Finance administers the Business Registration Act and the Companies Act. The Singapore Government actively encourages foreign investment and generally treats foreign capital the same as local capital. With exceptions for national security purposes and in certain industries, no restrictions are placed on foreign ownership of Singapore operations.
Branches	Branches will need to also register with the Registry of Companies and Businesses and supply information relating to the parent company.

Citation	Summary
Representative offices	A foreign company may establish a representative office in Singapore to undertake promotional and liaison activities on behalf of its parent company. Approval must be obtained from the Trade Development Board.
Control of Manufacture	Generally, there is no restriction on the types of businesses that may be set up in Singapore but some have to apply for special licences from the Government. The products under control of manufacture include air-conditioners, beer and stout, cigars, drawn steel products, firecrackers, pig iron and sponge iron, rolled steel products, steel ingots, billets, blooms and slabs, cigarettes, 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).

(2) Investment Review and Approval

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

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

Proposals	Guidelines/Conditions
Merger (No)	Guidelines for takeover process are included in the Companies Act and maintained by the Securities Industry Council. A company with effective control of another company (25% of voting rights) must make an offer for the balance of outstanding shares.
Acquisitions (No)	Acquisitions do not require official approval. Rules for the process are included in the Code on Takeovers and Mergers within the Companies Act. The government generally does not interfere with takeovers, adopting the view that they are an essential feature of economic growth and development. The Securities Industry Council may examine takeover offers of listed firms. Except in a few sectors, foreign buyers face the same rules as local ones.
Greenfield investment (No)	No provision.
Joint venture (No)	Joint ventures may take the form of equity investment in a limited liability company or unlimited partnership and are governed by the laws of companies or partnerships as appropriate.
Real estate/land (No)	Foreigners and foreign-owned corporations are free to acquire land and buildings zoned for industrial or commercial purposes. For industrial zoning or environmental protection purposes, operation of certain industries, including hazardous industries, are restricted to certain districts. Licences are required from the Ministry of Environment. Foreigners and foreign-owned corporations are free also to purchase residential premises in buildings of six floors or more and apartments in approved condominium developments.

Sector	Guidelines/conditions
Telecommunications (Yes)	Telecommunications and broadcasting services were provided previously by the government. These are now privatised. Some shares in Singapore Telecoms have been floated on the Stock Exchange of Singapore. Licences are gradually being awarded for various services, including mobile data network, mobile phone, paging and satellite uplink and downlink facilities. Broadcasting stations must obtain a licence from the Ministry of Information and the Arts.

Sector	Guidelines/conditions
Media (Yes)	Legislative control on the level of foreign equity is exercised over the newspaper publishing industry. Any single ownership of more than 3% of companies in the newspaper publishing industry requires clearance.
Transport (No)	Free trade zones for seaborne cargo and air cargo exist. Within these zones, a wide range of facilities and services are provided. The Port of Singapore Authority has been corporatised. Bilateral air services agreements are being restructured to add more flights once traffic reaches a predetermined capacity.
Agriculture (No)	For land zoning or environmental protection purposes, agriculture is restricted to certain districts. Zoned agricultural land is allocated usually through open tenders for development into agrotechnology parks.

3. *How to obtain application/approval forms required for screening purposes. 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)(ii)(2) above, may be obtained from the respective organisations named in Section B(1)(ii)(4) below.

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

Agency	Address/telephone/fax
Registry of Companies and Businesses	10 Anson Road #05-01/15 International Plaza Singapore 079903 Telephone: (65) 227 8551 Fax: (65) 225 1676
Trade Development Board	230 Victoria Street #07-00 Bugis Junction Office Tower Singapore 188024 Telephone: (65) 337 6628 Fax: (65) 337 6898
Telecommunications Authority of Singapore	35 Robinson Road TAS Building Singapore 068876 Telephone: (65) 323 3888 Fax: (65) 323 1486
Ministry of Information and the Arts	460 Alexandra Road 36th Storey PSA Building Singapore 119963 Telephone: (65) 270 7988 Fax: (65) 375 7765
Ministry of the Environment	40 Scotts Road Environment Building Singapore 228231 Telephone: (65) 732 7733 Fax: (65) 731 9456

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

The average waiting time is from one to three months.

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

processes and the average time for an appeal to be considered.

Licence requirements, if any, stem mainly from special conditions of the specific sector. Should an application for a licence be rejected by any organisation, reasons are given. Should an appeal for a review be required, the same organisation should be approached. For example, the Ministry of the Environment should be approached should an application for use of certain chemicals in a hazardous industry be rejected by them. Some of the respective agencies are listed in Section B (1)(ii)(4) above.

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

The Singapore Government actively encourages foreign investment and generally treats foreign capital the same as local capital. No restrictions are placed on investment except for national security purposes and in certain industries.

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

Agency	Address/telephone/fax	Type of Complaint
Economic Development Board	250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077 Web site at http://www.sedb.com.sg	Those requiring investment facilitation and liaison with other government departments.

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

Agency	Address/telephone/fax	Functions
Economic Development Board	250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077 Web site at http://www.sedb.com.sg	To consider items listed under Control of Manufacture Act.

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

The Singapore Government encourages private-sector initiatives. Opportunities are available for raising issues with business associations, employers federations, chambers of commerce and industry, government-to-government business councils and economic forums. Close interaction is maintained between Government agencies, including those with regulatory functions, and the private sector. Often, decisions are made after consultations with the private sector.

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

As there are not many investment regulations in Singapore, the role of the statutory boards are limited in this area. Their focus is on investment promotion. The 1994 establishment of the Economic Promotion Club, an informal gathering of chief executive officers from a number of related government bodies is specifically to enhance facilitation of investment and to communicate government's major strategies and programmes to the private sector.

For a list of agencies, see Section B (1)(ii)(4) above.

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

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

There are no exceptions to most favoured nation treatment.

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

None.

3. NATIONAL TREATMENT

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

Not applicable. Foreign investors are allowed to maintain 100% foreign equity and are free to make their own decisions on markets and technology licensing.

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

There are no limitations on firm's access to sources of finance.

4. REPATRIATION AND CONVERTIBILITY

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

There is no restriction on the repatriation of funds related to foreign investment.

2. Brief description of the foreign exchange regime.

There are currently no exchange control regulations.

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

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

5. ENTRY AND SOJOURN OF PERSONNEL

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

Business or social visit passes are required. Entry visas are required for holders of Hong Kong, China documents of identity and holders of travel documents issued by the governments of Afganistan, Algeria, Cambodia, China, India, Iraq, Jordon, Laos, Lebanon, Libya, Commonwealth of Independent States, Syria, Tunisia, Viet Nam and Yemen.

2. List and brief description of any restrictions by law or regulation on the entry/sojourn of foreign

technical/managerial personnel and their accompanying family members.

Restrictions	Description
Employment Pass	Foreign technical/managerial personnel may apply for an employment pass to engage in employment. There is usually little difficulty in obtaining employment passes for applicants who are senior executives of MNCs, qualified specialists or persons wishing to start up new industrial, financial or service undertaking. Accompanying family members may apply for a dependent pass.
Work Permits	Foreigners earning not more than \$2,000 a month are required to apply for work permits.

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

There are no regulations relating to personnel management of foreign firms.

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

The domestic labour laws in Singapore apply to all domestic and foreign firms alike. Industrial peace is promoted through the regulation of the conduct of industrial matters and the impartial arbitration of trade disputes.

The Industrial Arbitration Court in Singapore certifies collective agreements which set out the terms and conditions of service negotiated between unions and management in addition to minimum terms of employment and labour relations provided in the Employment Act and the Industrial Relations Act. Should parties fail to reach agreement through direct negotiation, disputes arising can be referred by either party to the Labour Relations Department of the Ministry of Labour for conciliation. If settlement fails, the dispute may be referred to the Industrial Arbitration Court for arbitration. Under the Trade Disputes Act, a strike or lock-out action is prohibited when the Industrial Arbitration Court has taken note of the trade dispute. Disputes related to wage increase arising from the implementation of guidelines recommended by the National Wages Council may be referred by either party to the Industrial Arbitration Court.

Law	Summary
Employment Act	This is the key legislation governing the terms and conditions of employment in Singapore. Overtime payment, public holidays, annual leave, sick leave, maternity leave and retrenchment benefits are included.
Employment of Foreign Workers Act	To discourage over-dependence on unskilled foreign workers, the Act provides for a company dependency ceiling and a monthly levy on each work permit holder employed. The rates vary between sectors.
Central Provident Fund Act	The Central Provident Fund is a compulsory savings programme. With effect from 1 January 1999, the monthly contribution is 10% of wages by employers and 20% by employees. This will be reviewed in 2001. The Fund includes provisions for retirement, medical benefits, education, home ownership and other investments.
Factories Act	Safety and health requirements are stipulated.
Industrial Relations Act	The Act lays down the framework for amicable resolution of industrial disputes through conciliation and arbitration.
Retirement Age Act & Retirement Age (Exemption) Notification	The Act prescribes a minimum retirement age. This was raised to 62 with effect from 1 January 1999. The Notification provides for certain classes of employees to be exempted from the provisions of the Act.
Trade Disputes Act	The Act lays down the rules by which industrial action e.g. strikes and lockouts may be taken.

Law	Summary
Workmen's Compensation Act	The Act provides for payment of compensation to workmen who are injured or afflicted with occupational diseases in the course of work.

6. TAXATION

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

Taxation arrangements	Summary
Corporate Income Tax Rates	Resident and non-resident companies are taxed at 26% on income after deduction for expenses, depreciation allowances, trading losses and donations to approved charities. A 10% rebate may be given for Year of Assessment 1999.
Avoidance of Double Taxation	Comprehensive agreements have been signed with 36 countries (Australia, Bangladesh, Belgium, Bulgaria, Canada, China, Denmark, Finland, France, Germany, India, Indonesia, Israel, Italy, Japan, Korea, Luxembourg, Malaysia, Mauritius, Mexico, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, South Africa, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, United Arab Emirates, United Kingdom and Viet Nam). Generally, a tax credit is allowed for the foreign tax paid on the remitted income up to the amount of Singapore tax payable on the same income.
Skills Development Fund	1% of total payroll for employees earning \$1,000 or less a month is levied for training.
Water	25% is levied to encourage conservation.
Goods and Services Tax	A rate of 3% is imposed on the supply of goods and services in Singapore and on the importation of goods into Singapore. This is a tax on domestic consumption.

7. PERFORMANCE REQUIREMENTS

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

There are no laws or policies stating performance requirements. All contracts are treated as commercial dealings.

Singapore does not practice any TRIMS.

8. CAPITAL EXPORTS

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

Not applicable. There are currently no exchange control regulations. As part of the globalisation strategy, Singapore encourages her companies to invest abroad.

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

Not applicable. There are no regulations/institutional measures that limit technology exports.

9. INVESTOR BEHAVIOUR

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

Foreign and domestic investors are to abide by the laws, regulations and administrative guidelines/policies of the economy. There is no particular requirement of observance by foreign investors, except as stated under proposals for real estate and share acquisitions in SectionB(1)(ii)(2) above.

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

There are no antitrust or other laws to regulate competition in Singapore. All industries and services are developed to enhance national competitiveness. There is now a process of privatisation of government services to stay ahead of competition.

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

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.

Copyright protection is provided under the Copyright Act without the need for registration or application. This has been in place since 1987. The Copyright Tribunal was established as a form of adjudicating specific disputes between copyright owners and users of copyright materials. Materials covered are original literary works, including computer programmes and dramatic, musical and artistic works. Relatively good protection for intellectual property has been provided in Singapore with enforcements stepped up since the 1980s. Proactive efforts to fight copyright piracy include the establishment of a new police unit for enforcement of search warrants related to intellectual property rights, action taken by the Film Censor Board to pass information on suspected pirated videotapes to copyright owners and requirement of licence to photocopy books and other publications.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

Other than the Land Acquisition Act listed below, the provision for expropriation and compensation is usually included in bilateral investment guarantee agreements.

Laws/ Regulations	Application and function
Land Acquisition Act	The Government is empowered to acquire land for public purposes. The Act provides for the payment of compensation to the owners of the land to be acquired and for appeals against awards of compensation made by the Collector of Inland Revenue. Appeals from such awards are heard by Appeals Boards.

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

There has been no instance of expropriation and compensation of foreign investment in Singapore.

2. SETTLEMENT OF DISPUTES

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

Singapore has institutionalised and internationalised arbitration through the creation of arbitration bodies and ratification of international conventions.

The Singapore International Arbitration Centre, a non-profit organisation, was set up in 1990 to establish, manage and conduct a centre for international and commercial arbitration and conciliation and to promote the settlement of disputes by arbitration. It provides free information and advice on dispute resolution in Singapore and, through its international network of contacts, provides the latest information on other international centres and their means and facilities for dispute resolution. The centre also promotes and supports the study of and research and training in the law of practice of international arbitration and conciliation. The International Arbitration Act based on a model law adopted by the UN General Assembly and passed in 1994 provides the framework for international arbitration. International commercial arbitration conventions ratified include the following:

- (a) The UNCITRAL (UN's Commission on International Trade Law) Arbitration Rules was adopted in Singapore in 1994. It provides a comprehensive set of rules to guide the arbitral process. As the Rules do not have the force of law in any country, parties must specify that the rules apply in their contract.
- (b) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the New York Convention was ratified by Singapore in 1986. It makes more effective the international recognition of arbitration agreements and foreign arbitral awards and the enforcement of the arbitration award.
- (c) The Convention on the Settlement of Investment Disputes between States and Nationals of other States has been adopted in Singapore's local statutes, specifically the Arbitration (International Investment Disputes) Act (see 2 below).

Agency	Address/telephone/fax
Singapore International Arbitration Centre	1 Coleman Street #05-07 The Adelphi Singapore 179802 Telephone: (65) 334 1277 Fax: (65) 334 2942

2. Signatory or accession to the ICSID Convention.

Singapore enacted the Arbitration (International Investment Disputes) Act to implement the International Convention on the Settlement of Investment Disputes between States and Nationals of other States on 10 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 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.

Investment incentives play a key role in shaping the pace and direction of industrial development. In Singapore incentives are used both for the promotion of new investments in industries and services and for encouraging existing companies to upgrade through mechanisation and automation and through the introduction of new products and services. The Economic Development Board, a statutory board responsible for the planning and promotion of industrial and commercial development, administers the following tax incentives under the Economic Expansion Incentives (Relief from Income Tax) Act.

Program	Nature of incentive	Contact point
Pioneer Status	Exemption of corporate tax on profits arising from pioneer activity for up to 10 years.	Economic Development Board 250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077 Web site at http://www.sedb.com.sg
Development and Expansion Incentive	Corporate tax rate of 13% for up to 10 years with provision for extension.	
Investment Allowance Incentive	Exemption of taxable income of an amount equal to a specified proportion, not exceeding 50%, of new investment in productive equipment.	
Operational Headquarters Incentive	Income arising from the provision of approved services in Singapore taxed at 10% for up to 10 years with provision for extension. Other income from overseas subsidiaries and associated companies may also be eligible for effective tax relief.	
Approved Royalties Incentive	Full or partial exemption of withholding tax on approved royalty payments.	
Approved Foreign Loan Scheme	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 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
Initiatives in New Technology	Grants of fixed quantum per trainee per day for training of manpower in qualifying activities.	Economic Development Board 250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077 Web site: http://www.sedb.com.sg
Innovation Development Scheme	Grants of 30% to 50% of approved direct development costs.	

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

Agency	Address/telephone/fax
<p>Economic Development Board</p> <p>(Offers one-stop service to investors. Includes providing information and assistance in securing industrial land, suitable operational facilities and skilled manpower. Foreign investors can also tap on the board's knowledge of Singapore's industrial capabilities to locate customers, suppliers, subcontractors and joint-venture partners.)</p>	<p>250 North Bridge Road #24-00 Raffles City Tower Singapore 179101 Telephone: (65) 336 2288 Fax: (65) 339 6077 Overseas officers are in: New York, Boston, Washington DC, Chicago, San Francisco, Los Angeles, London, Frankfurt, Milan, Paris, Stockholm, Tokyo, Osaka, Beijing, Jakarta, Suzhou and Hong Kong, China</p>

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

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

Agreement	Provisions
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	
<p>IGAs signed with: ASEAN, Belgo-Luxembourg Economic Union, Canada, China, Czech Republic, Egypt, France, Germany, Hungary, Mongolia, Laos, Latvia, Netherlands, Pakistan, Poland, Riau Archipelago, Slovenia, Sri Lanka, Switzerland, United Kingdom, United States of America, Viet Nam</p>	<p>Investment guarantee agreements are signed with countries to promote and protect investments coming into and going out of Singapore. The terms differ depending on the nature of the cooperation between Singapore and the specific country involved. In general, under the agreements, investments by nationals or companies of both contracting parties in each other's country are protected for an initial period of usually 15 years against war and non-commercial risks like expropriation and nationalisation.</p>

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.
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 1995.
Berne Convention	The Berne Convention extends copyright protection in over 100 member countries. Singapore acceded to this convention in 1998.

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\$96.5 billion as at end 1996, 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\$44.8 billion in as at end 1996. The financial (mainly holding companies) and manufacturing sectors were the main sectors that invested abroad.

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

Source of FDI (\$Million)	1990	1991	1992	1993	1994	1995	1996
Japan	10663	11718	13186	13471	15733	16970	19362
USA	8590	9530	9647	11251	11810	14253	16042
Switzerland	2262	2435	2634	3348	5718	7107	8643
Netherlands	4072	4345	4079	4051	4181	4397	7146
UK	4639	6150	6021	6166	6526	6666	7115
Hong Kong, China	3267	3245	3462	3759	3568	3910	4228
All Countries	49831	54563	56661	62767	73637	84267	96485

Destination of FDI (\$Million)	1990	1991	1992	1993	1994	1995	1996
Malaysia	2790	3121	3917	4657	6500	7715	7573
Hong Kong, China	2266	2369	3051	4026	4940	5414	4833
China	239	220	283	444	1533	3082	4237
UK	300	322	351	361	930	2447	3626
Indonesia	225	267	328	517	1997	3305	3340
USA	690	1304	1590	1755	1681	2089	2553
New Zealand	1359	1387	1333	1494	2076	2038	2131
All Countries	13622	15184	17741	22181	29765	39145	44837

Source: Ministry of Trade and Industry, Singapore

CHINESE TAIPEI

CHINESE TAIPEI

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

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

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 Chinese Taipei and develop Asia-Pacific markets in cooperation with domestic companies; and the development of Chinese Taipei into a multifunctional Asia-Pacific Regional Operations 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.

Regulations for investment by foreign nationals and overseas Chinese in Chinese Taipei 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. The following are the main results of revisions undertaken during the last two years.

(1) The Statute for Investment by Overseas Chinese and Statute for Investment by Foreign Nationals were revised on 19 November 1997:

- 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.

(2) The Negative List for Investment by Overseas Chinese and Foreign Nationals was revised as follows:

(2a) The following revisions were made on 15 October 1997:

With the exception of “nitrated glycerin used in gunpowder/explosive pillars and involving public safety” in the “manufacture of nitroglycerine” sub-item, which was left in the “Prohibited Industries” category, other parts of this sub-item were switched to the “Restricted Industries” category. “Gun/cannon barrel

forging,” “saber manufacturing,” “military instruments and equipment,” “fuel gas supply by pipeline,” “car rental services,” and “truck freight transport and container trucking services” were all switched from the “Prohibited Industries” to the “Restricted Industries” category.

(2b) On 27 May 1998, “power generation,” “power transmission,” and “power distribution,” all within the “Electric Light and Power Supply” industry, were moved from the “Prohibited Industries” category to the “Restricted Industries” category.

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

Liberalization, internationalization, and systemization are Chinese Taipei's basic long-term economic development principles. As Chinese Taipei has advanced toward fully developed status, the administrative authorities have removed, step-by-step, obstacles to the flow of commodities, capital, labor, personnel, information and services related to foreign investors (domestic and foreign). In January 1995, the highest administrative authorities passed a Plan for developing Chinese Taipei into an Asia-Pacific Regional Operations Center (the APROC Plan) involving accelerated macroeconomic readjustment as well as development of a manufacturing center, sea transportation center, air transportation center, financial center, telecommunications center and media center. As far as macroeconomic adjustment is concerned, the key point of this plan is in facilitation of the flow of commodities, services, personnel, capital and information. Since the APROC Plan has been carried out in 1995, Chinese Taipei has eased restrictions on foreign investment in sea transportation, air transportation, capital market, telecommunications and media sectors.

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 assistance in developing overseas industrial zones, 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

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

Citation	Summary
Statute for Investment by Foreign Nationals	Stipulates protection and application procedures for investment by foreign nationals.
Statute for Investment by Overseas Chinese	Stipulates protection and application procedures for investment by overseas Chinese.
Negative List for Investment by Overseas Chinese and Foreign Nationals	Lists industrial items in which investment by foreign nationals and overseas Chinese is banned or restricted.
Statute for Upgrading Industries	Contains stipulations regarding tax incentives for the promotion of agriculture, industry, and services and

Citation	Summary
	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

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

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

Proposals	Guidelines/Conditions
Mergers & acquisitions (Yes)	Provisions of the Fair Trade Law require the prior approval of the Fair Trade Commission 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 central competent authority.
Greenfield investment (Yes)	According to the provisions of the Statute for Investment by Foreign Nationals, foreign greenfield investment must obtain the approval of the Investment Commission, MOEA.
Real estate/land (Yes)	According to the 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: agricultural lands, forest lands, fisheries, pastures, 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.
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.”
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Sector	Guidelines/Conditions
Telecommunications (Yes)	According to the Telecommunications Act passed in January of 1996, foreign citizens may invest in Type I telecommunications business but their shareholding may not exceed one fifth of total shares. Foreign investment in Type II telecommunications business is not subject to the limitation. However, the amendment to the Acts is underway. The final proposal suggests that foreign share of the Type I enterprises (Chunghua Telecom excluded) could be up to 60% subject to 20% direct shareholding.
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)	<p>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:</p> <ol style="list-style-type: none"> 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) The shares of a company operating a cable radio and/or television system shall be widely distributed. A single shareholder shall not hold more than 10% of the total shares of stock issued by such a company. A shareholder and his/her related enterprises, spouse, relatives to the second degree of consanguinity, and relatives directly related by marriage, shall hold no more than a total of 20% of the shares issued by a company. c) Foreign investment – both direct and indirect – in a company operating a cable radio and/or television system shall be less than fifty 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 20% of the total shares issued. (Article 19). d) 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). e) 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. f) Applications by foreigners for investment in a cable radio and /or radio and/or television system, under any of the conditions described in the previous paragraph, or applications which violate Paragraph 3 of Article 19,

Sector	Guidelines/Conditions
	shall be rejected. (Article 23).
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.

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

There are 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:

- Directions on Preparation of Investment Applications (New Establishment);
- Directions on Preparation of Investment Applications (Investment in Existing Enterprise and Re-investment).

Copies of the relevant documentation can be obtained from the contact listed in Section B(1)(ii)(4) below.

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

Agency	Address/telephone/fax
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec. 1, Taipei Telephone: (886 2) 2351 3151 Fax: (886 2) 2396 3970

5. 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.

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

After a foreign investor submits an investment application to the Investment Commission, the Investment Commission sends it to the various agencies in charge of the target industry to solicit their opinions 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

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

Foreign investment cases with an investment amount less than NT\$1000 million, and for which the category of investment is not on the negative list of 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.

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

Agency	Address/telephone/fax	Type of Complaint
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.

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

Agency	Address/telephone/fax	Functions
Investment Commission, MOEA	8th Fl., 7 Roosevelt Rd., Sec.1, Taipei Telephone: (886 2)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.

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

The Statute for Investment by Foreign Nationals was revised on 19 November 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.

Chinese Taipei welcomes, at any time, any suggestion or comment related to the improvement of foreign investment laws or systems. Such suggestions or comments can be submitted through any available channel, including going through foreign associations in Chinese Taipei to the agencies in charge of the related industries. Any case related to foreign investment can be submitted through the administrative relief process. Public hearings will be held before the passage or revision of important bills, and those that involve disputes, in order to solicit opinions from all sectors.

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

With the exception of investment in the export processing zones, for which application should be made to the Export Processing Zone Administration or its Kaohsiung or Taichung branch, and investment in the Hsinchu Science-based Industrial Park, for which application should be made to the Science-based Industrial Park Administration, foreigners wishing to invest in Chinese Taipei should submit their investment plans to the Investment Commission, MOEA. After a case has been approved and the capital remitted, the investor should carry out the related procedures with the competent government authority. For example, applying to the Commerce Department, MOEA for a company name check and for company registration; applying to the local county or city government office for profit-earning-enterprise registration; or negotiating with the relevant industrial zone development unit for the procurement of factory land. The reconstruction bureau of the local county or city government should be contacted regarding mixed industrial/commercial zones; then, following recommendation by the Commerce Department, MOEA, and environmental assessment by the environmental protection bureau of the respective county or city government, application for a development permit should be submitted to the public works bureau of the respective county or city government.

A foreign company wishing to establish a branch in Chinese Taipei should first obtain a foreign company certificate of recognition from the Commerce Department and then apply to the reconstruction department or bureau of the respective local provincial or city government where the branch is located for a branch company operating license, and to the local tax office for a profit-earning-enterprise registration. Foreign companies setting up offices in Chinese Taipei should register with the Commerce Department and obtain a certificate of registration.

Agency	Address/telephone/fax	Functions
Commerce Department, MOEA	15 Fuchou St., Taipei Telephone: (886 2) 2321 2200 ext. 380 Fax: (886 2) 2394 2702	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 E-Mail: idpt552@tpts1.seed.net.tw Website: http://www.seed.net.tw/~csec/	Receiving and examining the applications for Mixed Industrial/Commercial Zones.
Industrial Development Bureau, MOEA	41-3 Hsinyi Rd., Sec. 3, Taipei Telephone: (886 2)2754 1255 ext. 2711 Fax: (886 2) 2704 3753	In charge of laws and regulations regarding factory construction permits and registrations; also provides consultation services.
Taipei City Bureau of Reconstruction	1 Shihfu Rd., N. Bldg. 1, Taipei Telephone: (886 2)2725 6567 Fax: (886 2) 2759 6577	Handles such matters as factory establishment permits and registrations in the Taipei area.

Agency	Address/telephone/fax	Functions
Kaohsiung City Bureau of Reconstruction	9Fl., 2 Weisan Rd., Lingya District, Kaohsiung Telephone: (886 7) 337 3160 Fax: (886 7) 331 6193	Handles such matters as factory establishment permits and registrations in the Kaohsiung area.
Taiwan Provincial Department of Reconstruction	4 Shengfu Rd., Chunghsing New Village, Taiwan Telephone: (886 49) 31 2954 Fax: (886 4) 31 5374	Handles matters submitted through county and city governments, related to the approval of factory establishment permits and the issuance of factory registration certificates.
Yilan County (Industry and Commerce Section)	23 Chiucheng S. Rd., Yilan Telephone: (886 39) 35 5420 ext. 185-187 Fax: (886 39) 32 3590	Approves or passes on to the proper authorities applications regarding factory establishment permits or registrations, and changes to factory establishment permits or registrations.
Keelung City (Industry and Commerce Section)	1 Yiyi Rd., Keelung Telephone: (886 2) 420 1122 Fax: (886 2) 423 0765	Same as above.
Taipei County (Industry and Commerce sections)	32 Fuchung Rd., Panchiao, Taipei County Telephone: (886 2) 967 4324 Fax: (886 2) 967 4365	Same as above.
Taoyuan County (Industry and Commerce Section)	1 Hsienfu Rd., Taoyuan Telephone: (886 3) 332 2101 ext 5121 Fax: (886 3) 332 0542	Same as above.
Hsinchu County (Industry and Commerce Section)	10 Kuangming 6th Rd., Chupei City, Hsinchu County Telephone: (886 35) 55 8447 Fax: (886 35) 51 6418	Same as above.
Hsinchu City (Industry and Commerce Section)	120 Chungcheng Rd., Hsinchu City Telephone: (886 35) 25 9003 Fax: (886 35) 26 0284	Same as above.
Miaoli County (Industry and Commerce Section)	100 Hsienfu Rd., Miaoli City Telephone: (886 37) 32 4428 Fax: (886 37) 32 6185	Same as above.
Taichung County (Industry and Commerce Section)	136 Chunghsing Rd., Fengyuan City, Taichung County Telephone: (886 4) 523 5641 Fax: (886 4) 528 1945	Same as above.
Taichung City (Industry and Commerce Section)	99 Minchuan Rd., Taichung Telephone: (886 4) 229 0081 Fax: (886 4) 229 7657	Same as above.
Nantou County (Industry and Commerce Section)	136 Chunghsing Rd., Nantou City Telephone: (886 49) 22 5144 Fax: (886 49) 23 4074	Same as above.
Changhua County (Industry and Commerce Section)	416 Chungshan Rd., Sec. 2, Changhua Telephone: (886 4) 722 9350 Fax: (886 4) 724 9384	Same as above.
Yunlin County (Industry and Commerce Section)	515 Yunlin Rd., Sec. 2, Touliu City Telephone: (885 5) 532 0368 Fax: (885 5) 532 9473	Same as above.
Chiayi County (Industry and Commerce Section)	1 Hsiangho 1st Rd., Hsiangho New Village, Taipao City, Chiayi County	Same as above.

Agency	Address/telephone/fax	Functions
	Telephone: (885 5) 362 0052 Fax: (885 5) 362 0123	
Chiayi City (Industry and Commerce Section)	1 Minsheng N. Rd., Chiayi Telephone: (885 5) 225 4321 Fax: (885 5) 227 5217	Same as above.
Tainan County (Industry and Commerce Section)	36 Minchih Rd., Hsinying City, Tainan County Telephone: (886 6) 635 8273 Fax: (886 6) 632 1260	Same as above.
Tainan City (Industry and Commerce Section)	1 Chungcheng Rd., Tainan Telephone: (886 6) 220 0575 Fax: (886 6) 221 4280	Same as above.
Kaohsiung County (Industry and Commerce Section)	132 Kuangfu Rd., Sec. 2, Fengshan City, Kaohsiung County Telephone: (886 7) 747 7611 Fax: (886 7) 747 6422	Same as above.
Penghu County (Industry and Commerce Section)	32 Chihping Rd., Makung City, Penghu County Telephone: (886 6) 926 4482 Fax: (886 6) 9276640	Same as above.
Pingtung County (Industry and Commerce Section)	527 Tzuyu Rd., Pingtung Telephone: (886 8) 732 1583 Fax: (886 8) 732 3100	Same as above.
Taitung County (Industry and Commerce Section)	276 Chungshan Rd., Taitung City Telephone: (886 89) 33 0727 Fax: (886 89) 31 8201	Same as above.
Hualien County (Industry and Commerce Section)	17 Fuchien Rd., Hualien Telephone: (886 38) 22 8240 Fax: (886 38) 22 7894	Same as above.
Kinmen County (Industry and Commerce Section)	60 Minsheng Rd., Chincheng Town, Kinmen County Telephone: (886 823) 26 204 Fax: (886 823) 25 547	Same as above.
Lienchiang County (Industry and Commerce Section)	76 Chiehshou Village, Nankan Township, Matsu Telephone: (886 836) 25 125 Fax: (886 836) 25 021	Same as above.

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

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

Relations across the Taiwan Straits remain in the stage of mutually beneficial interchange. In the interest of stability and the security of society in Chinese Taipei, and of the welfare of its people, a case-by-case approval procedure for people of the People's Republic of China (PRC) coming to Chinese Taipei to engage in economic and trade investigation has been adopted, based on the restrictions in the Guidelines for National Unification and the statute governing relations across the straits. This approval procedure is also used for foreign companies with more than 20% ownership by the people of PRC, with a gradual relaxation under way.

2. List and description of any international agreements to which your economy is a party which provides

for a possible exception to MFN treatment.

Not applicable.

3. NATIONAL TREATMENT

- 1. List and description of sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (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.

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

According to the provisions of the Offshore Banking Act, foreign firms are permitted to obtain financing through offshore banking units. According to the Company Law, a company's capital may not be extended as loans to any shareholder or other person except in cases where inter-company trading activities call for a capital loan. This stipulation also applies to foreign companies.

4. REPATRIATION AND CONVERTIBILITY

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

Article 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 1 March 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 3 January 1996.

Effective from 1 April 1999, each securities investment trust enterprises (SITE) managed offshore issued fund or each overseas Chinese and foreign national will be limited to holding in the maximum amount of 50% of the total outstanding shares of any given issuing company. The total SITE managed offshore issued funds holding and the total overseas Chinese and foreign nationals holding in any issuing company shall not exceed 50% of the total shares outstanding.

2. Brief description of 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:

- (1) Remittances relating to goods and services transactions and direct investments approved by the competent authorities are completely unrestricted.
- (2) Remittances not relating to goods and services transactions:
 - a) If not involving the conversion of New Taiwan dollars: completely unrestricted.
 - 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 are as follows:
- Any single foreigner may hold up to 50% of the total issued stocks of a listed company;
 - All foreigners together may hold up to 50% of the total issued stocks of a listed company.

3. 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 unrestricted.

5. ENTRY AND SOJOURN OF PERSONNEL

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

Except for the 14-day visa-free entry provision for citizens of specified countries, or unless otherwise specified, all foreigners entering Chinese Taipei are required to obtain a proper visa prior to entry.

According to Article 12 of the Regulations Governing Issuance of Visas on Foreign Passports, a visitor visa may be issued to foreigners who 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 which bear a restrictive stamp reading 'NO EXTENSION WILL BE GRANTED', or a restrictive duration of stay of 14 or 30 days.

According to Article 14 of the Regulations Governing Issuance of Visas on Foreign Passports, Chinese Taipei may decline to issue a visa to a foreign national if he or she has caused one of the following instances:

- The foreign national has a criminal record within or without the territory of Chinese Taipei, or has ever been denied entry, ordered to leave or deported by the Chinese Taipei authorities.
- The foreign national suffers from a contagious disease, mental illness or other diseases, which may be detrimental to public health or social order.
- The foreign national has made false statements or withheld important facts relating to the purpose of entry as declared on the visa application.
- The foreign national is found, on the basis of sufficient proof, by the authorities concerned that his or her words or deeds are detrimental to national interests, public safety, public order, or the good morals of Chinese Taipei.
- The foreign national has ever overstayed his or her visitor or resident visas or worked illegally.
- 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.
- The foreign national holds a passport which is not recognized by the Chinese Taipei government, or his or her foreign status is not accepted by the Chinese Taipei government.

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

Restrictions	Description
Application for Alien Resident Certificate	Foreigners who enter Chinese Taipei on resident visas are required to apply to their nearest city/county police headquarters for an Alien Resident Certificate within 15 days of entry. Those failing to apply within the stipulated period will be required to do so within 10 additional days. Those still failing to apply when the additional period has elapsed will be ordered to leave Chinese Taipei within a prescribed period of time.
Time limit on Alien Resident Certificates	The period of validity of Alien Resident Certificates held by foreigners residing in Chinese Taipei is determined in accordance with the purpose of residence, but shall not be in excess of three years. For those who come to Chinese Taipei to live with relatives, the period of residence may be the same as that of the relatives with whom they reside. If the relatives with whom they reside are citizens of Chinese Taipei, the period of validity of the Alien Resident Certificates shall not exceed three years.
Change of purpose of residence	Foreigners who need to stay in Chinese Taipei beyond the period of residence which they have been granted are required to apply for an extension prior to the expiration of the original period of residence. If the purpose of residence of a foreigner has changed and the change has been approved by the competent government authority, he/she is required to file an application with the police headquarters in the area of residence within 15 days for a change of purpose of residence. Those who fail to apply for extension or change of purpose of stay in accordance with regulations will be required to do so within an additional 10-day period, and those who still fail to do so during the 10-day additional period will be ordered to leave Chinese Taipei within a specified period of time.
Departure from and entry into Chinese Taipei during period of residence	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.

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

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.

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

Law	Summary
Labor Union Law	Governs the organization of industrial and trade unions with the aim of protecting the interests of labourers, advancing labor skills, developing productive industries and improving the life of labourers. The mission of labor unions encompasses the conclusion, revision and abolition of collective agreements; the mediation of labor-management disputes; the mediation of disputes between labor unions or their members; and the making of recommendations on the enactment, revision, or repeal of labor laws and regulations.
Collective Agreement Law	Article 83 of the Labor Standards Law provides that a business entity must convene labor-management conferences to coordinate relations and promote cooperation between labor and management as well as to increase work efficiency. The Collective Agreement Law further provides standards for the conclusion of written contracts between employers and workers' organizations regarding labor relations.
The Settlement of Labor Disputes Law	Differentiates two categories of labor disputes, rights disputes and adjustment disputes; stipulates mediation and arbitration procedures for the settlement of labor-management disputes, and provides for the compulsory execution of arbitration decisions and disciplinary actions.

6. TAXATION

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

Taxation arrangements	Summary
<p>To avoid double taxation, prevent tax evasion and improve relations, Chinese Taipei observes the OECD taxation agreement model and takes the political, fiscal, economic and trade situations of both sides into consideration in the signing of taxation agreements.</p> <p>By the end of 1998, income tax agreements had been signed with Australia, Gambia, Indonesia, Malaysia, New Zealand, Singapore, South Africa, Viet Nam and Swaziland. International transportation income tax agreements had been signed with Canada, the European Union, Germany, Israel, Japan, Korea, Luxembourg, Macau, Netherlands, Norway, Sweden, Thailand and the United States.</p>	<p>The withholding rate on stock dividends from investments not approved under the Statute for Investment by Overseas Chinese or the Statute for Investment by Foreign Nationals is 30% for non-resident individuals and 25% for non-resident foreign profit-seeking enterprises. The withholding rate on stock dividends, interest and royalties from approved investments is 20%. Under taxation agreements, the withholding rate for stock dividends, interest and royalties is reduced to 5% to 15%.</p>

7. PERFORMANCE REQUIREMENTS

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

With the exception of local content requirements for the auto industry, Chinese Taipei imposes no other performance requirements. The local content ratio requirements will be abolished upon accession to the WTO.

8. CAPITAL EXPORTS

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

Regulations	Application and function
Statute for Foreign Exchange Regulation Regulations Governing the Reporting of Foreign Exchange Receipts and Disbursements or Transactions Guidance Governing Appointed Banks for Assisting Customers' Reporting of Foreign Exchange Receipts and Disbursements or Transactions	(1) Capital movements relating to outward investments or inward investments approved by the competent authorities are completely unrestricted. (2) Individuals and groups whose foreign exchange payments, receipts, or transactions values do not exceed US\$5million or an equivalent amount in each year may apply to any designated 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.

2. *List and brief description of 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 unauthorised shipment to prescribed countries, on 1 June 1995 the Board of Foreign Trade promulgated a 'High-Tech Commodities List' in accordance with the 'Regulations Governing Export and Import of High-Tech Commodities'. Technology covered by this list can be exported only upon issuance of an export permit by the competent authorities.

9. INVESTOR BEHAVIOUR

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

- (1) Company establishment and registration:
- a) Company Law
 - b) Commercial Registration Law
 - c) Stock Transaction 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. OTHER MEASURES

1. Brief outline of the competition policy regime.

The Fair Trade Law was promulgated on 4 February 1991 and implemented a year later on 4 February 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 are 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, the Fair Trade Law has been amended and the amendment was put into effect on 5 February 1999. Salient points in the amendments include increasing pecuniary penalties to NT\$50,000,000

(administrative fines) and NT\$100,000,000 (criminal fines) to impoverish persons and enterprises that violate the Fair Trade Law, and thus enhancing the Fair Trade Commission's ability to impose more significant fines on enterprises that do not comply with the Commission directives and dispositions; requiring the 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 for enterprises and participants in multi-level sales activities.

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

The National Bureau of Standards (NBS) has been renamed and reorganized as the Intellectual Property Office (IPO) on 26 January 1999. The IPO takes charge of IP right-related matters, including registration, management, and protection of patent rights, trademarks, copyrights and other IP rights. The establishment of the IPO helps to unify the powers of government authorities currently in charge of all IP-related matters.

For the purpose of accession of the WTO, Chinese Taipei's current Copyright Law was amended to meet the requirements of the TRIPs Agreement and entered into force in January 1998, with the only exception of retroactive application of the copyright protection term to the life of the author plus 50 years, or to 50 years after public release, which will not apply before Chinese Taipei's accession to the WTO. Chinese Taipei's current Copyright Law has characteristics as follows: equal protection for works of both domestic and foreign origin on the basis of reciprocity; copyright protection to the life of the author plus 50 years, or to 50 years after public release; reasonable latitude for the application of the doctrine of fair use; the establishment of a system of copyright intermediary organization; adequate civil remedy and criminal penalty to deter copyright infringement. In short, Chinese Taipei has brought its Copyright Law regime in line with international standards and affords a sound environment for foreign investment.

The Patent Law was amended in April 1997, in compliance with the preparation for the accession of the WTO. The main revisions are as follows: to delete the requirement of reciprocity in respect of the granting of patents for microorganisms, extension of patent protection terms and the granting of exclusive import rights; to limit compulsory licensing in respect of semiconductor technology to public non-commercial use or to remedying anti-competitive practice; to provide patent owners and his/her exclusive licensees the right to request destruction or other necessary disposition of the infringing goods, raw materials or instruments used in connection with the infringement; to provide for shifting the burden of proof in respect of process patents; to extend the term of patent protection to 12 years for new designs since filing date. The Patent Law specifically requires that implementation of the amendments to this Law shall commence on a date to be determined by the Executive Yuan.

