# Public and Private Partnership for Facilitating Tourism Investment in the APEC Region

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**APEC Tourism Working Group (TWG)**
**&**
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# Public and Private Partnership for Facilitating Tourism Investment in the APEC Region

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# EXECUTIVE SUMMARY

**Objectives**

1) The specific objectives of the project are as follows:
   - Identify cases on public-private partnership for tourism investment among member economies and draw implications for facilitating tourism investment;
   - Investigate legal frameworks for public-private partnership and sources of financing for tourism development in the APEC member economies;
   - Develop strategic marketing planning for enhancing the public-private partnership in tourism development;
   - Facilitate productive tourism investment among the APEC member economies; and
   - To make a contribution to APEC Trade and Investment Liberalization and Facilitation (TILF).

**Methodology**

2) The project used various methods of secondary research, field surveys, pilot surveys, and technical assistance in order to achieve the objectives.
3) In addition, face interviews, focus group meetings to include tourism investment experts, and pilot surveys were conducted to secure an adequate sample size for reliability of data analyses.

**Public Private Partnerships (PPPs)**

4) Public-Private Partnerships (PPPs) are essentially partnerships between public sector organizations and private sector investors and business for the purpose of designing, planning, financing, constructing, providing and/or operating infrastructure, facilities or related services
5) Successful PPPs build on the experience of each partner to meet clearly defined needs and provide a net benefit (or value for money) to the general public through the appropriate allocation of resources, risks and rewards. It will involve unbundling the costs and the risks inherent in delivering the project and allocating them to the partner best able to absorb and mitigate them.
6) With PPP, the public sector will focus on acquiring services at the most cost-effective basis, rather than directly owning and operating assets.
7) Under PPP, the private sector can look forward to providing a wider range of services and over a longer contract period.

**Typical Objectives of PPPs**

8) Partnerships in fact form for a variety of reasons (see following figure). Partnerships can be formed to create new products or services, to achieve higher levels of efficiency or economies of scale, to open markets that were previously inaccessible or to simply pool resources - financial and/or human.
9) The key to any successful partnership, however, is the recognition that the partnership is a business relationship wherein the partners share the risks, rewards and responsibility for the success or failure of the initiative.

**Why PPPs?**

10) For the public sector: PPP allows the public sector to get better value for money in the delivery of the public services. Through closer partnership with the private sector, efficiency and effectiveness gains can be reaped, particularly from the following sources:
    A. Private sector innovation.
    B. Optimal whole lifecycle costing by outsourcing design, build, maintain and operate to the same private company (or consortium).
    C. Better asset utilization by sharing Government assets/facilities with third-party users.
    D. Optimal sharing of responsibilities between the public and private sector.
11) For the Private Sector: PPP offers more business opportunities to the private sector. The private sector will be engaged to deliver a full suite of services (e.g. design, construction, operations and maintenance) which were traditionally performed in-house by public agencies or performed by multiple private companies.
12) For members of the public: PPP brings together the expertise of the Government and the private sector to meet the needs of the public effectively and efficiently. When structured appropriately, PPP will deliver public services that can better meet the needs of the public without compromising public policy goals and needs.

**Benefits of PPPs**

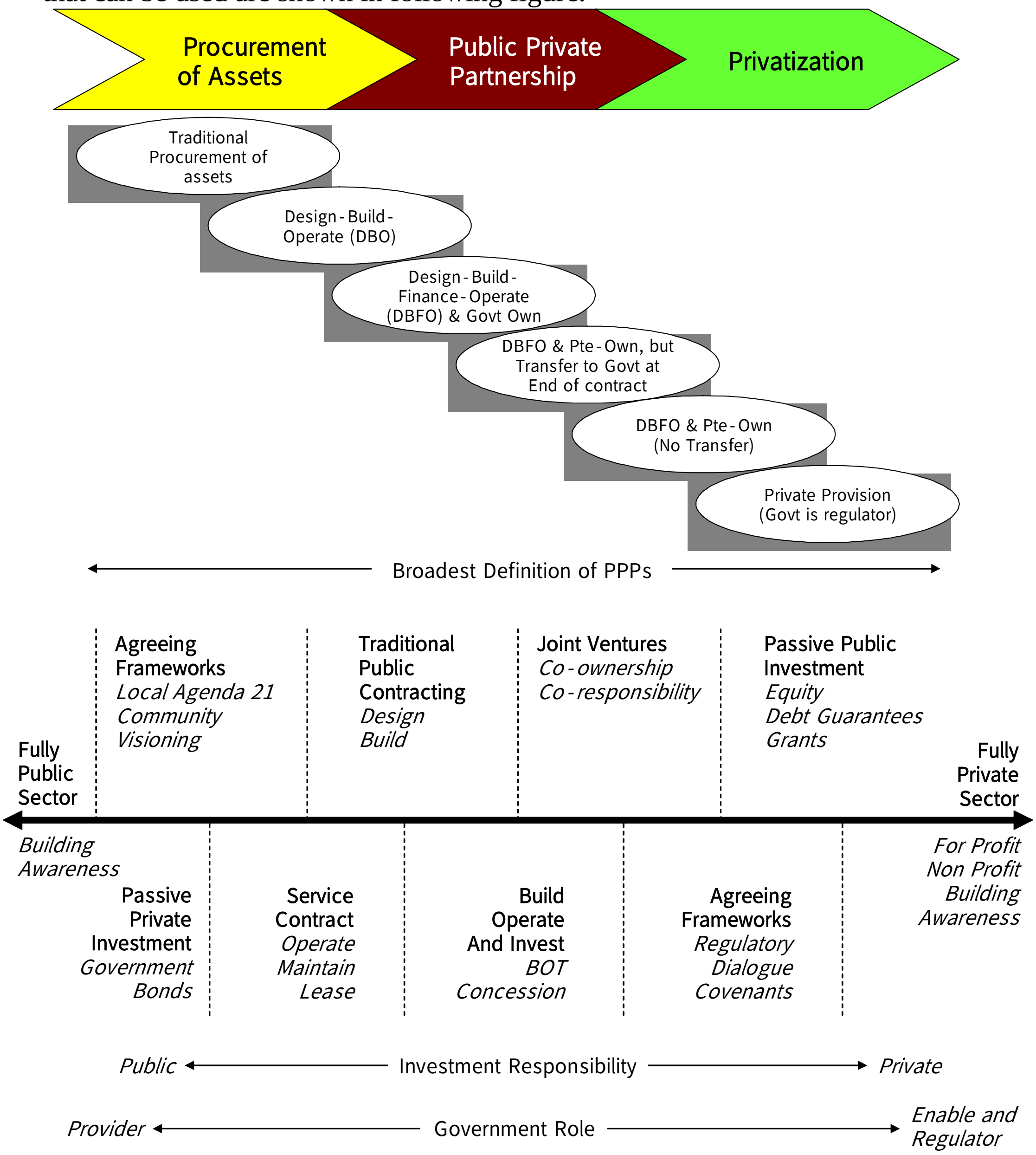
13) Public sector can realize important benefits when public private partnerships are used in the appropriate context. Potential benefits include:
    A. Cost savings
    B. Risk Mitigation or Risk Sharing
    C. Improved service levels or maintaining existing levels of services
    D. Enhancement of revenues
    E. More efficient implementation
    F. Other economic benefits

**Risks of PPPs**

14) As with conventional forms of service delivery, there are potential risks associated with PPPs. Governments can reduce or eliminate the risks by understanding what they are and addressing them through well-conceived negotiations and contractual arrangements, the involvement of stakeholder groups. Potential risks include:
    A. Loss of control by government
    B. Increased user fees
    C. Political risks and labor issues
    D. Accountability issues
    E. Unreliable service
    F. Lack of competition
    G. Reduced quality or efficiency of service
    H. Bias in the selection process

## Forms of PPPs

15) There are many public private partnership models, including joint-ventures, strategic partnerships to make better uses of government assets, Design-Build-Operate (DBO), Design-Build-finance-Operate (DBFO), etc. Some common public private models that can be used are shown in following figure.




Spectrum of PPP options

## Which Services Will PPP Used For?

16) PPP offers benefits to the public sector, the private sector and members of the public. For a start, Government will only be applying PPP to large value projects in sectors where there are successful PPP examples in other countries. Such sectors will include:
   - Sports facilities.
   - Incineration plants, water and sewerage treatment works.
   - Major IT infrastructure projects.
   - Education facilities, including student accommodation facilities.
   - Hospitals and polyclinics.
   - Expressways.
   - Government office buildings.

**When Should Public Private Partnerships be Considered?**

17) Public private partnerships are a suitable method of delivering most services commonly provided by government and are generally applicable to most components of service delivery. Virtually all aspects of service delivery lend themselves to public private partnership, including:
   - project design
   - project management
   - construction and procurement
   - financing
   - operations and management
   - maintenance
   - marketing of services
   - communications

**Who Should be Involved in PPPs?**

18) Government may wish to involve various stakeholders in the preparation of their public private partnership policies and procedures, as well as in individual projects or service delivery initiatives and organizational changes. Developing consensus with key stakeholders at the outset on policies and procedures will allow individual initiatives to be evaluated on their own terms, rather than on overall ideology or policy.

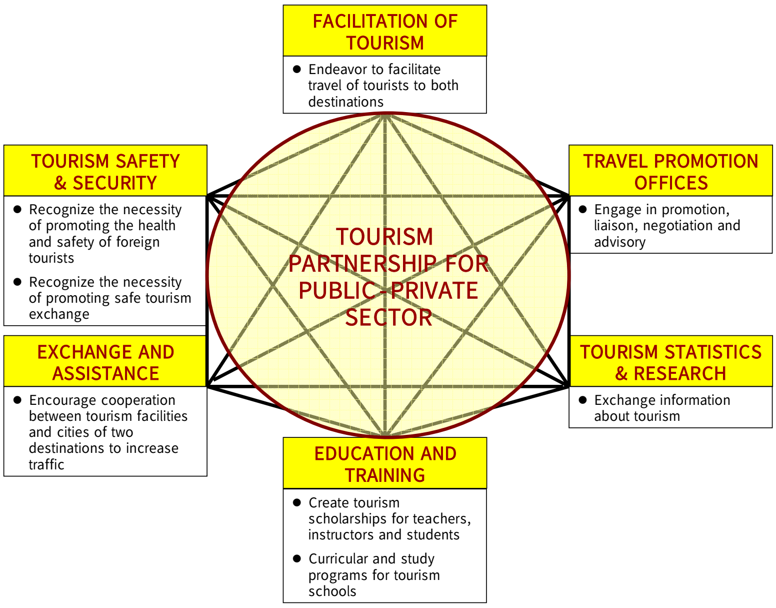
19) Stakeholders include government staff and organizations such as unions. Private sector organizations and other interest groups with a stake in the outcome of such policies and procedures should also be involved.

**Specific PPP Opportunities in Tourism**

20) Areas where partnering can create PPP opportunities in tourism are summarized below:
   A. Technology
   B. Operations
   C. Advocacy
   D. Product development
   E. Human resources

F. Research
G. Marketing
H. Financing

21) Expected model of public-private partnership for facilitating tourism investment is:




## Identification of Hurdles and Support of PPP for Tourism Investment

22) The success of tourism development in the APEC region will in large measure depend on its ability to attract sufficient, appropriate investment from the public and private sectors to implement key components of the strategy. The limited success in implementing earlier development plans for the tourist area is in part attributable to the failure to create investment conditions sufficiently favorable to encourage the private sector, either domestic investors or international investors, to invest.

23) There are a number of reasons to believe that there is a more realistic chance of success in attracting investment on a broad front:

A. Most APEC economies have adopted a much more open door position in respect to foreign investment and participation over the last two years and is becoming a more integrated part of the global economy;
B. Telecommunications advances, particularly the Internet, have had a profound effect in reducing the friction of distance allowing businesses to have a wider choice of location, giving APEC economies a greater range of opportunities;
C. Travel restriction have been relaxed and the costs of travel lowered for many countries in the region, making each member of APEC economies more accessible;
D. There is a clear recognition that the implementation of an investment procurement strategy requires a new legal and institutional framework and a much more coordinated approach than in the past.

24) To take advantage of these more favorable conditions, a clear, simple, consistent investment procurement strategy for the tourism investment development area is necessary.
    A. Individual investment procurement action plans tailored to the varied sources of investment that need to be targeted. They can be categorized in three ways:
        - End-users and developer/investors;
        - The public and private sectors; and
        - From national and international sources.

**Investment Climate**

25) The investment climate is extremely competitive in the Asia Pacific region and globally. If direct investment is to be attracted to each member of economies, the private sector will need to be made aware of trends and potential for further growth as well as the prospects for investment in specific projects. Particular projects should be actively promoted to further the implementation of the strategy. Potential investment will come from several different sources.
26) Private Sector:
    A. End Users
    B. Infrastructure Development Companies
    C. Development Companies
    D. Investment Funds
27) Public Sector
    - Central Government
    - Provincial Government
    - Investment Returns

**APEC Economies' Investment Agreements**

28) MFN Principles
29) National Treatment
30) Performance Requirements
31) Expropriation and Compensation
32) Repatriation and Convertibility
33) Settlement of Disputes
34) Entry and Sojourn of Personnel
35) Avoidance of Double Taxation
36) Intellectual Property Rights
37) Technology Transfer
38) Transparency
39) Business Facilitating Measures
40) Newly Emerging Issues

**Best Practices on Public-Private Partnership in Tourism Investment**

41) Jungmun Tourist Complex in Jeju island, Republic of Korea
    A. There are five large-scale tourist complex in operation or under construction in Korea. Three more complexes are being planned according to the Tourism

Promotion Act. Jungmun Tourist Complex is one of the most popular tourist attractions in Korea.

B. In the early 1970s, the Korean government began to develop tourist complexes to attract more foreign tourists as well as to revitalize the national and local economies. The Jungmun tourist complex development project is a model of collaboration between the private and public sectors in Korea. The government provided the infrastructure such as roads, bridges, communication systems, water supply and sewage, etc. The Korea National Tourism organization (KNTO), a semi-governmental body, took charge of purchasing and preparing the site for the complex. Then, the site was sold in lots to private companies to build tourist facilities and manage them.

42) Jeju International Convention Center

A. The Jeju International Convention Center project was sparred by the promulgation of the Act on Promotion of International Convention Industry in 1996. The act provides various supports for promoting the convention industry, such as provision of low-interest loans, subsidies to meeting organizers, provision of meeting information, professional training for meeting planners, etc.

B. Furthermore, convention facilities were designated as social overhead capital in 1997. This allowed the construction of convention centers to receive more government support.

C. The expected cost of 245 million US dollars was to be funded by local governments (61 million US dollars), KNTO (19 million US dollars), the private sector (83 million US dollars), and loans (82 million US dollars). It is noteworthy that private funds were raised through local subscription. 29 thousand local people both on and out side the island subscribed to the project, raising 179 per cent of the original target. This is an example of local residents' active involvement in the tourism business. In this case, a large part of the return from the operations of the Convention center and other related facilities will go to local people, thus strengthening the local economy. The convention center is scheduled to be completed in 2000. Along with the convention facility, the company plans to build a hotel and other related facilities.

43) Hong Kong Disneyland

- In the second half of 1998, the Hong Kong Government had preliminary discussions with Walt Disney regarding the construction of Hong Kong Disneyland. Initially, the parties began talks based on a site near Yam O, close to the Chep Lap Kok flight path. Later, they realized that Penny’s Bay,
- Northest Lantau, where there was virtually no intrusion or incompatible land use, would be a more appropriate location. In February 1999, the parties started serious discussions about the Hong Kong Disneyland project.
- To assess the financial feasibility of Hong Kong Disneyland, the Hong Kong Government had developed a set of assumptions with Walt Disney talking into account Disney’s operating experience in its international theme parks and resorts and the operating environment in Hong Kong. The Government then projected the financial performance of the proposed theme park.

- Scale of the New Theme Park: During the preliminary discussions, Walt Disney originally preferred to take part in the management of the park instead of becoming a partner in the investment. The proposed Disneyland would be divided into two phases. Phase I of Hong Kong Disneyland would include a Disney theme park, offering new and traditional Disney entertainment experiences through the delivery of attractions, shows and cutting-edge technology. Two to three Disney-themed resort hotels with a total of 2,100 hotel rooms would be constructed adjacent to the theme park. In addition to the theme park and the hotels, there would be a 28,000 square meter retail, dining and entertainment complex. Both the Government and Walt Disney anticipated a Phase 2 project, which would include a second Disney theme park, additional hotels and an expansion of the retail, dining and entertainment complex.
- Assessment of benefits: The Government expected that Disneyland, with its huge number of foreign and local attendess, would provide a significant stimulus to overall spending in Hong Kong. It therefore measured the economic benefits derived in terms of the primary and secondary value-added contribution to the economy. The primary value-added contribution represented the direct income derived from additional spending of the attendees on the goods and services produced by the hotel, retail, restaurant, local tour, entertainment and other tourism-related sectors. The secondary value-added contribution referred to the income generated from subsequent rounds of indirect spending on the further range of economic activities in support of the tourism-related sectors.
- Assessment of costs: The major cost components of the Hong Kong Disneyland project were the land reclamation at Penny's Bay and the infrastructure construction costs. The Government estimate that such costs would amount to HK$13.6 billion. This expenditure forecast included the cost of constructing roads from North Lantau to Penny's Bay, two public ferry piers, transport interchanges, police posts, a fire and ambulance station, drainage and sewage works and the formation of the 280-hectarre site. The Government envisioned that much of the infrastructure would have formed part of the capital works program to prepare Northeast Lantau for tourism and recreation development even if a Disney theme park and resort were not being built. Hence, the Government was prepared to bear all the costs for land and infrastructure. However, the Government was determined that it would not give away the land to Walt Disney for free, since it was not politically feasible to do so. It planned to charge a land premium of HK$4 billion for Phase 1 of the Disneyland project. The land premium represented the estimate pro rata cost for reclamation and land formation. Taking into account the land premium costs. Walt Disney worked out a projection and found that the park would not be profitable enough to pay for the land. The two sides therefore had to fine a way to solve the deadlock. Apart from the land infrastructure construction costs, there were other costs that would have to be included in the economic assessment of the project: Superstructure and facility erection costs; Recurrent operating costs of the theme park; and Other economic costs.

44) Macquarie Community Partnerships: "Building Sustainable Communities"
45) Tourism Investment Forum in Korea

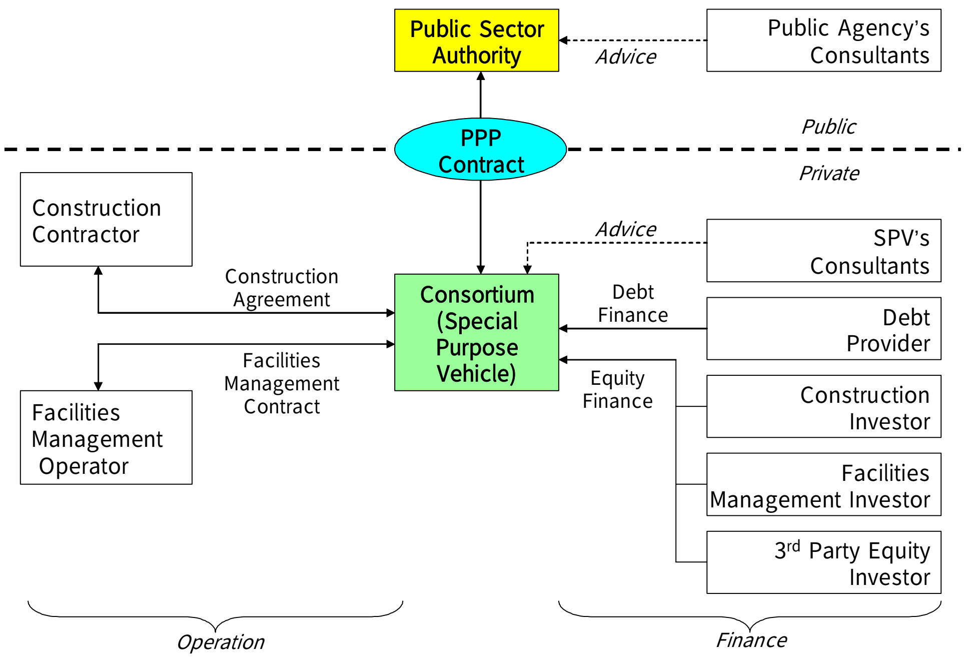
**Critical Success Factors for Public-Private Partnership in Tourism Investment**

46) Expert Preparation
47) Right Underlying Objectives
48) Developmental Structure of the Partnership
49) Effective and Efficient Actions of the Partnership
50) Sustainable Nature of the Partnership

**Roles of Public and Private Sectors in Tourism PPPs**

51) A PPP project involves collaboration between various types of private sector companies and the public agency. The PPP deal should be structured to be mutually beneficial to all the parties involved, with each party taking on the responsibilities which it is best able to manage. The roles of the public sector and the various private sector parties (including construction companies, operations companies, financial institutions and PPP consultants/advisors) in a typical PPP project under the Design-Build-Finance-Operate model are shown in following figure.

Typical PPP (for DBFO model) project structure




- Planning
- Regulation
- Safeguards
- Financial facilitation
- Legal and political facilitation

52) National Government
   - Regulation
   - Infrastructure and facilities

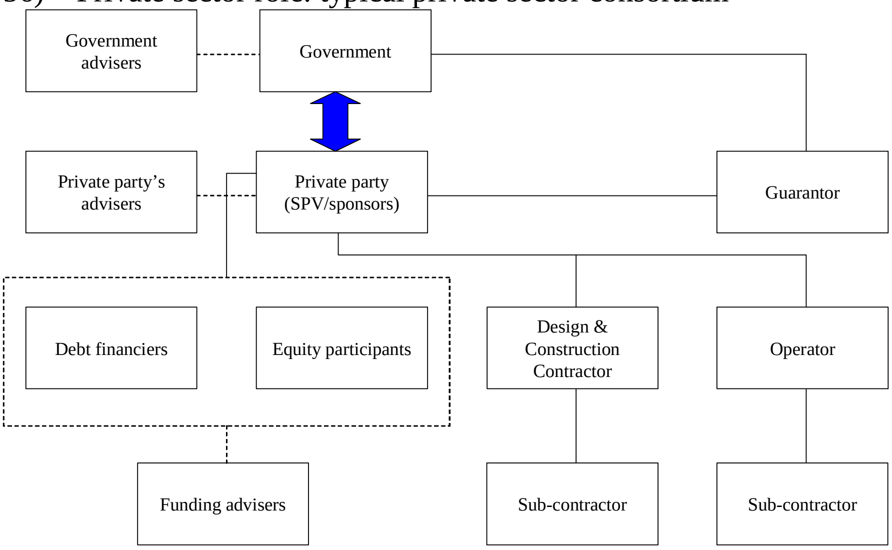
- Marketing and promotion
- Education and training

53) Local Government
- Increase local social welfare;
- Achieve greater and more equitable distribution of local economic wealth; and
- Enhance integrity of local ecosystems.

54) Non-governmental organizations (NGOs)
- Bringing together key players and decision makers to discuss areas of common interest or concern.
- Promoting consensus on the need for action and in influencing decision makers;
- Participating with industry in awareness raising campaigns and education activities to minimize the impacts of consumer behavior and consumption patterns;
- Assisting with measurement and monitoring of progress towards investment and tourism development;
- Supporting educational awareness programs on tourism for local people;
- Playing an important role in advocating bottom-up approach in tourism planning, development and management;
- Initiating stakeholder dialogue on community involvement in tourism development;
- Promoting respect for indigenous peoples and local community self-determination, autonomy and social and cultural integrity;
- Promoting consultation processes in tourism planning;
- Strengthening efforts to empower disenfranchised groups (in particular women);
- Promoting relevant research; and
- Monitoring tourism developments.

55) International organizations
- Promoting global ethics and best practice and
- Facilitating transfer of knowledge to industry sectors.

56) Private sector role: typical private sector consortium




- Service contracts.

- Management contracts.
- Leasing contracts.
- BOT type contracts.
- Concessions.
- Divestiture under license, or new entry of private sector participants through build-own-operate (BOO) arrangements.

**Effectiveness of Public/Private Partnerships**

57) Effective Public Private Partnerships


**Key Features of Win-Win Public-Private Partnership Deals**

58) There are several key factors which will affect whether the PPP deal can deliver value for money to Government while remaining attractive for the private sector. Public agencies should work closely with the private sector to address these issues in order to structure a win-win PPP deal.
- Competent Private sector providers
- Measurable Output/Outcome specifications
- Sufficient Project Scale
- Scope for private sector innovation and management efficiencies
- Sufficient time to plan and procure through PPP
- Manageable interfaces with other projects or existing contracts

**What Partnerships Did Well**

59) Research is Key
60) Quality Staff are Key
61) Education and Training

62) Keep a Tight Focus; Know Your Product; Learn by doing
63) Giving Partners/Members Enough Time and Opportunities to Get to Know and Trust Each Other
64) Ensuring Good, Transparent, Communication
65) Replacing Competition with Cooperation for Achievement and Strong Bargaining Position

**Implementation in PPPs for Facilitating Tourism Investment**

66) Transparency
    - Procurement: The best ways of designing suitable procurement regimes is to ensure that the process attracts bids from the most desirable companies and ensures that the possibility of winning is open to all.
    - Involvement of stakeholders: Taking account of the interests of all 'stakeholders' in projects can be done by a number of methods.
67) Corruption
    - PPPs are no more prone to corruption than other construction projects. However, one of the main causes of corruption in PPPs is the lack of a tendering process.
68) Public accountability
    - Public accountability requires (i) institutions to oversee the process of PPP design and implementation; (ii) performance reviews; (iii) and a free flow of information to the public especially on financing issues.
69) Sustainable Development
    - Social protection: The challenge is to achieve successful PPPs that deliver on social objectives such as poverty alleviation, and protection of the weak and vulnerable groups.
    - Environmental improvement: Environment improvement also is very prominent in many of today's PPPs.
70) Dispute resolution
    - Specific mechanisms for dispute resolution in PPPs include conflict preventive mechanisms (substantive and procedural arrangements that anticipate and offset the potential for conflicts to develop), conflict escalation mechanisms that identify emergent conflicts so they can be addressed early, third party facilitation, mediation, negotiation, or adjudication, and conflict resolving mechanisms that provide assistance to parties in moving their dispute towards a positive outcome (mediation, facilitation, training, advisory mediation, expert decision-making).
71) Security and Safety
    - Provision by the private sector of transport, health and other services raises concerns about security and safety. However these issues are being dealt with in contracts and current practices in most PPPs.

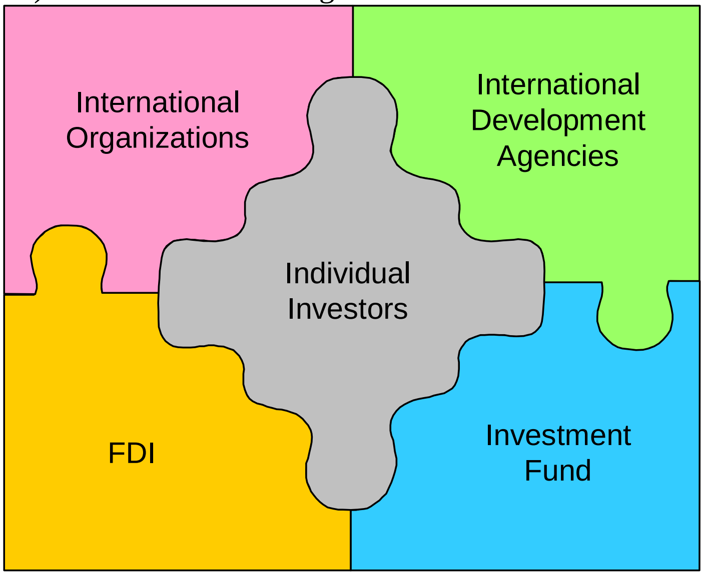
**Sources of Financing**

72) International development agencies such as World Bank and ADB expand their role both in facilitating political risk insurance and in fostering the development of domestic capital markets in Asia, particularly bond markets.

73) Direct foreign investment will remain an important source of funds for the development of the infrastructure sectors.

74) The development of domestic long-term capital markets will be critical for private sector investment in infrastructure, but these markets must have much better regulation as well.

75) Sources of financing




- World Bank
    - The International Bank for Reconstruction and Development (IRBD);
    - The International Development Agency (IDA);
    - The International Finance Corporation (IFC);
    - The Multilateral Investment Guarantee Agency (MIGA).
- Financing Framework for ADF
- Other Financing Sources
    - Overseas Economic Co-operation Fund (OECF)
    - Foreign Aid
    - Overseas Private Investment Corporation (OPIC)
    - Export Credit Agencies (ECAs)
    - General and Rule 144A Bond Issues
    - Medium Term Notes (MTN)

# 1. INTRODUCTION

## 1. 1. Context and Rationale

It is widely recognized that the tourism industry is making a significant contribution to the socio-economic development of many countries in the Asian and Pacific region through its role in expanding their economic base, increasing foreign exchange earnings, providing employment opportunities and enhancing standards of living. Particularly, tourism contribution is also recognized and valued as: a) a key source of economic demand and growth in demand; b) a major employer of both women and men at all economic levels and generator of sustainable employment opportunities; c) a significant earner of foreign exchange; d) an important generator of business opportunity for small and medium sized enterprises; e) an effective vehicle for dispersing economic benefits within and between economies, particularly at provincial level; f) tourism development is an important contributor to the achievement of governments' economic , fiscal, social and environmental goals; and g) a catalyst for partnership between the public and private sectors (Seoul Declaration on APEC Tourism Charter, 2000).

The WTTC (World Travel & Tourism Council, 2002) estimates that tourism and travel in the APEC region presently accounts for more than 110 million jobs, generates over US$2 trillion in travel and tourism related demand and approximately US$400 billion in export earnings. The WTTC is also forecasting that by 2012 employment in travel and tourism will increase by more than one quarter (more than 30 million new jobs), and export earnings will increase by more than US$1,000 billion.. Total tourism and travel demand in 2012 is expected by the WTTC to exceed US$4 trillion.

Furthermore, tourism within the APEC region accounts for more than one quarter of world international visitor arrivals and more than one third of global international visitor expenditure. Of greater significance is that more than three quarters of international visitor arrivals in the APEC region are generated by APEC economies, i.e. it is intra regional World Tourism Organization, 2003b, 2003c).

The high level of intra-regional tourism has highlighted the importance of APEC's broader goals to strengthen its respective economies and provide a stronger platform for sustainable development, economic growth and cooperation. Therefore, it is necessary to encourage the achievement in the interests of advancing tourism in the APEC region and the benefits tourism delivers its economies.

## 1.2. Linkages with APEC Priorities

This study responds to the priorities of APEC leaders and Ministers, as evidenced by economic and technical cooperation established in the Osaka Action Agenda including action program, vision statement that related to this project. This study designed to add APEC value, contributing the policy Goal, which is referred to as "Remove impediments to tourism business and investment" in the APEC Tourism Charter endorsed by the Ministers of Tourism on July 6, 2000.[1] In particular, this study is related to one of deliverables proposed by Chinese Taipei at the Second APEC Tourism Ministerial Meeting (July 2002), which was held in Manzanillo, Mexico.

In line with the above direction, the Republic of Korea has proposed to the APEC Secretariat to study the "Public and Private Partnership for Facilitating Tourism Investment in the APEC Member Economies." The project consultants intend to extend and elaborate the work that has already been undertaken on this topic, namely the project on "Opportunities and Challenges for the Tourism Industry" done by the United Nations Economic and Social Commission (UN, 2001) as well as other efforts made by the World Tourism Organization (WTO, 2003a).

In this regard, this project is consistent with the goals for free trade and investment established in the 'Bogor Declaration' and the general principles for trade liberalization and economic and technical cooperation established in the 'Osaka Action Agenda'. It aims to

[1] It is stated that these goals can be achieved by (1) promoting and facilitating the mobility of skills, training, and labors; (2) promoting and facilitating productive investment in tourism and associated sectors; (3) facilitating and promoting e-commerce for tourism business; and (4) fostering a non-discriminatory approach to the provision of visitor facilities and services.

assist equitable economic development and improve economic and social well-being among APEC member economies.

The outcomes of this project would be utilized to develop a tourism policy and implementation actions for promoting and facilitating productive investment in tourism and associated sectors among APEC Member Economies, in accordance with policy goal 1 of the APEC Tourism Charter. This project would also provide benefits to various stakeholders, such as government officials, educators, private enterprises, and investors. Further, this project would enhance cooperation among the APEC member economies for a tourism policy to 1) promote and facilitate the mobility of skills, training and labor; 2) promote and facilitate productive investment in tourism and associated sectors; 3) remove regulatory impediments to tourism business and investment; and 4) encourage liberalization of services trade related to tourism under General Agreement on Trade in Services (GATS).

This project also allowed participating APEC member economies, universities, institutions, non-government organization to build research and contribute to relevant and collaborative projects. APEC member economies, interesting in this project, were encouraged to participate and Steering Committee was organized by Korea and other APEC member economies interested.

## 1.3. Contributions to the APEC Trade and Investment Liberalization and Facilitation

As already mentioned, this project is related to policy Goal 1, which is referred to as "Remove impediments to tourism business and investment" in the APEC Tourism Charter. In particular, it was recommended that the goal should be achieved by: 1) promoting and facilitating the mobility of skills, training and labor; 2) promoting and facilitating productive investment in tourism and associated sectors; 3) removing regulatory impediments to tourism business and investment; and 4) encouraging liberalization of services trade related to tourism under General Agreement on Trade in Services (GATS).

It is understood that the tourism industry is private sector-driven, and regionally dispersed between and within member economies. Project beneficiaries would be obviously tourism enterprises which run tour companies, accommodation facilities, transportation businesses, shopping and other tourism related businesses in APEC member economies. More tourism enterprises will accelerate trade and investments within APEC member countries, which will benefit member economies.

## 1.4. Contributions of this Project to APEC-TWG

Public-private partnership for tourism investment has been identified as one of 5 priority focus items in APEC Minister Meeting. Ministers committed to demonstrate the policy goals in the APEC Tourism Charter by developing and implementing individual and collective action plans and identifying issues for consideration by other APEC fora, consistent with APEC practices for such activity. Individual and collective action plans would be developed by economies through the TWG. This empowers APEC Tourism Working Group (TWG) to improve the trade and investments between member economies through demonstrating the policy goal.

Moreover, the project aims to remove impediments to tourism business and investment in the APEC Member Economies by: 1) promoting and facilitating the mobility of skills, training and labor; 2) promoting and facilitating productive investment in tourism and associated sectors; 3) removing regulatory impediments to tourism business and investment; and 4) encouraging liberalization of services trade related to tourism under General Agreement on Trade in Services (GATS). This possible result will make APEC-TWG initiate all APEC working group activities.

## 1.5. Gender Integration

### 1.5.1. Objectives

The project methodology encouraged breakdown of statistical material collected by gender. The project also identified gaps in statistical collection and analysis in areas such as user flows.  Public-private partnership for tourism investment would be a source of qualitative and quantitative information from which a gap analysis can be undertaken to identify and rectify areas of gender disparity. The output of the project also lead to employment and training opportunities etc in the longer term for women in APEC Member Economies, which is integral to the goals of the APEC Tourism Charter.

### 1.5.2. Linkages

In managing this project the Republic of Korea is keen to ensure that, in line with the principles of equal employment opportunity, participation by women in all phases of the any project is actively pursued.

### 1.5.3. Methodology

The development and implementation of the project is being undertaken in a non discriminatory environment thus ensuring equitable participation by both genders. Whilst the project outcomes are not designed to specifically advantage either gender, the project methodology ensured that sex disaggregated data where available is collated thus providing an additional statistical tool for the network's users.

## 1.6. Objectives of the Project

As a successful consultant team, it would be our objective to work more as business partners on this project rather than as external consultants who simply commit to undertake the project for a fee. In this way our commitment to the ongoing implementation and fine-tuning of the research methodology will continue after the project has been completed.

Outlined below are the key steps, which were undertaken by the project team. It should be noted that in many cases these tasks will necessarily be inter-related and overlapping. Members of the project team were responsible for some of the most dedicated research on public-private partnership for tourism investment.

The specific objectives of the project are to:

(a) identify cases on public-private partnership for tourism investment among member economies and draw implications for facilitating tourism investment;

(b) investigate legal frameworks for public-private partnership and sources of financing for tourism development in the APEC member economies;

(c) develop strategic marketing planning for enhancing the public-private partnership in tourism development;

(d) facilitate productive tourism investment among the APEC member economies; and

(e) make a contribution to APEC Trade and Investment Liberalization and Facilitation (TILF).

Moreover, this project aimed to provide up-to-date information on current status of public-private partnership for tourism investment in the APEC Member Economies to help identify the hurdles of the public-private partnership, and to adopt a new framework of for public-private partnership towards facilitating tourism investment. Therefore, this project would help tourism industry each member economy achieve competitive advantages, establishing their niche as unique and authentic, and contributing to APEC Trade and Investment Liberalization and Facilitation.

## 1.7. Methodology

This project measure the results through various literature reviewing to gauge the current status of where all member economies stand in terms of the public-private partnership for tourism investment in APEC Member Economies.

The survey would help identify the hurdles faced by those who did not have the investment framework of the public-private partnership and the support needed for those who are going to adopt a new framework of for public-private partnership towards facilitating tourism investment.

The project used various methods of secondary research, personal interviews, field surveys, and technical assistance in order to achieve the objectives.

Such basic information, for example, as the level of investment obstacles as perceived by tourism entrepreneurs in each member economy were collected by reviewing existing documents. Statistics for each APEC member economy were carefully scrutinized.

In addition, face interviews, focus group meetings to include tourism investment experts, and pilot surveys were conducted to secure an adequate sample size for reliability of data analyses.

## 1.8. Project Procedures

This project was six stages of research procedures:

1) The objectives of project were designed for facilitating productive tourism investment among the APEC member economies;

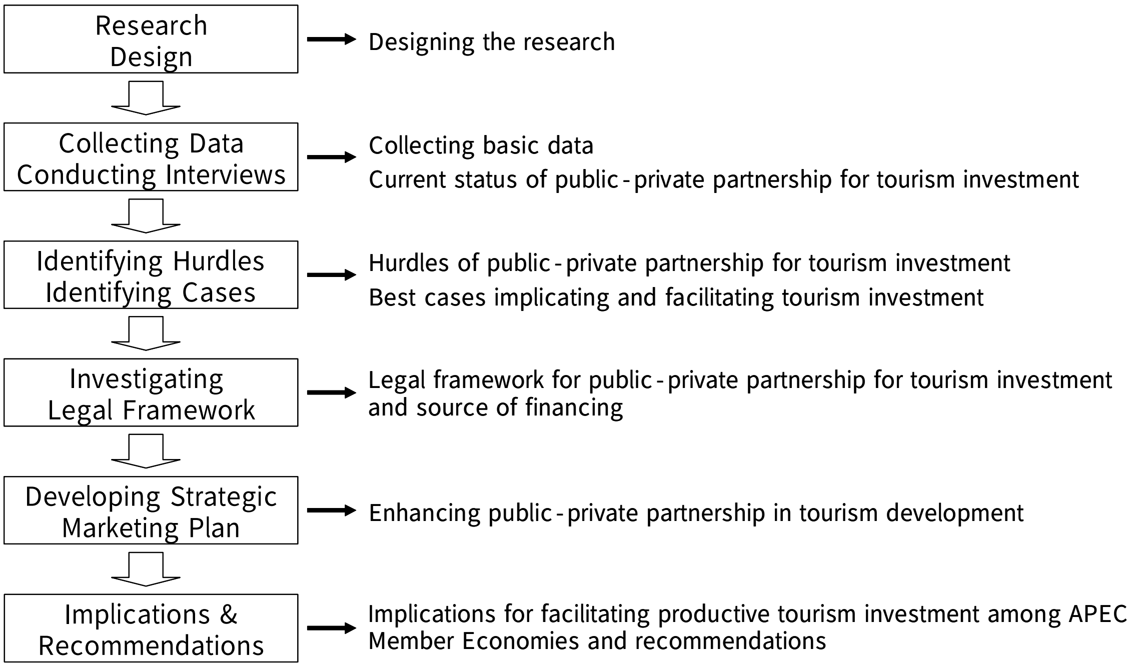
2) Collecting basic data on the information regarding infrastructure of the APEC Member Economies, and conducting interviews from public tourism officials and tourism investment experts to gauge the current status of where all member economies stand in terms of the public-private partnership for tourism investment in the APEC Member Economies;

3) Identifying the hurdles faced by those who did not have the investment framework of the public-private partnership and the support needed for those who are going to adopt a new framework of for public-private partnership towards facilitating tourism investment; and identifying cases on public-private partnership for tourism investment among member economies and drawing implications for facilitating tourism investment;

4) Investigating legal frameworks for public-private partnership and sources of financing for tourism development in the APEC member economies;

5) Developing strategic marketing planning for enhancing the public-private partnership in tourism development; and,

6) Facilitating productive tourism investment among the APEC member economies.




[Figure 1-1] Research procedures

# 2. WHAT IS A PUBLIC PARIVATE PARTNERSHIP?

## 2.1. Characteristics of Public Private Partnership

Public-Private Partnerships are essentially partnerships between public sector organizations and private sector investors and business for the purpose of designing, planning, financing, constructing, providing and/or operating infrastructure, facilities or related services (Department of the Environment, Heritage and Local Government, Ireland, 2003, Policy Framework for Public Private Partnership in Ireland; Ministry of Municipal Affairs, British Columbia, Canada, 1999: Public Private Partnership - A Guide for Local Government). Successful public private partnerships build on the experience of each partner to meet clearly defined needs and provide a net benefit (or value for money) to the general public through the appropriate allocation of resources, risks and rewards. It will involve unbundling the costs and the risks inherent in delivering the project and allocating them to the partner best able to absorb and mitigate them. This is different (and preferable) to not accounting for all of the real costs associated with a service and allocating all risks to either the public or the private sector partner. The ability of the public and private sector partners to efficiently and effectively mitigate each risk should govern the allocation of each risk.

Public organizations can engage the private sector in many ways, such as contracting for manpower, service outsourcing or business process outsourcing. Public private partnership (PPP) is another form of best sourcing that can be used to work with private sector to deliver services, particularly services that require the development of new physical assets. PPP refers to long-term partnering relationships between the public and private sector to deliver services. It is a new approach that public sector is adopting to increase private sector involvement in the delivery of public services.

With PPP, the public sector will focus on acquiring services at the most cost-effective basis, rather than directly owning and operating assets. For example, if PPP is used to develop a water treatment plant, the private sector will be engaged to not only construct the plant, but also to design, operate, maintain and raise financing to build the plant to supply water to the public agency. Hence, instead of owning and operating the water treatment plant, the public agency purchases the water directly from the private sector. This means that the private sector has more room to introduce innovation into the delivery of public sector services (Ministry of Finance, Singapore, 2004, Public Private Partnership Handbook – for Public Consultation).

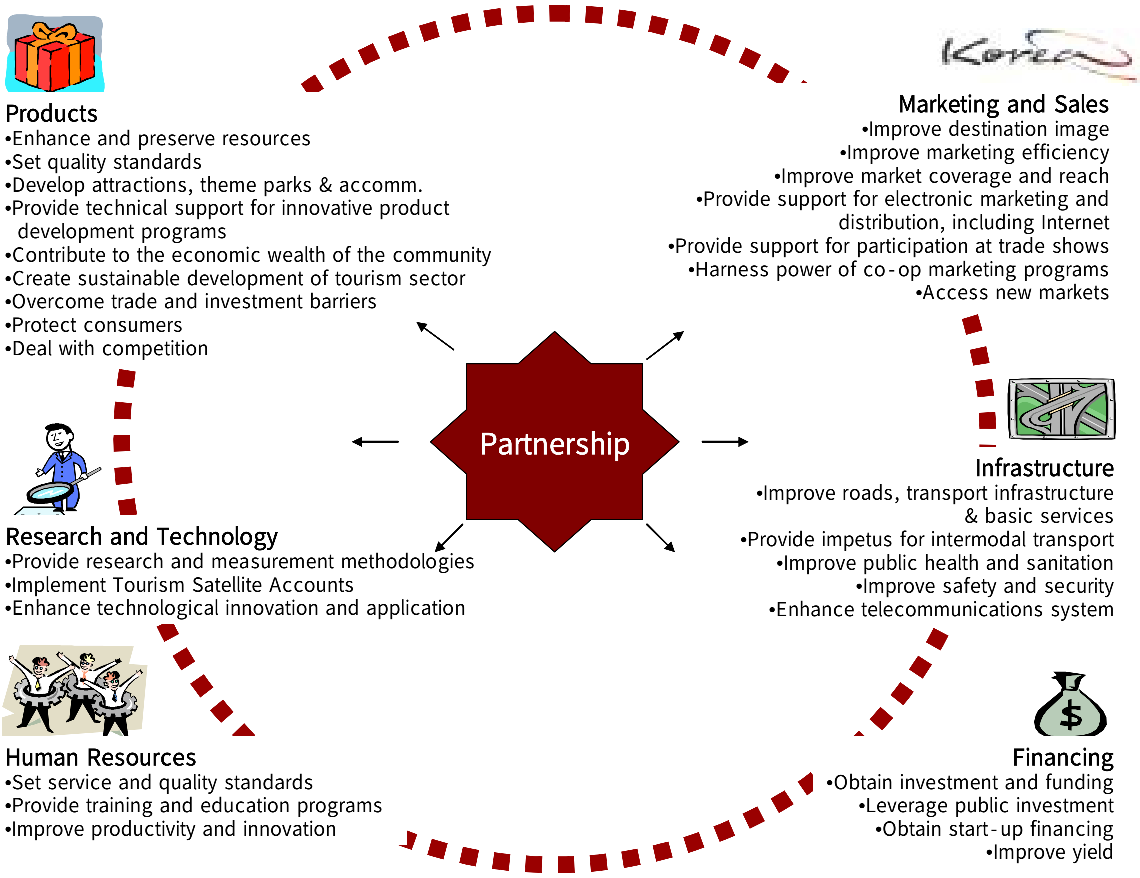
Under PPP, the private sector can look forward to providing a wider range of services and over a longer contract period (usually between 15 to 30 years). Through closer collaboration with the private sector, public services can be delivered in a more value for money way by making optimal use of the public and private sectors' expertise, resources and innovation to meet public needs effectively and efficiently.

The reason for establishing such partnerships vary but generally involve the financing, design, construction, operation and maintenance of public infrastructure, facilities and services. In other words, public private partnerships are not just about the private sector financing capital projects in return for an income stream, but also make use of private sector skills and management expertise to deliver and operate public projects more efficiently over their lifetime. The underlying logic for establishing partnerships is that both the public and the private sector have unique characteristics that provide them with advantages in specific aspects of service or project delivery. The most successful partnership arrangements draw on the strengths of both the public and private sector to establish complementary relationships.

While the roles and responsibilities of the private and public sector partners may differ on individual servicing initiatives, the overall role and responsibilities of public sector would do not change. Public private partnership is one of a number of ways of delivering public infrastructure, facilities and related services. It is not a substitute for strong and effective governance and decision making by government. In all cases, government remains responsible and accountable for delivering services and projects in a manner that protects and furthers the public interest.

## 2.2. Typical Objectives of Partnerships

The underlying impetus to partner, or the key motivator to co-operate, is that all partners, whether from the private or the public sector, will benefit from the alignment of resources and objectives. Partnerships in fact form for a variety of reasons (see following figure). Partnerships can be formed to create new products or services, to achieve higher levels of efficiency or economies of scale, to open markets that were previously inaccessible or to simply pool resources - financial and/or human (WTO, 2003d).




[Figure 2-1] Reasons for PPP

The key to any successful partnership, however, is the recognition that the partnership is a business relationship wherein the partners share the risks, rewards and responsibility for the success or failure of the initiative (WTO, 2004).

This is not to say that the partners want or seek the same benefits. For the public sector, a partnership with the private sector can bring:

- Access to new sources of capital;
- Accelerated development of infrastructure assets;
- Risk sharing opportunities;
- Maintenance or improvement of service levels;
- Access to skills in planning, management and service delivery;
- Realization of the value of under-utilized assets; and
- Greater value from economic development opportunities.

## 2.3. Why Public-Private Partnerships?

In an increasingly competitive global environment, public sectors around the world are focusing on new ways to finance projects, build infrastructure and deliver services. Public-private partnerships are becoming a common tool to bring together the strengths of both sectors. In addition to maximizing efficiencies and innovations of private enterprises, public private partnership can provide much needed capital to finance public programs and projects, thereby freeing public funds for core economic and social programs (Ministry of Finance, Singapore, 2004).

PPP offers a win-win-win solution for the public sector, the private sector and members of the public.