Based upon the national interests and needs of economic and trade development, Chinese Taipei is applying for the accession of WTO. Accordingly, Trademark Law was revised and promulgated on 7 May 1997, and has been enforced since 1 November 1998. The major revisions are as follows: The requirement of mutual acceptance of trademark applications between countries was added to the provision of Priority claimed; Combination of colors was added as object of trademark which is applying for registration; Fair use was added and functioned as the defense of trademark infringement; Grace period to application of extension of trademark registration was provided; The regulation regarding protection of well-known marks and service marks was specifically added in order to comply with the TRIPs Agreement; Destruction of infringing goods or of the materials or equipment which have been utilized to conduct such infringing act was added.

Chinese Taipei has no single law specifically for the protection of industrial designs, but such protection is provided, to varying degrees, under the Patent Law, Copyright Law and other laws and regulations. The Patent Law, for example, provides for the registration and protection of original new designs with respect to shape, configuration, colour, or any combination thereof. The Copyright Law provides protection for industrial designs that fall within the scope of "artistic works", "pictorial works", and "scientific or technical designs".

Since the semiconductor industry is one of the industries to which the authorities of Chinese Taipei give development priority, an Integrated Circuit Layout Protection Act was enacted and became effective on

11 February 1996. The term “integrated circuit” refers to a final or intermediary product having electronic circuit capability and being comprised of transistors, capacitors, resistors, and other electronic components and their transmission lines fixed in a semiconductor material. The creator of the circuit layout, as named in the registration of the layout, enjoys the right to exploit the creation.

Furthermore, in January 1996, Chinese Taipei promulgated a Trade Secrets Act. In addition to the passage of laws to protect intellectual property rights and the strengthening of education work on IPR protection, the Ministry of Economic Affairs has established an IPR Coordination Committee which meets regularly and coordinates with other concerned agencies in maintaining a good environment for intellectual property and in protecting foreign investors.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

1. List 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
Article 13 of Statute for Investment by Foreign Nationals	<p>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 government acquires or expropriates the invested enterprise because of national defense reasons.</p> <p>The compensation under the preceding Paragraph shall be permitted for exchange settlement.</p>
Article 14 of Statute for Investment by Foreign Nationals	<p>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 20 years after commencement of business as long as the investor continues to hold 45% or more of the total capital.</p> <p>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.</p>

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

Not applicable.

2. SETTLEMENT OF DISPUTES

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

In the spirit of the bilateral investment protection agreements signed by Chinese Taipei, any dispute or disagreement arising from investment by a foreign national should be solved by the parties to the dispute themselves through amicable discussion. When agreement cannot be reached in this way, the two sides may agree to turn it over to the International Court of Commerce Court of Arbitration or other dispute settlement agency that enjoys public credibility for an international mediation process that ends in a final

and compulsory judgment, and that provides a basis for resolution of the dispute through legal action. Disagreements between foreign investors and the administrative authorities can be resolved through diplomatic channels or through general administrative relief appeal methods.

2. *Signatory or accession to the International Convention on the Settlement of Investment Disputes (ICSID).*

No.

D. INVESTMENT PROMOTION AND INCENTIVES

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

Program	Nature of incentive	Contact point
Investment tax credit for the procurement of equipment or technology	Private manufacturing or technical service enterprises procuring equipment or technology, may apply for an investment tax credit amounting to 20%, 10%, or 5% of the total cost of the equipment or technology, depending on whether it is domestically produced or imported, on the business income tax for the current year.	Industrial Development Bureau, MOEA; Export Processing Zone Administration, MOEA; Science-based Industrial Park Administration
Investment tax credit for spending for research and development, personnel training, and the establishment of an international brand image	Companies spending funds on research and development, personnel training, or the establishment of an international brand image may claim an investment tax credit of 10% or 20% of such spending on their business income tax for the current year.	Local tax agency in area of the company's location.
Five-year tax holiday or income tax credit for shareholders	Within two years of the date when shareholders began making share payments, important technology enterprises and important investment enterprises may, with the agreement of the general shareholders' meeting, 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

Program	Nature of incentive	Contact point
	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 areas with scant natural resources or slow development	To promote balanced regional development, companies investing in 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.	County authorities of areas announced by the Ministry of 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. The depreciation period can be shortened by half for specified production machinery and equipment used for adjusting the industrial structure, or for improving the scale of operations or production methods.	For energy-conserving equipment: Energy Council, MOEA; For other equipment: Industrial Development Bureau, MOEA
Tariff-free import	Duty-free import of production, research and development, and inspection equipment, or pollution control facilities, which are not manufactured locally.	Industrial Development Bureau, MOEA
Tax exemption for creative works and inventions	Royalties and income from the creative works and inventions of individuals are exempt from the consolidated income tax.	Tax agency for inventor's residential area.
Merger incentives	Stamp taxes, contract taxes and land increment taxes resulting from mergers may be reduced, exempted or deferred.	Industrial Development Bureau, MOEA; Commerce Department, MOEA
Preferential land increment tax treatment for plant removal	The land increment tax due as a result of the sale or transfer of the original plant is collected at the lowest marginal rate.	Industrial Development Bureau, MOEA; Local Provincial or City reconstruction department or bureau; Local Provincial or City tax department or bureau.
Deferred payment of stock dividend tax	The value of shares obtained by shareholders or employees of	Provincial or City reconstruction department or

Program	Nature of incentive	Contact point
	companies that carry out a capital increase through retained earnings for the purpose of adding or renewing machinery, equipment, or transportation facilities, or of repaying loans or making payments on such machinery, equipment, or facilities, are exempted from the consolidated income tax for the current year.	bureau; Export Processing Zone Administration, MOEA; Science-based Industrial Park Administration
Allocation of reserve for loss on outward investments	Companies making outward investments approved by the Investment Commission may allocate an amount equal to 20% of the outward investment as a reserve against loss on that investment.	Investment Commission, MOEA
Tax exemption on payments for the procurement of technology	Profit-earning enterprises that bring in new production technology or products, or that utilize approved foreign patents, trademarks, or other special utilization rights for the purpose of improving product quality or reducing production costs, are exempt from taxes on royalty payments and payments for technical services.	Energy Commission, MOEA; Industrial Development Bureau, MOEA

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
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 the other 27 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	Chiao Tung Bank, Taiwan Business Bank and the other 27 commercial banks.

	points below the Chiao Tung Bank's prime rate.	
Loans for the procurement of pollution control equipment by private enterprises	Loans for the procurement or improvement of pollution control equipment by private factories are available at an interest rate 2.50 percentage points below the Chiao Tung Bank's prime rate.	Chiao Tung Bank, Taiwan Business Bank and the other 27 commercial banks.
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. 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
<i>Industrial Development and Investment Center, MOEA</i> provides information related to investment and helps solve problems encountered in the process of carrying out investment projects in Chinese Taipei.	19 Fl., 4 Chunghsiao W. Rd., Sec. 1, Taipei Telephone: (886 2) 2389 2111 Fax: (886 2) 2382 0497
<i>Export Processing Zone Administration, MOEA</i> provides services to export-oriented companies wishing to set up factories in export processing zones.	600 Chiachang Rd., Nantzu District, Kaohsiung Telephone: (886 7) 361 1212 Fax: (886 7) 361 4348
<i>Kaohsiung Branch, Export Processing Zone Administration, MOEA</i> provides services to export-oriented companies wishing to set up factories in the export processing zone.	2 Chungyi Rd., Chienchen District, Kaohsiung Telephone: (886 7) 821 7141 Fax: (886 7) 831 0897
<i>Taichung Branch, Export Processing Zone Administration, MOEA</i> provides services to export-oriented companies wishing to set up factories in the export processing zone.	1 Chienkuo Rd., Tantz Township, Taichung County Telephone: (886 4) 532 2113 Fax: (886 4) 532 2200
<i>Science-based Industrial Park Administration</i> provides services to technology-oriented companies wishing to establish factories in the science-based industrial park.	2 Hsinan Rd., Hsinchu Telephone: (886 35) 773 311 Fax: (886 35) 776 222

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

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

Agreement	Provisions
Friendship, Commerce and Navigation Treaties	A Treaty of Friendship, Commerce and Navigation with the United States became effective on November 30, 1948. This treaty grants the citizens of each party the right to carry out commercial, manufacturing and processing activities within the other party; to engage in the exploration and exploitation of mineral resources; and it provides most favoured nation treatment in the acquisition, holding, and disposal of real and movable property. It also provides the citizens of each party

Agreement	Provisions
	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, Belize and Costa Rica	These agreements are based on most favoured nation treatment and the principle of nondiscrimination; they are designed to encourage and promote two-way investment, and provide protection in the areas of expropriation, compensation for damage, repatriation of investments, subrogation and the resolution of disputes, thereby creating favourable investment conditions.
Regional or sub-regional Investment Treaties	Not applicable.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

According to statistics from the Investment Commission of the Ministry of Economic Affairs, by the end of 1998, accumulative approved investment by overseas Chinese and foreign nationals in Chinese Taipei had reached 10,022 cases with a total investment value of US\$32.73 billion. Of the total, overseas Chinese accounted for 2,661 cases with a total value of US\$3.63 billion and foreign nationals for 7,361 cases worth a total of US\$29.1 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 1998 amounted to approximately 4,600 cases with a total value of US\$18.6 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; Malaysia; Hong Kong, China; Thailand; Singapore; and Viet Nam. 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 of the major countries/economies that are sources/receivers of FDI over recent years.

According to statistics from the Investment Commission, the major sources/receivers of FDI in 1998 were as follows:

Sources FDI	Destination FDI
British possessions in Central America, the United States, Japan, Singapore and Hong Kong, China.	British possessions in Central America, the United States, Singapore, Thailand and Viet Nam.

APEC INVESTMENT REGIME GUIDEBOOK THAILAND

- A. Background on the Foreign Investment Regime
- B. Regulatory Framework/Investment Facilitation
- C. Investment Protection
- D. Investment Promotion and Incentives
- E. Summary of International Investment Agreements or Codes to Which APEC Member is a Party
- F. Assessment of Recent Trends in Foreign Investment

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:

Alien Business Law

Investment Promotion Act

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

B.1 Transparency

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

B.3 National Treatment

B.4 Repatriation and Convertibility

B.5 Entry and Sojourn of Personnel

B.6 Taxation

B.7 Performance Requirements

B.8 Capital Exports

B.9 Investor Behaviour

B.10 Other Measures

1. Transparency

B.1.1. Statutory (Legislative) Requirements

B.1.2 Investment Review and Approval

(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)	<p>Unless involving business activities specified in List 1, 2 or 3 of the Foreign Business Act</p> <p>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)</p> <p>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.</p> <p>For manufacturing business, foreign investors may hold a majority or all shares in promoted projects.</p>

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.

(d) 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 Commercial Registration, 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) 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 <u>30 days</u> from the submission of complete application and documentation
2. Companies engaged in activities in List 2 and 3	within <u>60 days</u> 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 <u>60 days</u> from the submission of complete documentation b) For projects with investment over 500 million baht, excluding land cost and working capital, within <u>90 days</u> from the submission of complete documentation
2. Issuance of Promotion Certificate	within <u>10 days</u> 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) <u>on the same day</u> of application submission given complete documentation and compliance with the IEAT criteria b) within <u>30 days</u> 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 <u>2 days</u> from the submission of complete documentation

3. Notification of Commencing Operation Approval	within <u>2 days</u> from the submission of complete documentation
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- (f) 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 Commercial Registration 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

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

Please refer to Section B.1.2 (e).

- (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
Office of the Board of	555 Vipavadee-Rangsit Road,	All investment-related

Investment	Chatuchak, Bangkok 10900 Telephone: (66 2) 537 8111, 537 8155 Fax: (66 2) 537 8188, 537 8177	matters
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- (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. 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.

- (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.

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.

- (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).

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	<u>Northern Region Investment and Economic Center</u> 112 Airport Business Park Tower 90 Mahidol Road., Haiya District, Amphor Muang, Chiang Mai 50100 Tel.: (66 53) 203-400 Fax: (66 33) 203 404 E-Mail: chmai@boi.go.th	Administer investment incentives and provide information services.
	<u>Northeastern Investment and Economic Center 1</u> 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	
	<u>Northeastern Investment and Economic Center 2</u> 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	
	<u>Eastern Region Investment and Economic Center</u> 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	
	<u>Southern Region Investment and Economic Center 1</u> 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	
	<u>Southern Region Investment and Economic Center 2</u> 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)
<u>List 1:</u> 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.
<u>List 2:</u> The businesses related to the national safety or security or affecting arts and culture, tradition, folk	Foreign equity participation must be lower than half of the registered capital

<p>handicraft or natural resource and environment:</p> <p>Group 1: National safety/security-related businesses</p> <ol style="list-style-type: none"> (1) Production, selling, repairing and maintenance of <ol style="list-style-type: none"> (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 <p>Group 2: Businesses affected to culture, traditional and folk handicrafts</p> <ol style="list-style-type: none"> (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, bronzeware and lacquerware (6) Production of crockery of Thai arts and culture <p>Group 3: Businesses affecting natural resources or environment</p> <ol style="list-style-type: none"> (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 	<p>except permission by the Minister with the approval of the Cabinet</p> <p>Foreigners operating business under this list must meet the following two qualifications:</p> <ol style="list-style-type: none"> 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.
<p><u>List 3:</u> The businesses which Thai nationals are not yet ready to compete with foreigners:</p> <ol style="list-style-type: none"> (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 	<p>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.</p>

- (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 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

<p>million Baht</p> <p>(16) Advertising business</p> <p>(17) Hotel business, except for hotel management service</p> <p>(18) Guided tour</p> <p>(19) Selling food or beverages</p> <p>(20) Plant cultivation or propagation business</p> <p>(21) Other categories of service business except that prescribed in the ministerial regulations</p>	
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- (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 and authorized finance companies¹. 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.

¹ Until July 2000, there is only one authorized finance company.

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

- (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
The Alien Employment Act of July 8, 1978 requires that natural	A Royal Decree listed 39

persons not of Thai nationality must obtain a work permit to work in Thailand.	occupations prohibited to aliens.
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(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.

Minimum Daily Wage Rates, effective January 1, 1998	Baht
Bangkok, Samut Prakan, Nonthaburi, Pathum Thani, Phuket, Nakon Pathom and Samut Sakhon	162
Pang Nga, Ranong, Chonburi, Saraburi, Nakhon Ratchasima, Chiang Mai	140
Other Provinces	130
Overtime Regulations 1998	
Overtime performed on regular working days	Not less than one and a half times
Regular work on public holidays	Not less than two times
Overtime performed on public holidays	Not less than three times
Severance Payment Entitlement 1998	
Workers employed for: - 120 days but less than 1 year - 1 year but less than 3 years - 3 years but less than 6 years - 6 years but less than 10 years - 10 years and up	Not less than 30 days severance pay Not less than 90 days severance pay Not less than 180 days severance pay Not less than 240 days severance pay Not less than 300 days severance pay

Source: Ministry of Labor and Social Welfare, July 2000.

There is no requirement as to the minimum number of local staff that foreign firms have to hire or train.

(d) 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	<ul style="list-style-type: none"> 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. 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. 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, they are subject to tax at the following rates of <ol style="list-style-type: none"> 10 per cent of gross receipts except income which are registration fee, maintenance of membership, properties received as donation or gifts. 	<ul style="list-style-type: none"> Nonresident companies are subject to tax at the rate of 30 per cent of net profit. Same as resident companies. 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 cent.

	<p>(2) 2 per cent of gross income under Section 40(8) of the Revenue Code.</p> <ul style="list-style-type: none"> 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). 	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> Dividend is subject to withholding tax at the rate of 10 per cent if it is not received by a registered company. 	<ul style="list-style-type: none"> 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	<p>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, <u>during the period of 1 April 1999 until 30 September 2001</u>, the 10 per cent value added tax is reduced to 7 per cent.</p>	
Specific Business Tax	<p>Specific Business Tax is imposed in lieu of Value Added Tax for the following business:</p> <ul style="list-style-type: none"> 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; sale of immovable properties in a commercial manner or for profits -at the rate of 3 per cent is reduced to 0.1 per cent <u>from 5 July 2000 until 31</u> 	

	<p>December 2001.</p> <ul style="list-style-type: none"> - 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	<p>Thailand has concluded Double Taxation Treaties with 40 countries, namely Australia, Austria, Bangladesh, Belgium, Canada, Czech Republic, China, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, South Korea, Laos, Luxembourg, Malaysia, Mauritius, Nepal, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Romania, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, United Kingdom and Northern Ireland, United States of America, Uzbekistan and Vietnam.</p> <p>The method of eliminating double taxation varies by treaties which mostly is the method of Ordinary Credit with Tax Sparing Credit.</p>

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.

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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

C.1 Expropriation and Compensation

C.2 Settlement of Disputes

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	<p>The Investment Promotion Act provides investment projects promoted by the Board of Investment with the guarantee against:</p> <ul style="list-style-type: none"> - 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., 5 th Floor, Rachadaphisek Road, Chatuchak, Bangkok 10900 Telephone: (662)541-2298-9, 541-2271 Fax: (662)541-2298-9 Office 2: Bangkok Insurance Bldg., 12 th 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

2. 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 Office of the Board of Investment (BOI)	Tax and non-tax incentives are granted to local and foreign investors on a 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	Office of the Board of Investment 555 Vipavadee-Rangsit Road, 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

	<p>the incentives. Projects located in zone 3 or Investment Promotion Zone receive maximum incentives.</p> <ol style="list-style-type: none"> 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. <p>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.</p>	
<p>Investment Promotion schemes provided by the Industrial Estate Authority of Thailand (IEAT)</p>	<p>Tax and non-tax incentives granted by the IEAT are</p> <ol style="list-style-type: none"> 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 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 	<p>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</p>

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 countries/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
<p><u>Bilateral Investment Treaties</u></p> <ul style="list-style-type: none"> - 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 20 countries, namely, Cambodia, Canada, China, Czech, Finland, 	

Germany, Hungary, Indonesia, South Korea, Laos, Netherlands, Peru, Philippines, Poland, Romania, Sri Lanka, Switzerland, Taiwan, United Kingdom and Vietnam	
<u>Regional or sub regional Investment Treaties</u>	
- 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).

In 1999, **Net foreign direct investment (FDI)** recorded a smaller surplus of 6.1 billion US\$, down from last year by 13 percent due mainly to the lower FDI from the USA and Japan in non-bank sector during the corporate debt restructuring period. Meanwhile FDI from some other foreign investor groups-namely the Netherlands, France and Germany-increased owing to the recapitalization and rehabilitation of affiliated companies with the expectation of an overall improved economy in 1999. As for the bank sector, FDI inflows were induced by recapitalization for the amount of 2.5 billion US\$. In 1999, FDI (excluding that of bank sector) was invested in major business sectors such as trade, industry and holding companies. **The Netherlands** and **the United States** recorded a high share in total FDI.

Overseas direct investments by residents increased from last year, with the major part comprising FDI in Hong Kong, food industry in the USA and China. Apart from these, there were also outflows of loan extended to overseas affiliated companies.

Portfolio Investment recorded net inflow of 1.0 billion US\$, a significant rise from last year, mainly on account of investment in the stock market after the trading conditions improved in the second and third quarter. **Hong Kong, Singapore and the Netherlands** were the three largest sources of investment in 1999 respectively.

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 Country

(Million USD)

Countries	1994	1995	1996	1997	1998	1999
Japan	3.6	1.1	-0.2	0.7	-0.3	1.9
U.S.A.	71.0	142.0	76.3	56.6	12.8	43.4
Canada	0.8	3.0	0.2	0.6	3.2	-1.8
Hong Kong	67.7	61.1	158.9	6.3	55.7	107.7
Taiwan	2.6	1.0	1.4	4.1	0.0	9.8
Switzerland	11.8	2.2	-20.7	-2.0	0.0	-0.1
Australia	6.8	9.4	9.8	8.0	1.3	0.2
S. Korea	0.3	0.3	0.5	0.3	2.2	0.1
China	64.8	75.4	96.5	36.2	12.8	28.0
ASEAN:-	86.3	181.7	120.1	138.1	-33.5	11.7
Singapore	35.8	4.5	11.8	106.5	-40.6	7.0
Malaysia	1.2	2.2	2.0	2.9	0.3	0.0
Philippines	31.7	145.8	73.1	10.5	8.6	4.7
Indonesia	17.7	29.1	33.2	18.2	-1.7	0.0
EU:-	14.3	148.6	33.7	-29.0	0.6	13.7
U.K.	7.8	38.7	33.1	1.3	-12.2	13.8

Germany	6.2	107.0	0.5	-22.0	2.7	0.0
France	0.2	3.0	0.2	-8.3	10.1	-0.1
INDOCHINA:-	28.1	64.8	146.9	78.0	16.4	15.7
Cambodia	10.7	8.9	30.7	20.0	1.3	3.1
Lao PDR	5.4	5.7	55.9	1.3	0.1	0.2
Myanmar	5.2	20.0	7.5	7.7	1.7	2.9
Vietnam	6.9	30.2	52.7	49.0	13.2	9.5
OTHERS:-	48.3	89.1	167.2	148.0	40.8	103.8
Total	406.0	779.5	790.5	445.9	112.0	334.1

Source: BOP & International Statistics Team- Bank of Thailand, as of 28 July 2000

Net Flows of Foreign Direct Investment in Thailand Classified by Country*

(Millions of Baht)

Countries	1994	1995	1996	1997	1998	1999
Japan	3,091.2	13,855.8	13,250.3	42,371.0	60,477.8	18,544.4
USA	3,908.7	6,471.2	10,870.0	25,835.2	51,800.4	23,245.5
Canada	113.8	-58.6	28.0	52.8	128.1	113.2
Hong Kong	8,004.2	6,948.2	5,443.9	14,816.0	16,571.2	8,475.6
Taiwan	2,073.7	2,405.0	3,491.8	4,604.9	4,073.2	4,392.5
Switzerland	672.5	396.6	1,315.9	3,942.7	3,078.2	2,261.8
Australia	270.5	626.8	863.6	3,824.3	1,525.6	488.4
South Korea	323.0	308.2	628.4	914.3	2,799.4	204.3
China	-30.5	46.4	99.0	-284.4	217.2	-81.2
ASEAN:-	4,879.7	3,973.2	7,749.7	10,426.1	23,495.7	19,183.8
Singapore	4,629.6	3,393.5	6,968.7	9,851.8	22,673.6	18,094.0
Malaysia	56.4	283.8	531.6	371.2	710.7	1,043.8
Indonesia	193.7	295.9	249.4	203.1	111.4	46.1
EU:-	2,206.8	6,292.0	2,232.3	10,183.0	33,651.9	54,787.5
UK	1,114.5	1,380.2	1,432.5	3,693.0	4,814.6	6,438.9
Germany	742.9	951.3	1,063.9	2,101.6	4,074.3	10,170.8
France	977.3	1,795.2	760.5	-35.9	10,926.9	13,598.9
Netherlands	-627.9	2,165.3	-1,024.6	4,424.2	13,836.2	24,578.8
Others:-	7,727.4	8,622.2	11,499.1	1,010.4	12,069.6	2,975.9
Total	33,241.0	49,887.0	57,472.0	117,696.3	209,888.3	134,591.7

Source: BOP & International Statistics Team- Bank of Thailand, as of 28 July 2000

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 Country*

(Millions of USD)

Countries	1994	1995	1996	1997	1998	1999
Japan	123.7	556.4	523.6	1,348.7	1,484.7	488.0
USA	155.8	260.0	429.5	780.8	1,283.3	617.1
Canada	4.5	-2.3	1.1	0.8	3.2	3.0
Hong Kong	318.8	279.1	215.1	442.2	393.9	223.2
Taiwan	82.6	96.6	138.0	133.0	106.3	116.4
Switzerland	26.8	15.9	52.0	120.4	73.2	60.2
Australia	10.8	25.2	34.1	119.4	34.6	12.9
South Korea	12.9	12.4	24.8	29.9	58.9	11.3
China	-1.2	1.9	3.9	-7.8	5.0	-2.1
ASEAN:-	194.5	159.9	306.1	290.3	561.8	513.5
Singapore	184.6	136.6	275.2	271.1	542.0	485.3
Malaysia	2.2	11.4	21.0	12.0	17.2	27.1

Indonesia	7.7	11.9	9.9	7.1	2.7	1.2
EU:-	88.0	252.7	88.2	342.0	813.0	1,445.7
UK	44.4	55.4	56.6	124.4	101.9	170.9
Germany	29.6	38.2	42.0	59.8	100.3	267.0
France	38.9	72.1	30.1	2.5	278.9	364.9
Netherlands	-24.8	87.0	-40.5	155.2	331.8	643.0
Others:-	307.8	345.3	454.5	27.6	324.3	72.5
Total	1,325.0	2,003.0	2,271.0	3,627.0	5,142.2	3,561.8

Source: BOP & International Statistics Team- Bank of Thailand, as of 28 July 2000

Note: * - Excluding Thai direct investment and banking sector

Net Flows of Portfolio Investment in Thailand (Equity Securities)

(Millions of Baht)

Countries	1994	1995	1996	1997	1998	1999
Japan	-115.1	1,000.0	562.0	1,315.6	-80.9	198.8
USA	4,592.5	1,171.9	1,203.5	-19,840.0	-21,080.7	-23,554.9
Canada	309.0	36.2	13.6	-85.8	14.3	-117.6
Hong Kong	5,705.0	6,497.2	-4,465.1	38,126.2	1,260.8	40,908.5
Taiwan	-567.7	507.1	84.3	-12.7	347.1	-410.4
Switzerland	-132.8	2,600.2	1,007.4	597.6	311.3	-309.0
Australia	112.2	1,965.6	652.9	428.8	132.9	35.8
Singapore	-2,169.0	36,619.3	26,277.7	65,910.6	29,823.0	16,926.6
Malaysia	79.2	-1.0	-1.1	49.4	111.3	10.1
EU:-	-20,733.6	3,259.4	2,802.9	34,414.6	2,475.1	2,164.0
UK	-11,170.0	8,642.3	4,506.7	32,965.2	1,993.0	1,768.5
Germany	37.0	409.1	197.0	1,080.5	1,496.7	2,698.3
France	225.6	8.5	769.9	744.0	468.4	1,127.6
Others:-	2,637.3	117.3	701.1	1,398.8	956.5	-263.0
Total	-10,283.0	52,759.0	28,437.0	122,303.3	14,270.7	35,588.9

Source: BOP & International Statistics Team- Bank of Thailand, as of 28 July 2000

Net Flows of Portfolio Investment in Thailand (Equity Securities)

(Millions of USD)

Countries	1994	1995	1996	1997	1998	1999
Japan	-4.6	40.2	22.2	18.3	-0.6	5.3
USA	186.8	47.1	47.5	-263.5	-515.9	-637.6
Canada	12.3	1.5	0.5	-2.0	0.2	-3.0
Hong Kong	227.1	261.0	-176.4	1,276.2	32.6	1,099.0
Taiwan	-22.6	20.4	3.3	28.1	7.4	-11.0
Switzerland	-5.3	104.5	39.8	22.0	6.4	-8.2
Australia	4.5	79.0	25.8	16.0	2.7	1.0
ASEAN:-	-77.0	1,471.0	1,037.6	1,848.4	702.0	438.0
Singapore	-86.3	1,471.2	1,037.9	1,849.3	696.2	451.7
Malaysia	3.2	0.0	0.0	1.9	2.4	0.3
EU:-	-823.6	124.8	150.1	1,025.4	12.5	56.3
UK	-444.6	347.2	178.0	950.0	10.1	-47.2
Germany	1.5	16.4	7.8	35.7	3.6	-70.7
France	9.0	0.3	30.4	29.0	11.3	29.1
Others:-	93.1	11.0	-27.3	19.1	16.7	6.5
Total	-409.3	2,119.7	1,123.1	3,988.0	264.0	946.3

Source: BOP & International Statistics Team- Bank of Thailand, as of 28 July 2000

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

Sources of FDI:

Japan, United States of America, Singapore, Hong Kong and Netherlands respectively

Destination of Thai FDI*

Hong Kong, Indochina States, United States of America and People's Republic of China respectively

Note: * Only data on Thai equity investment is currently available.

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**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 in the 1990s, it is increasingly important to offer a stable, non-discriminatory environment to encourage investors. The United States continues to provide such an investment regime, but also expects its investors to be treated similarly.

The United States is the world's largest economy and the world's largest host of foreign direct investment (FDI). Foreign investors are attracted to the United States' talented and skilled labor pool as well as the opportunity to create strategic alliances in the country's strong, competitive industries.

U.S. policy towards foreign direct investment has not changed in any substantial way for decades. The investment regime is characterized by a high degree of openness, and is based on the principle of national treatment. Foreign investors are provided fair, equitable and, for the most part, non-discriminatory treatment. The few exceptions to this policy are generally for reasons of national security or prudential considerations and should be viewed in the context of the overall stability and openness of the U.S. investment regime. In addition, the United States offers an investment regime in which investors have non-discriminatory legal recourse in the event of a dispute, free transferability of capital and profits, guarantees against expropriation, unparalleled infrastructure and a low tax burden.

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

President Clinton, in a speech on 26 February 1993, said “(We) will welcome foreign investment in our businesses, knowing that with it new ideas as well as capital...new technologies, new management techniques and new opportunities arise for us to learn from one another and grow. But as we welcome that investment, we insist that our investors should be equally welcome in other countries...We welcome the subsidiaries of foreign countries on our soil. We appreciate the jobs they create and the products and services they bring. But we do insist simply that they pay the same taxes on the same income that our companies do for doing the same business...”

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. TRANSPARENCY

(i) Statutory (legislative) requirements

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

Constitutional Provisions

The Constitution of the United States contains several provisions that guarantee economic freedom. These guarantees generally benefit foreign investors. Among these are Articles I, III, and VI, and the Fifth, Thirteenth and Fourteenth Amendments.

Article I, Section 8 provides, in part, that: all duties, imposts and excises shall be uniform throughout the U.S.; foreign and interstate commerce will be regulated by the federal government through Congress; there shall be a uniform bankruptcy law which would free assets that would otherwise be tied up in bankruptcy; and authors and inventors shall have exclusive rights for their works and inventions for a period of time. Article I, Section 9 provides that neither Congress nor the states of the United States can tax exports and prohibits preferences on the regulation of commerce or revenue to ports of one state over other states. Article I, Section 10 provides that the states generally cannot act in a certain manner to impair contractual obligations. Article III provides for federal courts to resolve issues arising under the Constitution and federal law.

The Fifth Amendment includes the takings clause that provides that no “private property shall be taken for public use without just compensation.” This constitutional requirement is consistent with international rules on expropriation. The Fifth Amendment also provides that no person shall be “deprived of life, liberty, or property, without due process of law.” The Thirteenth Amendment prohibits involuntary servitude and the Fourteenth Amendment provides that states shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

These provisions, as well as other provisions in the Constitution, have been interpreted by the U.S. Supreme Court in numerous cases dealing with specific rights to economic freedom. For example, the guarantee of freedom of speech in the First Amendment has been interpreted to cover, in certain instances, “commercial” speech by which manufacturers, retailers, and service providers transmit information to the general public. Analyzing the interstate commerce clause and equal protection clause, the Supreme Court has also determined that foreign corporations incorporated in one state cannot be charged a tax or fee as a condition to doing business in another state and that states cannot impose more burdensome regulations on foreign corporations than they do domestic corporations unless they are rationally related to a legitimate state purpose.

General Laws Affecting All Investments

The United States has a host of federal, state and local laws that affect investment, the vast majority of which are applied without regard to the nationality of the investor. These include laws and regulations governing anti-trust, mergers and acquisitions, wages and social security, export controls, environmental protection and health and safety. While such laws and regulations obviously have a significant impact on investment decisions, they are applied in a non-discriminatory fashion and so are not addressed in this paper.

Selected Laws That Affect Domestic and Foreign Investment Differently

(a) Laws that protect national security

In addition to restrictions in specific industry sectors discussed below, the Exon-Florio Amendment to the Defense Production Act provides the President with authority to review, and in certain circumstances, suspend or prohibit any merger with, or acquisition of, a U.S. company by a foreign person, should he determine that there is credible evidence of a threat to the national security and that other laws and regulations are not adequate or appropriate to protect it. The law provides a framework for a maximum 90-day review of notified transactions. This period includes a 30-day initial review, an extended 45-day period, if necessary, to do an investigation, and 15 days for the President to announce his decisions. Exon-Florio regulations have been published in the Federal Register and thus are a matter of public record. Domestic and foreign parties alike had opportunity to comment on these ExonFlorio procedures. As of April 1996, of over 1,000 notified transactions, only 15 have been investigated, and only one has been blocked.

(b) Laws that protect classified information

The Executive Orders and Defense Department regulations which constitute the Industrial Security Program may make it difficult for foreign corporations to obtain the security clearances necessary to carry out a contract involving classified information. Both a facility clearance and individual clearances for key management personnel and others who may have access to classified information are required for any company in the United States carrying out a classified contract. Generally, facilities under “foreign ownership, control, or influence” are ineligible for facility clearances, unless foreign management is excluded. A foreign-controlled U.S. subsidiary might obtain clearances by forming a “voting trust” or “proxy agreement” in which it gives up management rights, but retains rights to profits, or by formally agreeing to special management arrangements to ensure the security of the classified information.

(ii) Investment Review and Approval

1. Details of proposals and sectors that are/are not subject to screening.

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

The United States has no screening process for foreign direct investment (FDI). The United States has consistently welcomed FDI, providing foreign investors fair, non-discriminatory treatment both as a matter of law and practice. Foreign investors generally are free to either establish new businesses or acquire existing ones subject only to the laws and regulations applicable to all firms, irrespective of nationality.

Exceptions to non-discriminatory treatment have been made primarily to protect the national security, and have focused on investment in discrete sectors, such as air and water transport, nuclear energy and telecommunications.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

See section B(1)(i)(1) above.

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

State and local governments also have laws and regulations which affect the operations of businesses located in their territory, but the ability of these governments to regulate investment in a manner which discriminates between residents of the state or companies incorporated in it and residents or companies from other states (or, for that matter, other countries) is severely constrained by the Inter-state Commerce Clause of the U.S. Constitution. Accordingly, state laws outside the areas of general company law, real estate, and banking and insurance (areas in which Congress has specifically delegated regulatory authority to the states), will generally apply equally to all persons residing in them and to all companies or other business entities doing business there. Where there may be differences of treatment, these are minor and can frequently be eliminated through simple incorporation in the state.

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

and

3. NATIONAL TREATMENT

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

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

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

Atomic Energy – Aliens and entities owned, controlled or dominated by aliens or foreign governments may not engage in operations involving the utilization of atomic energy. This restriction applies primarily to nuclear reactors and reprocessing plants extracting plutonium.

Authority: *Atomic Energy Act. 42 U.S.C. §§2011 et seq. (1954).*

Customs House Brokers – To obtain a license to operate a customs brokerage, one officer or partner of a firm must be a licensed customs broker and an U.S. citizen.

Authority: *Tariff Act (1930), 19 U.S.C. §1641(b).*

Licenses for Broadcast, Common Carrier, and Aeronautical Radio Stations – For radio, broadcasting, and telephone companies in regard to common carrier radio licenses, U.S. enterprises with foreign ownership exceeding 20%, aliens, and foreign corporations may not be granted the relevant license. When a corporation is directly or indirectly controlled by another corporation, the Federal Communications Commission (FCC) may refuse to approve a license if more than a 25% interest in the controlling company is foreign and if the FCC finds it in the public interest to do so. Aliens, foreign corporations or

any corporation of which any officer or director is an alien may not hold broadcasting, common carrier or aeronautical radio licenses. Moreover, aliens, foreign corporations or foreign governments may not own or vote more than 20% of the stock of U.S. corporations holding radio licenses for such services. There are additional restrictions on the nationality of management that apply in the case of broadcasting companies, and telephone companies having a common carrier radio license.

Authority: *Communications Act of 1934*. 47 U.S.C. §§151 et seq., see particularly §§310(b).

COMSAT – Foreign controlled enterprises and all other foreigners may not hold in aggregate more than 20% ownership in the Communications Satellite Corporation.

Authority: *Communications Satellite Act (1962)*. 47 U.S.C. §734(d).

Subsidies or Grants Including Government Supported Loans Guarantees and Eligibility for Overseas Private Investment Corporation (OPIC) – insurance and guarantees for investments in eligible developing countries is limited to entities organized in the U.S. and substantially (more than 50%) beneficially owned by United States citizens, or to foreign entities at least 95% owned by U.S. citizens.

Authority: *Foreign Assistance Act (1961)*. 22 U.S.C. §2198(c).

Advanced Technology Program – To receive financial assistance under the Advanced Technology Program, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a U.S. owned company or a company incorporated in the United States whose parent is incorporated in a country which (1) affords to U.S. owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; (2) affords U.S. owned companies local investment opportunities comparable to those afforded any other company; and (3) affords adequate and effective intellectual property rights to U.S. owned firms.

Authority: *American Technology Pre-eminence Act of 1991*. 15 U.S.C. §278h.

Technology Reinvestment Project – To participate in the Technology Reinvestment Project, a company must conduct a significant level of its research, development, engineering, and manufacturing activities in the United States, or in a U.S. owned company. A foreign owned firm may be eligible if its parent company is incorporated in a country whose government encourages U.S. owned firms' participation in research and development consortia to which that government provides funding, and affords effective intellectual property rights for U.S. companies.

Authority: *Defense Conversion, Reinvestment and Transition Assistance Act of 1992*. 10 U.S.C. §2491.

Energy – To receive financial assistance under the Energy Policy Act, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a U.S. owned company or a company incorporated in the United States whose parent is incorporated in a country which (1) affords to U.S. owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; (2) affords U.S. owned companies local investment opportunities comparable to those afforded any other company; and (3) affords adequate and effective intellectual property rights to U.S. owned firms.

Authority: *Energy Policy Act of 1992*. 42 U.S.C. §13525.

Agriculture – Foreign controlled U.S. enterprises cannot obtain special government emergency loans for agricultural purposes.

Authority: 7 U.S.C. §1922. 7 U.S.C. §1941. 7 U.S.C. §1961.

State and Local Measures Exempt from Article 1102 of the NAFTA Pursuant to Article 1108 thereof – The NAFTA allows certain laws that do not conform with NAFTA's national treatment obligations to be grandfathered. These measures at the state level that were in effect on 1 January 1994, are automatically grandfathered for two years. After two years any state level measure otherwise prohibited in NAFTA must be noted in order to remain in effect. Measures in effect on 1 January 1994, on the local level are grandfathered forever.

Landing of Submarine Cables – The Federal Communications Commission (FCC), under delegated authority from the President of the United States with concurrence of the State Department, is authorized to issue licenses to land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country. Under the Submarine Cable Landing License Act of 1921, the FCC may withhold or revoke licenses if such action will assist, inter alia, in securing cable landing rights for U.S. citizens in foreign countries.

Authority: *Submarine Cable Landing Act*. 47 U.S.C. §34-39.

Fisheries – Foreign-controlled enterprises may not engage in certain fishing operations involving coastwise trade. In addition, foreigners may not hold more than a minority of shares comprising ownership in companies owning vessels which operate in U.S. fisheries. Also, corporate organization requirements pertain to the registration of flag vessels for fishing in the U.S. Exclusive Economic Zone.

Authority: *Anti-Reflagging Act (1987)*.

Foreign flag vessels may not fish or process fish in the 200-nautical-mile U.S. Exclusive Economic Zone except under the terms of a Governing International Fisheries Agreement (GIFA), or other agreement consistent with U.S. law.

Authority: *Magnuson Fishery Conservation and Management Act (1976)*.

Air and Maritime Transport, and Related Activities – Air transport, cabotage and exercise of U.S. international air route rights are reserved to national airlines controlled by U.S. citizens, and owned 75% or more (voting stock) by U.S. citizens.

Authority: *Federal Aviation Act (1958)*. 49 U.S.C. 41703.

Air transport (freight forwarding and charter activities) – A reciprocity test on air freight forwarding and air charter activities applies any time a foreign owned firm seeks authority to provide indirect air transportation either by crossborder or establishment for U.S. originating traffic. If a favorable determination is made by the Department of Transportation, indefinite registration is granted to the applicant, and subsequent applications of the same applications of the same nationality are routinely approved.

Authority: 49 U.S.C. 40109 [formerly Section 416 of the *Federal Aviation Act (1958)*]; 14 CFR 297,380 Subpart F.

Maritime transport – The Federal Maritime Commission is authorized to take unilateral action when a foreign government, foreign carrier or other persons providing maritime related services engages in activity that adversely affects U.S. carriers in U.S. ocean-borne trade; creates conditions unfavorable to shipping in the foreign trade; or unduly impairs access by U.S. flag vessels to trade between foreign ports. Sanctions proposed under these statutes most frequently affect the cross-border provision of services, however, sanctions could affect a foreign owned investment established in the U.S. (e.g. revocation of freight forwarders' licenses, suspension of preferential terminal leases).

Authority: *Foreign Shipping Practices Act (1988)*, *Merchant Marine Act (1920) Section 19*, *Shipping Act (1984) §13(b)4*.

Banking, Insurance, Securities and Other Financial Services Banking and Securities – As of August 1989, the Federal Reserve may refuse to designate as a primary dealer a foreign controlled commercial or investment bank if the government of the home country of the foreign bank denies national treatment to U.S. owned banks for government securities operations. Denial of the primary dealer designation means that the Federal Reserve, at its initiative, will no longer deal with that firm in the conduct of monetary policy. The firm, at its initiative, can continue unencumbered to purchase U.S. Government securities in government auctions.

Authority: *Primary Dealers Act of 1988*. 22 U.S.C. §§5341-5342.

Banking and Securities – Indentures must have at least one trustee organized and doing business in the U.S. The Securities and Exchange Commission can provide an exemption to this rule.

Authority: *The Trust Indenture Act of 1939*.

Banking, Insurance, Securities and Other Financial Services – There are also reciprocity provisions in the financial services field (including banking, securities and insurance).

Insurance – Regulation of the insurance industry is not done at the federal level. The one major exception to the policy of national treatment in the insurance sector is the licensing restriction as it relates to government-owned applicants. A few states prohibit the licensing of companies owned or controlled by foreign governments.

Mineral Land Leasing Act – The Mineral Leasing Act (1920) makes public lands available for leasing only to citizens of the United States, associations of such citizens, or corporations organized under the laws of the United States, with respect to acquiring rights of way for oil pipelines, or leases or interests therein for mining coal, oil or certain other minerals. Non U.S. citizens may, however, own a 100% interest in a U.S. corporation that acquires a right of way for oil or gas pipelines across onshore federal lands, or that acquires a lease to develop mineral resources on onshore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared to the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries.

Authority: *Mineral Land Leasing Act (1920). Chapter 3A, 10 U.S.C. §7435.*

Under current U.S. law, treatment of foreign investors in air transport related activities (i.e. freight forwarding, air charter), submarine cable landing rights, oil and gas pipelines across 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

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

There are no restrictions on foreign payments except for those imposed under Treasury Department regulations on transactions involving the governments or nationals of Cuba and the Democratic People's Republic of Korea, the governments of Iraq and Libya, certain terrorists who threaten to disrupt the Middle East peace process, and designated persons related to Colombian drug trafficking. Treasury regulations also restrict most payment transactions involving Iran, and payment transactions involving prohibited exports to UNITA or to the territory of Angola. Transfers of funds are also prohibited to persons in Iraq pursuant to United Nations Security Council resolutions, and to or through Cuban, Iraqi and Libyan financial institutions or to entities owned or controlled by these governments. Certain payments to Cuba, Iran and North Korea related to exempted or authorized travel transactions are permitted, as are certain payments in connection with travel to and within the United States by nationals of these countries. Payment transactions relating to international trade in most information and informational materials are exempt from Treasury regulation.

2. Brief description of the foreign exchange regime.

The United States formally accepted the obligations of Article VIII, Sections 2, 3 and 4 of the International Monetary Fund Agreement as from December 10, 1946. The U.S. dollar is a freely usable currency as defined in Fund Agreement Article XXX (F). The U.S. authorities do not maintain margins in respect of exchange transactions, and spot and forward exchange rates are determined on the basis of demand and supply conditions in the exchange markets. However, the authorities intervene when necessary to counter disorderly conditions in exchange markets or when otherwise deemed appropriate. There are no taxes or subsidies on purchases or sales of foreign exchange.

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

See section B(4)(1) above.

5. ENTRY AND SOJOURN OF PERSONNEL

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

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

The United States Immigration and Nationality Act and accompanying implementing regulations establish a clear process through which foreign nationals may apply for non-immigrant visas to work in the United States. Principal categories include international, intra-company transfer of executives, managers and persons with specialized knowledge (L-1) visas. Treaty trader (E-1) and treaty investor (E-2) visas are also made available to nationals of countries which are parties to Treaties of Friendship, Commerce and Navigation with the United States. The E-2 treaty investor visas are also available to nationals of countries with which the United States has Bilateral Investment Treaties. "H" visas allow persons of skilled and unskilled professions in short supply to work in the United States on a temporary basis.

The E-1 treaty trader visa allows a foreign national to enter the United States to carry on substantial trade, which may include trade in services or technology, principally between the United States and the treaty country. The E-2 treaty investor visa allows a foreign national to enter the United States for the purpose of establishing, developing, administering or advising on the operation of an investment. The holder of a treaty investor visa must have committed or be in the process of committing a substantial amount of capital to the investment; "substantial amount of capital" is explained in the regulations not in fixed terms, but in terms of the kind of enterprise in which the investment is made and the proportional amount of capital invested in such an enterprise.

All of these visa categories enable foreign nationals to enter the United States and lawfully accept employment. No numerical quotas exist for treaty trader, treaty investor, and intra-company transferee visas. A treaty investor may remain in the United States for an indefinite period, as long as the qualifying investor maintains the appropriate relationship to the investment. In negotiating treaties to grant E-2 status, the United States looks to a reciprocal practice for U.S. investors who seek to enter, stay and work in the foreign investor's home country.

The United States amended the Immigration and Nationality Act to create a separate, additional investment immigration visa process. In general, a foreign national may apply for immigration under this program by investing a minimum of one million dollars and creating employment for a minimum of 10 or more U.S. citizens or lawful permanent residents. Lower limits may apply if the investments are made in designated economic hardship areas.

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

and

4. List and 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. Campana 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

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

1. World-wide taxation

The United States taxes U.S. citizens and residents and U.S. corporations on their worldwide income annually.

2. Types of entities

2.1 Corporations

Generally corporations are taxable entities. However, certain types of corporations pay no income tax and pass their taxable income through to their shareholders who are taxed on it annually. See 4.3.2

2.2 Trusts and Estates

Trusts and estates are nominally taxable entities. However, they generally are allowed a deduction for income that is distributed to beneficiaries in the year it is earned. This effectively passes the tax liability through to the beneficiaries of the trust or estate. When trusts and estates are taxed because they accumulate income, individual rates apply. Generally trust and estates may not engage in business and continue to be taxed as trusts and estates.

2.3 Partnerships

Partnerships generally are not taxable entities. Income of a partnership is taxed to the partners annually. Certain partnerships with many partners are taxed as corporations, however.

2.4 Tax-Exempt entities

Pension trusts and organizations operated exclusively for religious, charitable, scientific or educational purposes are generally exempt from U.S. income tax.

3. Taxation of Individuals

3.1 Citizens and Residents

3.1.1 Definition of resident

An alien individual is considered a resident of the United States for income tax purposes if he is considered a resident for immigration law purposes (he holds a “green card”) or he is present in the United States for at least 31 days during the current year and during the last three years he was present in the United States, on average, at least 183 days. This average is computed by giving the days in the current year a weight of 1; those in the first preceding year a weight of one-third; and those in the second preceding year a weight of one-sixth.

3.1.2 Tax rates

The United States has a progressive rate structure. Currently, the highest marginal rate is 39.6% which begins at \$250,000.

3.1.3 Foreign tax credit

The United States allows a foreign tax credit for income tax paid or accrued to a foreign country. The credit is subject to a limitation that is intended to deny a credit to the extent the foreign tax exceeds the U.S. tax on foreign source income. This limitation is applied to individual categories of income, rather than all foreign source income in aggregate. Generally the categories have been designed to separate highly taxed income from lower taxed income. Credits disallowed in the current year may be carried to other taxable years and may be claimed in those years subject to the limitation.

3.1.4 Income earned through foreign corporations

Generally the United States does not tax 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 type of income which is subject to these taxing regimes is passive investment income (such as interest and dividends), certain income from tax-haven activities and income from activities that normally bear a low tax rate, such as insurance and shipping.

3.1.5 Alternative minimum tax

The United States imposes an alternative minimum tax (AMT) on individuals and corporations, which is intended to ensure that all individuals and corporations with large gross incomes pay some tax annually.

The tax base for the AMT is the regular tax base with certain deductions and exemptions added back or recomputed. The maximum AMT rate for individuals is 28%. Since the AMT is intended to ensure that all taxpayers pay at least a small tax each year, there are special rules that do not allow the AMT liability to be fully offset by prior year's losses and the foreign tax credit.

3.1.6 Deductions and losses allowed

Generally individuals may deduct all expenses and losses incurred in their trade or business or their investment activities in the year those expenses or losses are incurred, up to the income for that year. Taxpayers with excess losses generally may carry those losses to other years to reduce tax liability in those years. There are, however, numerous special rules limiting losses and deductions including special rules for capital losses and for losses from certain activities in which the taxpayer does not materially participate. Personal expenses are generally not deductible. The major exception is interest on home mortgages.

3.2 Nonresidents

3.2.1 *Tax rates*

Nonresidents engaged in business in the United States are taxed on their business income at the same rates that apply to resident individuals. Generally they are allowed the same deductions as U.S. citizens or residents.

Investment income from U.S. sources (such as interest, dividends, rents and royalties) earned by a nonresident is subject to a final 30% withholding tax. A nonresident earning real estate rental income may elect to be taxed on a net basis as though he were engaged in business in the United States.

3.2.2 *Real estate gains (FIRPTA)*

Gains from the sale of real estate located in the United States are subject to tax at regular U.S. rates as though they were earned in connection with a U.S. business.

3.2.3 *Exempt interest*

The United States does not tax interest paid on deposits with U.S. or foreign branches of U.S. banks provided it is not “effectively connected” with a U.S. business. The United States also does not tax “portfolio interest.” Generally this is interest paid by a U.S. person to a foreign person who is unrelated and who is not a bank, provided a filing requirement is satisfied and the interest is not effectively connected with a U.S. business.

4. **Taxation of Corporations**

4.1 *Classical system*

The United States corporate income tax system is a “classical” rather than an “integrated” system. Corporate earnings are taxed twice: once when earned and again when distributed. There are exceptions to this rule for an affiliated group of corporations that file a single tax return and for certain special corporations.

4.2 *Arms'-length pricing*

The United States follows the arms'-length pricing standard adopted by the OECD. Recently-issued regulations provide guidelines for determining the arms'-length price in transactions between related parties.

4.3 U.S. Corporations

4.3.1 *Tax rates*

The United States has a progressive rate structure. The highest marginal rate is 35%, which begins at \$10,000,000. If the income is between \$75,000 and \$10,000,000, the rate is 34%.

4.3.2 *Special entities*

There are special tax rules for corporations that serve as investment vehicles. Generally, regulated investment companies (RICs), real estate investment trusts (REITs) and real estate mortgage investment conduits (REMICs) do not pay tax, but their shareholder/investors do. Corporations with no more than 35 individual U.S. resident or citizen shareholders may elect “S Corporation” status which has the effect of eliminating the corporate level income tax. Shareholders of an S corporation pay tax on their share of the corporation's income annually.

4.3.3 *The indirect foreign tax credit*

Corporations are allowed the same foreign tax credit (direct credit) as individuals, subject to the same limitations.

Corporations are also allowed a foreign tax credit for the foreign income taxes paid by foreign subsidiary companies in which they have at least a 10% direct or indirect interest down to the third tier (indirect credit). The credit is allowed for the portion of the foreign tax paid on the profits distributed to the parent.

For example, if a foreign subsidiary earns \$100 of income and pays \$40 of foreign income tax on that income, and that same year distributes \$60 to its parent as a dividend, the parent would include \$100 (not \$60) in income and would be deemed to have paid foreign taxes of \$40 for purposes of claiming a credit.

This indirect credit is intended to provide parity for foreign corporations and foreign branches. It is limited in the same manner as the direct credit.

4.3.4 Consolidation

An affiliated group of U.S. corporations may elect to file a single U.S. income tax return provided the corporations have a common parent with a sufficient ownership interest (80%) in the members of the group. There are various advantages to this election including use of losses of one company to offset income of another, deferral of gain on certain intercompany transactions and elimination of tax on dividends paid within the group. Generally a foreign corporation may not be included in an affiliated group.

4.3.5 Alternative minimum tax

Corporations are subject to the AMT. Generally the same rules apply as apply to individuals. The rate is 20%.

4.4 Foreign Corporations

4.4.1 Tax rates

Foreign corporations engaged in business in the United States are taxed on their business income at the same rates that apply to U.S. corporations. Generally they are allowed the same deductions as U.S. corporations.

Investment income from U.S. sources (such as interest, dividends, rents and royalties) earned by a foreign corporation is subject to a final 30% withholding tax. A foreign corporation earning real estate rental income may elect to be taxed on a net basis as though it were engaged in business in the United States.

4.4.2 Real estate gains

Same rules as for nonresidents. See 3.2.2

4.4.3 Exempt interest

Same rules as for nonresident, See 3.2.3

4.4.4 Branch Profits tax

Since 1987 the United States has imposed a corporate tax in addition to the regular income tax on U.S. business income earned by the U.S. branch of a foreign corporation. This tax is intended to tax a U.S. branch of a foreign corporation and a U.S. subsidiary at the same effective rate by imposing a corporate tax that is similar to the withholding tax that would be due when a U.S. subsidiary remitted earnings to its foreign parent. It applies at the same 30% rate (or lower direct investment dividend treaty rate) to the portion of after-tax branch profits that represents the "dividend equivalent amount."

4.4.5 Branch interest tax

The United States treats interest paid by an 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.

4.4.7 Information reporting

The United States requires foreign-controlled U.S. corporations and U.S. branches of foreign corporations to file annual information returns disclosing transactions with related parties. Such corporations are also required to keep certain books and records in the United States or to provide assurances that they will be available in the United States in the event of a tax audit.

5. Tax Procedure and Dispute Resolution

5.1 Public Comment

U.S. law requires a period for public comment before significant regulations (and in particular most tax regulations) take effect. Domestic and foreign taxpayers are permitted to comment. Recently U.S. officials have traveled to other countries to solicit comments on the new transfer pricing regulations. This comment process is conducted by the Executive Branch alone and is generally free of political influences.

5.2 Reporting and Collection

The United States has a self-assessment system which requires U.S. corporations and foreign corporations doing business in the United States to file a U.S. income tax return annually showing a calculation of U.S. income tax liability.

5.3 Audit Procedures and Confidentiality

The IRS routinely audits a portion of the tax returns filed each year. By law, IRS personnel are not political appointees except for the Commissioner and Chief Counsel, and the audit process is designed to operate free of political considerations. The IRS may not disclose tax return information (including information about tax audits and litigation) to the public and generally may not disclose such information to other parts of the Government, except for enforcement and limited legislative purposes. Harsh penalties are imposed for violations of these rules. U.S. income tax treaties authorize the IRS to provide taxpayer information to the treaty partner's tax authority in appropriate cases.

5.4 Dispute Resolution

Audited taxpayers may appeal a proposed income tax deficiency within the IRS. If satisfactory resolution is not reached through the appeal procedure, a taxpayer may either (i) pay the tax due and sue for a refund in federal district court or the Court of Claims or (ii) dispute the asserted deficiency in the Tax Court without paying it. Once a final decision is reached by the court, the tax is paid or refunded, as the case may be, with interest. In cases of potential double taxation, our income tax treaties authorize the competent authorities of the United States and the treaty partner to hold discussions in order to resolve the dispute. The United States does not require that tax be paid to both jurisdictions as a condition for a request for competent authority assistance.

7. PERFORMANCE REQUIREMENTS

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

With some limited exceptions, the United States government does not impose performance requirements on foreign (or domestic) investment. The United States did not notify any measures under the TRIMs Agreement in the World Trade Organisation. However, under the broader provisions of the NAFTA, a limited Federal exception is listed related to waste management (i.e. construction of treatment plants for municipal sewerage or industrial waste).

8. CAPITAL EXPORTS

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

See section B(4) above.

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

The United States does not generally control the export of technology except for military or dual-use technology. The export of technology and technical data for items designed, developed, produced modified, or configured for military use is controlled through the export licenses issued by the State Department's Office of Defense Trade Controls. The Department of Commerce processes export license applications for sensitive dual-use commodities and technologies. The controlled dual-use technologies are primarily those civil technologies which have application in, or can make a significant contribution to, the design, development, or production of weapons of mass destruction (chemical, nuclear, and biological), advanced conventional weapons and their means of delivery.

9. INVESTOR BEHAVIOR

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

Not applicable.

10. OTHER MEASURES

1. Brief outline of the competition policy regime.

The United States' antitrust laws essentially prohibit business practices that unreasonably deprive consumers of the benefits of competition resulting in higher prices for inferior products and services. Following is a brief description of the three major federal antitrust laws.

The Sherman Antitrust Act (1890) criminalizes all contracts, combinations and conspiracies that unreasonably restrain interstate trade. This includes agreements among competitors to fix prices, rig bids and allocate customers. The Act also makes it a crime to monopolize any part of interstate commerce.

The Clayton Act (1914 and heavily amended in 1950) is a civil statute which prohibits mergers or acquisitions that are likely to lessen competition. Under the Clayton Act, the government challenges those mergers that a careful economic analysis shows are likely to increase prices to consumers. All persons considering a merger or acquisition above a certain size must notify both the Antitrust Division of the Justice Department and the Federal Trade Commission.

The Federal Trade Commission Act prohibits unfair methods of competition in interstate commerce, but carries no criminal penalties. It also created the Federal Trade Commission to police violations of the Act.

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

In the United States, intellectual property is adequately and effectively protected by a comprehensive system of federal and state laws. The federal government has exclusive competence regarding patents, copyrights and integrated circuit layout designs. Trademarks and service marks are principally protected by federal law, although state statutes and common law also provide additional protection, particularly for unregistered marks. In addition, many states provide protection for trade names, either by statute or through the common law. Trade secrets are protected by state statute or common law. The majority of states have adopted the "Uniform Trade Secrets Act."

The United States is a party to a large number of international intellectual property conventions, including the Paris Convention for the Protection of Industrial Property (Stockholm, 1967), the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971), the Universal Copyright Convention (Paris, 1971), the Patent Cooperation Treaty, the Convention Relating to the Distribution of Programme-

Carrying Signals Transmitted by Satellite, the International Convention for the Protection of New Varieties of Plants (1991) and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, and the Convention Establishing the World Intellectual Property Organization.

The United States has fully implemented its obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights. The United States, for example, provides 20 years of protection from date of filing for all inventions, whether products or processes, in all fields of technology provided that they satisfy statutory requirements for novelty, utility and non-obviousness. The United States provides 10 years of renewable protection for registered trademarks and service marks and imposes no special requirements incumbering the use of such marks. Federal statutes also protect industrial designs, geographic indications of origins and plant varieties. The United States provides Berne Convention consistent copyright protection for literary and artistic works (including computer programs and data bases). Sound recordings are protected by copyright law in a manner fully consistent with the TRIPS Agreement. Integrated circuit layout designs are protected for a term of 10 years by federal statute. The states provide TRIPS consistent levels of protection for trade secrets by statute and common law.

The United States provides extensive enforcement, both internally and at the border, for intellectual property rights. Severe criminal penalties (including prison sentences) are imposed on copyright pirates and trademark counterfeiters. Damages and injunctive relief (including provisional remedies) are available for infringement of patents, trademarks, service marks, copyrights, trade secrets, geographic indications of origin, plant varieties, industrial designs and integrated circuit layout designs. The United States also provides extensive border enforcement measures for trademarks and copyrights through the U.S. Customs Service and for patents and other forms of intellectual property rights through administrative proceedings before the U.S. International Trade Commission. The United States has provided the WTO with a detailed notification of its laws and regulations on intellectual property rights, as required by the TRIPS Agreement.

C. INVESTMENT PROTECTION

1. EXPROPRIATION AND COMPENSATION

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

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

SOURCES OF LAW

The U.S. has long recognized that a key attribute of sovereignty is the power of the government to take private property for public use without the owner's consent (i.e., the power of eminent domain or the power to expropriate). The "Takings Clause" contained in the Fifth Amendment of the U.S. Constitution limits the federal government's power of eminent domain by providing that private property shall not "...be taken for public use, without just compensation."

Although the Fifth Amendment is not by its own terms applicable to state governments, the U.S. Supreme Court has held that the Takings Clause is applicable to the states through the due process requirements of the Fourteenth Amendment. *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897). In addition, the constitutions of every state, except for Kansas, North Carolina, and Virginia, expressly prohibit the taking of private property for public use without just compensation. The constitutions of these three states have nevertheless been construed to impose the same restriction on the taking of private property as does the Fifth Amendment. Within its own jurisdiction, each state possesses

the power of eminent domain, subject to the limits in its state constitution and the limits imposed by the Fifth Amendment.

LEGISLATIVE AUTHORIZATION

Although the power of eminent domain is an inherent governmental power, it may be exercised only with legislative authorization. *Berman v. Parker*, 348 U.S. 26 (1954). The legislature may authorize the exercise of this power directly, may delegate this power to another governmental entity, or may delegate the power to private corporations promoting a public interest (e.g., public utilities).

PROPERTY SUBJECT TO TAKINGS CLAUSE

Tangible interests clearly constitute property that falls within the purview of the Takings Clause. All types of interests in real or personal property may be taken, including leasehold interests in real property, property held in trust, and the capital stock of a corporation. In addition, various forms of intangible property may be taken. The Supreme Court has held that trade secrets protected under state law are property under the Takings Clause. *Ruckelshaus v. Monsanto*, 467 U.S. 986 (1984). Likewise, the Court has found other intangible interests to be property for the purposes of the Takings Clause, including various types of liens, patents, and valid contracts. State courts too recognize tangible and intangible property as property that can be “taken”.

WHAT CONSTITUTES A TAKING?

A taking clearly occurs when the government initiates a condemnation proceeding to acquire a specific piece of property or when governmental action causes “[a] permanent physical occupation” of the property by the government or others. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). Most Takings Clause cases, however, do not concern actual physical invasion of real property by the government. Instead, in most Takings Clause cases an owner of property seeks compensation for the diminution in the value of property caused by a particular governmental regulation. The U.S. Supreme Court has indicated that no set formula determines at what point regulation of property becomes a taking for which just compensation is due. The Court has, however, identified several factors that it will balance when determining whether governmental regulation of property has become a taking: 1) the economic impact of the regulation on the owner; 2) the extent to which the regulation interferes with the owner's distinct investment-backed expectations; and 3) the character of the governmental regulation. *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1985); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

With respect to land-use regulations in particular, the regulation will not effect a taking if it substantially advances legitimate state interests and does not deny an owner the economically viable use of his property. *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987); *Agins v. City of Tiburon*, 447 U.S. 255 (1980); *Penn Central*, *supra*. Even taxation may result in a compensable taking where the act complained of is so arbitrary that it is confiscatory. *Acker v. Commissioner of Internal Revenue*, 258 F.2d 568 (6th Cir. 1958).

WHAT IS "PUBLIC USE" ?

In order to fall within the Takings Clause of the Fifth Amendment, the taking must be for a “public use.” (If a taking occurs that is not for public use, the taking violates the substantive due process requirements of the Constitution.) The Supreme Court has construed “public use” very broadly. As long as the legislature has authority over an activity, it may exercise its eminent domain power to achieve any goal with respect to that activity. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984). In other words, the public use requirement is coterminous with the scope of the sovereign's police powers (i.e., the powers enumerated to Congress by the Constitution and the power of the states to enact regulations for the health, safety, and welfare of the public). *Ruckelshaus*, *supra*; *Hawaii Housing Authority*, *supra*.

WHAT IS JUST COMPENSATION?

The just compensation provision of the Takings Clause requires that the owner of the taken property be given “a full and perfect equivalent” for what has been “taken”. *Monongahela Navigation Co. v. U.S.*, 148

U.S. 312 (1893). Normally, just compensation is measured by the market value of the property at the time of the taking, and considerations that are not normally a part of market value are excluded from the calculation. *U.S. v. 50 Acres of Land*, 469 U.S. 24 (1984). The Supreme Court has indicated that the calculation can deviate from the market value if failure to do so would cause manifest injustice to the owner or the public. *U.S. v. 50 Acres of Land*, 469 U.S. 24 (1984). Generally, federal and state courts have given great latitude with respect to evidence that may be presented to demonstrate market value. For example, courts have used opinions by qualified experts, the values of comparable properties, the price paid for the property, the amount of any **bona fide** offers for the property, and the cost of reproduction or replacement of the property to determine the market value of taken property. Just compensation does not extend to compensation for consequential damages arising from the condemnation.

When a taking occurs prior to payment, interest must be paid to the owner to compensate for the delay. *Kirby Forest Industries v. U.S.*, 467 U.S. (1984); *U.S. v. Klamath Indians*, 304 U.S. 119 (1938). Generally, the owner is entitled to interest of a proper or reasonable rate. Ordinarily, the normal commercial, legal, or statutory rate of interest applicable in the location where the property is located may be recovered. Courts have great discretion in determining an appropriate interest rate. In federal condemnation proceedings pursuant to the Federal Declaration of Taking Act, as amended, 40 U.S.C. §258a-e, the interest rate is linked to the interest rate payable on Treasury bills. However, the right to interest in eminent domain proceedings does not depend on the existence of a statutory provision. The right to interest is inherent in the just compensation provision of the Takings Clause itself.

TAKINGS PROCEEDINGS

Federal and state statutes provide procedures by which federal and state governments can “take” various forms of property. In addition, federal and state governments can acquire private property summarily. In such a case, the owner has the right to bring an inverse condemnation suit to recover the value of the property as of the date of the taking. The owner's right to bring such a suit stems from the self-executing nature of the Takings Clause. Federal and state statutes provide judicial fora for individuals to bring claims for compensation under the Takings Clause. Even in the absence of a specific statute, owners of “taken” property still have a course of action because of the self-executing nature of the federal and state constitutional provisions. However, where the taking occurs as a result of a constitutional statute and in compliance with its provisions, and the statute provides for adequate compensation, the statutory remedy is exclusive.

2. SETTLEMENT OF DISPUTES

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

In general, investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor. Generally, such disputes are resolved in domestic courts, although arbitration may be available depending on local law and practice, as well as the wishes of the parties to the dispute. Investor-state disputes are rare and generally are resolved in domestic courts where available, although some bilateral investment treaties permit investors to opt for international arbitration in certain disputes. Under certain bilateral treaties an investor who seeks a remedy (other than interim injunctive relief) in local courts forfeits the right to bring the dispute to international arbitration.

2. Signatory or accession to the ICSID Convention

The United States is a party to several conventions relevant to the settlement of investment disputes, including ICSID.

D. INVESTMENT PROMOTION AND INCENTIVES

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

There are no foreign investment incentives **per se** at the national level (i.e., incentives not also available to domestic investors). State-level incentives are offered on a national treatment basis, and in fact states make an effort to share information with potential foreign investors. The incentives that states provide include: tax abatements, exemptions and credits for land, equipment purchases or training; grants, below-market rate loans, loan guarantees and low interest bond financing to provide up-front money to help build or modernize a plant; training and employment assistance; and infrastructure, site improvements and land grants. Almost all states offer investors some combination of these incentives.

The U.S. Federal government plays a conservative role in the area of economic development, generally leaving responsibility for economic development activities, including investment promotion and attraction, in the domain of state and local government. The underlying philosophy of this approach is that states and local communities are in the best position to determine the specific needs and priorities for their economies. The Department of Commerce's International Trade Administration offers a program, the Agent/Distributor Service (ADS), to U.S. firms and individuals which may be used to locate, screen and assess potential foreign investors. The ADS, however, more commonly is used to assist U.S. exporters.

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

The U.S. federal government does not have incentive programs specifically to encourage foreign direct investment in the United States. In general, foreign owned firms and foreign investors in the United States receive national treatment in regards to federal fiscal and financial incentives that are used to stimulate investment and promote economic development.

The U.S. federal government plays a relatively minor role compared to state and local governments in the area of economic development. Thus, investment incentives, including financial, fiscal and others, are handled primarily by state and local government entities and are outlined in the next section.

Most federal investment incentive programs consist of financial tools to assist particular regions or groups. The Economic Development Administration (EDA) in the U.S. Department of Commerce serves as the primary agency for promoting economic development. The EDA provides financial assistance to economically disadvantaged areas in the form of business loan guarantees and revolving loan funds. Other federal agencies that provide financial development assistance are the Small Business Administration and the U.S. Department of Agriculture under its Farmers Home Administration. Federal financial programs can be accessed by contacting the sponsoring agency. In terms of non-financial incentives, there are not significant programs at the federal level.

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

U.S. state governments maintain a long tradition of policies and programs focused on stimulating private investment. Today, all 50 states have some form of incentive and outreach program for investment, both domestic and foreign.

State investment programs typically are administered by state economic development agencies (SDAs). SDAs normally are cabinet level agencies (e.g., a department of commerce) headed by a commissioner

who reports directly to the governor. Although SDAs have a wide range of functions, there are two primary responsibilities common to all SDAs: promoting economic growth and creating jobs within the state.

All states view investment as a key means of achieving economic growth objectives and many annually modify and improve their investment programs to attract greater investment. While states generally are open to all types of investment, investments that create jobs, for example, in manufacturing (as opposed to real estate or portfolio investment) are likely to qualify for greater assistance. A growing trend in state investment programs over the past decade has been an increase in the selectivity and targeting of state investment promotion efforts. Now more than ever, states focus their investment attraction efforts on specific industries with potential for their states or on certain regions of the world with fast growing economies.

Most states view foreign direct investment (FDI) as a crucial means of economic growth. Over the past few years, state budgets for FDI attraction have grown rapidly, averaging about \$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 countries/economies with which the agreement has been entered into and a brief summary of the provisions of the agreement (details provided only for those agreements that have entered into force).

BILATERAL AGREEMENTS

U.S. bilateral investment agreements take three basic forms: treaties of Friendship, Commerce and Navigation (FCNs); Bilateral Investment Treaties (BITs), and Overseas Private Investment Corporation (OPIC) agreements.

FCNs and BITs

Both the FCNs and BITs establish rights and obligations of the signing parties concerning the treatment of investment. There are 47 FCNs currently in force; the earliest (with the United Kingdom) dates from 1815, while the most recent (with Thailand) was concluded in 1966. FCNs deal with a wide array of bilateral consular and commercial as well as investment issues. The program was discontinued in the mid-1960s in part due to a belief that many of the noninvestment concerns are better addressed through the GATT. By the early 1980s however, the U.S. government decided that, because of the lack of established multilateral rules governing the treatment of investment, it was necessary to develop a bilateral treaty instrument to provide protection for U.S. investment abroad.

The resulting Bilateral Investment Treaty was developed in close consultation with the U.S. private sector. Accordingly, while many of its investment-related provisions echo those in the FCN, it is in many respects stronger. The major obligations of the BIT include:

- the right of nationals and companies of a Party to establish investments on a basis no less favorable than nationals and companies of the other Party, or nationals and companies of any other country (the better of national or most favoured nation treatment);
- the right to operate those investments, once established, also on the better of national or MFN treatment basis;
- the right to hire top managerial personnel of the investor's choice;
- the right to transfer freely all funds related to the investment into and out of the host country;
- international law standards for expropriation, meaning that such actions can be taken only for a public purpose, in a non-discriminatory manner, according to due process, and with prompt, adequate and effective compensation; and
- the right of an investor to take the host government to binding international arbitration to resolve disputes concerning the rights and obligations in the Treaty, investment authorizations and investment agreements.

Sectors and matters in which a Party takes exceptions to these basic obligations are specified in an annex to the BIT; such exceptions should be few and generally limited to those based on national legislation.

Since the inception of the BIT program, the United States has signed BITs with 37 countries. Of these, 22 are in force (Argentina, Armenia, Bangladesh, Bulgaria, Cameroon, Congo, Czech Republic, Egypt, Grenada, Kazakhstan, Kyrgyzstan, Moldova, Morocco, Panama, Poland, Romania, Senegal, Slovakia, Sri

Lanka, Tunisia, Turkey and Zaire); one (Ecuador) has been ratified by both sides but awaits exchange of instruments before going into force; one (Russia) has been ratified by the United States but not by the other party; and 11 (Albania, Belarus, Estonia, Georgia, Haiti, Jamaica, Latvia, Mongolia, Trinidad and Tobago, Ukraine and Uzbekistan) have been submitted to the Senate Foreign Relations Committee. In addition the U.S. is in negotiations with several other countries.

THE UNITED STATES OVERSEAS PRIVATE INVESTMENT CORPORATION

In contrast to a BIT, which establishes obligations concerning the treatment of investments, an OPIC agreement provides the procedural framework for operation of the U.S. government's investment insurance program as it ensures that upon payment of a claim to an investor, OPIC's succession to the rights of the investor will be recognized by the host government. It also makes available OPIC's finance program (a source of project finance through direct loans and loan guarantees) and OPIC's investment promotion programs (investment missions, the Investor Information Service and the Opportunity Bank). The OPIC agreement creates no new rights for investors, but lets OPIC operate in the existing investment climate, providing insurance of financing on a case-by-case basis to eligible U.S. investments which apply and qualify for it. The OPIC agreement differs from the BIT as well in that the BIT is a treaty requiring Senate 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, which regulate the way in which member states may treat investments from other member states. These are the Code of Liberalization of Capital Movements and the Code of Liberalization of Current Invisible Operations (the Codes), and the National Treatment Instrument (the NTI). The first two contain legally binding obligations requiring national treatment on the establishment of investments, while the NTI exhorts member states also to provide national treatment to such investments in post-establishment operations. Exceptions of the national treatment principle may be taken, but in general such exceptions should not be intensified, and, if liberalized, should be "frozen" at the new level. In addition, the OECD is negotiating an investment agreement which will provide a broad multilateral framework for international investment with high standards for the liberalization of investment regimes and investment protection and with effective dispute settlement. This agreement would be a free-standing international treaty open to all OECD members and to accessible by any non-OECD member countries.

International Center for Settlement of Investment Disputes (ICSID)

The United States is a charter member of the International Center for Settlement of Investment Disputes (ICSID), an international institution created under the aegis of the World Bank by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The purpose of ICSID is to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States, leading toward depoliticization of investment disputes. ICSID procedures have a number of distinctive features which give ICSID a unique place among dispute settlement mechanisms.

The World Trade Organisation (WTO)

The Uruguay Round Trade Agreement was signed in April 1994 and went into force on 1 January 1995, with some provisions phased in over a 10 year period. The TRIMs Agreement prohibits measures such as local content requirements and trade balancing requirements and mandates that any such measures existing as of the date of entry into force be notified and then eliminated. Developed countries have two years to bring notified measures into conformity with the Agreement. Developing countries have five years and the least-developed countries have seven. Twenty-four WTO Members submitted notifications as required to the TRIMs Committee.

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. It is designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership. The GATS provides a legal framework for addressing barriers to trade and investment in services. It includes specific commitments by WTO Members to restrict their use of those barriers and provides a forum for further negotiations to open services markets around the world. These commitments are contained in a schedule, similar to the schedules on tariffs. The Council for Trade in Services oversees implementation of the GATS and reports to the General Council.

North American Free Trade Agreement (NAFTA)

The NAFTA creates a free trade area comprising the U.S., Canada and Mexico. Consistent with GATT rules, all tariffs will be eliminated within the area over a transition period. The NAFTA involves an ambitious effort to eliminate barriers to trade, to remove investment restrictions, to protect effectively intellectual property rights, and to address environmental concerns. The NAFTA countries are meeting these objectives by observing principles such as national treatment, most-favoured nation treatment and procedural "transparency." Along these lines, NAFTA's investment chapter provides investors of the parties, when investing in the territory of another party, and subject to limited exceptions specified in an annex, with the rights:

- to establish new firms, acquire existing firms, and receive the same treatment as domestic investors;
- to repatriate profits and to obtain hard currency for all payments associated with an investment;
- to provide international law protections on expropriation, including the right to compensation equal to the market value of their investment;
- to establish and operate investments free from trade distorting requirements; and
- to go to international arbitration to seek monetary damages or restitution for any violations of these rights.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

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

Foreign direct investment, once seen as a substitute for international trade, is increasingly viewed as a complement or even a necessary component of trade. The evidence on U.S. outward foreign direct investment bears this out. Roughly 60% of U.S. exports are sold by American firms that have operations abroad. The evidence also indicates that the countries where U.S. exports are most successful are the same countries where U.S. firms have the largest investment, and where investment restrictions are the most minimal. Furthermore, nearly \$1 of every \$5 in sales by U.S. companies abroad is earned by American sales affiliates or wholesaling companies that have established local facilities to sell U.S. exports. Access to foreign markets is the strongest motivation for investing overseas, not lower production costs.

Analyses of investment into and out of the United States are printed in the U.S. Department of Commerce publication *The Survey of Current Business*. In 1997, 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 10.7% and 14.8% respectively on a historical cost basis. Favorable economic conditions in the United States and in many host and investor countries abroad boosted both growth rates.

Capital flows, the major component of the change in the positions, were 114.5 and 90.7 billion respectively. However, the composition and purpose of the flows differed. For USDIA, the majority of

the flows consisted of reinvested earnings, which were primarily used to finance the ongoing operations of foreign affiliates. For FDIUS, the majority of the flows consisted of equity capital, a major portion of which appears to have been used to finance acquisitions of new U.S. affiliates.

2. Major countries/economies that are sources/receivers of FDI over recent years.

U.S. OUTWARD INVESTMENT

The U.S. direct investment position abroad valued at historical cost – U.S. direct investors' equity in, and net outstanding loans to, their foreign affiliates – was \$860.7 billion at year end 1997. The positions in the United Kingdom – at \$138.8 billion, or 16% of the total – and in Canada – at \$99.9 billion or 12% of the total – remained by the far the largest of any country. In 1997, the position increased \$83.5 billion, or 11%, the same as the 11% increase in 1996, but less than the 14% increase in 1996.

The \$83.5 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 almost 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 \$681.7 billion at the end of 1997. The United Kingdom had the largest position – \$129.6 billion, or 19% of the total. Japan's position was the second largest – \$123.5 billion, or 18% – and the Netherlands position was the third largest – \$84.9 billion, or 12%.

In 1997, the position increased \$87.6 billion, or 15%, somewhat faster than the 11% increase in 1996. The increase in 1996 was about the same as in 1995. The strong increase in the 1997 position, as well as that in 1996, resulted from stepped-up economic activity both in the United States and abroad that increased foreign investors' ability and incentive to invest in the United States. Their ability to invest was strengthened by the continued improvement in business conditions in certain major investor countries, such as the United Kingdom, which raised the earnings of foreign parents in those countries. Their incentive to invest was enhanced by the continued growth of the U.S. economy, which increased the profitability of potential acquisition targets.

VIET NAM

VIET NAM

A. BACKGROUND ON THE FOREIGN INVESTMENT REGIME

Following the reunification of the country, in 1976 the Vietnamese economy developed on the basis of a centrally planned mechanism and five-year plan objectives. Heavy industry was given a priority for development in comparison with other industries. Centralized, bureaucratic and close management resulted in an ineffective industrial and agricultural production.

Facing the slow growth, serious food deficit, budget deficit, soaring inflation and chronic trade deficit, the 6th Nation-wide Congress of the Viet Nam Communist Party which was held in December 1986 gave a start to a policy of overall economic renovation aimed to achieve two basic objectives of food self-provision and improvement of the living standard. The 7th Nation-wide Party Congress in 1991 and the 8th congress in 1996 continued to reaffirm the policy of a multi-sector, socialist-oriented, market economy based on the state management, and introduced deeper structural reforms.

The core of the “Doi Moi” or renovation policy is the liberalization of the production force, limitation of the government’s interference with business activities and encouragement of investment from various economic sectors and foreign investment.

Liberalization of prices and trade activities has been introduced. Almost all government allowances and loss recovery compensations have been cancelled. The multi-rate foreign exchange system has been replaced by a single rate system reflecting the market relation. There is a gradual renovation of the state management of foreign trade allowing more business entities including production and private companies to be involved directly in import-export activities. Import-export limitations have been reduced. The foreign exchange control has become freer. The banking system has been reformed to a two-level system. Commercial banks have been separated from central banks. Attractive interest rates are used to encourage domestic savings accounts. Cash tight control measures have been adopted. In order to recover budget deficits, bonds and treasury bills were issued instead of money. In the field of finance the Government has enlarged the range of the taxpayers and start to use unique tax rates for all economic sectors. In the field of agriculture, long-term and stable land use rights are granted to farmers. Farmers are given the right to inherit, transfer, mortgage and rent the use of land during the period of their land use rights.

One important factor of the continuing process of the economic renovation in Viet Nam is the limitation of the government’s influence on the business activities and encouragement of private investment. State-owned enterprises and companies are being classified, and their number has reduced through merges and dissolution from 12,297 entities in 1989 to 5,600 entities in 1998 in order to enhance the efficiency. The state-owned sector is now not entitled to allowances and privileges, but it is more independent in its production and trading activities. The Government has initiated and is currently carrying out an equitisation of state-owned enterprises and companies.

Being aware of the importance of foreign direct investment (FDI) for the industrialization and modernization cause of Viet Nam, in order to attract direct foreign investment, the National Assembly of Viet Nam initially passed the Law on Foreign Investment in December 1987 and was revised two times in 1990 and 1992. In November 1996 a new investment law was adopted to replace the old one, and it is considered one of the most liberal in the region.

As of March 1999, the Government of Viet Nam has issued investment licenses for over 2,600 foreign invested projects with the total registered capital of USD35.2 billion, in which the total implemented capital is USD14 billion.