*For the public sector:*

PPP allows the public sector to get better value for money in the delivery of the public services. Through closer partnership with the private sector, efficiency and effectiveness gains can be reaped, particularly from the following sources:

a) Private sector innovation. PPP allows Government to tap on to the private sector’s capacity to innovate. This is the greatest source of value for money gain, and is achieved by Government not specifying how a service should be delivered or how an asset has to be designed and built. Instead, Government will spell out the services it need, and the desired outcomes/outputs. The private sector can then introduce innovative solutions to meet Government’s objectives.

b) Optimal whole lifecycle costing by outsourcing design, build, maintain and operate to the same private company (or consortium). The company (or consortium) will then be in a good position to optimize the design in the first instance so as to achieve economy in construction, operations and maintenance. This is not possible under the conventional government procurement approach where design, construction, maintenance and operations are undertaken by different entities.

c) Better asset utilization by sharing Government assets/facilities with third-party users. Some government assets/facilities can be shared with other users. For example, space in government buildings can be rented out for suitable alternative uses. Sharing government facilities with other users can contain cost increases for Government and thus public services. With PPP, the private provider, which has expertise in managing assets, will help Government determine the optimal way of using and sharing Government's assets/facilities with third-party users.

d) Optimal sharing of responsibilities between the public and private sector. In a PPP project, Government and the private sector share the responsibilities of delivering a service. The responsibilities are allocated according to each party's expertise in managing and adding value to a specific part in the service delivery process. For example, Government's core competency is in identifying public needs and crafting public policies and objectives. Hence, the public sector is responsible for clearly defining the service requirements and desired outcomes. The private sector is usually better equipped to manage construction and utilization of assets and operational issues. Hence, the private sector is typically responsible for designing, building and operating assets to deliver the service. By sharing responsibilities optimally, Government and the private sector can put together their financial and human resources and skills expertise to deliver the public service in the best value for money way.

*For the Private Sector:*

PPP offers more business opportunities to the private sector. The private sector will be engaged to deliver a full suite of services (e.g. design, construction, operations and maintenance) which were traditionally performed in-house by public agencies or performed by multiple private companies.

PPP also allows the private sector to move from just constructing assets according to clearly specified designs, to designing and delivering innovative solutions. The private sector has more room to innovate and offer efficient solutions for public services.

*For members of the public:*

PPP brings together the expertise of the Government and the private sector to meet the needs of the public effectively and efficiently. When structured appropriately, PPP will deliver public services that can better meet the needs of the public without compromising public policy goals and needs.

Government will also ensure that public interest is protected in all PPP projects and that service delivery will meet public needs at the best value for money when the private sector is brought in to provide government services. In particular, the public sector will ensure that:

• The private providers can meet the public needs effectively;

• There is clear accountability when services are delivered by the private sector and the public knows who to approach for service queries and feedback;

• Public security, health and safety will not be compromised in the PPP projects; and

• Confidentiality of information will be observed. We will protect the personal data and information of the public agency's customers.

## 2.4. What Are the Potential Benefits of Public-Private Partnerships?

Public private partnerships are not the solution for the delivery of all services. There are risks in proceeding with public private partnerships without critically examining their suitability to specific circumstances. However, government can realize important benefits when public private partnerships are used in the appropriate context (Service Industries, Canada, 2001; Ministry of Municipal Affairs, British Columbia, Canada, 1999).

Potential benefits include:

*Cost savings*

With public-private partnership, governments are able to realize cost savings not only for the construction of capital projects but more importantly in the operation and maintenance of services. For example, construction cost savings can often be realized by combining design and construction in the same contract. The close interaction of designers and constructors in a team can result in more innovative and less costly designs. The design and construction activity can be carried out more efficiently, thereby decreasing the construction time and allowing the facility to be put to use more quickly. Overall costs for professional services can be reduced for inspections and contract management activities. As well, the risks of project overruns can be reduced by design-build contracts.

Cost savings can also be realized by government in the operation and maintenance of facilities and service systems. Private partners may be able to reduce the cost of operating or maintaining facilities by applying economies of scale, innovative technologies, more flexible procurement and compensation arrangements, or by reducing overhead.

*Risk Mitigation or Risk Sharing*

With public-private partnership, government can share risks with a private partner. Risks could include cost overruns, inability to meet schedules for service delivery, difficulty in complying with environmental and other regulations, or the risk that revenues may not be sufficient to pay operating and capital costs.

*Improved service levels or maintaining existing levels of services*

Public private partnerships can introduce innovation in the way that service delivery is organized and carried out. It can also introduce new technologies and economies of scale that often reduce the cost or improve the quality and level of services.

*Enhancement of revenues*

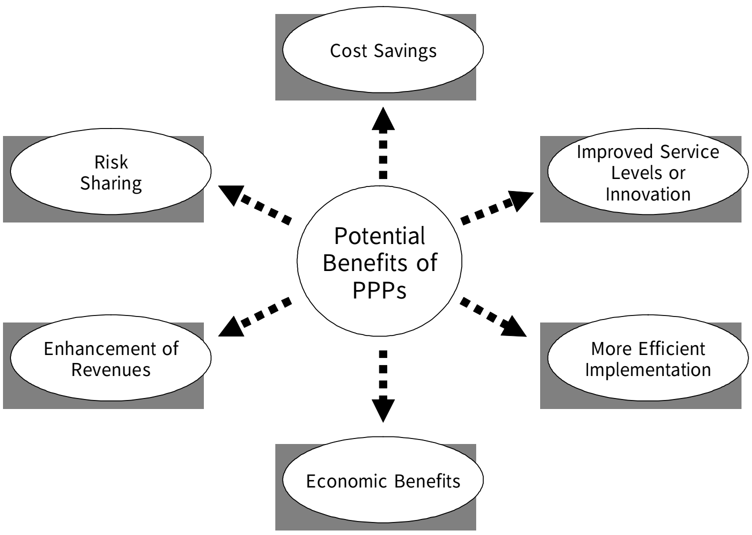
Public private partnerships may set user fees that reflect the true cost of delivering a particular service. Public private partnerships also offer the opportunity to introduce more innovative revenue sources that would not be possible under conventional methods of service delivery.

*More efficient implementation*

Efficiencies may be realized through combining various activities such as design and construction, and through more flexible contracting and procurement, quicker approvals for capital financing and a more efficient decision-making process. More efficient service delivery not only allows quicker provision of services, but also reduces costs.

*Other economic benefits*

Increased involvement of government in public-private partnerships can help to stimulate the private sector and contribute to increased employment and economic growth. Local private firms that become proficient in working in public-private partnerships can "export" their expertise and earn income outside of the region.




[Figure 2-2] Potential benefits of PPPs

## 2.5. What Are the Potential Risks of Public-Private Partnerships?

As with conventional forms of service delivery, there are potential risks associated with public-private partnerships. Governments can reduce or eliminate the risks by understanding what they are and addressing them through well-conceived negotiations and contractual arrangements, the involvement of stakeholder groups (Service Industries, Canada, 2001; Ministry of Municipal Affairs, British Columbia, Canada, 1999).

Potential risks include:

*Loss of control by government*

Public private partnerships, by their nature, involve a sharing of risks, benefits and decision making between the partners. Public private partnerships that involve significant investments and risks by the private partner often provide for greater involvement of the private partner in decisions concerning how services are delivered and priced. This often leads to concerns about who controls the delivery of services. The issue of control needs to be addressed at the time the project is defined and kept in mind when the contract is negotiated. In the final analysis, government has the authority and responsibility to establish servicing standards and to ensure that the public interest is protected.

*Increased user fees*

When establishing their pricing policies for user fees for services, not all governments consider the "true" costs of providing services. The costs of overhead or depreciation of assets are, for example, sometimes not included in the pricing of individual services. In some cases, there are explicit subsidies for specific services. The delivery of services through public-private partnerships requires pricing policies and fees to reflect all relevant costs. This can have the effect of increasing user fees for specific services.

Managing public controversy over increased fees or developing complex policies for staging fee increases can be a difficult aspect of using public-private partnerships for certain services.

*Political risks and labor issues*

Few governments have extensive experience with public-private partnerships. Such inexperience combined with government and stakeholder unfamiliarity with public-private partnerships may result in higher political risks. Government may wish to reduce potential risks by initially entering into less complex and better understood public private partnership contracts. Moreover, even though collective agreements and labor laws apply to public private partnership arrangements, there could be adverse reaction from labor unions or government staff.

*Accountability issues*

Certain government services are more sensitive that others in terms of public demand for accountability and responsiveness. With public-private partnerships, the lines of accountability for the provision of services are less clear to the public than under conventional service delivery. This may result in public criticism of the partnership arrangement and the private partner, or require increased involvement of the government in ensuring compliance and responding to public demands.

*Unreliable service*

Private partners may suffer labor disputes, financial problems or other circumstances that may prevent them from honoring their commitments.

*Lack of competition*

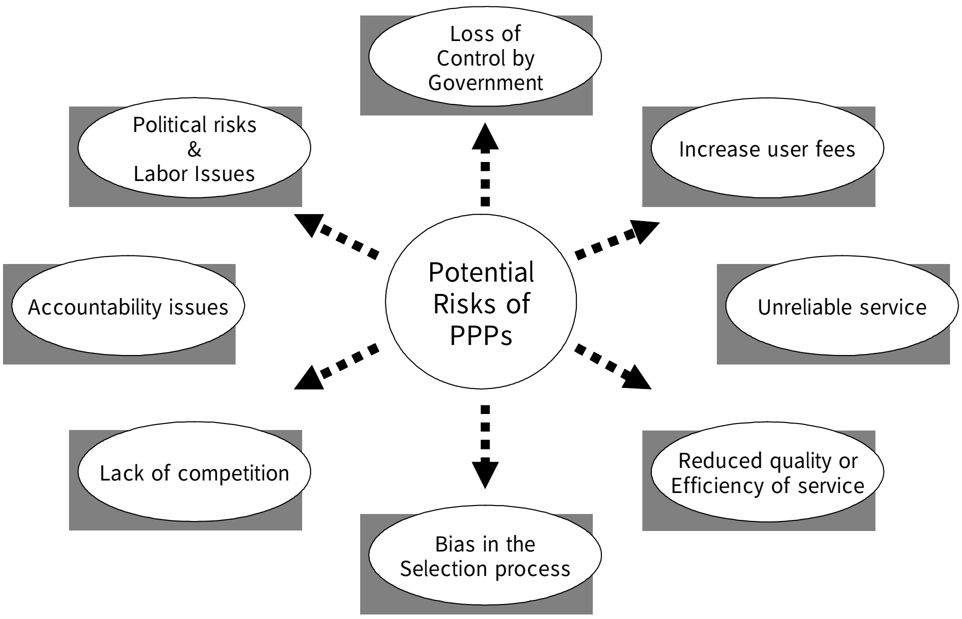
Competition among private partners to secure the right to enter into a public-private partnership is an important benefit for government. Competition leads to innovation, efficiency and lower costs. Governments may not be able to benefit from public-private partnerships if there are only a limited number of potential private partners with the expertise or ability to respond to a request for proposals.

*Reduced quality or efficiency of service*

If not properly structured, public private partnership contracts can result in a reduction in service quality, inefficient service delivery or a lack of proper facility maintenance. For example, cost-plus contracts provide little incentive for the private partner to maintain quality or increase efficiency. Governments should also consider the life-cycle cost approach in establishing evaluation criteria for projects or services.

*Bias in the selection process*

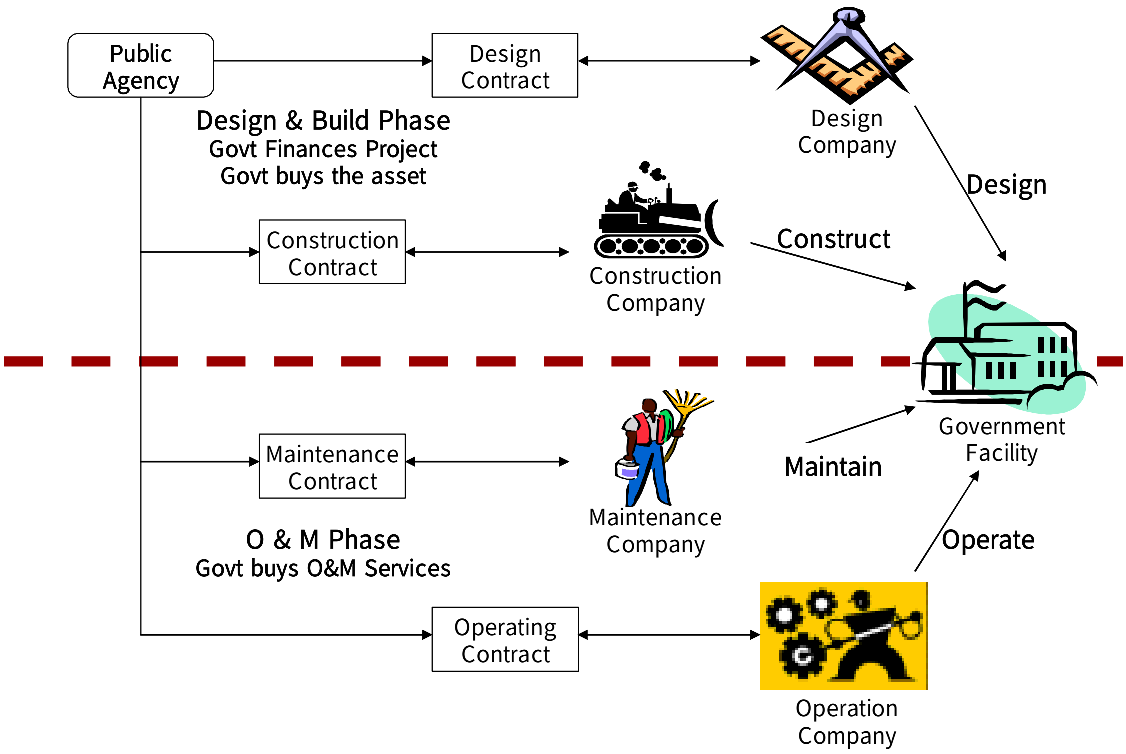
As with conventional forms of service delivery, there is always the potential for government to be accused of bias in selecting proponents. This may be more prevalent with public-private partnerships given that "low bid" may not always win the contract if the government has established other criteria (e.g., value for money). The potential for accusation of bias can be reduced through well-developed policy and procedures, and by ensuring transparency in dealing with potential private partners.




[Figure 2-3] Potential risks of PPPs

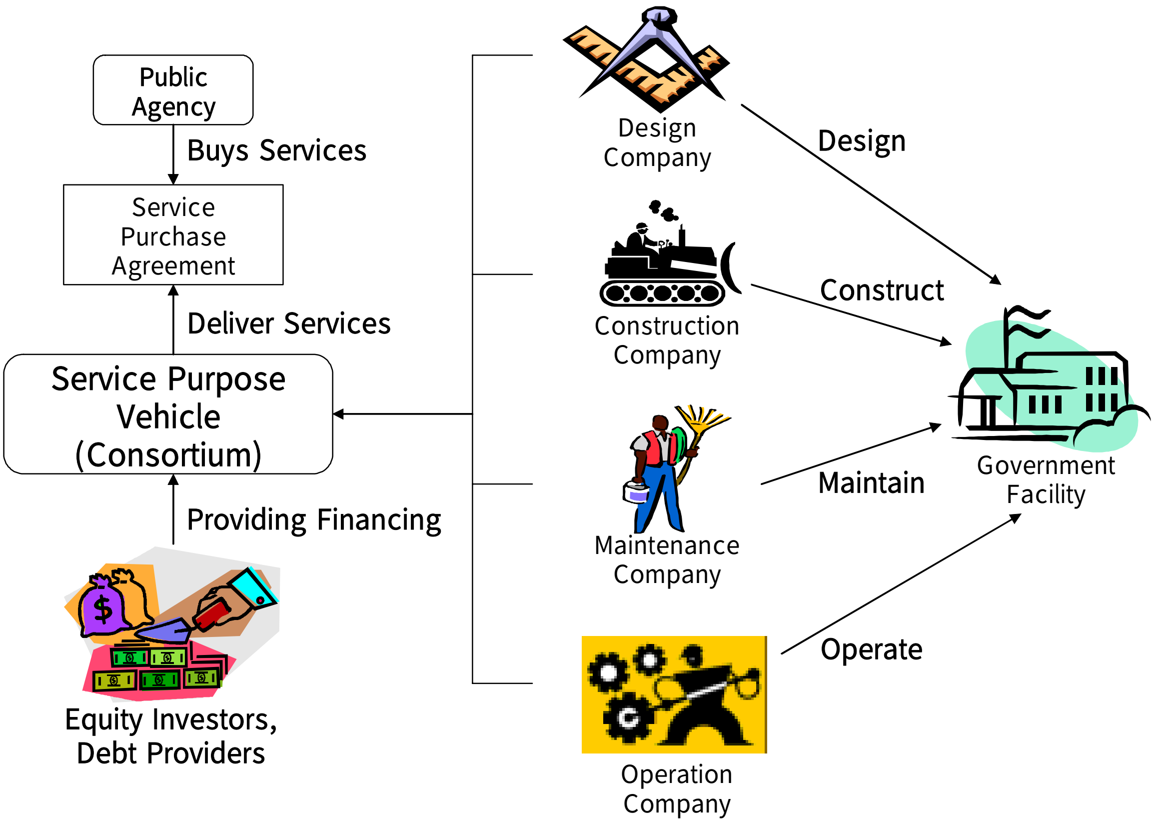
## 2.6. Cases of Public Private Partnership

Conventionally, public agencies have only engaged the private sector to construct facilities or supply equipment. Public agencies will then own and operate the facilities or equipment to deliver services. For example, a public agency might engage private companies to build a water treatment plant. Upon completion, the public agency will own and operate the water treatment plant to provide water to the public (Service Industries, Canada, 2001; Ministry of Municipal Affairs, British Columbia, Canada, 1999; WTO, 2004; Ministry of Finance, Singapore, 2004).



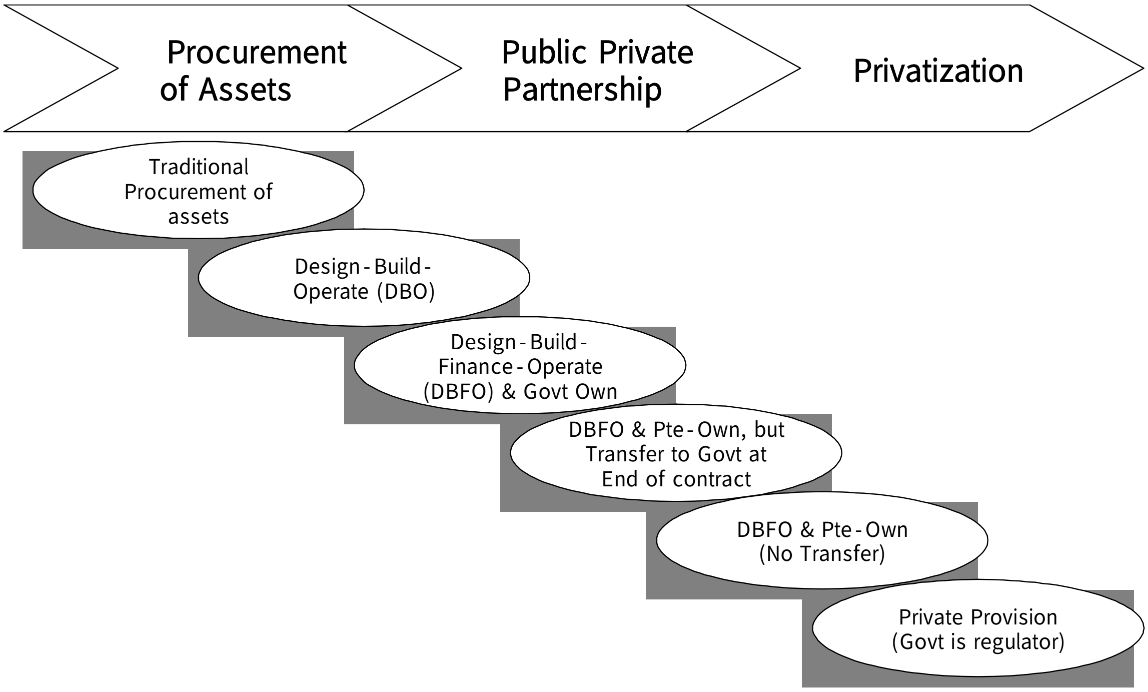

[Figure 2-4] Conventional Procurement Model

With PPP, the public sector will focus on acquiring services at the most cost-effective basis, rather than directly owning and operating assets. For example, if PPP is used to develop a water treatment plant, the private sector will be engage to not only construct the plant, but also to design, operate, maintain and raise financing to build the plant to supply water to the public agency. Hence, instead of owning and operating the water treatment plant, the public agency purchases the water directly from the private sector. This means that the private sector has more room to introduce innovation into the delivery of public sector services.

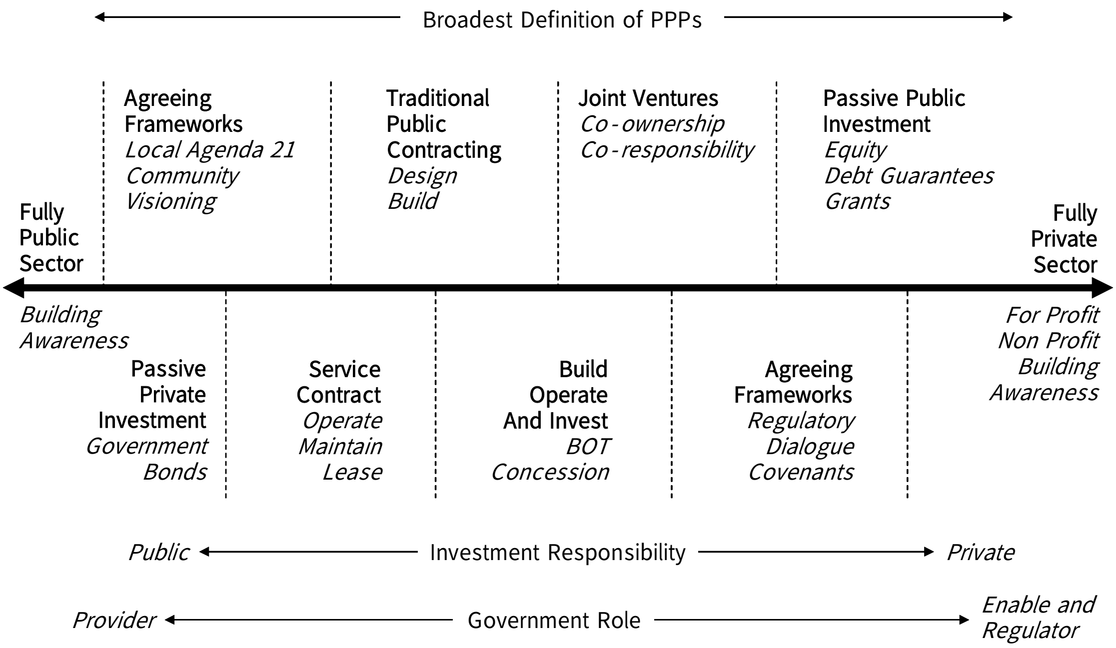



[Figure 2-5] Typical PPP model (DBFO)

There are many public private partnership models, including joint-ventures, strategic partnerships to make better uses of government assets, Design-Build-Operate (DBO), Design-Build-finance-Operate (DBFO), etc. Some common public private models that can be used are shown in following figure (UNDP, 1999).




[Figure 2-6] Forms of PPP




[Figure 2-7] Spectrum of PPP options

Partnerships can go by various names and structures and be formed with the private sector (i.e. private-private), with the public sector (i.e. public-public) or between the public and the private sectors (i.e. public-private). Followings are types of partnerships adapted from the Developing Business Opportunities Through Partnering completed by the Canadian Tourism Commission in 1995.

• Consortium - a pooling of resources to gain a benefit that they could not afford on their own (e.g. joint technology, joint services).

• Joint venture - a co-operative project (typically bringing different skills/resources) pursue an opportunity. The initiative is often given a "corporate entity" of its own.

• Strategic alliance - generally a longer-term agreement to achieve common objectives. There may involve both smaller and larger organizations with complementary resources or expertise. Termed "strategic" because the objectives are of critical importance to the overall business/market development strategy of the partners.

• Co-operative marketing - an agreement to market partners' products or services through joint promotion. Often relates to maximizing the potential of distribution networks of various partners and gaining familiarity with target markets through an "in-market" partner.

• Value-chain relationship - where organizations in different industries with unique but complementary skills link their capabilities to create value. The relationship is very tightly knit, with joint or overlapping activities occurring in many areas.

• Organization network - a multi-organization alliance in which member businesses collaborate to meet common objectives.

• Outsourcing - contracting of non-core services to third-party providers.

Public private partnerships can vary in:

• the degree of risk allocated between the partners
• the amount of expertise required on the part of each partner to negotiate contracts
• the potential implications for ratepayers

The allocation of risk between the partners is a key consideration that affects various other aspects of partnership agreements, including rewards, investments and responsibilities. Followings provides an overview of the more common forms of public private partnership, starting with those that transfer the least amount of risk to the private partner.

Table 2-1. Types of Public Private Partnerships

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 1 Operations and Maintenance | The government contracts with a private partner to operate and maintain a publicly owned facility. | A broad range of services including water and wastewater treatment plants, solid waste removal, road maintenance, parks maintenance/ landscape maintenance, arenas and other recreation facilities, parking facilities, sewer and storm sewer systems. | • potential service quality and efficiency improvements<br>• cost savings<br>• flexibility in structuring contracts<br>• ownership vests with government | • collective agreements may not permit contracting out<br>• costs to re-enter service if contractor defaults<br>• reduced owner control and ability to respond to changing public demands |
| 2 Design-Build | The government contracts with a private partner to design and build a facility that conforms to the standards and performance requirements of the government. Once the facility has been built, the government takes ownership and is responsible for the operation of the facility. | Most public infrastructure and building projects, including roads, highways, water and wastewater treatment plants, sewer and water systems, arenas, swimming pools and other government facilities. | • access to private sector experience<br>• opportunities for innovation and cost savings<br>• flexibility in procurement<br>• opportunities for increased efficiency in construction<br>• reduction in construction time<br>• increased risk placed on private sector<br>• single point accountability for the owner<br>• fewer construction claims | • reduced owner control<br>• increased cost to incorporate desirable design features or change contract in other ways once it has been ratified<br>• more complex award procedure<br>• lower capital costs may be offset by higher operating and maintenance costs if life-cycle approach not taken |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 3 Turnkey Operation | The government provides the financing for the project but engages a private partner to design, construct and operate the facility for a specified period of time.<br>Performance objectives are established by the public sector and the public partner maintains ownership of the facility. | This form of public private partnership is applicable where the public sector maintains a strong interest in ownership but seeks to benefit from private construction and operation of a facility.<br>This would include most infrastructure facilities, including water and wastewater treatment plants, arenas, swimming pools, golf courses and government buildings. | • places construction risk on the private partner<br>• proposal call can control design and location requirements as well as operational objectives<br>• transfer of operating obligations can enhance construction quality<br>• potential public sector benefits from increased efficiency in private sector construction<br>• potential public sector benefits from increased efficiency in private sector operation of the facility<br>• construction can occur faster through fast-track construction techniques such as design-build | • reduced government control over facility operations<br>• more complex award procedure<br>• increased cost to incorporate changes in design and operations once contract is completed<br>• depending on the type of infrastructure, financing risk may be incurred by the government |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 4 Wrap Around Addition | A private partner finances and constructs an addition to an existing public facility. The private partner may then operate the addition to the facility for a specified period of time or until the partner recovers the investment plus a reasonable return on the investment. | Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, and recreation facilities such as ice arenas and swimming pools. | • public sector does not have to provide capital funding for the upgrade<br>• financing risk rests with private partner<br>• public partner benefits from the private partner's experience in construction<br>• opportunity for fast-tracked construction using techniques such as design-build<br>• flexibility for procurement<br>• opportunities for increased efficiency in construction<br>• time reduction in project implementation | • future facility upgrades not included in the contract with the private partner may be difficult to incorporate at a later date<br>• expense involved in alteration of existing contracts with the private partner<br>• perceived loss of control<br>• more complex contract award procedure |
| 5 Lease-Purchase | The government contracts with the private partner to design finance and build a facility to provide a public service. The private partner then leases the facility to the government for a specified period after which ownership vests with the government. This approach can be taken where government requires a new facility or service but may not be in a position to provide financing. | Can be used for capital assets such as buildings, vehicle fleets, water and wastewater treatment plants, solid waste facilities and computer equipment. | • improved efficiency in construction<br>• opportunity for innovation<br>• lease payments may be less than debt service costs<br>• assignment of operational risks to private sector developer<br>• improve services available to residents at a reduced cost<br>• potential to develop a "pay for performance" lease | • reductions in control over service or infrastructure |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 6 Temporary Privatization | Ownership of an existing public facility is transferred to a private partner who improves and/or expands the facility.<br>The facility is then owned and operated by the private partner for a period specified in a contract or until the partner has recovered the investment plus a reasonable return. | This model can be used for most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, government buildings, airports, and recreation facilities such as arenas and swimming pools. | • if a contract is well structured with the private partner, the municipality can retain some control over standards and performance without incurring the costs of ownership and operation<br>• the transfer of an asset can result in a reduced cost of operations for the government<br>• private sector can potentially provide increased efficiency in construction and operation of the facility<br>• access to private sector capital for construction and operations<br>• operational risks rest with the private partner | • perceived or actual loss of control<br>• initial contract must be written well enough to address all future eventualities<br>• private sector may be able to determine the level of user fees, which they may set higher than when under government control<br>• difficulty replacing private partner in the event of a bankruptcy or performance default<br>• potential for government to reemerge as the provider of a service or facility in the future<br>• displacement of government employees<br>• labor issues in transfer of government employees to the private partner |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 7 Lease-Develop-Operate or Buy-Develop-Operate | The private partner leases or buys a facility from the government, expands or modernizes it, then operates the facility under a contract with the government.<br>The private partner is expected to invest in facility expansion or improvement and is given a specified period of time in which to recover the investment and realize a return. | Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, government buildings, airports, and recreation facilities such as arenas and swimming pools. | • if the private partner is purchasing a facility, a significant cash infusion can occur for the government<br>• public sector does not have to provide capital for upgrading<br>• financing risk can rest with the private partner<br>• opportunities exist for increased revenue generation for both partners<br>• upgrades to facilities or infrastructure may result in service quality improvement for users<br>• public partner benefits from the private partner's experience in construction<br>• opportunity for fast-tracked construction using techniques such as design-build<br>• flexibility for procurement<br>• opportunities for increased efficiency in construction<br>• time reduction in project implementation | • perceived or actual loss of control of facility or infrastructure<br>• difficulty valuing assets for sale or lease<br>• issue of selling or leasing capital assets that have received grant funding<br>• if a facility is sold to a private partner, failure risk exists—if failure occurs, the government may need to reemerge as a provider of the service or facility<br>• future upgrades to the facility may not be included in the contract and may be difficult to incorporate later |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 8 Build-Transfer-Operate | The government contracts with a private partner to finance and build a facility. Once completed, the private partner transfers ownership of the facility to the government. The government then leases the facility back to the private partner under a long-term lease during which the private partner has an opportunity to recover its investment and a reasonable rate of return. | Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, government buildings, airports, and recreation facilities such as arenas and swimming pools. | • public sector obtains the benefit of private sector construction expertise<br>• public sector obtains the potential benefits and cost savings of private sector operations<br>• public sector maintains ownership of the asset<br>• public sector ownership and contracting out of operations limits any provincial and federal tax requirements<br>• public sector maintains authority over the levels of service(s) and fees charged<br>• compared to a Build-Operate-Transfer model, avoids legal, regulatory and tort liability issues<br>• under Occupiers' Liability Act, tort liability can be avoided<br>• government control of operational performance, service standards and maintenance<br>• ability to terminate agreements if service levels or performance standards not met, although facility would continue to permit repayment of capital contributions and loans and introduction of new private partner<br>• construction, design and architectural savings, and likely long-term operational savings | • possible difficulty in replacing private sector entity or terminating agreements in event of bankruptcy or performance default |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 9 Build-Own-Operate-Transfer | The private developer obtains exclusive franchise to finance, build, operate, maintain, manage and collect user fees for a fixed period to amortize investment. At the end of the franchise, title reverts to a public authority. | Most public infrastructure services and facilities, including water and wastewater systems, recreation facilities, airports, government administration and operations buildings, parking facilities and solid waste management facilities. | • maximizes private sector financial resources, including capital cost allowance<br>• ensures the most efficient and effective facility is constructed, based on life-cycle costs<br>• allows for a private sector operator for a predetermined period of time<br>• the community is provided with a facility, without large up-front capital outlay and/or incurring of long-term debt<br>• all "start-up" problems are addressed by the private sector operator<br>• access to private sector experience, management, equipment, innovation and labor relationships may result in cost savings<br>• risk shared with private sector | • facility may transfer back to the public sector at a period when the facility is "work" and operating costs are increasing<br>• public sector loses control over the capital construction and initial mode of operations<br>• initial contract must be written sufficiently well to address all future eventualities<br>• the private sector can determine the level(s) of user fees (unless the public sector subsidizes use)<br>• less public control compared to Build-Transfer-Operate structure<br>• possible difficulty in replacing private sector partner or determining agreements if bankruptcy or performance default |

Table 2-1. Types of Public Private Partnerships (continued)

| Type of PPP | Features | Government Applications | Advantages | Disadvantages |
|---|---|---|---|---|
| 10 Build-Own-Operate | The government either transfers ownership and responsibility for an existing facility or contracts with a private partner to build, own and operate a new facility in perpetuity. The private partner generally provides the financing. | Most public infrastructure and facilities, including water and wastewater systems, parking facilities, recreation facilities, airports, government administration and operations buildings. | • no public sector involvement in either providing or operating the facility<br>• public sector can "regulate" the private sector's delivery of a "regulated/ monopolistic" service area<br>• private sector operates the service in the most efficient manner, both short-term and long-term<br>• no public sector financing is required<br>• income tax and property tax revenues are generated on private facilities, delivering a "public good" • long-term entitlement to operate facility is incentive for developer to invest significant capital | • the private sector may not operate/construct the building and/or service "in the public good"<br>• the public sector has no mechanism to regulate the "price" of the service, unless it is a specifically regulated commodity<br>• the good/service being delivered is subject to all federal, provincial and municipal tax regulations<br>• no competition, therefore necessary to make rules and regulations for operations and to control pricing |

## 2.7. Which Services Will PPP Used For?

PPP offers benefits to the public sector, the private sector and members of the public. However, a significant amount of effort and resources have to be put in by both the public and the private sectors in structuring a successful PPP deal where the responsibilities are optimally shared. Both the public and the private sectors have to gradually build up the competency to structure and sustain successful PPP deals (Ministry of Finance, Singapore, 2004).

For a start, Government will only be applying PPP to large value projects in sectors where there are successful PPP examples in other countries. Such sectors will include:

- Sports facilities.
- Incineration plants, water and sewerage treatment works.
- Major IT infrastructure projects.
- Education facilities, including student accommodation facilities.
- Hospitals and polyclinics.
- Expressways.
- Government office buildings.

PPP project is unique. There is no one single PPP model that is suitable for all PPP projects. Hence, Government and the private sector should work closely together to determine the optimal scope of collaboration in each project (WTO, 2004).

## 2.8. When Should Public Private Partnerships be Considered?

A public private partnership may not be the best option for delivering a public service or project. Government should undertake a cautious approach and examine all relevant factors and issues when considering this type of arrangement. The different forms of public private partnership vary in terms of how risks and responsibilities are allocated. They also vary in complexity and the degree of expertise required to successfully negotiate required contracts.

Governments should not assume that public private partnerships provide easy outs to difficult servicing issues. They should expect that increased transfer of risk will result in higher expectations for reward by the private sector and that the negotiation of contracts may require a high degree of expertise. The following discussion provides an overview of some of the potential benefits and risks associated with public private partnerships (ADB, 2003).

Public private partnerships are a suitable method of delivering most services commonly provided by government and are generally applicable to most components of service delivery.

2.8.1. Application of public private partnerships to various types of government services

The types of services that could be provided through public private partnerships will vary from government to government based on the policies of their Councils or Boards. Generally, most services provided by government could benefit from bringing the strengths of the private and public sectors together. Public private partnerships may be less suitable for government services to which access cannot be restricted (such as services with "public good" characteristics, including bylaw enforcement, environment protection and social services). They may also be less suitable for essential services (such as policing, fire protection and other emergency services) (UN/ECE, 2000).

Government officials and public groups tend to be more receptive to the provision of more specialized recreation facilities, solid and liquid waste management or utilities through public private partnerships.

2.8.2. Aspects of service delivery that lend themselves to public private partnerships

Virtually all aspects of service delivery lend themselves to public private partnership, including:

- project design
- project management
- construction and procurement
- financing
- operations and management
- maintenance
- marketing of services
- communications

2.8.3. When to partner with the private sector

Governments can consider partnerships with the private sector where any of the following circumstances exist:

- the service or project cannot be provided with the financial resources or expertise of the government alone
- a private partner would increase the quality or level of service from that which the government could provide on its own
- a private partner would allow the service or project to be implemented sooner than if only the government were involved
- there is support from the users of the service for the involvement of a private partner
- there is an opportunity for competition among prospective private partners
- there are no regulatory or legislative prohibitions to involving a private partner in the provision of services or a project
- the output of the service can be measured and priced easily
- the cost of the service or project can be recovered through the implementation of user fees
- the project or service provides an opportunity for innovation
- there is a track record of partnerships between government and the private sector
- there are opportunities to foster economic development

If none of the above conditions exist, public private partnerships should not be considered.

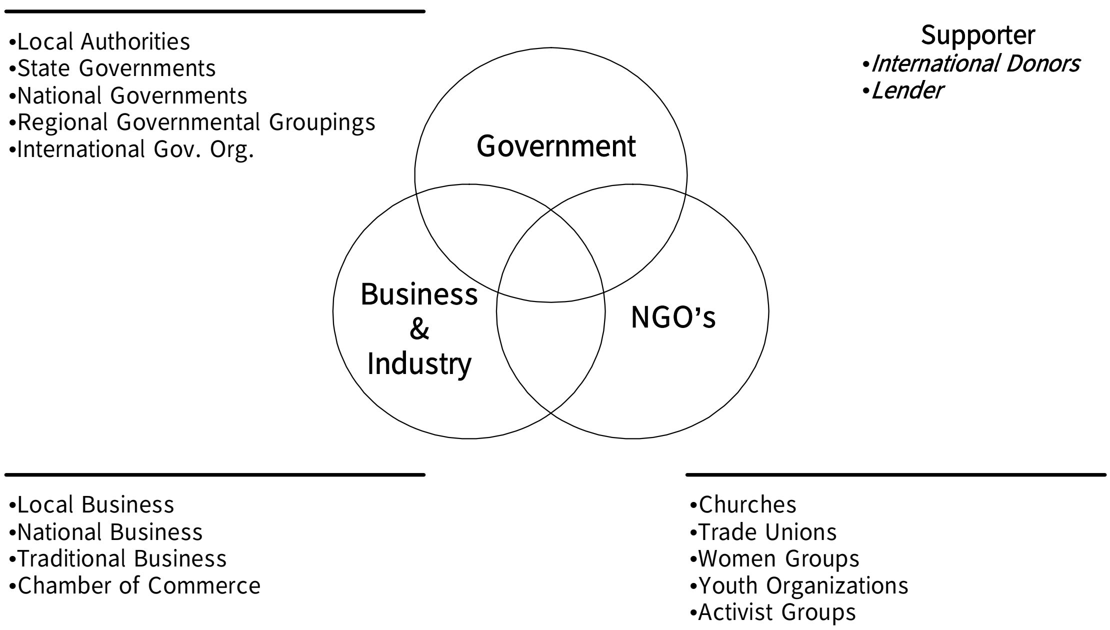
## 2.9. Who Should be Involved in Public Private Partnership?

Government may wish to involve various stakeholders in the preparation of their public private partnership policies and procedures, as well as in individual projects or service delivery initiatives and organizational changes. Developing consensus with key stakeholders at the outset on policies and procedures will allow individual initiatives to be evaluated on their own terms, rather than on overall ideology or policy.

Stakeholders include government staff and organizations such as unions. Private sector organizations and other interest groups with a stake in the outcome of such policies and procedures should also be involved. Followings show parties involved in public private partnerships (Service Industries, Canada, 2001).

Table 2-2. Parties Involved in Public Private Partnerships

| Public Players | Private Players |
|---|---|
| - state<br>- municipalities<br>- the legislative (courts/politicians)<br>- the executive (government, administration, authorities)<br>- public institutions | - private enterprises<br>- economic associations<br>- chambers of commerce<br>- labor unions<br>- interest groups<br>- private / single persons<br>- private clubs and societies<br>- citizen action groups |
| At least one player from each side and a common formal / informal agreement are needed to form a PPP. | |




[Figure 2-8] Parties involved in PPPs

## 2.10. Common Misconceptions About Public Private Partnerships

Given the numerous forms of public private partnership potentially available to government, there is some confusion as to what constitutes a public private partnership. Public private partnerships are often not considered due to erroneous information based on misconceptions. The most common of these misconceptions are:

• *Public private partnerships are the same as privatization*

Only one form of public private partnership, known as Build-Own-Operate (BOO) can be described as coming close to privatization. All other forms require an ongoing partnership between the private and public sectors. Even Build-Own-Operate involves a form of partnership in that the public sector can place conditions and regulations on the private partner. One of the key reasons for considering public private partnership is the ability to introduce competition in the provision of government services, either between private firms or between the private and public sectors. Full privatization merely transforms a public monopoly to a private monopoly such that the benefits of public private partnership are not realized.

• *By entering into a public private partnership, government loses control over the provision of services*

By entering into a public private partnership, government does not give up its ability to implement its policies or regulate the provision of services. The government establishes the ground rules and has the ability to shape the public private partnership to reflect its own objectives, policies and regulations. It can be argued that the government actually has more control, in that it has well-defined contractual remedies in a public private partnership arrangement that it may not have with its own management and staff.

• *Public private partnerships apply only to infrastructure projects*

Public private partnerships can be an effective and innovative way of delivering a range of government services and facilities. While large infrastructure projects tend to capture the most public attention, public private partnerships can also be used to deliver services that do not involve capital projects. Examples include provision of data services, refuse collection and road maintenance.

• *The principal reason for governments entering into public private partnerships is to avoid debt*

The principal reasons for government becoming involved in public private partnerships are to benefit from increased efficiency, shorter implementation time, greater innovation and ultimately better value in the delivery of services brought about by increased competition. The ability to finance a project so that the debt is "off book" should not be the prime motivation for entering into a public private partnership in that the government and the ultimate users of the service are still responsible for servicing the debt in one way or another. The emphasis should be on structuring creative and cost-effective ways of delivering services, not on creative accounting.

• *The quality of service will decline under public private partnerships*

Quality of service does not depend on whether the service is delivered in a traditional manner or through public private partnerships. The government has the ability to stipulate the quality of service to be provided and ensure it can enforce provisions of the contract dealing with quality control. The nature of public private partnerships suggests that the quality of service would not only be maintained, but enhanced. It is in the private partner's interest to invest in the service, become more efficient, enhance the quality of service to attract more customers or provide additional services to customers.

• *Government staff will lose under public private partnerships*

Both union and non-union staff sometimes fear public private partnerships because of potential job loss or reduced wages and salaries. In British Columbia, labor laws provide for the succession of labor contracts. Any public private partnership agreement will need to reflect the labor laws of the province and existing collective agreements. Often, the labor representatives are invited at an early stage of the process to discuss options for service delivery. Most partnership agreements that have been negotiated in Canada require the private partner to take on public staff and guarantee job security and salary levels. Any changes in staffing levels are generally consistent with labor contracts and occur through attrition rather than layoffs. Many of the benefits of public private partnerships, such as increased efficiency and higher quality of service, have been accomplished through former employees of government. Reasons for increased productivity include increased investment in employees through training, technology transfer and skill diversification.

• *The cost of service will increase to pay for the private partner's profit*

Governments sometimes resist public private partnerships because they believe that the cost of providing the service will increase to reflect the profits the private partner must realize to stay in business. While the private partner will need to make a profit, the profit must be earned within the existing or a lower price for the service. Presumably, the government would only enter into a public private partnership if the price of providing a given service was lower than if provided by the government, or if a higher level of service could be provided for the same price by the private partner. (This assumes that the government is not subsidizing the cost of providing the service.) The private partner's profit can only be realized through increased productivity or expansion of service, not through higher prices

• *Government can finance the cost of services at a lower cost than the private sector*

By borrowing through the Municipal Finance Authority, government can often finance projects at a lower cost than the private sector can. However, this may not always be the case. The objective of government should be to focus on the overall advantages of the public private partnership arrangement.

• *There are only two partners in a public private partnership*

From the narrow perspective of the public private partnership contract, there are only two partners. In reality, there are additional parties and interests that need to be on board as "partners" for the public private partnership to succeed. These include the customers of the service and the employees who will operate or deliver the service. Public private partnerships cannot succeed without the support of the end user of the service or the agreement of those who will ultimately deliver the service. A four-way partnership is required to successfully move service provision from the public sector to a partnership arrangement.

# 3. PARTNERSHIPS IN TOURISM

## 3.1. The Tourism System

Over the past 50 years the travel and tourism industry has experienced phenomenal growth to become one of the most dominating socioeconomic activities at the beginning of the 21st Century. It is a major creator of jobs across national and regional economies (World Travel and Tourism Commission & International Hotel and Restaurant Association 1999). Research based on simulated Tourism Satellite Accounting for 160 countries in the year 2000, illustrated that the direct and indirect impacts of travel and tourism were estimated to contribute Gross Domestic Product of US$3,575 billion. This represents 10.8 per cent of the total worldwide (WTTC 2001). In employment terms, it was estimated in the year 2000 that travel and tourism generates 192 million jobs around the world, across all industry sectors, which represents 8 per cent of total employment (WTTC 2001). It is expected that tourism will continue to expand and grow significantly over the next two decades (WTO 2001). In the year 2000 alone, international trips increased by nearly 50 million, bringing the total number of international arrivals to a record 698 million (WTO 2001). Global tourism is growing at an annual rate of 7%. It is still difficult to accurately quantify the number of domestic tourists, but researchers estimate there are approximately 5 times as many domestic as international tourists (Ceballos-Lascurain 2001).

A whole range of different services and products in both the source market and destination, are dependant on, create and shape the travel and tourism industry. What makes tourism distinct is that people often travel far distances to reach the product. It is a complex and highly integrated activity, reaching the upstream suppliers (i.e. aircraft manufacturers or food producers) and downstream services (i.e. retail shops) (WTTC & IHRA 1999). This is also known as the ‘flow-on’ or the ‘multiplier’ effect of tourism (Elliott 1997).

A whole range of stakeholders from both the private and public sector participate in the tourism system. Stakeholders in the tourism industry include (Table 1) (De Lacy, et. al., 2002):

*Supply side*

a. Those whose resources are used – e.g. government bodies such as parks and wildlife, galleries, museums, heritage sites, traditional landowners

b. Those who deliver the product – e.g. tourism operator such as airlines, hotels, restaurants, attractions, tour operators.

c. Those who manage destinations – e.g. tourism commissions

d. Those who provide infrastructure – e.g. roads, building, water supply, waste disposal.

*Demand side (those who use the product – tourists)*

a. International

b. Domestic

Table 3-1. Stakeholders in the Tourism Industry

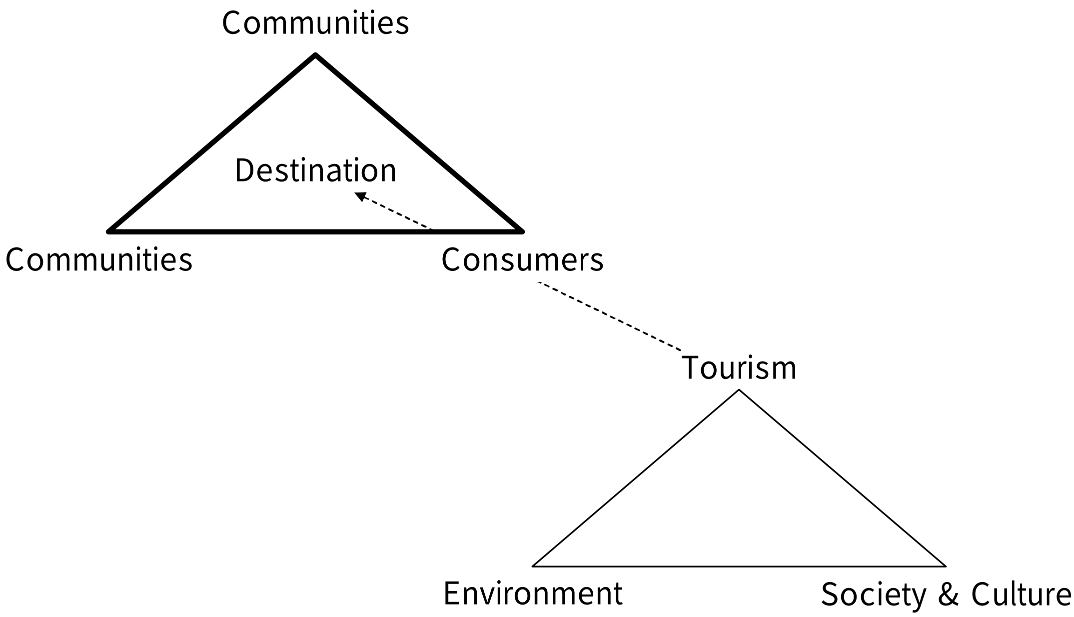
| | Category | Examples |
|---|---|---|
| Supply Side | Resource owners | Traditional landholders |
| | Resource managers | National park managers |
| | Providers of infrastructure | Construction, design, power, gas, water, waste treatment |
| | Planners & development control | Government authorities |
| | Deliverers of product | Enterprise operators – hotels, airlines, airports, hire cares, attractions, tour operators, travel agents, farm stays, convention centers, restaurants, museums, sporting events |
| | Destination developers & marketers | Tourism commissions, government |
| | Employees | Managers, hospitality, planning, communication, ICT, finance, construction |
| Demand Side | Tourists | Domestic and international – e.g. package holidays, ecotourists, business travelers, backpackers, visiting friends and relatives, events, conferences, cultural tourism |

The travel and tourism industry has the ability to create and spread wealth, employment and innovation from urban to rural and regional areas, while acting as a catalyst to the development of other economic activities (WTTC 2001). Importantly, tourism is a catalyst of entrepreneurship and small businesses.

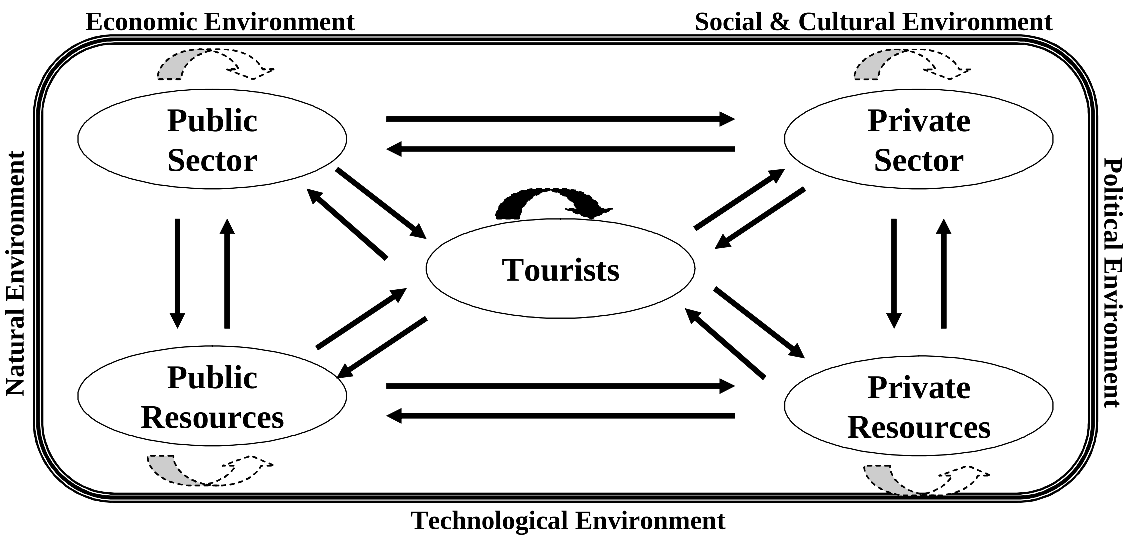
Tourism however is more than an economic activity and an industry; it is inherently interrelated with culture and environment (Figure 3-1; Figure 3-2) (Fridgen, 1991; Holecek, 1995, 1996). It is a universal, dynamic, social and cultural phenomenon, touching all countries of the world and affecting their people, culture and environments (Elliott 1997). Tourism's interconnection of people and their environment, means that its long-term survival depends on sustainable tourism developments that foster healthy and vibrant natural and cultural environments.

As a result of travel and tourism's diverse nature, it is also a highly fragmented industry. Therefore, the long-term survival of the industry also depends on coordinated action between different sectors. This is both challenging and important in order to achieve a more sustainable industry. It demands that further development should be guided by greater dialogue, co-operation and partnerships between the public and private sectors (WTO 2001) (Figure 3-1). This is not to say that sustainable tourism development cannot result from partnerships within the one sector. Collaboration between various stakeholders however does allow for more successful tourism planning, management, marketing, product development, training and education (Selin 1999). To achieve responsible tourism planning and management outcomes, partnerships must be holistic in outlook and based on sustainable development principles, and exist at the national, provincial and importantly at local levels (WTO 2001). The process of collaboration and partnership is a key element for planning and managing natural and cultural assets/products. Partnerships are at the core of sustainable development and sustainable tourism (De Lacy, et. al. 2002).

Clearly, tourism plays a paramount economic role in countries around the world and, if planned and managed correctly, can significantly contribute to sustainable socioeconomic development and environmental conservation. By experiencing different cultures and traditions, tourism can also represent a critical force for peace and understanding among peoples of the world (WTO 2001).




[Figure 3-1] Interrelationships in tourism




[Figure 3-2] Tourism System

## 3.2. The Public and Private Sectors

3.2.1. Public sector

The term ‘public sector’ covers the whole range of public organizations, from national government ministries and departments to government business enterprises and government tourism departments. Just as tourism has been identified as important to many governments economically and politically – public sector (government) involvement is very important to the sustainable growth and development of the tourism industry (Elliott 1997). The public sector makes up a core component of the tourism industry. Many tourism products are based on public assets such as the natural and cultural environments. A key role of the public sector is to provide basic infrastructure, essential services, destination management and marketing, innovation, training and education (Elliott 1997). These are important components in providing a sustainable and profitable travel and tourism industry. Governments provide a policy and planning framework for environmental protection and heritage management and set strategies to encourage the private sector to take the issue of sustainability seriously (Swarbrooke 1998).

3.2.2. Private sector

Private enterprises provide the basic tourism products, facilities and essential services, such as: accommodation, transport, restaurants, retail, various attractions and even experiences. This sector ranges from large vertically and horizontally integrated global corporations such as tour companies, airlines and hotel chains, to tiny, remote local family businesses, such as craft shops and lodges.

The private sector therefore, plays an essential role in the development and management of tourism and must be equally involved with national, regional and government, in the management and sustainable development of tourism.

3.2.3. Public private partnerships in tourism

Until recently, the travel and tourism industry has been hesitant in establishing public/private partnerships, because of the very competitive market within which it operates.

Industry has been reluctant to participate in public policy objectives, in case they are required to do anything that will increase their costs, or otherwise reduce their competitiveness (Swarbrooke 1998).

Public/private tourism partnerships however, can do quite the opposite. They represent a pooling of knowledge, expertise, capital and other resources from various stakeholders (Bramwell and Lane 2000). There is gradually a growing awareness of the benefits of partnerships. They ensure consistency within a framework and act as an effective agent for planning, management, problem solving and change, and therefore enhances rather than reduces the competitive advantage of the tourism product (UNCSD 1999).

According to Wood and Gray (1991:146) collaboration occurs: "…when a group of autonomous stakeholders of a problem engage in an interactive process, using shared rules, norms and structures, to act or decide on issues related to that problem" (Bramwell and Lane 2000).

Whatever the tourism objective is, from economic development, poverty reduction, protected area management, conservation, cultural development or social justice, the travel and tourism industry is beginning to realize the power of collaboration and partnerships. Most important are the partnerships between local community, and the tourism industry, which provides opportunities for community involvement and participation in tourism.

This integration has spawned a diverse array of new interorganisational forms and agreements including regional planning authorities, joint management of protected areas, community-based cooperatives, multinational firms and coalitions formed by global accords (Bramwell and Lane 2000). There are various inter-organizational forms and agreements that represent the travel and tourism industry on the global and regional level. They play an important role in coordinating, organizing and planning the travel and tourism industry. On a global level, key intergovernmental and industry organizations include the World Tourism Organization (WTO) and the World Travel and Tourism Council (WTTC). There are also various sector associations representing the private sector, for example the International Hotels and Restaurant Association (IHRA). On a regional level, key bodies include the Asia Pacific Tourism Association (PATA) and the Asia Pacific Economic

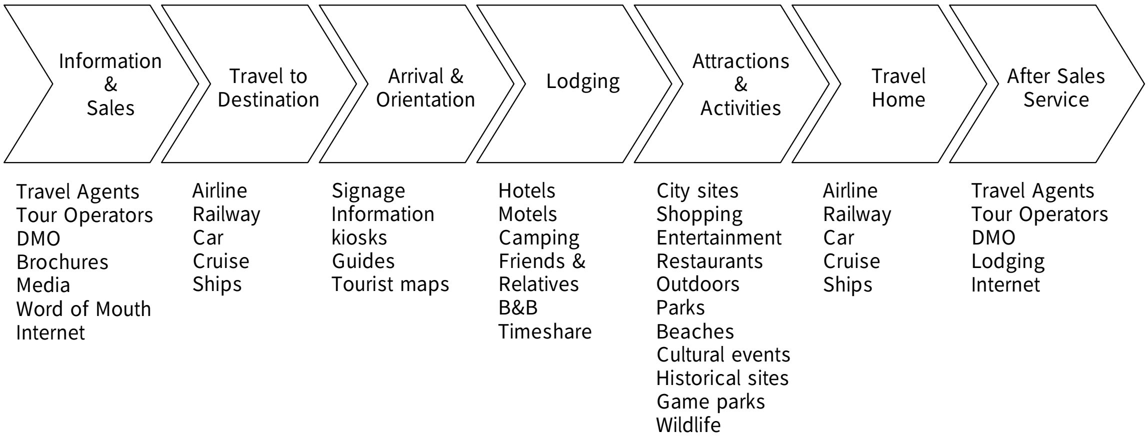
Cooperation (APEC) Tourism Working Group. There is an increasing awareness in the APEC region that strengthened partnerships between the public and private sectors in tourism will assist tourism to effectively meet economic, environmental and socio-cultural goals. This will benefit industry, private sector, tourist consumers and host communities.

## 3.3. Recognizing the Opportunities in Tourism

The tourism sector, perhaps because it encompasses so many sectors of the economy, is susceptible to fragmentation. Travelers are becoming more sophisticated and wanting customized experiences, creating tendencies for the sector to develop micro-segments, niche brands and customized products - all valid strategies. Unfortunately, these same strategies can also build barriers to protect narrow regional identity or business interests that in a globalized world may not allow sufficient leverage of resources. But building partnerships is about trying to find where the commonalities lie, breaking down the barriers in order to leverage what each can bring to the table (WTO, 2003d).

The tourism sector presents any number of opportunities to partner. It is characterized by a burgeoning set of small and medium sized businesses that have the entrepreneurship and flexibility to take advantage of new opportunities. On a global scale, the public sector is looking for new ways to partner with the private sector to strategically develop and market tourism and to leverage available assets for growth.

We are beginning to recognize that the destination represents a bundle of experiences that all together create a competitive cluster. The greater number and range of things to see and do, the better the destination is able to sustain visitation in fragile times. But it’s individual businesses that make up the “destination,” and it’s not just those that provide the attractions and activities, the things to see and do, that are important. As Exhibit II-1 suggests, the value chain in the tourism sector begins outside the destination, where the idea to travel is first presented and converted into the decision to travel. The opportunity to partner resides in the myriad of links in the value chain.



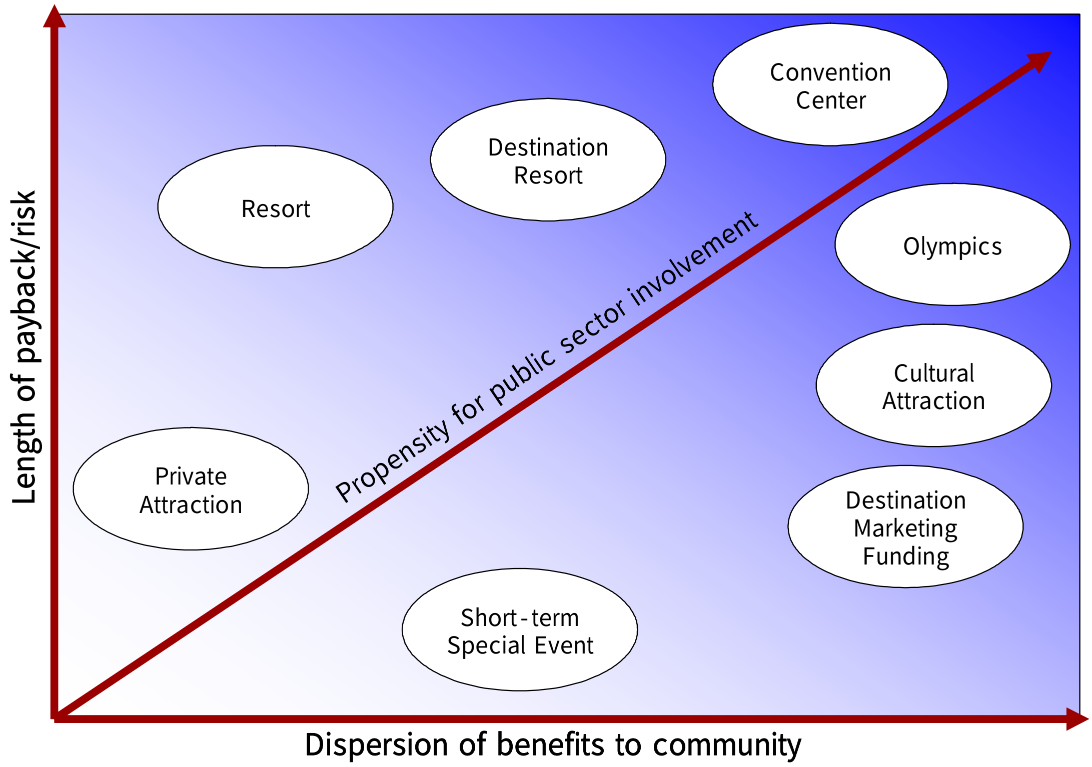

[Figure 3-3] Tourism value chain

It's also important to note that the opportunity to partner is not just with organizations that are traditionally viewed as being within the tourism sector. Organizations are beginning to think creatively about opportunities to partner with non-traditional sectors. For example, in our case studies Spa Canada, a consortium of spa operators, partnered with a retail chain that specialized in paint and home decorating because these two industries targeted the same market segments and each could leverage the other's offering.

Partnerships can then take a variety of forms and involve any number of partners-indeed, and as the WTOBC 2000 study noted, no "correct" formula or model is available to follow. The formation of partnerships depends on the circumstances, economic, organizational, cultural, and structural capability of the private or the public sector to participate, and the willingness of the potential partners to assume the additional responsibility that the partnership entails.

Each partner brings unique assets and capabilities to the partnership. For its part, the public sector may be able to offer assets that are under utilized or "soft assets," such as reputation or an existing customer base. Given the capacity of the public sector to be able to borrow at an effective rate, the public sector can also bring a lower cost for financing capability. On the other hand, the private sector can often bring a business focus and may also be able to bring international operational and marketing experience. In some instances the private sector can also bring capital. However, whether they are from the private or the public sector, the key motivator to co-operate is that all partners will benefit from the alignment of resources and objectives.

Public-private partnerships have become popular vehicles for creating investment in tourism development. But when does it make sense for the public and the private sectors to partner? As demonstrated in Exhibit II-2, and as a rule of thumb, the public sector will likely have a higher propensity to invest when the dispersion of benefits to the public is high and the return on investment is stretched over a long period of time (making it prohibitive for the private sector to undertake solely). In other words, the public sector is more likely to solely own and operate assets such as such as convention centers, museums and large destination attractors. These assets require intensive and ongoing capital investment, but the payback to the public is substantial in terms of quality of life and the economic impact of the incremental inflow of high-value visitors to the city.




[Figure 3-4] Propensity for the public sector to invest in tourism projects.

If the public sector is looking to partner, generally it will be in those areas where the dispersion of benefits to the public is high, but the payback to the private sector is within a reasonable amount of time. As the WTOBC 2000 report indicated, the main area for public-private sector co-operation in the tourism sector has been in marketing and promotion. Marketing, particularly in international markets, is inherently expensive and partnerships offer the opportunity to pool limited resources. Other common areas for public-private co-operation are product and infrastructure development; education and training, and; financing and investment.

The Nepal Tourism Board has restructured as a public-private partnership to ensure that the national tourism organization is meeting the needs of Nepal's private sector. In Nepal, the dispersion of benefits of an active and vibrant tourism sector to the country's population can be tremendous. It makes sense for the private sector to participate, because the success of the national tourism organization will directly affect their bottom line. The private sector can not only bring additional financial investment, but they can also bring marketing expertise (WTO, 2003d).

In another case, the Hungarian government has led the redevelopment of the spa and wellness tourism sector by supporting a targeted set of public-private partnerships. Under Hungary's Szechenyi Plan, the national government's funding was aimed primarily at those spa assets that are the main tourist attractors and/or are culturally important but neglected. The return on investment in these spa assets would likely not be initially interesting to the private sector given the magnitude of the investment and associated risks. However the dispersion of benefits to the public would be large once the spa was revitalized, spurring further private sector investment in the support infrastructure such as hotels, taxis, health tourism, among other ventures. In instances such as this, the public sector will more likely take the lead when the required investment to kick start the redevelopment is high, allowing the private sector to take advantage of the opportunities as they arise (WTO, 2003d).

Similarly, in Egypt, the Egyptian government is partnering with the private sector in a massive redevelopment effort in what has become known as the Red Sea Riviera. However, in this redevelopment, the Egyptian government is not directly investing in tourism assets, but is investing in basic infrastructure such as roads, hydro and communications and then supporting the private sector through various incentive plans. Through a number of structured schemes, large and small capital can participate (WTO, 2003d).

In some cases the public sector is not always available to partner. The public sector may be hampered by the availability of resources and/or may not have a history or tradition to partner because of a variety of cultural and economic factors. In these cases, the public sector may wait until the private sector demonstrates the interest and willingness to partner. For example, in Cape Town's townships, the private sector has undertaken a phenomenal initiative leveraging off of an existing Web-based marketing solution to create the Sonke Tourist Route. Through the demonstrated success of the project and the enthusiasm of the participants, the public sector is now taking note and beginning to come to the table as a participating partner.

No easy answer is available to the question as to when should the public and private sectors partner. The case studies demonstrate that both the public and private sector can play a role. Public-private partnerships are becoming very popular, but they should not be viewed as a cure-all for public and private sector challenges, such as limited development capital, limited operating funds and inefficient cost structures.

Without a doubt, public private partnerships can bring about significant benefits, but they are difficult to achieve and may not be achievable in all circumstances. As demonstrated by the private sector experience in Cape Town's townships, the private sector may need to take the lead at least initially in the development initiative. And, of course, sometimes it just makes more sense for the private sector to create partnerships with each other to ensure competitiveness.

The tourism sector is under great pressure. The financial sector tends to see parts of the tourism sector as being relatively traditional, slow to change and prey to shocks. That the tourism sector consists mainly of small and medium sized enterprises -even micro-enterprises- is part of the tourism reality. Small though many of its members may be, the tourism sector has proven that it can be resilient and creative in response to changing environments. Now, more than ever, if they are to be successful, tourism operations must master partnering to sustain and grow this important sector.

## 3.4. Specific Public Private Partnership Opportunities in Tourism

It is rare for partnerships to draft their plan so accurately that course corrections are never required. One of the delights of partnering is the discovery of unintended successes, some big and some small. For example, Ontario East found their Cycling Map has been a tremendous success. Tourism operators indicated that visitors are more interested in the area and are more inclined to extend their stay, if only for a few hours, to experience the region's offering. This led to the printer continuing the series outside the partnership region, and developing five additional cycling maps for the southern portion of Ontario (CTC, 2001).

Areas where partnering can create opportunities are summarized below and examples are shown on the following chart:

1. Technology
2. Operations
3. Advocacy
4. Product development
5. Human resources
6. Research
7. Marketing
8. Financing

Table 3-2. Activity areas where partnering can assist in product development

| Activity Areas | Partnership Examples |
|---|---|
| 1. Technology | Use of technologies can improve communications, marketing & information exchange |
| Technology Development | • The Northern Wilderness Adventure PC not only has a web site, but developed an intranet capability for PC member communications<br>• The Golf PC has just developed an agreement with Golfserv – a golfwebsite provider<br>• The Festivals Network has developed a website for hundreds of Canadian festivals, using HRDC job creation assistance for staff. This is a website for the public to search festivals, & assists members, is a marketplace for suppliers, & is updated daily |
| Technology Diffusion | • The Bay of Fundy PC finds it much easier to communicate between partners with email<br>• The Conservation Lands of Ontario & the Northern Wilderness PCs have developed new communications tools for members – electronic bulletins<br>• The Quebec Maritime PC uses Flash4 technology to enable website visitors to send electronic postcards to others – new electronic marketing materials |
| 2. Operations | Groups have more negotiating power |
| Materials Purchasing | • The ECONOMUSEUMTM network negotiated volume rates on products with logos, such as paper bags, craft paper, silk paper. |
| Insurance | • The ECONOMUSEUMTM network is negotiating group insurance rates for cars & for buildings |
| Services Purchasing | • Ski & Snowboard negotiated joint advertising rates in regional newspapers, to obtain the best prices<br>• The ECONOMUSEUMTM Network negotiated with a craft show to have all members together on one aisle of the show. They also plan to rent a group truck to take crafts to the show. |
| Contracting Services | • Conservation Lands of Ontario staff charge for substantive advice which they provide others |
| Staff Sharing | • Ontario East Tourism Association shares its staff with the Ontario East PC |
| Management | • Partners for the Saskatchewan River Basin Tourism Consortium (a PC partner) had an organizational structure, later used for management of the Saskatchewan River Basin PC |

Table 3-2. Activity areas where partnering can assist in product development (continued)

| Activity Areas | Partnership Examples |
|---|---|
| 3. Advocacy | Adopt policies or guidelines of appeal |
| Regulations | • When there was a move for Lighthouses decommissioning, the partners took legal action. Each had different roles: – provinces offered postage, copying, meeting space, phones, etc.; they had Coast Guards financial assistance. They developed good news stories which gave PR to their cause, & they lobbied for a Lighthouse Protection Act. Every time there was an award, they nominated a Lighthouse, to increase publicity & awareness & mobilize community groups outside the partnership. When the public responded by asking for further information, volunteers provided the best information possible giving "their story" first, then passed the queries on to others last. This prominence helped mobilize community groups to say "there is hope, hang in there & stay interested." Now, the Coast Guard is asking that lighthouse queries are referred to champions from the partnership. |
| To Markets | • Conservation Lands of Ontario implemented policies to improve quality & appeal of services & packages, (related to environmental protection, community development, recycling, conservation, sustainable development, $$ investment) embedded in membership conditions<br>• Adoption of codes of ethics gives a message of conservation & sustainability, as exemplified by the Ecotourism PC, the Saskatchewan River Basin PC, & the CLO |
| Government Programs | • Ski & Snowboard has influenced federal government marketing programs<br>• The Arts in the City PC works with the Greater Vancouver Regional District on their Cultural Tourism Strategy, & helped the Ministry responsible for Tourism & Culture to develop a symposium, which increased awareness of cultural matters |
| Government Policies | • Ski & Snowboard advocates positions on behalf of members, e.g., supporting the development of limits in the Banff/Jasper ski areas<br>• WTAY partnered with YTG in developing the Wilderness Tourism Licensing Act. "The PC frees up resources & strengthens our sector, allowing WTAY to pursue advocacy" |

Table 3-2. Activity areas where partnering can assist in product development (continued)

| Activity Areas | Partnership Examples |
|---|---|
| 4. Product Development | Partners provide ability to develop powerful product databases & quality standards |
| New Product Development | • New product testing with target markets<br>• Fundy touring. Or new package (Saskatchewan R Basin)<br>• The ECONOMUSEUMTM Network is aware that some traditional craftspeople made articles or products which are not likely to be bought by one of their main markets – bus tours. They tend to buy lower cost souvenirs. Whereas some craftspeople might have made items which started from $50, which is too expensive for many markets. The ECONOMUSEUMTM have a program of assistance to show craftspeople how to do different, less expensive items for bus markets.<br>• The CLO conducted serious research with bookstores & staff when developing Guidebooks, to have correct price points for middle markets, but with the best maps, to ensure high quality product. |
| Product/Service Improvements | • Greektown/Taste of the Danforth - approach a business which adds to variety & dimension of product with your customer base as a potential new market for their operation.<br>• Or new services/amenities to serve a specific market, e.g., group of resorts might feel real need for additional winter activities for family market – Ski & Snowboard, so they expanded offerings at ski hills (not just snowboarding, but lodge, transportation, etc.)<br>• Offer value-added (e.g. complimentary item with purchase of package). Or crosspromotion, where purchasing one gives discount at another<br>• Win a contest or prize - e.g., a holiday (Independent Innkeepers of Ontario)<br>• Frequent buyer promotions (retail purchase points to help buy a w/e special at your venue)<br>• Bay of Fundy PC developed a self-critiquing operator tour of attractions & operations on both sides of the Bay of Fundy |
| Facility Development | • The ECONOMUSEUMTM Network assists new craftsworkshops with the layout and details of their enhanced facilities, to provide welcome, interpretation, viewing & retail opportunities. |

Table 3-2. Activity areas where partnering can assist in product development (continued)

| Activity Areas | Partnership Examples |
|---|---|
| Product Packaging | • CLO developed a series of packages, combining accommodations, activities, transport, B&Bs, restaurants, research, native culture, attractions, & other elements Product Database • Developing an inventory of product, or supply, particularly when dispersed, e.g., the Health PC<br>• Ontario East developed a database of shipwrecks, to assist its scuba diving industry<br>• The Travelers with Special Needs PC developed an inventory of tourism facilities which cater to the disabled. This has proved to be tremendously helpful for those seeking to develop packages, since the appropriate partners were not previously well known<br>• The Lighthouse PC developed an inventory of lighthouses (& lighthouse keepers' quarters) in the Maritimes (over 300) with a record of: which are operational, surplus, history, & whether or not the Canadian Coastguard is willing to release them, those of no use for tourism, those with potential, & current use. Also technical information about such topics as foghorns, sounds, lights, paints, salt-box styles. They will to put this on the web. |
| Product Quality Standards | • ECONOMUSEUMS have very clear standards about the product & presentation<br>• The Bay of Fundy PC has developed a Mentoring Program for key operators, who are eligible for a personalized market-readiness report card with established benchmarks. These will be eligible for a quality recognition package, possibly the Ultimate Fundy Operators.<br>• The Ecotourism PC developed operator principles which it communicates to visitors. It invites visitors to comment to both the PC & the operator, after experiencing the product. |
| Value Added | • The Conservation Lands of Ontario retail bottled water & discovery guide books to benefit consumers, with profits funneled back into the agencies & projects to benefit the resource<br>• Ontario East developed a cycling guide to the region in the form of a map, which is for sale so continually reinvests in future printings<br>• The Independent Innkeepers of Ontario developed a guidebook & travel planner, which not only focused on inns, but the activities, attractions & events around their properties, which not only provided value-added for visitors, it often induced them to stay longer |

Table 3-2. Activity areas where partnering can assist in product development (continued)

| Activity Areas | Partnership Examples |
|---|---|
| 5. Human Resources | Share costs of training or staffing |
| Recruitment | • Greektown businesses shared the cost of shuttle bus & driver taking visitors from down town hotels to Greektown, & interpreting on the way |
| Apprenticeship | • One of the Biosphere Reserves hosted a college student doing a practicum. From that position, she moved to be part time manger of the Ecotourism PC on graduation |
| Skills Development | • Partner with a training institution & other businesses to develop & implement training courses for your staff. E.g. Adventure PC partners with the Tourism Chair at the University of Montreal to work on market research & other studies<br>• The Outdoor Adventure PC meets regularly where individual sectors share their experiences, product & expertise, so as to benefit the entire alliance |
| Training | • Best practice tours/evaluation<br>• The PC for Travelers with Physical Disabilities trains by using a team of disabled people who, with simplicity & humor, break the ice around discussions of the topic of disability. They provide a description of the different types of disabled clientele (impairment related to motor, speech, hearing, visual, intellectual & emotional aspects), or even the elderly. They discuss perceptions & attitudes, & propose techniques for helping & welcoming these clients. Training is directed at the managers & staff of hotels & restaurants, tourist attractions, activities, & students, guides & recreation organizers.<br>• Ontario East developed & delivered seminars to industry partners |
| 6. Information & Research | Collectively undertaking joint research |
| Gathering Information (On Competitors Or More General) | • The Aboriginal PC works with the University of Montreal which conducts studies & surveys for them, usually charging only for hard costs, & providing the intelligence at no cost<br>• The Health PC conducted product specific research outside its region, on spas & health tourism<br>• The Saskatchewan River Basin PC commissioned research related to attitudes & knowledge about the PC throughout the river basin |

Table 3-2. Activity areas where partnering can assist in product development (continued)

| Activity Areas | Partnership Examples |
|---|---|
| Customer Research | • Market research (current or niche)<br>• Satisfaction research or motivations (for traveling to the area)<br>• Common customer base<br>• Combine data bases on customers to do joint research on price-sensitivity<br>• Ski & Snowboard conducted significant psychographic research on their national markets, examining origins, characteristics, motivations & overnight stays, providing first time new knowledge to partners<br>• The Conservation Lands of Ontario conducted branding-related research with markets to assist position the CLO PC<br>• Because small attractions had insufficient resources, the Arts in the City PC developed a standard visitors' form to be used by all attractions, to centralize & analyze all market information. |
| Benchmarking/ Industry Evaluation | • The Saskatchewan River Basin PC commissioned Tourism Saskatchewan to evaluate their performance<br>• Performance measures or benchmarking |
| Strategic Planning | • The Conservation Lands of Ontario jointly commissioned a strategic marketing audit |
| Product Research | • Product info not necessarily in same region, about competition<br>• The Health PC developed an inventory of research materials on spas & health tourism as well as on Canadian health tourism product supply<br>• The Conservation Lands of Ontario developed a complete properties & facilities inventory |
| Industry Assistance | • Greektown developed a manual for its members, which could also be used by other communities across Canada |
| Feasibility Studies | • Economic impact studies to allow you to quantify benefits of tourism to area<br>• Feasibility studies for specific projects |

## 3.5. Expected Model of PPP for Facilitating Tourism Investment

There are several elements to encourage public and private partnerships for facilitating tourism investment. Those are:

a. facilitation of tourism: endeavor to facilitate travel of tourists to both destinations

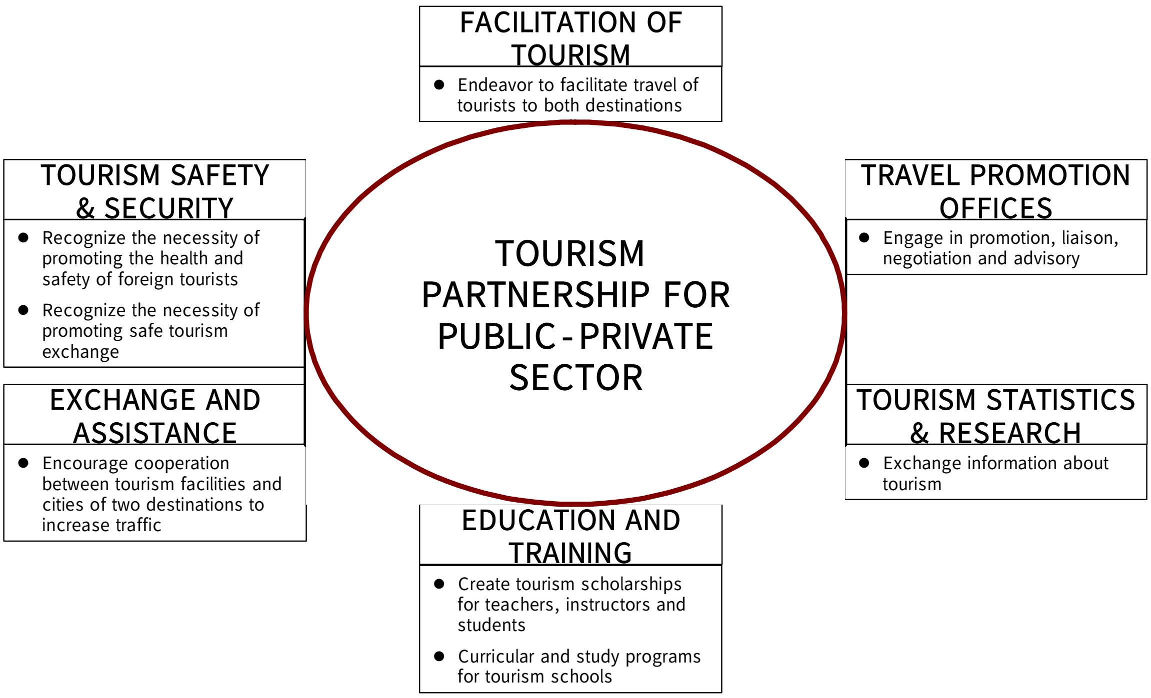
b. travel promotion offices: engage in promotion, liaison, negotiation and advisory

c. tourism statistics and research: exchange information about tourism

d. education and training: create tourism scholarships for teachers, instructors and students; curricular and study programs for tourism schools

e. exchange and assistance: encourage cooperation between tourism facilities and cities of two destinations to increase traffic

f. tourism safety and security: recognize the necessity of promoting the health and safety of foreign tourists; recognize the necessity of promoting safe tourism exchange




[Figure 3-5] Expected PPP model for facilitating tourism investment

# 4. LEGAL FRAMEWORK FOR FOREIGN INVESTMENT AMONG MEMBER ECONOMIEES

The authors cited and summarized “Guide to the Investment Regimes of the APEC Member Economies - Fifth Edition, 2003” published by APEC Secretariat in 2004. If you have any further interesting about this section, please consult above document.

## 4.1. Australia

4.1.1. Background on the foreign investment regime

Australia’s foreign investment policy comprises the Foreign Acquisitions and Takeovers Act 1975(FATA) and various Ministerial policy statements on foreign investment. The Government's approach to foreign investment policy is to encourage foreign investment consistent with community interests. In recognition of the contribution that foreign investment has made and continues to make to the development of Australia, the general stance of policy is to welcome foreign investment. Foreign investment provides scope for higher rates of economic activity and employment than could be achieved from domestic levels of savings. Foreign direct investment also provides access to new technology, management skills and overseas markets. The Foreign investment policy provides for Government scrutiny of many proposed foreign purchases of Australian business and properties.

4.1.2. Regulatory framework and investment facilitation

a. Transparency

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

(i) to acquire interests in Australian urban land regardless of value; and

(ii) to acquire substantial interests in Australian businesses having total assets valued at $50 million or more.

b. Most favored national treatment/non-discrimination between source economies

Australia's foreign investment policy is applied on a non-discriminatory basis as to source country of investment funds. There are no applicable international agreements, which provide for MFN exceptions in relation to the administration of Australia's foreign investment policy.

c. National treatment

Australia's foreign investment policy, by its nature, discriminates between foreign investors and domestic investors. Australia is therefore unable to commit itself to the provision of national treatment. A list of the key laws, regulations and policies which provide exceptions to national treatment has been provided in section B(1). The Australian Securities and Investment Commission (ASIC) regulates the securities markets in Australia. A foreign corporation which offers securities (including bonds) in Australia must comply with the Corporations Law.

d. Repatriation and convertibility

There are no restrictions on the repatriation of capital and earnings by foreign investors related to foreign investment. 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 are no restrictions on the convertibility of currencies for the overseas transfer of funds.

e. Entry and sojourn of personnel

Temporary business entry arrangements provide for the entry of foreign personnel for both short and long stay business entry. The APEC Business Travel Card cuts though the red tape of business travel, and gives credited business people pre-cleared entry to participating APEC economies. Card holders enjoy:

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

*Restrictions/Description*

A spouse and dependent children who are part of the family unit of the principal applicant are granted a visa with the same conditions and period of validity as that principal.

f. Investor behavior

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.

## 4.2. Brunei Darussalam

### 4.2.1. Background on the foreign investment regime

Foreign Direct Investment has long been recognized as one of the ways to deal with Brunei Darussalam's over dependence on oil and gas. It remains as an important element in the diversification strategy of the National Development Plans of this country. It is also an important source of technology transfers, production know-how, employment as well as market access. Now FDI is not just "one of the ways" to develop the economy but it has just gained a new height when a new-image Brunei Economic Development Board (BEDB) was reestablished in 2001.

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

4.2.2. Regulatory framework/investment facilitation

a. Transparency

Investment Incentives Act (Chapter 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. The Companies Act (Chapter 39) is the main Act which provides for the incorporation and registration of companies in Brunei Darussalam. It provides for the conditions under which companies incorporated outside Brunei Darussalam may carry on business in Brunei Darussalam. The Act also controls the functioning of companies within Brunei Darussalam in related matters. Business Name Act (Chapter 92) 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 Licenses Act (Chapter 127) provides for the licensing, regulation and control of certain commercial places and activities and for incidental purposes. Miscellaneous licenses are renewable annually. To utilize 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.

b. Most favored nation treatment/non-discrimination between source economies

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

c. National Treatment

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

d. Taxation

Brunei Darussalam has no personal income tax. There are no exports, sales, payroll or manufacturing taxes. Sole proprietorship and partnership businesses are not subject to income tax. Only companies registered under public and private limited are subject to 30% corporate tax.

e. Investor Behavior

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

## 4.3. Canada

### 4.3.1. Background on the foreign investment

The attitude of the Government of Canada to foreign investment was clearly articulated with the passage of the Investment Canada Act (ICA) in 1985, which replaced the more restrictive Foreign Investment Review Act (FIRA). In March 2002, Canada's Minister for International Trade stated that for Canada foreign investment is key to prosperity and job creation. The Minister has also promoted the benefits of inward investment as being an important source of high-skill, high-value jobs, and outward investment as being linked to increased exports of goods and services from Canada. Canada has responded directly to the increased importance of international investment (both inward and outward). It has taken concerted actions that have greatly improved the Canadian investment climate; developed targeted investment attraction strategies; and actively participated in the development and implementation of international rules governing investment.

4.3.2. Regulatory framework/investment facilitation

a. Transparency

Foreign investment in Canada is subject to multilateral obligations (e.g. through the Organization for Economic Cooperation and Development (OECD) and the World Trade Organization (WTO) and, more recently, to obligations in regional and bilateral agreements (CCFTA) and 22 Foreign Investment Protection Agreements (FIPAs). The only domestic law of general application with respect to foreign investment is the Investment Canada Act.

b. Most favored nation treatment/non-discrimination between source economies

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.

c. Taxation

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 The federal and most provincial governments levy general sales taxes and product-specific taxes in Canada. The federal Goods and Services Tax (GST) is a value-added tax that applies to most goods and services consumed in Canada. The GST is not generally charged on exports.

http://www.fin.gc.ca/treaties/treatystatus_e.html.

d. Performance requirements

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

e. Investor behavior

Foreign investors and domestic investors alike are expected to observe all laws, regulations and administrative policies that are in place in Canada. Canada endorses the OECD Guidelines for Multinational Enterprises. These guidelines set out voluntary principles and standards of responsible conduct which will help to promote and protect the environment and human rights, and uphold labor standards.

4.3.3. Investment protection

a. Expropriation and compensation

Both at the federal and provincial levels, there exists legislation giving authority to expropriate for public purpose in accordance with the rule of law, subject to compensation. In all circumstances, a fair and equitable legal process is available to the expropriated party for the determination of compensation. Authorities first attempt to reach agreement on appropriate compensation, failing which the action is subject to the judicial process. Compensation is based on fair market value. Valuation criteria are determined by the courts and can include such things as asset value, going concern value, and other criteria.

b. Settlement of disputes

Foreign and national investors have equal access to legal procedures in Canada. In addition, under the NAFTA and a number of bilateral investment agreements, foreign investors can appeal to international arbitration mechanisms. Canada is a party to the Convention on the Recognition and Enforcement of the Foreign Arbitral Awards (the “New York Convention”) done at New York 10 June 1958. It entered into force for Canada on 12 May 1986. The British Columbia International Arbitration Centre (Vancouver, B.C.) and the Quebec National and International Commercial Arbitration Centre (Montreal, Quebec) offer services that may be accessed by foreign investors.

## 4.4. Chile

4.4.1. Background on the foreign investment

Under Chile’s constitutional and legal framework, foreign investment in all sectors of the economy is allowed and encouraged, with minor restrictions in some sectors. Generally, foreign investors are subject to the same laws and regulations as nationals. The first, simpler investment mechanism is Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (CFER). Under this mechanism, FDI need only comply with registration procedures. The second mechanism is the Foreign Investment Statute (Decree Law 600). Since coming into force in1974, the vast majority of foreign investors have chosen to use this mechanism. Based on constitutional principles, the Foreign Investment Statute guarantees non-discriminatory and non-discretionary treatment of foreign investors. The former assures all people, regardless of their nationality, "to be treated by the State and its bodies in economic matters without arbitrary discrimination."

4.4.2. Regulatory framework/investment facilitation

a. Transparency

*Overview*

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

*Special advantages for foreign investors*

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

*Foreign investment procedures*

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

*Institutional framework*

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

b. Most favored nation treatment/non-discrimination between source economies

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

c. National treatment

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

d. Repatriation and convertibility

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

e. Taxation

Taxes can only be created by law. The Chilean tax system may be separated into taxes related to foreign trade, which are supervised by the National Customs Service (Servicio Nacional de Aduanas, hereinafter the “Service”) and, on the other hand, internal taxes which are supervised by the Internal Taxes Service (Servicio de Impuestos Internos, hereinafter ‘SII’).

f. Performance requirements

There are no major performance requirements in the Chilean legal framework that impose limits on trade and investment. Law N 16.624 about Mining Copper Activities, stipulates that copper productive entities that produce more that 75.000 tons yearly of blister copper, must establish a local reserve that benefits local manufacturing entities.

g. Investor behavior

Foreign investors receive equal treatment with Chilean investors. They cannot develop economic activities contrary to law, morals, public order or national security. Foreign investors must comply with all laws and 116 Chile regulations generally applicable to Chilean investors, including any specific regulation for the sector they wish to invest in and generally applicable regulations, such as environmental impact assessments.

4.4.3. Investment protection

a. Expropriation and compensation

Political Constitution of the Republic of Chile, 1980 - Through a provision included in article 19 N. 23 and 24 of the Chilean Constitution, property is protected in full and in an absolute manner.

Law about Expropriatory Procedures, Decree Law Nº 2186 - This law regulates all the aspects related with expropriatory procedures, indemnification, immediate effects of expropriation, determination of indemnification, indemnification payment.

b. Settlement of dispute

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.

## 4. 5. People's Republic of China

4.5.1. Background on the foreign investment

The year 2002 was the first year of China's accession into the WTO. Chinese government has carefully honored its commitments on its obligations. The three basic laws on foreign direct investment, namely the laws on Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Contractual Joint Ventures and Wholly Foreign-owned Enterprises and their implementing regulations, have been revised to meet the requirements of WTO TRIMs agreement. The Chinese government has promulgated the 3rd version of the Provisions on Guiding Foreign Investment and Industrial Catalogue for Guiding Foreign Investment which were taken effective on April 1, 2002. The new versions are based on the requirements of its strategic restructuring of national economy and to its WTO accession.

4.5.2. Regulatory framework/investment facilitation

a. Transparency

The legislation framework of the PRC concerning foreign direct investment has basically taken shape since the Law of P. R. China on Chinese-Foreign Equity Joint Ventures was enacted and implemented in 1979. According to the existing laws, foreign-invested enterprises in China fall into three categories: Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises. Chinese-foreign equity joint ventures, which are jointly established within China by foreign individuals, enterprises or other economic organizations on one side and enterprises or other economic organizations in the PRC on the other. Chinese-foreign contractual joint ventures, mean that parties to such a venture shall agree in their cooperative venture contact on the conditions for investment, the ratio of the distribution, the sharing of risks, the form of operations and management and the ownership of the assets at the time of the termination of the venture. 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.

b. Most favored nation treatment/non-discrimination between source economies

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

c. National treatment

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

Projects adopting out-of-date technologies;

Projects unfavorable to resource-saving and ecological environment improvement;

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

Projects in industries to be opened gradually; and

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

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

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

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

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

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

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

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

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. Foreign invested enterprises are forbidden to acquire loans from non-financial institutions.

d. Entry and sojourn of personnel

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.”

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.”

e. Performance requirements

Chinese government keeps on reviewing its existing laws and statutes since 2000. Three basic laws on FDI and the detailed rules for the implementation of the Law on Chinese-Foreign Equity People’s Republic of China 148 Joint Ventures, Chinese-Foreign Contractual Joint Ventures and the Law on Wholly Foreign-owned enterprises have been revised since 2000. The restrictions on the requirement of balance of foreign exchange, export performance and localization of supplies etc have been removed.

f. Investor behavior

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.

### 4.5.3. Investment Protection

a. Expropriation and compensation

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 People's Republic of China 152 Enterprises. They have stipulated that the State will not nationalize or expropriate any foreign invested enterprises; only under special circumstances, for the requirement of social and public interests, foreign invested enterprises may be expropriated in accordance with legal procedures, and appropriate compensation shall be provided.

b. Settlement of dispute

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

## 4.6. Hong Kong, China

### 4.6.1. Background on the foreign investment

The Government of the Hong Kong Special Administrative Region (HKSAR) firmly believes in, and supports, a free market economy and a liberal investment regime. There are no restrictions on outward investment and an open inward investment regime is in place, which is best witnessed by:

- a level playing field to all investors, be they domestic or overseas, and to all types of investments;
- no restrictions on corporate ownership and no foreign exchange controls;
- rule of law and an impartial judicial system under which private property rights are fully guaranteed and protected;
- free flows of news and information; and

• transparency of laws and regulations.

As a corollary of this free market policy, there has been a sustained growth in both outward and inward investment attributed to Hong Kong, China (HKC) during 1998-2001. The stock of outward direct investment at market value amounted to US$353 billion as of end-2001 and the corresponding inward direct investment was US$419 billion. The World Investment Report 2002 published by the United Nations Conference on Trade and Development ranked Hong Kong as the second best-performing host economy for foreign direct investment in the world after Belgium/Luxembourg. In 2002, the Heritage Foundation rated Hong Kong as the world's freest economy for the ninth consecutive year since 1994.

In his Policy Address in October 2001, the Chief Executive reaffirmed the HKSAR Government's determination to maintain Hong Kong's many advantages, including its unique position, favorable business environment and pool of entrepreneurial talents and enterprises. He stated that to continue moving forward, Hong Kong must build on its existing strengths as well as foster further economic growth by applying new knowledge and utilizing the latest technology. On economic restructuring, he highlighted, among other things, that Hong Kong should enhance the soft and hard infrastructure, and improve the business environment and the quality of its living environment.

4.6.2. Regulatory framework/investment facilitation

a. Transparency

There are no dedicated legislation, regulations and administrative guidelines that regulate foreign investment in HKC.

b. Most favored nation treatment/non-discrimination between source economies

HKC does not maintain any MFN exceptions in relation to the establishment, expansion and operation of foreign investment.

c. National treatment

Broadcasting - As stipulated in the Broadcasting Ordinance (Chapter 562), unqualified voting controllers (i.e. those who do not satisfy the "ordinarily resident in HKC" requirement) are subject to the restriction of a maximum of 49% of the total voting control at a general meeting of a company which is a domestic free television programme service licensee.

Banking - Since November 2001, overseas incorporated banks are no longer subject to any branching restriction. Moreover, the entry requirements for local and overseas incorporated bank applicants have been broadly aligned.

Insurance - The chief executive appointed by an authorized insurer should normally reside in HKC.

Other Financial Services - Residency requirement in HKC applies to dealers engaging in securities or commodities futures business.

Maritime Transport - Income derived from international operation of ships registered in the Hong Kong Shipping Register is exempted from Hong Kong, China's profits tax.

d. Repatriation and convertibility

There are no restrictions in HKC for the repatriation of funds related to foreign investment. The linked exchange rate system has been adopted in HKC since October 1983. This is basically a currency board system which requires the monetary base to be fully backed by foreign reserves at the fixed exchange rate. In HKC, the monetary base comprises the Certificates of Indebtedness against which banknotes are issued, notes and coins issued by the government, the sum of clearing account balances held by banks with the Hong Kong Monetary Authority (HKMA) for settlement purposes (i.e. the Aggregate Balance) and outstanding Exchange Fund Bills and Notes.

e. Entry and sojourn of personnel

For the purpose of making a business visit to HKC, most foreign nationals may enter HKC visa-free, except for nationals of those countries who require a visit visa/permit for entry. Foreign nationals wishing to take up employment or to establish or join in a business operation in HKC need to apply for an employment visa/permit. The requirements and criteria also apply to foreign technical and managerial personnel. Immediate family members such as spouse and unmarried dependent children of foreign nationals permitted to work or invest in HKC are normally allowed to take up residence as dependants in HKC.

f. Taxation

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

4.6.3. Investment protection

a. Expropriation and compensation

Some of the HKSAR laws provide for the deprivation of property and resultant compensation (e.g. the Lands Resumption Ordinance (Chapter 124), the Roads (Works, Use and Compensation) Ordinance (Chapter 370), and the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Chapter 276)). These laws apply indiscriminately to all investors affected. The statutory laws of the HKSAR that relate to expropriation and compensation are subject to Article 105 of the Basic Law of the HKSAR which provides that: the HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property;

· such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay; and

· the ownership of enterprises and the investments from outside the HKSAR shall be protected by law.

b. Settlement of dispute

The Convention on the Settlement of Investment Disputes between States and Nationals of other States is applicable to the HKSAR.

## 4.7. Indonesia

### 4.7.1. Background on the foreign investment

Foreign Direct Investment (FDI) in Indonesia is governed primarily by Foreign Investment Law No. 1 of 1967 as amended by Law No. 11 of 1970. Legally it is still able to accommodate the various deregulatory policies and measures that have been and will continue to be adopted by the government. To implement this Investment Law, Government Regulation No. 20 of 1994 as amended by Government Regulation No. 83 of 2001 concerning The Share Ownership in The Foreign Investment Company.