Foreign direct investment in the past years proved to be an important source of the investment capital for development in Viet Nam. Since 1995, this source has accounted for nearly 30% of the total investment capital, contributing to the high record of economic growth rate of 8.5% during the period of 1991-1997. The contributing rate of foreign direct investment sector increased gradually in the past years, and achieved

9.8% of GDP in 1998. The foreign capital contributed to shift the economic structure into the direction of industrialization and modernization, create favorable conditions for reforming and improving technology, and create new products and markets.

B. REGULATORY FRAMEWORK/INVESTMENT FACILITATION

1. FORMS OF INVESTMENT:

Foreign investors wishing to invest in Viet Nam can do so by obtaining a Foreign Investment License. The investment can take the following forms:

- a) *A Business Co-operation Contract (BCC).* A BCC is a document signed by two or more partners which defines the responsibilities for and the sharing of business results between the parties for the purposes of commencing business investment without creating a legal entity.
- b) *A Joint Venture enterprise.* Two or more parties may contract to co-operate to form a joint venture enterprise. A joint venture enterprise is established as a limited liability company and is a legal entity in accordance with Vietnamese law. The structure and responsibilities of the board of management, which must contain representatives from all the partners, are defined in the legislation. The law requires major issues relating to the organization and operation of the joint venture to be decided on the basis of a unanimous decision of the board of management.
- c) *An enterprise with 100% foreign owned capital.* An enterprise with 100% foreign owned capital may be established as a limited liability company and is regarded as a legal entity according to Vietnamese law. The legal capital must be at least 30% of the invested capital. The representative of the company is the general director who must be a permanent resident of Viet Nam or must delegate authority to a permanent representative.

The duration of operation of a foreign owned enterprise (FOE) is stated in the investment license but that will not normally exceed 50 years. Ownership of land is not possible in Viet Nam; land is leased to the foreign owned enterprise from the government. Alternatively a foreign investor may lease land from institutions, either Vietnamese or foreign investing, authorized to re-lease land (i.e. in EPZs and IZs) for the duration of the project.

Foreign investors may enter into Build Operate Transfer (BOT), Build Transfer Operate (BTO) or Build Transfer (BT) contracts with an authorized state body and will be entitled to the rights, and subject to the obligations, stated in the contract. The contract form for BOT projects was added to the Foreign Investment Law in December 1992. In the new Foreign Investment Law, passed at the end of 1996, the additional forms of BT and BTO were added.

2. ENCOURAGED INVESTMENT FIELDS/SECTORS

The Vietnamese government welcomes investment in any of its principal sectors. However, there are areas in which investment is encouraged, as specified in the government decree on the encouragement of foreign investment which was adopted in January 1998. These are:

Agricultural, forestry and fishery sectors

- Processing of agricultural, forestry and fishery products for export;
- Technology of preservation of food, preservation of post-harvest agricultural products and application of bio-technology and biological measures in agriculture, forestry and fishery;
- Production of materials for insecticides which are of high effectiveness and safe for humans, domestic animals and the environment;
- Manufacture of equipment, spare parts and agricultural machinery;
- Projects employing a high number of workers, effectively using the natural resources available.

Industrial Sectors

- Exploration, exploitation and down-stream processing of minerals;
- Development of the petro-chemical industry;
- Production of high-quality steel, alloy, non-ferrous metals, special metals, billet and sponge iron for industry;
- Manufacture of machine tools for metal machining;
- Manufacture of spare parts for automobile and motorbike manufacture and equipment assembly, construction vehicles and machinery;
- Manufacture of technologically-advanced diesel engines, manufacture of machinery and spare parts for engines, hydraulics and compressing machines;
- Building of ships and manufacture of equipment and spare parts for cargo ships and fishing boats;
- Manufacture of equipment and components for oil and gas exploitation and energy mines; manufacture of large-sized lifting equipment;
- Manufacture of precision mechanical equipment; jig and dies manufacturing;
- Manufacture of equipment for the treatment of waste water;
- Manufacture of electrical middle and high voltage devices;
- Production of basic chemicals, pure chemicals, dyes and specialised chemicals;
- Production of special cement, composite materials, sound-insulating materials, electrical insulating materials, heat-insulating materials and wood-substitute synthetic materials;
- Production of silk, fibre of various kinds, textile products for export, and special fabrics used in industry;
- Production of high quality materials for production of footwear and garments for export;
- Production of high quality packaging for export;
- Production of materials for medicines;
- Production of medicines meeting recognised international standards; production of new pharmaceutical products by bio-technology.

There are also other specific areas in which Viet Nam especially encourages foreign investment.

- Projects for export of 100% of products;
- Projects for the production of high quality, international standard, economically efficient new breeds or cross-breeds of animals;
- High added-value, labour intensive projects which process domestic agricultural, forestry and fishery products for export;
- Projects from selected favoured sectors for location in those geographic areas where investment is particularly encouraged;
- Projects for the production of new or rare precious metals; those involving new bio-technology, electronic technology; new technology for manufacturing communication and telecommunications equipment; informatics technology;
- Export-processing businesses and high-tech industrial businesses in Industrial Zones, Export Processing Zones and High-Tech Zones;
- Projects for the treatment of environmental pollution and protection and waste treatment and processing;
- Projects under Build Operate Transfer, Build Transfer Operate and Build Transfer contracts.

3. APPLICATION FOR INVESTMENT LICENSE

The application document must be made in Vietnamese language and another prevailing foreign language in accordance with the uniform form introduced by the Ministry of Planning and Investment and submitted to competent agency for issuing investment license. Depending on the form of investment, *the application includes:*

- Application for investment license
- Business Cooperation Contract (BCC) (if investing in the form of a Business Cooperation Contract) or Joint Venture Contract (if investing in the form of a joint venture)
- Charter of the enterprise (for joint venture enterprise and 100% foreign owned enterprise)
- Document confirming the legal status and financial capacity of investing parties)

- Technical-economic explanatory statement
- Technology transfer document (if contribution is made by way of technology transfer), environmental impact report (for project under the list requiring an environmental impact report), land document (for projects having requirement for land use), and certificate of planning and preliminary design (for projects requiring construction work)

BCC and Joint Venture Contract must have main contents as follows:

- Nationality, address, competent representatives of the parties;
- Objectives and scope of business activities;
- Capital contribution of the parties, distribution of business results, timing of contract implementation (for business cooperation contract) or investment capital, legal capital, proportion of legal capital contribution and time of construction of the enterprise (for joint venture);
- Primary products, proportion of export and domestic sale;
- Duration of the contract (for business cooperation contract) or duration of operation of enterprise (for joint venture);
- Rights and obligations of the parties;
- Amendment and termination of contract; conditions for transfer (for business cooperation contract) or amendment and termination of contract; conditions for transfer, termination, dissolution of enterprise (for joint venture);
- Settlement of disputes.

Charter of joint venture and 100% foreign owned enterprise consist of the contents as follows:

- Nationality, address and competent representatives of investor; name and address of enterprise;
- Objectives and scope of business activities of enterprise;
- Investment capital, legal capital, proportion of legal capital contribution (for joint venture) or investment capital, legal capital, mode and timing of capital contribution and timing of construction (for 100% foreign owned enterprise);
- The number, responsibility, power and term of office of Board of Management; responsibilities and power of the general director and of the deputy general director (for joint venture);
- Representatives of enterprise before courts, arbitration bodies and state agencies of Viet Nam;
- Principles of finance;
- Proportion of profit and loss distribution to the parties (for joint venture);
- Duration of operation, termination and dissolution of enterprise;
- Labor relationship at enterprise, training plan for managing, technical, professional skill officials and workers;
- Procedures for amendment of enterprise's charter.

4. AUTHORITY TO CONSIDER AND APPROVE AN INVESTMENT PROJECT

a) The Prime Minister takes decision for project of Group A including:

- Construction of infrastructure in industrial zones, export processing zones, BOT, BTO and BT projects;
- Project with investment capital of at least US\$40 million in the following fields: electricity, mine exploration, oil and gas, metallurgy, cement, chemicals, seaports, airports cultural and tourism centers, real-estate business activities;
- Projects of shipping, airlines, post office and telecommunication, culture, publishing, press, radio, television broadcasting, training, scientific research and health care, insurance, finance, auditing, inspection;
- Projects of exploiting rare and precious natural resource; projects under national defense, security, project utilizing urban land of 5 or more hectares and other kinds of land from 50 or more hectares.

b) The Ministry of Planning and Investment takes decision for projects of Group B projects including project not falling into the Group A above, except for projects which are delegated to the peoples'

committee of provinces and cities under central authority and the ones devolved to the management board of industrial zones to issue investment license.

c) The peoples' committee of provinces and cities under central authority are delegated by the Prime Minister to issue investment license to projects under the Group B in conformity with planning, socio-economic development plan approved by the Government, except for projects belonging to the following areas, regardless of their scales:

- Oil and Gas exploration, exploitation and services;
- Energy industry;
- Construction of seaport, airport, national highway, railway;
- Cement, metallurgy, production of sugar, spirits, beer, tobacco.

The People's Committees of Ha Noi and Ho Chi Minh City are delegated to issued licenses to projects of up to US\$10 million. People's Committee of other provinces are delegated to issue licenses to projects of under US\$5 million.

d) Management board of industrial zones can be delegated by the Ministry of Planning and Investment to issue investment license to project in the industrial zones on the basis of the proposal by the people's committee of provinces or cities and approval by the Prime Minister. From 1 July 1997, 10 management boards of industrial zones and export processing zones which have been devolved to issue investment licenses include: Management Board of the Industrial Zone and Export Processing Zone of Ha Noi, Ho Chi Minh City, Hai Phong, Quang Nam Da Nang and Can Tho, and Management Board of the Industrial Zone of Dong Nai, Dung Quat, Binh Duong, Ba Ria Vung Tau and Viet Nam – Singapore.

In accordance with the current regulations, management board of industrial zone at provincial level is devolved to issue investment license to projects of Group B which have investment scale up to US\$40 million.

5. FINANCE AND BANKING REGULATIONS

5.1 Tax

According to Law on Foreign Investment and other relevant legal documents in Viet Nam, foreign investors operating in Viet Nam may be subject to the following kinds of tax:

- Corporate income tax
- Value added tax
- Special sale tax
- Remittance tax
- Import-export tariffs
- Royalty
- Land rentals
- Personal income tax
- Contractor withholding tax.

(a) Corporate Income Tax

Corporate income tax generally applied to FOEs and foreign parties to BCCs is at a rate of 25% irrespective of business sectors. However, those operating in the fields or sectors where investment is encouraged or specially encouraged may be entitled to preferential corporate income tax rates: 10%, 15%, 20%.

(b) Profits Tax on Capital Transfer

The profit tax on capital transfer will be 25% of the gains made on such transfers. The taxable profits will be the difference between the value of the transfer and the original value of the transferred capital less any transfer fees.

Where the transfer is made to a State owned enterprise or an enterprise in which the State has a major interest; the foreign investor shall be entitled to an exemption of profit tax on capital transfer. If the transfer is made to other Vietnamese enterprises, profits tax on capital transfer will be 10% of taxable profits.

(c) Profits remittance tax

Upon remitting profits abroad or retain profits abroad (including gains made on capital transfer and refund of profits tax for profits re-invested), the foreign investor must pay tax on the amounts remitted for each remittance at the following rates:

- 5% of profits transferred abroad in respect of foreign investors contributing no less than US\$10 million to the legal capital or capital of a BCC.
- 7% of profits transferred abroad in respect of foreign investors contributing from US\$5 million to less than 10 million to the legal capital or capital of BCC.
- 10% of profits transferred abroad in respect of foreign investors contributing less than US\$5 million to the legal capital or capital of BCC.

Profits remittance tax shall be exempted in respect of loan interest; technology transfer fees or licensing fees after payment of related taxes on technology transfer (except where it is used for capital contribution stated in "Import-export duty" below).

(d) Value added tax (VAT)

In April 1997, the National Assembly of the S.R. of Viet Nam passed the Value Added Tax Law, it has come into full effect until 1 January 1999. All FOEs and foreign parties to BCCs are subject to VAT at 4 different rates ranging from 0% to 20% corresponding to trade sectors.

(e) Import-export duty

Generally, all imports/exports into/out of Viet Nam are subject to import/export duties. Consumer goods, especially luxury goods are subject to high import duties, while machinery, equipment, materials and supplies needed for production, especially those items which are not produced domestically, enjoy lower rates of import duties, or even a 0% tax rate. A number of goods in transit, goods needed for scientific research and study, and charitable relief goods may be exempted from import duties.

Implementing the policy to develop an open economy, accelerate exports, integrate into the region and the world, Viet Nam joined AFTA on 1 January 1996 and has become a member of APEC since November 1998. Viet Nam is negotiating for its membership in WTO. Having joined AFTA, Viet Nam has prepared four categories of goods for the purpose of implementing the Common Effective Preferential Tariffs (CEPT) and there is a time frame for tariffs reduction so that by the year 2006 all goods within the categories for tariffs reduction shall be subject to 0% -5% tax rates.

(f) Land rentals

Where the land is rented from the State, land rentals are determined by the land prices tariff of the Ministry of Finance and kept stable at least for a period of five years. If the rate is adjusted later, any increase cannot exceed 15%. Where land rentals have been paid for the whole duration of the lease contract, the land rental shall be kept stable till the expiration of the lease. Where there are changes that make new land rentals different from the rates specified in the investment license, then the rates specified in the license will be kept for another five years from the date of such a decision on rate increase.

(g) Personal income tax

According to the Ordinance on personal income tax was promulgated in 1994 and the Ordinance amending and supplementing the Ordinance on personal income tax approved in June 1999, four

subjects are governed by this tax including Vietnamese citizens residing in Viet Nam, Vietnamese citizens residing overseas, “*individuals residing in Viet Nam*” (this group does not cover most of expatriates), and expatriates working in Viet Nam. A foreigner residing in Viet Nam for more than 183 days within one year will be considered a resident, unless tax treaties between Viet Nam and other countries provide otherwise. A foreigner considered to be a resident in Viet Nam is subject to progressive tax rates, while a non-resident foreigner is subject to a 10% tax rate on his Viet Nam income if he stays in Viet Nam from 30 to 183 days. Foreigners staying in Viet Nam less than 30 days in one year are not subject to personal income tax.

5.2 Foreign exchange control

Under the Law on Foreign Investment and the Law on the Central Bank and Law on Credit Institution in Viet Nam, all investment capital or revenues (irrespective of foreign currency or Viet Nam currency) of businesses with foreign invested capital must be deposited at a Vietnamese bank, joint venture bank or a foreign bank branch operating in Viet Nam. For special cases, the business can open a loan account at an overseas bank after having been approved by the Governor of the State Bank of Viet Nam.

The Central Bank of Viet Nam ensures to balance foreign exchange requirements for projects operating in the infrastructure construction and business, projects producing import-substitutes and important projects stipulated by the Ministry of Planning and Investment. The assurance of sale of foreign currency shall be stably applied for the entire duration of the enterprises.

Other FOEs or foreign parties to BCCs should be self-sufficient in foreign currencies to cover expenses in foreign currencies, including loans, import of materials and profits to be remitted abroad. However, production enterprises being obliged to export their products and other enterprises which are not balance foreign currency requirement by the State shall be assisted by the State Bank of Viet Nam for part of foreign currency requirements which are actually necessary and reasonable for the first three years after the enterprise commences its operation in accordance with the following priority order:

- Import of raw and other materials for production in the budgeted year
- Import of spare parts for replacement
- Repayment of interest on loans

With respect to FOEs engaging services industries such as tourism, hotel, office for lease, public transportation, school, health, culture and equipment for lease and so forth), the State Bank of Viet Nam may consider permitting purchase of foreign currency in accordance with the applicable regulations on control for foreign exchange.

Besides profits, the foreign investor is allowed to remit abroad license fees or other fees paid to the supplier of technology or services, principal and interest of the loans for the purpose of production, investment and other proceeds and assets under legal ownership of the investor.

Expatriates working at FOEs or parties to BCCs are allowed to remit abroad their wages and other legal income in foreign currency after paying personal income tax and other expenses incurred.

6. IMPORT EXPORT REGULATIONS

FOEs or parties to BCCs have the right to direct import of goods needed for their projects and direct export of the goods they produce (but they are not allowed to conduct trading activities), or assigning another trading entity do it instead. Under similar trading conditions, FOEs and parties to BCCs should buy goods available in Viet Nam as a priority rather than import.

FOEs may be entitled to an exemption of import duties on a number of equipment, machinery; specialized transport means, etc. as mentioned in section on import export duties. Samples or goods for advertising or marketing can be imported subject to permit of the Ministry of Trade and are subject to import duties. There are a number of restrictions on the import of second hand equipment and goods. Where imports are second hand equipment and goods, it is advisable that consultations with the Ministry of Science, Technology and Environment and the Ministry of Trade should be made before signing any contracts.

Transactions between exports processing zone and Viet Nam domestic market are considered import export transactions and subject to import export duties.

7. LAND REGULATIONS

Foreign individuals and enterprises are not entitled to land ownership. However, FOEs are allowed to lease land to implement their investment projects. Foreigners also are allowed to rent house for residential purpose.

Land lease duration depends on duration of a project and shall not exceed 50 years. However, pursuant to regulations made by the Standing Committee of the National Assembly, the Government may, on a project by project basis, grant a longer duration but the maximum duration shall not exceed 70 years.

8. LABOR REGULATIONS

FOEs and parties to BCCs shall have the right to recruit and employ labor in accordance with business requirements and must give priority to Vietnamese citizens, shall only recruit and employ foreigners for jobs which require a level of technical and management expertise which a Vietnamese citizen cannot satisfy but must train Vietnamese citizens as replacements.

Work permit shall be granted by the Provincial Departments of Labor, Invalid and Social Affairs and the Provincial Management Board of the Industrial Zone and Export Processing Zone. Duration of the work permit shall be consistent with the term of the labor contract signed between enterprise and foreign employee.

9. TECHNOLOGY TRANSFER REGULATIONS

Viet Nam encourages technology transfer and priority is given to projects with significant technology transfer. In order to be recognized as a technology transfer, the technology must be able to increase technical functions, productivity and product quality; creating the capacity to produce new products needed in Viet Nam or to produce exports; save raw materials, fuel; and efficiently exploit and process natural resources. Further, the technology transferred must not cause any damages to the environment or labor safety. Under prevailing regulations, the following forms are recognized as technology transfer:

- Transfer of the title or the right to use inventions, patents, productive solutions, industrial designs, trade marks, or other subjects under intellectual property;
- Transfer of technical know-how and knowledge in the form of technological solutions, documents, designs, formulas and technical specifications with or without equipment;
- Technical assistance and provision of consultant services, including training and provision of information.

Value of technology transfer can form investment capital contribution, but not exceeding 20% of the legal capital.

Documents of the technology transfer that submitted together with the application for investment license should include documents relating to intellectual property, industrial copyright protection certificate and other certificates on technical functions, and the agreement between the parties on the value of the technology.

10. TERMINATION REGULATIONS

The operation of an FOEs or BCC shall be terminated in the following cases:

- The expiry of the duration stipulated in the investment license;
- Following the proposal of one or more of the parties subject to approval by the body in charge of State management of foreign investment;
- According to a decision of the body in charge of State management of foreign investment in consequence of a serious violation of the law or any provision of the investment license.
- Following a declaration of bankruptcy;

- In other cases stipulated by law.

Within 15 days from the date on which operations are terminated, FOE or BCC must publish such termination in central or local newspapers and commence liquidation of the assets of the enterprise or liquidation of the BCC.

The period of liquidation of the FOE or BCC shall not exceed six months as from the date on which operations are terminated, or as from the date on which a decision is made to dissolve the enterprise or terminate the contract prior to expiry. In special cases where approval of the investment license issuing body is required, this period may be extended provided that the total period shall not exceed one year.

11. DISPUTE SETTLEMENT REGULATIONS

Disputes between parties to joint-venture enterprises and BCC shall be resolved primarily through conciliation and negotiations between the parties.

In case where the conciliation failed, the disputing parties may, on the basis of mutual agreement, select one of the following dispute resolution alternatives:

- A Vietnamese court;
- A Vietnamese arbitration body, foreign arbitration body or international arbitration body; or
- An arbitration tribunal established pursuant to an agreement between the parties.

Vietnamese arbitration organizations or courts in accordance with the law of Viet Nam shall resolve disputes between FOEs or between FOEs or foreign parties to BCC and Vietnamese economic organizations.

C. INVESTMENT GUARANTEE

The Government of Viet Nam guarantees fair and equitable treatment toward investors. Capital and other lawful assets of the investors shall not be expropriated or confiscated by administrative measures; businesses with foreign invested capital shall not be nationalized. Laws and regulations will not be applied retroactively if they adversely affect investors' interests. Foreign investors are allowed to remit abroad investment capital and profits, loan principal and interests, and other lawful proceeds and assets. Expatriates working for businesses with foreign invested capital in Viet Nam are allowed to remit their income abroad. The government guarantees foreign exchange conversion for revenue from infrastructure projects, those, which produce substitutes for imports, and other important projects.

The Government of Viet Nam also protects industrial copyrights and legitimate interests of foreign investors involved in technology transfer in Viet Nam.

D. INVESTMENT INCENTIVES

1. CORPORATE INCOME TAX INCENTIVES

In order to encourage foreign investment into certain economic sectors, areas and specific projects, the State of Viet Nam have provided a number of incentives in Corporate income tax, including tax rates lower than the general rates, tax exemption and reduction on a provisional basis as follows:

The 20% rate will apply to projects satisfying at least one of the following criteria:

- Export of at least 50% of products;
- Having 500 or more employees;
- Utilization of advanced technology;
- Investment in Research & Development;
- Cultivation or processing of agricultural, forestry or aquatic products;

- Utilization of a substantial amount of material and supplies available in Viet Nam; efficient processing and exploitation of natural resources in Viet Nam; manufacturing products with a high local content; as required by the regulations for each field.

The preferential tax rate 20% shall be applied for a period of 10 years from the commencement of production or business activities. In addition, projects subject to tax at the 20% rate are entitled to a corporate income tax exemption of one year from the date of profitable operation and a reduction of 50% for the subsequent two years.

The 15% rate shall be applied to projects satisfying at least one of the following criteria:

- Export of at least 80% of products;
- Investment in the fields of metallurgy, basic chemicals, machinery manufacturing, petrochemicals, fertilizers and manufacture of electronic components, automobile and motorcycle spare parts;
- Construction and operation of infrastructure projects;
- Cultivation of perennial industrial crops;
- Investment in regions with difficult natural, economic, and social conditions (including hotel projects);
- Transfer of assets to the State of Viet Nam after the expiration of project duration without any compensation;
- Projects satisfying two of the conditions stipulated above for projects entitled to the 20% rate (item 2.1 above).

The Corporate income tax rate 15% shall be applied for a period of 12 years from the commencement of production or business activities. In addition, projects of this category are entitled to a corporate income tax exemption of two years from the date of profitable operation and a reduction of 50% for the subsequent three years.

The 10% rate shall be applied to the following kinds of projects:

- Construction of infrastructure in regions with difficult natural, economic, and social conditions;
- Investment in mountainous regions and remote or distant regions;
- Afforestation;
- Those in the projects where investment is specially encouraged.
- Exporting at least 80% of its products;
- Exporting at least 50% of its products and intensive use of local labor and raw materials (with a value of at least 30% of the production cost).
- Investing in areas with difficult socio-economics conditions meeting one of the following conditions:
 - Exporting at least 50% of its products in the fields of breeding, planting and processing of agricultural, forestry and aqua-cultural products;
 - Exporting at least 50% of its products and employing more than 500 employees;
 - Exporting at least 30% of its products and intensive use of local accessories with high added value and intensive use of local raw materials (with a value of at least 30% of the production cost);
- Producing mechanical, electric or electronic spare parts or, accessories with high added value and intensive use of local raw materials;
- Processing minerals exploited in Viet Nam.

The tax rate 10% shall be applied for a period of 15 years from the commencement of production or business activities. In addition, projects of this category are entitled to a corporate income tax exemption of four years from the date of profitable operation and a reduction of 50% for the subsequent four years. Afforestation projects; infrastructure construction projects in mountainous regions, remote or distant regions; and large-scale projects included in the list of projects where investment is specially encouraged are entitled to a corporate income tax exemption of eight years.

Except for the investment projects which are exempted from Corporate income tax for eight years, the investment projects included in the List of projects where investment is specially encouraged and the List

of are where investment is encouraged shall be exempted from Corporate income tax for four years commencing from the first profit-making year and shall be granted a 50% reduction of Corporate income tax for a further period of four years.

Corporate income tax of FOEs in industrial zones and export-processing-zones

- 10%** - Applied to high tech industrial enterprises and high tech services enterprises in high tech zones. These enterprises are also entitled a tax exemption of eight years.
- Applied to industrial zone infrastructure developers. These enterprises are entitled a tax exemption of four years and a reduction of 50% for the subsequent four years.
 - Applied to exports processing zone enterprises in the field of manufacture. These enterprises are entitled to a tax exemption of four years.
 - Applied to industrial zone enterprises with export of at least 80% of products. These enterprises are also entitled a tax exemption of two years and a reduction of 50% for the subsequent two years.
- 15%** - Applied to industrial zone enterprises with export less than 80% of products. These enterprises are entitled a tax exemption of two years. In case where export reaches from 50% to 80% of products, they will be entitled to a tax reduction of 50% for the subsequent two years.
- Applied to exports processing zone enterprises in the field of services. These enterprises are entitled to a tax exemption of two years.
- 20%** - Applied to industrial zone enterprises in the field of services. These enterprises are entitled to a tax exemption of one year.

The period of corporate income tax exemption and reduction is calculated continuously from the beginning of profitable operation regardless of whether, thereafter, the enterprise may operate without profits again.

In respect of investment projects in the form of BOT, BTO, BT and projects constructing industrial zone infrastructure and projects in industrial zones, the preferential Corporate income tax rates shall be applied for the whole life of the projects.

Overseas Vietnamese investing under the Law on Foreign Investment in Viet Nam are entitled to a reduction of 20% of the Corporate income tax compared with other projects of the same category (except where the 10% Corporate income tax rate has already been granted).

2. REFUND OF CORPORATE INCOME TAX PAID ON PROFITS RE-INVESTED

The foreign investor who utilizes distributed profits for reinvestment in Viet Nam, in projects where investment is encouraged, for three years or more shall, depending on circumstances, be entitled to a 50% refund (for projects subject to tax at the 20% rate), a 75% refund (for projects subject to tax at the 15% rate) or a 100% refund (for projects subject to tax at the 10% rate).

The Ministry of Finance shall consider and decide on the refund of corporate income tax for profits re-invested within 15 days from the receipt of such an application for refund.

3. VALUE ADDED TAX INCENTIVES

- Foreign owned enterprises (FOEs) and foreign parties to Business Cooperation Contract (BCC) shall be entitled temporarily to defer the VAT payment on raw materials, materials imported for manufacturing exported goods in the period of temporary deferring of the payment of import duties in accordance with laws on import-exports.
- The following goods imported by FOEs and foreign parties to BCC shall not be subject to VAT:
 - Equipment, machinery, specialized transportation means belonging to a technological production line used for forming fixed assets of the enterprise.
 - Construction materials used for forming fixed assets of the enterprise and not locally produced.

4. IMPORT DUTY INCENTIVES

FOEs and foreign parties to BCC are entitled an exemption from import duties on the following:

- Equipment, machinery, as well as specialized transport means included in the technology/production line which are imported to form the fixed assets for the implementation of the projects, to expand the size of projects, to replace and upgrade technology, and transport means for workers (automobiles of 24 seats or more, waterway transport means).
- Construction materials imported for the purpose of forming the fixed assets, which have not been produced locally.
- Components, accessories, spare parts, appliances, moulds, other items accompanying the equipment, machinery, specialized transport means, and other transport means mentioned above;
- The exemption of import duties applicable to the above equipment machinery and means of transport shall also be applied in the case of expansion of a project and replacement or renewal of technology.
- Materials and supplies imported for the implementation of BOT, BTO, BT projects; tree/plant species, animal breeds, specialized pharmaceutical products needed for the implementation of agricultural, forestry, and aquatic projects;
- Patents, technical know-how, technological process, technical services, etc. used as capital contribution is exempted from taxes related to technology transfer.
- Enterprises engaging in hotel industry, offices and apartments for lease, residential premises, commercial centers, technical services, supermarket, gold courses, training, culture, finance, banking, insurance, auditing and consultant services shall be permitted to once-off exemption from import duties in respect of equipment provided for in Appendix II, attached Decree No.10/1998/NDD-CP dated 23 January 1998.
- Raw and other materials imported for manufacturing machinery and equipment used in a technological process, or for manufacturing components, parts, spare parts, support structures, appliances, moulds and accessories accompanying the above equipment and machinery.
- Investment projects included in the List of projects where investment is specially encouraged and investment projects in mountainous, remote or distant regions as stipulated in Appendix 1 attached to Decree No. 10/1998/NDD-CP shall be exempted from import duties in respect of raw materials used for production for a period of five years from the commencement of production.
- Projects manufacturing mechanical, electric or electronic spare parts or accessories shall be exempted from import duties in respect of raw materials within three years.

In respect of materials, accessories, spare parts, and supplies imported for the production of exports, in principle, are subject to payment of import duties upon entry and tax refunds will be granted upon export of finished goods in proportion to actual exports.

In order to facilitate import of goods needed for the production of exports, the Government allows the enterprise with export of at least 50% of products to establish a bonded warehouse at the enterprise under the direction, control and supervision of customs authority. Goods entering a bonded warehouse are not subject to immediate payment of import duties.

Where goods which have been exempt from duty or subject to a deferred payment arrangement are sold into the domestic market (when approved) import duty and other taxes are required to be paid.

5. OTHER INCENTIVES:

During business operation, FOEs shall be permitted to carry forward losses incurred in any tax year to the following tax year and set off against the profits of subsequent years for a maximum of five years.

FOEs shall be entitled to lease land at the minimum land rental and shall be entitled to maximum exemption from and reduction of taxes for construction of houses for workers and infrastructure facilities outside industrial zones and outside the location of FOEs. (E.g. education, training and health care facilities)

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

As of March, 1999, the Government of Viet Nam has entered into bilateral agreements for investment protection with nine APEC-member countries (including Australia, Thailand, Malaysia, Philippines, Indonesia, Singapore, China, Chinese Taipei, Russia), and double taxation agreements for investments in Viet Nam with nine APEC-member countries (including Australia, China, Canada, Indonesia, Korea, Malaysia, Russia, Singapore, Thailand). Viet Nam also signed the ASEAN Agreement for the Promotion and Protection of investment and the Framework Agreement on the ASEAN Investment Area (AIA) in December 1998.

F. ASSESSMENT OF RECENT TRENDS IN FOREIGN INVESTMENT

In the past years, the Government of Viet Nam issued timely policies and measures to improving foreign investment climate. The decrees and decisions of the Government on encouraging and guaranteeing foreign investment which were issued for two recent years have been highly appreciated by the foreign business.

The importance of these measures is not only to enhance the attraction and competition of foreign investment in Viet Nam, to restore the confidence of foreign investors, but also create favorable conditions to honor the commitment of Viet Nam to global and regional economic organizations. The permitting foreign investors to select investment sectors, forms, contributing capital, consumption market; progressively eliminating the dual pricing system; improving the administrative procedures related to labor recruitment, import-export, custom, land, foreign exchange control, etc. are important measures contributing to level the legal framework toward granting national treatment for foreign investors.

Particularly, in order to improve the foreign investment climate, the Government of Viet Nam has taken the following measures:

1. Expanding measures encouraging and guaranteeing foreign investment

- Supplementing projects which are granted special preferential treatment;
- Expanding the list of goods which are exempted from import duty;
- Expanding the exchange of goods between enterprises inside and outside the industrial zones;
- Expanding the list of projects which are balanced the foreign currency requirement;
- Taking further measures to support enterprises facing difficulty in the implementation of project;
- Amending and supplementing some articles of regulations on BOT, BTO, BT projects toward guaranteeing the lawful rights and interests of BOT enterprises and lenders.

2. Reducing investment cost with the aim to enhance the competitiveness and efficiency of FOEs

- Since 1 July 1999, the Government of Viet Nam shall reduce the prices of some essential goods and services for FOEs and foreigners.
- Since 1 July 1999, service prices, fees and charges as well as minimum wages and wages of Vietnamese employees working in FOEs shall be stipulated in Vietnamese dong, except as otherwise regulated;
- Allowing FOEs, which face difficulties leading to delay the operation to reduce or exempt from land rental equivalent to the delay period of time.

3. Enhancing the efficiency of the ministries, branches and provincial administration, reforming administrative procedures

- Giving authority of issuing and managing foreign investment projects for the remaining provinces and cities;
- Giving authority of approving import-export schedule and managing trading activities for provincial people's committees and provincial management boards of industrial zone.
- Establishing "hot line" to answer all questions of foreign investors;
- Implementing "one stop shop" in dealing with all matters relating to foreign investment;

4. Further promoting foreign investment and conversations with foreign investors

- Announcing the list of high-profile projects calling for foreign investment to 2000 and afterwards;
- Organizing regularly conversations between the Prime Minister, the Ministry of Planning and Investment and other relevant authorities with foreign investors;
- Disseminating new laws and regulation relating to foreign investment.

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) What is the average period from the formal submission of all relevant/required documentation to final approval/rejection?
- (f) 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.
- (g) Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal.
- (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).
- (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.
- (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.
- (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).

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.

Restrictions
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:

Regulations
Application and function

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

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. Other measures

- (a) Briefly outline the competition policy regime.
- (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.

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

- (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 countries/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

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 countries/economies that are sources/receivers of FDI over recent years.

Sources FDI
Destination FDI

COOK ISLANDS

Background on the Foreign Investment Regime

The Cook Islands is a group of 15 islands and atolls dispersed over an Exclusive Economic Zone (EEZ) of nearly 2 million square kilometres of the South Pacific Ocean. Cook Islands became a self-governing country 'in free association with New Zealand' in 1965. Agriculture, black pearls and tourism are major local industries.

Government Policy

The Government recognises that foreign investment can make enormous contributions to the economic and social development of the Cook Islands and therefore offers encouragement where investment proposals are clearly beneficial. The ability of Cook Islanders to take part in development investments or new enterprises should be pursued as far as practicable, depending on one or more prevailing factors, for example, technical expertise, managerial skills and/or investment capital.

Regulatory Framework and Investment Facilitation

Transparency

All foreign investments into the Cook Islands are governed by the *Development Investment Act 1995-96*. The Act spells out general regulations and requirements related to establishing new enterprise in the Cook Islands.

All foreign investment into the Cook Islands must:

- 1) Make significant economic contribution;
- 2) Be environmentally sound;
- 3) Be socially-acceptable and harmonised;
- 4) Not bring the Cook Islands into disrepute.

Every foreign enterprise, where foreign equity exceeds 33%, wishing to carry on business in the Cook Islands must apply for registration with the Development Investment Board. Application's for foreign enterprise registration must include details such as the nature of the enterprise, market potential, source of financing, expectations of employment provision, and of course the names, passport numbers and other details of all relevant parties. All applications should be accompanied by the fee set out in the First Schedule: NZD100. ~~An Interpol/FBI criminal check must accompany all applications for foreign enterprise registration.~~

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Investment Review and Approval

All foreign investment (all categories) into the Cook Islands must seek the approval of the Development Investment Board. Approval will be awarded by way of formal registration.

In addition to compliance with the *Development Investment Act 1995-96*, sector-specific investments shall be subject to sector-specific legislation:

Mergers & Acquisitions - *Development Investment Act 1995-96*;

Agriculture - *Agriculture Act(s)*;

Real Estate/Land - *Facilitation of Dealings Act 1970*;

Marine Resources - *Marine Resources Act 1989*.

In addition to the provisions of the *Development Investment Act 1995-96*, and the sector-specific Acts as listed above, all on-shore foreign investment shall also be subject to the provisions of all legislation in force in the Cook Islands.

All applications for Foreign Enterprise Registration, Exemption of Customs Import Levy, Employee Work & Residence Permits – of a foreign enterprise, Appeals, Revocations and General Queries, should be submitted or addressed to:

Development Investment Board
Private Mail Bag – Avarua Rarotonga
Cook Islands
Ph: 682-24296 Fax: 682-24298
Email: cidib@oyster.net.ck
Internet: www.cookislands-invest.com

Review and Approval Mechanisms for Foreign Investment Proposals/Requirements

Proposals are considered and resolved by the Development Investment Board. The minimum period for approval of applications is two to four weeks. Urgent Applications can be resolved in 24 hours, subject to the quality of information supplied by the applicant.

Competition Policy

Price Controls

Price controls apply to a limited range of essential commodities - principally foodstuffs.

Takeovers, Mergers and Monopolies

Proposals are investigated and reviewed by the Cook Islands Development Investment Board.

Transparency

Company/Business Structures

Business in the Cook Islands may be conducted through the normally recognised entities of company, partnership or sole proprietorship. The Government is particularly keen to encourage joint ventures of local and overseas investors, especially where the overseas involvement leads to the expansion or establishment of new export markets, brings essential technical and management expertise, or provides capital which otherwise would not be available locally.

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

Most foreign investment into the Cook Islands has primarily come from New Zealand and Australia. The Development Investment Board welcomes investment from all countries.

National Treatment

The Cook Islands provide favorable conditions for foreign investment. Foreign investors can engage 100% beneficial shareholding in a foreign company, as well as joint venture partnerships.

Repatriation and Convertibility

There are no exchange controls or regulations that hinder the repatriation of capital, profits, dividends, royalties, loan payments, interest earned on loans and other forms of foreign owned finance.

Restrictions on Foreign Investment

Reserved investment areas are those in which new investments will be reserved primarily for local investors or for enterprises predominantly owned by local investors. Examples include copra production, and commercial harvesting of pearl shell, shellfish and other reef products. A full listing of reserved activities can be found in the Cook Islands Investment Code. **The Cook Islands Investment Code whilst currently in force, is under review and is subject to change. A revised Investment Code should be available in the near future.**

Access to Land

All land in the Cook Islands is Customary and is not available under freehold title. The maximum lease obtainable by a non-Cook Islander is 60 years. All leases for longer than five years require approval from the Leases Approval Committee.

Entry and Sojourn of Personnel

Special Visas

Work and residency permits are granted on an annual basis. The Development Investment Board can grant Residence and Work Permits up to three years to key personnel or employees of an approved foreign enterprise.

Labour

Where qualified local persons are not available to fill a position, the foreign investor may recruit from overseas. The statutory minimum wage for employees 18 and over is US\$1.72 per hour. Labour relations are regulated by the Industrial and Labour Ordinance, 1964. Workers compensation is covered by the Insurance Liability Ordinance, 1964.

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Banking and Finance

Banking and Insurance Licences

The Off-shore Banking and Insurance Acts provide for the licensing of companies to carry on off-shore businesses in these areas. Generally, eligible companies must be incorporated as international companies under the International Companies Act 1981-82 or registered as foreign companies under the Act. Certain levels of asset backing are also required.

Banking/Finance Facilities

New Zealand and Cook Islands currency are both legal tender in the Cook Islands. A full range of domestic and international banking services is provided by Westpac Banking Corporation and ANZ Bank. The Cook Island Savings Bank provides domestic services. The Cook Islands Development Bank can also offer assistance, particularly in the financing of developing business ventures.

Taxation

Company tax is charged at 20 %. Since 1 July 1997, a Value Added Tax (VAT) of 12.5% (which is similar to a GST). Withholding tax of 15 % is imposed on payments of interest and dividends. The Cook Islands are not party to a Double-Taxation Agreement or Treaty with another country. Individual Income Tax rates are on a progressive scale with the top marginal rate being 30% for income above US\$20,910.

Capital Exports

As mentioned earlier, capital and profit repatriation are not subject to regulation.

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Investor Behaviour

Foreign citizens residing in the Cook Islands shall act as reasonable persons in society. A foreign citizen not in compliance with the law can be deported from the Cook Islands. Details of this are covered in detail in the *Entry, Residence and Departure Act 1971-72*.

Other Measures

The Cook Islands has Legislation that provides for intellectual property protection, including:

- *Patents Act 1953;*
- *Design Act 1953;*
- *Trademarks Act 1953; and*
- *Copyright Act 1962.*

Investment Protection

Expropriation and Compensation

All foreign enterprises registered with the Development Investment Board and bound by the Development Investment Act 1995-96 will not be subject to compulsory acquisition or expropriation of its property except in accordance with due process of the law.

Investment Promotion and Incentives

Investment Incentives

The *Development Investment Act 1995-96* administered by the Cook Islands Development Investment Board, is regarded as the basis for all incentives and concessions. Under the Act, any foreign enterprise (i.e., one with less than 67% local shareholding) must apply to the Development Investment Board to establish a new business.

The Development Investment Code identifies concession areas where incentives apply to growth sectors identified by Government. Growth sectors include commercial agricultural (including livestock), Fisheries, Commercial Manufacturing and Tourism.

Additional References:

- *Cook Islands Investment Guide*, Development Investment Board;
- <http://www.cookislands-invest.com>, Development Investment Board Website;
- *Cook Islands Investment Code*, Development Investment Board.