### 4.7.2. Regulatory framework/investment facilitation

a. Transparency

Followings are the list of relevant laws, regulations, administrative guidelines and policies pertaining to investment in Indonesia:

- Act No. 1 of 1967 on Foreign Direct Investment as amended by Act No. 11 of 1970.
- Act No. 7 of 1983 and Act No.10 of 1994 on Income Tax as amended by Act No. 17 of 2000. Act No.8 of 1983 on Value Added Tax as amended by Act No.18 of 2000
- Act No. 1 of 1995 on Limited Liability Company (Perseroan Terbatas)
- Government Regulation No. 20 of 1994 on Share Owner-ship in foreign direct investment as amended by Government Regulation No. 83 of 2001
- Government Regulation No.146 of 2000; No.147of 2000; No.148 of 2000; No.20 of 2000; and No.12 of 2001 as amended by No. 43 of 2002 on Tax Facilities in certain area
- Presidential Decree No.90 of 2000 concerning foreign company representative office (KPPA)
- Presidential Decree No. 127 of 2001 concerning sectors reserved for small-scale business and sectors open for medium and large-scale business with partnership condition.

b. Most favored nation treatment/non-discrimination between source economies

The Indonesian Government adopts "Most Favored Nations/MFN" treatment where Indonesia is opened for all foreign investors who want to invest in Indonesia regardless of their origin country, Indonesia 207 unless otherwise stipulated.

c. National treatment

There is no limitation on FDI companies access to sources of investment funds from offshore financing as long as there is no government involvement.

d. Entry and sojourn of personnel

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.

e. Investor behavior

Foreign and domestic investors are to abide by the laws, regulations and administrative guide lines/policies of the economy. There is no particular requirement observance by foreign investors.

4.7.3. Investment protection

a. Expropriation and compensation

Law No. 1 of 1967 on Foreign Direct Investment

(i) 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.

(ii) Compensation

• In the case of nationalization, the government has the obligation to provide compensation. The amount, type and method of payment shall have been agreed upon by both parties, in accordance with valid principles of international law.

• 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. Settlement of dispute

Indonesia participates in the convention of the Settlement of Investment Dispute between state and nationals of other states. Consequently, disputes that may arise from foreign investment can be referred to the International Centre for Settlement of Investment Dispute in Washington D.C. Disputes of problems related to laws, regulations and procedures can be referred to Deputi Bidang Pengendalian BKPM (Deputy Chairman for Supervision, Investment Coordinating Board) and Peradilan Tata Usaha Negara (Court of State's Administration). Disputes between shareholders/ investors can be referred to Badan Arbitrase Nasional Indonesia/BANI (Indonesian National Arbitration Board) and Pengadilan Negeri (Court).

## 4.8. Japan

4.8.1. Background on the foreign investment

With the increase of mutual dependence among economies in recent years, cross-border direct investment has attracted much attention in the world. International direct investment will contribute to the development of the world economy by stimulating economic activities around the world, and thereby contribute as well to stable and cooperative international relations.

In the General Policy Speech of January 31, 2003, Prime Minister Junichiro Koizumi outlined the Government of Japan's plan with regard to inward foreign direct investment in the context of "Japanese Economic Rebirth and Investment Appeal": "Foreign direct investment in Japan will bring new technology and innovative management methods, and will also lead to greater employment opportunities. Rather than seeing foreign investment as a threat, we will take measures to present Japan as an attractive destination for foreign firms in the aim of doubling the cumulative amount of investment in five years" Japan Investment Council Expert Committee (JICEC) finalized the report as well as "Program for the Promotion of Foreign Direct Investment into Japan." The report announces that the Government of Japan recognizes the importance of inward FDI while it clearly demonstrates, both domestically and internationally, the Government's firm intention to increase inward FDI.

4.8.2. Regulatory framework/investment facilitation

a. Transparency

Investment in Japan by foreign investors is treated as "Inward Direct Investment, etc." under the Foreign Exchange and Foreign Trade Law (except for "portfolio investment") and is subject, in general, to ex post facto report or, in certain cases, prior notification to the Minister of Finance and the competent Minister(s) in charge of the industry concerned, in order to determine if an inquiry is necessary, considering national security, reciprocity, material adverse influence on the national economy and others.

b. Most favored nation treatment/non-discrimination between source economies

(i) Foreign Exchange and Foreign Trade Law - No exception to MFN treatment regarding establishment, expansion and operation of foreign investment other than the reciprocity principle.

(ii) Other laws such as the following stipulate possible exceptions to MFN treatment.

*Banking*: The establishment of branches or subsidiaries of foreign banks requires authorization and is subject to considerations of reciprocity (It will be examined by the

Prime Minister whether Japanese banks are entitled to a status equivalent in substance to the one given under Japanese Banking Law in the country where the main office of that foreign bank exists.).

*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.

c. National treatment

Apart from the regulations written in the Foreign Exchange and Foreign Trade Law, some laws, such as the following, restrict FDI in Japan: telecommunications, broadcasting, air transport, maritime transport, mining, and banking.

d. Entry and sojourn of personnel

The Government of Japan recognizes that human resources play a substantial role as a driving force in industrial growth. Provision of excellent personnel is essential for the development of new business. Facilitating the resident-eligibility cle arance for foreign managers, researchers and engineers needed in Japan is vital for the promotion of inward FDI into Japan. Furthermore, it is also important to create a comfortable living environment for foreign professionals and their families in Japan. This includes improvement in education, medical services and pensions systems. In this context, the Government of Japan takes various measures such as improving systems related to entry and sojourn of foreign nationals.

e. Taxation

Taxes on corporate income consist of corporation tax (national tax), corporate inhabitants tax (prefectural and municipal tax) and corporate enterprise tax (prefectural tax). While corporation tax and corporate inhabitants tax are not deductive, corporate enterprise tax is deductible. Domestic source income such as interest, dividend etc. is subject to withholding tax at source. Foreign companies setting up a Japanese branch and doing business are subject to tax on income from all sources in Japan. Consumption tax is imposed on goods and services provided by enterprises in Japan and on foreign goods received from bonded areas.

f. Investor behavior

The Government of Japan has compiled guidelines on "Activities Expected of Japanese Firms Operating Abroad (10 items)" for Japanese firms. The aim of the guidelines is to ensure that Japanese firms act in harmony with and contribute to the development of the investment recipient communities. The government of Japan has been disseminating the guidelines.

4.8.3. Investment protection

a. Expropriation and compensation

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.

## 4.9. Republic of Korea

4.9.1. Background on the foreign investment

In 1997, the FDI concept of Friendly M&A was realigned and certain long-term loans were included as FDI. In 1998, the Korean government, in order to create a more supportive and convenient system of foreign direct investment, replaced the old system of regulating and administering foreign investment with a new policy. The new policy is symbolized by the new Foreign Investment Promotion Act, which became effective on

November 17, 1998. In 1999, newly adopted systems to expedite FDI procedures and establish Foreign Investment Zones (FIZ).

In order to promote investment into the components and basic material industries, foreign investment zones could be designated by plural investors. As far as liberalization is concerned, from 2001, 2 sectors were fully restricted to foreign investors, and a further 27 partially restricted. FDI requirements for manufacturing and tourism industries were eased: in the case of the manufacturing sector, the current level of not lower than $100 million in investment was eased to one of not lower than $50 million. At the end of 2001, a comprehensive plan was established for a total of 54 tasks in the sectors of finance, labor, taxation, education and housing in order to enhance the FDI environment, and also a cooperative system was set up among all Ministries.

4.9.2. Regulatory framework/investment facilitation

a. Transparency

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.

b. Most favored nation treatment/non-discrimination between source economies

There is no discrimination between source economies. All relevant laws, regulations, and administrative guidelines are stipulated in the form of "Regulations on Foreign Investment" in a transparent manner and there is no policy or agreement which may cause discrimination between source economies (Most Favoured Nation, MFN).

c. National treatment

Unless otherwise provided in law, foreign investors and foreign invested companies are accorded equal treatment to the nationals or corporations of the Republic of Korea (National Treatment, NT ).

Under the act(1998), to promote the transparency of Korea's FDI regime and provide further convenience for foreign investors, a comprehensive annual announcement on all FDI restrictions in various individual laws will continue to be made by the Minister of Commerce, Industry and Energy.

d. Repatriation and convertibility

There is no regulations which restrict repatriations. Overseas remittance and repatriation are guaranteed by Article 4 of the Foreign Capital Inducement Act and Article 5 of its accompanying Enforcement Decree.

e. Performance requirements

Since the abolition of the performance requirement on foreign investment in 1989, there have been no performance requirements such as export or local content obligations that are inconsistent with the WTO/TRIMs Agreement.

4.9.3. Investment protection

a. Expropriation and compensation

Compensation for exploration: The purpose of expropriation, range of public purpose, and procedures and compensation for expropriation are stipulated concretely in the Land Expropriation Act (for a general expropriation) and the Special Act for Acquisition and Compensation for Losses and from Land for Public Use.

b. Settlement of dispute

According to bilateral investment agreements contracted between Korea and other economies, most foreign investors can submit the disputes to the ICSID.

## 4.10. Malaysia

4.10.1. Background on the foreign investment

Malaysia has always maintained a liberal foreign investment regime. FDI is sought as a source of capital funds and foreign exchange, and as a means of securing industrial technology, managerial expertise, marketing know -how and network to achieve higher levels of growth, employment, productivity and export performance. Malaysia promotes both FDI and domestic investment (DI) as sources of economic growth. Over the years, various policies and measures have been introduced to promote investments. Among these are liberal policies which allow 100 per cent foreign equity ownership. The conducive business and investment environment and dynamic promotional efforts have been successful in attracting a large number of investment projects into the economy. FDI has contributed significantly to the economic development of the economy not only in terms of GDP growth, but also in terms of structural changes that have transformed Malaysia from a producer of primary commodities to a modern industrializing economy. With over three decades of industrial development, Malaysia has developed a strong manufacturing base and currently hosts substantial investments from major multinational companies from around the world.

4.10.2. Regulatory framework/investment facilitation

a. Transparency

Industrial Coordination Act, 1975 - Provides for the coordination and orderly development of manufacturing activities.

Promotion of Investments Act, 1986 - Provides for the incentives system for manufacturing, agriculture, tourism and hotel projects.

Companies Act, 1965 - Provides guidelines and registration procedures for all companies conducting businesses in Malaysia.

Income Tax Act, 1967 - Contains tax law, special incentive reliefs and exemptions from tax.

Free Zones Act, 1990 - Enables operations in the zones to enjoy minimum custom control and formalities in import of raw materials, parts, machinery and equipment as well as in the export of finished goods.

Exchange Control Act, 1953 - Provides for the recording, monitoring and supervision of payments to non-residents, and also to protect the country's foreign exchange position should the need arise.

b. Most favored nation treatment/non-discrimination between source economies

There are generally no exceptions to MFN treatment in relation to the establishment, expansion and operation of foreign investment.

c. National treatment

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. There are restrictions on foreign equity participation for activities such as extraction and harvesting of timber, capture fisheries, and oil and gas upstream industries. There are also exceptions to national treatment in certain areas such as land/property ownership; and some investment incentives which are restricted to small and medium industries.

d. Repatriation and convertibility

Exchange Control Policy - Exchange control is administered by Bank Negara Malaysia (Central Bank) in accordance with the provisions of the Exchange Control Act, 1953. The present exchange control regime in Malaysia is liberal and applies uniformly to transactions with all economies, except Israel, Serbia and Montenegro for which special restrictive rules apply.

e. Entry and sojourn of personnel

Passport Requirements - All persons entering Malaysia must possess valid national passports or other internationally recognized 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.

Visa Requirements - Commonwealth citizens (except India, Bangladesh, Pakistan, Sri Lanka, Cameroon, Mozambique and Nigeria), citizens of ASEAN Countries and citizens of Switzerland, Netherlands, San Marino and Liechtenstein do not need a visa to enter Malaysia.

f. Taxation

Generally, all income of companies and individuals accrued in, derived from or remitted to Malaysia are liable to tax. However, income derived from outside Malaysia and remitted to Malaysia by resident companies (except those involved in the banking, insurance, air and sea transportation business), non-resident companies and non-resident individuals are exempted from tax.

g. Performance requirements

Local Content Policy - Malaysia does not have any laws or regulations regarding local content requirements applying to domestic production. In line with the TRIMs requirement, Malaysia will phase-out the local content requirements by 31 December 2003. Malaysia has phased-out the local content requirements linked to investment incentives since 2000. In the automotive sector, some components are no longer required to be sourced locally. The remaining list of items which are currently required to be sourced locally will be phased-out by 31 December 2003.

4.10.3. Investment protection

a. Expropriation and compensation

Investment Guarantee Agreements - The purpose of Investment Guarantee Agreements (IGAs) is to ensure against non-commercial risks such as expropriation, nationalisation and to allow for remittances of capital and repatriation of capital. For a developing economy such as Malaysia, it is hoped that the IGAs will help to quicken the pace of industrialisation by encouraging the inflows of foreign capital and also accord protection to Malaysian investments abroad. It is generally considered that the IGAs, which prevent arbitrary action on the part of a recipient economy, will generate confidence among foreign investors.

## 4.11. Mexico

4.11.1. Background on the foreign investment regime

Prior to the mid-1980's, foreign direct investment (FDI) played a relatively small role in Mexico's total external financing. As a result of its long-standing restrictive foreign investment policy, Mexico had a very low share of FDI. Over the last several years, Mexico has removed significant foreign investment barriers as part of an ambitious economic development plan that aims to achieve, and sustain, industrial development and expansion. The government recognized that substantial private capital is needed to create additional employment and to increase industrial output, which also results in attracting an influx of modern technology, management techniques and financing. This recognition was crystallized with the enactment of the Foreign Investment Law (FIL) in 1993. The FIL reduces many of the notifications and authorizations previously required under the previous regulations, and largely eliminates performance requirements.

4.11.2. Regulatory framework and investment facilitation

a. Transparency

· In December 1993, Mexico enacted 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 that are related to the establishment, operation or expansion of an investment.

· Thus, the FIL came to extend to all foreign investors, the commitments of 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 foreigners' exclusion clause to acquire real estate within the restricted zone for non-residential purposes. Foreign individuals and foreign corporations may acquire rights over real estate located within the restricted zone through a trust for 50 years after which duration may be extended.

· The neutral investment mechanism allows Mexican companies to issue shares with no voting rights or with limited corporate rights, which grant their holders only pecuniary rights or limited corporate rights. Such participation is not considered to determine the foreign investment percentage in the capital stock of Mexican corporations.

· With the entry into force of the FIL of 1993, the Regulations of 1989 resulted inapplicable. As a consequence, it was required to design a complementary instrument to the FIL that complies with the National FDI policy guidelines. These new Regulations to the FIL of September 1998 simplify administrative procedures and create favorable conditions for the entrance of capital flows. They reflect the economic deregulation as part of the economic deregulation process; describe the liberalized activities as a result of the amendments in specific laws, by reason of transparency and consistency; and, establish the economic survey requirement and the requirement to notify investments through the concept of reinvested earnings and inter-company loans.

b. Most favored nation treatment/non-discrimination between source economies

Mexico grants most favored nation treatment to those countries with which we have a treaty that establishes such treatment, such as: NAFTA.

North America Free Trade Agreement (NAFTA), Group of the Three (Colombia, Venezuela and Mexico) Free Trade Agreement, Bolivia-Mexico Free Trade Agreement, Chile-Mexico Free Trade Agreement, Costa Rica-Mexico Free Trade Agreement, Nicaragua-Mexico Free Trade Agreement, European Union-Mexico Free Trade Agreement, Mexico-European Free Trade Association Free Trade Agreement and the Mexico-CA3 (Guatemala, Honduras and El Salvador).

Bilateral Investment Treaties (BITs) with Spain, Switzerland, Argentina, Germany, Netherlands, Austria, France, Finland, Uruguay, Portugal, Denmark, Sweden, Greece, Korea and Cuba. BITs with Italy, Iceland, Czech Republic and the Belgo-Luxembourg's Union are in process of approval.

c. National treatment

In broad terms, Mexican law does not distinguish between domestic and foreign companies with regard to limitations on sources of finance; as long as foreign companies operate through a permanent establishment or a fixed base in Mexico (or a subsidiary in the case of financial services), they are generally treated as resident corporations.

With regard to offshore financing, there are no general limitations, since the country does not maintain foreign exchange controls. Specific sectors, such as the financial sector, have their own particular regulations. Banks, for instance, are limited in the amount of foreign currency financing they can acquire.

Both foreign and domestic companies can issue securities in the Mexican Stock Market, as long as they comply with the conditions and regulations set forth in the Securities Law. The Federal Income Tax Law, particularly with regard to transfer pricing regulates inter-company loans between related parties. Special laws also apply to the financial sector. Securities firms, for instance, have limitations regarding their source of financing.

d. Repatriation and convertibility

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.

e. Entry and sojourn of personnel

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".

f. 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.

g. Performance requirements

Under the current Foreign Investment Law no performance requirements are imposed. On March 31, 1995, the notification of some legal instruments, authorized by the World Trade Organization (WTO) was made. This notification only covers TRIM's related to the automotive industry and autotransport vehicles.

h. Capital Exports

In Mexico there are no exchange rate controls and no limitations with regard to the export of capital, repatriation of profits or any type of remittances in foreign currency. Nevertheless, in FTAs and BITs signed by Mexico, there is an exception concerning the case of difficulties in the balance of payments. In such a case, transfers may be limited temporarily.

i. Investor behavior

Every Mexican law has to be observed by foreign investors, specifically the Foreign Investment Law.

4.11.3. Investment protection

a. Expropriation and compensation

Constitution - Constitutional or legal causes that permit the expropriation or limitation of the property: Article 27, 2nd paragraph of the Constitution points out: "Expropriations will only proceed by public utility cause and through compensation".

Expropriation Law - The amount of compensation is calculated in the following manner: I.- According to the Expropriation Law: the value of the expropriated property will be equivalent to the fixed commercial value, which may not be less than the fiscal value that figures at the census or collecting offices, nevertheless, the affected person may claim the fixed value reccourring to the judicial instance. The amount of the compensation shall be covered by the State when the expropriated thing passes under its ownership. The term for the payment of compensation shall not exceed one year from the declaration of expropriation. The payment shall be done in national currency, or it could be agreed to realize it in kind. II.- Notwithstanding what is provided for in the Expropriation Law, it is possible that in n international agreements which Mexico is part of, or widely accepted arbitral agreements celebrated, expropriation may be ruled by different mechanisms.

b. Settlement of disputes

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

## 4.12. New Zealand

### 4.12.1. Background on the foreign investment regime

A key aspect of the New Zealand Government's growth strategy is the development of strong international linkages; this includes both outward and inward investment. New Zealand has a very welcoming and open attitude towards inward foreign direct investment (FDI), which is frequently reiterated in public statements by Government ministers and officials. New Zealand welcomes and encourages foreign investment from all countries without discrimination. This is reflected in the facilitatory nature of the Government's foreign investment policy regime. No national plan has been established or priorities set which condition the environment for foreign investment in particular sectors or regions. It is at the discretion of the individual investor as to where to invest.

The Ministry of Agriculture and Forestry and the New Zealand Tourism Board are active in promoting foreign investment into their respective sectors, including the production of promotional sectoral material.

With regard to outward investment, there are no impediments at all to prevent companies investing offshore. As New Zealand is a net capital importer with on-going requirements for capital, the Government is more active in promoting inward rather than outward investment.

### 4.12.2. Regulatory framework and investment facilitation

a. Transparency

Overseas Investment Act 1973 -Establishes the OIC, sets up the administrative structure, outlines the functions and powers of the Commission. The OIC is the Government appointed agency responsible for administering New Zealand's foreign investment policy.

Overseas Investment Regulations 1995-Defines the circumstances in which a foreign entity needs to gain the approval of the OIC prior to making an investment in New Zealand.

Overseas Amendment Act 1998 - Explicitly recognizes three distinct types of overseas investment in NZ (non land, farm land, land other than farm land).

Overseas Investment Regulations (No 2) 2001- Prescribes procedures by which farm land must be offered for sale or acquisition on the open market to New Zealanders.

Overseas Exemption Notice 2001- Exempts certain persons connected to portfolio investors and certain New Zealand controlled companies from the provisions of the Overseas Investment Regulations.

b. National treatment

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.

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 regislation and taxation requirements.

c. Entry and sojourn of personnel

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.

d. Taxation

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.

e. Performance requirements

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.

f. Capital Exports

Regulations - Customs and Excise Act 1996; Customs Export Prohibition Order 1996

4.12.3. Investment protection

a. Expropriation and compensation

Laws/regulations - None except the provisions in the Investment Protection and Promotion Agreements with China and Hong Kong, China.

b. Settlement of disputes

There are a variety of dispute settlement procedures available in New Zealand, all of which are available equally to New Zealanders and non-New Zealanders. Investors and potential investors can appeal decisions of the OIC to the High Court. They can also seek judicial review of Minister's decisions and have access to non-litiguous methods of dispute resolution.

## 4.13. Papua New Guinea

### 4.13.1. Background on the foreign investment regime

Papua New Guinea has a liberal investment policy that encourages and welcomes foreign investment. To facilitate the foreign investment, the Government has made considerable efforts to curtail regulatory and administrative requirements. These changes promise to relieve many of the roadblocks experienced in the past. The Government also developed a long term National Investment Policy, which builds on the considerable progress the Government has made to curtail regulatory and administrative requirements.

The National Investment Policy aims to provide the transparency, equal treatment and consistency required by foreign companies, to enable them to make medium term strategic decisions to invest in Papua New Guinea. As part of its strategy to implement the policy, the Government is reviewing the investment incentives and establishing a One-Stop-Shop (OSS) facility for investment in the Investment Promotion Authority (IPA). The first phase of the OSS facility is the establishment of a Business Licensing and Information System (BLIS) which phase I was completed in 2001.

The National Investment Policy (August 1998): The National Investment Policy informs both domestic and foreign investors that the Government of Papua New Guinea is serious about aligning its policies and that the country welcomes and supports private sector initiative and investment. The National Investment Policy provides the foundation policy frame work for transparency, equal treatment and consistency required by the private sector, to enable it to make medium term strategic decisions to invest in Papua New Guinea. The National Investment Policy makes the Investment environment consistent with:

· The Government's overall strategy for development- as set out in the Medium Term Development Strategy (MTDS); and

· The Government’s ongoing commitment to greater participation in the global economy, through trade and investment liberalization as exemplified by Papua New Guinea’s membership to APEC and WTO.

4.13.2. Regulatory framework and investment facilitation

a. Transparency

The Investment Promotion Authority (IPA) is mandated by the Government to promote and facilitate both foreign investment and local investment. This involves provision of information on business opportunities, rules and regulations on conducting business in PNG. The Authority also facilitates meetings for business missions in the country and outbound, as well as lobby on behalf of investors to obtain the necessary approvals. The IPA accepts applications for foreign investment and approves certification prior to business being conducted.

The IPA is the relevant agency to contact in the first instance, with regard to queries or complaints regarding applications. IPA pursues strict quality controls and will process certificates within 35 working days. Foreign Businesses are defined as those with 50% or more foreign ownership. Contact details for certification submissions are provided at the end of the chapter.

Government Departments in some economic sectors have their own regulatory procedures for approving foreign investment once a business certificate is approved by IPA to enable foreign investors do business. In this case, the IPA provides investors with the relevant information and contacts. IPA has established One-Stop-Shop (OSS) Center to provide information on all investment approval process administered by the different government departments and institutions. This is to cut down on bureaucratic red tape and other procedural constraints being faced by the investors.

b. National Treatment

The Regulations of the Investment Promotion Act 1992 contains a list of business activities, which are reserved for citizens or national enterprises.

However during the delivery of the 1995 Papua New Guinea Budget, the Government indicated its intention to phase out the reserved activities list in two to three years. The following list is an example of industries or activities, which are not currently open to foreign investment:

- land transportation without operators;
- handicrafts and artifacts;
- export of commodity; coffee and copra production and export;
- small-scale alluvial gold mining;
- small scale going of tree crops; coffee, cocoa and copra and certain agricultural activities;
- coastal fishing; and
- 'trade stores' such as snack bars, taverns, shoe repair and amusement shops.

A detailed list is available from the IPA.

c. Repatriation and convertibility

Foreign investors are allowed to remit earnings overseas, repatriate capital and remit amounts necessary to meet payments of:

· principal, interest and service charges;

· similar liabilities on foreign loans; and

· the costs of other foreign obligations approved by the State.

d. Entry and sojourn of personnel

Papua New Guinea welcomes people from overseas and the Department of Foreign Affairs facilitate entry, offering a variety of permits to meet the different needs of non-citizens.

e. Performance requirements

Generally, there are no performance requirements in place. However, Papua New Guinea encourages the use of locally available material.

f. Capital exports

Resident or non-resident individuals and business entities may purchase foreign currency up to K500, 000 per annum for any purpose subject to taxation clearance where appropriate. Applications to enter into foreign currency transactions beyond this annual entitlement should be submitted to the Bank of Papua New Guinea.

g. Investor behavior

There are currently no restrictions relating to investor behavior.

## 4.14. Peru

4.14.1. Background on the foreign investment regime

The legal framework governing foreign investments in Peru is based on national treatment. Foreign investments are allowed, without restrictions, in the most economic activities; just few services establish specific restrictions (e.g. mass media, air transportation, and land transportation are reserved for national investors or majority national share is required). No prior authorization is required for foreign investments; acquisition of national investors shares is fully allowed, through stock exchange or other mechanism. Except for a constitutional exclusion of resources' ownership of various kinds within fifty kilometers of Peru's international borders, FDI is welcomed in every geographical area of the country. Nevertheless, this exclusion can be waived by decree on a case-by-case basis.

4.14.2. Regulatory framework and investment facilitation

a. Transparency

Constitutional Principles - The Peruvian Constitution includes provisions on essential principles to guarantee a favorable juridical framework for the development of private investment in general, and foreign investment in particular.

Foreign Investment Promotion Law (Legislative Decree Nº 662) - The Foreign Investment Promotion Law, approved in August 1991, by Legislative Decree Nº 662, is the cornerstone of a sound legal framework that establishes clear rules and the necessary security for the development of foreign investments in the country.

Private Investment Framework Law (Legislative Decree Nº 757) - The Framework Law for Private Investment Growth, approved by Legislative Decree Nº 757, complements the general legal framework for the treatment of foreign investment. The provisions are addressed to encourage the growth of investments in every sector of the Peruvian economy.

Legal Stability Agreements - Empowered by the Political Constitution, and under the Foreign Investment Promotion Law and the Framework Law for the Growth of the Private Investment, the State guarantees the legal stability to foreign investors and to the enterprises where they invest, through the subscription of agreements with contract-law status, and abide by the general provisions on contracts established in the Civil Code.

b. Most favored nation treatment/non-discrimination between source economies

Most favored nation treatment applies to every activity and investment in relation with the expansion and operation of foreign investment. In the case of restrictions to national treatment applicable to the establishment of foreign investments in few activities, the benefits derived from Decision 291 of the Andean Community, which provides for national treatment applicable to investments coming from Andean investors, do not extent to investors from other economies.

c. National treatment

• Acquisition or possession of mines, lands, forests, water, fuel - Under Article 71º of the Constitution “foreign citizens are not allowed to acquire or possess, under any title, within fifty kilometers from the borders, mines, land, forests, water, fuels or energy sources, whether directly or indirectly, individually or in association, under penalty of losing the right thus acquired to the benefit of the State".

· Commercial aviation – Article 79º of Law Nº 27261, Law on Civil Aeronautics of Peru, establishes that national civil aviation is reserved to Peruvian individuals and corporate bodies. According to definition of this Law, at least 51% of equity stock shall be Peruvian capital and shall be under real and effective control of Peruvian shareholders or partners with permanent domicile in Peru.

· Activities of aeronautic labour - Article 75º of Law 27261, Law on Civil Aeronautics of Peru, establishes that personnel developing aeronautic duties in operations made by national carriers, except general aviation, shall be Peruvian staff.

· Commercial aquatic passenger and cargo transportation in national traffic or coastal trading – According to Article 3º of Legislative Decree Nº 683, this is reserved to Peruvian flag trading ships, as well as to foreign flag ships provided that they are leased or operated by national ship companies, whatever its origin or destination may be.

· Private services of broadcasting – Article 23º of Legislative Decree Nº 702 establishes that besides the requirements set forth by pertaining regulations to get authorization for broadcasting services, it is required that individuals or corporate bodies requesting such authorization have Peruvian nationality.

· Fabrication of warfare weapons - In conformity with Article 285º of the Peruvian Constitution, the fabrication of warfare weapons shall be only authorized to private companies under agreement entered into with the State.

· Juridical Services – Law on Notary – Decree Law Nº 26002 and Legislative Decree Nº 872, establishes that Notaries shall have Peruvian nationality.

d. Repatriation and convertibility

There is no restriction for the repatriation of funds related to foreign investment. Repatriation of profits, dividends, royalties, loan payments and liquidation do not require specific previous authorization. The foreign investment law gives specific assurances to investors in relation to convertibility and repatriation, in particular:

(i) Free remittance abroad of profits, proceeds of asset disposals, royalties and payments for the use of technology; and

(ii) Access to the most favorable exchange rate for currency conversions for inward and outward remittances.

Local currency is freely convertible to hard currency for current and capital transactions and investors are statutorily entitled to seek the most favorable exchange rate. There are no restrictions on holdings by residents of foreign currency either domestically or abroad. Independent monetary management by the Central Bank supports these measures.

e. Entry and sojourn of personnel

Legislative Decree Nº 703 governs matters related to temporary entry and resident status for foreigners who, due to their activities, require or wish to have domicile in the country. The resident status can be obtained with migratory authorities in Peru, as well as in Consulates of Peru abroad.

f. Performance requirements

WTO commitments are fully abide by. In that sense, no selection mechanism or performance requirement is applied to foreign investment.

To promote and develop dairy farming in Peru, imported milk powders, anhydrous fat and other milk products may not be used in the reconstitution and re-mixing processes for the production of liquid milk products, cheeses, butter, and similar products for direct human consumption (XV Complementary Provision on Legislative Decree Nº 653). This restriction, notified to the Committee on Trade-Related Investment Measures in 1995, also requires producers of evaporated milk to use nationally produced fresh milk.

This measure is supposed to be applied to every local producer regardless the origin of its capital. However, the measure have not been implemented in practic e nor have attempts been made to enforce it.

g. Investor behavior

The Peruvian State expects fair performance of every private investor, national or foreign, avoiding the implementation of monopolistic practices and restrictive measures of competition in production and commercialization of goods and rendering of services, as well as the fulfillment of labor and environmental regulations.

4.14.3. Investment protection

a. Expropriation and compensation

The Political Constitution of Peru, approved in 1993, guarantees property rights for foreigners and nationals. It sets forth that no person can be deprived of their property except by reason of national security or public need, expressly declared by Law, and after payment in cash of a fair-value indemnity including redress for any possible damages. An action can be filed with the Judiciary to contest the value assigned to the property by the State in the expropriation procedure. Complementary actions have been established in General Law of Expropriations approved in May, 1999.

No case of expropriation of foreign investment has been produced during the last five years. In August 1993, the Peruvian government concluded a Compensation Agreement for 7 years with the American International Group-AIG, for the expropriation of BELCO assets, occurred before 1990.

b. Settlement of disputes

Foreign investors can access to the local courts for disputes, in the same conditions than national investors. Peruvian government encourages arbitration as a way to facilitate the settlement of disputes through the Law of Arbitration, approved by Law Nº 26572.

The State, its branch offices, Central, Regional and Municipal Governments, and other persons subject to public law, as well as the companies managed by the State, shall be authorized to submit to national or international arbitration all controversies relating to their goods and obligations. Peru is entitled in conformity with national laws or international treaties in which Peru is a signatory country, provided any such controversies arise from their relationship with a company subject to private law or under a contract.

## 4.15. Republic of the Philippines

### 4.15.1. Background on the foreign investment regime

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.

### 4.15.2. Regulatory framework and investment facilitation

a. Transparency

The Omnibus Investments Code of 1987 (Executive Order No. 226) as amended by RA 8756 - Provides the rules by which foreign and local investments in the Philippines may qualify for certain incentives.

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.

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.

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.

Export Development Act of 1994 (Republic Act No. 7844) - Provides for incentives to enterprises in the export business.

Investors' Lease Act (Republic Act No. 7652)-Allows qualified foreign investors to lease private lands for an initial period of up to 50 years, renewable for up to 25 additional years.

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.

Amendment of the Build-Operate-Transfer Law (R.A. 7718, 1994) - Allows for variations of Build-Operate-Transfer schemes, eases the restrictions on government financing including the setting of tolls and charges, and increases the opportunity for wholly foreign-owned corporations to undertake such projects.

An Act to Amend Article 7(13) of Executive Order 226, otherwise known as the Omnibus Investments Code of 1987 (Republic Act No. 7888, 1995) - Allows the President of the Philippines to suspend the nationality requirements under the Omnibus Investments Code in cases of investments by ASEAN nationals, regional ASEAN or multilateral financial institutions in preferred projects.

Anti-Money Laundering Act of 2001 (Republic Act No. 9160) as amended by RA 9194 (2003) - Creates a three-member Anti-Money Laundering Council that is empowered to look into suspicious bank accounts and initiate forfeiture of such deposits. It aims to ensure that the Philippines shall not be used as a money-laundering site for the proceeds of any unlawful activity.

b. Most favored nation treatment/non-discrimination between source economies

The Philippines does not discriminate against any investment source economy.

c. National treatment

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.

d. Repatriation and convertibility

As a general policy, foreign investments need not be registered with the BSP. The registration of a foreign investment with the BSP is only required if the forex needed to service the repatriation of capital, remittance of dividends, profits and earnings shall be sourced from the banking system. Foreign exchange needed to service unregistered foreign investments may be sourced outside the banking system. Given this general policy, BSP-registered foreign investments enjoy full and immediate repatriation of capital and remittance of profits, dividends, and other earnings which accrue thereon. The same regulations apply to investments in money market instruments. Unregistered investments may be serviced using foreign exchange sourced outside the banking system.

Similarly, only loans which have been registered with the BSP shall be available for servicing using foreign exchange purchased from the banking system. Unregistered loans can be serviced using the debtor's own supply of foreign exchange or forex sourced outside the banking system.

e. Entry and sojourn of personnel

Foreign nationals who wish to come to the Philippines can enter as a tourist without visa under Executive Order No. 408, or secure a temporary visitor's visa under Section 9(a) of the Philippine Immigration Act, as amended before any Philippine consular posts abroad. Section 9(a) visa can either be for business, pleasure, or health and normally entitles the alien to an initial stay of 59 days, extendible to a year. While in the Philippines, the Bureau of Immigration (BI) allows the alien to convert his immigration status from tourist/temporary visitor to another visa category without the necessity of leaving the country to secure the new visa.

f. Performance requirements

Performance requirements under the Car Development Program (CDP), Commercial Vehicle Development Program (CVDP), and Motorcycle Development Program (MDP).

g. Capital exports

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.

4.15.3. Investment protection

a. Expropriation and compensation

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. Settlement of disputes

Disputes Between Government - The Philippines subscribes to the WTO dispute settlement procedures as the primary and ultimate mechanism to settle disputes between governments in matters related to the formal jurisdiction of the WTO. It resolves disputes with its APEC partners through consultations, mediations and/or arbitration, as appropriate. Disputes are settled under the WTO dispute settlement procedures only as a matter of last recourse.

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).

Disputes Between Private Parties - The Philippines recognizes various forms of alternative dispute resolution. Commercial disputes may be settled through negotiation, mediation/conciliation and arbitration.

## 4.16. Russian Federation

4.16.1. Background on the foreign investment regime

The current policy of the Government of the Russian Federation is aimed at encouraging foreign investments in Russia. Investment policy was particularly directed at creating the conditions to promote the expansion of foreign investments, and also the formation of transparent and stable rules in the conduct of economic activities.

The Russian legislative acts in this sphere provided proper guarantees for the protection of foreign investors' rights and interests and advantageous conditions for foreign investors and enterprises which intended to invest in the Russian Federation respecting its domestic investment legislation and relevant international treaties signed by the Russian Federation.

According to the Federal Law No. 160-FZ of 9 July 1999 “On Foreign Investment in the Russian Federation” (as amended on 21 March 2002, 25 July 2002), foreign investors in the Russian Federation were treated not less favorably than Russian ones with few exceptions provided by the same federal legislation.

4.16.2. Regulatory framework and investment facilitation

a. Transparency

The main regulations, relating to the activity of foreign investors, were laid down in the Constitution of the Russian Federation adopted on 12 December 1993, Civil Code, Part I dated 30 November 1994, No. 51-FZ (with amendments dated 20 February, 12 August 1996, 8 July 1999,16 April, 15 May 2001) and Part II dated 26 January 1996, No. 14-FZ (with amendments dated 12 August 1996, 24 October 1997, 17 December 1999) and some other legislative acts like Federal Law dated 9 July 1999, No. 160-FZ “On Foreign Investments in the Russian Federation” (as amended on 21 March 2002, 25 July 2002), Federal Law dated 25 February 1999, No. 39-FZ “On Investment Activities in the Russian Federation in the Form of Capital Investments” (with amendments of 2 January 2000), Law of the Russian Federation dated 9 October 1992, No.3615-1 “On Currency Control and Currency Regulation” (with amendments of 29 December 1998, 5 July 1999 and 8 August 2001) and Federal Law dated 30 December 1997, No. 225-FZ “On Product Sharing Agreements” (with amendments of 7 January 1999, 18 June 2001).

b. Most favored nation treatment/non-discrimination between source economies

Russia’s foreign investment policy is applied on a non-discriminatory basis as to source country of investment funds. Russian legislative acts provide for proper guarantees to protect rights and interests of foreign investors and provision of favorable conditions for foreign investors whose purpose is to invest in the Russian Federation, observing the Russian investment legislation and the relevant international agreements signed by the Russian Federation.

In accordance with Federal Law dated 9 July 1999, No.160-FZ "On Foreign Investments in the Russian Federation" (as amended on 21 March 2002, 25 July 2002), foreign investors in the Russian Federation enjoy the same favorable treatment as Russian investors with rare exceptions stipulated by the same federal legislation.

Federal Law dated 8 August 2001, No.129-FZ "On State Registration of Legal Entities" establishes the procedure for registration of legal entities and does not contain any restrictions or discriminatory regulations in relation to foreign founders of legal entities.

c. Repatriation and convertibility

As per the Federal Law No. 3615-1 of October 9, 1999 "On Currency Regulation and Currency Control" foreign currency, received by the enterprises (organizations)-residents, is subject to compulsory crediting to their accounts with the authorized banks, unless otherwise is established by the Central Bank of Russia (CBR). The exception – is the part of the currency earnings of the organizations-debtors in respect of the credits of the governmental agencies of the OESR member states.

The conversion is available without restrictions for current currency operations and loan payments for loans granted in hard currency. Under the Russian law, current currency operations are deemed as trade and non-trade bank transfers not exceeding 180 days. Payments on loan transactions exceeding 180 days and investments payments refer to capital transfers. Capital transfers require a license from the CBR which is usually time consuming for a recipient.

d. Entry and sojourn of personnel

According to the Federal Law "On Amendments and Additions to the Federal Law No. 7-FZ dated on 10 January 2003 "On the Procedure of Entry to and Departure from the Russian Federation" foreign nationals and apatrides (stateless persons) entering Russia are required to produce valid papers identifying them and recognized in Russia as such as well as visa issued by the diplomatic mission or the consular post of Russia, unless otherwise is stipulated by the international treaty signed by Russia.

e. Taxation

In the Russian Federation every person must pay the legally established taxes and charges. The principle of the Russian tax legislation – is the universal nature and equality of taxation. In the Russian Federation the legal conditions of activities of foreign investors and the use of the profit, received from investments, cannot be less favorable than the legal conditions of activities and the use of profits, provided for the Russian investors, except for the cases, established by the federal laws. The legislation of the Russian Federation on taxes and charges consists of the "Tax Code of the Russian Federation" (Parts One and Two) and of the federal laws on taxes and charges, adopted in accordance with it, in particular the Law "On Foreign Investments." The taxes and charges cannot have the discriminatory nature and applied differently, proceeding from the social, racial, national, religious or similar criteria, as well as they do not depend on the form of ownership, citizenship of natural persons or the place of origin of the capital. All doubts that cannot be eliminated, contradictions and unclear matters in the legislation acts on taxes and charges are construed in favor of the tax payer (payer of the charges).

f. Performance requirements

Trade-Related Investment Measures (TRIMS), connected with trade, are applied in the Russian practice of concluding the product sharing agreements. The Federal Law No. 225-FZ of December 30, 1995, with the alterations of January 7, 1999, No. 19-FZ "On Product Sharing Agreements" provides for in Article 7 the obligations of investor (foreign and national) in:

- provision to the Russian legal persons of the pre-emptive right to participate in the works under the agreement as contractors, suppliers, carriers or in other capacity on the basis of agreements (contracts) with investors;

- attraction of workers – citizens of the Russian Federation, the number of which should be not less than 80 percent of the composition of all attracted workers, attraction of foreign workers and specialists only at the initial stages of works under the agreement or when the workers and specialists – citizens of the Russian Federation of the appropriate qualification are not available;

- placing of orders for the manufacture of the equipment, technical facilities and materials, required for the geological study, extraction and initial processing of mineral resources in the volume of not less than 70 percent of the total cost of such orders between the Russian legal persons or foreign legal persons, who carry out the appropriate activities and are registered as tax payers on the territory of the Russian Federation;

- acquisition on a tender basis of new machinery and introduction of the progressive technologies for the performance of works under the agreement. At the same time, the Russian commodities (equipment, technical facilities and materials) in respect of reliability, safety, quality and delivery dates should be competitive in respect of the similar foreign commodities.

g. Capital exports

In accordance with the Russian legislation in force, the non-residents have the right without limitation to transfer, import and send the currency values to the Russian Federation, provided they observe the customs regulations. The non-residents have the right to sell and buy foreign currency for the currency of the Russian Federation according to the procedure, established by the Central Bank of Russia.

h. Investor behavior

The observance of law, regulations or administrative guideline/policy is stressed in most of the Russian laws and regulations related to foreign investment.

4.16.3. Investment protection

a. Expropriation and compensation

The Federal Law of the Russian Federation “On the Investment Activities in the Russian Federation, Carried Out in the Form of Capital Investments” (No. 39-FZ of

February 25, 1999), which also spreads its action to the “foreign entities of the entrepreneurial activities” (Article 4), envisages (Article 16 – “Protection of Capital Investments”) that capital investments may be:

- Nationalized only on condition of preliminary and equitable reimbursement by the State for the losses, inflicted on the entities of the investment activities, in accordance with the Constitution of the Russian Federation;

- Requisitioned by decision of the State authorities in cases, according to the procedure and on the terms and conditions, which are determined by the Civil Code of the Russian Federation.

The interests of foreign investor in Russia are also protected by the relevant provisions of bilateral agreements on encouragement and mutual protection of investments, concluded by Russia with other countries.

b. Settlement of disputes

According to the Federal Law No. 160-FZ of 09.07.1999 “On Foreign Investments in the Russian Federation” (as amended on 21 March 2002, 25 July 2002) the dispute of foreign investor, which arose in connection with making the investments and carrying out the entrepreneurial activities on the territory of the Russian Federation, is settled in accordance with the international agreements of the Russian Federation and the federal laws at the court or arbitration court, or at the international arbitration court (arbitration tribunal).

## 4.17. Singapore

4.17.1. Background on the foreign investment regime

A major development strategy pursued by the Singapore government is the active promotion of investment in productive economic activities. The Economic Development Board was set up in 1961 as a one-stop agency to lead Singapore's industrialization drive through investment promotion. The fundamental policy in Singapore is the “open-door” concept where foreign investors are free to own 100% equity, free to repatriate profits and free to bring in foreign skilled workers to operate their facilities. Over the years, Singapore has encouraged both manufacturing and services investments, especially those with higher value-added and skill-intensive content. A core of local industries, mainly in the supporting activities, has also developed. Singapore's twin engines of growth, its manufacturing and services sectors, has powered the drive into a knowledge-based economy in the 21st century. To sustain such broad-based knowledge-driven economy, Singapore has continued to build the necessary capabilities and infrastructure and to encourage and nurture talent. This is also important for the current emphasis on innovation in the economy best spearheaded by private-sector companies.

4.17.2. Regulatory framework and investment facilitation

a. Transparency

New Business- Every business in Singapore must register with the Registry of Companies and Businesses. The requirement also applies to any firm, individual or corporation conducting business as a nominee, trustee or agent for any foreign corporation.

Branches - Branches will need to also register with the Registry of Companies and Businesses and supply information relating to the parent company.

Representative offices - A foreign company may establish a representative office in Singapore to undertake promotional and liaison activities on behalf of its parent company.

Control of Manufacture - Investors intending to manufacture products listed in the Control of Manufacture Act must obtain a license from the Registrar of the Act, the Chairman of the Economic Development Board.

b. Most favored nation treatment/non-discrimination between source economies

There are no exceptions to most favored nation treatment and no discrimination between source economies.

There are no provisions for exception to MFN treatment and for discrimination between source economies.

c. National treatment

Foreign investors are free to maintain 100% foreign equity and to make their own decisions on markets and technology licensing.

d. Repatriation and convertibility

There is no restriction on the repatriation of funds related to foreign investment.

There are currently no exchange control regulations.

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

e. Entry and sojourn of personnel

Business or social visit passes are required for the temporary entry and sojourn of key foreign technical and managerial personnel for engaging in activities connected with foreign investment. Entry visas are required for holders of travel documents issued by the governments of Afghanistan, Algeria, Bangladesh, Cambodia, China, Egypt, Hong Kong (documents of identity) India, Iran, Iraq, Jordon, Laos, Lebanon, Libya, Myanmar, Commonwealth of Independent States, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Viet Nam and Yemen and holders of Refugee Travel Documents issued by the Middle East countries.

f. Performance requirements

There are no laws or policies stating performance requirements. All contracts are commercial dealings. Singapore does not practice any TRIMS.

f. Investor behavior

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.

4.17.3. Investment protection

a. Expropriation and compensation

Other than the Land Acquisition Act, the provision for expropriation and compensation is usually included in bilateral investment guarantee agreements.

Land Acquisition Act - The Government is empowered to acquire land for public purposes. The Act provides for the payment of compensation to the owners of such land and for appeals against awards of compensation made by the Collector of Inland Revenue. Appeals Boards hear appeals from such awards.

b. Settlement of disputes

Singapore has institutionalized and internationalized arbitration through the creation of arbitration bodies and ratification of international conventions.

## 4.18. Chinese Taipei

4.18.1. Background on the foreign investment regime

Chinese Taipei has established a stable and comprehensive legal system under which multinational enterprises are protected and afforded the same rights as domestic enterprises. Foreign investment in Chinese Taipei, its protection, and any applicable restrictions on scope are handled mainly in accordance with the provisions of the Statute for Investment by Foreign Nationals. To further assure that administrative procedures take place in accordance with the law, an Administrative Procedures Law was implemented on January 1, 2001. The primary objective of investment policy is to maintain a highly liberalized, internationalized, transparent, and obstacle-free investment environment. Investments by foreign multinationals should obtain approval by the Investment Commission of the Ministry of Economic Affairs. Regulations for investment by foreign nationals and overseas Chinese are set forth in the Statute for Investment by Overseas

Chinese and Statute for Investment by Foreign Nationals. These two statutes stipulate that investment is prohibited in industries that have an unfavorable influence on national security, public order, good moral habits, and national health, or in which investment is prohibited by law.

4.18.2. Regulatory framework and investment facilitation

a. Transparency

Statute for Investment by Foreign Nationals - Stipulates protection and application procedures for investment by foreign nationals.

Statute for Investment by Overseas Chinese - Stipulates protection and application procedures for investment by overseas Chinese.

Statute for Upgrading Industries - Contains stipulations regarding tax incentives for the promotion of agriculture, industry, and services and regulations for the development of industrial zones.

Regulations Governing Securities Investment by Overseas Chinese and Foreign Investors, and Procedures for Remittance - Contains stipulations related to foreign investment in the domestic stock market and the overseas issuance of corporate bonds and global depository receipts by domestic enterprises.

Regulations Governing the Screening and Handling of Outward Investment and Outward Technical Cooperation Projects - Contains regulations related to the screening of applications for outward investment and outward technical cooperation.

Rules Governing the Approval and Administration of Foreign Specialist and Technical Personnel Employed by Public or Private Enterprises and Ranking Executives Employed by Overseas Chinese or Foreign National Invested Enterprises - Contains stipulations for the screening and approval of applications by enterprises under the administration of the Ministry of Economic Affairs for the hiring of foreign nationals to serve as specialists or technical workers, or as ranking executives of enterprises invested by overseas Chinese or foreign nationals.

b. Most favored nation treatment/non-discrimination between source economies

Relations across the Strait remain in the stage of mutually beneficial interchange. In the interest of stability and the security of society in Chinese Taipei, and of the welfare of its people, a case-by-case approval procedure for people of the People's Republic of China (PRC) coming to Chinese Taipei to engage in economic and trade investigation has been adopted, based on the restrictions in the Guidelines for National Unification and the statute governing relations across the straits. This approval procedure is also used for foreign companies with more than 20% ownership by the people of the PRC, with a gradual relaxation under way.

c. National treatment

Industries which may negatively affect national security, public order, good customs and practices, or national health; and

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.

d. Repatriation and convertibility

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.

e. Entry and sojourn of personnel

Except for the 14-day visa-exempt entry provision that applies to citizens of specified countries, or unless otherwise stipulated, all foreigners wishing to enter Chinese Taipei are required to obtain a proper visa prior to entry.

f. Performance requirements

Chinese Taipei conforms to TRIMs requirements.

4.3.3. Investment protection

a. Expropriation and compensation

Article 13 of Statute for Investment by Foreign - In cases where the investor's investment is less than 45% of the total capital of the enterprise in which he invests, he shall be reasonably compensated if the Nationals government acquires or expropriates the invested enterprise because of national defense reasons. The compensation under the preceding Paragraph shall be permitted for exchange settlement.

Article 14 of Statute for Investment by Foreign Nationals - In cases where the investor's investment is 45% or more of the total capital of the enterprise in which he invests, such an enterprise shall not be subject to requisition or expropriation for a period of twenty years after commencement of business as long as the investor continues to hold 45% or more of the total capital. If the investor's investment is made in conjunction with overseas Chinese investment conforming to the Statute for Investment by Overseas Chinese, and their aggregate amount of investment is 45% or more of the total capital of the enterprise involved, the provision of the preceding paragraph shall still apply.

b. Settlement of disputes

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.

## 4.19. Thailand

### 4.19.1. Background on the foreign investment regime

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.

### 4.19.2. Regulatory framework and investment facilitation

a. Transparency

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.

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.

b. Most favored nation treatment/non-discrimination between source economies

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.

c. Repatriation and convertibility

Repatriation of investment funds can be remitted freely upon submission of supporting evidence.

d. Entry and sojourn of personnel

All persons, other than those in transit and citizens of certain countries, are required to obtain a visa to enter Thailand.

e. Performance requirements

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.

4.19.3. Investment protection

a. Expropriation and compensation

Investment Promotion Act of 1977 Amended in 1991 - The Investment Promotion Act provides investment projects promoted by the Board of Investment with the guarantee against:

- nationalization;
- competition from new state enterprises;
- monopolization of sales of similar products;
- price control;
- export restriction; and
- duty-free imports by government agencies or state enterprises.

Thailand has enacted the Act to accommodate the operation of Multilateral Investment Guarantee Agency (MIGA) which has been announced in the Government Gazette on 28 April 2000 and become effective since 29 April 2000. Thailand has become MIGA's 154th member and is now eligible for MIGA's political risk coverage for Thai investment going overseas as well as other member countries' investment going into Thailand.

b. Settlement of disputes

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.

## 4.20. The United States of America

### 4.20.1. Background on the foreign investment regime

The United States is the world’s largest economy and the world's largest host of foreign direct investment (FDI). Foreign investors are attracted to the United States' talented and skilled labor pool as well as the opportunity to create strategic alliances in the country's strong, competitive industries.

U.S. policy towards foreign direct investment has not changed in any substantial way for decades. The investment regime is characterized by a high degree of openness, and is based on the principle of national treatment. Foreign investors are provided an open, transparent and, for the most part, non-discriminatory investment climate. The few exceptions to this policy are generally for reasons of national security or prudential considerations and should be viewed in the context of the overall stability and openness of the U.S. investment regime. In addition, the United States offers an investment regime in which investors have non-discriminatory legal recourse in the event of a dispute, free transferability of capital and profits, guarantees against expropriation, and unparalleled infrastructure.

### 4.20.2. Regulatory framework and investment facilitation

#### a. Transparency

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.

#### b. Repatriation and convertibility

There are no restrictions on foreign payments except for those imposed under Treasury Department regulations on transactions. As of April 15, 2003, Treasury Department regulations impose restrictions on transactions involving the governments or nationals of Cuba; the governments of Libya and Sudan; certain terrorists who threaten to disrupt the Middle East peace process; designated persons who commit, threaten to commit or support terrorism; designated narcotics traffickers; Slobodan Milosevic, his close associates, and persons indicted by the International Criminal Tribunal for the former Yugoslavia; designated persons who threaten international stabilization efforts in the

Western Balkans; and designated persons undermining democratic processes or institutions in Zimbabwe. Treasury regulations also restrict most payment transactions involving Iran, and payment transactions involving prohibited exports to UNITA or to the territory of Angola. Transfers of funds are also prohibited to or through Cuban, Sudanese, and Libyan financial institutions or to entities owned or controlled by these governments. The United States government is in the process of amending the restrictions on transactions with Iraq and on transfers of funds to and through Iraq, with a view toward lifting them entirely once a duly constituted Iraqi governing authority is in place.

c. Entry and sojourn of personnel

The United States Immigration and Nationality Act and accompanying implementing regulations establish a clear process through which aliens may apply for entry to work in the United States. The United States has four entry categories applicable to the temporary entry of business persons: business visitors, traders and investors, intra-company transferees, and professionals.

d. Performance requirements

With some limited exceptions, the United States government does not impose performance requirements on foreign (or domestic) investment. The United States did not notify any measures under the TRIMs Agreement in the World Trade Organization.

e. Capital exports

The export of technology and technical data for items designed, developed, produced modified, or configured for military use is controlled through the export licenses issued by the State Department's Office of Defense Trade Controls pursuant to International Traffic in Arms Regulations (Title 22, Code of Federal Regulations (C.F.R.), Parts 120-130). The Department of Energy controls technology related to the production of Special Nuclear Material pursuant to section 57b of the Atomic Energy Act (implemented at 10 C.F.R. Part 810). In addition, the Department of Commerce processes export license applications for sensitive dual-use commodities and technologies pursuant to the Export

Administration Regulations (15 C.F.R. Parts 730-774). The controlled dual-use technologies are primarily those civil technologies which have application in, or can make a significant contribution to, the design, development, or production of weapons of mass destruction (chemical, nuclear, and biological), advanced conventional weapons and their means of delivery.

4.20.3. Investment protection

a. Expropriation and compensation

Sources of Law - The U.S. has long recognized that a key attribute of sovereignty is the power of the government to take private property for public use without the owner's consent (i.e., the power of eminent domain or the power to expropriate). The “Takings Clause” contained in the Fifth Amendment of the U.S. Constitution limits the federal government's power of eminent domain by providing that private property shall not “...be taken for public use, without just compensation.” Although the Fifth Amendment is not by its own terms applicable to state governments, the U.S. Supreme Court has held that the Takings Clause is applicable to the states through the due process requirements of the Fourteenth Amendment. Chicago, Burlington & Quincy Railroad Co. v. City of Chicago, 166 U.S. 226 (1897). Within its own jurisdiction, each state possesses the power of eminent domain, subject to the limits in its state constitution and the limits imposed by the Fifth Amendment.

b. Settlement of disputes

In general, investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor. Such disputes are generally resolved in domestic courts, although arbitration may be available depending on local law and practice and the wishes of the parties to the dispute. Investor-state disputes are generally resolved in domestic courts where available, although U.S. bilateral investment treaties and investment chapters in free trade agreements permit investors to opt for international arbitration in certain disputes. Under some U.S. bilateral investment treaties, an investor who seeks a remedy (other than interim injunctive relief) in local courts forfeits the right to bring the dispute to international arbitration.

## 4.21. Viet Nam

4.21.1. Background on the foreign investment regime

Viet Nam has been carrying out economic reforms since 1986 under the "Doi Moi" (Renovation) policy, focusing on market oriented economic management; restructuring to build a multi-sectoral economy; financial, monetary and administrative reform; and the development of external economic relations. One of the most important aspects of economic reform in Viet Nam is the encouragement of domestic and foreign direct investment. The Enterprise Law (which replaced the Company Law and the Law on Private Enterprises) has had a profound impact on the development of the private sector in Viet Nam. The Law on Foreign Investment was promulgated in 1987 and amended in 1990, 1992, 1996 and 2000. The Law is now considered among the most liberal investment laws in the region.

4.21.2. Regulatory framework and investment facilitation

a. Transparency

Viet Nam commits to publish all laws, regulations and general administrative procedures and to the extent possible permit public comment regarding the formulation of such measures. In addition, Viet Nam commits to provide access to economic and trade data and enforce measures that are published. It will designate an official journal for the publication of all measures of general application and administer measures in a uniform, impartial and reasonable manner. Viet Nam will maintain administrative and juridical tribunals for the prompt review of administrative action related to the agreement and permit the right to appeal an adverse decision.

b. Restrictions on foreign ownership

The establishment of a 100% foreign owned enterprise is not allowed in the following sectors: (i) telecommunications service (only allowed in the form of a BCC); (ii) exploration and exploitation of oil and gas, and precious and rare minerals; (iii) consultancy services (except for technical consultancy); (iv) air, rail and sea transportation; public passenger transportation; airport and port construction (only allowed for BOT, BTO and BT projects); (v) production of industrial explosives; (vi) afforestation; (vii) travel tours; and (viii) culture. The legal capital of a foreign owned enterprise must be at least 30% of its investment capital and cannot be reduced during the investment term. There is no ceiling on the foreign capital contribution to the legal capital of a joint venture enterprise but it must not be less than 30%.

c. Entry and stay of personnel

Entry and exit visa - In addition to a passport, a visa is necessary to visit Viet Nam from most countries, although there are some countries whose tourists do not now require visas. Tourists and business visas are usually obtained from Vietnamese embassies and consulates abroad. People coming to live and work in Viet Nam usually obtain a visa through a sponsoring agency, providing them with personal details - full name - date and place of birth - citizenship - passport number, date and place of issue, expiry date - date and point of entry to Viet Nam.

4.21.3. Investment protection

a. Investment guarantee

Under its laws and international obligations, the Vietnamese government provides a wide range of investment guarantees to foreign investors, including:

- guarantee of fair and equitable treatment between foreign investors and progressively phasing in non-discriminatory treatment for foreign investors and domestic investors;

- guarantee that the capital and other lawful assets of foreign investors will not be expropriated by administrative measures, except in the public purpose, under due process of law, on a non-discriminatory basis and with prompt, adequate and effective compensation;

- non-retrospective application in the event that the interests of investors are damaged by a change in the provisions of any law of Viet Nam;

guarantee of ability to transfer profits derived from business operations, payments received from the provision of technology and services, the principal of, and interest on, any foreign loan obtained during the course of operation, investment capital, and other sums of money and assets lawfully owned.

b. Settlement of disputes

Generally, disputes arising out of civil, commercial and economic transactions in Viet Nam may be resolved at Vietnamese courts and arbitration centers, including:

- Civil Courts and Economic Courts under the People's Court system containing a court of first instance and an appeal court;

- Economic Arbitration Centers established as social and professional organizations to resolve disputes arising: (i) from economic contracts; (ii) between a company and its members or between its members; (iii) from the establishment, operation and dissolution of a company; or (iv) from sales or purchases of shares or debentures;

- Viet Nam International Arbitration Center (VIAC) established as a non-government organization belonging to the Viet Nam Chamber of Commerce and Industry to resolve disputes relating to international economic relations, including foreign trade contracts, international investment contracts, tourism, transport, technology transfer, and international insurance, credit, payments etc

Specifically, foreign investment legislation provides that disputes between parties to a joint venture enterprise (JVE) or a business cooperation contract (BCC), disputes between foreign owned enterprise and foreign organizations or individuals, and disputes between foreign parties to a JVE or BCC with Vietnamese economic organizations shall be first attempted to be resolved through negotiation and conciliation. Where conciliation fails, the disputing parties may agree on the selection of one of the following dispute resolution alternatives:

- a Vietnamese court;

- a Vietnamese arbitration body, a foreign arbitration body or an international arbitration body;

- an arbitration tribunal established by agreement between the parties.

However, disputes between two FOEs or disputes between FOEs and Vietnamese economic organizations shall be resolved by Vietnamese arbitration organizations or by Vietnamese courts in accordance with Vietnamese laws. According to its international arrangements and Government regulations on FDI under the form of BOT, BTO and BT contracts, Viet Nam recognizes the mechanism for dispute resolution between the State and the investors of other States, under which administrative tribunals, courts of the host country, foreign arbitration centers, UNCITRAL and other methods agreed to in the contract, as the case may be, are used to resolve those disputes. Viet Nam will commit to using the ICSID mechanism when Viet Nam accedes to the 1965 Washington Convention on this matter. Since 1995, Viet Nam has been a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

# 5. IDENTIFYING HURDLES AND SUPPORT OF PPP FOR TOURISM INVESTMENT

The success of tourism development in the APEC region will in large measure depend on its ability to attract sufficient, appropriate investment from the public and private sectors to implement key components of the strategy. The limited success in implementing earlier development plans for the tourist area is in part attributable to the failure to create investment conditions sufficiently favorable to encourage the private sector, either domestic investors or international investors, to invest.

There are a number of reasons to believe that there is a more realistic chance of success in attracting investment on a broad front:

- Most APEC economies have adopted a much more open door position in respect to foreign investment and participation over the last two years and is becoming a more integrated part of the global economy;

- Telecommunications advances, particularly the Internet, have had a profound effect in reducing the friction of distance allowing businesses to have a wider choice of location, giving APEC economies a greater range of opportunities;

- Travel restriction have been relaxed and the costs of travel lowered for many countries in the region, making each member of APEC economies more accessible;

- There is a clear recognition that the implementation of an investment procurement strategy requires a new legal and institutional framework and a much more coordinated approach than in the past.

To take advantage of these more favorable conditions, a clear, simple, consistent investment procurement strategy for the tourism investment development area is necessary.

- Individual investment procurement action plans tailored to the varied sources of investment that need to be targeted. They can be categorized in three ways:

- End-users and developer/investors ;

- The public and private sectors ; and

- From national and international sources.

It is envisaged that the implementation of the investment procurement strategies will be through an Inward Investment Promotion Enterprise Company which would act as a national and international inward investment attraction agency for all investment in the APEC region. It would be a “one-door” agency for the APEC economies providing access to all government and other agencies, giving locational, housing and educational advice and support and giving assistance with applications, consents, visas etc.

The precise contents of the strategic marketing framework and the individual investment procurement strategies will to a large degree depend on the extent to which our whole package of recommendations is accepted and implemented. In this section we provide an illustration of the likely key components in the light of a summary of the current investment climate and legal framework of investment and a review of the current impediments to the attraction of international investment that will need to be overcome.

## 5. 1. Investment Climate

The investment climate is extremely competitive in the Asia Pacific region and globally. If direct investment is to be attracted to each member of economies, the private sector will need to be made aware of trends and potential for further growth as well as the prospects for investment in specific projects. Particular projects should be actively promoted to further the implementation of the strategy. Potential investment will come from several different sources.

### 5.1.1. Private Sector

In investment procurement it is traditional to distinguish between investment by end-users and investment by developer/investors. The latter can be sub-divided into infrastructure development companies, developers and investment funds. Investment by a developer/investor represents an investment in real estate or other infrastructure, which would be occupied by an end-user or purchased as a service by an end-user. Clearly some investors, namely owner-occupiers, are a combination of end-user and developer/investor, although this is increasingly rare in most parts of the world.

*End Users*

Investment by end-users represents a direct investment in a productive asset for an operational entity. Typically end-user foreign direct investment comes from manufacturers and industrialists, although this could include foreign companies with expertise in the primary industry sectors such as agriculture and fisheries. This could also be the investment by a hotel management company in establishing a hotel operation, or the establishment of a logistics facility by an air freight company i.e. by companies actually setting up business.

*Infrastructure Development Companies*

The attraction of this type of investment has been successfully achieved in other parts of the APEC region through the use of Build-Operate-Transfer (BOT) and Build-Operate-Own (BOO) schemes, in which the private sector would be granted rights to build a facility or infrastructure project in return for the right to receive revenues from the project for a specified period. These have been successful where the contract has been drawn up to deal specifically with all aspects of the deal, where the rights and obligations of both parties are clearly identified and the contractual terms have been adhered to throughout the contract period. Often the public authority would be required to make guarantees regarding restrictions on the permits for potential future projects that might adversely affect revenues from the original deal. In some cases, public authorities have underwritten projects in order to guarantee a minimum return to the investor. Based on past experience, investors would be expected to be very cautious towards contracts that were not explicit on all arrangements or projects where the facilitating public authority has a track record for renegotiating the terms of contracts subsequent to the formal signing of the deal.

*Development Companies*

These would be expected to seek involvement in project from conception to completion, either as local companies, wholly foreign owned enterprises or joint-venture companies comprising a combination of local and foreign interests. This would typically involve the development of real estate to be retained for lease as an investment, to be sold en-bloc as an investment or to be sold in stratified title to end users or investors.

*Investment Funds*

These could be local, but in the current environment are considered more likely to come from overseas. These are generally the managed capital of individual investors, either as a small number of wealthy entities or a larger number of smaller investors. Other investment funds represent the capital of a single entity. For example, a significant number of the leading investment banks now have direct real estate investment funds, investing the bank's own capital. Other entities of this nature include pension funds of major corporate. Each of the above types of funds have demanding hurdle investment expectation rates in order to meet the requirements of the individual investors or the company's own expected return on equity investments.

5.1.2. Public Sector

*Central Government*

Typically investment is made as a stimulus to the local economy. The invested capital may be required to show specific investment returns (e.g. Hong Kong Government's recent investment into the proposed Disney Theme Park in the territory). However, it is also likely to reflect broader aims of the government such as economic stimulus, enhancement of the country's product offer for tourism or business ventures, social benefits and the mitigation of external and uncontrollable negative social and economic impacts upon a specific region or location.

*Provincial Government*

Provincial government collects revenue through the Acquisition tax, Registration tax, City Planning tax, Community Facility tax, Aggregate Land tax and Property tax as well as a number of other less significant local taxes. In recent years, this has comprised about 40-45% of the total tax collected, with the remainder being directed to central government. Provincial government has been typically responsible for funding local infrastructure projects, while central government has typically funded approved national status roads, airports, seaports, and other projects of a strategic nature. Provincial government funding would also be expected to show specific investment returns, although as with central government funding, it is likely that social benefits and the enhancement of the province's economic objectives would also be taken into account.

*Investment Returns*

Investors of all kinds require returns on capital. The actual return varies from one investor to another, according to various factors:

- The quality of the investment opportunity
- The market profile of the investment
- The developers individual cost of capital
- Perceived Country risk
- Perceived currency risk
- Opportunity cost of capital
- The type of investor

Secure investments can generally be regarded as 'income' driven, in which the long term profile for recurrent revenues tend to constitute a significant proportion of the rationale for investment. These investments are typically found in mature real estate markets. 'Growth' or 'value added' investments can usually be found in developing and maturing real estate markets. Typically, these markets are less transparent and require higher tolerance for risk, and consequently the required returns to compensate for the risks tend to be higher. 'Opportunistic' investments are typically found in markets that are not well developed and in which there are higher risks due to:

- lower levels of transparency;
- scarcity of high quality information;
- increased risk of political interference;
- under-developed nature of local capital markets; and

- low transaction volumes

## 5.2. Types of Investment Agreements

Most of this section was cited from Park's article (2002). If any further interesting, please find the article "Harmonization of APEC Investment Instruments with Investment Agreements of APEC Economies" written by Taeho Park, 2002, in APEC Workshop on Bilateral and Regional Investment Rules/Agreements, Asia-Pacific Economic Cooperation, Committee on Trade and Investment, Investment Experts Group, Merida, Mexico.

### 5.2.1. Multilateral Agreements

The Punta del Este Declaration, which launched the Uruguay Round, included a set of discussions in the area of investment deemed to have restrictive and distorted effects on trade. In the Uruguay Round, however, investment per se was not on the negotiating agenda. The Final Act of the Uruguay Round contained a number of provisions dealing with issues, which were related to investment liberalization and protection. They are found in the General Agreement on Trade in Services (GATS), Agreement on Trade-related Investment Measures (TRIMs), and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) (Taeho Park, 2002).

The most important of these is the General Agreement on Trade in Services (GATS). This provision addresses the terms and conditions upon which an investor may enter a market, and the conditions of operation in the post-establishment phase. With regard to "establishment," the most-favored-nation (MFN) commitment applies, but beyond that GATS market access concept permits governments to condition the extent to which (non-discriminatory) entry by foreign suppliers will be permitted.

With regard to post-establishment, by defining "national treatment" as an obligation that relates only to scheduled commitments and not as a principle of general application, GATS is different from a number of other inter-governmental investment agreements in which national treatment has the same status as MFN. Moreover, GATS provides for national treatment to be granted only partially, or subject to specified conditions.

The TRIMs Agreement derives from Articles III and XI of the General Agreement on Tariffs and Trade (GATT). One of its primary objectives is to facilitate investment across international frontiers. It states that World Trade Organization (WTO) members shall not apply measures which require investors or producers to purchase their inputs locally to the exclusion of competing imported products (typically called local content requirements), or to sell their output domestically rather than exporting it (typically called domestic sales requirements). The aim in both cases is to discipline measures, which restrict or distort trade flows.

The TRIPs Agreement is regarded as a strong rule-based agreement likely to generate positive investment protection despite no detailed provisions dealing directly with the treatment of investment per se. It provides further protection for intangible assets that form the basis of the activities of multinational firms.

The Multilateral Investment Guarantee Agency (MIGA) was established in 1988 as a member of the World Bank Group to encourage foreign direct investment in developing countries. It provides investment guarantees to investors against the political risks of transfer restriction, expropriation, breach of contract, war and civil disturbance in the host country and technical assistance to host governments on means to enhance their ability to attract foreign direct investment.

In 1995, the Organization for Economic Co-operation and Development (OECD) Ministers agreed that to deal with the trend of globalization, there was a pressing need for a multilateral regime on investment, which offered a uniform, stable and predictable environment. Thus, negotiations on the Multilateral Agreement on Investment (MAI) began in 1995 among "like-minded" countries. It was expected to be the first multilateral agreement which combined all main disciplines in the key areas on foreign direct investment rule-making: especially, investment protection, investment liberalization and dispute settlement. Members emphasized the open character of the MAI allowing for accession by non-OECD members. Throughout the meetings there was shared dialogue with business and labor and with non-governmental organizations. However, the MAI negotiations eventually fell apart in December 1998 despite three years of negotiations. This experience suggests that investment is not an easy sector to conclude even among developed countries with seemingly similar interests.

Since 1997, WTO members have started to analyze the relationship between international trade and investment, and its implications for economic growth and development. The Working Group on the Relationship between Trade and Investment have examined a range of international investment instruments and existing agreements and have debated the possible pros and cons of negotiating a multilateral framework of investment rules in the WTO.

5.2.2. Regional Agreements

Regional economic integration agreements are a significant subcategory. They often involve a higher than usual degree of unity and cooperation among their members and sometimes are marked by the presence of “supranational” institutions, and it is therefore difficult to draw general conclusions from their provisions. Regional instruments have some of the characteristics of multilateral ones: the agreement of many countries is needed for their negotiation and conclusion, they often have important institutional structures and the generally provide for their continuing growth and development. However, the number of countries involved is smaller and they tend to be relatively homogeneous; the adoption of instruments that serve common interests in fairly specific fashion is more feasible. With respect to FDI, regional agreements have helped to change pre-existing structures of law and policy and to create important habits and patterns of expectations on a broader transnational level, even though not a universal one. As a result in recent years, regional agreements have often been the harbingers of significant new trends in matters of investment law and regulation.

The North American Free Trade Agreement (NAFTA) was signed in 1992 between Canada, Mexico and the US. As a regional agreement, it is not limited to developed countries only and may indeed be extended to other countries. At first, APEC member economies expressed some anxiety lest NAFTA turn into a protectionist trade bloc. However, members reiterated their belief in ‘open regionalism’ and endorsed the view that regional and sub-regional trade arrangements should be outward-looking, GATT-consistent and support the process of broader trade liberalization. Indeed, NAFTA's provisions on the subject of foreign direct investment (FDI) have significantly influenced other arrangements. It may in fact be considered as a characteristic of a recent trend for free trade agreements to include FDI in their scope. While the agreement covers only three states, their size and overall importance as well as the process of liberalization the agreement has set in motion, make it a particularly important treaty.

In October 1998, the governments of Brunei Darussalam, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam- the member states of the Association of South-East Asian Nations (ASEAN), concluded the Framework Agreement on the ASEAN Investment Area with a view to creating a more liberal and transparent investment environment in the area. This Agreement is focused on FDI alone. It seeks to promote investment in the area through the cooperation of the countries in the region in the liberalization of investment regulations, the provision of national treatment to all investors from the countries involved, increased transparency and an interstate dispute-settlement system. The ASEAN Investment Area Council, comprised of the Ministers responsible for investment and the Secretary General of ASEAN was established at the same time to supervise, co-ordinate and review the implementation of the Agreement.

5.2.3. Prototype investment treaties and bilateral investment treaties

According to the 2001 World Investment Report, a dense web of 1,941 bilateral investment treaties have been formed to date, covering all corners of the globe. They were first introduced in the 1960s and have since remained largely unchanged in terms of their format and the issues they cover. These treaties focus solely on investment issues and make binding provisions on expropriation, compensation of losses due to armed conflict or internal disorder, and for the transfer of payments. Typically, these benefits are accorded on a national treatment or MFN basis. The definition of investment used is broad, covering both non-equity forms of investment and portfolio investment. Protection is only granted to investors with real links to one of the two partners to the agreement.

BITs can be tailored to the specific circumstances of the two parties more easily than other types of agreements, are relatively easy to conclude, and therefore can be realized more quickly than regional and multilateral agreements. Some of the disadvantages of BITs are related to the fact that a bilateral negotiation between parties with unequal bargaining power may disproportionately favor one party's interests. The proliferation of BITs may also lead to a complex web of inconsistent provisions that are difficult to apply and may distort investment flows. Furthermore, in contrast to their specificity with respect to investment protection, BITs are short on commitments on the liberalization of investment restrictions. Still, BITs may have a contributory role in the elaboration of regional and multilateral rules if the two types of agreements can be seen as mutually reinforcing.

## 5.3. APEC Investment Instruments

The case for new international rules to govern investment is built on four premises: that globalization is increasing, global firms face national policies, conflicts are inevitable, and the goals of both global firms and governments are legitimate.

While international investment agreements by definition contain obligations that, by their very nature, limit to some extent the autonomy of participating parties, the need for a certain degree of flexibility to allow countries to pursue their development objectives in light of their specific needs and circumstances must be addressed. The non-binding nature of the APEC investment instruments, the non-binding investment principles and the menu of options specifically addresses these challenges.

### 5.3.1. Non-binding Investment Principles

The Non-binding Investment Principles (NBIP) was adopted in Bogor, Indonesia in 1994 as an investment code for facilitating investment flows within the region. As the code is non-binding some commentators argue that the NBIPs amount to a weak instrument for achieving a free and open investment regime in the region. Nonetheless, all recognize the code as a useful first step towards this end. The following is a list of investment principles set out in the investment code: transparency, non-discrimination between source economies, national treatment, investment incentives, performance requirements, expropriation and compensation, repatriation and convertibility, settlement of disputes, entry and sojourn of personnel, avoidance of double taxation, investor behavior and removal of barriers to capital exports.

5.3.2. Menu of Options

In 1997, in response to both government and business, the Investment Experts Group (IEG) at St. Johns, Canada, drafted the Menu of options to help economies identify policy measures that they may include unilaterally in their individual action plans. There was a consensus that the project should focus on concrete measures and the APEC ministers endorsed the Menu initiative at Vancouver. The Menu is devised so that APEC member economies may voluntarily select any of a number of options in order to make progress towards creating a free and open investment regime. It was intended as a reference tool for economies to refer to when updating their IAPs. The APEC approach to liberalization and facilitation of trade and investment is to recognize the diversity that exists among APEC member economies. The Menu of Options is consistent in this goal, recognizing diversity and providing members with a broad range of choices suitable for different circumstances. The items are not prescriptive and, where chosen, may be modified to suit particular circumstances. Since its initial drafting, the Menu of Options has been expanded by the IEG with the addition of texts on technology transfer, intellectual property rights, start-up companies/venture capital and domestic business environment so as to capture the benefits of APEC economies' increasing experience and changing views. The list of Menu items include: transparency, non-discrimination related to MFN and national treatment, expropriation and compensation, protection from strife and similar events, transfers of capital related to investments, performance requirements, entry and stay of personnel, settlement of disputes, intellectual property, technology transfer, avoidance of double taxation, start-up companies and venture capital, competition policy and regulatory reform and business facilitating measures to improve the domestic business environment.

It can be said that APECs NBIPs and Menu of Options follow standards that have come to be known as "soft law." These standards are not always legal in the traditional sense, in that they are not formally binding on states or individuals, but they may still possess considerable legal and political authority, to the extent that they often represent widely held expectations that affect in a variety of ways the actual behavior of economic and political actors. The exact legal status of soft law has long been a matter of controversy. To the extent that such standards represent widely shared expectations, they may, through repeated invocation and appropriate utilization, move to the status of becoming binding and enforceable rules.

Furthermore, the APEC process relies on a consensus-based approach, which promotes discussion of wide ranging initiatives. While members may not implement these initiatives immediately, regular meetings and reports and the peer pressure associated with these provides impetus for member countries to be seen to be doing something substantial to liberalize their investment regimes. As Graham points out, the APEC experience in crafting investment principles demonstrated two things. The first was that a diverse group of nations, including some of the most dynamic of the newly industrializing economies, were willing to discuss and international convention on direct investment. The second was that although these principles are non-binding, it does represent the beginning of a dialogue.

In its review of the provisions of the NBIPs in 1995, the Eminent Person's Group (EPG) suggested that five of the provisions, namely, transparency, non-discrimination, expropriation, settlement of investment disputes and tax measures, were the equivalent of international practice in investment treaties. However, the Group claimed that five provisions- relating to national treatment, performance requirements, investment incentives, repatriation and convertibility, the entry and sojourn of foreign personnel - failed to measure up to international best practice standards.

### 5.3.3. Investment Guidebook and Individual Action Plans

While not considered as investment instruments per se, the Investment Guidebook and Individual Action Plans (IAP) serve as useful tools in revealing to investors an economy's investment regime.

The Collective and Individual Action Plans were to put in place specific measures that could be taken by individual economies and by APEC collectively to promote trade and investment liberalization, trade and investment facilitation and economic cooperation. Individual and collective actions are to take place across a broad range of areas, such as those included in the NBIPs and menu of options. The IAPS are voluntary commitments submitted by each member economy to liberalize and facilitate trade - primarily through a lowering of tariffs and other barriers - and to liberalize rules for foreign investment. The APEC Business Advisory Council (ABAC) points to two specific needs in IAPs. One is the need to be more transparent in setting out the steps that economies intend to take to achieve liberalization and the policy intention behind those steps. The other is the need to be more specific as opposed to making vague suggestions about "adhering to the non-binding investment principles." It also recommended that the contents of the action plans be more friendly. Furthermore, ABAC has suggested that the action plans were not comprehensive in that they did not take into account liberalization measures that had been adopted since the Asian financial crisis in 1997. ABAC claims that concrete liberalization initiatives need to be set out along with a timetable for their implementation. These criticisms suggest that translating good intentions into concrete action is very difficult in the investment arena.

The Investment Guidebook published by the APEC Secretariat serves as a useful guide on the laws most relevant to investment. However, the information provided in the guidebook depends almost entirely on the information that member economies provide to the Secretariat, and shows that some member economies are more diligent than others in providing comprehensive information.

## 5.4. Evaluation of APEC Economies' Investment Agreements

### 5.4.1. MFN Principles

Bilateral investment treaties use two different standards to prevent discriminatory treatment of different classes of investments, the MFN treatment standard and the national treatment standard. The MFN standard is a core element of international investment agreements, which seeks to prevent discrimination against investors from foreign countries on grounds of their nationality. The MFN standard gives investors a guarantee against certain forms of discrimination by host countries and is crucial for the establishment of equality of competitive opportunities between investors from different foreign countries.

In principle, one can distinguish several types of MFN clauses. They can be either unilateral or reciprocal, conditional or unconditional, limited (by territory, time, or substantive scope) or unlimited. MFN clauses in investment matters are usually reciprocal, unconditional and apply to all investment-related matters. Although MFN clauses are characterized by a basic similarity in terms of structure and substantive coverage, they nevertheless differ in one important area, namely, whether they apply only at the post-entry stage or also at the pre-entry stage. The majority of BITs do not include binding provisions concerning the admission of foreign investment. This means that there is an obligation to apply MFN under these terms only after an investment has been made. With regard to the pre-establishment phase, contracting parties are usually encouraged to create favorable conditions for foreign investors and admit their investments in accordance with their domestic laws. Some BITs, most notably those of the US and Canada and some regional agreements such as NAFTA offer a pre-and post-entry MFN standard.

There are several exceptions to the MFN standard, such as general exceptions (national security reasons), exceptions based on reciprocity considerations (taxation and intellectual property), exceptions related to special privileges accorded to members of a customs union or a free trade area, and individual country-specific exceptions.

The US Prototype as well as NAFTA contain a provision state that MFN applies only to investors and investments that are in “like situations” or in “like circumstances.” Thus, signifying different treatment is justified if they are in different objective situations.

The US Prototype Agreement and the US-Vietnam Treaty both state that intellectual property rights concluded under the auspices of the World Intellectual Property Organization do not fall under the MFN provisions.

Chinese Taipei’s Investment Guidebook outlines that it follows a case-by-case approval procedure for investors from China. The approval procedure is also used for foreign companies with more than 20% ownership by the people of the PRC, with a gradual relaxation under way.

### 5.4.2. National Treatment

The foundation of a liberalized investment regime is the absence of distinction between domestic and foreign investors. National treatment is the principle whereby a host country extends to foreign investors treatment that is at least as favorable as the treatment that it accords to national investors in like circumstances. While this is an important standard, it is perhaps the most difficult to achieve, as it touches upon politically and economically sensitive issues. The exceptions to national treatment are general exceptions based on reasons of public health, order and morals, and national security. Such exceptions are present in almost all multilateral regional, prototype and bilateral agreements. Subject specific exceptions which exempt specific issues from national treatment, such as intellectual property, taxation provisions in bilateral tax treaties, prudential measures in financial services or temporary macroeconomic safeguards. Country specific exceptions also whereby a contracting party reserves the right to differentiate between domestic and foreign investors under its laws and regulations - in particular, those related to specific industries or activities - for reasons of national economic and social policy.

The ASEAN model offers a temporary list of national treatment exclusions, reviewed every two years, and to be progressively phased out by 2010 by all Member States, with the exception of late entrants. This is very progressive in the sense that it accounts for national treatment in sectors such as manufacturing, agriculture, fishery, forestry, mining and quarrying, as outlined in the Protocol to Amend the Framework Agreement on the ASEAN Investment Area.

The New-Zealand-Singapore Agreement also has a provision that the Parties undertake to review at least every two years the status of the limitations on national treatment.

In the Investment Guidebook and IAPs, all member economies have listed restrictions on national treatment to foreign investors.

### 5.4.3. Performance Requirements

Investors may object to performance requirements because they impede the management of their investment and may require the investor to conduct the business in ways that reduce its efficiency and profitability. It has also been argued that because they regulate imports and exports, certain performance requirements may also distort international trade.

According to the provisions outlined in the treaties, they are well followed. However, the Investment Guidebook and IAPs suggests that there are many exceptions to the rule.

Chile maintains the right to impose performance requirements with requirements to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research in its territory. Chile’s National Television Council establishes that as a general requisite, up to 40% of transmissions must be Chilean productions. Furthermore, 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.

China’s entry in its Investment Guidebook also stipulates local content requirements for some industries are included in government policies such as automobiles.

The Philippines imposes local content requirements for motor vehicle development and detergent manufacture. Motor vehicle development is also subject to foreign exchange requirements, but the Philippines government has filed with the WTO Council for Trade in Goods’ (CTG) to request for an extension of an additional one and a half years from and after 31 December 2001 (or up to 30 June 2003) to phase out the local content and foreign exchange requirements under its Motor Vehicle Development Program.

Chinese Taipei’s IAP entry states that it has already committed to the abolishment of local-content requirements for automobiles and motorcycles/scooters upon accession to the WTO.

According to Vietnam’s IAP, local content requirements are applied for some manufacturing industries, including automobile, motorcycle, electric and electronic; and 24 industrial products which the market demand is satisfied by domestic production, are required to export at least 80%. However, Vietnam states that it intends to cut down the list of products, which are required to export at least 80% of products.

### 5.4.4. Expropriation and Compensation

Practically all the agreements examined adopt some variation of the traditional rule of international law that a State may not expropriate the property of an alien except for a public purpose, in a non-discriminatory manner, upon payment of compensation, and in accordance with due process of law. This provision of the NBIP aims at facilitating rather than liberalizing investment. Its inclusion stems from the fact that many investments are long-term and before making such a commitment, foreign investors need to be confident that their property cannot be taken by the state other than for public purposes and then only if prompt adequate and effective compensation is paid to them. The provision adopts the highest international standards with regard to expropriation and compensation.

The expropriation and compensation clauses are well followed according to the bilateral, prototype and regional agreements. The US and Chile prototypes as well as the Canada-Chile BIT and NAFTA contain very detailed provisions in this regard.

It is noteworthy that the Chile-Korea treaty expanded coverage of this provision so that investors affected have the right to prompt access under the law of the contracting party making the expropriation to review the amount of compensation and legality of any such expropriation or comparable measure.

### 5.4.5. Repatriation and Convertibility

The provisions on the transfer of payments are considered by both investors and countries as among the most important in an investment agreement. There are aspects here in which the interests of the host country and the foreign investor may differ widely. The Eminent Person’s Group found this provision in the NBIP to be weaker than comparable international standards primarily because it appears to allow member economies to move at their own pace towards totally free movement of capital flows related to foreign investment projects. While most economies in the region have now adopted Article 8 of the IMF provisions related to free movement of capital, many of these economies still have onerous bureaucratic requirements in place and some have not yet adopted freely convertible currency regimes. The repatriation and convertibility provision seeks the removal of these restrictions.

Repatriation and convertibility were in most cases well followed. Several agreements stated exceptions to prevent a transfer; those being bankruptcy, insolvency, or the protection of the rights of creditors; issuing, trading or dealing in securities; criminal or penal offenses; ensuring compliance with orders or judgments in ad judicatory proceedings. Such exceptions were listed in the treaties of the US and Australia Protocol Agreements, New Zealand-Singapore, NAFTA, Canada-Chile, Korea-Japan and Thailand-Canada.

In addition, the US' IAP states that transfers are freely permitted except for reasons of essential security and several exceptions described in the Investment Guidebook. The Investment Guidebook outline restrictions on foreign payments to governments or nationals of Cuba, DPRK, Iraq and Libya among others.

Papua New Guinea's Investment Guidebook entry states that 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.

### 5.4.6. Settlement of Disputes

Provisions for the settlement of disputes are important as a means of ensuring that the standards of treatment and protection granted by a treaty are effectively implemented and enforced. The presence of effective mechanisms for the resolution of disputes is the ultimate guarantee of protection for foreign investors. The most commonly accepted forum for resolving state-foreign investor disputes is the international arbitration institution established under the International Convention for the Settlement of Investment Disputes (ICSID). The provision also takes account of traditional East Asian preferences for informal resolution of disputes by specifically requiring consultations and negotiations prior to more formal dispute resolution procedures.

The settlement of disputes provisions in the treaties vary greatly in scope and detail among the agreement examined, but do generally follow the NBIPs and menu of options.

### 5.4.7. Entry and Sojourn of Personnel

The efficient operation of an investment may require the application of specialized knowledge possessed only by foreign nationals. For these reasons host countries need to find a reasonable balance between their right to exclude aliens and their desire to provide a favorable investment climate, necessitating the admission of certain aliens. Thus, as Bishop points out, when we consider each member economy's entry in the Investment Guidebook we find that the provisions relations to the stay of foreign personnel are often the most lengthy and complex part of the entry. An examination reveals that each economy has its own system for issuing visas and work permits, with little standardization evident across the region. A precursor to any liberalization may be some degree of policy harmonization.

The treaties examined do not all contain provisions providing for the entry and sojourn of personnel. However, those that do follow the general APEC provisions.

### 5.4.8. Avoidance of Double Taxation

The provisions for the avoidance of double taxation in the APEC instruments is arguably weak in that it appears only to encourage the formation of double taxation agreements rather than attempt to harmonize their provisions. For this reason, ABAC has made a number of recommendations on the issue. However, separate from the APEC provisions, the avoidance of double taxation measures appear to be well followed as most economies have provisions in their bilateral investment treaties dealing separately with double taxation. The Investment Guidebook and IAP entries provide an extensive list of the number of double taxation treaties covered to date in each economy.

### 5.4.9. Intellectual Property Rights

Perhaps due to the "newness" of this issue, its provisions are only found in the Korea-Japan treaty signed in March 2002. Yet the provisions are very rudimentary as they are lacking in Menu of Options items 10.03-10.05. Nevertheless, this agreement signals the beginning stages of implementation of this measure for future agreements.

### 5.4.10. Technology Transfer

Most BITs do not mention technology as such and this issue is only specifically treated in the US-Vietnam agreement signed in July 2000. However, it is noteworthy that the Menu of Options provisions reads as a positive statement outlining parties duties to reduce restrictions and provide protection on the transfer of technology. The USA-Vietnam clause reads as a negative statement of what each contracting party shall not mandate or enforce on the other party. Thus, this is an issue that needs further implementation and surveillance.

### 5.4.11. Transparency

Transparency is an important feature of a favorable investment climate. Foreign investors are more likely to invest in a country if they believe that they can ascertain the laws that will govern their investments. The transparency of laws and other government measures has many facets, from simply disclosing and publicizing all government measures in accordance with a country's legal system, to specifically notifying and making available certain types of measures to an international body or to officials of another country.

In this respect there are not too many transparency clauses in the agreements examined. They can only be found in the USA-Vietnam, Korea-Japan, Australia-Hong Kong and ASEAN treaties. However, the Investment Guidebook and IAPs thoroughly cover the transparency provisions of each member economy.

### 5.4.12. Business Facilitating Measures

The Menu of Options entry on business facilitating measures is quite lengthy with13 different points under its heading. Yet not one agreement examined incorporates its provisions in their multilateral, regional, prototype or bilateral treaties. The US-Vietnam agreement has a list of provisions on business facilitation but this list does not correspond to that of the Menu of Options.

The Investment Guidebook and IAPs do a better job of incorporating some of these principles in their respective entries.

### 5.4.13. Newly Emerging Issues

The following are newly emerging issues, and there is no mention in the multilateral, regional prototype and bilateral treaties on the topics of start-up companies and venture capital, removal of barriers to capital exports, investment behavior and competition policy.

## 5.5. APEC Tourism Impediments

### 5.5.1. Definition of Impediments

The question of what is an impediment to tourism growth is one which has been of concern to international organizations for a number of years. Early studies such as OECD concentrated on impediments to movement and tourism operations in a 1984 study, for example (Dain Simpson Associates, 2003). In the 1996 study the consultants adopted, as a definition:

"any factor, real or perceived, such as a regulation, capacity constraint, policy or operating practice which limits the growth of tourism to or within the APEC Region. It includes constraints which limit the freedom of the individual to travel to or from economies within the region or affect their decision to travel to economies in the region.

It also includes those factors which limit the operation, promotion, establishment or development of tourism-related businesses within the APEC region. This includes constraints such as infrastructure capacity, regulatory environments, the financial system, the labor market, the marketing and promotion network and introduction of technology."

5.5.2. Dynamic Character of Impediments

Tourism is a dynamic industry, and its role as a potential contributor to economic growth is more widely accepted than it was ten years ago. Through the sheer pressure of growth it is continually at the limits of system capacity and there is demand for infrastructure, skilled labor, investment capital and a more efficient processing system.

Some impediments which existed in the 1996 survey are no longer important, such as restrictions on outbound travel or foreign currency restrictions. The region has seen major investment in airport infrastructure over the past five years (Malaysia, Hong Kong, Japan, Korea for example) which has eliminated some of the concerns regarding aviation bottlenecks. The introduction of improved air navigation systems has overcome some of the airspace congestion concerns, the widespread adoption of E-mail as a means of business communication has overcome communication problems and provided instant links, although there are inconsistencies in the level and reliability of service across the region.

In their place a new set of barriers have emerged, September 11 and its aftermath has generated a new level of traveler security concerns and increased controls for departing and arriving passengers. Bio-security has become a major issue following the foot and mouth outbreak in the UK, with increased inward barrier control measures in Australia and New Zealand. Unauthorized migration (both refugee movements and economic migrants) has required some member economies to increase barrier controls and more closely manage passenger flows. The introduction of advanced passenger processing systems, initially by Australia but now being adopted among other APEC member economies has been a major step in simplifying the passenger arrival process.

Consequently, some impediments identified in 2002, particularly those affecting the movement of individuals, remain important but exist for a different set of reasons, primarily national security and the security and safety of the individual. There are references to the 'visa reversal' pattern, in which many member economies have tightened their visa requirements in the drive for security.

### 5.5.3. The relative significance of tourism in the political arena

It is widely recognized that tourism is a concept which does not fir comfortably with the normal structure of government, and that the factors influencing the development and operation of tourism are the responsibility of a range of agencies. Private sector tourism operations are regulated by agencies such as aviation, transport, health, or local government, the regulatory agencies, customs, immigration do not have the reception or encouragement of tourism as their prime purpose.

While the economic significance of tourism is gaining increased recognition among APEC member economies tourism frequently lacks the political influence that mainstream areas of government, health, agriculture, education or transport can bring to bear.

Consequently overcoming impediments to the development of tourism requires an understanding of the issues and an awareness of the importance of change by related agencies. The role of many central tourism agencies is one of advocacy and persuasion towards other agencies, seeking change in areas where there is no direct responsibility, such as foreign investment, labor regulations or immigration. The needs of the tourism sector are often secondary to the main purpose of central agencies.

Removing impediments is therefore not only a matter of identifying the problem, it is one of persuading the responsible agency or agencies that it is of sufficient importance to justify remedial action. It is not only a question of gaining acceptance of the issue, but also one of raising the priority for action.

The recognition of tourism's significance has been assisted by the publication of Tourism Satellite Accounts and the quantification of the contribution of tourism to Gross Domestic Product and employment. There is greater willingness to overcome impediments than was evident some years ago, but the fact remains that tourism agencies generally do not have the powers to initiate change, only to work through others.

### 5.5.4. The extent of impediments

There are relatively few significant tourism impediments in the APEC region. Procedural and regulatory impediments which are identified by governments are generally overcome in a cooperative manner between agencies. Only in Papua New Guinea, where tourism has a lower political profile, were a number of impediments to visitor movement, investment, labor mobility and visitor safety, identified. For many member economies there has been increasing recognition of the contribution that tourism makes to their economy. As noted, the introduction of Tourism Satellite Accounting in some member economies has enabled proposals which strengthen the tourism sector to receive political and bureaucratic support.

The pressure on infrastructure and the demand for new facilities to meet growing tourist volumes has fuelled new investment. Agencies which impact on the development or operation of tourism activities in areas such as labor, investment and barrier controls are aware of, and willing to assist in, responding to the needs of the tourism sector. The private sector concerns are more likely to be with issues outside the control of governments, such as the policies of privatized airlines and the effect of airline yield management strategies on seat pricing and availability, particularly for group and incentive travel. The effect of regulations in origin countries which impact on operations (such as the EC Directive) are also a concern. The availability of development finance to meet the demand for new facilities is a problem faced in a number of economies.

The benefits of technology, of rapid communication, of new techniques to handle large number of visitors, of better working relations between agencies and the increased privatization of services and infrastructure have all combined to make travel between economies, and the development and operation of tourism businesses, easier.

### 5.5.5. The nature of impediments identified

The impediments can be grouped into a number of categories which reflect the broad considerations of government policy, process, the way regulations are applied or the inherent lags between demand and supply. These include:

*Issues of national policy or law,*

In a number of cases a specific national policy or law enacted in the broader national interest acts as an impediment to the development of tourism. These include:

- regulations governing the employment of nationals in key occupations;
- limits on airline access aviation access through the continuation of bilateral aviation agreements; and
- a universal visa policy, where national interest in controlling the movement of foreign nationals prevails over the needs of tourism for equality of access and conditions.

*Security concerns*

The events of September 11 2001 and subsequent international terrorist actions have created a new climate of security and increased emphasis on barrier control. Travel advisories are influential in the choice of destinations, or whether or not to travel. National interest supersedes sectoral interest. This has included:

- more sophisticated screening procedures of airline passengers through the introduction of advanced passenger processing systems;
- more extensive baggage checks and similar measures which have impacted on visitor movements at the barrier and in the airport terminal; and
- increased bio-security measures following the foot-and-mouth outbreak in Europe, which have meant processing delays, particularly in Australia and New Zealand.

These risk management measures have impacted on airfares and have given rise to new charges on passenger movements which are passed on to passengers, either directly or indirectly. As one member economy stated, there are now substantial costs to identify a very small number of people arriving at major international destinations.

Security measures have also increased delays in passenger movements, required earlier check-in times and at key hubs such as Los Angeles created pressure on facilities and processing at peak times. They have also impacted on airline efficiencies. Some member economies have introduced heavier penalties for visitors who do not comply with border regulations and a regime of fines and penalties for security and bio-security breaches.

*Administrative practices or regulations*

The greater proportion of impediments identified during the study in the six member economies were areas where regulations impacted on tourism, either as part of a wider policy, governing all sectors or where regulatory regimes had not adapted to dynamic changes in the international tourism market.