Further details on the Cook Islands are contained in the following:

- *'Investment in the Cook Islands'*: KPMG, Peat Marwick;
- *'Directory of South Pacific Forum Island Countries' Products 1993-94'*: South Pacific Forum.

Summary of International Investment Agreements or Codes to which the APEC Member is a Party

The Cook Islands are party to the following trade agreements:

- a) SPARTECA - New Zealand and Australia;
- b) Generalised Systems of Preferences (GSP) - USA, Canada, Japan.
- c) Cook Islands-Republic of Fiji Islands Bilateral (Non-reciprocal) Trade Agreement

Assessment of Recent Trends in Foreign Investment

Statistics of recent trends in foreign investment were not provided. The majority of foreign investment has originated from New Zealand.

Contacts for Further Information

Chief Executive
Development Investment Board
Private Bag Avarua,
Rarotonga
COOK ISLANDS
Tel: (682) 24296
Fax: (682) 24298
Email: cidib@oyster.net.ck
Internet: <http://www.cookislands-invest.com>

Secretary
Ministry of Finance and Economic Management
PO Box 41
Rarotonga
COOK ISLANDS
Tel: (682) 29511
Fax: (682) 21511

FEDERATED STATES OF MICRONESIA

Background on the Foreign Investment Regime

The FSM became fully self-governing in 1986 and was admitted to the United Nations in September 1991. The FSM is headed by a president and comprises a 14 member National Congress. Each of the states elects its own legislature and governor. The National Constitution defines the federal responsibilities which include immigration, taxes, duties and tariffs, regulation of currency, foreign and domestic trade, banking, navigation and shipping and development of national resources.

Primary production is directed mainly at subsistence farming with the coconut tree as a vital element of the islanders' existence. In recent years there has been an increase in commercial fishing with the National Fisheries Corporation responsible for examining the potential for further development of international fishing rights.

Federal and State Government Policies

The FSM welcomes foreign investment, aware that foreign capital, management and technology are critical to its development. Preference is given to foreign investments that are constructive and encouragement is offered to activities and enterprises that create jobs, make efficient use of raw materials, offer training to locals and allow for local equity participation. The Department of Resources and Development is responsible for the promotion of trade, investment and tourism at the national level.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

There is no legislation relating to foreign investment.

Investment Review and Approval

If a business is to be a sole proprietorship or partnership and one of the partners is a foreign corporation, the only registration requirement is the Foreign Investment Permit. A foreign investor must apply for this permit before commencing business even if the investor acquires equity in a domestic corporation. Application forms may be obtained from the Registrar of Corporations and filed with the same office without a fee. Business activities other than Banking, Insurance, Fishing in the FSM's EEZ, International and Interstate Transport, and International Shipping are processed by each of the four states with small fees.

Reviewing Foreign Investment Permit Applications

The application is processed within 15 days by the Department of Economic Affairs at the National Level or not more than 45 working days by each of the four states under the following circumstances:

- If the proposals involve business activities in more than one state;
- If export sales will be in excess of 50% of total sales;
- If the proposals involve imports of 50% or more of the materials processed; or
- If the proposal's main business activity is related to communication, air or sea transportation or the transport of fuel.

Company/Business Structure

Business in the FSM may be done through sole proprietorship, partnerships or corporations. The foreign investment permit regulations however, require that during the review process consideration be given to the extent of local ownership in a corporation.

Business Registration

Application to establish a business must be made in the form of application for Corporate Charter through the Office of the Registrar of Corporations in the National Department of Economic Affairs.

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

All investors are accorded equal treatment.

National Treatment

Same treatment to all local and international investors.

Repatriation and Convertibility

No restriction.

Restrictions and Limitations on Foreign Investment

Access to Land

Land ownership is limited by the Constitution to citizens only. Even domestic corporations which have non-citizen shareholders may not own land. Non-citizen individuals and corporations may lease either public or private lands. The initial point of contact in respect of access to land should be the Secretary of the Department of Resources and Development.

Entry and Sojourn of Personnel

Investors coming to the FSM will be granted permits to reside in the country for the duration of their investment. If an investor wishes to bring in outside labour, application must be made to the Division of Labour, Department of Resources and Development.

Special Visas

For US citizens, passports are not required but proof of US citizenship is necessary. Non-citizens must have a valid passport and a round trip ticket. Entry for both US and non-US citizens is granted for a 30 day period. Persons coming for a longer period or for purposes other than tourism must obtain *before arrival* a working permit from the FSM Department of Justice. An expatriate work permit fee of US\$100 is levied for each overseas worker.

Taxation

Income Taxes

Company Taxes

All businesses operating in the FSM pay a gross receipt tax which is assessed on the basis of 'gross revenue', that is, all receipts of a business from whatever source (including 'passive income' such as interest, dividends, etc.) without deductions, are taxable when they occur, rather than when they are received. The tax rate is \$80 on the first \$10,000 of gross revenue and 3% on any excess for the calendar year. Businesses with less than \$2,000 in gross revenue during a year are exempt from tax.

Personal Income Tax

Personal income tax may be paid on all personal income, including non-cash income. The tax is 6% of the first \$11,000 and 10% of any excess earned during a calendar year.

Other Taxes

Both employer and employee are required to contribute 3% towards social security (superannuation). This tax is administered by deductions from salaries. An import tax is also levied on various goods.

US Tax Considerations

Through the Compact of Free Association, corporations doing business in freely associated states will enjoy the same tax treatment as if doing business in a US possession.

Banking/Finance

Three banks operate in various FSM states. They are the Bank of Hawaii, the Bank of the FSM, and the Bank of Guam. The FSM Development Bank has the responsibility of mobilising financial resources for

development and providing medium and long-term loans and equity capital for high-priority projects. The Development Bank also administers the Investment Development Fund (IDF). The official currency is the US dollar.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Investment Protection

Settlement of Disputes

The FSM is not a party to any international agreements relating to foreign investment protection and compensation.

Investment Promotion and Incentives

Investment Incentives

Duty-Free Access to the US Market

As a general rule, all articles wholly grown, made or produced in the FSM will enter the US duty free except for certain categories such as watches, footwear and leather apparel. Tuna canned in water has duty free access to the US so long as total exports do not exceed 10% of total US consumption.

Quotas

Products produced in the FSM are not currently subject to quota restrictions. This is particularly relevant with regard to textile production, which is generally subject to highly restrictive quotas based on country of origin.

Investment Development Fund (IDF)

The IDF has been established to provide funding for approved projects which require financing in excess of US\$500,000. Approved loans are re-payable within 25 years and currently attract an interest rate of 5%.

Import Duties

Materials or products imported for transshipment or processing for re-export are eligible for duty drawbacks.

Investment Promotion

The FSM promotes investment opportunities in various publications including:

- *'An Investors Guide to the Federated States of Micronesia'*: Department of Economic Affairs; and
- *'Federated States of Micronesia Business Directory 1992'*: FSM National Government Publication.

Other documents include the:

- *'Directory of South Pacific Forum Island Countries' Products 1993-94'*: South Pacific Forum; and
- *'Tourism Investment Guide'*: Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to which the APEC Member is a Party

The Compact of Free Association which enables the FSM duty free access to the United States market is the only international agreement to which the FSM is a party.

Assessment of Recent Trends in Foreign Investment

Not applicable.

Contacts for Further Information

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Chuuk

Secretary
Director
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Yap

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FIJI

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Background on the Foreign Investment Regime

The Republic of Fiji consists of approximately 320 islands dispersed over an Exclusive Economic Zone (EEZ) of 1.3 million square kilometers of the South Pacific Ocean.

The Fijian Government treats local and foreign investors alike and allows investment to be market driven. In general there is little distinction between the form and conduct of a foreign-owned business and one that is locally owned. Essentially, conditions placed on investment by the Fiji Islands Government are designed to ensure that the investment is desirable for Fiji Islands in terms of its development, existing resources and investment.

Foreign investment is welcomed when it introduces foreign capital, management and technology and makes a contribution to Fiji Island's economic and social development. Joint ventures are encouraged in order to stimulate local entrepreneurship. In view of the small size of the local market, industrial development is geared towards the establishment of export-oriented manufacturing units.

Regulatory Framework and Investment Facilitation

Transparency

Investment Review and Approval

The Fiji Trade and Investment Board (FTIB) was established in 1980. Contact details are provided at the end of the chapter. The FTIB accepts applications for foreign investment and provides information to potential investors. It also facilitates dealings with Ministers and governmental or semi-governmental departments and bodies. It takes approximately two weeks from the date of submission of the formal documentation for a proposal to be assessed. It takes a total of 6-8 weeks for the final approval to be obtained. In the event that a project is rejected, investors can appeal by re-submitting the proposal with amendments.

Foreign Investment Act 1998

The Foreign Investment Act (FIA) 1998 was endorsed by the Senate in March this year and will shortly be enacted by the Minister for Commerce, Industry, Co-operatives & Public Enterprises. In essence, the FIA 1998 regulates the entry of foreign investment into Fiji Islands.

Foreign investment is encouraged and unrestricted in all sectors of the economy other than those which have been reserved for Fiji Islands' nationals under the **Reserved Listing**, or those where foreign investors must meet certain conditions prior to investment as stated in the **Restricted Listing**.

Certification

The Act requires the Chief Executive of Fiji Trade & Investment Board to issue foreign investors a Foreign Investment Certificate. The Chief Executive is required to give a written notice to the foreign investor granting or refusing an application within 15 days of the lodging of the application. The Act also requires foreign investors already operating in the Fiji Islands, to obtain a Foreign Investment Certificate within 12 months of the enactment of this Act.

Requirements

Requirements of foreign investments are that they:

- introduce adequate funds for their projects;
- pay a fair price for assets acquired locally;
- do not have a debt to equity ratio greater than 3:1; and
- are generally expected to finance fixed assets from overseas sources.

In addition, lenders in the Fiji Islands require Exchange Control approval from the Reserve Bank to make

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Survey Questionnaire (Questions are in bold type - our answers are in normal type)¶

A. ¶
Please provide a brief description of your foreign investment policy including any recent policy changes.¶
¶
Attach a summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.¶

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

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

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

¶
Proposals - Guidelines/Condition [1]

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Address/telephone/fax¶
Briefly describe what conditions need to be met for an expedited review of a foreign investment proposal. ¶
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Indicate agencies that consider foreign investment related complaints. [2]

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Functions¶
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loans to non-resident investors.

Investment Review and Approval

All proposals from foreign investors, and requests from locals for concessions and assistance, must be approved by the Government. Applications to the Government are submitted through the (FTIB) for decisions. Decisions normally take a maximum of eight weeks provided applicants give all relevant information.

Company/Business Structure

Forms of Business Enterprise

In Fiji Islands, business is generally conducted through incorporated companies, branches of foreign corporations, partnerships, and sole traders.

Company Legislation and Administration

The laws relating to companies in Fiji Islands are prescribed by the Companies Act, 1983. The Registrar of Companies administers the requirements of the Act.

Most Favored Nation Treatment

All foreign investors irrespective of source are allowed to invest in Fiji Islands and are subject to the same law.

National Treatment

Not applicable.

Investment Borrowing

A non-resident company may borrow 100% of its working capital requirements and fixed asset funding from a local commercial bank or other official lending institutions provided that total debt (including offshore borrowing) to equity ratio of the company is within the approved guideline of:

- 3:1 - if the company is 91 - 100% foreign owned;
- 4:1 - if the company is 71 - 90% foreign owned; and
- 5:1 - if the company is 51 - 70% foreign owned.

Companies and residents of Fiji may borrow up to the sum of F\$100,000 in foreign currency without the prior approval of the Reserve Bank.

Exchange Controls Transactions (Current Account)

To facilitate foreign exchange transactions, investors seeking foreign exchange for capital transactions must lodge an application with the RBF providing relevant documentation or directly to the Commercial Banks for current payment. Exporters may retain a certain percentage (currently 40%) of their earnings in a foreign currency account in the currency of their choice.

Repatriation of Funds

There are no restrictions on the remittance of profits and retained earnings. The amount to be remitted must be covered by a tax clearance certificate from the Inland Revenue Department. Payments in excess of F\$100,000 must be referred to the Reserve Bank for approval.

Limitations on Access to Land

Eighty three per cent of land is owned by Fijians in communal tenure. Fijian land, which is reserved for the special use of its owners, may not be leased except with their consent. The Government controls about 7% of the land and, like NLTB land, Government land may not be sold. Freehold land accounts for the remaining 10% of total land area. Access to land held in freehold tenure is negotiable with the private owners and estate. The normal method of conveyance is by lease.

Immigration Approvals

Visitor permits are issued on arrival. However for nationals of countries which are not covered under the list of visa exempted countries, a pre-entry visa must be obtained before travelling to Fiji Islands. A visitor

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

3.

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¶ Sector¶

¶ Nature of Exception (eg. prohibition, limitation, special conditions and special screening).¶

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

permit is normally issued for a stay of four months initially and can be extended for up to two months only upon application to the Department of Immigration.

A foreigner investing at least \$F250,000 worth of foreign funds into a Fiji Islands business or undertaking can qualify for the seven year investor permit which may include spouse and their children below 21 years. Businessmen with smaller investments but of economic benefit to Fiji Islands can apply for the 3-year permit.

Application forms for residence/work permits are available from the Immigration Offices and any Fiji Islands mission overseas at a cost of \$F5.50 per form. An application fee of \$F275.00 is to accompany each application. The legally married spouse of the principal applicant and their children can be included on the same form. An issue fee of \$F110.00 per person covered in the application form is payable if the application is approved.

Labour Regulations and Employment Standards

Fiji Islands has adaptable, disciplined, English speaking and readily available labour. The total labour force in 1996 was estimated at 301,500 of which 35% were in regular and paid employment. This is indicative of labour availability

Availability of Labour

Skilled and unskilled labour is readily available locally. However, when shortages in middle and top management personnel are experienced, expatriates with appropriate qualifications are recruited to fill those positions.

Regulation of Labour Relations

The Ministry of Labour & Industrial Relations has responsibility for the administration of the labour laws and for the encouragement of goods labour relations and social welfare. The following regulations on labour govern employment in the Fiji Islands:

- 1) The Employment Act regulates conditions for employment for all employees except for specified categories of persons.
- 2) The Workmen's Compensation Act prescribes social benefits in case of injury, sickness and death arising out of, and in the course of employment.
- 3) The Health & Safety at Work Act provides for the health, safety and welfare of employees.
- 4) The Fiji National Training Council Act provides regulations for employee training purposes.
- 5) The Trade Dispute Act sets out the procedures for the treatment of trade disputes.
- 6) The Wages Council Act provides for the establishment of a Wages Council.
- 7) The Trade Union Act deals with the formation of trade unions, which in turn look after the affairs of their members.
- 8) The Fiji National Provident Fund Act provides regulations for social security and old age benefits.

Wages Councils

The Wages Council Act provides for the establishment of wages councils. The council is composed of four representatives each from employers and employees and three independent members. The council deals with questions of wages and vacations in industries where no adequate collective bargaining machinery exists.

Arbitration of Trade Disputes

The treatment of trade disputes is governed by the Trade Disputes Act. Under the Act, disputes must be notified to the Permanent Secretary for Labour and Industrial Relations, who may undertake conciliation talks himself or may appoint another person to do so on his behalf or may even refer the dispute to the Minister. In the event of conciliation talks failing to resolve any dispute, it may then, if both parties agree, be referred to arbitration.

Trade Unions and Employee/ Employer Fixed Associations

The formation, registration and conduct of trade unions and employee/employer associations are dealt with by the Trade Unions Act. Registration of trade unions is compulsory and organisations registered under the Act are corporate bodies.

Employee Training Scheme

The Fiji National Training Act instituted a grant/levy scheme whereby all employers (subject to exemption of certain industries and services) pay 1% of their gross six monthly payroll and other emoluments to the FNTC for industry training. Companies are able to claim expenses incurred for any in-house staff training purposes from the Fiji National Council. The value of the grant is dependent on the type and the degree of training undertaken but is subject to a general maximum of 100% of levy paid.

Working Conditions/Wages

There is no statutory minimum wage in Fiji covering all types of employment. The total labour force is divided into three broad categories for wages guidelines purposes:

- **Trade Union Agreement** - On relation to those employees covered by a Trade Union Agreement, the union negotiates with the employer for minimum wages, annual increments and other benefits.
- **Wage Regulation Council** - The Wage Regulation Council (wage council) sets no minimum wage guidelines, annual increments and other benefits for employees of these industries for which wage councils have been established.
- **Individual Bargaining** - All employees who are not covered by the above two categories fall in this category whereby they themselves negotiate with their employer for wages, annual increments and other benefits.

Hours of Work

The average hours of work range from 40-48 hours per week, depending on the type of industry. The minimum wage rate for wages regulated by wages council vary from \$1.26 to \$2.09.

Social Security

Superannuation

The Fiji National Provident Fund (FNPF) which is regulated by the FNPF Act provides social security benefits for old age and for total incapacity. An employer is legally obliged to contribute to the Fund at the rate of 7% of gross earnings for each employee, and the employee contributes a like amount, which is deductible from his wages. Under amendments to the Act, the rate of contribution will be increased to 8% from 1 July 1999.

Workmen's Compensation

The Workmen's Compensation Act regulates social benefits payable in the case of injury or any mishaps. Every company is obliged to take out a Workmen's Compensation Insurance Policy to safeguard the interest of its employees or their beneficiaries against sickness, death and in capacity during working hours in the course of employment.

Occupation, Health and Safety Act

The Occupation, Health and Safety Act outlines a detailed list of safety and health measures for enforcement within organisations to ensure occupational safety and minimise hazards at work.

Taxation in Fiji

Types of Taxation

The major revenue sources of the Fiji government are Income Tax, Withholding Tax, Land Sales Tax, Value Added Tax, & Gambling Turnover Tax.

The fundamental features of the Fiji Islands income tax system are:

- Tax is charged on taxable income as determined by the operation of the Fiji Income Tax Act. The Act is administered by the Commissioner of Inland Revenue;
- A resident of Fiji Islands is subject to income tax on taxable income derived from both within and outside Fiji Islands. Double taxation of residents is avoided by allowing credits for foreign tax paid on overseas income derived from countries with which the Fiji Islands has double tax treaties eg, the United Kingdom, Japan, New Zealand and more recently Australia;
- Non-residents are subject to income tax on taxable income derived only in the Fiji Islands;

- The rates of tax levied on individuals differ between residents and non-residents of the Fiji Islands. The rate of tax payable by companies depends on their registration status.

Determination of Taxable Income

Basis of Taxation

Fiji Islands income tax is levied on taxable or 'chargeable' income, that is, total income less allowable deductions.

Allowable Deductions

These include most types of expenditure, which would normally appear in the revenue accounts of a business enterprise. The Fiji Income Tax Act governs the nature and amount of allowable deductions for specific costs or outgoing. The resident company tax rate is 35%. The tax year usually runs from 1 January to 31 December although alternative fiscal years are permitted.

Employment Earnings

Employment related earnings have tax deduction at source under the PAYE System. Taxpayers coming under this category are also required to lodge an Income Tax Return at the end of the year for any final adjustments.

Resident / Non-Resident Individual Tax Rates on Fiji Islands Sourced Income

Chargeable Income (\$)	Tax Payable (\$)
0 - 6,500	nil
6,501 - 8,500	nil + 15% of excess over 6,500
8,501 - 15,500	300 + 25% of excess over 8,500
15,501 +	2,050 + 35% of excess over 15,500

These rates also apply to estates, trusts and settlements.

Non-Resident Withholding Tax Rates

	NZ UK & Japan	Korea	Australia	Malaysia	Other Countries
Royalty	15%	10%	15%	15%	15%
Interest	10%	10%	10	15%	10%
Dividend	15%	15%	20%	15%	15%

Other Taxes

Land Sales Tax - Land sales tax is currently the only form of 'capital gains' tax in Fiji Islands being levied generally on profits arising from dealings in 'undeveloped' land. The tax is levied progressively, maximising at the rate of 30% on profits in excess of \$9,500.

Stamp Duty Tax - Stamp Duty Tax is payable on specified legal documents (e.g., contracts, share transfers, mortgages etc.). The rates of such tax are laid down in Stamp Duties Act.

Gambling Tax - Gambling Turnover Tax is payable at the rate of 10% of the gross amount spent by a person for the acceptance of abet, provisions of a ticket, the stake money in relation to that bet etc.

Value Added Tax - VAT is a tax on spending. The tax is borne by the final consumer of goods and services because it is included in the price paid. The tax is at a flat rate of 10%.

Imports and Exports

The Ministry of Commerce, Industry, Co-operatives & Public Enterprises and Ministry of Foreign Affairs & External Trade control import and export policy. Imports are subject to import duty only, which is levied at various rates in accordance with the Customs Tariff Act 1986, although, as an investment incentive, such duties may be waived. Most goods may be imported without an import licence. However, there are restrictions on the import of a number of products in order to protect local industries. The Government has a policy of removing import assistance to industries with the ultimate aim of zero tariff protection. However the immediate goal is a tariff rate of 10% before the year 2000. The Departments'

export control activities include checking export valuations. Exports are actively encouraged and, while some export taxes are imposed, they are minimal.

Performance Requirements

Not applicable.

Investor Behaviour

Not applicable.

Other measures

Not applicable.

Competition Policy

Price Controls

Price controls exist only on selected essential commodities such as food, beverages and fuel.

Takeovers, Mergers and Monopolies

The Fair Trading Amendment Act 1998 includes provisions which allow agreements, mergers to be authorised where the conduct results in a public benefit which outweighs the detrimental effects. The Commerce Commission administers these provisions.

Intellectual Property

Trademarks and Patents are protected under the Fiji Islands law. Foreigners wishing to register trademarks and patents must be represented by a duly authorised agent resident in the Fiji Islands. The new Copyright Act grants copyright protection on artistic and literary works.

Investment Protection

Expropriation and Compensation

The 1997 Constitution provides protection for foreign investors against expropriation of investments.

Investment Promotion and Incentives

Investment Promotion

The FTIB undertakes investment promotion locally and overseas through missions, seminars and printed documents.

Official documents used in promoting investment opportunities include:

- 'An Investors Guide to Fiji': FTIB; and
- 'Fiji Product Directory 1998': FTIB.

Other promotional documents include:

- 'Doing Business in Fiji': Price Waterhouse.

Investment Incentives

The *Tax Free Zone/Tax Free Factory (TFZ/TFF)* scheme provides further taxation and customs concessions to incentives already in place

Benefits of the TFF/TFZ Package

- a) Customs Concessions from duty on imported:
 - plant and equipment; raw materials; components, spares and packaging materials; and
 - other items purchased to set up a TFF, eg building materials, furniture, and office equipment and other concessions.

Note: there are some exceptions to customs concessions such as on consumable articles.

b) Tax Concessions:

- corporate profits will be fully exempt from tax for a period of 13 years on approved activities;
- no withholding tax on interest, dividends and royalty provided there is no 'shift of revenue abroad';
- final dividend tax of 15% on dividend paid to resident shareholders;
- freedom to repatriate capital and profit.

Further benefits available to both Tax Free Enterprises and other foreign investors include generous depreciation allowances, accelerated depreciation, the ability to carry forward losses, Double Taxation Agreements and others including industry specific concessions.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

- SPARTECA - this agreement provides Fiji and other Forum Island Country (FIC signatories with preferential access to the markets of Australia and New Zealand.
- LOME IV - this treaty extends the provisions of the original LOME Convention and applies to the markets of the EU, allowing products originating in the ACP states to be exported to the EU free of customs duty and other similar charges. The products are also not subject to quantitative restrictions.
- GSP - is the General System of Preferences whereby developed countries offer preferential access to most developing countries in the form of duty free entry or concessionary duty on imports.

Assessment of Recent Trends in Foreign Investment

Statistics on foreign investment were not available.

Contacts for Further Information

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Governor
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Private Mail Bag
SUVA FIJI
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KIRIBATI

Background on the Foreign Investment Regime

Kiribati (pronounced Kiribass) has 33 coral atolls widely dispersed over a vast area of the Pacific Ocean and has an Exclusive Economic Zone (EEZ) covering 3.5 million square kilometres.

For administrative and demographic purposes, Kiribati is divided into atoll island groups, the Gilbert, Line and Phoenix Groups. The Kiribati economy is small with few resources. The agricultural base, including subsistence, is narrow and averages 30% of GDP. Copra is the only important cash crop and commercial fishing (mainly tuna) is undertaken by the small fleet of the national fishing company.

Government Policy

Foreign investment is generally encouraged and no discrimination is shown between foreign and local investors. Foreign Investors who wish to establish an enterprise must make application to the Foreign Investment Commission (FIC) which is chaired by the Permanent Secretary for Commerce, Industry and Tourism. The key Government Ministries are represented on the FIC.

All proposals put to the Commission are considered under the following guidelines:

- the potential employment of I-Kiribati (the indigenous population);
- net export contribution;
- the balance between local resource exploitation and the size of the foreign investment;
- the potential for transferring to I-Kiribati foreign managerial and technical skills required in the enterprise;
- the extent of competition with local enterprises; and
- the impact on social and natural environments.

Regulatory Framework and Investment Facilitation

Statutory (Legislative) Requirements

Overseas investment in Kiribati is controlled under the *Foreign Investment Act 1985* (as amended), the *Foreign Investment Regulation 1986*, and the *Foreign Investment Policy 1996*.

Investment Review and Approval

For investment to the value of US\$156,848 (AU\$250,000), and above, approval must be sought from Cabinet on advice from the FIC. For investment less than US\$156,848, the FIC may approve or reject the investment directly. The average time involved in processing an investment application from point of submission to final approval is two to three months. Complaints made by foreign investors (or complaints made against them) should be addressed to the Foreign Investment Commission.

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Most Favored Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Not applicable.

Repatriation and Convertibility

There is no foreign exchange control in Kiribati, nor is there a central monetary authority.

Restrictions and Limitations on Foreign Investment

The Government of Kiribati imposes restrictions on foreign investment only where local expertise or local industry already exists (for example, handcraft) or where the local, natural or social environment could be adversely affected.

Access to Land

The Kiribati Government owns about two-thirds of the land. Christmas and Fanning islands in the Line group and Canton island in the Phoenix group have been earmarked by the Government as prime areas for future development. Land in the country cannot be bought by foreigners. However, for investment purposes, land can be leased on a long-term basis. All enquires and approval for Government land is handled by the Lands Management Division (LMD) of the Ministry of Home Affairs and Rural Development. Foreign Investors may enter into direct negotiation with private landowners on the terms and conditions for leasing. However where the term of the lease is more than 21 years, the consent of the Honourable Minister of Home Affairs and Rural Development must be sought before the lease agreement is concluded.

Entry and Sojourn of Personnel

Special Visas

Investors are normally granted visas for one year (by The Ministry of Foreign Affairs) with provision for annual extensions.

Labour and Labour Regulations

The number of people engaged in the formal paid workforce is about 8,000 or approximately 14 % of the total population. At the moment a total of over 3,500 people are engaged in the Government Ministries.

The country does not at present have a minimum wages legislation although enactment plans are underway. The hotel industry is partly unionised. Prevailing wage levels in the private sector are US\$0.97 an hour for unskilled workers and US\$2.07 an hour for supervisory level workers. Government wage rates are marginally higher.

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Superannuation

Employers and their employees are required to be registered with the Kiribati Provident Fund (KPF). The employer is required to pay six percent of an employee's basic salary into this fund, while the employee contributes a further 6%. Compensation for workplace injuries is governed by the Workplace Compensation Act. This Act applies to all I-Kiribati employees.

Taxation

Companies

Normal company tax is based on a flat rate of 25% of net profits for the first US\$34,393 and 35% for amounts in excess.

Individuals

Personal income tax is at progressive rates and is applied to chargeable income (taxable income less allowable expenses) at the following rates (using exchange rate of \$130):

Per Annum	Tax Rate
0 - US\$1,385	nil
US\$1,385 - US\$11,539	25%
US\$11,539 - US \$38,462	30%
US\$38,462 and over	35%

Hotel Tax

Hotel tax is based on a flat rate of 10 percent of turnover and applies to all hotels and motels.

Withholding Tax

Withholding tax on dividends paid to overseas investors is 30%, except for dividends paid to an Australian resident where the rate is 15%.

Banking

There is no central monetary authority in Kiribati and the official currency is the Australian dollar. The

Development Bank of Kiribati is authorised to make long term loans to private enterprises engaged in agriculture, fisheries, industry and services. The only commercial bank, the Bank of Kiribati, is owned jointly by the Australian bank, Westpac (51%) and the Government (49%).

Capital

The Development Bank of Kiribati is willing to lend for tourism development projects up to a maximum of around US\$171,970, provided the project is financially viable and meets the Bank's lending criteria. The Bank of Kiribati may also provide short-term loans of up to five years to the hotel sector for working capital requirements.

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Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Competition Policy

Price Controls

Price controls exist on selected items, including essential commodities such as mineral fuels and basic food groups.

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Imports and Exports

Import duty exemptions may be provided for investment project items. Customs clearance procedures apply to any goods imported into Kiribati.

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At present, no export duty is charged on exportable items. There are also no restrictions on items for export except the export of marine products. An export license from the Fisheries Division of the Ministry of Natural Resources Development is required for marine products.

Investment Protection

The government of Kiribati is currently considering joining the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Dispute (ICSID).

Investors securing their rights to own and operate their business in Kiribati are able to obtain Government guarantees to repatriate after-tax profits, original capital, loan and interest repayments, know-how fees and other service charges.

Investment Promotion and Incentives

Investment Incentives

A range of incentives is offered to those wishing to invest in Kiribati. These incentives are not automatic but available on a case-by case basis. It is up to the investor to initiate any request for such assistance.

Pioneer Status

Any pioneer company that wishes to establish a business in Tarawa or Kiritimati may apply to the Internal Revenue Board for 'pioneer status', pursuant to the Income Tax Act (as amended). This allows for a reduced company tax rate of 10 % for five years.

Protected Status

This allows for protection against competition to pioneer businesses (local or foreign) pursuant to the Protected Industries Ordinance (as amended). Nonetheless, planning is in progress to repeal this legislation.

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Depreciation Rates

Depreciation deductions for assets are at the following fixed rates:

- industrial building: 5% of cost;
- motor vehicles: 20% of written down value;
- furniture & fittings: 25% of written down value;
- ship: 10% of cost;
- tanks referred to: 3% of cost;
- in section 34(2)(e) of the Income Tax Act (as amended);
- any other article: 25% of written down value;
- machinery or plant.

Carry Forward of Losses

Losses from previous years may be carried forward for up to three consecutive years but should be offset against like income.

Loan Interest Deduction

Interest payable on both foreign and local loans may be 100 % free of tax deductions for income tax purposes but with total debt deductions restricted to an equity ratio of 3:1.

Customs Duties Concession

Import duties are generally low and full or partial exemptions of import duties may be granted on capital items. These include building materials, plant and equipment, furniture and fittings and boats.

Direct Government Investment

The Government may assist by equity involvement or through joint-venturing a project. Assistance may be in the form of a financial contribution or through another resource contribution such as land (land cannot be owned by foreigners, but for investment purposes it can be leased at low rates).

Development of Infrastructure

Assistance may be provided for development projects, such as tourism. This may take the form of the development of or improvement of general infrastructure such as roads, port facilities, airport development, electricity and water supplies.

Licence Fees Exemption

Not applicable.

Additional Reference Documents

The only official promotional document is the *'Investment Opportunities in the Republic of Kiribati'* produced by the Department of Trade and Industry and the Ministry of Foreign Affairs, New Zealand, 1988. However, this document is out of date, therefore planning is in progress to revise and update it.

Other promotional documents include:

- *'Directory of South Pacific Foreign Island Countries' Products 1993-94*: South Pacific Forum; and
- *'Tourism Investment Guide'* : Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Kiribati is a signatory of the SPARTECA Agreement. Goods exported from Kiribati to New Zealand or Australia may be granted preferential access to those markets.

Kiribati is also a member of many International and Regional Organisations including UNESCO, the Commonwealth Foundation, the World Association of Investment Promotion Agencies (WAIPA), and the Commonwealth Secretariat and the Forum Secretariat.

Assessment of Recent Trends in Foreign Investment

Some examples of significant foreign investment ventures include:

- fisheries with licences granted to companies from Japan, Taiwan, US, Korea and the Federated States of Micronesia (FSM);
- joint venture arrangements with Australian companies in commercial banking and telecommunications; and
- smaller investments in the wholesale/retail sector, inter-island shipping, tourist-related activity, computer consultancy services, and process and export of marine products.

Recent Trends in Foreign Investment

Statistics compiled by the Foreign Investment Promotion Division of the Ministry of Commerce Industry and Tourism show an increase in the number of approved foreign investment proposals. A total of 32 foreign investments were approved for the period commencing 1995 to April 1999. In the previous three years period of 1992 to September 1994, there were only five approved foreign investment projects. The main sectors included tourist related activities, shipping and fishing ventures and processing and import of fish. Major sources of foreign investment in Kiribati are the USA, Japan, UK, Australia and New Zealand.

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Contacts for Further Information

Secretary
Foreign Investment Commission
Ministry of Commerce, Industry and Tourism
PO Box 510
Betio, Tarawa
KIRIBATI
Tel: (686) 26 157/26 158
Fax: (686) 26 233
Email: commerce@tskl.net.ki

Chairman
Internal Revenue Board
Ministry of Finance and Economic Planning
PO Box 67
Bairiki
Tarawa
Republic of Kiribati
Tel: (686) 21 307
Fax: (686) 21 824/21 082

MARSHALL ISLANDS

Background on the Foreign Investment Regime

The Marshall Islands is a republic associated with the USA in a Compact of Free Association. It is a nation of 29 coral atolls and five islands which form two vast parallel chains scattered over 750,000 square miles of the Central Pacific. There are over 1,225 islands and 870 reef systems in the Marshall Islands with over 800 species of fish and 160 species of coral. The total population of the Marshall Islands at present is estimated at 60,000.

The legislative body consists of a 33 member Nitijela (Parliament) who elect the President by majority vote. From the Nitijela, the President appoints his 10-member Cabinet. Elections are held every four years.

Government Policy

The Government recognises the value of foreign investment as a means of promoting more vigorous economic development and self-sufficiency for its citizens. The Government recently named the tourism and fisheries sectors as the priority areas for development. In addition, copra production remains a priority area for economic activity. The taxation system continues to be one of the lowest in the Pacific.

Regulatory Framework and Investment Facilitation

Legislative Framework

The relevant legislation is the Foreign Investment Business License Act (1999), which was previously administered by Cabinet. The new legislation makes obtaining a foreign investment license more automatic and transparent.

Review and Approval Mechanisms for Foreign Investment Proposals

Interested investors can obtain an application form from the Clerk of the Cabinet, Office of the President. License applications are reviewed periodically by the Cabinet, who currently administers the application process. Applications are currently under modification, however, generally, required information is standard.

A foreign investor wishing to conduct business as a foreign corporation or other foreign entity must be registered. Applications to register are made to the Office of the Registrar of Corporations within the Attorney General's office which completes the registration if the application is approved. Approval of applications is provided by the Cabinet. Registration fees are as follows:

- registration as a foreign corporation doing business in the RMI, an initial fee of US\$1,000 and an annual renewal fee of US\$500;
- registration as a domestic corporation, an initial fee of US\$250 and an annual renewal fee of US\$75.

Most Favored Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Restrictions and Limitations on Foreign Investment

In cases where land is required, a limited term lease must be negotiated with the relevant land-owners. Legislation to set up a Development Land Registry Authority is currently pending adoption. The DLRA will allow land-owners to designate, through registration, their land for development purposes, thereby making the leasing process more investor-friendly.

Repatriation and Convertibility

The Marshall Islands has the United States dollar as legal tender. There are no regulations restricting foreign exchange transactions. There are also no borrowing restrictions on foreign investors from either local or international sources.

Entry and Sojourn of Personnel

Special Visas

Investors are normally granted visas for one year with provision for annual extensions. The legislated minimum wage rate is US\$2.00 per hour, of which employers of non-resident workers are required to pay US\$0.25 per hour into a government training fund to sponsor skills training for local people.

All non-resident workers are required to obtain a work permit, for both short-term (90 days or less) and long term employment. The Division of Labor in the Ministry of Foreign Affairs and Trade is responsible for issuing work permits. Work permits for short term and long term employment have different procedures, however in both cases, applications can be processed immediately if the required information is submitted.

Taxation

Taxes are levied on private sector corporations and enterprises at the rate of US\$80 per year for the first US\$10,000 of gross revenue and at three percent of gross revenues earned above US\$10,000. This tax is applicable to all companies operating in the RMI (unless they are exempt under the tax incentive programme) and is assessed and collected quarterly.

The RMI provides a five year gross revenue tax exemption for a business which meets one or more of the following criteria:

- capital invested exceed US\$1 million;
- wages paid to Marshallese exceed US\$150,000 per annum; or
- investment is in off shore or deep sea fishing; manufacturing for export, or for both export and local use; agriculture; or hotel and resort facilities.

A business which engages in deep seabed hard mineral mining can be exempt indefinitely, provided it pays royalties to Government. Personal income taxes are applicable to all persons employed in the RMI, the tax rates being 8% for the first US\$10,400 and 12% thereafter. There are no export taxes in the RMI.

The National Government imposes an import tax on goods and materials imported into the Marshall Islands of 5%. Exemptions from the import tax are available for goods and materials imported for the establishment, operation, or maintenance of the following industries: manufacturing; hotel and tourism; fishing; and other industries designated by the Cabinet.

With respect to employees, businesses are also required to make quarterly social security contributions on 'covered earnings'. Covered earnings are defined as the compensation paid to employees up to \$5,000 per quarter. From the employee's wages, the employer is to withhold and pay to the Social Security Administration 3.5% of covered earnings. From the employer's revenues, the employer is to contribute to the Social Security Administration for the benefit of the employee another 3.5% of covered earnings.

Businesses are also required to make quarterly health insurance contributions on covered earnings. Covered earnings for health insurance is defined the same as it is for social security contributions. From the employee's wages, the employer is to withhold and pay to the Social Security Administration 2.5% of covered earnings. From the employer's revenues, the employer is to pay to the Social Security Administration for the benefit of the employee another 2.5% of covered earnings.

Banking

Three commercial banks, the Bank of the Marshall Islands, the Bank of Guam and the Bank of Hawaii all provide domestic and international services. Four credit unions provide savings and loans services to their 2,000 members. The official currency is the US dollar. The Marshall Islands Development Bank provides a range of financial and non-financial assistance to enterprises and individuals in the Marshall Islands.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Competition Policy**Price Controls**

There are no Government imposed price controls in the Marshall Islands.

Investment Protection

There is no internationally recognised investment protection in the Marshall Islands, however, the Constitution provides general protection.

Investment Promotion and Incentives**Investment Promotion**

The Ministry of Foreign Affairs and Trade produces and distributes the RMI's National Trade Directory and Investment Guide. In addition, the tourism and fisheries Authorities occasionally undertake their own investment promotion activities, with support from the Ministry.

Investment Incentives

The Marshall Islands is a beneficiary of various trade agreements which allow preferential access to major markets for its exports. The Compact of Free Association gives access to US markets as does the Generalised System of Preferences (GSP) which covers markets in Canada, Japan and non-western European countries. The South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) provides access to the markets of Australia and New Zealand.

Articles exported from the RMI qualify for this duty-free treatment if some of the cost or value of the materials produced in the RMI, and the direct costs of processing operations performed in the RMI are not less than 35% of the appraised value of the merchandise at the time of its importation into the United States. The cost of processing operations in the RMI can include the following:

- all Actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;
- dyes, moulds, tooling, and depreciation. Oil machinery and equipment which are able to be allocated to the specific merchandise;
- research, development, design, engineering, and blueprint costs so far as they are able to be assigned to the specific merchandise; and
- costs of inspecting and testing the specific merchandise.

Products produced in the RMI are also not presently subject to any quota restrictions into the US market. This is particularly relevant in the area of textile production. Textile imports into the US are generally subject to highly restrictive quotas based on the country of origin.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

The RMI is not a member of APEC.

Assessment of Recent Trends in Foreign Investment

Major countries/economies that are sources/receivers of FDI:

- Sources FDI - Japan, China, US, Korea;
- Receivers FDI - most Marshallese business owners invest in the Marshall Islands, usually in joint ventures with one of the above named sources.

Trends in Foreign Investment

There are no formal statistics showing any trends in foreign investment.

Amendments to the Current Foreign Investment Business Act

The Foreign Investment Policy is being amended to transfer all investment-related matters to the Ministry of Foreign Affairs and Trade. The amendments have yet to be formally adopted but the objective of the amendments is to make the licensing process more automatic and transparent, and transfer the approval process from Cabinet to the Ministry of Foreign Affairs and Trade.

Further proposed amendments entail a substantial reduction in the license application fee to make it a more appropriate reflection of its intention to be an administrative fee. An RMI Investment Opportunities Guide has just been completed, which contains summaries of potential investment opportunities as well as laws and regulations for doing business in the Marshall Islands.