Examples include

- Inadequate barrier facilities at certain ports to meet changes in the market;
- the application of taxes which impact inequitably on the operation of tourist facilities;
- regulations governing working visas or business visas which act as a deterrent; or the narrow interpretation of regulations or policies.

*Infrastructure limitations*

While the region has seen major investment in tourism-related infrastructure in the past decade, there will always be areas where infrastructure has not yet been expanded or adapted to meet demand or where reinvestment has been inadequate and facilities are below standard. This also reflects economic conditions which have affected a number of member economies over the past five years, where the upgrading of facilities, such as visitor accommodation, has been difficult to finance.

*Environmental and legislative constraints*

In a number of instances tourism appears to be constrained by broader national policies governing areas such as foreign investment in real estate, with foreign ownership of prime land a sensitive issue for some member economies. Foreign ownership of coastal land is an issue in economies such as Mexico and New Zealand.

With increased concerns regarding the environment the application of environmental protection measures become a significant constraint in the development of new facilities and infrastructure, in a way not intended by legislation. Tourism is viewed as having a greater impact on the environment than other activities in environmentally sensitive areas, particularly where new developments, such as marinas or hotels are involved. Procedures for environmental impact assessment are stated as being used to defer development, not necessarily on environmental grounds, in some member economies.

### 5.5.6. APEC-wide issues

*Impact of taxes and charges*

An increasing concern is the impact of taxes and charges on travel which, as a visible charge against the tourist, are increasingly seen as an impediment. Taxes include arrival and departure taxes, applied by governments and airport operators, taxes and charges related to airport movements, air route charges, security charges and other aviation related costs. On the ground there are industry specific charges on hotels and food services as well as generic expenditure taxes charges such as VAT, GST or sales taxes which apply to all transactions.

The greatest impact (and greatest change) has been airfare-related charges. While taxes on long haul fares remain relatively insignificant as a proportion of the total fare, on short haul and medium haul flights they are becoming increasingly significant. This is particularly evident for the lowest available fares, where their impact is more evident than full economy or business class travel. While most of these charges are included with the ticket travelers become aware of the charges, for example through Internet booking where taxes are specified.

The impact is global and not limited to APEC member economies. In one instance taxes and charges on the lowest return fare between Australian and New Zealand ports are 18% of the fare. For both of these member economies the other economy is the largest visitor market.

While most visitors accept the impact of value-added tax systems, the inequity arises when there is both a VAT and a hotel tax applied to the visitor's accommodation. A number of member economies, including New Zealand and Mexico, do not prove for refunds on Value Added Taxes by departing visitors, or restrict the opportunity for refunds Those member economies which subscribe to the Kyoto Protocol on greenhouse gas emissions are facing the possibility of carbon taxes on the key elements of the tourism system, aviation and road transport which has the capacity to add to the total costs of the visitor experience.

*Insurance*

Over the period since early 2001 there has been a major shift in the cost, availability and coverage of insurance across a range of categories. There has been an increase in the cost of reinsurance. This change is not solely due to the events of September 11, but also to a major shake-out in the global insurance industry, The areas include personal travel insurance, aviation insurance, and accident insurance for outdoor operations, and the policies of travel insurers towards rating destinations or tour operators as a way of reducing risk. It is not only a matter of cost but of varying coverage and excluding or redefining insurable events. Policies increasingly have a terrorism exclusion clause. This is a global issue, but events in Bali and the focus on the APEC Region have increased the relevance to APEC member economies.

Specific instances have been identified. In Australia public liability insurance costs and conditions of cover are forcing the closure of some outdoor and adventure activities favored by international visitors. Insurance cover against terrorism is an additional risk which may need to be secured, at a cost. In Australia and New Zealand it is no longer possible for a traveler to insure against the failure of a major travel supplier. In New Zealand there have been quantum shifts in the cost of some insurance classes which affect the viability of businesses. In Chinese Taipei one operator stated any involvement in outdoor activities by guests required specific approval from their insurer, another had difficulty obtaining the level of public liability cover required by an international operator.

The increase in vehicle ownership and improved highway and secondary road systems throughout Asia and the Americas makes self-drive, already the most popular form of domestic holiday travel, an increasingly attractive international touring option. In two member economies taking a vehicle into another member economy (for example Malaysia to Thailand) required the traveler to purchase local insurance for third party protection. With the development of the Asian Highway and greater international private vehicle touring a regional approach to third-party insurance is a desirable outcome.

*Aviation issues*

The dependence of the tourism industry on the aviation sector creates tensions where interests diverge. The airline industry has experienced major shocks since 2001, there have been airline failures, cut backs in services and an emphasis on survival and on profit recovery. Not all of the problems are related to the events of 2001, they relate to the dynamic nature of the industry, the focus on profitability and system efficiency and the role of alliances in the aviation sector which can serve to reduce competition on specific routes.

The issues in the aviation sector occur in a number of areas:

- capacity limitations on certain routes where carriers have withdrawn from operations;
- pressures at key hubs such as Los Angeles (LAX). The comment was made that the difficulties of hubbing at LAX were an impediment to Asian visitors seeking to visit Mexico;
- the impact of yield management practices on seat availability, particularly for groups, incentives, and conference delegates, where blocks of seats at a comparable costs are frequently difficult to secure. This issue was raised in several member economies by inbound operators and those involved in the Business Tourism (MICE) market as an impediment; and
- the increasing role of low cost carriers, which gain efficiencies by flying between high density centers, often using secondary airports and which operate as a transport system, rather than part of the tourist system in such areas as marketing, distribution and packaging.

For the tourism sector, airlines are a part of the system which respond to a different set of economic imperatives. 'Airlines are not going to abandon obtaining the best airplane trip revenues possible. The broader tourism industry must develop an understanding that it needs better product adaptation to fit with it: it will not go away.

*Facilitating barrier movement*

For the visitor, arrival and departure are major events in their journey. The delays, procedures and increased security form an impediment in the minds of the visitor, something which delays their trip. Many immigration and barrier control agencies are seeking to find a more effective method of dealing with increasing volumes of arriving passengers and in minimizing processing delays, yet retaining the capacity to identify.

The application of technology to arrivals processing will be the major change in reducing impediments to travel by individuals. The Australian Advanced Passenger Processing System (APPS) is under consideration by a number of APEC member economies, providing advanced clearance based on passenger check-in documentation. Mexico will be one of the first APEC member economies to introduce an electronic smart card technology involving finger print identification for arriving visitors in specific high volume segments. Australia is testing biometric recognition techniques.

As volumes increase at major visitor destinations increased resources will be committed to the management of visitor flows, but not at the expense of maintaining security, including biosecurity measures, for arriving visitors as operated by Australia and New Zealand.

*Travel advisories*

While the issuing of travel advisories has always the prerogative of Governments for the purpose of protecting their citizens traveling to areas deemed to be at risk, since September 11 and subsequent events they have become more frequent and are now beginning to impact on APEC member economies. The concern is that some advisories remain in place after the immediate period of danger has ended and that a consultative mechanism to ensure they do not impede tourism beyond the period of risk is desirable at the individual economy level. This may include recommending travel be limited to certain regions or at certain times rather than blanket advice not to travel to a particular economy.

## 5.6. APEC Tourism Investment Hurdles

### 5.6.1. Australia

*Visa regime*

Australia's universal regime has been facilitated by the introduction of an Electronic Travel Authority (ETA), a system available in 32 countries globally and which allows automated processing of an ETA which is equivalent to a visa. It can be accessed by a travel agent, airline or direct through the Internet. The Department of Immigration* advise that it now covers approximately 85% of all arrivals. The policy is to progressively extend the system, but where it is not available visa requests are made to the nearest Australian immigration post. This creates problems in emerging markets without ETA access and without immigration services, particularly in those markets with a pattern of late booking.

A number of APEC member economies are not covered by the ETA, South or Central American countries are also not covered. For the business tourism sector, the difficulties in obtaining visas has a competitive impact on bids for major international conferences. The inability to guarantee entry and the complexity of the process were reported by the meetings industry as limiting their capacity to compete.

Australian offers working holiday visas and these are now available on the Internet, with computer-generated decisions for low-risk groups. Working holiday visas are being extended to 12 countries, including APEC member economies Korea and Hong Kong SAR.

Australia participates in the Approved Destination Status program with China and is considering extending the ADS system to other economies.

*Labor and employment*

Australia has a migration policy which is designed to manage skills shortages within a framework of controlled migration. Hotel employees are eligible for temporary visa for up to 4 years, there is no skills assessment but employment is subject to a market test. A threshold salary of A$34,075 applies to all positions filled from overseas under temporary visas which are not on the skills shortage list, and a documented offer is required.

Permanent entry is permitted to overcome skills shortages, with chefs, cooks and aviation technical staff the main groups within tourism-related industries. Skills shortages are identified by labor market analysis, and are being continually monitored, not just at broad category level but including specializations or skill levels. There is a gazetted list of eligible occupations for which permanent visas can be awarded. Meeting skills shortage requirements provides additional points under the points requirement for permanent entry.

Where a company wishes to bring in less skilled people, the threshold salary applies. A business must also have a labor agreement in place and demonstrate a satisfactory training record in respect of Australian employees. Sponsored positions are expected to participate in training.

The list of eligible occupations for temporary visas also includes tour guides and travel consultants. Employment under temporary visas must not be a substitute for employing Australians but there is recognition of the inbound sector's reliance on expatriates. The requirement for a labor agreement can be difficult for smaller organizations and there have been collective labor agreements in at least one tourist centre covering a number of employers.

*Aviation*

While Australia has a policy of open skies the only open skies agreement is with New Zealand. Australia carriers operating on international routes must be substantially Australian-owned. The industry expressed concern at the impact of yield management practices on moving large groups for functions and events. The withdrawal of carriers post September 11 has affected regional destinations where services have been withdrawn.

*Infrastructure*

There is an industry view that the Australian visitor experience has shown little growth or diversification in recent years in and is constrained by key locations visited by international travelers which are capacity limited, such as Ayers Rock. The development of new resorts is subject to the approval of the Foreign Investment

Review Board which has the power to enforce approvals and require projects to be completed. There is a requirement for environmental impact assessments but this is not seen as impeding investment.

*Barrier control*

Australia has been at the forefront of the development and use of the Advanced Passenger Processing System which is being considered by a number of other APEC member economies. Australia is also testing biometric recognition techniques. In common with New Zealand there is heavy emphasis on bio-security and 100% of bags are being screened. The increased security procedures have increased passenger processing times on departure and arrival and are also a factor leading to an increase in passenger movement charges.

5.6.2. Mexico

*Entry procedures*

With extended coastlines on both the Caribbean and Pacific coasts marine tourism is a significant component of the Mexican tourist sector. Procedures for the entry of private vessels into Mexico have required complex approval and payment procedures involving nine separate steps. These procedures are being simplified. Procedures have already been simplified for large yachts and charter vessels.

Procedures for the entry of private vehicles arriving in Mexico require drivers to complete an application for temporary importation of vehicle and to take out third party insurance for the vehicle, issued by a Mexican insurance company. This applies even if the car is insured in the country of origin and covers public liability in Mexico.

Visas are required for China, Russia, Vietnam, Chinese Taipei and Hong Kong SAR. A new electronic migration card for visitors from USA and Canada with a digital chip implanted which includes fingerprint identification will enable visitors to pass through a screening barrier without completing a form or being interviewed. The system is voluntary and will require 5 minutes to complete the procedure necessary for the issue of a visitor card.

The temporary import of goods for exhibition purposes, which forms a major part of the convention and conference sector, is constrained by current procedures, which require goods to be entered through normal customs procedures rather than under the ATA Carnet system. The Government of Mexico has adopted but not yet implemented the ATA Carnet

*Transport*

Commercial tourist vehicles can secure multiple entry permits, but the procedure requires proof of ownership, third party insurance, insurance cover for passengers, formal request by the owning corporation and the constitution of the corporation. A response to an application must be given within thirty days. Before departure a route plan and time schedule is required.

Cruise vessels entering Mexican ports are required to have a Mexican pilot, even if they are on a frequent schedule. Mexican aviation policy favors Mexican operators rather than open skies and operates on a reciprocal basis. Mexico has no direct flights from trans-Pacific neighbors, with most international arrivals from the Asia-Pacific region via Los Angeles. The Los Angeles transfer operates as an impediment.

*Foreign investment*

The specific economic activities in the tourism sector where foreign investment is restricted are domestic air transportation and air taxi transportation - up to 25%, integral port administration - up to 49% and airport administration where permission required for foreign investment above 49%. International overland passenger transportation including tourism between destinations in Mexican is restricted but will be freed up by 2004.

For restricted areas (areas 100 km from the border and 50 km from the coast) a foreign investor cannot own land or buildings directly. Assets can be owned through a trust established with a Mexican bank, by which the trust owns the land but the investor has 50 year use rights. A foreign corporation can incorporate a Mexican corporation which can then acquire land (Article 11 Foreign Investment Law).

*Reserved occupations*

The following positions are limited to Mexican nationals:

- Airline pilots for aircraft with Mexican registration
- Ship captains for vessels with Mexican registration
- Coach drivers for vehicles with Mexican registration

*Environmental legislation*

The Federal Government requires an Environmental Impact Statement for all projects in the natural protected zone and 20 meter coastal zone (ZFMT), covering construction, operations and site abandonment. SEMARNAT, the responsible agency, also supports the States in the environmental assessment process. The procedure can be complex and time consuming and can be used to delay approvals. A process of reviewing the EIS procedures and simplifying the process is underway.

The 20 meter coastal strip throughout Mexico is the maritime land federal zone, or ZFMT, ownership cannot be transferred to private individuals or corporations. Foreign companies cannot operate directly and operate through a trust or a Mexican corporation. Development within the ZFMT is subject to approval.

### 5.6.3. New Zealand

*Transport*

New Zealand is a member of the APEC multilateral Air Service Agreement. Domestic airlines can be 100% foreign owned. There is a limit of 49% ownership on international airlines, 35% any one shareholder. Cabotage is permitted for foreign flag carriers, with Qantas operating in NZ under cabotage. Under the multilateral agreement any carrier from a participating member can carry under cabotage. Cruise shipping is now big business in New Zealand and a number of steps have been taken to facilitate its growth.

There are no real impediments in the transport sector

*Barrier issues*

New Zealand places great emphasis on managing bio-security risks to preserve a disease-free environment for its primary industry sector. This has led to the introduction of on-the-spot fines for visitors breaching regulations and charges for fumigation. There is a working party to overcome barrier delays although a change to the Australian advanced passenger processing system has the potential to increase passenger processing times.

New Zealand operates a visa waiver policy covering more than 50 countries. Australian residents are exempt from holding visa and residents of 10 APEC member economies do not require a visa. The residents of APEC member economies requiring visas include China, Thailand, Chinese Taipei, Vietnam, Philippines, Indonesia, Russia, Peru, and PNG.

*Labor and employment*

New Zealand facilitates the employment of overseas nationals although subject to labor market test. Tour escorts require work permits under regulations but the rule is not generally applied. The cruise shipping industry which bases overseas-crewed vessels on the New Zealand coast has negotiated special arrangements for crews in consultation with the New Zealand trade unions. There is no licensing requirement for guides and no restrictions on foreign guides in New Zealand.

*Foreign Investment*

While approval of the Overseas Investment Commission is required for investment involving more than 25% foreign equity, it does not act as an impediment. Approval for the purchase of land of more than 5 hectares or land classed as 'sensitive' interpreted as foreshore land, or adjoining conservation land, heritage or Maori sites as well as most offshore islands.

*Resource Management Act*

The Resource Management Act, which defines the procedures governing new developments is regarded as an effective mechanism which protects New Zealand's sensitive environment. It is implemented through 87 local agencies and there are inconsistencies in the way it is applied or the delays which can occur in the process. It is complex, with community consultation requirements and, for a foreign investor, can involve high costs. The appeal process can invoke competitive impacts. It is regarded as an impediment to the development of new tourism facilities, particularly in sensitive areas.

*Taxes and charges*

The cruise industry has concerns that there is a requirement to pay GST (12.5%) on the full face value of the ticket (even though this includes overseas wholesaler commissions). This is inconsistent with airlines which are GST free when purchased offshore. This is a major anomaly which constrains the cruise industry.

5.6.4. Papua New Guinea

*Visa Program*

The principles and the practical application of PNG's universal visa program were identified as an issue. There are anomalies in both the system and the way it is applied which impede the development of tourism. Specific issues include

- the differential between visas for tourists and for business visitors, with business visitors required to obtain their visa in advance.

- the impact of the high cost media fees on visiting tourism journalists and film crews.

- the procedure for issuing visas on arrival, and the requirement for visitors to pay in local currency.

In addition an airport service charge on departure payable in cash of US$7.50 had been introduced without consultation.

*Employment*

The Papua New Guinea tourism sector is dependent on a high proportion of expatriate managers. All expatriates require an employment visa which can be granted for up to three years. The problems lie in the process, there are two agencies involved in the approval procedure and the delays can be up to eight weeks for Australian residents and considerably longer for other countries. This can make it difficult to secure new contract staff.

There are plans to develop a one-stop shop for labor approvals, certification of new businesses and foreign investment approvals.

*Business development incentives*

Papua New Guinea has an established system of business development incentives across most sectors of industry, including mining, agriculture, manufacturing and fishing. Benefits can include income tax concessions for pioneer industries and accelerated depreciation for plant. There are wages subsidies, duty free entry for oil and gas production, concessions for training expenditures. Companies involved in the export of manufactured goods can obtain 100% income tax exemption for 4 years on net export income.

The tourism sector only benefits from concessions for the diving sector. Tourism does not access the export market development concessions. Compared with other sectors of the economy the tourism sector receives little direct assistance or concessions.

*Reserved industries*

PNG has a policy of reserving certain sectors for PNG citizens and certain activities for National Industries, with a minimum 51% local shareholding. Activities reserved for PNG citizens include accommodation with less than 10 rooms, airport business concessions and kiosks. Activities reserved for national enterprises include tourist related activities, tourist guides, wholesale tour operators and travel agents.

Foreign investment involving land outside of the major cities is difficult, as 97% of land in PNG is owned by traditional owners and cannot readily be alienated. Developments do occur in partnership with local owners.

*Tariffs*

There is a discriminatory tariff on promotional material (formerly 40%, now 25%) designed to protect local industry but which impacts heavily on the tourism industry with its use of quality promotional materials which are normally used outside PNG. Recovery of duty paid on re-export is difficult, as materials are often mailed in small quantities.

*Visitor safety*

The issue of visitor safety is a major concern for Papua New Guinea, with an under resourced police force and limited understanding at community level of the benefits of tourism. The police are establishing a Tourism Police Squad within the community policing system, (a community-based extension of the existing service). The objective is to develop links between tourism operators and police to minimize the risks to visitors traveling in isolated areas.

### 5.6.5. Chinese Taipei

*Transport*

Chinese Taipei has an outstanding road and domestic airline system and an efficient road transport system. Public transportation, however, does not work well for tourists, tourists need a guide, which can mean a high cost private tour. There is a need to encourage local bus companies to operate tour services for the international market.

Self-drive is not recommended and car rental companies do not serve the international leisure traveler. There is only one rental car operator at CKS Airport which only serves the local market, the international car rental companies do not list Chinese Taipei as a location for car hire. At the same time highways have well marked and attractive driver stopping points with a full range of services. Main highway signage is generally in Roman script, there is no evident impediment to selfdrive.

*Labor and employment*

Chinese Taipei offers ease of access and long term working visas for skilled or qualified individuals in the tourism sector. A chef with two years experience can gain a visa in 7-10 days allowing for a three year stay. This can be renewed and there are no restrictions. This applies to a tourist hotel only. A travel agent can hire foreign people. Unskilled workers are not allowed. There were reported delays in securing approvals for key personnel, even though they were well-qualified. One group (international operator) reported difficulties in bringing specialist trainers on short-term assignment from Mainland China.

The availability of training facilities and resources for the hotel sector is seen as issue. Chinese Taipei with its population and range of hotels could support a number of hotel schools.

Chinese Taipei is considering a working holiday visa for Australia for under 30's, Australia will be the first. Visas for 1 year are already given on arrival to Australians/Canadians coming in to teach English. Student visas are also available.

The quality of guides were raised by the industry as an area of concern, the pay fails to attract younger people with language skills and the qualified guides are generally older, often with a teaching background. There is seen to be a mismatch between the type of visitor – eg younger Japanese, and the guides.

*Foreign investment*

Foreign investment – there are no restrictions except in the transport area, with complete deregulation. An authority to invest can be obtained in 2-3 days – is not refused. A Business License from the Commerce Department also only takes 2-3 days.

The only serious impediments noted are the restrictions on foreign investment in the tourism sector, specifically transport. The Negative List for Investment by Overseas Chinese and Foreign Nationals (1999) has a prohibited list which includes:

- Passenger bus services including highway passenger services and city passenger bus services.
- Taxi transport.
- Tour bus services.

- Harbor and related services, including construction or leasing and engaging harbor facilities business, or tour boat service.

- Air transport and relevant services including civil air transport.

The Chinese Taipei aviation system is closed to foreign investors and operates bilateral air service agreements.

As part of its drive for increased tourism Chinese Taipei is seeking to expand marine tourism, and is planning new marine tourism facilities near Kaoshung. While this proposal is directed towards attracting foreign participation, the prohibited list would appear to preclude such involvement.

The impediments to the development of marine tourism relate primarily to the lack of infrastructure, no effective management of marine resources and marine recreation, and the absence of a domestic market which provides the underlying demand for new facilities.

*Visas*

Visas are not an issue. Philippines, Malaysia and Indonesia among APEC member economies secure a landing visa although Malaysia is currently under review. There are 21 economies with 14-day visa free entry to Chinese Taipei, while 24 countries can obtain a 30 day landing visa on arrival. Hong Kong citizens working in Mainland China are not allowed visa free entry. There is a differential between group and individual visas from Malaysia, group visa costs 70 ringgit per person, individual visas 140 ringgit.

### 5.6.6 Thailand

*Foreign investment*

Thailand has restriction on foreign ownership in a number of areas including hotels and transport, including aviation. Foreign ownership of hotels is limited to 49%. In a case of financial difficulties a foreign investor can acquire a larger share to assist the property but must sell down over an agreed period. Foreign investment in transport operations, including aviation, is limited to 30%. Restrictions on foreign ownership of restaurants has recently been eased.

*Infrastructure*

The continued growth of tourism to Thailand has placed pressures on infrastructure and services. Discussion in Phuket, in particular, centered on the limitations of local infrastructure for a destination which receives 30% of Thailand's tourist traffic. Phuket airport at 3000m cannot handle fully-laden international wide-bodied aircraft, which must refuel at Bangkok. Bangkok airport itself is close to or at capacity. With new regions opening up and a network of some 30 international airports, not all are equipped to meet demand, Krabi, for example, has no refueling facilities.

Phuket lacks a cruise berth capable of handling larger international cruise vessels, with even the weekly Star Cruises vessel discharging passengers by boat. The growth in hotel rooms in Phuket is reported to be placing pressure on the urban infrastructure capability, water, waste and transport. The issues in Thailand are primarily demand exceeding capacity in some areas and the dispersal of visitors throughout the economy exceeding local capacity to service.

The process of securing environmental approval was seen as limiting development, with the environmental impact approval process taking up to 12 months. Decisions are made in Bangkok with delays in securing a place on the agenda for meetings held every six weeks. A change to a local approval process would facilitate development.

The hotel sector has no constraints and there have been periods of overdevelopment. A concern of the industry is that readily available finance will be directed to new hotels, generating over-development once again.

*Employment*

For management or skilled employees the maximum period for an employment visa is 3 years with annual renewals which are granted automatically. For lower paid workers, permits are subject to six month renewals. The Labor Department was seen as supportive of the work permit process. A number of activities are reserved for Thai nationals, including guides, taxi drivers and coach drivers as well as domestic airline pilots. Guides must be Thai nationals, have qualified through the TAT training course and hold a bachelor degree.

This requirement limits the opportunity for local interpretation by community groups providing local tour or interpretation programs as they cannot hold a license.

*Transport*

Drivers wishing to bring a vehicle into Thailand are required to buy Thai insurance for third party cover at the border, a constraint on international road travel. Private aircraft entering Thailand require approval in advance, normally available within one week. There is a lack of suitable transport for FIT visitors outside of the major centers,

Thailand has no system of public transportation other than basic domestic services which are not suited to most passengers. This limits the dispersal of visitors to those centers with airports.

Thailand retains bilateral aviation agreements, but has agreements with 92 countries, permits two points of entry or departure and the system is relatively liberal.

*Human resources*

It was commented that Thailand has limited reserves of trained managers and there are limited opportunities for retraining and development of people already in the workforce. There is also a need for a hotel management school in Phuket, where the demand is high and there is a lack of trainers for developing less skilled workers. A Bangkok hotel owner also echoed the need for additional hotel schools to meet the continuing demand for quality staff.

*Border issues*

Thailand has visa-free entry for a number of economies, but others are subject to visa on arrival, a system which works satisfactorily at most entry points, but for example at Phuket is not available for cruise ship passengers. As new markets emerge the system takes time to adapt to meet the need to be able to offer visa on arrival at all entry points.

# 6. BEST PRACTICES ON PUBLIC-PRIVATE PARTNERSHIP IN TOURISM INVESTMENT

## 6.1. Jungmun Tourist Complex in Jeju island, Republic of Korea

There are five large-scale tourist complex in operation or under construction in Korea. Three more complexes are being planned according to the Tourism Promotion Act. Jungmun Tourist Complex is one of the most popular tourist attractions in Korea. In the early 1970s, the Korean government began to develop tourist complexes to attract more foreign tourists as well as to revitalize the national and local economies. The Jungmun tourist complex development project is a model of collaboration between the private and public sectors in Korea. The government provided the infrastructure such as roads, bridges, communication systems, water supply and sewage, etc. The Korea National Tourism organization (KNTO), a semi-governmental body, took charge of purchasing and preparing the site for the complex. Then, the site was sold in lots to private companies to build tourist facilities and manage them.

The project began its first stage of development in 1978 and is scheduled for completion this year. The second stage began in 1996 and is scheduled to be completed by 2001. The total amount of investment in the first stage of the Jungmun complex project is 424 million US dollars. The central government and KNTO have invested altogether 12 per cent of the total investment. Jeju provincial government invested a mere 0.07 per cent, while the private sector has invested 88 per cent. This indicates the limited support and involvement of the local government in the first stage of the project. During those days, the discretionary powers and resources of the local government were very limited, whereas the central government predominated in almost every aspect. The private sector also was so weak that it could not provide enough to initiated large-scale development projects.

In the second stage, KNTO invested 73 per cent (58 million US$) to purchase the site and prepare the complex, and private organizations invested 27 per cent. In total, among 504 million US dollars invested in two stages, the public sector invested 22 per cent and the private sector invested 78 per cent. This project has been recognized for revitalizing the local economy by creating jobs as well as increasing the level of income. The complex employed 1,488 employees, and 78% of them were local residents in 1996. Total income in 1996 was 33 million US dollars, and 1.2 million US dollars were paid in local taxes. Now the Jungmun Tourist Complex is a world-class facility, which attracts almost 3 million tourists in 1996. More that 130 thousand foreign tourists visited the complex, or 62% of total visitors to Jeju Island.

[Figure 6-1] Jungmun Tourist Complex


[Figure 6-2] Tourism Master Plan for Jungmun tourist Complex

## 6.2. Jeju International Convention Center

The Jeju International Convention Center project was sparred by the promulgation of the Act on Promotion of International Convention Industry in 1996. The act provides various supports for promoting the convention industry, such as provision of low-interest loans, subsidies to meeting organizers, provision of meeting information, professional training for meeting planners, etc.

Furthermore, convention facilities were designated as social overhead capital in 1997. This allowed the construction of convention centers to receive more government support. Unlike the case of Jungmun Tourist Complex, the Jeju provincial government played a leading role in this project. The provincial government organized a partnership between the public and private sectors. The Convention Center Project Committee was established with public officials, private business leaders and citizens. The founding of Jeju International Convention Center Co. followed.

The expected cost of 245 million US dollars was to be funded by local governments (61 million US dollars), Korea National Tourism Organization (KNTO) (19 million US dollars), the private sector (83 million US dollars), and loans (82 million US dollars). It is noteworthy that private funds were raised through local subscription. 29 thousand local people both on and out side the island subscribed to the project, raising 179 per cent of the original target. This is an example of local residents' active involvement in the tourism business. In this case, a large part of the return from the operations of the Convention center and other related facilities will go to local people, thus strengthening the local economy. The convention center is scheduled to be completed in 2000. Along with the convention facility, the company plans to build a hotel and other related facilities.

[Figure 6-3] Jeju International Convention Center

## 6.3. Hong Kong Disneyland

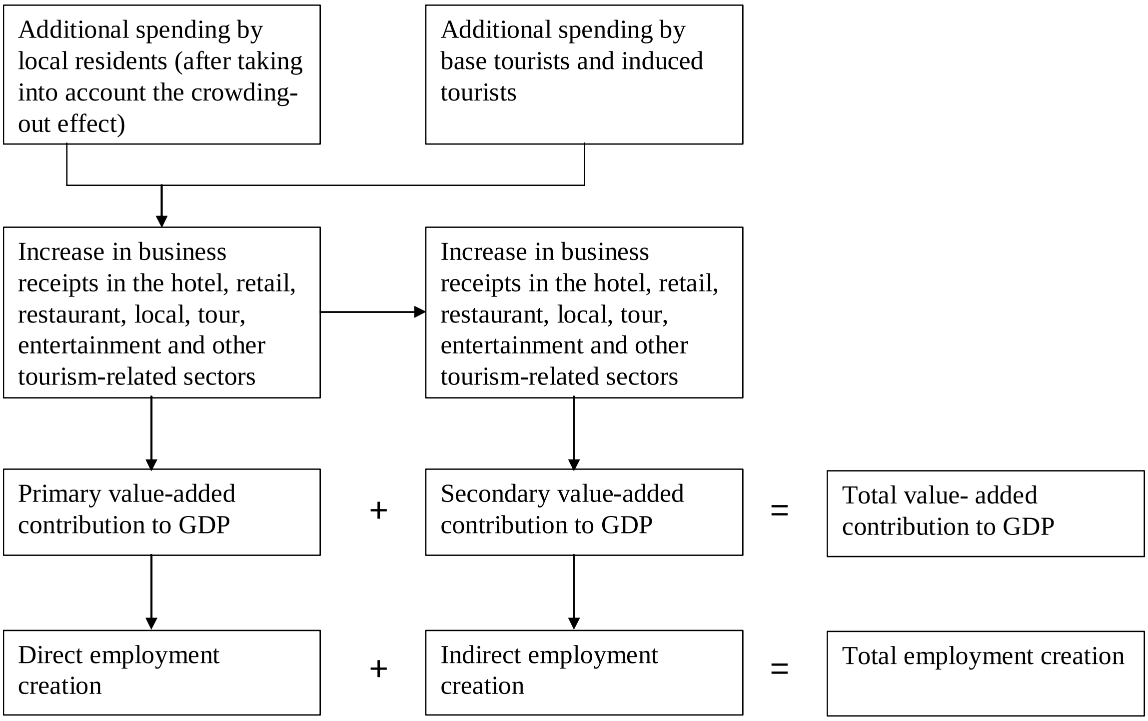
In the second half of 1998, the Hong Kong Government had preliminary discussions with Walt Disney regarding the construction of Hong Kong Disneyland. Initially, the parties began talks based on a site near Yam O, close to the Chep Lap Kok flight path. Later, they realized that Penny's Bay, Northest Lantau, where there was virtually no intrusion or incompatible land use, would be a more appropriate location. In February 1999, the parties started serious discussions about the Hong Kong Disneyland project (School of Business, The University of Hong Kong, 2000). To assess the financial feasibility of Hong Kong Disneyland, the Hong Kong Government had developed a set of assumptions with Walt Disney talking into account Disney's operating experience in its international theme parks and resorts and the operating environment in Hong Kong. The Government then projected the financial performance of the proposed theme park.

### 6.3.1. Scale of the New Theme Park

During the preliminary discussions, Walt Disney originally preferred to take part in the management of the park instead of becoming a partner in the investment. The proposed Disneyland would be divided into two phases. Phase I of Hong Kong Disneyland would include a Disney theme park, offering new and traditional Disney entertainment experiences through the delivery of attractions, shows and cutting-edge technology. Two to three Disney-themed resort hotels with a total of 2,100 hotel rooms would be constructed adjacent to the theme park. In addition to the theme park and the hotels, there would be a 28,000 square meter retail, dining and entertainment complex. Both the Government and Walt Disney anticipated a Phase 2 project, which would include a second Disney theme park, additional hotels and an expansion of the retail, dining and entertainment complex.

### 6.3.2. Assessment of benefits

The Government expected that Disneyland, with its huge number of foreign and local attendees, would provide a significant stimulus to overall spending in Hong Kong. It therefore measured the economic benefits derived in terms of the primary and secondary value-added contribution to the economy. The primary value-added contribution represented the direct income derived from additional spending of the attendees on the goods and services produced by the hotel, retail, restaurant, local tour, entertainment and other tourism-related sectors. The secondary value-added contribution referred to the income generated from subsequent rounds of indirect spending on the further range of economic activities in support of the tourism-related sectors.




[Figure 6-4] Methodology for assessing the value-added contribution and employment creation of the Disneyland project

### 6.3.3. Assessment of costs

The major cost components of the Hong Kong Disneyland project were the land reclamation at Penny's Bay and the infrastructure construction costs. The Government estimate that such costs would amount to HK$13.6 billion. This expenditure forecast included the cost of constructing roads from North Lantau to Penny's Bay, two public ferry piers, transport interchanges, police posts, a fire and ambulance station, drainage and sewage works and the formation of the 280-hectarre site. The Government envisioned that much of the infrastructure would have formed part of the capital works program to prepare Northeast Lantau for tourism and recreation development even if a Disney theme park and resort were not being built. Hence, the Government was prepared to bear all the costs for land and infrastructure.

However, the Government was determined that it would not give away the land to Walt Disney for free, since it was not politically feasible to do so. It planned to charge a land premium of HK$4 billion for Phase 1 of the Disneyland project. The land premium represented the estimate pro rata cost for reclamation and land formation. Taking into account the land premium costs. Walt Disney worked out a projection and found that the park would not be profitable enough to pay for the land. The two sides therefore had to fine a way to solve the deadlock.

Apart from the land infrastructure construction costs, there were other costs that would have to be included in the economic assessment of the project:

- *Superstructure and facility erection costs*

These include capital costs for building Phase 1 of the theme park and its associated facilities. The cost were estimated at around HK$10.5 billion in gross value terms.

- *Recurrent operating costs of the theme park*
- *Other economic costs*

These included other non-quantifiable costs, e.g. pollution costs and other costs arising from the curtailment of other major facilities, if any.

6.3.4. Assessment of risks to the Hong Kong Government

There were a number of risk factors that had to be considered by the Hong Kong Government:

- The possibility that Walt Disney would open a competing theme park in Asia, especially in China, where the potential attendees were expected to come from
- The ability of the theme [ark to attract adequate patronage both from within and outside of Hong Kong
- The recovery speed of South-east Asian economic from the Asian financial turmoil
- Uncertainty in respect of the amount of spending by the attendees, especially those from mainland China, who generally spent the least in Hong Kong when compared to visitors from other countries
- The ability of the Government to exit from the deal if the park was not profitable
- Timing of the cash flow generated from the park
- The possibility of cost overruns
- The ability of the joint venture to service the debts of the project
- The political stability of Hong Kong, Mainland China and other regions, e.g. Chinese Taipei
- Illegal sales of counterfeit Disney products that might have a negative impact on the sales of merchandise in the theme park
- Uncertainty as to whether US culture would be welcome on Chinese soil at a time when Japanese culture was sweeping Hong Kong and other Asian cities

6.3.5. Assessment of alternatives: Other options for Penny’s Bay

To the Hong Kong Government, giving up a piece of precious land at Penny’s Bay involved hidden costs. In a study called the Northshore Lantau Development Feasibility Study, the Government measured the opportunity costs by matching three competing vision of Penny’s Bay against each other.

*Option 1: Disneyland and another theme park development*

Under this option, a 280-hectare site would be created from the reclamation of Penny's Bay, with 126 hectares for the Disney park and the remainder for tourism-related development.

*Option 2 : Massive port expansion with a business/science park*

This involved reclamation of Penny's Bay and major reclamation in Western Harbor by as much as 70 per cent. Additional marine facilities such as marine service support would be provided. A certain portion of the land reclaimed would be reserved for a business or science park and a road link along the coast to Discovery Bay.

*Total costs* : HK$54 billion

*Cash cost to taxpayer*: cash profit of HK$4.5 billion due to land sales and port rental

*Direct Jobs created on completion*: 25,704(including 12,000 in the business park)

*Demerits*: Difficult to estimate growth as the port could be affected by a slowdown in the US economy.

*Option 3 : A fourth-generation new term*

- Penny's Bay Housing Development and other tourism-related development

To reclaim land as in Option 1, but the Disney site would be auctioned for low-to-medium density accommodation. About 85,000 flats of 500 square feet each could be created.

*Cash cost to taxpayer*: around HK$16 billion but received one-off cash windfall from land sales that could reach about HK$20 million.

*Direct jobs created on completion*: relatively few

*Demerits*: Very few jobs would be created for the economy. In addition, property development required the import of materials, which resulted in a foreign exchange outflow. On the contrary, a Hong Kong Disneyland could bring foreign exchange into Hong Kong.

- Lantau Dormitory City

- Reclamation same as Option 1, with the entire area given over to high-density housing. If the town was built to the levels of Tseung Kwan O, the most recent high-density new town as of 1999, 75,000 flats and substantial commercial and community facilities would be provided for 240,000 people.

*Cash cost to taxpayer*: Reclamation and services costs would amount to HK$4 billion, but Government would receive a land premium of HK$25 billion if two-thirds of the flats were built by the developers.

*Direct jobs created on completion*: shops, offices and community facilities would create jobs but this was difficult to forecast.

*Demerits*: similar to option 3(a)

[ Figure 6-5] Hong Kong Disney Land

[Figure 6-6] Hong Kong Disneyland Hotel

Table 6-1. Disneyland Paris – Some Basic Facts

Economic and financial arrangements

| **Investment** | |
|---|---|
| **French government** | **Walt Disney** |
| ● Sold Disney approximately 4,400 acres of land at farmland price<br>● Lent Disney US$770 million at interest rates considerably lower than the market rates<br>● Financed much of the key infrastructure of the park at US$400 million, most notably extending the Paris subway to make the site a terminus, as well as improving the motorway that ran by the site<br>● Arranged for trans-continent train TGV to stop at the front entrance of the park<br>● Arranged for direct link with traffic from the Euro-tunnel<br>● Cash grant of US$30 million<br>● Accelerated depreciation for capital investment of 10 years instead of 20 years<br>● VAT for Disney at 5.5% instead of 18.6% | ● Designed and built the park<br>● Equity investment of US$100 Million<br>● Arranged For US $1 billion public offering of shares on 5 October, 1989 on the French stock exchange<br>● Arranged for borrowing of US$1 billion from banks at favourable interest rates |

| **Return** | |
|---|---|
| **French Government** | **Walt Disney** |
| • 10,000 jobs in Disneyland Paris<br>• 30,000 jobs in neighboring counties<br>• 10 million additional annual visitors<br>• Increase of billions of revenue | • Management fee as % of revenue:<br>Base management fee: 3% for years 1-5, 6% from year 6<br>Variable management fee: 1-50% or pre-tax cash flow above a pre-determined threshold<br><br>• Royalties from gross revenues on food, merchandise and admissions, etc.:<br>Admission and Participant: 10%<br>Merchandise, Food & Beverage, Hotel: 5% |

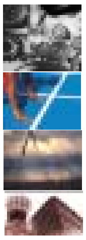
## 6.4. Macquarie Community Partnerships: "Building Sustainable Communities"

This section was fully cited the presentation, "Macquarie Community Partnerships: 'Building Sustainable Communities' - Why Bother With The Regions?" which was presented by Peter Wright, Chief Executive of Macquarie of Bank, to Australian Regional Tourism Convention on 5 September, 2003.

**Macquarie Community Partnerships**

***"Building Sustainable Communities"***

Why Bother With The Regions?



Presentation to: Australian Regional Tourism Convention

Peter Wright, Chief Executive
5 September, 2003

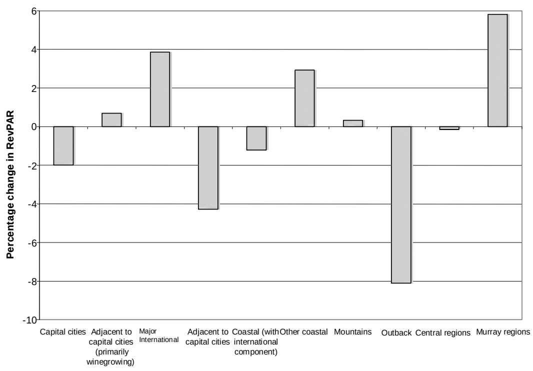
**Why Bother with the Regions?**

- Regional growth prospects are far greater than for the cities.
- Governments have struggled to provide the hard and soft infrastructure necessary to facilitate tourism outcomes.
- Partnerships are vital to building a sustainable growth platform for regional tourism.
- Community PPP's are the solution for regional tourism growth.

**Regional Tourism**

- Regional tourism has outperformed the capital cities over the last five years.

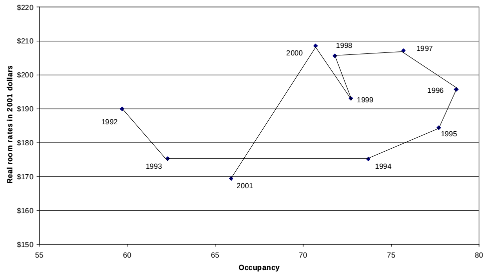
**Regions Perform Better Than Cities**



## Growth Drivers

- Supply
  - Lower supply growth leads to better regional profitability!
  - Unmitigated supply growth has led to capital city hotels charging lower rates they were in 1992! (in real $'s).

## Real Room Rates and Occupancy - Sydney




## Growth Drivers

**Demand**

- Changing travel patterns.
  - Substitution from outbound to regions since 9/11.
  - Shorter breaks – closer to home.
  - Higher airfares and reduced capacity favour drive holidays.
- Regional marketing campaigns.
  - A "drive to" focus.

## Impediments

- Infrastructure
  - Well "master planned" and integrated urban infrastructure can create a market.
  - Significant regional infrastructure deficit.
  - Regional infrastructure plagued by market failure.

## Government Infrastructure

State Government & the Federal Government are responsible for:

- Education
- Health Care
- Aged Care
- Affordable Housing
- Transport
- Corrective Service
- Judicial

## Local Government Infrastructure

Local Government infrastructure responsibilities include:

- Local roads, bridges and footpaths
- Water and sewerage, drainage, waste disposal
- Public buildings
- Recreational, community & cultural facilities
- Land management
- Environmental Protection

## Market Failure in Regional Infrastructure

- Leisure assets are still not perceived as an "asset class of choice"
- Hotels and resorts
- Regional Airports
- Marinas
- Rail Tracks
- Regional roads and scenic roads
- Regional attractions
- Rejuvenation projects
- Theme Parks

## Financing Infrastructure

- Non-integrates regional infrastructure is not a viable investment asset class
  - Low utilization rates
  - Large capital investment

**You need to make a market to make it work!**

## Financing Options

- Option1. Government
  (hospitals v tourism)
- Option 2. Private sector
  (bonds v tourism)
- Option 3. Government + Private sector
  (Public Private Partnership)

## Regional Infrastructure Solution

Public Private Partnership approach:

- Tax preferred investments in regional tourism infrastructure;
- Capped limit of tax credits;
- Applies to specific regional infrastructure asset classes;
- National fund for regional infrastructure.

## Impediments

- Infrastructure
- Destination Management

## Destination management matters

Destination management is more than just pump priming demand

It's about creating REAL PARTNERSHIPS!

## Partnerships

Partnership =

- Community
- Government (especially local)
- Local businesses
- Tourism operators
- Private sector capital and intellectual property

## Sustainable Regional Tourism Growth

- Keep supply in check
- Upgrade infrastructure
- Forge partnerships

## Building Sustainable Communities

- Regional tourism growth relies on building sustainable communities.
- Sustainable communities will be built in the next wave of Public Private Partnerships.

## Core Question

Despite the relatively strong financial positions of state & federal governments in Australia:-

"*can the required appropriate community infrastructure be delivered solely by the public sector, particularly at a local government level*?"

## Answer

NO. This is why government saw the need to harness private sector capital and competence well over 100 years ago.

## Definitions

**Public Private Partnerships - (PPP)**

"Public Private Partnerships" (PPP) is a general term covering any contracted relationship between the public and private sectors to produce an asset or deliver a service."*

* Working with Government – November 2001, Guidelines for Privately Financed Projects. Copyright NSW Government 2001.

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**Yesterday**

- Forms of private sector partnering with governments were established in the 1800's to develop railways, power plants and networks
- Countries like Italy, France and UK experienced concessions and other institutional arrangements for private delegation of public services under public authority & control
- Minimisation of public sector borrowing to gain quality public improvements
- UK is believed to be the first country to have identified and formalised a PPP framework in the mid 1990's

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**Today**

- Governments tend to procure services from the private sector rather than acquiring the underlying asset itself
- The private sector becomes the framework for the provision of long term services
- State Government's continue to evolve best policy and process to deal with partnering
- Local Governments operate without an adequate framework and guidelines

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**Tomorrow**

- Our vision for future community PPP projects include the creation of quality community driven, sustainable community developments that function well on an environmental, economic and social scale.
- The fundamental objective is to deliver community outcomes with balance, precision and probity whilst enhancing community wealth. We seek to deliver precincts that provide platforms for people to:

**"*live, learn, work and play*".**

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**Key Issues**

- Fundamental – alignment of delivered outcomes with the defined needs of stakeholders
- Provide integrated regional solutions efficiently and in an equitable manner
- Transparency
- Probity
- Consideration of tangible and intangible 'value for money' benefits
- Risk mitigation
- Import of intellectual property

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**Global Trends in PPPs**

- Privatisation of independent, non-core, government owned infrastructure businesses; then
- Private sector delivery of individual infrastructure projects through BOOT type structures; then
- Expansion to include social infrastructure projects – private ownership with public service delivery.

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**Globally**

- PPPs have been utilised in over 140 countries world wide
- Australia and the UK have developed the most comprehensive PPP strategies and sophisticated financial markets for investment in infrastructure
- Significant developments in Europe, Asia and the Americas
- Developing Countries ~ 1900 projects during 1990s, >US$580 billion

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## The Australian Story

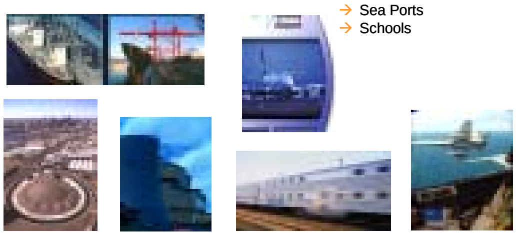
**Where are we?**
- Leading the world in framework for PPPs
- Key stakeholder support for framework
- Utilise Australian and International infrastructure experience

**The Opportunity**
- Further development of accepted framework
- Continue to harness private sector funding
- To craft delivery solutions for community infrastructure

**The Challenge**
- Develop framework for local government PPP's
- Engage all Government & agency Stakeholders
- Engage all community Stakeholders

## History of PPPs in Australia

| Pre 1990s - 1993 | 1994 - 1997 | 1998 - 2000 | 2001- 2002 | 2003 → |
|---|---|---|---|---|
| → Tollroads<br>→ Hospitals<br>→ Water | → Prisons<br>→ Power<br>→ Sea Ports<br>→ Water | → Airports<br>→ Rail<br>→ Power<br>→ Water | → Defence<br>→ Prisons<br>→ Hospitals<br>→ Airports<br>→ Toll Roads<br>→ Sea Ports<br>→ Schools | → Sustainable Urban & Community Based PPPs |



## Genesis of PPP's in Australia

- PPP concepts applied historically through various structures such as BOOT, BOT, LBO, DBFO etc in over 170 infrastructure projects (worth over $60B)
- Growth of superannuation pool from $40B to nearly $750B – a large pool of capital seeking to grow
- June 2000 - The UK model was adopted by the Victorian Government Partnerships Victoria
- July 2000 – "Private Sector Participation in Public Sector Infrastructure Provision Policy Statement" released in TAS
- Sept 2001 - QLD released "PPP Policy- Achieving Value for Money in Public Infrastructure and Service Delivery"
- Nov 2001 - NSW released "Working With Government- Guideline for PFP's"
- Sept 2002 – SA released PPP paper
- Dec 2002 – WA Gallop government launched PPP policy framework

## Benefits of PPP's to the Public Sector

- Risk allocation
- Project delivery
- Enhanced efficiencies (time & cost)
- Customised to the end user
- Access to wider and deeper funding structures
- Holistic Approach
- Access to world class technology
- Economically sound decision making

## Potential PPP Risks

- Project Scoping Skills
- Risk variance and assessment at certain phases of the projects
- Maximum risk transfer
- Mitigating risk
- Refinancing and liquidity
- Legal changes, legal structures
- Political demands and perspectives
- Public intervention rights to appeal?
- Macro policy issues
- Industrial relations changes

## What is Missing?

- Lack of framework for local government partnering
- Social & community infrastructure focus
- New funding methods for community and social infrastructure including solutions for healthcare, aged care, education and affordable housing
- Cross-state PPP's
- Flexibility in asset management for the Government
- Disposal strategies which benefit both public and private sectors
- Private sector intellectual property

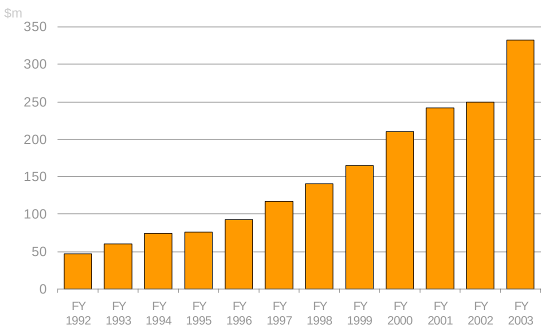
## Macquarie Competence

- Macquarie provides specialist investment, advisory and financial services in select markets around the world
- Over 5,000 people located in 18 countries
- Leading provider of a full range of investment banking, financial markets and retail financial services in Australia
- It ranks as one of Australia's top 25 companies by market capitalisation and has reported successive years of record profits and consistent growth since 1992
- On an aggregated basis Macquarie would rank as about No.10 in Australian listed companies

## Global Presence


- Over 5000 employees (including contractors)
- Presence in 18 countries

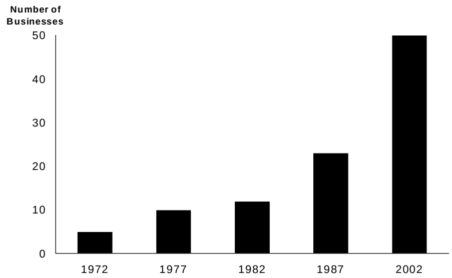
## After Tax - Profit Growth- MBL




## Partnerships

*Proven track record in establishing partnerships with clients.*

The growth of these partnerships have allowed us to expand existing businesses and the development of new businesses




## Macquarie Competence

- Macquarie's Banking and Property Group (BPG) is one of Macquarie Bank's biggest, most diverse and profitable Groups with over 900 employees across many industry sectors sectors including:
  1. Banking;
  2. Property;
  3. Securitised Lending; and
  4. Golf & Leisure.
  5. Public Sector
- In Asia Pacific, Macquarie's Property Group would rank as one of the largest players in property as lender, principal and adviser to both private and public sectors.

## Macquarie Property Finance Competence

- Leading financier and adviser to Governments and the private sector in over 9 countries
- Initiator of sector specific property trusts – now over $7bn in funds under management in office, industrial, retail, leisure and technology/business park sectors

## Macquarie Community Development Competence

- **Medallist** – developing integrated lifestyle communities in USA/Mexico/Australia
- **Urban Pacific Ltd (UPL)** – as a partner to Government UPL is creating large scale infill communities in VIC, SA and WA

## Macquarie Infrastructure Group (MIG)

| | | |
|---|---|---|
| Macquarie Infrastructure Group (MIG) (Funds under management) | (A$M) 9,507.5 | Listed infrastructure fund in OECD countries, 99% toll roads |

| | |
|---|---|
| **Market Capitalisation** | **A$6.154bn** |
| **Size Relative to ASX** | **Top 25** |
| **Average Weekly Trades** | **A$50m+** |
| **Number of Unit Holders** | **42,000** |
| **Level of Foreign Ownership** | **22%** |
| **Net Assets per Security*** | **$3.60** |

## MIG's Assets

| TOLL ROAD | Location | Concession Ends |
|---|---|---|
| 407ETR | Ontario – Canada | 2098 |
| Midland Expressway | United Kingdom | 2054 |
| Eastern Distributor | Sydney – NSW | 2048 |
| M2 – Sydney | Sydney – NSW | 2044 |
| SR 125 | USA | 2041 |
| WSO – Sydney | Sydney – NSW | 2037 |
| City Link | Melbourne – VIC | 2034 |
| Warnow Crossing | Germany | 2033 |
| Tagus Crossings | Portugal | 2030 |
| M5 – Sydney | Sydney – NSW | 2022 |
| M4 – Sydney | Sydney – NSW | 2010 |

## What We Do – Macquarie Community Partnerships

Our growth strategy is to expand selectively, seeking only to enter markets where we perceive there is a genuine opportunity to add demonstrable value through partnering with public stakeholders

- **Originate/Scope**
- **Advise**
- **Finance/Structure**
- **Develop/Manage**
- **Underwrite**

Community Based Urban Development Partnership

## What We Do – Macquarie Community Partnerships

**The Framework**

- Master Partner
- Master Financier
- Master Underwriter
  - Scope/masterplan
  - Financial model/capital
  - Delivery
  - Risk
  - Fees
  - Probity

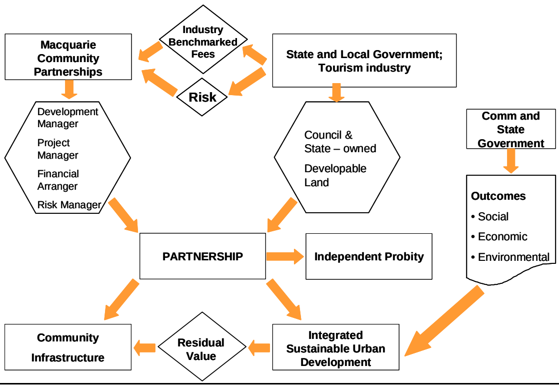
## Benefits of Aligning with Macquarie Community Partnerships

- Plenty of banks! Some do PPPs. Why Macquarie?
- Our values and our commitment to working with communities
- Real partnerships – differing but complementary skills – and a shared vision
- Simply, the best of the public and private sectors coming together to deliver real and enduring changes for the better
- **No-one else has the array of necessary skills under one brand**

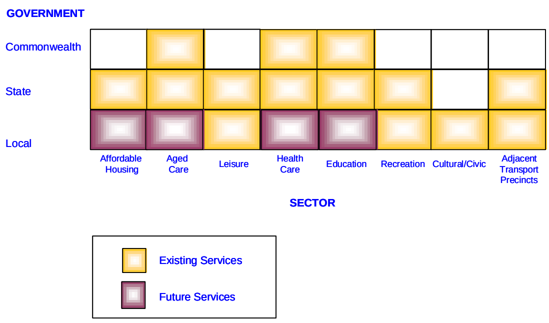
## Business Model Benefits

- Risk management and mitigation – **safeguarding** ratepayers' assets and money
- Macquarie's fees are industry **benchmarked**
- 100% **surplus (value creation)**, after development costs and management fees, is **returned to the community**
- Economic **wealth creation** for the community
- Financial arranging – a **"whole of market"** undertaking without onerous red tape
- Total commitment to **probity** and **transparency**
- Precise **delivery** of urban community outcomes
- **"Value for money"** in line with Government PPP guidelines to deliver outcomes with tangible benefits well beyond those that the public sector could deliver alone

## Macquarie Community Partnership's Model




## Macquarie Community Partnership's Matrix

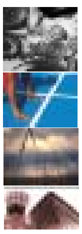



## Partnerships – Govt's, Private Sector, Communities

- For PPP's to get "traction" at community level, more work needs to be done on PARTNERSHIPS
- Real partnerships should have a fair alignment of risk between the partners that create value for the community
- Community Partnerships combine the best skills and experiences of both the private and public sectors
- Macquarie Community Partnership's models deliver leading edge outcomes targeted at optimal value – whilst protecting government and rate payers from financial and development risk.

## Macquarie Community Partnerships

***"Building Sustainable Communities"***



Why Bother With The Regions?

Presentation to: Australian Regional Tourism Convention

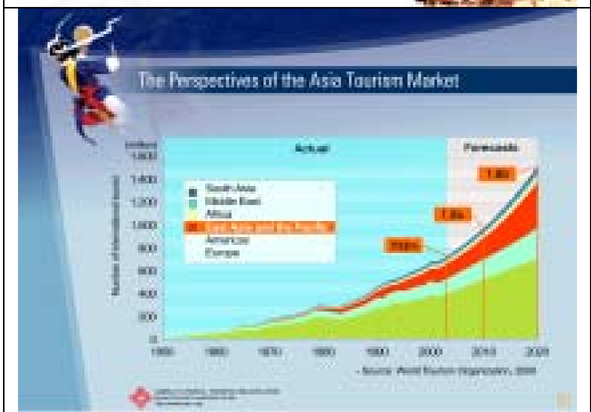
Peter Wright, Chief Executive
5 September, 2003
Email peter.wright-bpg@macquarie.com

## 6.5. Tourism Investment Forum in Korea

This section was fully cited the presentations, which were presented at the "2004 Korea Tourism Forum" held in Jeju, Korea, on 23 November 2004. The contents of forum were; Investment information on Multi-Purpose Tourism/Leisure City; Jeju Free International City and others; and Business meetings between investors and developers etc.

### 6.5.1. Korea Tourism Investment Opportunity



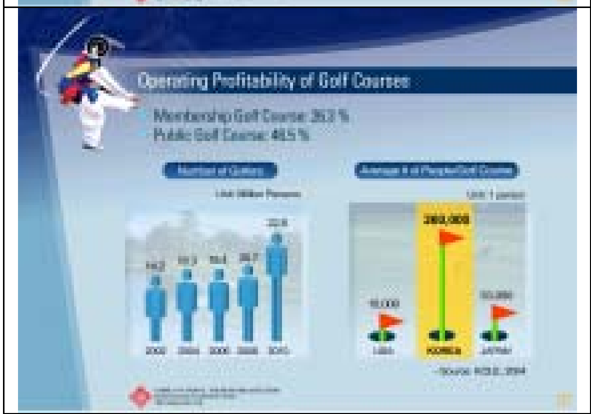






Nationalities of Foreign Visitors to Korea
Americas
China
Japan
Others

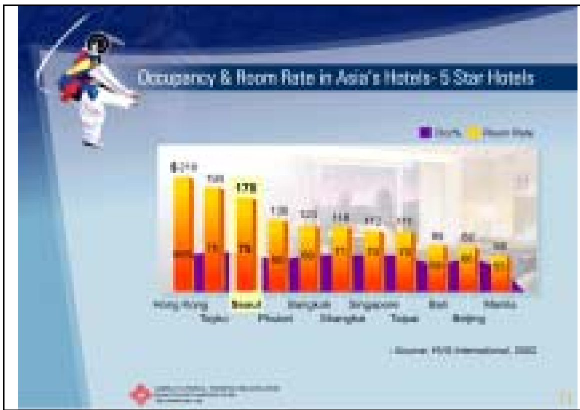

World Top 10 Visited Theme Parks


Operating Profitability of Golf Courses


Operating Profitability of Major Casino


Top International Conference Host Countries in Asia


Operating Profitability of Tourist Hotels


Occupancy & Room Rate in Asia's Hotels- 5 Star Hotels
179
Hong Kong
Seoul
Bangkok
Singapore
Bali
Manila
Tokyo
Phuket
Shanghai
Taipei
Beijing


Hotel Investment Opportunities in Asia
1.Early Downturn
2.Late Downturn
3.Trough
4.Early Upturn
5.Late Upturn
6.Peak
Kuala Lumpur
Auckland Gold Coast


Foreign Investment Examples
Hotel & Resort: Accor, Best Western, Hyatt, Hilton, CDL, Novotel ...
Golf Course: PINX (Japan) ...
Aquarium: Oceanis (Australia)...
Gale International is leading a $ 20 billion project for New Song Do City


Registered Foreign Direct Investment
Gross investment
1998 to 2002
Accommodation
Electronics
Finance
Chemical
Machinery
Food
Construction


Government Policies for Tourism Related Projects
Establishment of a multi-purpose tourism/leisure city
(sized 6.61 million sq. meters or larger)
Encouraging government institutions to invest
in the tourism industry
Issuance of tourism-related real estate funds
Attraction of business-class hotels & theme park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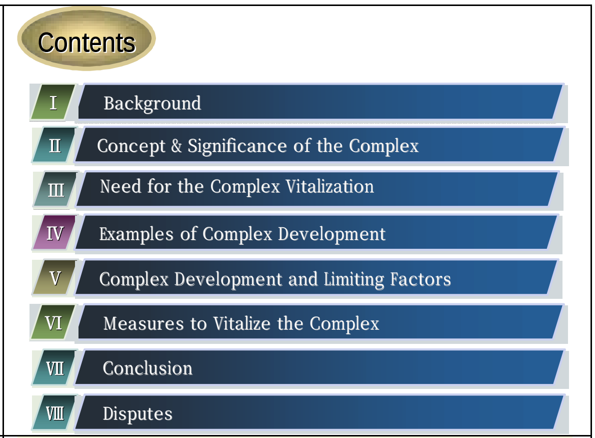
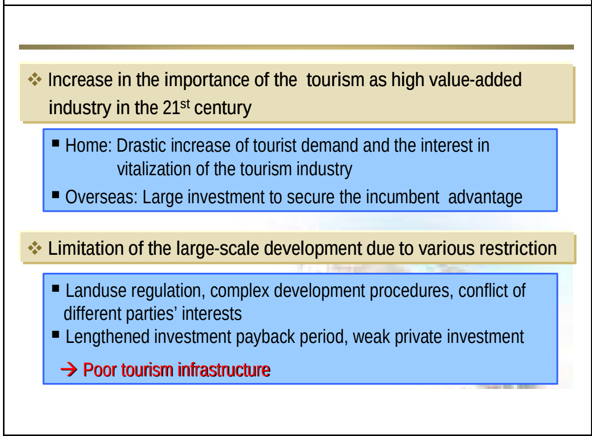
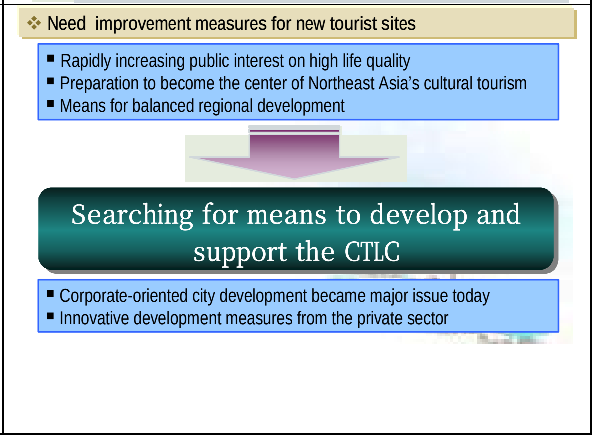
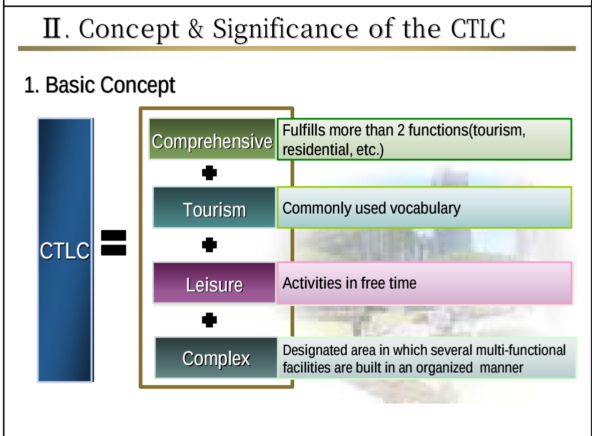
Thank You

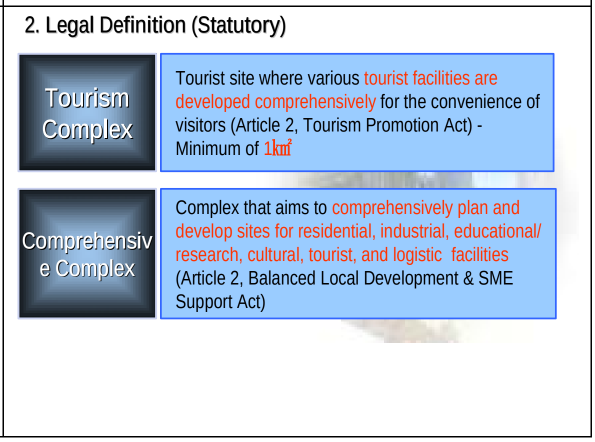
## 6.5.2. Measures to Vitalize the Comprehensive Tourism/Leisure Complex (CLTC) by Private sector

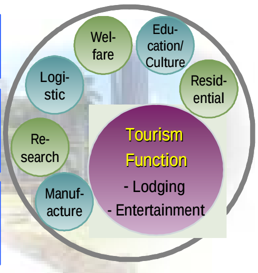



## 3. Concept & Significance of the Project

### Concept

- Self-sufficient community that evolves around tourist and leisure activities
- Coordinated development system for residential, educational, logistic, and production facilities through tourism
- Maximization of synergy effect through organic arrangement of various functional facilities for tourist/leisure activities




### Features

- Emphasis on tourism/leisure among all functions of the city
- Inclusion of tourism, residential, production, educational/research, distribution, and administration functions
- Systematic community develoment conducted by a unified group that promotes a unified goal
- Other functions to support the tourist function
- Center of domestic & international tourism

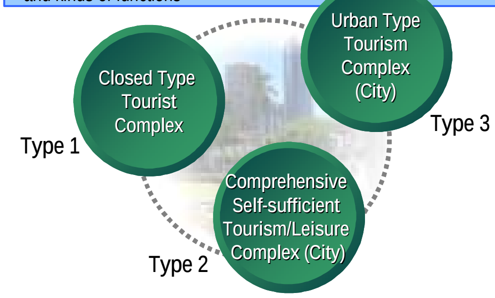
### Significance

- Existing urban development project
  → Unable to house tourism facilities
- Tourism development Project → Limited to tourism functions

**Innovative attempt to develop urban area(city) through tourism development**
- Coordination of various supplementary functions (residential, etc.) with the tourism function

## 4. Types of comprehensive tourism/leisure complex

- It can be classified into 3 types by the relationship with the city, size, and kinds of functions




### Type 1: Closed Type Tourist complex(One-function)

- Accommodation + Limited Tourist Facilities
- Limited to tourist/ lodging functions(partial supplements)
- Short-term visit/ en route tourists
- Complex visitors
  → Use of city facilities

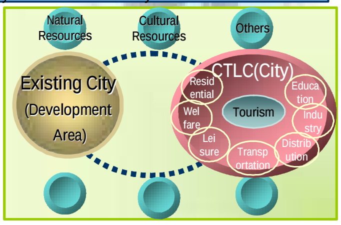

### Type 1: Examples


Gyeongju Bomun Tourism Complex


Jeju JUngmun Tourism Complex

❖ Type 2: Comprehensive self-sufficient tourism / leisure complex (City)

- Separated planned tourism complex from the city development
  → Multi-functional (residential, education, administration, industry, etc.)
- Self-sufficient city type with tourism as the main function
  → Enough job creation by the tourism industry
- Development by the single leading enterprise with a unified development concept
- Optimal for long-term visitors




Type 2: Examples


Disneyland Resort Paris, France


Cancun, Mexico


Languedoc-Roussillon, France


Cancun, Mexico

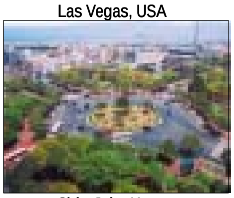
❖ Type 3: Urban type tourism complex(city)

- City where city functions are closely related to tourist functions
  → Developed into a tourist city
- Inseparable tourist activities (lodging/leisure) and non-tourist activities (residential, education, distribution functions)
- Different facility units are developed independently


Type 3: Examples


Las Vegas, USA


Honolulu, HI, USA


Shin-Jeju, Korea


Honolulu, HI, USA

## Ⅲ. Need for the Complex Vitalization

### 1. Efficient Land Use

**Promote balanced regional development**

- Job creation and economic vitalization through tourism industry development
- Means for balanced regional development

**Utilization of undeveloped industrial estate**

- Undevelopedd industrial estate : approx. 15㎢ (2003)
  - National industrial estate 11㎢, local industrial estate 4㎢

### 2. Increase in Tourism Demand & Importance of the Tourism Industry

**Tourism industry as a new growth engine**

- Tourism industry: 11.6% and 8.6% of the world's GDP and employment in 2014
- Foreign-exchange earning rate 88% (automobile 71%, mobile phone 52%)
- Employment multiplier of .062 is twice as big as the industry average of .029

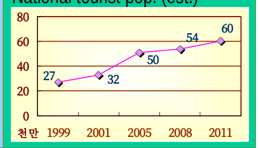
**Making regional tourism industry high value-added industry**

- Vitalization of related industries
- Disneyland Japan: 25.5 million visitors, \3.4 trillion SR, Net Profit \180 billion
- Disneyland Resort Paris, France : 12 million in direct employment, 400,000 induced employment, €980 million SR

**Increase in tourism demand with increase in interest on high life quality**

- Change of tourism
  40-hours work schedule, KTX, increasing GDP per capita
- ↑ National tourist population
  270 million (1999)
  → 650 million (2011)

National tourist pop. (est.)



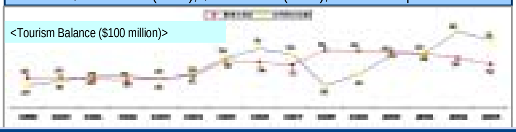

**Preparation to become the center of Northeast Asia through tourism**

- 52 million Northeast Asian tourists (2000)→ 109 million (2010), growth rate of 7.8%
  Chinese traveling abroad: 60 million (2010)→100 million (2020)
- Need for strategic tourism policies to strengthen the competitiveness

### 3. Escaping the Tourism Deficit

**End to the tourism deficit**

- Outbound tourists: 7 million, Inbound tourist 4.8 million (2003),
- Deficit: $3.12 billion (2002), $2.89 billion (2003), increase expected in 2004




**Outbound tourist increase resulting in money outflow**

- Weakened domestic tourism infrastructure
  → Outbound Increase (over $400 million/year for golf trips)
- Large-scale theme parks development in neighboring countries
  → threat to Korea's tourism market

### 4. Tourism Complex Development Vitalization with Private Investment

**Lack of large scale tourism complex development base**
**→ Difficulty in building a tourism complex**

- Tightened environmental regulation, Lack of related statutory foundation
- Manufacturing-oriented support→Lack of gov. support for tourism industry
- Lack of private investment in areas other than the Capital region

**Respond to Changes in General Tourist Preference**

| | |
|---|---|
| Land/ en route | → Oceanic/ long-term stay |
| East Sea preference | → Yellow/South Sea |
| Group, sightseeing, excursion | → Small, family, participatory |
| Environment-unconscious sprawl | → Environment-friendly development |
| US/Japan-oriented | → Yellow Sea/ Northeast Asia |

Need for Innovative method in Tourism Development

## IV. Examples of CTLC Development

### 1. Overseas Examples

**❖Disneyland Resort Paris, France**

**Summary**

| | |
|---|---|
| Location | ▪ 30㎞ Outside Paris in Val d'Europe |
| Development Process | ▪ 1983: Walt Disney Amusement Park Construction Launched<br>▪ 1987: Val D'Europe Agreement between the French government and Walt Disney |
| Development Method | ▪ Joint-effort by Marne-la-Vallee, SAN, and Walt Disney for 30 years<br>▪ Walt Disney: Amusement park, inner city facilities<br>▪ Government: Road and other related SOC |
| Tourism | ▪ 12 million visitors, 400,000 employment (direct/induced) |

**Major Facilities**

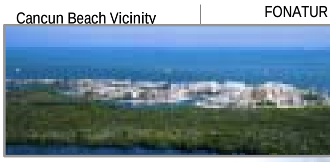

**❖ Cancun, Mexico**

**Summary**

| | |
|---|---|
| Location/ Feature | ▪ 550 mile from Yucatan Peninsula (South Mexico) to Miami<br>▪ "7"-shaped, 25.6㎞-long, 300m~500m-wide<br>▪ Average temp. 25.5 ˚ C, historic remains of the Mayan civilization |
| Development Process | ▪ 1967: Formulation of the Development plan by the Mexican govt.<br>▪ 1969: FONATUR founded |
| Major Facilities | ▪ 1st Zone: La Ciudad de Cancun (300,000 population)<br>▪ 2nd Zone: La Reserva Ecologica<br>▪ 3rd Zone: Zone Hotelera at the hotel/shopping district |
| Tourism (2003) | ▪ over3 million tourists (6 million for the vicinity)<br>▪ Cancun region accounts for 30.7% of the national tourism income |

"7"-shaped Cancun Beach

Cancun Beach Vicinity



FONATUR

Cancun Coastal Line

Chichen Itza

❖ Languedoc-Roussillon, France

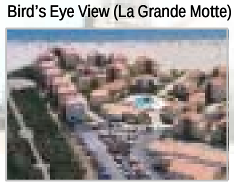
Summary

| | |
|---|---|
| Location/ Feature | ▪ Southwest France, Mediterranean Coast, 320km away from Nice<br>▪ 300 sunny days/ year: typical Mediterranean climate |
| Development Process | ▪ 1963: L-R Coastal Development Committee organized<br>▪ Plan d'urbanism directeur d'interet regional<br>▪ Languedoc-Roussillon development plan pushed forward |
| Major Facilities | ▪1,234 lodging facilities, 20 Golf Courses, 5 convention centers<br>▪ Road construction to connect 6 zones, 180km coastal highway |
| Tourism (2003) | ▪ 10 million tourists, €4.9 in tourism income<br>▪ Tourism industry accounts for 12% of the region's GRDP (60,000 employment) |

Languedoc-Roussillon Map

Bird's Eye View (La Grande Motte)

La Grande Motte



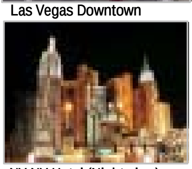
Le Cath

❖ Las Vegas, USA

Summary

| | |
|---|---|
| Location/ Feature | ▪ Southeast of NV, USA<br>▪ International capital of gambling |
| Development Process | ▪ 1930s: Hoover Dam Construction Created as a leisure city for workers<br>▪ Transformation to become a gambling city in 1950s<br>▪ Transformation to become a business town in 1980s |
| Major Facilities | ▪ Appr.127,000 guestrooms<br>▪ 43 Golf courses (30% of tourists) |
| Tourism (2002) | ▪ 35.07 million tourists<br>▪ Average occupancy rate of 89% |

Las Vegas Downtown



NY NY Hotel (Night view)

## 2. Domestic Examples

❖ Gyeongju Bomun Tourist Complex

| | |
|---|---|
| Location | ▪ Gyeongju, Gyeongbuk<br>▪ Approx. 7㎢ |
| Develop-ment Process | ▪ 1971: Gov. initiated development Plan<br>▪ 1975: Tourism complex designated<br>▪ 1979: Bomun Complex opened |
| Major Facilities | ▪ 8 Zones<br>▪18 lodging facilities, 3,017 rooms |
| Tourism (2003) | ▪ 6.8 million tourists<br>▪ 2,695 employment |

❖ New Jeju, Jeju

| | |
|---|---|
| Summary | ▪ Yeon-dong, Jeju (New Town), 36,700 population, 12.4㎢ |
| Development Process | ▪ 49 lodging facilities, (54.4% of the city, 33.8% of the island)<br>▪ 1.2 million lodging users (44.8% of 2.7 million users in the island)<br>- 950,000 Koreans, 250,000 foreigners<br>(42.8% of the total in the island) |

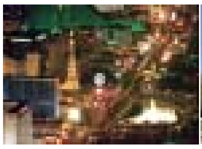
**Improved accessibility through SOC development**

▪ Construction of highways and airports to improve accessibility

**Need attractive tourist facilities & living environment**

▪ Attractive large-scale leisure & tourism facilities
- Casino, theme part, oceanic recreation, GC, etc.

▪ Harmonious coexistence of residential areas and recreational facilities (GC, etc.)



❖ New Development — Development method is yet to be defined

| | |
|---|---|
| Examples | ▪ South Shihwa Reclaimed Area (comprehensive leisure complex) (Ansan, Gyeonggi)<br>→ Environment-friendly leisure/cultural activities<br>▪ Saemangeum comprehensive tourism/leisure city (Gunsan, Jeonbuk)<br>→ Eco-tourism, sports, logistics, large farming<br>▪ Yeongam/Haenam(J project) Samho Reclaimed Area (Yeongam, Jeonnam)<br>→ Large-scale tourism/leisure complex on a reclaimed area<br>▪ Hwayang, Yeosu (Yeosu, Jeonnam) in process (Free Economic Zone)<br>→ Privately developed tourist complect |

## 3. Implications

**Secure the sufficient tourism demand**

▪ Large-scale tourism complex based on Tourism function
▪ Tourist market identification: domestic & international

**Selection & Concentration**

▪ Limited number of large-scale and self-sufficient complex
- need consideration of mid-size complex

**Development process**

▪ Joint-effort by government & corporate bodies (foreign included)
- Government: road & other related-SOC facilities
- Corporate: Amusement park & interior installment

▪ Organization & statutory frames : need a special act

# Ⅴ. Tourism Complex Development and Limiting Factors

## 1. Present Situation

❖ Existing Development — Based on the current statutes

| | |
|---|---|
| Tourist Complex | ▪ Operation 5, Construction 5 (June 2004)<br>→ Operation: Bomun, Jungmun, Weolsong, Bongpyeong, Yongpyeong<br>→ Construction: Hwaweon, Kimpo, Kimjeon Spring, Yongyoo/Mueui, Andong Culture<br>▪ Total Expenditure: \10.2 trillion, investment of only 31.0% of planned |
| Compre-hensive Recrea-tional Enterprise | ▪ 14 private enterprises (June 2004)<br>▪ From a single function facility which is vulnerable to seasonal variation to multi function facilities |

## 2. Limiting Factors

❖ Designation Stage

| Restriction | Core Contents |
|---|---|
| Land Use Restriction | • Landuse restriction : National Parks, Fishery Reserve Zone<br>- Gusan Oceanic Tourism Complex project in Masan stalled for 4 years<br>• Large scale development limitation in Capital region which has a high potentiality<br>- Failure of Lego Group (Denmark) project in 1997 |
| Difficulty in Land Acquisition | • Land price hike after designation<br>- Incheon Yongyoomu Tourism Complex – \21,000 ('96)→ \150,000 ('04)<br>• Added difficulty for private business in land purchase<br>- Time & money → Land price hike : Vicious cycle |

❖ Planning Stage

| Restriction | Core Contents |
|---|---|
| Leng-thened authorization process | • Delayed from complex and repetitive authorization process<br>- Separate permit needed for each facility<br>• Need more paper work compared with industrial development<br>• Repetitive environmental review, tightened regulations |
| Various Facility Regula-tions | • Regulation on some installments within a complex<br>- Tourism Complex: residential facility/<br>- Recreational area: residential & distribution facilities<br>• Regulation against casino (domestic/international), cycling, horseracing and boat racing facilities<br>• Environmental regulation on the types of facilities |

❖ Implementation and Operation Stage

| Restriction | Core Contents |
|---|---|
| Lack of Govt. Support | • Lack of SOC and other infrastructure support from the public sector<br>- maximum to 50% for infrastructure facilities<br>• Inferior incentive policy compared to other industries<br>- Acquisition/registration tax: Manufacturing full exemption vs. tourism complex 50% deduction<br>• Lack of significant financial support<br>- Limit on loan to tourism businesses,<br>- Restricted use of Tourism Development Promotion Fund<br>• Less incentive in operation<br>- utilities : not incentive<br>- GC : Special consumption tax |

3. Tasks

| Stage | Restrictions | Support Tasks |
|---|---|---|
| Designation | Land use restriction | Make land acquisition easy |
| | Difficulty in land purchase | |
| Planning | Lengthened authorization process | Simplified development and authorization procedure |
| | Various facility regulations | Regulation relaxation |
| | | Housing of various functions |
| Implementa-tion | Poor govt. support | Expansion of policy support |

## Ⅵ. Measures to Vitalize CTLC

Ⅰ. Purpose

- Vitalization of tourism/leisure complex construction
- Promotion of self-sufficient urban development
- Encouragement of private investment
- Strengthened local development capacity

2. Policy Goals & Tasks

❖Policy goals & direction

| Policy Goals | Key word | Policy Direction |
|---|---|---|
| Northeast Asian Tourism hub<br>Balanced national development | Economic | Create business environment that encourages private investment |
| Local economy development | Locality | Local development that can haul in further growth |
| Efficient use of national land | Environment | Environment-friendly development for sustainable growth |

❖ Policy tasks

**Vitalization of Comprehensive Tourism/Leisure Complex**

- Create business environment that encourages private investment
- Local development that can haul in further growth
- Environment-friendly development for sustainable growth

| Vitalization Support Tasks (Contents) | Propulsion Tasks (System) |
|---|---|
| Make land acquisition easy<br>Simplified development procedure<br>Regulation relaxation<br>Expansion of policy support<br>Housing of various functions | Cooperative propulsion system<br>Rational implementation process<br>Effective business support |

3. Vitalization Support Tasks

❖ Making land acquisition easy

Relaxation & adjustment of regulations on land use
- Relaxation of land use regulation and functional change when needed

Offer incentives in development site acquisition by private developer
- Land acquisition by local governing bodies
- Limited eminent domain for private developer: after 50% acquisition

Device against land price hike
- Statutory installment to suppress the land price hike in the early stage of development

❖ Simplified development procedure

Simplified authorization process
- Adopting one-stop authorization process
  - Inclusion of related plans for coastal management, etc.

Standardization of the authorization process
- Integrated standard planning system
- Organization of support teams for authorization in local governing units
- Strengthened cooperative relationship with relevant departments of the central government

❖ Rational regulation relaxation

Permitting various tourist/leisure facilities
- Permitting of of various tourist/leisure facilities such as casino, cycle racing, horseracing, and boat racing
  - Creativity & profitability of the private sector
  - Attraction to Korean/foreign tourists

Flexible implementation of environment regulation
- Permitting various tourist/leisure facilities with tightened regulation of emitting standards
- Regulation by the total volume of pollution instead of individual facilities

❖ Expansion of Policy Support

Systematic infrastructure support to encourage private investment
- Early development support of SOC facilities
- Flexible adjustment of the SOC support rate of 50%

Expansion of Incentive to encourage private investment
- Tax exemption for the CTLC at least equal to the industrial complex and free economic zone
- Lowering development tax

Financial support for private developer
- Relaxing the investment volume restriction and credit contribution limit
- Financial support through Tourism Development Promotion Fund

Expansion of incentives in operation of the complex
- Lowering tax rate and use of industrial electricity rate
- Include tourism businesses in the subject for special consumption tax deduction and investment tax exemption under the Tax Privilege Regulation Act

❖ Housing of Various Functions

Inclusion of various functions for self-sufficient living environment
- Support for installment & management of educational facilities
  - special school fit to the complex
  - autonomous management
- Support for installment & management of medical facilities
  - Establishment of general hospital, special-purpose hospital (nursing house, cancer clinic)

Measures to encourage investment
- Simultaneous development of residential areas and the complex to promote high-quality living environment
- Statutory support necessary for special-purpose schools/ hospitals

### 4. Propulsion Tasks

❖ Cooperative propulsion system

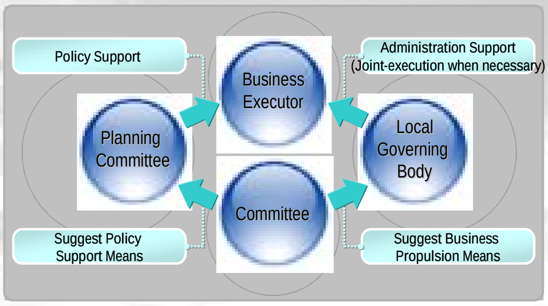
**Recognition of various implementation body**

- Implementation by private sector with support of the public
- Joint-effort by the private and public sector when necessary (local and areawide administrative body )

**Complete support system by central & local governing bodies**

- Establishment of various managing body for systematic implementation in mid/long-term perspective
  - Complex (city) support committee, management committee, working committee
- Aggressive administration support by local governing bodies

**Propulsion System**




❖ Rational Propulsion Process Standardization

**Securing economic feasibility**

- Maximum guarantee of profit based on the market conditions
- Reinvestment of extra development profit to public & SOC facilities

**Environmental review prior to the site selection**

- Sites with the least environmental impact will be designated

**Aggressive support measures for the selected**

- Support system that will secure competitive edge over other regions

❖ Statutory Frame for Effective Development Support

**Founding legislation to effectively support the complex**

- Improve overbearing regulations, repetitive administrative process, and tax burden
- Aggressive statutory support to encourage private investment

**Formulate institutional measures to support tourism industry development**

- Preparation of support policy for the tourism industry to match the one for the export industries
- Systematic improvement of the tourist development regulations
- Statutory measures to vitalize the tourism industry: Oceanic tourism, etc.

❖ Implementation Plan

| Stage | Period | Core Contents |
|---|---|---|
| Introduction | 2004 ~ 2005 | ▪ Preparation of statutory frame, organization of various committees<br>▪ Designation of sites and developers, development plan approval |
| Administrative Support | 2006 ~ 2007 | ▪ Land acquisition, eminent domain granted<br>▪ Formulating development plan, securing funding |
| Development & Management | After 2008 | ▪ Complex construction<br>▪ Disposition of developed site<br>▪ Operation and management |

## Ⅶ. Conclusion & Proposal

### 1. Conclusion

**Vitalization of the Complex through Private Investment**

- Strengthen international competitiveness of the tourism industry/ Balanced national development/ Vitalized local economy/ Effective land use
- All-encompassing government support to attract private investment
- Preparation of institutional and statutory support frame to run the development smoothly
- Improvement of the institution to better the relationship with existing complexes

2. Suggestions

1. Preparation of detailed and unbiased standard related to selection of project sites and developers
   - Lack of detailed standard leave much room for dispute and abuse
   - More research & pilot projects prior to full implementation for creating unbiased standards
2. Feasibility analysis for each project site
   - Lack of feasibility when the general standard for the whole nation are adopted
   - Feasibility analysis after designation of the project site

3. Improvement of existing tourism-related statutes
   - Limitation to vitalization of the tourism/leisure industries
   - Need support system within the existing statutory frame to benefit the industry in general
4. Differentiated government support for the different sites
   - Private businesses demand sites with great development potential to maximize profit
   - Maximum freedom in choosing project sites based on feasibility analysis with differentiated government support

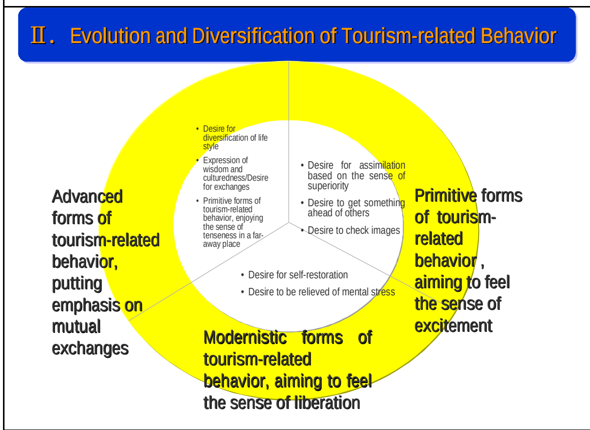
# Ⅷ. Major Factors of Dispute

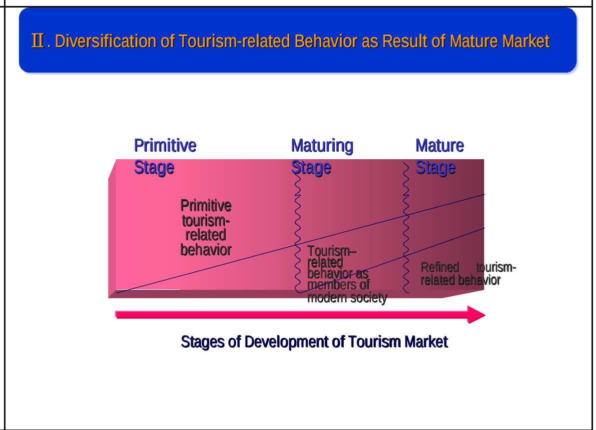
1. Eminent Domain for the Private Sector
2. Redemption of Development Profit
3. Exception to the Investment Volume Restriction
4. Privilege in School/ Hospital Construction
5. Obligatory direct investment ratio by the primary developer
6. Environmental Preservation
7. Authorization/ Permit Processing
8. Real Estate Speculation

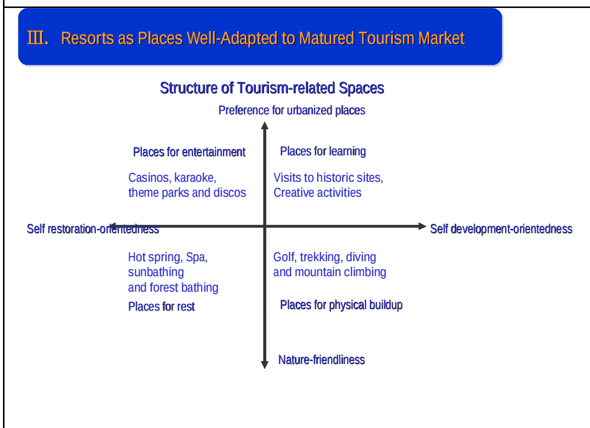
Thank You.

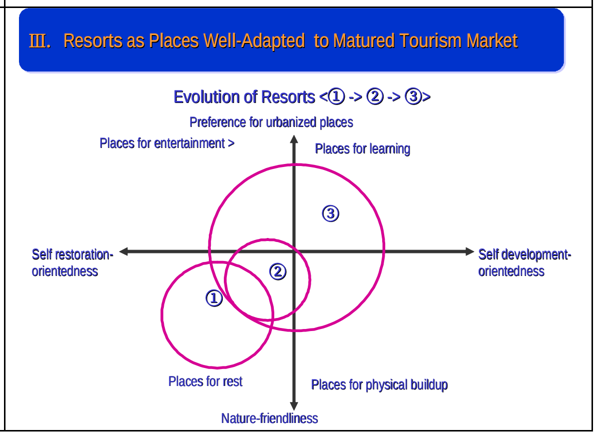
## 6.5.3. Measures to Vitalize the Comprehensive Tourism/Leisure Complex (CLTC) by Private sector





IV. New "Complex Contents for Formation of Successful Resorts

1. Contents combining places for entertainment and those for rest
2. Contents combining places for entertainment and those for learning
3. Contents combining places for entertainment and those for physical buildup
4. Contents combining places for rest and those for learning
5. Contents combining places for rest and those for physical buildup
6. Contents combining places for learning and those for physical buildup
7. Contents combining characteristics of places for entertainment, rest and learning
8. Contents combining characteristics of places for entertainment, rest, learning and physical builingup
9. Contents combining places for tourism and those for business

## 6.5.4. Partnership Model by Wynn Resorts Macau, SA

### Partnership Model

- Wynn Resorts, The Organization
- Global Growth Strategy
- Partnerships in Action
  - Las Vegas
  - Macau
- Partnership Objectives
  - Win / Wynn Outcomes

### Wynn Resorts Overview

- Established in June 2000 after Steve Wynn sold Mirage Resorts for US$6.4 billion and purchased The Desert Inn
- Steve Wynn is the Chairman and CEO – also owns 27% of the Company
- Viewed as premier developer of hotel gaming resorts
- Completed IPO in October 2002 – market cap approximate of US$5.5 billion
- Focused on global growth strategy – developing resorts in Las Vegas and Macau

### Experienced Management Team

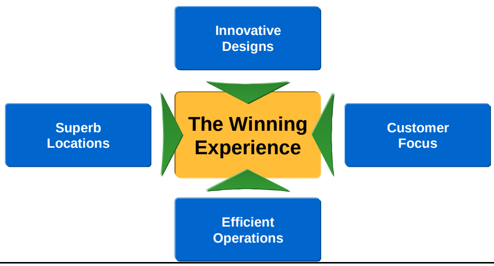
- Leading designers, developers, builders and operators
  - Previously built 5 properties with over 16,000 hotel rooms and 625,000 square feet of gaming space
- The management team has an average of over 20 years experience designing, building and operating some of the most successful gaming resort hotels in the world

*"Mirage Resorts, which got high marks for its ability to provide quality service, to attract good people, and to innovate, moved from No. 7 to No. 2. CEO Stephen Wynn's transformation of mundane hotels and casinos into sparkling gaming palaces has forever changed Las Vegas. For his efforts, Wynn's company was rewarded the fourth-highest overall ranking in quality of management."*

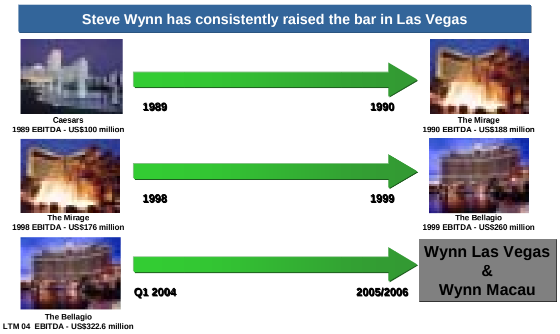
– Fortune Magazine, "Most Admired Companies", 3 March 1997

### Global Growth Strategy

- Develop and operate the best global gaming company in the world (Las Vegas, Macau, and other locations)

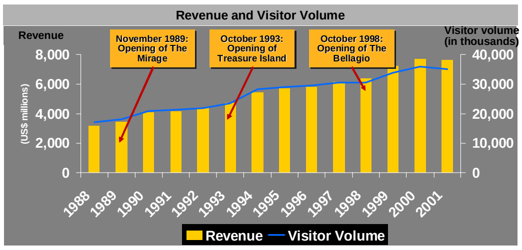


## Wynn & Las Vegas Partnership
### Leveraging Off the Wynn Brand

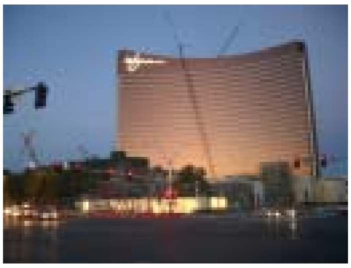



## Favorable Market Dynamics

- Wynn's properties are catalysts for gaming growth




## Wynn Resorts Las Vegas Opening April 2005



- 2,700 hotel rooms
- 110,000 sq. ft. gaming facility
- 75,000 sq. ft. of retail space
- 223,300 sq. ft. of convention space
- 19 restaurants
- 18 hole golf course
- 36 golf course villas
- 2,087 and 1,100 seat showrooms
- Ferrari/Maserati dealership
- Art gallery

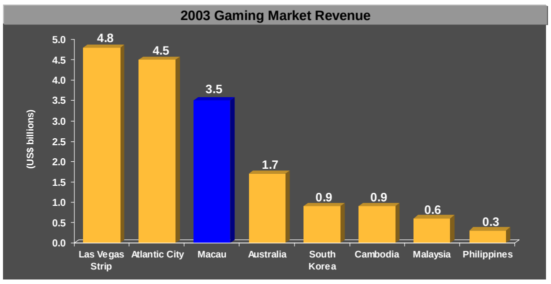
## Wynn & Macau Partnership

### Macau Investment Rationale

- Ideally positioned as the central gaming destination for Asia


## Gaming Market Revenue

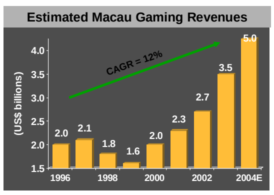
- Despite the lack of gaming supply, Macau is a top global gaming market

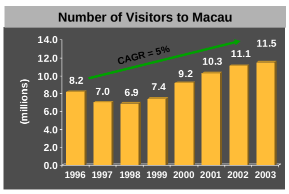



Source: Industry Research

## Macau – A Very Deep Market

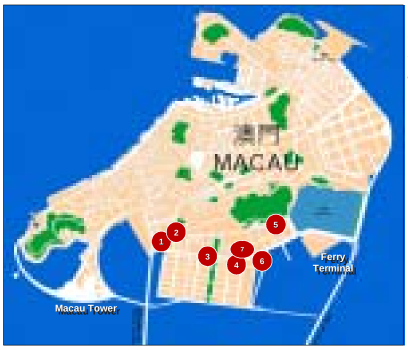
- Macau has been an established gaming market for over 40 years
  - Market win estimate of US$5.0 billion in 2004
- Over 100 million people within a 3 hour drive
- Over 1 billion people within a 3 hour flight



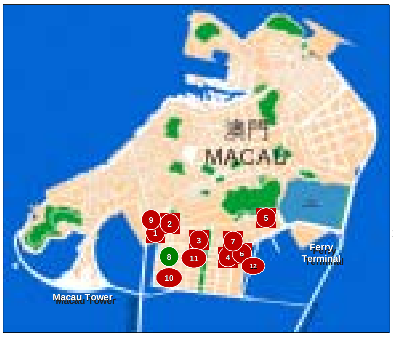

Sources: Macau Statistics and Census Service

## Current Major Gaming Outlets




1. Lisboa
2. Kam Pek
3. Pharoah's Palace
4. Mandarin Oriental
5. Jai Alai
6. Sands Macau
7. Galaxy Waldo Casino

## HK$15 Billion of Proposed Investments




1. Lisboa
2. Kam Pek
3. Pharoah's Palace
4. Mandarin Oriental
5. Jai Alai
6. Sands Macau
7. Galaxy Waldo Casino

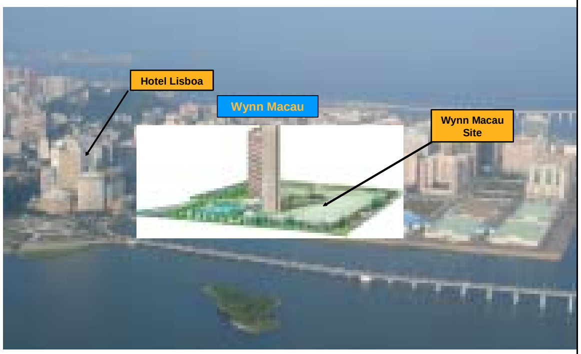
Future Properties

8. Wynn Macau
9. SJM 800 room Hotel
10. Future Gaming Site
11. Galaxy Star World Hotel
12. Fisherman's Wharf

## Wynn Macau Overview

- Broke ground on 24 June 2004 opening in 4Q 2006
- Arc-shaped 20-story hotel tower with 600 rooms (440 deluxe rooms, 140 standard suites, and 20 corner suites)
- 200 tables / 350 slots
- 7 food and beverage establishments
- Separate VIP dining
- 20,000 sq. ft. event ballroom
- 28,000 sq. ft. of retail space
- 15,000 sq. ft. health spa

## Wynn Macau Development Site




**Partnership Model**
**to maximize the**
**Economic and Social sustainability**
**via a**
**public sector (community)**
**and**
**private sector partnership.**

## Community Partnership Objectives

**TO BALANCE**

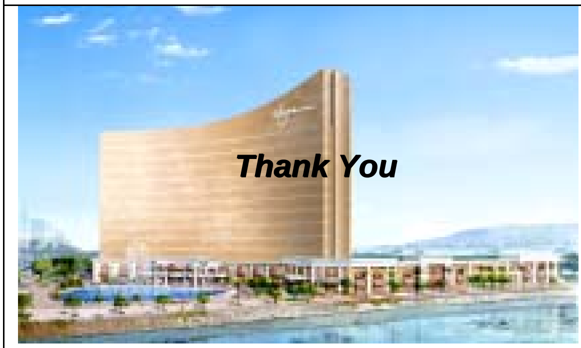
- **Economic Development**
  - Investment - Building, Infrastructure
  - Business Growth
  - Industry Diversification

**AND**

- **Social Development**
  - Employment - Sustainability
  - Education and Skills
- **Community Development**
- **Social Responsibility**

**Wynn Partnership Objectives**

- **Economic Objectives**
  - Financial Feasibility
  - Long-term Development Opportunities
- **Social Objectives**
  - Strong Regulatory Framework
  - Government and Community Support

## 6.5.5. Project Finance for the Tourism Industry: Bank's Perspective

2004 Korea Tourism Investment Forum

**Project Finance for the Tourism Industry:**

**Bank's Perspective**

Korea First Bank
www.kfb.co.kr

November 23, 2004
Lotte Hotel Jeju

### 1. What is Project Finance?

- Limited non-recourse debt financing for projects that relies on future cash flow from the project as the primary source of repayment, with the project's assets, rights and interests held as collateral security.