Contacts for Further Information

Clerk of the Cabinet
Office of the President
PO Box 2
Majuro, MH 96960
Tel: (692) 625 3445/2233/3213
Fax: (692) 625 4021
Email: presoff@ntamar.com

Managing Director
Marshall Islands Development Bank
PO Box 1048
Majuro, MH 96960
Republic of the Marshall Islands
Tel: (692) 625 3230
Fax: (692) 625 3309

Secretary
Ministry of Minister of Foreign Affairs and Trade
PO Box 1349
Majuro, MH 96960
Republic of the Marshall Islands
Tel: (692) 625 3181/3012
Fax: (692) 625 4979
E-mail: mofat@ntamar.com

NAURU

Background on the Foreign Investment Regime

The Republic of Nauru is one of only two single island nations in the South Pacific. It is located 41 kilometres south of the equator and has a land area of only 21 square kilometres, although its Exclusive Economic Zone (EEZ) covers 310,000 square kilometres. The Nauruan Government comprises 18 elected members headed by a president who is both head of state and *de facto* prime minister.

Nauru's rich phosphate deposits have made it the wealthiest nation in the South Pacific with a per capita GNP of US\$4,145. The local labour force is insufficient to meet the phosphate mining needs and the Nauru Phosphate Commission imports contract workers from areas such as the Philippines; Hong Kong, China; Kiribati; Tuvalu; and other Pacific Islands.

Government Policy

Nauru has never actively encouraged foreign investment and offers no incentives as such for investors. It does, however, operate a financial centre which allows international companies to register there for tax planning purposes. Laws and regulations have been designed to promote the further development of this centre.

Nauru's sole export is high quality phosphate. In 1996 exports were US\$25.1 million. The trade balance is heavily weighted in Nauru's favour even though virtually every commodity is imported. Main suppliers of imports are Australia and New Zealand. There are no import duties except on tobacco products, alcoholic beverages, motor vehicles and motor cycles. Primary production is confined to fruit and vegetables for domestic consumption although the country is nowhere near self-sufficient and commercial fishing does not exist on any scale. Nauru has not developed as a tourist destination; most arrivals are in transit on Air Nauru flights or returning expatriate workers.

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Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

As noted above, Nauru does not have a specific investment policy in place and the regulatory framework is not established.

Investment Review and Approval

Not applicable.

Most Favored Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Restrictions and Limitations on Foreign Investment

Not applicable.

Repatriation and Convertibility

Not applicable.

Entry and Sojourn of Personnel

Not applicable.

Taxation

The Nauru Government does not impose any taxes except for an Airport Departure Tax imposed on

foreigners passing through Nauru.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Investment Protection

Expropriation and Compensation

Not applicable.

Settlement of Disputes

Not applicable.

Investment Promotion and Incentives

Investment Incentives

Investment incentives are not offered. The relevant contact is the Department of Island Development and Industry. There are no official promotion documents other than an entry in the:

- *'Directory of South Pacific Foreign Island Countries' Products 1993-94*: S.P.Forum.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Nauru is a beneficiary of the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) which gives its products preferential access to Australian and New Zealand markets. It is not, however, partner to the Generalised System of Preferences (GSP) and the Lome Conventions which benefit the trading agreements of many other Pacific nations.

Assessment of Recent Trends in Foreign Investment

Not applicable.

Contacts for Further Information

Secretary
Department of Island Development and Industry
Republic of Nauru Central Pacific
Tel: (674) 444 3181
Fax: (674) 444 3791

NIUE

Background on the Foreign Investment Regime

Niue consists of a single island. It is an uplifted coral island of 259 square kilometres. The Constitution Act of 1974 provides for self-government in free association with New Zealand, with New Zealand accepting most of the responsibilities for foreign relations and defence.

Government Policy

The Government of Niue welcomes foreign investment and wishes to extend an invitation for all to consider the investment opportunities that are available in Niue. It is the primary aim of the Government of Niue to improve its capacity towards self-sufficiency through maximum use of the limited resources the country is endowed with as well as those other resources that are accessible. Government policy is to support, within reason, any overseas investment proposal which could provide employment for local people, increase opportunities for import substitution and reduce the trade deficit.

Priority will be given to investment proposals that directly or indirectly contribute to the National Development Goal and Objectives as set out in the *Niue National Development Strategic Plan, 1994*. Proposals relating to horticulture, timber milling, labour intensive light manufacturing and tourism are of particular interest to the Government. Priority is also given to the projects and proposals which emphasise skills and technical transfers to local Niueans, and those which make provisions for local ownership.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

There is very little in the way of a regulatory framework. The *Development Investment Act 1992* and the accompanying Investment Code are relatively open, both having the objective of imposing minimum restrictions on overseas investment. In general, each application will be considered on its merits. The relevant Investment Code is the *Niue Development Investment Act 1992 and accompanying Investment Code*.

Investment Review and Approval

All applicants for foreign investment or for incentives and concessions are to be accompanied by comments from the Financial Secretary, General Manager, Niue Development Bank, the Economic Adviser and the Director, Community Affairs Department. Other Government departments may be asked for comment on the possible impact of proposals on infrastructure and other services provided by Government. An initial visit by the applicant or a representative is strongly recommended. Every application made to Cabinet pursuant to the *Development Investment Act 1992* must contain details of the financial structure and ownership of the proposed investment. Applications should include specific information on the following for local planning purposes:

- nature of business;
- financial requirements, for example, banking;
- building requirements;
- power requirements;
- water requirements;
- land type and area;
- operating capacity; and
- labour force requirements.

Procedures

The office of the Economics, Planning and Development Unit (EPDU) is responsible for dealing with investors seeking approval to invest in Niue or for investment incentives.

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Survey Questionnaire (Questions are in bold type - our answers are in normal type)¶

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Please provide a brief description of your foreign investment policy including any recent policy changes.¶

Attach a summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.¶

¶
The Republic of Fiji consist of approximately 320 islands dispersed over an Exclusive Economic Zone (EEZ) of 1.3 million square kilometres of the South Pacific Ocean.¶

¶
The total land area of the Fiji group is 18,272 square kilometres with majority of the islands being mountainous and of volcanic origin.¶

¶
The biggest island, Vit i Levu, is also the most developed and the most heavily populated island. The capital of Suva, Nadi International Airport, most of the primary and secondary industrial development and a good deal of the tourism infrastructure are located on the island.¶

¶
The Cook Islands is a group of 15 islands and atolls dispersed over an Exclusive Economic Zone (EEZ) of nearly 2 million square kilometres of the South Pacific Ocean.¶

¶
In general there is little distinction between the form and conduct of a foreign-owned business and one that is locally owned. The Fijian Government treats local and foreign investors alike and allows investment to be market driven. Essentially, conditions placed on investment by the Fijian Government are designed to ensure that the investment is desirable for Fiji in terms of its development, existing resources and investment.¶

¶
The Government favours overseas investment proposals that will: ¶

¶
<#>assist in developing Fiji on a sound economic basis.¶

<#>generate increased exports; ¶

<#>provide opportunities for significant local equity participation, particularly in projects that involve the utilisation of the country's natural resources.¶

<#>make provision for employment and training opportunities for local people. ¶

The investment approval process consists of the following procedures:

- 1) prior to submission of application, EPDU liaises with investors to discuss preliminary information which may be required in order to prepare the application;
- 2) the application is forwarded to Cabinet for approval through the office of the EPDU. If more time is required to complete a full application, applicants can request that Cabinet through the EPDU grant an approval in principle of the application;
- 3) EPDU arranges/coordinates comments from other departments for a Cabinet submission. Matters commented upon will include administrative and technical requirements, for example, land, business licensing requirements, EIAs, physical infrastructure requirements, audit statement;
- 4) EPDU submits the final application to Cabinet for approval;
- 5) EPDU informs the applicant of the results following Cabinet decision;
- 6) EPDU maintains communication with applicant for any further inquiries.

Assistance in implementing investment projects after Cabinet approval has been given will be provided by the EPDU.

General Criteria for Evaluation

Approval of registration as a foreign investor and the extent of incentives and concession given will reflect the degree to which a proposal meets evaluation criteria, which are based on the information required by the Investment Code, namely commercial viability, employment structure, proposed training for locals, economic, environmental and cultural impact, and resource use.

The Government of Niue through the Secretary to Government will consider providing assistance in preparing all or some of the required assessment on application by the investor. Each request for assistance will be considered on its merits. Such assistance may be charged for depending on the circumstances of the investor.

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Restrictions and Limitations on Foreign Investment

Depending on their nationality, there may be restrictions on entry of skilled workers. All Niueans are New Zealand citizens therefore entry of New Zealand citizens is unrestricted. Other nationalities may require a visa or permit. Presently, land can be leased but not sold. There is currently an ongoing land titling project with the aim of registering family interests in all land.

There is currently no company legislation in Niue. For business purposes, companies registered elsewhere are recognised. There are no limitations on capital/profit transfers. There are very few restrictions on raw material imports. The main restriction is related to the importation of plants and animals, where investment approval is needed. The only limitations on imports into Niue are those contained in the liquor and firearms legislation or quarantine and health requirements.

There is no excise legislation. Clearance of goods from customs follow normal procedures. Completed import entries should be lodged with Customs prior to release of goods. An application for exemption of duties can be lodged with Cabinet if this is seen as necessary by an investor.

The Development Investment Act 1992 states that where an enterprise employing other than a local person or an expatriate, designates a local person to be trained to replace the expatriate employee in that position or job, up to 200% of the direct cost of training incurred during each year may be claimed against the taxable income of the enterprise over the first three years of training.

Repatriation and Convertibility

Not applicable.

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

¶

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

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3.

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Statutory (legislative) requirements¶

¶

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

¶

Investment Review and Approval¶

¶

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

¶

For each proposal identify guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Please 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: - ¶

¶

Attach samples of all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.¶

¶

... [4]

Entry and Sojourn of Personnel

Special Visas

A permit to enter, work and reside in Niue is required by a foreign investor. An official form must be completed. A local sponsor (which can include government) is required for each application. The sponsor is to provide or ensure that there is suitable accommodation for the applicant; and guarantees payment for all costs incurred by the applicant during their stay in Niue if the applicant is unable to meet any of these costs. Residence and work permits may be granted for periods of up to three years for key personnel or employees of an approved enterprise.

Charges

• <u>Exemption Permit</u>	<u>no charge</u>
• <u>Visitors permit up to 30 days</u>	<u>no charge</u>
• <u>Application for Permanent Residence</u>	<u>US\$11.40</u>
• <u>Granting of Permanent Residence Status</u>	<u>US\$285.00</u>
• <u>Entry & Residence Permit for up to 36 months or part of</u>	<u>US\$57.00</u>
• <u>Work Permit up to 36 months or part thereof</u>	<u>US\$171.00</u>
• <u>Study Permit up to 36 months or part thereof</u>	<u>US\$57.00</u>
• <u>Applications for an Entry Residence, Work or Study Permit</u>	<u>US\$5.70</u>
• <u>Cabinet Review</u>	<u>US\$57.00</u>

Extension Permits

• <u>Entry & Residence up to 36 months or part of</u>	<u>US\$28.50</u>
• <u>Visitor (for any period up to 36 days)</u>	<u>US\$5.70</u>
• <u>Work up to 36 months or part of</u>	<u>US\$142.50</u>
• <u>Study Permit up to 36 months or part of</u>	<u>US\$45.60</u>

Labour and Labour Regulation

Approximately 50% of the population of around 2,088 are between the ages of 15 and 59 years. As determined by the 1997 census, the active workforce, including purely subsistence activity, is around 1,050. Of which, around 66% of workers are paid, and 29% are unpaid workers. The remaining 5% are unemployed. The Public Service Association is the only 'union' on the Island and labour disputes are rare.

Salaries

No minimum wage rate applies to the private sector. Public sector wages can be adopted as a guideline, private employers can negotiate a rate with their workers. The public sector wages range from \$1.30 per hour for Youth (15 years of age) to \$4.49 for a Masters degree.

Superannuation

A local superannuation contribution scheme exists for public sector employees. Private employers can negotiate between themselves and employees a level of contribution to this fund. Private sector participation in the fund is voluntary.

Taxation

Niue has a very simple tax system applying only income taxes on both companies and individuals.

Income Tax

Companies

<u>Resident company rate</u>	<u>30 %</u>
<u>Non-resident company rate</u>	<u>30 %</u>

Individuals

Taxation is on a sliding scale from a minimum rate of 10 percent to a maximum of 50% for income above US\$19,950. The same rates apply for both resident and non-resident individuals.

Withholding Tax

A 10% withholding tax on businesses applies on payments made by government.

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Briefly describe the foreign exchange regime. ¶

¶
Identify any restrictions on the convertibility of currencies for the overseas transfer of funds. ¶

¶
5.

Deleted: Identify any permits/entry visa requirements for non-resident staff of foreign firms and briefly describe the nature of the entry restriction. ¶

¶
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 ¶

¶
Describe and regulations relating to personnel management of foreign firms, eg., minimum wage laws, minimum requirements for training or employment of local staff. ¶
List and provide a summary of domestic labor law which apply to foreign firms in the contest of labour disputes/relations. ¶

¶
Law ¶
Summary ¶

¶
Entry and Sojourn of Personnel ¶

¶
Special Visas ¶

¶
Because of the rapidly expanding population, immigration is subject to strict control. The Government recognises, however, the need to admit persons investing funds in the country. An investor introducing at least US\$350,000 into a business or ... [5]

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6.

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Provide 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 ¶

¶
Taxation ¶

¶
Taxing Authority ¶

¶
Income tax is levied by the ... [6]

Banking

There is one Commercial bank (Westpac) on the Island and all loans are subject to Westpac's internal assessment criteria.

Performance Requirements

There are no performance requirements.

Capital Exports

There are no regulations or that limit capital exports or the outflow of foreign investment.

Investor Behavior

Not applicable.

Other Measures

Not applicable.

Investment Protection

Although the *Arbitration Act 1908 (NZ)* is applicable to Niuean land, there is no mention in the *Development Investment Act 1992* to arbitration on any dispute that may arise. Any dispute can be referred to the court of law.

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Investment Promotion and Incentives

Investment Incentives

The Niue Government is extremely interested in attracting foreign investment and Ministers and officials will consider submissions and support those which offer benefits to the country.

A current program aims to encourage the tourism industry, with the initial aim of fully utilising seating capacity on current airline flights.

The incentives and concessions that may be granted are set out in the Schedule of the *Niue Development Investment Act 1992*. Cabinet will determine whether these are to be awarded, on application prior to commencement. Retrospective applications will not be considered. Investments which meet Niue's investment priorities will be given favourable consideration.

The incentives and concessions available are:

Tariff Protection – Where the activity is import substituting and protection is essential for the initial survival of the approved activity; or there is a threat of excessive or unreasonable trade competition by a foreign exporter into Niue of such a commodity.

Capital Equipment Concessions – Concessions may be granted for capital items, where partial or full exemption from import duty may be granted to an enterprise on the importation of the plant, equipment, machinery or construction materials used. Alternatively, there may be a refund of duty paid.

Raw Materials Concession – Partial or full exemption from import duty may be granted to an enterprise in respect of any essential raw or processed materials used directly in any production or manufacturing process in an approved activity which is import substituting or export generating for any specified period of time not exceeding five years.

Tax Concessions – Tax concessions may be granted where any new or existing enterprise establishes a new activity in Niue, or where an activity already existing in Niue is materially expanded by any new or existing enterprise, provided Cabinet is satisfied that such establishment or expansion will contribute substantially to the economic development of Niue.

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¶ 1. Expropriation and Compensation¶

¶
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¶

¶
Briefly describe recent instance (last five years) of expropriation and compensation of foreign investment.¶

¶ 2. Settlement of Disputes¶

¶
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.¶

¶
Agency¶
Address/telephone/fax¶

¶
Has your economy signed or acceded to the ICSID Convention?¶

¶
D.

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Allowable Expenditure and Costs on the Recruitment – The recruitment costs of an employee who is a local person ordinarily domiciled overseas may be granted as a deduction against the taxable income of the enterprise of the year it is incurred.

Training of Local Persons – Where an enterprise employing an employee other than a local or an expatriate designates a local person to be trained to replace the expatriate employee in that position or job, up to 200 percent of the direct cost of training during each year may be claimed against the taxable income of the enterprise over the first three years of training.

Depreciation Allowances - Accelerated depreciation allowances of up to 200 % of the rate specified in the Income Tax Act 1961 may be granted on plant, machinery, equipment, and permanent buildings used or to be used in any approved activity.

Residence Permits - Subject to such conditions applying from time to time, residence and work permits maybe granted for periods up to three years to key personnel or employees.

Salary Subsidy - In certain circumstances and subject to the policies of Government from time to time Cabinet may approve that a proportion of the wages of a local person be subsidised by the Government for a period of up to three years. A subsidy is not to exceed 75% for year 1; 50% for year 2; and 25% for year 3.

Investment Promotion

The first point of contact should be the Niue Planning and Development Unit, but there is no designated investment promotion unit. There are no official promotion documents other than entries in the:

- 'Directory of South Pacific Foreign Island Countries' Products 1993-94': South Pacific Forum; and
- 'Tourism Investment Guide': Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Niue is not a party to any international investment agreements or codes.

Assessment of Recent Trends in Foreign Investment

Statistics indicating recent foreign investment trends are not available.

Contacts for Further Information

Head of Department
Economic Planning & Development Unit
PO Box 95
Alofi
NIUE
Tel & Fax: (683) 4148
email: talagint@mail.gov.no

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Deleted: Indicate if your economy is a party to any of the following agreements, the countries/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¶
¶

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1. Trends in foreign investment over recent years.¶
¶
2. Provide an overview of recent trends in foreign investment (FDI and portfolio) over recent years (both inward/outward). ¶
¶
List of major countries/economies that are sources/receivers of FDI over recent years. ¶
¶
Sources FDI¶
Destination FDI¶
¶

PALAU

Background on the Foreign Investment Regime

The Republic of Palau is an archipelago of more than 300 islands, only nine of which are inhabited. The Republic of Palau is associated with the USA in a compact of free association, officially attaining its independence in October 1994. The democratically elected National Government is modelled upon that of the United States and has three separate branches of government: the executive, the legislative and the judicial. In addition, a 'Council of Chiefs', composed of a traditional chief from each of the States, advises the President on matters concerning traditional laws, customs and their relationship to this constitution and laws of Palau.

Government Policy

The National Government aims to maximise opportunities for the people of Palau by implementing policies designed to stimulate a free and vibrant market economy to supersede the subsidised economy that developed during Palau's years as a trust territory. Thus, the Government encourages and recognises the value of foreign investment, provided such investments are compatible with the cultural and environmental heritage of the islands.

Special Requirements

Any foreign investor wishing to do business in the Republic of Palau will need to obtain the necessary business licences from the Bureau of Revenue, Customs and Taxation. Also a business may have to obtain any applicable state business licences from the state government where the business will be located. In addition, entry and work permits must be obtained from the Division of Immigration and the Division of Labour for any foreign workers. In certain circumstances, specific permits from the Environmental Quality Protection Board or the Maritime Authority may need to be obtained.

A proposed business activity either must involve a foreign investment of more than US\$500,000 or the workforce of the business must be at least 20% Palauan. Foreign investors also are required under the Foreign Investment Act to pay an annual fee of US\$500 for every foreign worker employed by the company.

Regulatory Framework and Investment Facilitation

Statutory (Legislative) Requirements

[Foreign Investment in Palau is regulated by the *Foreign Investment Act* 1990](#) (the Act). The Act is codified in Title 28 of the Palau National Code.

Review and Approval Mechanisms for Foreign Investment Proposals

All proposals from foreign investors seeking to engage in business in the Republic of Palau are required by the Act to apply for and obtain a licence known as a Foreign Investment Approval Certificate (FIAC). Applications to the Government are submitted through the Foreign Investment Board for decisions. A FIAC application must be submitted with an additional 20 copies plus a non-refundable application fee of [US\\$500](#). This application shall be evaluated by the Board according to the economic need for the proposed activity in the Republic; the extent of its current availability in the Republic; the likely impact on same or similar activities currently being carried on by citizen; the overall benefit to the national economy; the bona fide, financial capacity, experience and expertise of the applicant; and the technical and economic viability of the proposed project.

The Foreign Investment Board is required by law to issue a decision on applications within 90 days of the submission of a complete application. However, moves are presently being made to expedite the review process and to issue decisions more quickly.

Following an application approval, the Board will set the duration, scope and any conditions to be included in the FIAC. In addition to the foreign investment approval certificate, investors are generally required to

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obtain business licences from the Bureau of Customs and Taxation before commencing a business enterprise.

Reserved Activities

Reserved investment areas are those in which new investments will be reserved for local citizens or for enterprises partially or wholly owned by local citizens. These areas include handicrafts and gift shops, bakeries, bar services and commercial fishing.

Exclusive investment areas are those in which new investments are reserved for local citizens or for enterprises wholly-owned by local citizens. These areas include:

- Wholesale or retail sale of goods
- All land transportation including bus services, taxi services, and car rentals
- Tour guides, fishing guides, diving guides, and any other form of water transportation services
- Travel and tour agencies
- Commercial fishing for other than highly migratory species

Access to Land

Foreign investors cannot buy land in the Republic of Palau. Only citizens of Palau and corporations wholly owned by citizens of Palau may acquire title to land or waters in Palau. However, foreigners may lease land from the Palauan owners for up to 50 years. Accordingly, the foreign investor should be careful to ensure that the Palauan lessor with whom they are dealing legally has acquired the right to alienate a specific parcel of land before entering into a lease on behalf of a foreign business enterprise.

Company/Business Structures

In Republic of Palau, business is generally conducted through incorporated companies, branches of foreign corporations, partnerships, and sole traders.

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

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National Treatment

Not applicable.

Repatriation and Convertibility

Not applicable.

Entry and Sojourn of Personnel

To ensure that interested Palauans will have an opportunity to apply for jobs as they become available in the private sector, the Division of Labour requires that all prospective employers first advertise a position locally before bringing in a foreign worker.

Labour and Labour Regulation

The indigenous population of the Republic of Palau is approximately 15,000, of whom about 5,000 are active members of the work force. There is a statutory minimum wage of US\$2.50 per hour for the private sector. For the Government sector a minimum wage of US\$2.74 per hour is enforced.

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Taxation

Under a *Unified Tax Act* the Government levies three general types of taxes. As mentioned earlier there is no corporate tax levied in Palau.

Gross Revenue Tax (GRT)

The principal form of taxation in the Republic of Palau is the GRT which applies to all businesses operating in the islands. This tax is levied at four percent of gross revenue; however, no tax is payable where gross revenue is US\$2,000 or less. A recent amendment to the Unified Tax Act clarifies [that](#) a 100 percent deduction is permitted for [income in the form of wages and salaries paid to Palauan employees](#) whereas a 50% deduction is permitted for income for foreign wages.

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Wage and Salary Tax

The second form of taxation is the wage and salary tax. The current tax rates are 6% on the first US\$8,000 and 12% on amounts over US\$8,000. No tax is payable where the annual wage and salary is US\$2,000 or less.

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Import Duties

Generally products that are imported into the Republic of Palau for resale, including on-site resale at hotels and restaurants, attract an import tax. The tax rates vary depending on the product: most import items are levied at a 3% ad valorem rate. All consignees of imported products, regardless of whether the product may be taxable, are required to make an entry transaction for them within 48 hours (exclusive of weekends or holidays) after arrival of the importing vessel or plane.

Other Taxes

Some taxes may be imposed by the Government for specific business activities. These include for example, social security taxes, export taxes, foreign vessel taxes and hotel room taxes.

Banking

There are eight commercial banks currently operating in the Republic of Palau.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Competition Policy

Presently there is no legislation in respect to monopolies and anti-trust, and acquisitions and mergers.

Investment Protection

Expropriation and Compensation

Under the Act, the Board has the power to modify, suspend, or revoke a FIAC. Such circumstances that could warrant this action include, but not limited to:

- submission of false or fraudulent information;
- violation of any laws or regulation of the Republic of Palau; and
- violation of any of the terms or conditions of the FIAC.

In order for the Board to take such action, the Board must be satisfied that there are sufficient grounds to proceed against the grantee, communicate the grounds for the proposed action to the grantee, and afford him an adequate opportunity to present his case.

Settlement of Disputes

Not applicable.

Investment Promotion and Incentives

Investment Promotion

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The Republic of Palau actively promotes investment opportunities through the Foreign Investment Board. The official publication produced by this Board is '*Palau - The Foreign Investor's Guide: Foreign Investment Board*'.

Investment Incentives

The primary incentive for investment in the Republic of Palau is its status as one of the lowest taxed business environments in the Asia Pacific region. There is no corporate tax, nor is there any taxation of income for business owners.

Palau is a beneficiary of the Compact of Free Association, which allows business access to US markets.

Any foreign investor who constructs a facility in the Republic may be entitled to a refund of taxes paid equal to the costs of off-site roads, water, power or sewer infrastructure improvements accomplished to service such facility. The amount refunded in any single tax year shall not exceed 50% of the amount paid in that tax year by the foreign investor.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

As noted earlier, Palau is associated with the USA in a compact of free association. This compact allows the Republic of Palau to operate under its own Constitution and conduct its own domestic and foreign affairs.

Assessment of Recent Trends in Foreign Investment

Over the past few years the Government has observed rising levels of foreign investment in tourism, fisheries and garment manufacturing.

The tourism sector in particular is seen as one of the most lucrative investments in Palau given its wilderness qualities.

Contacts for Further Information

Foreign Investment Board
PO Box 1733
Koror
PALAU 96940
Tel: (680) 488 1135
Fax: (680) 488 3722

Secretary
Environmental Quality Protection Board
PO Box 100
Koror
PALAU 96940
Tel: (680) 488 1639
Fax: (680) 488 2963

Secretary
Bureau of Revenue
Customs and Taxation
PO Box 6011
Koror
PALAU
Tel: (680) 488 2580
Fax: (680) 488 3844

PAPUA NEW GUINEA

Background on the Foreign Investment Regime

With a land area totalling 462,243 square kilometres, and a sea area of 3.1 million square kilometres, Papua New Guinea is by far the largest of the Forum Island Countries. Papua New Guinea is generously endowed with natural resources, giving it considerable development potential in agriculture, forestry, fisheries, minerals and petroleum, tourism, and agro-processing activities.

Papua New Guinea has always placed a high priority on the development of mining and petroleum projects even though this sector is relatively well developed. A major portion of foreign direct investment (FDI) is generated as a result of increased investment in this highly capital-intensive sector. Whilst Papua New Guinea's foreign investment guidelines remain adjunct to the macro-economic reforms, the simultaneous implementation of micro-economic reforms is enabling an expansive facilitation of private enterprise development. In that context, the Government is committed to a privatisation policy that will ultimately see Government involvement in commercial activities transferred to the private sector.

Government Policy

Papua New Guinea encourages and welcomes foreign investment. In order to facilitate foreign investment the Government has made considerable efforts to curtail regulatory and administrative requirements. These changes promise to relieve many of the roadblocks previously encountered. The Government does not discriminate against proposals for different investment activities provided they achieve some of the following; contribute to economic growth, create new jobs, utilise domestic resources, particularly renewable resources, assist in skills acquisition, expand the volume and value of exports, develop remote areas of the country, facilitate increased ownership of investment by citizens, and promote import replacement.

Regulatory Framework and Investment Facilitation

Transparency

Statutory and Legislative Requirements

Citation	Summary
<i>Investment Promotion Act, 1992</i>	<ol style="list-style-type: none"> 1. Promotes and facilitates investment 2. Certifies foreign enterprises 3. Administers legislation relating to businesses
<i>Papua New Guinea Companies Act</i>	Provides guidelines and registration procedures for all companies conducting business in Papua New Guinea
<i>Income Tax Act, 1959</i>	Contains tax laws and administers incentives for some sectors
Foreign Exchange Control Regulation	Administered under the Central Banking Act, 1973 by the Bank of Papua New Guinea to provide for the recording, monitoring and supervision of payments to non-residents and also to protect the country's foreign exchange should the need arise
<i>Industrial Centres Development Act, 1990</i>	Provides for industrial estate development
<i>Small Business Development Act, 1992</i>	Provides guidelines and policy framework for the development of small business
<i>Non-Citizens Employment Act</i>	Administered by the Department of Industrial Relations containing regulations on restricted and unrestricted occupations relating to issuance of work permits
<i>Migration Act, 1978</i>	Containing regulations and guidelines on entry by non-citizens
<i>Forestry Act, 1991</i>	Contains guidelines and regulations for enterprises intending to or actively participating in this sector

Citation	Summary
<i>Mining Act, 1992</i> <i>Land Registration Act, 1981</i>	Provides powers for licensing and regulation of fishing, fish exports and management of fisheries resources 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)
<i>National Institute of Standards and Industrial Technology Act, 1993</i>	Establishes and coordinates a National Standards System in Papua New Guinea that is consistent with international Primary Measurement Standards and maintains harmony and transparency with the International Standards Organisation

Review and Approval Mechanisms for Foreign Investment Proposals

For investors and developers interested in pursuing projects in the mining and petroleum sectors, the Government of Papua New Guinea has established a series of administrative procedures which correspond to the stages of project development. Coordinators from the Department of Mining and Petroleum work with the developer, relevant national government departments, provincial governments and landowners, at both the national and local level. 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. Processing of applications by the IPA for registration (certification) takes about 35 days. The National Land Board screens applications for land allocations and submits its recommendation to Minister for Lands for approval.

Monitoring and Regulatory Environment Applying to the Activities of Foreign Investors

Monitoring of foreign investors' activities are performed by the IPA. It also has the authority to prosecute breaches of the *Investment Promotion 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:

- 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
- Partnerships of two or more persons: regulated by the provisions of the Partnership Act and Business Names Act
- Joint ventures
- Individuals operating as sole proprietors

The Government generally prefers joint ventures between citizens and foreign investors. Under the Investment Promotion Act, the time allowed is 45 working days. In respect of approval procedures contained in the *Investment Promotion Act*, investors may appeal to the Minister for Trade and Industry if their investment proposal is rejected by the IPA Board or if the investor objects to any imposed terms and conditions. The Minister is required to respond to the appeal within 45 days.

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Reserved Activities

The Regulations of the *Investment Promotion Act 1992* contains a list of business activities which are reserved for citizens or national enterprises. These include land transportation, handicrafts and artefacts, coffee and copra production and export, small-scale alluvial gold mining, certain agricultural activities, coastal fishing, and 'trade stores' such as snack bars, taverns, shoe repair and amusement shops.

Access to Land

The availability of land for development remains a major constraint in Papua New Guinea. Due to a complex traditional land tenure system, the Government owns small quantities of land and plantations. Land is the only commodity all Papua New Guineans have and claims for land loss compensation are often the most convenient way for them to participate in the cash economy. The Government may become involved in negotiations for large resource projects vital to economic growth. However, the Government is generally restricted to protecting traditional property rights and this often means that foreigners must negotiate with the local landowners. A program known as the Land Mobilisation Program, directly supported by a tripartite funding arrangement involving the World Bank and the Governments of Australia and Papua New Guinea, has been established. This project aims to simplify procedures for allocating alienated land.

Access to Finance

The amount of local non-government finance available to businesses is limited.

Borrowing of Foreign Currency

Prior approval is required from the IPA (in respect of the certification functions) for all new and increased foreign investment in PNG. Authorised dealers (the commercial banks in PNG) are empowered to approve such investments where the value does not exceed US\$270,000 in any calendar year.

Authorised dealers may approve applications by business entities or person resident in PNG (other than mining or petroleum) to borrow foreign currency offshore until such time that outstanding new net aggregate foreign currency borrowing exceeds the foreign currency equivalent of US\$2.7 million at a debt to equity ratio of up to 5:1. Conditions will apply. All exchange controls relating to the mining and petroleum and forestry sectors are dealt with by the Bank of Papua New Guinea and do not involve authorised dealers.

Domestic Borrowing

The exchange control division of the bank administers the guidelines governing borrowing on the domestic market by non-resident controlled companies (ie, most usually where voting control of a PNG company rests in the hands of non-residents). Under current practice, a newly established non-resident controlled company is limited to borrowing of US\$270,000 for the first two years of operations unless the lending bank's facility is supported by an overseas bankers guarantee from a bank of international standing. After this time, a company may borrow up to twice non-residential shareholders' funds defined as retained profits, paid up share capital and overseas borrowing. Such domestic borrowing is reviewed annually.

Repatriation and Convertibility

Papua New Guinea has recently adopted a flexible exchange rate policy and the regime is under review with a view to totally liberalising the system. Section 37 of the Investment Promotion Act also states that, subject to any laws relating to taxation and exchange control, a foreign investor shall be allowed to remit earnings overseas and repatriate capital and remit amounts necessary to meet payments of:

- principal, interest and service charges;
- similar liabilities on foreign loans; and
- the costs of other foreign obligations approved by the State.

Transfer of Capital and Profits

There is a system of exchange control in Papua New Guinea which is administered by the Bank of Papua New Guinea. The incorporation of a subsidiary in Papua New Guinea by a foreign investor will require certain approvals under the Central Banking (Foreign Exchange and Gold) Regulation. In general there are no specific restrictions on the repatriation of capital owned by or due to non-residents and earnings may be freely repatriated.

Entry and Sojourn of Personnel

Special Visas

The Department of Industrial Relations deals with applications for work permits of foreign technical/managerial personnel and their accompanying family members. The applicant is required to provide evidence of immediate family members to allow the issuance of appropriate visas by the Department of Foreign Affairs and Trade.

It is necessary for foreigners to apply for a work permit for each non-citizen employee employed in Papua New Guinea. The work permit application must be accompanied by a training and localisation program in accordance with the Employment of Non-Citizens Act. Each work permit is for a particular position and is generally valid for a period of three years. During this period it is possible to replace the employee working in that position without obtaining approval for a new position.

Labour

Basic conditions of employment are covered by the Employment Act and minimum rates of pay are determined by the Minimum Wages Board. Presently, the board has set the minimum at just under US\$18.25 per week. In addition, an increasing number of citizen employees are being covered by various industrial awards and agreements. An increasing number of unions are being established although the private sector is still largely non-unionised. There is a scheme of compulsory workers compensation in which all employers are required to take out a policy of insurance for all employees, both citizens and non-citizens. Also, a compulsory system of superannuation fund payments by employers and employees has been introduced through the National Provident Fund Act. The Act applies to all employers with more than 25 staff members.

All non-Papua New Guinean citizens who wish to work in Papua New Guinea must have a work permit. A full list of prohibited occupations can be obtained from the Department of Industrial Relations. A prospective employee must first obtain a temporary residence (employment) visa, valid for three years, from the Papua New Guinea High Commission or Embassy in his country of residence. Unskilled labour is readily available. There are a large number of construction firms in the country, including several foreign/multinational companies, providing sufficient construction expertise to undertake all kinds of building operations. In the case of qualified local persons not being available to fill a position, the foreign investor may recruit from overseas.

Taxation

Papua New Guinea's tax laws are enshrined in the Income Tax Act 1959. The Act is administered by the Commissioner-General of Internal Revenue. Reporting directly to the Commissioner-General is the Commissioner for Taxation and the Commissioner for Customs and Excise. This three-pronged hierarchy was introduced in the 1993 Budget with the purpose of amalgamating the previously separate departments of Taxation and Customs and Excise. Company tax rates do not distinguish between public and private companies but there are differences in the tax rates of resident, non-resident, resident mining, non-resident mining and petroleum companies. Company tax applies to income earned. The rates of company tax are:

- **Resident companies**, not engaged in mining or petroleum operations.....25 %
- **Non-resident companies**, including those engaged in mining operations.....48 %
- **Resident mining companies**35 %
- **Petroleum companies**, resident and non-resident.....50 %

Income Tax - as of 1 January 1998

Tax Rates (Per Annum)			
Residential		Non-Residential	
US\$0 - US\$2,160	0%	US\$0 - US\$1,080	10%
US\$2,160 - US\$2,700	10%	US\$1,080 - US\$3,780	20%
US\$2,700 - US\$5,400	20%	US\$3,780 - US\$9,180	30%
US\$5,400 - US\$10,800	30%	US\$9,180 - US\$32,400	35%
US\$10,800 - US\$32,400	35%	US\$32,400 - US\$43,200	37%
US\$32,400 - US\$43,200	37%	US\$43,200 - US\$54,000	42%
US\$43,200 - US\$54,000	42%	over US\$54,000	47%
over US\$54,000	47%		

Dividend Withholding Tax

Whenever a Papua New Guinea resident company (other than a petroleum company) pays a dividend it must deduct 17% Dividend Withholding Tax (DWT) and remit it to the Taxation Office. The DWT is legally a tax on the recipient of the dividend. Its subsequent status therefore depends on the status of the recipient, as outlined below:

- Non-resident companies or individuals: the DWT is a final tax on the dividend
- Resident companies:
 - private: the DWT may be offset against liability to deduct this tax when the private corporation recipient in its turn pays a dividend
 - public: the DWT is offset as above if the public corporation recipient pays a dividend within the next 12 months. If no dividend is paid the amount of tax is credited against the next year's tax liability or refunded to the extent it exceeds that liability
- Resident individuals: the DWT is credited against the individual's normal tax liability on the dividend income, to the extent of such liability

Sales Tax

Sales tax is imposed at the retail level by provincial governments on goods such as beer, wine, spirits, tobacco products, petrol and tyres. The limit for provincial sales taxes stands at 5%.

Double Taxation Treaties (DTT)

DTTs have been established with the UK, Australia, Canada, Singapore, Malaysia, the People's Republic of China, Korea and Germany. Those under consideration listed in order of priority are USA, Japan, New Zealand, Philippines, Indonesia, Chinese Taipei and Thailand.

Employers

Any person or business, employing one or more employees in PNG paid more than (US\$66) per fortnight must register as a *Group Employer* with the IRC. The employer is provided with tax deduction schedules and remittance forms and is required to deduct the correct tax from employee's wages and remit it monthly to the IRC. Other taxes include:

- Training levy;
- Compulsory Payment to National Provident Fund;
- Natural Resources Tax;
- Capital Gains Tax;
- Specific Gains Tax;
- Export Taxes;
- Management Fee (Withholding) Tax;
- Fringe Benefits Tax; and
- Foreign Contractor (Withholding) Tax.

Performance Requirements

Generally, there are no performance requirements in place. However, Papua New Guinea encourages the use of locally available material.

Capital Exports

On application to an authorised dealer, resident or non-resident individuals and business entities may purchase foreign currency up to US\$270,000 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.

Investor Behavior

There are currently no restrictions relating to investor behaviour.

Other Measures

Papua New Guinea has no intellectual property rights laws, except the Trade Marks Act. This is administered by the Trade Marks Office established within the Investment Promotion Authority.

Competition Policy

Price Controls

The Price Regulation Act imposes price controls on certain items that are regarded as necessary commodities.

Monopoly and Antitrust

Papua New Guinea is currently in the process of formulating a National Competition Policy and related laws as a requirement under its membership to APEC and WTO.

Acquisitions and Mergers

The market for mergers and acquisitions is limited but, provided an investor abides by the guidelines for foreign investment laid down by the IPA and the Bank of Papua New Guinea, there are no barriers to such activity.

Imports and Exports

Import and export policy is controlled by the Department of Trade and Industry. Commercial (import) policy involves consideration of tariff measures, import restrictions, quota arrangements and other policies designed to assist the development of viable domestic industries and reduce reliance on imported goods, in particular, basic foodstuffs.

Export control involves all export valuation functions. For example, minimum export prices are set subject to export licensing. At present, however, only timber (logs), wood chips and tuna are subject to these requirements.

Investment Protection

Expropriation and Compensation

Section 37 of the Investment Promotion Act guarantees that the property of a foreign investor shall not be nationalised or expropriated except in accordance with law, for a public purpose defined by law and with payment of compensation as defined by law. The Investment Promotion Treaty is administered by the Department of Foreign Affairs and is effected between any two countries.

Settlement of Disputes

The relevant agencies are the IPA the Department of Foreign Affairs and Trade. The latter administers the Investment Promotion Protection Treaties.

Agency	Address/Telephone/Facsimile
The IPA which administers section 38 of the Investment Promotion Act in respect of the Multilateral Investment Guarantee Agency and Section 39 relating to the International Centre for Settlement of Investment Disputes.	PO Box 5053 BOROKO National Capital District Papua New Guinea Tel: (067) 321 7311 Fax: (675) 320 0262

Section 39 of the *Investment Promotion Act* states that the terms of the *Investment Disputes Convention Act* (implementing the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States) apply to disputes arising out of foreign investment. Separate investment protection agreements have been entered into with several individual countries, notably Australia and Malaysia.

Investment Promotion and Incentives

For projects in the mineral and gas sectors, the Government has initiated the Development Forum process. This approach engages local landowners, provincial and national government representatives and the developer in a cooperative process aimed at arriving at agreements that serve all interests and thereby guaranteeing the stability and security of the projects.

For projects in sectors other than natural resources, the Government has established the IPA to, *inter alia*, promote and facilitate foreign investment. The IPA is actively involved in informing investors about existing investment incentives in Papua New Guinea. These incentives are administered by the Commissioner General for Internal Revenue and the Department of Trade and Industry. The IPA has also assumed responsibility for administration of the following Acts:

- *Associations Incorporation's Act;*
- *Business Group Incorporation Act;*
- *Business Names Act;*
- *Companies Act; and*
- *Land Group Incorporation Act.*

Export Income - Profits made from the export sale of qualifying goods are exempt from company income tax for the first three years of export and for the following four years. Profits on any increase in export sales over the average for the first three years are also exempt.

Double Deduction for Export Market Development Costs - A deduction of income from taxable income equal to twice the amount of any expenditure on development of an export market is available only for the promotion of sales of goods manufactured totally in Papua New Guinea or where the Papua New Guinea labour cost component exceeds 10 % of the sale price of the product.

Pioneer Industries Scheme - The scheme provides a five-year tax holiday for pioneer industries associated with the development of manufacturing related activities, mainly downstream processing of Papua New Guinea's vast wealth of natural resources.

Rural Development - New business activities in any designated under-developed areas may gain a 10-year exemption from corporate income tax. The eligible industries are agricultural production, manufacturing, restaurant or hotel trade, transport, storage or communication, real estate and community and social services. Businesses involved in the exploitation of non-renewable resources are excluded from the exemption.

Staff Training Double Deduction - This incentive allows a double deduction against company income tax for the payment of salary and wages to registered apprentices, citizen employees attending a full-time training course at an approved training institute and training officers engaged wholly in training activities. The tax saving from these deductions is limited to 75 % of actual expenditure incurred.

Solar Heating - Expenditure on the acquisition and installation of solar heating plant for use in deriving income is allowable as an outright deduction.

The following incentives involve a deferment of tax liability. They relate to the tax treatment of depreciation, and include:

- initial year accelerated depreciation;
- flexible depreciation for agriculture and fishing;
- additional depreciation of industrial plant; and
- depreciation allowances for fuel conservation.

Other Incentives

Wages Subsidy - Firms which produce a manufactured product never made before in Papua New Guinea are eligible for a wages subsidy, payment of which last for five years.

Training Levy – Reductions - A 2% training levy on payrolls of more than US\$79,860 per annum is reduced by qualifying expenses incurred in the training of citizen employees.

Primary Production Investment - The Taxation Office can advise on a number of tax benefits available for businesses engaged in primary production.

Imported Capital Equipment - Customs legislation provides for duty free importation of some capital equipment, not available in Papua New Guinea.

All tax incentives offered by the Internal Revenue Commission of Papua New Guinea will be applied in accordance with qualifying criteria. All enquires regarding these criteria should be directed through the IPA. (Address and contact details are at the end of the chapter.)

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Agreement	Provisions
Bilateral Investment Treaties	Investment Promotion Protection Treaties or Agreement: Australia, Malaysia and China. To accord reciprocal state assurance or guarantees against nationalism or expropriation of investment in respective territories.
Regional or sub regional Investment Treaties	South Pacific Forum - treaties relating to fisheries agreements with the United States and Japan. Melanesian Spearhead Group - investment between PNG, Vanuatu and Solomon Islands.
Other Trade Related Treaties	PATCRA - provides non-reciprocal preferential access to Australia and requires only that Papua New Guinea consult Australia prior to any tariff change. SPARTECA - provides access to Australia and New Zealand for all South Pacific nations.

Assessment of Recent Trends in Foreign Investment

Recent statistics on proposed foreign investment show that:

- the main sectors into which foreign capital is directed are mining (41%), agriculture (12%), petroleum (12%), and forestry (10%);
- the main sources of foreign capital are Australia (19%), Malaysia (15%), USA (6%) and Japan (5%).

Contacts for Further Information

Investment Promotion Authority
Certification and Research Division

Department of Foreign Affairs and Trade
PO Box 422

PO Box 5053
BOROKO NCD 111
Papua New Guinea
Tel: (675) 321 7311
Fax: (675) 321 2819

Department of Industrial Relations
PO Box 5644
Boroko, NCD
Papua New Guinea

National Land Board
PO Box 5665
Boroko, NCD
Papua New Guinea
Tel: (675) 301 3109

Waigani
National Capital District
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) 3227 200
Fax: (675) 3221 288

SAMOA

Background on the Foreign Investment Regime

Samoa (formerly Western Samoa) consists of two main islands, Upolu and Savaii, with several smaller adjacent islands. The total land area is 2,934 square kilometres Samoa has an Exclusive Economic Zone (ECZ) of only 120,000 square kilometres, the smallest in the South Pacific. The islands are volcanic, dominated by rugged mountain ranges generally with a four to five kilometre 'skirt' of gently sloping fertile land.

Government Policy

The Government of Samoa actively encourages foreign investment. The Government has streamlined legislation and procedures to encourage the establishment and expansion of enterprises capable of providing increased employment opportunities and contribute substantially to widening the economic base of the country. Manufacturing and tourism are seen by the Government as the two most important sectors. The Government has provided infrastructural facilities and an attractive incentives package to encourage both local and foreign investors in these sectors.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

The National Investment Policy Statement is now under review to highlight new policy changes to the investment environment. A new Business Licensing Act 1998 was passed by Parliament which repealed the old Business Licence Ordinance of 1960. This new Act issues licenses directly without having to go through other government departments for endorsement. This new Act also gives the authority to the Commissioner to issue licenses. Applicants may appeal to the Minister if an application is not accepted.

Company/Business Structures

Business in Samoa may be conducted through the normally recognised entities of company, partnership or sole proprietorship. With the exception of the insurance industry, all industries are controlled by either the Companies Ordinance of 1935 or the Partnership Act.

Company Legislation and Administration

The current laws relating to companies are the *New Zealand Companies Act 1935* and the *Samoa Companies Order 1955*. Any business entity wishing to do business in Samoa must be registered prior to commencing operations.

Special Requirements

A business licence is required which must be renewed annually. A separate licence must be obtained for each activity the business is running. The business licence fee is:

- Individual or Partnership US\$81
- Company US\$185

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

There are no laws or regulations that distinguish between national and foreign investment. However, the Government does have certain policies that discourage investment in such areas as the small retail sector. The only sector that is banned is logging for export without processing.

Restrictions and Limitations on Foreign Investment

Access to Land

Only Samoan citizens are permitted to own land. Land holdings in Samoa fall into three categories, customary land, freehold land, and public land.

Customary Land - This land is not for sale but can be leased out to foreigners as well as locals. This is usually the option taken by foreign investors, particularly in the tourism industry. All land leases in this category are registered with the Department of Lands, Survey and Environment.

Freehold Land - This land has mostly been taken up for residential purposes located around the Apia urban area.

Leasing Arrangements - Customary land is available for lease on liberal terms and conditions. The Government has recently established new procedures to facilitate and speed up the leasing of land to investors. These procedures allow the Government to lease lands from traditional owners and villages. These lands may then be sub-leased to local and overseas investors.

Repatriation and Convertibility

Transfers of Capital and Profit

There are no set minimum or maximum limits to the amounts of capital an investor can bring into Samoa. Overseas borrowings are subject to approval by the Central Bank. Repatriation of overseas capital and profits is normally permitted provided the original investment had come to Samoa through the Banking system or in some other approved way. Foreign investors are expected to finance at least 50 percent of their fixed assets from overseas sources.

Exchange Control

Exchange Control is administered by the Central Bank which delegates some of its powers to authorised Commercial Banks. Anyone may with the approval of the Central Bank, operate external or Foreign Currency Accounts with one of the Commercial Banks in the country. Foreign Currency Accounts must be entirely funded from foreign sources. Authorised Banks may maintain Foreign Currency Accounts in the names of Corporate Bodies who are resident outside Samoa.

Repatriation of Funds

Repatriation of capital and profit remittances on foreign capital is permitted, although it must be approved by the Central Bank. Expatriate workers with local contracts of one year or longer will be considered residents and therefore need Central Bank approval if they wish to repatriate funds in excess of 80% of their net earnings on a fortnightly basis. Earnings not repatriated during the contract period may be repatriated at the end of the contract.

Entry and Sojourn of Personnel

Work permits are required for the employment of non-Samoan citizens. Such permits are granted only if the skills needed are unavailable locally, although there is general recognition that foreign investors will require experienced foreign managerial and technical staff. The permit lasts for six months and is renewable upon request by the local firm. Permanent residence status may be granted only to those people who have resided continuously in Samoa for not less than five years. Individuals must apply to the Secretary to Government.

Labour and Labour Regulation

The Samoan government encourages labour intensive activities which assist in the development of employment opportunities for local workers. Where activities rely on imported expertise they are expected to have a localisation program in place so that employment of the indigenous workforce is utilised in the long term.

Government, industrial and most commercial enterprises work five days a week (about 40 working hours per week), depending on the industry. Every employee is entitled to 12 paid public holidays per year. The statutory minimum wage for the private sector is US\$0.52 per hour. There are two statutory provisions for social security for the labour force. These are contributions to the Samoa National Provident Fund and an Accident Compensation Levy.

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Samoa National Provident Fund (WSNPF)

This is a statutory authority set up to provide social security. An employer is obliged to contribute to the Fund at the rate of five percent of gross earnings for each employee who is a Samoa resident. The employee also contributes five percent, which is deductible from wages.

Samoa Accident Compensation Board (WSACB)

The WSACB was set up to provide benefits in case of injury, sickness and death arising out of and in the course of employment. The compensatory scheme is funded by an employer paid levy of 1% of an employee's net wage.

The conditions of employment are regulated by the Labour and Employment Act of 1972. Relationships between employers and employees have been relatively dispute free. Any disputes are settled on a person-to-person basis although the Act does make provision for conciliation and arbitration.

Freedom of association is guaranteed under the Constitution of Samoa, but unionisation is very low. The Public Service Association Inc is the only registered workers' organisation in the country.

Deleted: There is no union movement in the private sector in Samoa.

Taxation

Principal Taxes

The principal taxes in Samoa are:

- income tax;
- value added goods and services tax (tax on consumption). It is charged and accounted for at a rate of 10%; and
- withholding taxes, customs duty, import duty, and stamp tax.

Income Tax

All income taxes are levied by the Government of Samoa under the Income Tax Act of 1974.

Companies

Resident company rate / Non-resident company rate 35 %

A dividend tax of 10% and 15% applies to Resident and Non-Resident companies respectively. Royalties and management/directors fees are taxed at 10% and 35% respectively. Bank interest earned by both Resident and Non-Resident companies is taxed at 15%. The financial year normally ends on 31 December, but companies with other financial year periods may apply to the Commissioner setting out the reasons for adopting a different year.

Individuals

Taxation is on a sliding scale from a minimum rate of 10% to a maximum of 35% for income above US\$6,667. The same rates apply for both resident and non-resident individuals.

International Aspects

A company or person resident in Samoa who derives income from sources outside Samoa is entitled to relief from income tax provided the income has been subject to foreign income tax. At the present time, Samoa has no formal double tax agreements with other countries.

Banking

The Development Bank of Samoa (DBS) provides the majority of medium and long-term loans to industry and agriculture. These loans are primarily for the acquisition of fixed assets for new enterprises and modernisation of existing enterprises. The loans have varying interest rates depending on the sector for which a loan is sought. Three commercial banks in Samoa provide a full range of banking services to businesses and the public.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Competition Policy

Price Control

Prices of basic food items and various other domestic and imported products are regulated by the Prices Control Board. There are no regulations covering monopolies and anti-trusts or restrictions on acquisitions and mergers. There are Government regulations covering the sale of food, drugs, poisons and narcotics.

Imports and Exports

There are very few items subject to import restriction. The main control mechanism is the requirement to establish sight drafts or letters of credit, which are controlled by the Central Bank through the trading banks.

Customs duties apply to most goods coming into the country and are based on a single column tariff system. There are currently no preferential rates for imports from Commonwealth countries. In some industries, duty-free importation of building materials, raw materials, vehicles, and equipment is available under the Enterprises Incentives Act. Excise taxes apply to most imported non-food items and to certain goods of local manufacture (mainly tobacco products and liquor).

Investment Protection

Expropriation and Compensation

Not applicable.

Settlement of Disputes

Samoa is not a party to any international agreements regulation foreign investment and protection.

Investment Promotion and Incentives

Investment Promotion

The Government is preparing new investment guidelines and further details may be obtained from the Secretary, Department of Trade, Commerce and Industry (contact details at the end of the chapter).

Within the Department of Trade, Commerce and Industry is the Trade and Investment Promotion Unit. This was specifically set up to facilitate and promote investment in Samoa. Investors, both foreign and local, intending to establish a business in Samoa should first consult TIPU to obtain up to date information on trade and investment matters.

Current promotional material includes:

- '*A Guide to Investment*': Department of Trade, Commerce and Industry;
- '*Doing Business in Samoa*': Price Waterhouse;
- '*Directory of South Pacific Foreign Island Countries' Products 1993-94*': South Pacific Forum; and
- '*Tourism Investment Guide*': Tourism Council of the South Pacific.

Investment Incentives

The Government provides a range of incentives for new investment, some of which are listed below.

Incentive Legislation, Enterprise Incentives and Export Promotion Act 1992/1993

This Act categorises enterprises as either a domestic or an export enterprise:

- **domestic enterprises** are activities defined in the schedule to the Act as non-exporting enterprises or those which export less than 95% of their production output;
- **export enterprises** are industrial activities that export at least 95% of their annual production.

Summary of Incentives

- A tax-free concession allows deduction of income liable for tax for a period of up to five years or accelerated depreciation rates at the option of the investors.
- Import duty exemptions or concessions on buildings, plant, machinery and equipment for establishment or expansion and industrial raw materials not available locally can be offered for up to five years and, subject to extension approval, to an additional five years.
- During its income tax holiday, a company's dividends are exempted from withholding tax.
- The possible lease of a site on which there is a newly constructed, fully serviced factory building. The rental cost reflects the current cost of construction and providing services.
- Generally, repatriation of invested capital, dividends, net profit, royalty, and licence fees is freely permitted.
- Completion within 24 hours of customs inspection of incoming or outgoing commodities.
- Electric power preferential rates.
- The issue of long-term resident permits to promoters and shareholders as warranted by the size of the interest.
- Provision of housing for use of expatriate staff in order to attract industries that either have a high labour content or would create employment opportunities through linkage effects.

Export Enterprises

For new enterprises, which intend to export at least 95% of their annual production, the following incentives are available:

- A tax holiday up to 15 years;
- A subsequent tax rate of 25% on assessable income;
- A holiday on tax on dividends of up to 15 years (up to the limit of funds invested);
- Complete relief from all custom and excise duties on both imports and exports for up to five years;
- Losses may be carried over until after the tax holiday.

Export Finance Facility (EFF)

This facility, introduced by the Central Bank of Samoa through the commercial banks, provides pre-shipment and post-shipment credit to exporters at reduced interest rates to meet firm export orders. All exports (excluding re-exports) qualify under this scheme without any local value-added criteria being imposed.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Samoa is party to a number of regional and international trade agreements, including:

- SPARTECA- which provides access to Australian and New Zealand markets at reduced duty;
- LOME 1V- access to European markets at reduced duty under the Lome Convention; and
- GSP - which provides access to the United States and other developed countries at reduced duties.

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Current details of the conditions attached by the donor countries to each of these treaties is available from the Department of Trade, Commerce and Industry.

Assessment of Recent Trends in Foreign Investment

As the Government does not vet all foreign investment proposals there are no statistics kept on foreign direct investment.

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Contacts for Further Information

Secretary
Department of Trade, Commerce and Industries
Specifically: The Trade and Investment Promotion Unit
PO Box 862
APIA
SAMOA
Tel: (685) 20471
Fax: (685) 21646
[Email: tipu@talofa.net](mailto:tipu@talofa.net)

The General Manager
Central Bank of Samoa
Private Bag
APIA
SAMOA
Tel: (685) 24100
Fax: (685) 20293

Registrar of Companies
Justice Department
PO Box 49
APIA
SAMOA

The General Manager
Development Bank of Samoa
PO Box 1232
APIA
SAMOA
Tel: (685) 22861
Fax: (685) 20880 / 23888

SOLOMON ISLANDS

Background on the Foreign Investment Regime

The Solomon Islands consists of a group of several hundred islands stretching over approximately 1,500 kilometres. They are characterised by steep mountain ranges and dense tropical forests and are surrounded by extensive coral reefs. The Solomon Islands became fully independent in 1978. Recently the central government embarked on a program of decentralisation and to date nine provincial governments have been established.

Government Policy

The Government recognises the important role that overseas investment can play in broadening the country's economic base. The assessment process for overseas investment also pays particular attention to the impact of the proposal on the strengthening the technical and marketing expertise of the private sector, the use of local raw materials, the net export income, the import cost savings, and the level of employment and training, especially in regional areas. In addition, the Government has developed a list of desired investment areas for potential investors. This can be obtained from the Investment Board.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

The relevant legislation is the *Investment Act 1990* combined with the *Investment Amendment Act 1996*.

Review and Approval Mechanisms for Foreign Investment Proposals

Proposals for foreign investment are screened under the provision of the Investment Act and Regulation. Section 14 of the Act provides for investment guarantees where transfer or proceeds of sales, dividends, profits, payments under approved technology agreement, etc, is required. The Investment Board is the national body responsible for approving all foreign investment applications. The Investment Division of the Department of Commerce, Employment and Tourism acts as the Secretariat to the board.

Proposals may be approved in as little as 30 days but can take considerably longer depending on the complexity of the project, its location and the land related issues involved.

Company/Business Structure

Procedures and regulations for the formation and registrations of locally incorporated and foreign companies are prescribed in the *Company Act*. A locally incorporated company must:

- lodge a copy of its Memorandum and Articles of Association;
- give notification of Directors and Secretary;
- give address of registered office; and
- lodge a Schedule of Compliance with provisions of the *Company Act*.

A public company is required to lodge a prospectus or statement in lieu of prospectus before capital subscriptions can be sought. In addition, a foreign company is required to lodge documents relating to the appointment of its agent.

A foreign company should have the approval of the Investment Board before proceeding with local registration. All investors should approach the Investment Board and, when forming a company, should make inquiries to the Company Registrar in the Ministry of Police and Justice. As laws on foreign investment are subject to change it is also advisable to check on all requirements (for example, fees) prior to registration.

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Survey Questionnaire (Questions are in bold type - our answers are in normal type)¶

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Please provide a brief description of your foreign investment policy including any recent policy changes.¶

¶

Attach a summary of any significant public statement which most accurately describes and defines philosophies, policies and attitudes toward foreign (inward and outward) investment.¶

¶

¶

The Republic of Fiji consist of approximately 320 islands dispersed over an Exclusive Economic Zone (EEZ) of 1.3 million square kilometres of the South Pacific Ocean.¶

¶

The total land area of the Fiji group is 18,272 square kilometres with majority of the islands being mountainous and of volcanic origin.¶

¶

The biggest island, Viti Levu, is also the most developed and the most heavily populated island. The capital of Suva, Nadi International Airport, most of the primary and secondary industrial development and a good deal of the tourism infrastructure are located on the island.¶

The Cook Islands is a group of 15 islands and atolls dispersed over an Exclusive Economic Zone (EEZ) of nearly 2 million square kilometres of the South Pacific Ocean.¶

¶

In general there is little distincti [7]

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Statutory (legislative) requirements¶

¶

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

¶

Investment Review and Approval¶

¶

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

¶

For each proposal identify guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10% [8]

Most Favoured Nation Treatment/Non-Discriminatory Between Source Economies

The Most Favoured Nation treatment does not apply to foreign investment proposals. There are a couple of trade related agreements (see below) to which the Solomon Islands is a party.

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National Treatment

There are several sectors of the economy reserved for Solomon Islanders. To date, there has not been a strict application of this policy. At present, the new government is reviewing these sectors so these restrictions may be lifted in the near future.

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

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

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Restrictions and Limitations on Foreign Investment

Reserved Activities

A number of activities are not open to foreign investment including retailing and the right to fish in in-shore areas, the reef and lagoons (subject to traditional ownership/usage rights). More information on restricted sectors can be obtained by contacting the Investment Secretariat.

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Identify any sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg., requirements for joint ventures, linkages between export ratios and equity participation, technology licensing). In your response briefly list laws, regulations and policies which provide for those exceptions. ¶

¶
Sector ¶

¶
Nature of Exception (eg. prohibition, limitation, special conditions and special screening). ¶

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

¶
Restrictions and Limitations on Foreign Investment ¶

¶
Restrictions enforced on foreign investment include: ¶

¶
<#>remittances in and out of Fiji are controlled by Ministry of Finance [9]

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

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Briefly describe the foreign exchange regime. ¶

¶
Identify any restrictions on the convertibility of currencies for [10]

Access to Land

Land is a complex and integral part of the Solomon Islands way of life. It is generally communally owned by clans or tribes. Children inherit land rights through either the father or mother depending on the lineal system practised by the particular clan. About 88% of land is customary and 12% registered. In 1977, an Amendment Bill to the Lands and Titles Ordinance converted perpetual estates owned by non-Solomon Islanders into 75 year fixed term estates (leases from government) with development conditions.

Repatriation and Convertibility

Approval for repatriation of funds is required under the Exchange Control Act 1976 and the Exchange Control Regulations 1977. The Central Bank of the Solomon Islands administers the exchange control policy and authorises commercial banks to deal and process applications for remittance of foreign exchange.

Exchange Control

Exchange control is administered by the Central Bank of the Solomon Islands and provides for the control of all financial transactions between Solomon Islands residents and non-residents. Authorised dealers are the Australian and New Zealand Banking Group Ltd, the National Bank of Solomon Islands Ltd, and Westpac Banking Corporation. Exchange control approval is required on a wide range of transactions.

Authorised dealers are allowed to enter into forward contracts with the public in any currency. All forward contracts must be for bona fide trade or trade-related operations and should not be undertaken with non-residents of Solomon Islands.

Entry and Sojourn of Personnel

Special Visas

A work permit must be obtained from the Labour Division before entering the country to take up employment. Work permits are renewable and issued for a period of two years.

A Permit to Enter and Reside in the Solomon Islands must be obtained after a Work Permit is provided. In practice applications for both permits are usually submitted at the same time. Entry of new foreign employees must be approved by the Commissioner of Labour and based on evidence that no trained Solomon Islander is available to fill the position; the foreign employee is qualified, experienced and able to train Solomon Islanders to undertake the task; and provision has been made for localising the position through suitable training.

Labour and Labour Regulations

Labour Force

The population of the Solomon Islands is around 390,000. Less than 20% of the population aged between 15 and 54 is currently engaged in paid full time employment.

Employment Conditions

Minimum wages and conditions are set by the Wages Advisory Board under the Labour Act. The average

wage is approximately US\$177 per annum, for a 45-hour working week (half day Saturday) and four weeks paid annual holiday leave for full time employees. The minimum legal wage is set at US\$0.39 per hour. Pay rates are the same for male and female employees.

The Solomon Islands National Provident Fund is a compulsory savings scheme to make provision for age, invalidity and death. Every employer must make monthly contributions equal to 7.5% of each employee's wage to this fund. The employee contributes another 5%.

The Workmen's Compensation Act and Subsidiary Legislation makes provision for compensation to workmen injured at work in the Solomon Islands; it also covers occupational diseases. Employers are required, by law, to insure for accidental liability.

The Labour Division deals with enforcement of provisions in the Labour Act ensuring, through inspection, that minimum requirements laid down in the law are met. The Division provides advice to both employers and employees on labour policy, labour law and related subsidiary legislation and has the powers to enforce these laws. There are 14 trade unions affiliated to the Solomon Islands Council of Trade Unions.

Taxation

Individual

Tax is payable on total income less personal exemptions, with all individuals being taxed at the following rates.

Personal Income Tax Rates	
US\$0 - US\$3,287	11%
US\$3,287 - US\$6,574	23%
US\$6,574 - US\$13,148	35%
US\$13,148 and above	47%

Company

Resident establishment - 35 %

Non-resident establishment - 50 %

Withholding Taxes

Withholding tax on dividends paid to non-residents by companies incorporated in the Solomon Islands is 35% and 20% on dividends paid to residents. Gross dividends are a deductible expense of the paying company. A range of other income generating activities (for example, interest, professional services, royalties, lease income etc) also attract withholding tax at rates from 5% to 15%.

Sales Tax

Goods are subject to sales tax at a rate of 8% of turnover across the board, whereas services are taxed at various dollar and percentage rates.

Goods Tax

Goods manufactured or imported into the Solomon Islands for consumption use have a goods tax levied on their wholesale value. The standard rate is 12% for most goods, with 5% applying to essential commodities and goods manufactured in the Solomon Islands.

Imports and Exports

Import duties are applied to a range of goods. These range from 5% (for example, on some chemical products) to over 200% on some motor vehicles.

Export duties are applied to exports of certain raw and semi-processed materials and foodstuffs of Solomon Islands origin including shell, gold and timber.

Banking

The Development Bank of Solomon Islands, a statutory body wholly owned by the Government Shareholding Agency, provides a wide range of development loans for agriculture, industry and

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

¶

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¶

¶

Describe and regulations relating to personnel management of foreign firms, eg., minimum wage laws, minimum requirements for training or employment of local staff.¶

List and provide a summary of domestic labor law which apply to foreign firms in the context of labour disputes/relations.¶

¶

Law¶

Summary¶

¶

Entry and Sojourn of Personnel¶

¶

Special Visas¶

¶

Because of the rapidly expanding population, immigration is subject to strict control. The Government recognises, however, the need

[11]

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Provide a list and brief summary of all taxation arrangements affecting foreign investment, including corporate income tax rates, indirect taxes, withholding taxes, double taxation agreements

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¶

Taxation arrangements¶

Summary¶

¶

Taxation¶

¶

Taxing Authority¶

¶

Income tax is levied by the Government of Fiji under the Income Tax Act of 1974. The Act is administered by the Commissioner of Inland Revenue.¶

Principal Taxes¶

¶

The major revenue sources of the Fiji Government are:¶

¶

income tax consisting of normal tax

and withholding tax on individ

[12]

commerce. As well as the head office in Honiara, there are a number of branches in the Provinces.

The Central Bank of the Solomon Islands is responsible for issuing currency and managing international exchange and provides overall banking and monetary policy. In addition there are three private banks providing a full range of commercial banking facilities.

Performance Requirements

Not applicable.

Capital Exports

The Ministry of Finance is responsible for administering regulations relating to capital exports and the outflow of foreign investment.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Competition Policy

Price Controls

A Price Control Unit is established within the Finance Department. Controls apply to selected products (for example, fuel).

Takeovers, Mergers and Monopolies

There is no specific trade practices legislation in the Solomon Islands. However, takeovers and mergers may be subject to provisions of the *Company Act* and *Investment Act*.

Investment Protection

Expropriation and Compensation

While investment protection is a priority, there are no formal laws or regulations in place to provide expropriation and compensation for foreign investments.

Settlement of Disputes

A Trade Dispute Panel has been set up to hear and settle disputes. The Panel has been vested with the necessary powers under the law to settle disputes.

Investment Promotion and Incentives

Investment Incentives

The Solomon Islands Investment Board is empowered by the Solomon Islands Investment Act to negotiate investment incentive packages tailored for individual proposals. The incentive package includes:

- up to 10 years tax free holiday;
- up to 15 years exemption from withholding tax on dividends;
- up to 10 years exemption from withholding tax on interest paid to non-residents;
- the capacity to carry forward losses;
- accelerated capital write off of 40% in first year and five percent per annum thereafter for manufacturing enterprises (a special rate of 50% is allowed for tourist developments);
- double deduction for expenditure on apprenticeships and tertiary education;
- 150% deduction for cost of inter-province transport of raw materials;
- 150% deduction for export promotion expenditure;
- duty free entry for capital equipment and drawback on re-exported items;
- special additional incentives for tourism developments; and
- free movement of capital and profit remittances.

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¶ 1. Expropriation and Compensation¶

¶ 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¶

¶ Briefly describe recent instance (last five years) of expropriation and compensation of foreign investment.¶

¶ 2. Settlement of Disputes¶

¶ 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.¶

¶ Agency¶
¶ Address/telephone/fax¶

¶ Has your economy signed or acceded to the ICSID Convention?¶

Deleted: ¶

- ¶

¶ Investment Incentives¶

¶ The *Tax Free Zone/Tax Free Factory (TFZ/TFF)* scheme provides further taxation and customs concessions to incentives already in place. A collection of factories in a specific location is referred to as a Tax Free Zone while individual factories enjoying the same preferential conditions are known as Tax Free Factories.¶

¶ The key criterion for qualification for TFF status is that the enterprise should export 95 per cent or more of its annual production. Provision exists for TFZ status for an enterprise which re-exports 95 per cent or more of its output, provided it is located within a proclaimed TFZ, and any enterprise engaged in an approved trade, product or service which supplies 95 per cent or more of its annual output to a TFF also will be eligible for designation as a TFF. Some already established industrial areas have been designated TFZs while others are to be set up.¶

¶ [13]

[The Solomon Islands actively promotes investment opportunities in various publications including:](#)

- [‘Solomon Islands Investment Guide’](#): Investment Board;
- [‘Solomon Islands Welcomes You and Your Investment’](#): Foreign Investment Board Ministry of Commerce and Primary Industries; and
- [‘Solomon Islands Trade Directory.’](#)

Other documents include the:

- [‘Directory of South Pacific Forum Island Countries’ Products 1993-94’](#): South Pacific Forum; and
- [‘Tourism Investment Guide’](#): Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

[The Solomon Islands is a party to SPARTECA, LOME IV and the GSP, all of which provide both tariff and trade concessions to exporters.](#)

Deleted: ¶

[SPARTECA](#)

[Signatories include Australia and New Zealand. The benefits of this agreement include a wide range of non-reciprocal duty free tariff concessions and export assistance incentives.](#)

[LOME IV](#)

[Certain exports originating from the Solomon Islands may enter the EC duty free and unrestricted under the ACP-EEC LOME IV Convention.](#)

[GSP](#)

The Generalised System of Preferences offers concessional or duty free access for Solomon Islands products into all developing countries who are signatories to the GSP. Signatories include the USA and Canada.

Assessment of Recent Trends in Foreign Investment

The total value of investments approved in 1996 was US\$164 million, including projects such as the Anuha resort, Vangunu oil palm, Mamara Tasifarongo and TV broadcasting.

Sectoral distribution of investment shows that over half (56%) of approved investment was in the agricultural sector, 29% in the services sector, 3% for tourism and communication and 4% in the forestry sector.

The origins of foreign investment show that 74% of approved investments were sourced from Malaysia and Singapore, 15% from Australia, 8% from Solomon Islands partners in projects and the remaining 3% from the rest of the world.

Deleted: Indicate if your economy is a party to any of the following agreements, the countries/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¶
¶

Contacts for Further Information

Secretary

Foreign Investment Board

Department of Commerce, Employment and Tourism

PO Box G26 Honiara

SOLOMON ISLANDS

Tel: (677) 23015/21849/21928

Fax: (677) 21651/26075

Trade Dispute Panel

PO Box 404 Honiara

SOLOMON ISLANDS

Chairman Tel: (677) 25370

Inquiries Tel: (677) 20263/20237

Fax: (677) 25610

Manager

Foreign Exchange Department

Central Bank of Solomon Islands

PO Box 634 Honiara

SOLOMON ISLANDS

Tel: (677) 23492/21791

Fax: (677) 23513

TONGA

Deleted: CHIEF EXECUTIVE
FIJI TRADE AND INVESTMENT
BOARD
PO BOX 2303
GOVERNMENT BUILDINGS
SUVA FIJI
TEL: (679) 315 988
FAX: (679) 301 783
GOVERNOR
THE RESERVE BANK OF FIJI
PRIVATE MAIL BAG
SUVA FIJI
TEL: (679) 313 611
FAX: (679) 301 688

Background on the Foreign Investment Regime

The Kingdom of Tonga, or the Friendly Islands as Captain Cook called the cluster of islands south-east of Fiji, is one of the world's few remaining constitutional monarchies. The islands are of volcanic and coral formation. The Tongan economy is based predominantly on agriculture with at least 60% of the population depending on it for their livelihoods. The economy is estimated to have grown by three to four percent per annum in recent years.

Government Policy

The economic goals and objectives of the Government of Tonga are outlined in a series of five-year development plans. The Seventh Development Plan covers the period 1996-2001. The Tongan Government intends to focus on increasing employment and generating additional foreign exchange by increasing export earnings from goods and services and to encourage investment. Foreign investment is welcomed in Tonga. While there is a range of Government regulations and procedures to be adhered to, each proposal is dealt with on its own merits.

A proposal is particularly welcomed where it has the potential to bring in foreign capital; introduce technical expertise (management, engineering and technological) which would otherwise be unavailable; generate workforce skills; create employment for Tongans; generate and/or conserve foreign exchange through export, tourism and import substitution; or develop or create access to new export markets and/or the expansion of existing export markets.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative Requirements)

The Industrial Development Incentives Act 1978 (IDI) contains the provisions relating to foreign investment in Tonga.

Review and Approval Mechanism for Foreign Investment Proposals

The policy on foreign investment is administered by the Ministry of Labour, Commerce and Industries (MLCI). The provisions of the Industrial Development Incentives Act require that a Development Licence be obtained for any proposed industry or tourism prime facility. The Ministry also deals with company registration and the administration of incentives under the Act.

A Standing Advisory Committee (SAC) as established under the IDI Act is responsible for screening all applications for Development Licences under the Act and to make recommendations for the approval of the Minister for Commerce Labour and Industries. The Ministry will appraise applications in consultation with other ministries and departments and submit them to the Standing Advisory Committee on Industrial Licensing. All successful proposals are issued with a development licence which sets out clearly all incentives and concessions granted for the project.

The time taken for the approval process varies depending on the nature of the proposal and the completeness of the supporting documentation, but most decisions are made within five to six weeks.

In addition to the above requirements, a one stop centre has been created within the Ministry of Labour, Commerce and Industries to take care of other requirements such as trading licences, work permits from the Ministry of police, and appropriate assistance regarding land from the Ministry of Land, Survey and Natural Resources.

Company/Business Structure

A business may be established in Tonga by:

- an individual operating as a sole trader with sole liability for the debts of the business;
- two or more persons (but not more than 10) in partnership, with each partner being liable for the debts of the business, proportional to his or her share;
- an incorporated company as defined in The Companies Act 1912 (usually the liability of company members is limited); or
- branches or representatives of foreign companies as allowed for under the relevant provisions of the Companies Act.

A company incorporated outside the Kingdom which establishes a place of business within the Kingdom must, within three months of establishment of that place of business, file three signed copies of its memorandum and articles of association with the Registrar of Companies, who is the Minister of Labour, Commerce and Industries. Registration fees range from US\$14.50 to US\$695 depending on the share capital amount.

Partnerships and sole proprietors do not need to be registered but they, like all business concerns, must have a trading licence. Applications for trading licences are submitted to the Minister for Finance through the Deputy Commissioner of Inland Revenue. Trading licences vary from US\$3.60 to US\$36.00 a quarter.

Restrictions and Limitations on Foreign Investment

Access to Land

Foreign investors cannot buy land in Tonga. The Government provides areas designated to small industry sectors and will help in negotiation for leasing of private lands between foreign investors and locals.

Infrastructure - Road Transportation

Foreign investors are excluded from investment in this sector.

Most Favored Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Not applicable.

Repatriation and Convertibility

Transfers of Capital and Profit

For the purpose of conserving foreign exchange, the National Reserve Bank of Tonga exercises some control on foreign receipts and payments. Repatriation of funds, including dividends, profits, capital gains, interest on capital and loan repayment and salaries is permitted according to the provisions of the *Foreign Exchange Control Act* except:

- where an industrial enterprise is partly financed by locally raised capital (including working capital), in which case the repatriation of funds will be related to the extent of foreign financing, that is, repatriation will be regulated on a *pro rata* basis;
- in respect of capital gains, the amount eligible for repatriation will be restricted to the amount transferred in through the banking system or by other approved methods;
- expatriate employees will be allowed to remit overseas their wages and salaries received in Tonga up to the amount on which income tax has been paid.

Entry and Sojourn of Personnel

Special Visas

Foreign investors and their families will be issued with visas to reside and work in the Kingdom as long as their enterprises are in operation. Visas will also be issued to non-Tongan employees of approved enterprises for the contracted period of their employment. Spouses are allowed, without restrictions, to find employment or generate their own employment

Labour and Labour Regulation

Wages and salaries are comparatively low. Wages, salaries and other conditions of work in the private sector are a matter of direct negotiation between employers and workers. There are no trade unions in Tonga, although a 1964 Act of Parliament provided for their establishment. Local skilled labour is available in sufficient quantities to undertake most types of building works, except for some specialised skills and supervisory levels manpower which can be recruited from abroad.

Labour

Work permits are required for the employment of non-Tongans. There is no specific policy regarding who is eligible for permits although, generally, the Government prefers that work permits be only issued to non-Tongan citizens if the skills needed are unavailable locally.

Taxation

Sales tax, customs duty and port and service taxes are levied on most imported goods and commodities sold in Tonga.

There is no provisional tax, payroll tax, local government tax, capital gains tax, export tax, probate tax or death duties.

Income Tax

Personal income tax is levied at the rate of 10% of assessable income. Incomes below US\$1,807 per annum are exempt from tax.

Company Tax

Company income tax is levied according to company status, as follows:

- resident:
 - 15 % for the first US\$72,290;
 - 30 % over US\$72,290;
- non-resident:
 - 37.5 % for the first US\$36,145;
 - 42.5 % over US\$36,145.

Banking

The banking system consists of the National Reserve Bank, the Tonga Development Bank and three commercial banks. Businesses controlled by foreign investors may, without restriction from the Reserve Bank, obtain finance from the Bank of Tonga, the Development Bank, and others.

Performance Requirements

Not applicable.

Capital Exports

As noted earlier, an investor is entitled to remit the foreign capital which has been brought into Tonga.

Investor Behavior

Not applicable.

Other Measures

Not applicable.

Investment Protection

Expropriation and Compensation

Not applicable.

Settlement of Disputes

Not applicable.

Investment Promotion and Incentives

Investment Incentives

For approved industrial and prime tourist enterprises a range of incentives is offered. They include tax holidays, exemption from Customs Duties (in certain cases), concessional rates of Port and Service tax and others such as:

- Protection from competition for specified periods;
- Long term space and land leasing in the small industries centre, a 12 acre industrial estate one kilometre from the centre of nuku'alofa;
- Residential and work visas for foreign investors and their families for as long as the enterprise is in operation;
- Exemption from customs duties for investors and families' personal effects;
- Priority for electricity telephone and water connections;
- Technical and promotional assistance from the Ministry of Labour, Commerce and Industries is available to help prospective investors identify, evaluate and set up industries.

Investment Promotion

The Industrial Promotion Unit of the Ministry of Labour, Commerce and Industries is the industrial promotion arm of Government. Other institutions including the Bank of Tonga undertakes active investment promotions supplying the *'Investing in Tonga Guide'* (1989).

Other documents used in promoting investment opportunities include:

- *'Directory of South Pacific Forum Island Countries' Products 1993-94'*: South Pacific Forum; and
- *'Tourism Investment Guide'*: Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Not applicable.

Assessment of Recent Trends in Foreign Investment

Not available.

Contacts for Further Information

Secretary
 Department of Labour, Commerce and Industries
 PO Box 110
 Nuku'alofa
 TONGA
 Tel: (676) 23688
 Fax: (676) 23887

TUVALU

Background on the Foreign Investment Regime

Tuvalu consists of nine dispersed islands of atoll or coral formation none of which is over 4.6 metres above sea level. They have a combined land area of only 26 square kilometres. Tuvalu has an extremely limited resource base and is relatively difficult to visit. The economy is significantly aid dependent.

Government Policy

The Tuvalu Government welcomes foreign investment and recognises the substantial contribution foreign investment can continue to make to the development of Tuvalu's industries and resources, as there is limited capacity of the domestic private sector to provide this growth. Foreign investment proposals are dealt with on a case-by-case basis with the Government generally being accommodating regarding the terms and conditions under which overseas firms can operate.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

Foreign Direct Investment Act 1996

Review and Approval Mechanism for Foreign Investment Proposals

The Ministry of Tourism, Trade and Commerce will provide information on investment opportunities. Proposals or applications relating to potential investments and requests for information should be directed to the Foreign Investment Facilitation Board (FIFB). The Foreign Direct Investment Questionnaire (FDIQ) must be completed by an applicant. Information requested includes the size and nature of the project, its projected costs and benefits, land requirements and other information which may be helpful in assessing a particular project.

The Board will appraise the proposal and make a report with appropriate recommendations to the Minister, including the granting of concessions. The Minister has 30 days in which to accept or reject the recommendations of the report.

Company/Business Structures

Partnerships and companies are subject to specific legislation. Foreign companies may carry on a business within Tuvalu provided they register with the Registrar of Companies.

Restrictions and Limitations on Foreign Investment

Access to Land

As a small island state, Tuvalu faces the problem of limited territory. The Government itself does not own any land, leasing land for its own purposes from traditional owners. The Ministry of Natural Resources has the responsibility for lands. Non-natives can only access land on a leasehold basis, and then only with the approval of the Minister of Natural Resources.

Most Favored Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

Not applicable.

Repatriation and Convertibility

Transfers of Profits

Approval to repatriate profits under the Foreign Currency Act is required from the Secretary of Finance.

Entry and Sojourn of Personnel

Special Visas

Applications are required to enter and reside in Tuvalu. They should be addressed to the Secretary for Foreign Affairs before the expatriate arrives in Tuvalu to commence employment. Applications are to be made on the appropriate forms and contain the necessary requirements to facilitate consideration and processing.

Labour and Labour Regulations

There is a plentiful supply of unskilled labour in Tuvalu; however shortages exist for semi-skilled, skilled and managerial workers. Permits are granted to investors involved in any project and for expatriate personnel where comparable local staff is not available.

Most wage rates in the private sector are based upon the government salary scale. Hourly wage rates for unskilled casual labour vary from US\$0.36 to US\$0.82 with US\$0.42 being fairly typical.

Taxation

Income Tax

Personal income tax is levied at a flat rate of 30% with a tax-free threshold of US\$1,849. Company tax rates on all chargeable income are also set at 30%. Non resident individuals are taxed at a flat rate of 40% of income.

Sales Tax

A variety of sales taxes are applied to different goods and services.

Company Tax

Taxation of foreign resident companies is 40% on net profit.

Banking

The National Bank of Tuvalu (NBT), the only bank in the country, is responsible for commercial banking service and functions connected with exchange control regulations. Westpac previously held 40% of the NBT, but this share has been acquired by the Government of Tuvalu. Westpac continues to provide international services for the bank. The country's Provident Fund is also becoming an important source of finance.

Some loans may be obtained from the NBT for working capital requirements and joint venture partnerships may qualify for assistance from the Development Bank of Tuvalu. The major source of investment funds for developments by foreign investors must be abroad.

Imports

Most capital items, including plant, machinery and vehicles for newly established businesses, are exempted from duty upon application. All building materials are imported duty free.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Investors should comply with provisions of the Foreign Direct Investment Act 1996.

Other Measures

Not applicable.

Competition Policy

Price controls are applied to essential commodities for example, basic food items and mineral fuels. There

is no legislation in respect of monopolies and anti-trust, and acquisitions and mergers.

Investment Protection

Expropriation and Compensation

Not applicable.

Settlement of Disputes

The Tuvalu Government offers the following guarantees to foreign investors who establish themselves in Tuvalu. There will be no nationalisation except:

- in accordance with law;
- for a public purpose defined by law; and
- with payment of compensation as defined by law.

Guarantees relating to repatriation and conversion are also provided by the Government.

Investment Promotion and Incentives

Investment Incentives

No specific or fixed set of incentives currently exists for investment in general. In most instances incentives are granted on a case-by-case basis. Incentives are currently being reviewed to make them more attractive.

Investment Promotion

There is no designated investment promotion unit in Tuvalu. Inquiries should be made to the Foreign Investment Facilitation Board.

There are no official promotion documents other than entries in the:

- *'Directory of South Pacific Forum Island Countries' Products 1993-94'*: South Pacific Forum; and
- *'Tourism Investment Guide'*: Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Not applicable.

Assessment of Recent Trends in Foreign Investment

Not available.

Contacts for Further Information

Secretary,
Foreign Investment Board
Ministry of Tourism, Trade and Commerce
Private Mail
Vaiaku, Funafuti,
TUVALU
Tel: (688) 20182
Fax: (688) 20829

Secretary
Ministry of Finance & Economic Planning
Vaiaku
Private Mail Bag
Vaiaku
TUVALU
Tel: (688) 20207/20107
Fax: (688) 20210/20205

VANUATU

Background on the Foreign Investment Regime

The Republic of Vanuatu comprises a chain of 13 larger islands and about 70 smaller islands including the Banks and Torres Group, stretching from northwest to southeast for a length of approximately 725 kilometres. The terrain throughout is generally hilly and rough and covered with dense forest. Vanuatu is a sovereign democratic state. It achieved independence in 1980 after 74 years of joint rule by Britain and France.

The main sector of the economy is the agricultural sector due to the favourable climate. The formal sector of the economy is primarily composed of the service activities of government, tourism and the finance centre. The informal sector is rural based for the most part and the main cash crops are copra, coffee and cocoa.

Government Policy

Vanuatu encourages and welcomes foreign investment. In order to facilitate foreign investment the Government has enacted a Foreign Investment Act to create a favourable environment for private sector operations. This major change promises to relieve many of the hurdles previously encountered.

In July 1998 the Government passed the Foreign Investment Act which provided for the establishment of the Vanuatu Foreign Investment Board. The Board encourages the formulation of a more transparent and open investment environment as well as faster processing of investment applications. Taxation arrangements and budgetary reforms are also being reviewed which could result in significant changes to the current arrangements.

Regulatory Framework and Investment Facilitation

Transparency

Statutory (Legislative) Requirements

The Foreign Investment Act No.15 of 1998 governs foreign investments in Vanuatu. A Foreign Investment Board (known as the VFIB) was established on 24 August 1998. All businesses are required to operate with a valid business licence under the *Business Licence Act*.

Investment Review and Approval

New investors require approval from the VFIB before establishing a business in Vanuatu. This requirement will involve completion of an Investor Application Form, which should then be submitted to the VFIB Secretariat. The average period of time involved in processing an investment application from the point of submission to final approval is three weeks. Foreign Investors are expected to comply with relevant local legislation, the Investment Division of the Department of Trade, Industry & Investment monitors approved projects for compliance.

Company/Business Structure

For offshore financial activities, the most commonly used vehicle is a private company registered as an 'exempted company' or 'international company'. For certain offshore activities, trusts are used as business entities. A private local company or sole trader (or use of business name) is the most common form of business registration within Vanuatu. As there is no direct company or personal taxation, fiscal incentives favouring particular types of business structure are not a consideration in Vanuatu.

Most Favored Nation Treatment/Non-Discriminatory Between Source Economies

Not applicable.

National Treatment

The Government of Vanuatu has an 'open regime' policy. Therefore, foreigners should enjoy all the same rights and be subject to the same obligations as a national engaged in similar activity. There are only a few special activities from which foreigners are exempt. Foreigners are afforded the same protection as residents under the Constitution of Vanuatu, but they are excluded from participation in any political activity.

Restrictions and Limitations on Foreign Investment

Reserved Activities

A list of Reserved investments is currently being reviewed and will be substantially reduced.

Access to Raw Materials

There are no current limitations on access to imported raw materials (subject to quarantine restrictions).

Access to Land

About 90 percent of land in Vanuatu is owned according to custom, with the balance owned by the Government and a small portion by the private sector. Leases can be obtained for periods ranging from 50 to 75 years. The Government intends to improve land administration by surveying and registering all land ownership and then identifying land that can be used for development.

Repatriation and Convertibility

Foreign Exchange Control

As there are no exchange controls in Vanuatu, foreign companies are free to repatriate profits and any income earned. Accounts may be opened in most major currencies.

Entry and Sojourn of Personnel

Special Visas

Persons who wish to engage in business in Vanuatu may qualify for residence by means of their business investment in the country. All new investors require a permit to enter and reside in Vanuatu. The residency permit requires a police clearance from the applicant's country of usual residence. The level of investment affects the length of residency permit granted.

Labour and Labour Regulations

The estimated total labour force in Vanuatu is over 60,000. The Government is the single biggest employer, accounting for 30 percent of total employment. The tourism and transport industries are the major employers in the private sector. In Vanuatu unions are not militant and disputes are minimal. A Minimum Wages Act sets national minimum wages every four years, although there is flexibility under the comprehensive reform program. Employers and employees are each required to contribute 3% of wages and salaries to the National Provident Fund. Work and residency permits are required for non-Vanuatu citizens. Such permits will not be issued in instances where skilled Vanuatuan labour is available. There is however a shortage of skilled and semi-skilled Vanuatuan workers and overseas recruitment of skilled personnel is often necessary.

Taxation

Hotel and Licensed Premises Tax - A tax of 10% of gross turnover is applied to hotels, motels and restaurants.

Turnover Tax - A Value Added Tax (VAT) of 12.5% is imposed on gross turnover of VT 4 million or more.

Rent Tax - A tax of 15% is imposed on all rental income from investment properties.

Banking

The banking sector comprises of the Reserve Bank, and four commercial banks. The Reserve Bank, established in 1980, performs the normal functions of a central bank and advises the Government on monetary policy and foreign reserves. The local currency, the Vatu, was introduced in 1981.

Capital

A full range of sophisticated domestic and international banking services are available. There are no restrictions on local borrowing and funds can be made available locally from the four commercial banks. Loan approvals are based on the commercial viability of projects.

Imports and Exports

Import duties range from a low of 10 percent to a high of 90 percent on CIF. A 5 percent service tax is an additional impost on import duties. The rates on these duties have been revised as part of the VAT. For certain projects, these import duties may be waived upon application.

Performance Requirements

Not applicable.

Capital Exports

Not applicable.

Investor Behaviour

Not applicable.

Other Measures

Not applicable.

Competition Policy

Price controls, monopolies and anti-trust legislation and restrictions on acquisitions and mergers do not exist.

Investment Protection

Currently Vanuatu is not a party to any international agreements/codes regarding foreign investment, although negotiations are in process concerning an agreement with the United Kingdom.

Investment Promotion and Incentives

Investment Incentives

Incentives are mostly applied on a project-by-project basis. The primary incentive for investment in Vanuatu is its status of Tax Haven which allows freedom from corporate tax, income tax, estate duties and non-capital gains tax. In addition, the country is free of withholding tax and does not have any treaties or double taxation agreements with other countries.

While no specific free trade zone exists, for certain projects consistent with Government policy, total or partial exemptions from import duties may be offered in respect of capital goods, spare parts, raw materials associated with export production and various other items associated with agriculture. Particular encouragement is given to industries involving tourism, fishing and processing of agricultural or marine products. Generally, there are no restrictions on exports from Vanuatu. Legislation has been introduced creating Provincial Chambers of Commerce. The intention is to promote business development in Vanuatu. All business licence holders are automatically members of their local Chamber of Commerce.

Investment Promotion

Investment promotion is the responsibility of the Department of Trade, Industry and Investment. The official document used in promoting investment opportunities is:

- *'The Investor's Guide to Vanuatu'* : Department of Trade, Industry & Investment.

Other promotional documents include:

- *'Doing Business in Vanuatu'*: Price Waterhouse;
- *'Directory of South Pacific Foreign Island Countries' Products 1993-94'*: South Pacific Forum; and
- *'Tourism Investment Guide'*: Tourism Council of the South Pacific.

Summary of International Investment Agreements or Codes to Which the APEC Member is a Party

Vanuatu is a party to a number of preferential trade agreements with other countries, namely:

- SPARTECA - provides reduced duties for exports entering Australia and New Zealand;
- LOME IV - applies to exports to the European Union countries;
- GSP - applies to exports to the United States.

Another trade treaty is the Melanesian Spearhead Group (MSG) treaty which governs Vanuatu, the Solomon Islands, Papua New Guinea and recently, Fiji Islands. This agreement presently covers beef, tea and canned tuna and they are accorded duty free and preferential treatment within the Agreement Guidelines.

Assessment of Recent Trends in Foreign Investment

Board is still at infancy stage and can not accurately measure any trends yet.

Contacts for Further Information

Chief Executive Officer
Vanuatu Foreign Investment Board
PMB 030
Port Vila
VANUATU
Tel: (678) 22770 / 24908
Fax: (678) 25640
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Director
Department of
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Director General
Ministry for Trade, Tourism & Business
Development
PMB 056
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Tel: (678) 25675
Fax: (678) 25677

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

For each proposal identify guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Please 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: -	()

Attach samples of all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

(COVER SHEET with a list of documents attached)

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

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

Address/telephone/fax

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

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

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
Addresses/telephone/fax
Functions

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.

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

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Unknown

Please provide a brief description of your foreign investment policy including any recent policy changes.

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

The Republic of Fiji consist of approximately 320 islands dispersed over an Exclusive Economic Zone (EEZ) of 1.3 million square kilometres of the South Pacific Ocean.

The total land area of the Fiji group is 18,272 square kilometres with majority of the islands being mountainous and of volcanic origin.

The biggest island, Viti Levu, is also the most developed and the most heavily populated island. The capital of Suva, Nadi International Airport, most of the primary and secondary industrial development and a good deal of the tourism infrastructure are located on the island.

The Cook Islands is a group of 15 islands and atolls dispersed over an Exclusive Economic Zone (EEZ) of nearly 2 million square kilometres of the South Pacific Ocean.

In general there is little distinction between the form and conduct of a foreign-owned business and one that is locally owned. The Fijian Government treats local and foreign investors alike and allows investment to be market driven. Essentially, conditions placed on investment by the Fijian Government are designed to ensure that the investment is desirable for Fiji in terms of its development, existing resources and investment.

The Government favours overseas investment proposals that will:

- ? assist in developing Fiji on a sound economic basis;
- ? generate increased exports;
- ? provide opportunities for significant local equity participation, particularly in projects that involve the utilisation of the country's natural resources;

- ? make provision for employment and training opportunities for local people;
- ? involve maximum processing of products in Fiji; and
- ? involve the enterprise in the provision of maximum common-use facilities, such as roads, labour, etc.

In view of the small size of the local market, industrial development is geared towards the establishment of export-oriented manufacturing units. In principle, the Fijian Government will encourage any export-oriented project found suitable for location in Fiji, provided it satisfies the goals previously mentioned.

B. -

Transparency,

Statutory (legislative) requirements

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

Investment Review and Approval

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

For each proposal identify guidelines/conditions that apply for screening (eg mandatory or voluntary notification, notification only required if foreign equity in excess of 10%). Please 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: - ()

Attach samples of all application/approval forms required for screening purposes. Briefly summarise additional documentation that is required for review or approval processes.

(COVER SHEET with a list of documents attached)

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

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

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

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

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

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

Addresses/telephone/fax

Functions

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.

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

Agency

Address/telephone/fax

Functions

Requirements

Foreign investment is welcomed when it introduces foreign capital, management and technology and makes a contribution to Fiji's economic and social development. Joint ventures are encouraged in order to stimulate local entrepreneurship.

The real requirements for foreign investments are that they:

? introduce adequate funds for their projects;

? pay a fair price for assets acquired locally;

? do not have a debt to equity ratio greater than 3:1; and

? are generally expected to finance fixed assets from overseas sources.

In addition, lenders in Fiji require Exchange Control approval from the Reserve Bank to make loans to non-resident equities.

Review and Approval Mechanisms for Foreign Investment Proposals/Requirements

All proposals from foreign investors, and requests from locals for concessions and assistance, must be approved by the Government. Applications to the Government are submitted through the Fiji Trade and Investment Board (FTIB) for decisions.

The FTIB appraises all investment proposals and, together with its recommendations, submits them to the Government for consideration and decision. Decisions are conveyed to the applicants by the FTIB. Decisions normally take eight weeks provided all relevant information is given by applicants.

The Government has given FTIB approval to act as a 'one stop shop', which will enable the FTIB to provide all the necessary approvals to investors to implement projects.

Company/Business Structure

Forms of Business Enterprise

In Fiji, business is generally conducted through the following types of commercial entities:

? incorporated companies;

? branches of foreign corporations;

? partnerships; and

? sole traders.

Foreign investors usually operate through a branch of an overseas corporation or through an incorporated company which is a local subsidiary of an overseas corporation.

Types of Companies

The Act provides for a number of ways in which companies may be structured:

- ? limited liability companies;
- ? unlimited liability companies; and
- ? public or private companies.

Company Legislation and Administration

The laws relating to companies in Fiji are prescribed by the Companies Act, 1983.

The Registrar of Companies administers the requirements of the Act. The Government formulates policy in regard to changes in the legislation and the courts decide on any questions of law.

4. Repatriation and Convertibility

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

Page 510: [5] Deleted

Unknown

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

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

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

List and provide a summary of domestic labor law which apply to foreign firms in the contest of labour disputes/relations.

Law
Summary

Entry and Sojourn of Personnel

Special Visas

Because of the rapidly expanding population, immigration is subject to strict control. The Government recognises, however, the need to admit persons investing funds in the country. An investor introducing at least US\$350,000 into a business or undertaking can be issued a permit to take up residence in Fiji for an initial period of up to seven years.

Persons wishing to establish smaller businesses or undertakings may also be admitted, provided the business or undertaking is considered to be of economic benefit to Fiji. Similarly, persons who are to be employed under contracts with firms in Fiji are normally admitted, provided the positions in question cannot be adequately filled by local people. A foreigner's family may accompany him or her during the period of residency.

Subject to the proviso that no local person is available, local firms or companies that are branches or subsidiaries of overseas concerns are able to transfer skilled staff to Fiji. Persons in these categories may be granted permits to reside, generally, for a three-year period. These permits may be renewed (but normally for no longer than a total period of five or six years) if the continued presence of the holder is considered to be to Fiji's economic advantage or if the persons concerned are shown to be indispensable to their employers.

Foreign investors are not expected to employ expatriates in areas where local expertise is available. They are encouraged to train local employees to fill positions held by expatriates. 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.

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The workforce is estimated at 301,500 of which 36 per cent are in formal paid employment and the remainder are classified as 'own account' workers. Nearly 80 per cent of the workforce have been educated to secondary school level and four per cent have continued through tertiary training at an academic or specialist skills level.

The following acts prescribe and regulate non-monetary conditions of employment:

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- printing trade;
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Minimum Hourly

Rate (US\$)

○ building, civil and electrical engineering	\$1.05
○ hotel and catering	
* licensed undertaking	\$0.78
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○ printing	\$0.93
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* beginners	\$0.44
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The **Fiji National Provident Fund (FNPF)** was established to provide a national superannuation fund for all employees. Under the FNPF Act all Fiji citizens between the ages of 15 and 55 employed for at least twelve working days in any one month must be members of the FNPF. Minimum contributions to the FNPF amount to 14 per cent of the employee's salary with the employee and the employer paying seven per cent each. Total contributions must not exceed 30 per cent of gross salary.

The Fiji National Training Council provides training courses, mainly short term, through eleven industrial training boards. The Council has a staff of about 95, of whom about 45 are trainers or teachers and is financed through a one per cent levy on the payroll of employers.

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Unknown

Provide 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

Taxation

Taxing Authority

Income tax is levied by the Government of Fiji under the Income Tax Act of 1974. The Act is administered by the Commissioner of Inland Revenue.

Principal Taxes

The major revenue sources of the Fiji Government are:

- ? income tax consisting of normal tax and withholding tax on individuals and companies; and
- ? other tax, such as:
 - ? provisional tax on contract for services;
 - ? customs and excise duties;
 - land sales tax;
 - departure tax;
 - stamp duty; and
 - Value Added Tax.

Incomes Taxes

Individuals

Individuals (Sole Trader and Partners of Partnership/Joint Ventures) are liable to normal tax payable on chargeable income, i.e. total income less personal allowance. Personal resident income tax commences at income of US\$3,500 per annum at a rate of 15 per cent and increases in two steps to a rate of 35 per cent at US\$10,500 per annum. For non-residents, income tax is levied at 20 per cent for the first US\$3,150, rising in three steps to 35 per cent for income over US\$10,500.

Companies

The rate of Fiji income tax on the chargeable income of a resident company is 35 per cent and for non-resident companies carrying on business in Fiji is 45 per cent. Further details of the Fiji Tax System may be obtained from accounting firms and the Department of Inland Revenue.

Withholding Taxes

? A 15 per cent non-resident dividend withholding tax is payable where a dividend is declared, paid or credited by the company incorporated in Fiji to a non-resident shareholder. In the case of a resident individual shareholder, five per cent dividend tax is deducted at source.

Dividend tax is not payable by non-resident companies on branch profits repatriated out of Fiji. No dividend tax is payable on dividends paid by a locally incorporated company to another locally incorporated company.

The rate of dividend withholding tax with a tax treaty country under the tax treaties is restricted to a maximum of 20 per cent for Australia and 15 per cent for New Zealand, Japan, UK and South Korea.

? Interest payable to a non-resident is subject to a 15 per cent interest withholding tax. However, there are certain exemptions from this tax, including interest on any bill of exchange or any promissory note payable to the supplier of goods in respect of goods imported into Fiji.

? Royalties paid to non-residents are subject to 15 per cent royalty withholding tax deducted at source. The rate of withholding tax with a double tax treaty country is restricted to a maximum of 15 per cent except for South Korea which is restricted to a maximum of 10 per cent.

? A withholding tax of 15 per cent is levied on the gross amount of the know-how payments paid or credited to a non-resident. A know-how payment is defined as any payment for scientific, technical, commercial or industrial information, techniques, knowledge or assistance likely to assist in the carrying on of a business, or in the manufacture or processing of goods or materials, or in the working of mines, oil wells or other sources of mineral deposits, or in the carrying out of any agriculture, forestry or fishing operations.

The above withholding taxes may be reduced or waived at the discretion of the Minister of Finance if he considers it to be expedient to do so, having regard to the relative contribution towards economic development.

Other Taxes

? Provisional tax must be deducted at the rate of 15 per cent of any payments arising under any contract for services, including progress payments under any such contract, and remitted to the Department of Inland Revenue (unless the service provider has a certificate of exemption from provisional taxes).

? Land sales tax is generally applied progressively on profits arising from dealings in undeveloped land, maximising at the rate of 30 per cent on profits in excess of US\$6,750. This tax affects both residents and non-residents.

? As of 1 July 1992 the Fiji Government adopted the Value Added Taxation system, applying an indirect tax of 10 per cent on all goods and services.

? Stamp duty is payable at rates laid down in the Stamp Duties Act on specified written documents.

? Capital Gains Tax does not apply in Fiji.

Banking and Finance

Fiji has a well developed banking system controlled by the Fiji Government through the Reserve Bank of Fiji (RBF). The RBF regulates the Fijian monetary and banking system, manages the note issue and administers exchange control. There are seven trading banks listed as follows:

- ? ANZ Bank;
- ? Bank of Hawaii;
- ? Westpac Banking Corporation;
- ? National Bank of Fiji;
- ? Bank of Baroda;
- ? Habib Bank Limited; and
- ? NBF Asset Management Bank.

In addition, there are non-bank financial institutions providing financial assistance and borrowing facilities to the commercial community and to consumers. These include:

- ? The Fiji National Provident Fund (FNPF); a major source of long term capital finance.
- ? The Fiji Development Bank (FDB); provides long term funds for priority sectors, namely agriculture and industry
- ? Housing Authority,
- ? National MBf Finance (Fiji) Limited; and
- ? Unit Trust of Fiji.

7. Performance Requirements

Briefly describe any performance requirements that could impose limits on trade and investment and indicate any TRIMS.

8. Capital Exports

List and briefly describe any regulations, institutional measures that limit capital exports or the outflow of foreign investment.

Regulations
Application and function

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

Regulations

Application and function

Limitations on Transfer of Capital/Profit Into/Out of the Country

Exchange control permission is required for remittances in and out of Fiji.

The rationale for exchange control in Fiji is to maximise and preserve the country's external reserves. The following areas are affected by exchange control:

- ? transactions in foreign currency;
- ? transfer of currency into and out of Fiji;
- ? transfer of property and securities out of Fiji; and
- ? export and import transactions.

Generally, therefore, investment outside Fiji, overseas equity, loan investment into Fiji and the flow of funds arising from commercial and private transaction into and out of Fiji are subject to exchange control.

Bona fide applications for foreign currencies for repatriation of capital and profit are generally approved after an income tax clearance has been issued by the Inland Revenue Department.

9. Investor Behaviour

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

Briefly outline the competition policy regime.

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.

Competition Policy

Price Controls

Since early 1975 the Government has moved away from a comprehensive system of controlling prices and income and has implemented a system of price control on selected essential commodities such as food, beverages and fuel.

Takeovers, Mergers and Monopolies

There is no specific legislation dealing with takeovers and mergers, nor is there provision for the regulation of monopolies. However, the Government generally discourages overseas investors from acquiring a controlling interest in a locally owned business. In all cases, including where a foreign investor wants a substantial but not a controlling interest, approval in advance is necessary. The Government controls takeovers and mergers under the Exchange Control Act and requests are

examined by a committee that reports to the Minister of Finance for decision. Approval of a request is normally withheld if a takeover would:

- ? lead to a monopoly;
- ? curtail the existing distribution of income among Fiji nationals; or
- ? fail to contribute to Fiji's economic development.

An application from an overseas investor may be favourably considered if:

- ? an acquisition of the controlling interest or takeover would ensure the continuation of a business that otherwise would cease;
- ? an acquisition would enable the expansion of a business or the establishment of a new one; or
- ? an acquisition would increase Fiji's foreign exchange earnings.

Imports and Exports

Import and export policy is controlled by the Department of Commerce and Industry. Commercial import policy involves consideration of tariff measures, import restrictions, quota arrangements and other policies designed to assist development of viable industries and reduce reliance on imported goods.

Imports are subject to import duty only, which is levied at various rates in accordance with the Customs Tariff Act 1986, although, as an investment incentive, such duties may be waived. Most goods may be imported without an import licence. However, there are restrictions on the import of a number of products in order to protect local industries. The restrictions are absolute for some products while others may be imported subject to conditions imposed by statute or under licence from the Department of Commerce and Industry. Quotas may be placed on the imports of particular products, such as motor vehicles. The Government has a policy of removing import assistance to industries with the ultimate aim of zero tariff protection. However the immediate goal is a tariff rate of 10 per cent before the year 2000.

The Department's export control activities include checking export valuations. Exports are actively encouraged and, while some export taxes are imposed, they are minimal. All exports from Fiji are controlled by a system of export licensing and export proceeds must be repatriated to Fiji through the banking system within six months of shipment of products.

Please provide a brief description of your foreign investment policy including any recent policy changes.

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

The Republic of Fiji consist of approximately 320 islands dispersed over an Exclusive Economic Zone (EEZ) of 1.3 million square kilometres of the South Pacific Ocean.

The total land area of the Fiji group is 18,272 square kilometres with majority of the islands being mountainous and of volcanic origin.

The biggest island, Viti Levu, is also the most developed and the most heavily populated island. The capital of Suva, Nadi International Airport, most of the primary and secondary industrial development and a good deal of the tourism infrastructure are located on the island.

The Cook Islands is a group of 15 islands and atolls dispersed over an Exclusive Economic Zone (EEZ) of nearly 2 million square kilometres of the South Pacific Ocean.

In general there is little distinction between the form and conduct of a foreign-owned business and one that is locally owned. The Fijian Government treats local and foreign investors alike and allows investment to be market driven. Essentially, conditions placed on investment by the Fijian Government are designed to ensure that the investment is desirable for Fiji in terms of its development, existing resources and investment.

The Government favours overseas investment proposals that will:

? assist in developing Fiji on a sound economic basis;

? generate increased exports;

? provide opportunities for significant local equity participation, particularly in projects that involve the utilisation of the country's natural resources;

? make provision for employment and training opportunities for local people;

? involve maximum processing of products in Fiji; and

? involve the enterprise in the provision of maximum common-use facilities, such as roads, labour, etc.

In view of the small size of the local market, industrial development is geared towards the establishment of export-oriented manufacturing units. In principle, the Fijian Government will encourage any export-oriented project found suitable for location in Fiji, provided it satisfies the goals previously mentioned.

B. -

Transparency,

Statutory (legislative) requirements

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

Investment Review and Approval

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

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

Proposals - Guidelines/Conditions

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Address/telephone/fax
Type of Complaint

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Agency
Addresses/telephone/fax
Functions

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.

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

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The Government has given FTIB approval to act as a 'one stop shop', which will enable the FTIB to provide all the necessary approvals to investors to implement projects.

Company/Business Structure

Forms of Business Enterprise

In Fiji, business is generally conducted through the following types of commercial entities:

- ? incorporated companies;
- ? branches of foreign corporations;
- ? partnerships; and
- ? sole traders.

Foreign investors usually operate through a branch of an overseas corporation or through an incorporated company which is a local subsidiary of an overseas corporation.

Types of Companies

The Act provides for a number of ways in which companies may be structured:

- ? limited liability companies;
- ? unlimited liability companies; and
- ? public or private companies.

Company Legislation and Administration

The laws relating to companies in Fiji are prescribed by the Companies Act, 1983.

The Registrar of Companies administers the requirements of the Act. The Government formulates policy in regard to changes in the legislation and the courts decide on any questions of law.

Identify any sectors which are subject to exceptions to national treatment for the purpose of foreign investment and the nature of the exception (eg., requirements for joint ventures, linkages between export ratios and equity participation, technology licensing). In your response briefly list laws, regulations and policies which provide for those exceptions.

Sector

Nature of Exception (eg. prohibition, limitation, special conditions and special screening).

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

Restrictions and Limitations on Foreign Investment

Restrictions enforced on foreign investment include:

- ? remittances in and out of Fiji are controlled by Ministry of Finance through the Reserve Bank of Fiji;
- ? overseas investors require Exchange Control permission to make any investment in Fiji securities;
- ? local borrowing by non-residents is limited and is generally related to the amount of equity and the percentage of local equity participation;
- ? land tenure is regulated;
- ? overseas investors are discouraged from acquiring controlling interest in, or taking over, established, locally owned businesses in Fiji; and
- ? the milling of all sugar cane in Fiji is handled by the Government controlled Sugar Corporation and is closed to private enterprise.

Limitations on Transfer of Capital/Profit Into/Out of the Country

Exchange control permission is required for remittances in and out of Fiji.

The rationale for exchange control in Fiji is to maximise and preserve the country's external reserves. The following areas are affected by exchange control:

- ? transactions in foreign currency;
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- ? transfer of property and securities out of Fiji; and
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Generally, therefore, investment outside Fiji, overseas equity, loan investment into Fiji and the flow of funds arising from commercial and private transaction into and out of Fiji are subject to exchange control.

Bona fide applications for foreign currencies for repatriation of capital and profit are generally approved after an income tax clearance has been issued by the Inland Revenue Department.

Limitations on Access to Land, Capital and Labour

Eighty three per cent of land is owned by Fijians in communal tenure. Fijian land which is reserved for the special use of its owners may not be leased except with their consent. Surplus land outside the reserve may, through the Native Land Trust Board (NLTB), be leased by anyone.

About seven per cent of the land is controlled by the Government and, like NLTB land, Government land may not be sold. The availability of crown land is usually advertised; this does not, however, preclude consideration being given to individual applications in cases where the land is required for special purposes.

Freehold land accounts for the remaining 10 per cent of total land area. Access to land held in freehold tenure is negotiable with the private owners and estate.

The normal method of conveyance is by lease. Each lease category has different conditions and terms. The leasing cost comprises yearly rental payments to the appropriate authority plus the actual lease or premium cost. Leases may be sold, transferred and varied, but such dealings are subject to the consent of the NLTB and Lands Department.

Foreign investors are generally expected to finance fixed capital investments from overseas sources. If some local equity is involved, permission may be given to financing fixed assets on a pro-rata resident/non-resident equities basis.

If fixed assets are financed from external sources and the requirement regarding debt/equity ratio of 3:1 maintained, under normal circumstances, local borrowings may embrace working capital needs.

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Unknown

Briefly describe the foreign exchange regime.

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

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Unknown

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

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

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- road transport industry;
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Income tax is levied by the Government of Fiji under the Income Tax Act of 1974. The Act is administered by the Commissioner of Inland Revenue.

Principal Taxes

The major revenue sources of the Fiji Government are:

? income tax consisting of normal tax and withholding tax on individuals and companies; and

? other tax, such as:

? provisional tax on contract for services;

? customs and excise duties;

○ land sales tax;

○ departure tax;

○ stamp duty; and

○ Value Added Tax.

Incomes Taxes

Individuals

Individuals (Sole Trader and Partners of Partnership/Joint Ventures) are liable to normal tax payable on chargeable income, i.e. total income less personal allowance. Personal resident income tax commences at income of US\$3,500 per annum at a rate of 15 per cent and increases in two steps to a rate of 35 per cent at US\$10,500 per annum. For non-residents, income tax is levied at 20 per cent for the first US\$3,150, rising in three steps to 35 per cent for income over US\$10,500.

Companies

The rate of Fiji income tax on the chargeable income of a resident company is 35 per cent and for non-resident companies carrying on business in Fiji is 45 per cent. Further details of the Fiji Tax System may be obtained from accounting firms and the Department of Inland Revenue.

Withholding Taxes

? A 15 per cent non-resident dividend withholding tax is payable where a dividend is declared, paid or credited by the company incorporated in Fiji to a non-resident shareholder. In the case of a resident individual shareholder, five per cent dividend tax is deducted at source.

Dividend tax is not payable by non-resident companies on branch profits repatriated out of Fiji. No dividend tax is payable on dividends paid by a locally incorporated company to another locally incorporated company.

The rate of dividend withholding tax with a tax treaty country under the tax treaties is restricted to a maximum of 20 per cent for Australia and 15 per cent for New Zealand, Japan, UK and South Korea.

? Interest payable to a non-resident is subject to a 15 per cent interest withholding tax. However, there are certain exemptions from this tax, including interest on any bill of exchange or any promissory note payable to the supplier of goods in respect of goods imported into Fiji.

? Royalties paid to non-residents are subject to 15 per cent royalty withholding tax deducted at source. The rate of withholding tax with a double tax treaty country is restricted to a maximum of 15 per cent except for South Korea which is restricted to a maximum of 10 per cent.

? A withholding tax of 15 per cent is levied on the gross amount of the know-how payments paid or credited to a non-resident. A know-how payment is defined as any payment for scientific, technical, commercial or industrial information, techniques, knowledge or assistance likely to assist in the carrying on of a business, or in the manufacture or processing of goods or materials, or in the working of mines, oil wells or other sources of mineral deposits, or in the carrying out of any agriculture, forestry or fishing operations.

The above withholding taxes may be reduced or waived at the discretion of the Minister of Finance if he considers it to be expedient to do so, having regard to the relative contribution towards economic development.

Other Taxes

? Provisional tax must be deducted at the rate of 15 per cent of any payments arising under any contract for services, including progress payments under any such contract, and remitted to the Department of Inland Revenue (unless the service provider has a certificate of exemption from provisional taxes).

? Land sales tax is generally applied progressively on profits arising from dealings in undeveloped land, maximising at the rate of 30 per cent on profits in excess of US\$6,750. This tax affects both residents and non-residents.

? As of 1 July 1992 the Fiji Government adopted the Value Added Taxation system, applying an indirect tax of 10 per cent on all goods and services.

? Stamp duty is payable at rates laid down in the Stamp Duties Act on specified written documents.

? Capital Gains Tax does not apply in Fiji.

Banking and Finance

Fiji has a well developed banking system controlled by the Fiji Government through the Reserve Bank of Fiji (RBF). The RBF regulates the Fijian monetary and banking system, manages the note issue and administers exchange control. There are seven trading banks listed as follows:

? ANZ Bank;

? Bank of Hawaii;

? Westpac Banking Corporation;

? National Bank of Fiji;

? Bank of Baroda;

? Habib Bank Limited; and

? NBF Asset Management Bank.

In addition, there are non-bank financial institutions providing financial assistance and borrowing facilities to the commercial community and to consumers. These include:

? The Fiji National Provident Fund (FNPF); a major source of long term capital finance.

? The Fiji Development Bank (FDB); provides long term funds for priority sectors, namely agriculture and industry

? Housing Authority,

? National MBf Finance (Fiji) Limited; and

? Unit Trust of Fiji.

7. Performance Requirements

Briefly describe any performance requirements that could impose limits on trade and investment and indicate any TRIMS.

8. Capital Exports

List and briefly describe any regulations, institutional measures that limit capital exports or the outflow of foreign investment.

Regulations

Application and function

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

Regulations

Application and function

Limitations on Transfer of Capital/Profit Into/Out of the Country

Exchange control permission is required for remittances in and out of Fiji.

The rationale for exchange control in Fiji is to maximise and preserve the country's external reserves. The following areas are affected by exchange control:

? transactions in foreign currency;

? transfer of currency into and out of Fiji;

? transfer of property and securities out of Fiji; and

? export and import transactions.

Generally, therefore, investment outside Fiji, overseas equity, loan investment into Fiji and the flow of funds arising from commercial and private transaction into and out of Fiji are subject to exchange control.

Bona fide applications for foreign currencies for repatriation of capital and profit are generally approved after an income tax clearance has been issued by the Inland Revenue Department.

9. Investor Behaviour

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

Briefly outline the competition policy regime.

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.

Competition Policy

Price Controls

Since early 1975 the Government has moved away from a comprehensive system of controlling prices and income and has implemented a system of price control on selected essential commodities such as food, beverages and fuel.

Takeovers, Mergers and Monopolies

There is no specific legislation dealing with takeovers and mergers, nor is there provision for the regulation of monopolies. However, the Government generally discourages overseas investors from acquiring a controlling interest in a locally owned business. In all cases, including where a foreign investor wants a

substantial but not a controlling interest, approval in advance is necessary. The Government controls takeovers and mergers under the Exchange Control Act and requests are examined by a committee that reports to the Minister of Finance for decision. Approval of a request is normally withheld if a takeover would:

? lead to a monopoly;

? curtail the existing distribution of income among Fiji nationals; or

? fail to contribute to Fiji's economic development.

An application from an overseas investor may be favourably considered if:

? an acquisition of the controlling interest or takeover would ensure the continuation of a business that otherwise would cease;

? an acquisition would enable the expansion of a business or the establishment of a new one; or

? an acquisition would increase Fiji's foreign exchange earnings.

Imports and Exports

Import and export policy is controlled by the Department of Commerce and Industry. Commercial import policy involves consideration of tariff measures, import restrictions, quota arrangements and other policies designed to assist development of viable industries and reduce reliance on imported goods.

Imports are subject to import duty only, which is levied at various rates in accordance with the Customs Tariff Act 1986, although, as an investment incentive, such duties may be waived. Most goods may be imported without an import licence. However, there are restrictions on the import of a number of products in order to protect local industries. The restrictions are absolute for some products while others may be imported subject to conditions imposed by statute or under licence from the Department of Commerce and Industry. Quotas may be placed on the imports of particular products, such as motor vehicles. The

Government has a policy of removing import assistance to industries with the ultimate aim of zero tariff protection. However the immediate goal is a tariff rate of 10 per cent before the year 2000.

The Department's export control activities include checking export valuations. Exports are actively encouraged and, while some export taxes are imposed, they are minimal. All exports from Fiji are controlled by a system of export licensing and export proceeds must be repatriated to Fiji through the banking system within six months of shipment of products.

Investment Incentives

The *Tax Free Zone/Tax Free Factory (TFZ/TFF)* scheme provides further taxation and customs concessions to incentives already in place. A collection of factories in a specific location is referred to as a Tax Free Zone while individual factories enjoying the same preferential conditions are known as Tax Free Factories.

The key criterion for qualification for TFF status is that the enterprise should export 95 per cent or more of its annual production. Provision exists for TFZ status for an enterprise which re-exports 95 per cent or more of its output, provided it is located within a proclaimed TFZ, and any enterprise engaged in an approved trade, product or service which supplies 95 per cent or more of its annual output to a TFF also will be eligible for designation as a TFF. Some already established industrial areas have been designated TFZs while others are to be set up.

Types of enterprises considered for TFZ/TFF are:

- ? manufacturing;
- ? mixing, blending and packaging;
- ? assembly; and
- ? exportable professional services (as approved).

Benefits of the TFZ/TFF package.

- a) Customs Concessions
 - Total waiver of licensing for import of capital goods and other production materials.
 - Exemption from customs duty on imported:
 - ◆ capital goods and equipment;
 - ◆ raw materials;
 - ◆ components, spares and packaging materials; and
 - ◆ other items purchased to set up a TFF, e.g. building materials, furniture, office equipment.
 - Exemption from excise duty on products manufactured within the zone.
 - All materials supplied to the zone from outside to be treated as exports and eligible for export benefit such as remission of excise duties.
 - The following are 'exceptions' to customs concessions:
 - ◆ passenger and goods motor vehicles along with any other means of conveyance of goods and persons;
 - ◆ goods purchased ex-traders' duty paid stock will not be eligible for refund of duty; and
 - ◆ consumable articles.
- b) Tax Concessions
 - Corporate profits will be fully exempt from tax for a period of 13 years.
 - No withholding tax on interest, dividends and royalty provided there is no 'shift of revenue abroad'.

- Final dividend tax of 15 per cent on dividend paid to resident shareholders.
- Freedom to repatriate capital and profit.

Further benefits available to both Tax Free Enterprises and other foreign investors include:

- ? generous depreciation allowance;
- ? accelerated depreciation;
- ? carry forward of losses;
- ? double Taxation Agreements with Australia, NZ, Japan, UK and South Korea;
- ? concessional rates of interest to eligible exporters;
- ? reduced rates of withholding taxes; and
- ? enterprises expanding at least 30 per cent of output are entitled to:
 - tax relief for a period of 8 years (with provision for extension); and
 - deductibility for income tax liability of 150% of expenditure increased in promoting Fijian products overseas.

Industry specific concessions include support for:

- ? tourism related investments:
 - Hotels (Hotels Aid Act) investment allowance.
 - Supportive Projects to the Tourist Industry Investment Allowance.
 - Tourist Vessel Investment Allowance.
- ? mining industry:
 - Income Exemption.
 - Deduction of Expenditure.
- ? Accelerated Depreciation.
- ? Agricultural Enterprises:
 - Tax Exemption/Holiday.
 - Losses Offset and Carry Forward.
 - Land Improvement Allowance.

A Fuel Economy Investment Allowance is given to encourage economic use of fuel oil and its derivatives.

The Government undertakes investment promotion and holds forums through the FTIB. Official documents used in promoting investment opportunities include:

'An Investors Guide to Fiji': FTIB;

'Fiji: A New Horizon Across the Pacific': FTIB; and

'Fiji Product Directory 1994': FTIB.

Other promotional documents include:

'Doing Business in Fiji': Price Waterhouse;

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.

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 Commission 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 Withholding 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
OSIPTTEL	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