### 2. Why use Project Finance?

- Leverage: High leverage improves the return.(e.g., power, toll road projects are long-term but usually do not offer high return)
- Risk limitation: The risk is limited to the amount of equity investment

---

- Risk sharing / joint ventures
  - • A project may be too large for one sponsor(investor)
    → bring in other sponsors(investors) to share the risk in a Joint Venture Project Company
  - • Project Risks can be reduced by combining expertise
    → e.g., local expertise plus technical expertise, construction expertise plus operating expertise plus marketing expertise
- Long-term finance: Projects usually have a high capital cost that cannot be recovered over a short-term.
  (e.g., Power project / infrastructure > oil, gas, minerals project > telecommunication)
- Accounting considerations: off-balance-sheet accounting possible
  → does not affect sponsors'(investors) balance sheet
- Borrowing capacity: Project finance normally not counted against corporate credit lines
  → Increase investors'(sponsors) overall borrowing capacity

### 3. What are the benefits of Project Finance to 3rd parties?

(End-users of the product / service, off-takers, host governments)

- Lower product and/or service cost through lower project cost
  → Private sector can often be more cost-effective in building and managing projects than the public sector.
- Investment in public infrastructure
  → Provide relief to economic/financial constraints in the public sector budget
  → Stimulate other economic investments, provide employment opportunities
- Risk transfer
  → Transfer project cost overruns from the public to the private sector

---

- 3rd Party Due Diligence
  → Independent due diligence and control of the project exercised by lenders
- Transparency
  → The true costs of the product / service can be measured and monitored
  ( Project Financing is self-contained:
  Deals only with assets/liabilities and costs/revenues of the project)
- Technology transfer / accumulation of management experience, skills

### 4. Banks' Questionnaire (checklist)

- Commercial viability: Does the project make overall economic sense?
- Completion risks: Can the project be completed on time and budget?
- Operating risks: Is the project capable of operating at the projected performance level and cost?
- Revenue risks: Will operating revenue be as projected?
- Input supply risks: Can raw materials or other inputs be obtained at projected costs?

- Sponsor track record and support:
  Does the sponsor(s) have a proven successful track record and is there a need for more recourse to the sponsor(s)?
- Environmental risks:
  Does the project have any potential environmental constraints in construction and/or operation?
  Does the project adhere to "Equator Principles"?
- Technology risks: Is there any unproven new technology in the project?
- *Force Majeure* risks: Can the project cope with *force majeure* events?
- Contract mismatch: Do the project contracts fit together properly?

## 5. Conclusions

- Project Finance is neither "Magic" nor a "Silver bullet".

⇒ **Project Finance cannot be used to finance a project that cannot otherwise be financeable.**

⇒ **Commercially viable, economically sensible projects will be financed through Project Financing or other financing methods.**

Case Study: **Wynn Resorts (Macau)**
**USD 352 Million Project Finance**

## 1. Background

- 2001: The government of Macau decides to increase the Macau gaming market from a single gaming concession(SJM) to three concession.
- Tender Process of 18 "finalists":
  - 1st place – Wynn Resorts (Macau)
  - 2nd place – Galaxy Resorts Casino
  - 3rd place – SJM (The current single operator)
  - 4th place – Caesars World / Mandalay Bay (1st alternate)
  - 5th place – MGM (2nd alternate)

➡ **Transform Macau into a world-class resort and gaming destination**


## 2. The Project

- Base cost: USD 704 million
- Financing: 50% - equity + subordinated debt
  50% - senior debt (Project Financing from Banks)
- Facilities:
  - Hotel – 20 story, 600 rooms
    – Health spa, salon
    – 7 restaurants
    – 28,000 square feet retail space
  - Gaming – 100,000 square feet, 200 tables, 350 slot machines

## 3. The Sponsor: Wynn Resorts Limited

- Incorporated in June 2000 after Mr. Steve Wynn sold Mirage Resorts for USD 6.4 billion and purchased The Desert Inn
  → Wynn Resorts (Las Vegas: USD: 2.4 billion project)
  a 212 acres, 2,700 room hotel, 36 golf course villas, 18 hole championship golf course, 19 restaurants (April 28, 2005 scheduled opening)
- Listed on the NASDAQ stock market in Oct. 2002, current market capitalization of USD 5.5 billion.
- Mr. Steve Wynn has more than 30 years of experience in the gaming, hotel and tourism industries as designer, developer and operator.

  Design and Development of;

  - Atlantic City Golden Nugget : Opened in 1980 at an approximate construction cost of USD 150 million

- The Mirage:
  Opened in 1989 at an approximate construction cost of USD 620 million

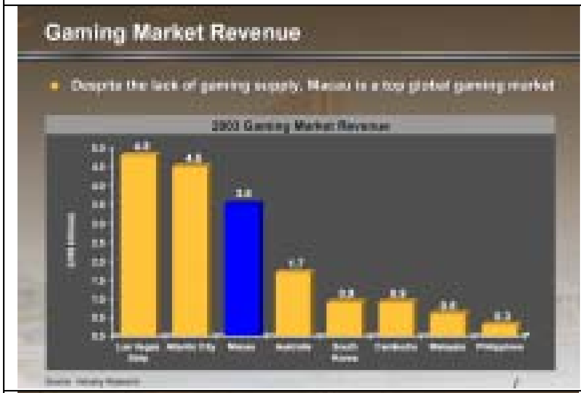
- Treasure Island at the Mirage:
  Opened in 1993 at an approximate construction cost of USD 303 million

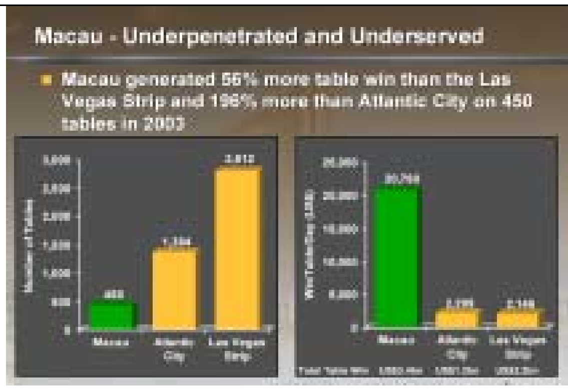
- The Bellagio:
  Opened in 1998 at an approximate construction cost of USD 1.6 billion

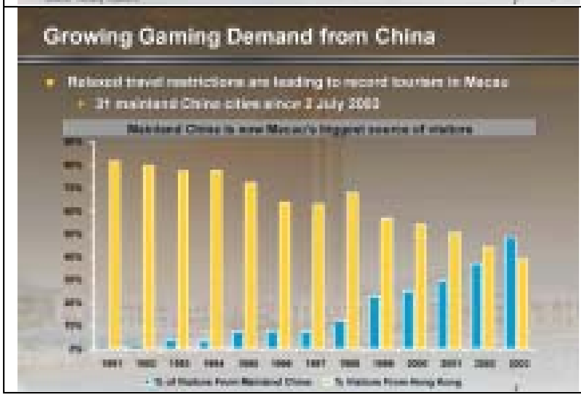
- Beau Rivage in Biloxi, Mississippi:
  Opened in 1999 at an approximate construction cost of USD 660 million

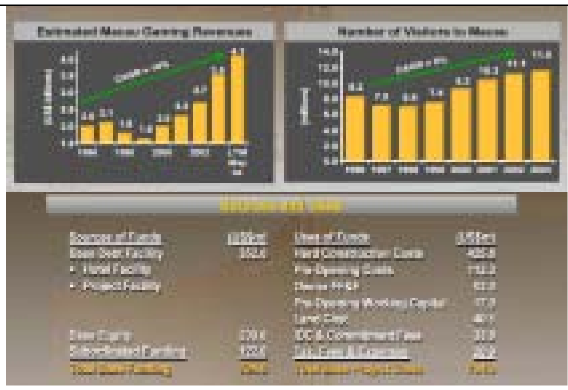
## 4. Market Dynamics – Commercial Viability

- Macau(rated A1, Moody's) is the 3rd largest gaming market in the world and the largest in Asia despite limited nature of facilities. Only Las Vegas and Atlantic City are larger gaming markets.
- Macau has the largest win-per-table/ day in the world, with an average of USD 20,709 vs. Las Vegas with USD 2,588.
- Over the past 3years, mainland Chinese customers have passed that of visitors from Hong Kong, as China started to relax travel restrictions.
- Macau has been an established gaming market for over 40 years.
- Over 100 million people within a 3 hour drive.
- Over 1 billion people within a 3 hour flight.



## 6. Credit / Risk checklist and conclusions

- Commercial viability: ✓
- Completion risks: ✓
  - Guaranteed Maximum Price Contract ("GMP")
    - Leighton / China State JV
  - Due diligence and drawdowns subject to lenders' technical consultant, Mott Connell Limited's certificate.
  - No unproven technology
- Sponsor's track record and support: ✓
- Operating / Revenue risks: ✓

- Financial risks:
- Site / Environmental risks:
  - The project is category "C" under the "Equator Principles"
- Regulatory / Political risks:
- Operating / Revenue risks:

**USD 352 million successfully syndicated by 13 banks from Europe(5), Japan(2), China(2), Macau(2), Canada(1), and Korea(KFB)**

# Thank you

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# 7. FACILITATING TOURISM INVESTMENT THROUGH PUBLIC PRIVATE PARTNERSHIP

## 7.1. Critical Success Factors

### 7.1.1. Expert Preparation

The partnership initiative, based on sound reasons, is driven by either the public or private sector. The agreement is simple, conforms to legal provisions and is based on formally established links. The partnership is organized along horizontal lines and involves both the public and the private sectors. An official body responsible for joint efforts is established. Time involved in arranging a partnership scheme justifies its worthiness.

### 7.1.2. Right Underlying Objectives

The objectives of partnership agreement are long-term, based upon extensive research and forecasting. They are common to all organizations entering such agreements and strike a balance between the diverse interests of the public and the private sectors. The partners respect, however, one another's identities while competing in these areas that are excluded form the agreement.

### 7.1.3. Developmental Structure of the Partnership

The relationship is reciprocal. The partners possess and share their specific strengths, bringing together a wide range of sources of support in order to provide an integrated service. The partners are able to pool resources, share their skills and communication costs. Simultaneously, they know what gains they can expect from collaboration. In order to attract a broad base of support, local democratic accountability is regarded as necessary for success, which require a genuine sharing of control and decision making. The responsibilities of partners are clearly specified. Each partner has a role to play according to the knowledge and expertise possessed. Co-ordination is crucial to link the public and private sector areas of action and prevent duplication of effort, which contributes to maximizing the benefits while minimizing the costs. Effective co-ordination requires establishment of an efficient information system and consultation network.

### 7.1.4. Effective and Efficient Actions of the Partnership

Appropriate actions leading to the attainment of the partnership objectives have to be undertaken. Efficiency of the partnership is measured by the level to which the objectives of such an agreement are achieved at the lowest cost of resource utilization. Due to the nature of partnership agreements, economic indicators are not, however, sufficient to determine the effectiveness of partnerships. The social network of external contacts constitutes an important facet of a partnership's environment. Underlying this view is a quest for information to reduce uncertainty, a quest that has been identified as one of the main drivers of organizational action. The informational benefits from social networks are crucial for the ultimate success of the partnership.

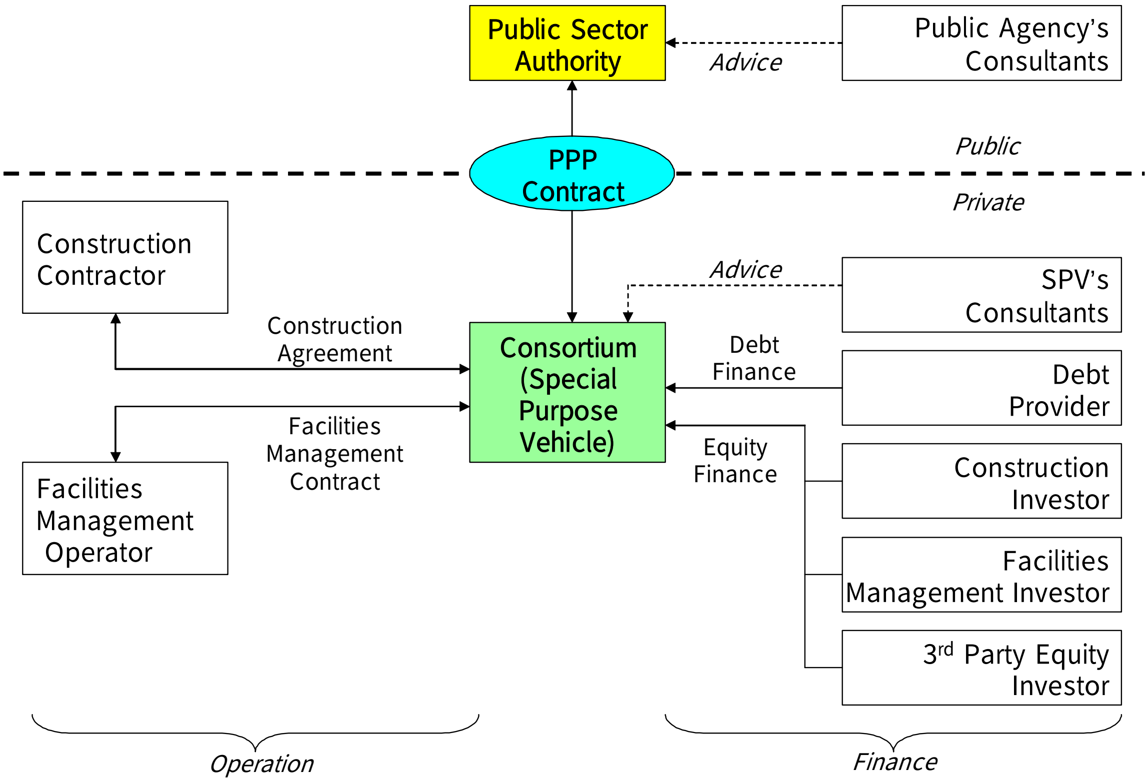
### 7.1.5. Sustainable Nature of the Partnership

In order to sustain the partnerships, constant feedback is necessary and objectives have to be reshaped before they begin to lose their importance. Monitoring systems are therefore developed and changes in the internal and external environment of the partnership are reflected in modified objectives, structures and actions.

## 7.2. Roles of the Public and Private Sectors in PPP Projects

### 7.2.1. Public sector roles

A PPP project involves collaboration between various types of private sector companies and the public agency. The PPP deal should be structured to be mutually beneficial to all the parties involved, with each party taking on the responsibilities which it is best able to manage. The roles of the public sector and the various private sector parties (including construction companies, operations companies, financial institutions and PPP consultants/advisors) in a typical PPP project under the Design-Build-Finance-Operate model are shown in following figure.




[Figure 7-1] Typical PPP Project Structure

In general, the responsibilities of the various parties collaborating in a PPP project are as follows:

• *Public agency – Purchaser of services*. As the purchaser of services, the public agency will specify the outcomes/outputs that it requires and avoid specifying the means of the delivering the services. The public agency monitors the performance of the PPP provides, and will also pay the PPP provider (i.e. the SPV) when the services are delivered according to the contract performance standards.

• *Design, Construction, and Operations and Maintenance companies – Service providers*. These private companies will form the SPV to bid for the PPP project. These companies play the critical role of proposing innovative solutions to meet Government's objectives for the PPP project. In a typical PPP project, the SPV will manage its design, construction and operational and maintenance responsibilities, by subcontracting the construction, operations and equipment supply to suitable providers. These subcontractors may be the parent companies of the SPV (i.e. the construction, operations and maintenance companies which are the equity investors of the SPV). In addition to design/construction/operations/maintenance, the SPV is to also raise the financing it needs to build any asset it requires to deliver the services. It will need to explore the financing arrangements, such as the quantum of the debt/equity, the rates of returns required and the tenure of loan, with potential equity and debt providers. When the SPV starts to deliver the services, it will use the service payment streams it receives from the procuring Government agency to repay its debt and equity providers, as well as its suppliers and subcontractors.

• *Equity investors and Debt providers– Private financiers***.** The equity investors of the SPV are typically (but not necessarily always) the construction and operations companies who will be involved in the actual service delivery. Fund managers or other financial institutions may also take equity stakes in the SPV. Equity investors are interested in generating positive returns on their investment, and hence have a strong interest in ensuring that the services delivered meets the performance standards that were agreed between the public agency and the SPV. Debt providers, such as banks and bond holders, provide the majority of the funding (sometimes up to 80% - 90%, with the residue coming from equity investors). As debt providers, the banks and financial institutions will carry out due diligence on the SPV (such as its technical capability and financial soundness to be able to deliver on the PPP contract) and its business plan to ensure that its plans are robust.

As the SPV's sole revenue source is from the PPP contract, as long as it is able to meet the service standards under the PPP contract and thus gets paid by the government procuring entity, the debt taken up by the SPV can then be repaid accordingly.

• *Consultants (if necessary) – Advisors***.** The public agency and the private sector bidder may also separately decide to engage consultants (such as technical, legal and financial consultants) to help them structure a PPP tender, and to work out a viable PPP proposal respectively. Advisors who have experience in developing PPP contracts can help to highlight the best practices to adopt or the pitfalls to avoid when preparing for a PPP deal.

• *Planning* - It is the responsibility of the public agencies to draw up master plans for the development of tourism services and infrastructure. They must do this through forward-planning and by taking account of the economic and social benefits of projects (whereas the financial profitability is a constraint for the private partner) (Fayard, 1999).

• *Regulation* - While reference to the market economy modifies the traditional role of the agencies, it also, somewhat paradoxically, broadens this role. The public sector must commit itself fully to its role as regulator which it must keep completely separate from that of the operator. The role of regulator is currently buried under administrative bureaucracy and is often confused with that of the operator. In some cases (mainly to be seen in the rail sector), the regulator is held "captive" by the agent, the operator under his supervision. What is needed therefore is not less intervention by the State, but better and different forms of intervention. This will require clarification of the roles played by different actors within the administrative, if not the political, system. Decisions must be taken according to transport policy objectives; the other considerations are merely the constraints that need to be taken into account. The predominant role played by finance departments leads to inefficiencies, particularly in view of the fact that such departments have no strategy, at least not in the transport sector, and are driven by the desire for power, on the one hand, and very short term considerations or dogma on the other. Problems arising from relations between central administrations and regional administrations, on the one hand, and from differences between their various remits (spatial development, the environment, transport, etc.) on the other may also lead to completion delays and cost overruns.

• *Safeguards* - The public sectors are the guardians of public safety and the environment and must, if a concession is awarded, protect the public against the risk of abuse of a dominant position while at the same time according the "concession holder" a satisfactory rate of return. In addition, the sectors may intervene in an activistic manner, for example to ensure social and spatial solidarity or in the pursuit of industrial policy, but to do this they must use market-type instruments. Tariffs are the preferred medium for such intervention, even though in many cases it could justifiably be argued that it would be more efficient to provide direct assistance to disadvantaged social categories or communities rather than equalizing tariffs. The imperatives of social solidarity, territorial development and cohesion are objectives in their own right, but an infrastructure policy is simply one means among others and must be subordinated to certain constraints. Lastly, lateral effects such as the impact on employment must not be neglected but under no circumstances should be a determining factor. It would be irrational, to say the least, to build infrastructure which has a particularly long lifetime and which requires particularly lengthy periods of preparation in order to provide a short-term boost to the economy. The advantage (or rather the least disadvantage) to road, from this standpoint, is that the management and operation of roads does not generate the type of deficits found in other sectors. As a general rule, it is not advisable to use infrastructure investment primarily as an instrument for fine-tuning the economy; investment must basically be planned over the long term as part of a master plan or transport development plan.

• *Financial facilitation* - Lastly, the authorities act as financial facilitators, a role that in most cases is indispensable, who provide an expectable level of financial profitability fitted to the risks born (if the social and economic profitability is higher than the financial one because the concession - holder cannot capture the whole social and economic benefits generated) and who ensure that projects actually get off the ground, given that large sums of money are inevitably required in the early stages of projects. The main criteria for investment must be the economic and social benefits which will improve the welfare of society. Because of positive externalities, the economic and social benefits often outweigh the financial profitability; the private sector, however, can only fund projects that are financially profitable. Public-private partnerships must therefore be financially viable or must be made to financially viable. The public sector may make it worthwhile for private enterprises to fund projects by reducing costs. Such assistance may take the form of:

- construction of infrastructure to accompany the project (in the case of the Channel tunnel, the cost of such infrastructure has the same magnitude as that of the tunnel itself);
- subsidies (or reimbursable loans) during the construction stage;
- periodic payments over a given period of time (which may or may not be reimbursable);
- acquisition of a share of the equity by the public sector.

Procedures must be drawn up on a case-by-case basis. The only form of aid to be excluded is that of balancing subsidies, determined on the basis of the results observed, which transfers all the risks to the public sector. As a general rule, any guarantee that is too broad is to be avoided, lastly, it is advisable to give priority to cash advances and to transfer repayments into a special fund. Government support can also take the form of association in an existing project, that is to say using the income from an existing infrastructure to contribute to the financing of a new structure. This system has been used to build bridge links (for example the Second Severn Crossing, the Dartford Bridge, the second bridge over the Tagus). It has also been used on a larger scale to develop the highway networks in Italy and France by using cross-subsidies between former and new infrastructure within the same concession holder company. This is also the strategy adopted by New York and the New Jersey Port Authority. Backing by collateral is a highly effective instrument. However, compliance with competition law requires that any cross-subsidy, while remaining internalized within the transport system concerned, must be externalized with regard to the concession holder. The company in charge of the new structure will be paid a subsidy from a fund financed through a concession fee (set out in the concession contract) levied on existing franchise operators. These flows may be consolidated within a single company but only if the flows have been identified at the time the concession is awarded. Furthermore, in order to ensure that tolls remain socially acceptable, the pooling of funding must remain at a reasonable level, namely at the level of the infrastructure system concerned. If there were need for a greater degree of pooling, this would have to be achieved through general taxation.

*Legal and political facilitation* - The public authorities must put in place a clear and stable frame of reference that is sufficiently transparent for the private partner. This is notably the case for technical standards (which must focus more on results than on means), taxation (which must not evolve solely with respect to the sector) and the setting of toll levels. Private investors can only take on risks that they are able to control and predict with a reasonable degree of accuracy. Political risks are by no means readily predictable, even in Europe, and a supranational guarantee system would encourage individual governments to respect their commitments. Lastly, legal safeguards must be provided with regard to the adjudication of any conflicts. Arbitration may be a solution for the conflicts that may arise between franchiser and concession holder; nevertheless intervention by third parties may lead to substantial instability.

*National Government*

The role of national governments is to set the broad policy agenda and provide the framework in which development takes place (CTC, 2001). Governments can and should provide a lead for integrating travel and tourism into overall policy

- Regulation: Governments establish the legal and regulatory framework for overall economic development, including planning and development control, investment, environmental protection and heritage conservation

- Infrastructure and facilities: Governments provide a great deal of infrastructure, such as, ports, roads, waste management and potable water supply, crucial for tourism development. Governments should support performance related incentives for investment and operation of tourism facilities.

- Marketing and promotion: Governments often invest in marketing and promoting tourism destinations within their country.

- Education and training: Governments are major providers of education and training. Introducing training and education programs in environmental management and sustainable tourism development for guides, tour operators and marketers, is also important. Finally, tourism related education should be incorporated into the curricula of hospitality, tourism and related courses in colleges and universities.

*Local Government*

Local governments should builds the capacity of a destination to host tourism and ensures sound and effective management and product development of destinations. Of the three levels of government, local government is the one involved most directly with communities and individuals, and therefore provides the 'on-the-ground' interface where most government policies are implemented. The problem is that often the role of local governments is very limited in its scope. At the local level, sound tourism development is achieved by steering local development activities to simultaneously achieve 3 objectives:

- Increase local social welfare;
- Achieve greater and more equitable distribution of local economic wealth; and
- Enhance integrity of local ecosystems.

Local authorities provide social services, build economic infrastructure, regulate economic activity and manage natural environment. Consequently they are able to directly influence the direction of local tourism development (ICLEI 1999). Another important role local authority's play, especially in a global economy, is to act as facilitators amongst diverse interest groups that exist within a community. This is important as it assists to define community interests as a shared vision and guides action consistent with that vision.

*Non-governmental organizations (NGOs)*

NGOs play a key role in representing and acting for the community. NGOs range from small local institutions such as women's groups to large global organizations such as WWF. NGO roles include:

- Bringing together key players and decision makers to discuss areas of common interest or concern (WTTC & IHRA 1999).

- Promoting consensus on the need for action and in influencing decision makers;

- Participating with industry in awareness raising campaigns and education activities to minimize the impacts of consumer behavior and consumption patterns;

- Assisting with measurement and monitoring of progress towards investment and tourism development;

- Supporting educational awareness programs on tourism for local people;

- Playing an important role in advocating bottom-up approach in tourism planning, development and management – through putting pressure on the industry and facilitating contracts and local participation for community development;

- Initiating stakeholder dialogue on community involvement in tourism development;

- Promoting respect for indigenous peoples and local community self-determination, autonomy and social and cultural integrity;

- Promoting consultation processes in tourism planning;

- Strengthening efforts to empower disenfranchised groups (in particular women);

- Promoting relevant research; and

- Monitoring tourism developments (UNCSD 1999b).

*International organizations*

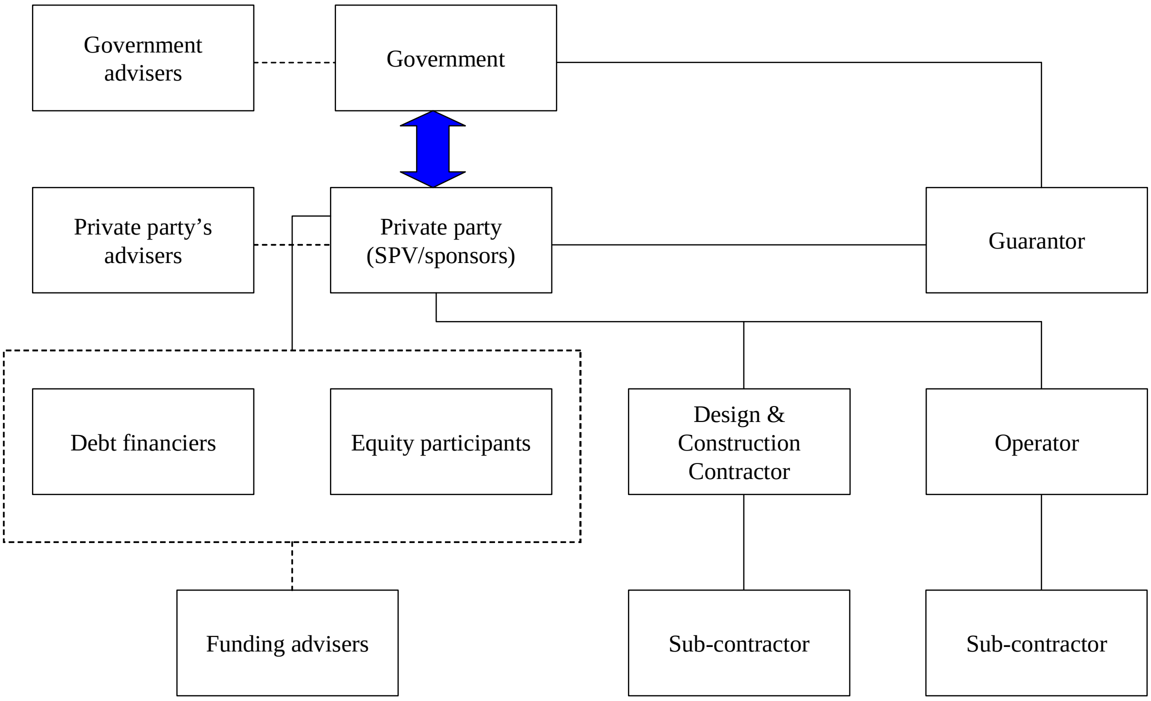
Tourism is a very global industry, and not surprisingly a variety of international organizations have developed to represent the various stakeholders in the tourism system. Some of these are United Nations organizations such as UNEP, UNDP, UN ESCAP, UNCTAT, and so on. Others are a representation of governments, such as WTO, APEC, ASEAN, and OECD; and still others represent industry associations such as, WTTC and PATA. Such international organizations can enhance sustainable growth of global tourism industry by:

- Promoting global ethics and best practice and

- Facilitating transfer of knowledge to industry sectors.

### 7.2.2. Private sector role

This section attempts to identify the private party’s roles in public private partnerships, in particular highlighting the effect financing has on the private party’s risk position and issues of particular concern to the private party when contracting with government. The term ‘private party' is used to describe the private sector entity with which government contracts. This may be a 'special purpose vehicle' (SPV), created specifically for the purposes of the project. The private party is not limited to this form, however, and can be set up under a number of structures including as a subsidiary of an existing company, a joint venture or a trust structure. Behind the private party there may be a number of private sector parties (the “Consortium”) who will be seeking to have their interests represented through the private party. Government needs to appreciate each of these interests when negotiating its position. In the case of a DBFO project, a Consortium is likely to include debt financiers (often in a syndicate arranged through a bank), equity investors/sponsors (who invest in the fortunes of the project and are therefore exposed to both the 'upside' and 'downside' risks), a design and/or construction contractor, and the operator. Following is a configuration of a typical consortium and its relationship with government and government's advisers.

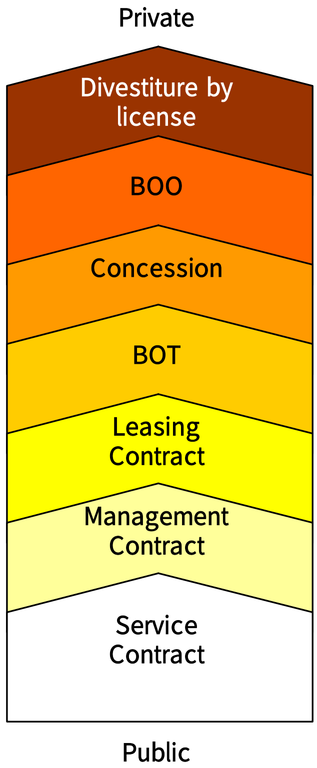



[Figure 7-2] Typical private sector consortium

In many economies, private sector participation is a key requirement for meeting growing demands for tourism services and resources development. The private sector is an important source of new investment capital that is relatively scarce for many economies. It also brings management expertise and, in the case of foreign private investment, technologies and know how which may not be presently available. The range of private sector participation options is quite broad. Private sector participation in tourism industry involves a continuum of options ranging from options with a relatively low level of private sector participation to those with a high level of private sector participation. These are:

- Service contracts.
- Management contracts.
- Leasing contracts.
- BOT type contracts.
- Concessions.
- Divestiture under license, or new entry of private sector participants through build-own-operate (BOO) arrangements. There are several options to categorize private public

participation into three groups, depending on the level of private sector involvement (ADB, 2000).




[Figure 7-3] Options for private sector involvement in tourism industry

*Service Contracts*

Service contracts include supply and civil work contracts, technical assistance contracts, plus sub- contracting or contracting out aspects of the tourism service and resource development. These contracts involve a utility contracting with a private contractor for the provision of specific services such as tariff collection, information technology, operations and maintenance, and construction. In its simplest form, the private contractor provides agreed services to the public authority under the public authority's general control and supervision.

*Management Contracts*

A management contract is a more comprehensive form of service contract, under which the public authority appoints a private contractor to manage all or part of its operations. Under such contracts, the bulk of the commercial risk and all the capital and investment risks remain with the government. Responsibility for all investment remains with government under a management contract. These contracts are useful if the core objective is to increase a utility's technical efficiency for performance of specific tasks. Like service contracts, management contracts can lead to improvements in service for those customers who are connected to the network but they provide little potential for improved access by those potential customers who are not connected to the network.

*Lease Contracts*

Under a lease contract, a utility leases the full operation and maintenance of its facilities within an agreed geographic area to a private operator for a period of time, say, ten years. The contract grants the operator the right to invoice and collect charges from customers within that area. The public utility would own the assets and remain responsible for major extensions and upgrades. The operator would be consulted on all major works, especially when the continuity of service is involved, and may participate in tender evaluation or submit its own tender.

Under a best practice lease contract, the private operator would take the full commercial risk on all operations within its lease area, with its remuneration directly linked to the charges it collects from customers. From these charges, it would pay the public utility a rental fee intended to cover the public utility's capital costs in extending or upgrading the facilities. Under a lease contract, the operator is usually required to finance the renewal of plant and equipment. At the termination of the contract, the government would compensate the operator for the works it had financed that had not yet been fully amortized. The management of such works (preparation, procurement, and supervision) would be the operator's full responsibility.

*BOT Type Contracts*

BOT, build-own-operate-transfer (BOOT), and ROT schemes are a variety of adaptations of leasing contract. Under these arrangements, the private sector typically designs, constructs and operates facilities, and provides services. Generally, any existing underlying assets are leased for a limited period, often 15 to 30 years. Contracts should be designed to allocate risks between the private operator and the public utility, preferably according to capacity to manage and minimize risk. In contrast with lease contracts, BOT type contracts allocate much more of the commercial risk for specific projects to private parties rather than governments. They can also provide a relatively quick method for mobilizing project based non-recourse finance for new capital investment in developing economies, particularly where capital markets are poorly developed.

*Concession Contracts*

Concession contracts combine elements of operation leases for existing assets and BOT contracts or ROT contracts for major rehabilitation investments. Under concession contracts, a private operator is given a contractual right to use existing infrastructure assets to supply customers. However, the concession contract also includes obligations to finance extensions and upgrades to the existing supply. This tends to result in concession contracts being of longer duration than lease contracts to enable the operator to recover its capital and financing costs. Management of all capital extensions and upgrades, as well as normal maintenance, is often entirely the responsibility of the operator. Procurement, in particular, could follow acceptable commercial practices that are often different from those required of public agencies. In comparison to single project BOT type schemes, concessions leave greater flexibility in the hands of the operator in determining the nature and timing of the investments they make to achieve contractual supply obligations. Typically, under a concession agreement, the constructor and operators also are given the right to supply retail services direct to customers.

*Divestiture and Build Own Operate*

Private sector participation in infrastructure can also be achieved through the direct sale of infrastructure assets to the private sector. Private ownership of assets may be achieved through either 100 percent private ownership or JV5 with public sector corporations. In either case, government retains the regulatory role.

Divestiture can be by way of sale of assets, sale of shares or management buy-out. Like divestiture, BOO contracts require removal of constraints to private sector entry in tourism supply and the introduction of competitive market structures or regulation by government.

In a full divestiture or BOO arrangement, the private sector has full responsibility for operations, maintenance, and investment in a utility. In contrast to a concession, these arrangements transfer assets to, or permit investments by, the private sector. In a concession, the government continues to own the utility's assets and is therefore responsible for ensuring that the assets are used efficiently and, in particular, returned to the government in the appropriate condition at the end of the concession period. Furthermore, the government needs to ensure customers are protected from poor service and monopolistic pricing. Under divestiture or BOO, it should be the private company's concern to operate, design and maintain the asset base. The government, on the other hand, would concern itself with the regulation of the utility, which commonly involves a license to operate a supply system.

## 7.3. Effectiveness of Public/Private Partnerships

### 7.3.1. Effective partnership

The cumulative benefits of public/private partnerships, involving travel and tourism companies, local and national government, communities and other industries, will outweigh individual efforts and protect the quality of the tourism product. The achievement of tourism investment objectives will depend on the quality of the partnerships. The most effective partnerships are those developed for mutual benefit. They must include a wide and representative range of stakeholders from the local community, who are able to play an active role in partnerships (Bramwell and Lane 2000). By involving a range of organizations, tourism can significantly contribute to the development of the local economy.

There is an urgency to constructively shape tourism in order to support local development and conservation goals. Effective travel and tourism partnerships should include: national governments, local authorities, NGO's, international organizations, development organizations, national and international trade associations, labor representatives, education and training providers, and investment companies.


[Figure 7-4] Effective public-private partnerships

7.3.2. Public sector initiatives in participation

Government departments, national tourism authorities and trade organizations can take a number of steps to develop successful partnerships:

- Offer support and assistance in the form of effective legislation where necessary, in order to encourage tourism investment and to help provide a climate of self-action in the travel and tourism industry;

- Offer a coordinating mechanism between government departments with responsibility for tourism development, and travel & tourism industry;

- Work to ensure that the policies developed and advice offered by government departments to the Travel & Tourism industry are consistent;

- Facilitate information exchange between companies and government agencies and local authorities to help industry develop more sustainable operations and products;

- Recommend/introduce incentives and awareness creation measures to assist the industry;

- Promote sustainability accreditation schemes, which encourage responsible entrepreneurship;

- Encourage all branches of industry to train people in environmental management;

- Work with government to ensure that the necessary infrastructure is in place for companies to operate in an environmentally responsible manner (for example sewage treatment plants, recycling facilities, etc.); and

- Assist the travel and tourism industry to adopt suitable targets for energy and materials use reduction, waste minimization, fresh water resources management, and waste water management and to achieve them consistently.

7.3.3. Private sector initiatives in participation

Travel and tourism companies should:

- Foster dialogue between individual businesses to formulate solutions to joint problems;

- Work with small and micro enterprises to build management skills, market development, and technology transfer;

- Work with governments to establish an enabling framework for the achievement of sustainable development;

- Promote interaction between tourists and host communities and so enhance the industry's potential to contribute to increased understanding of other cultures; and

- Incorporate the concerns of communities – especially indigenous communities – in the planning process so that they effectively participate in sustainable development.

Effective partnerships will result in the following benefits (Bramwell and Lane 2000):

- Involvement by a range of stakeholders all of whom are affected by the multiple issues of tourism development and may be well placed to introduce change and improvement;

- Decision-making power and control may diffuse to the multiple stakeholders that are affected by the issues, which is favorable for democracy;

- The involvement of several stakeholders may increase the social acceptance of policies, so that implementation and enforcement may be easier to effect;

- Parties involved in policy-making may have a greater commitment to putting the resulting policies into practice;

- More constructive and less adversarial attitudes result from working together;

- The parties who are directly affected by the issues may bring their knowledge, attitudes and other capacities to the policy-making process;

- Greater innovation and effectiveness;

- Learn much through working together – learn the work and skills of other parties, develop negotiating skills that help to make partnerships successful;

- Improved coordination of policies and actions;

- Greater consideration of the economic, environmental, social and cultural issues that affect the sustainable development of resources;

- Greater recognition of the importance of noneconomic issues and interests, which will strengthen the range of tourism products available;

- Pooling of resources of stakeholders, which may lead to their more effective use;

- Resulting policies are more flexible and more sensitive to local circumstances and to changing conditions; and

- Non-tourism activities may be encouraged, leading to a broadening of the economic employment and societal base of a given community or region.

Not all partnerships however are effective. Some potential problems with collaboration and partnerships include (Bramwell and Lane 2000):

- Only limited number of stakeholders participating;

- Token partnerships – to avoid tackling 'real' problems head on with all interests;

- Actors may not reduce their own power or not be willing to work together with unfamiliar partners or previous adversaries;

- Those stakeholders with less power may be excluded from the process or may have little influence on the process;

- Some key parties may be uninterested or inactive in working with others, sometimes because they decide to rely on others to produce the benefits resulting from a partnership;

- Some partners may coerce others;

- Involving a range of stake-holders in the policy-making may be costly and time consuming;

- The complexity of engaging diverse stakeholders in policy-making makes it difficult to involve them all equally;

- There may be fragmentation in decision-making and reduced control over implementation;

- The power of some partnerships may be too great, leading to the creation of cartels;

- Some collaborative arrangements may outlive their usefulness, with their bureaucracies seeking to extend their lives unreasonably.

One response to these potential problems to partnerships for tourism development is to strengthen the role of elected government as an organization able to facilitate and coordinate in the work of partnerships, and also to mobilize debate, opinion and support where necessary. There is a need to see partnerships and collaboration within the context of the public interest as opposed to only the market interest. Partnerships and collaborations need to be challenged by focusing on equity and access to all stakeholders in tourism planning and policy processes (Bramwell and Lane 2000).

## 7.4. Structuring Win-Win Public-Private Partnership Deals

### 7.4.1. Key Features of Win-Win Public-Private Partnership Deals

PPP projects must be structured to benefit both the public sector and the private sector. Specifically, the PPP deal must deliver value for money to government and also present commercially attractive business opportunities for the private sector. Public agencies will adopt a Best Sourcing approach in deciding whether to use PPP. This means that agencies will compare the PPP approach (e.g. Private sector to design-build-finance-operate) with the conventional government procurement model (e.g. private sector build and government operate). The public agencies will then select the best approach to deliver the services (either through PPP or through conventional procurement). PPP will only be used if it can deliver better value for money than conventional procurement for that project. Similarly, for the private sector, there should be sufficient revenue, either from Government or directly from the users, to recover the initial investment and the costs incurred by the private sector.

There are several key factors which will affect whether the PPP deal can deliver value for money to Government while remaining attractive for the private sector. Public agencies should work closely with the private sector to address these issues in order to structure a win-win PPP deal.

- Competent Private sector providers – Are there reliable and capable private sector providers who can deliver the required services? Is it possible for the private sector to deliver services better and more efficiently than Government?

Fundamentally, PPP will only be successful if the private sector has the capabilities to add value to the delivery of public services. Hence, PPP should only be applied to projects where the private sector has the competencies to meet the service standards required by Government or the public.

In addition, there should also be multiple potential private providers who can offer different proposals and ideas that will drive continual improvement in the delivery of public services.

- Measurable Output/Outcome specifications – Are the performance requirements expressed clearly in terms of service outcomes and outputs? Are there meaningful Key Performance Indicators to measure the delivery of the service outcomes/outputs?

In a PPP project, the desired service outputs/outcomes must be clearly stated so that the private sector can have a clear understanding of Government's policies and objectives. The private sector can then introduce innovative solutions to meet Government's needs. Clearly stated service requirements also reduce the uncertainty faced by both the public agency and the PPP provider.

The service outputs/outcomes should also be measurable. A set of performance measures and targets can then be developed to incentives the private sector to meet the objectives of the public agency. The public agency can also objectively monitor the performance of the private sector to ensure that its service requirements are met.

- Sufficient Project Scale – Does the project require a significant level of investment in the development or redevelopment of capital assets?

Generally, the larger the scale of the project (in terms of capital value of assets), the more potential for management efficiencies through increased private sector involvement, particularly through economies of scale. This is particularly true for services which can be easily replicated, e.g. development of school buildings.

- Scope for private sector innovation and management efficiencies – Is there sufficient scope for the private sector to innovate? Can the private sector improve the level of utilization of assets? Is the private sector able to exploit economies of scale through the provision, operation and maintenance of other similar assets/services to other customers?

PPP tends to be more successful for projects where the private sector is well-equipped to introduce innovation. Therefore, the scope of the PPP project should allow the private sector sufficient flexibility to introduce new ideas, e.g. new technology, business process re-engineering, to generate efficiency gains. As far as possible, public agencies should also be open to the private sector's suggestions to share assets or facilities with other users, unless such sharing of resources undermines public policy and objectives.

- Sufficient time to plan and procure through PPP – Is there sufficient time to procure the services through PPP, given the timeframe of the project?

PPP projects are generally more complex than conventional government projects. Hence, more effort, time and resources have to be put in to structure and tender for a PPP project. Insufficient planning and procurement time might prevent the public agency from identifying all its requirements clearly. The private sector will also need time to examine the business opportunities in a PPP project to propose new ideas. Hence, it is beneficial to both Government and the private sector if ample time is available for both parties to fully understand the objectives of the PPP project and the potential opportunities in the project.

- Manageable interfaces with other projects or existing contracts – Are there other projects or contracts that interface with the PPP project? Are the responsibilities of the PPP provider and other contractors clearly stated? Are there procedures governing the relationship and interaction between the PPP provider and contractors of other projects/contracts?

In some PPP projects, the public agency might decide to engage separate contractors for specialized services that are not within the scope of the PPP project. Procedures should also be put in place to govern the interactions between the various providers, e.g. how the vendors should respond to service failures.

### 7.4.2. Avoiding Potential Pitfalls When Structuring a PPP Deal

Although PPP projects can be beneficial to Government and the private sector, there are some pitfalls or problems that can affect the success of PPP projects. Such problems can be mitigated if appropriate measures are put in place to address these issues upfront.

*Higher Private Financing Cost*

It can be argued that private sector financing under some PPP models, e.g. the Design-Build-Finance-Operate (DBFO) model, will result in higher financing cost for the project, since the borrowing rate for the private sector is generally higher than the borrowing rate for Government. The financing cost for the private sector might be higher because lending to the private sector could inherently be riskier than lending to Government. Private borrowing rates also include profits that private financiers have to make. However, private financing is an important element of PPP projects as it helps to instill discipline in the use of capital. As the private sector is required to raise financing, there is an incentive to optimize capital investment in Government projects. Private financing also allows Government to tap into the expertise of private financiers in evaluating business proposals. The due diligence by private financiers will ensure that business proposals are robust and sustainable over the contract length.

In addition, the cost of private financing for the project can be controlled by managing the risks of the project. Appropriate risk mitigation measures should be put in place to ensure the private financiers of the viability and bank ability of the PPP deal. Private financiers could then provide lower borrowing rates to a PPP provider. With appropriate risk management measures under a win-win PPP deal structure, the higher private financing costs could be offset by the efficiency gains that private financing can provide, e.g. through better capital investment decisions.

*Inflexible, long-term contracts*

PPP projects generally involve long-term contracts, where the private sector is committed to providing services to Government or the public. Government is also committed to a payment stream over the long contract period. If no variation provisions are included in the PPP contract, the PPP contract will be too inflexible to handle unforeseen circumstances, e.g. changes in demand from the public or changes in technology. To avoid this pitfall in such long-term projects, it is important to build a flexible PPP contract to allow for variations in specifications and requirements, with appropriate changes in payment to the private sector. The variation provisions should be fair to both the public and private sector. In addition, termination clauses should also be included to allow both parties to terminate the contract under exceptional circumstances, with fair compensation (to either party), where necessary.

*Costly and lengthy procurement process*

Generally, PPP would involve a longer procurement period. PPP bidders also incur higher bidding costs due to the increased complexity. Hence, only large PPP projects can generate sufficient efficiency improvements to offset the higher bidding costs from PPP procurement. Public agencies and potential private bidders should also ensure that their project teams have sufficient competencies to understand the implications of the contract clauses in a PPP contract and also to structure and manage PPP deals effectively.

*Service discontinuity if private provider fails*

If the private provider is to run into financial difficulties during the contract length, there are concerns that the government might not be able to take over the function immediately, which will ultimately affect service continuity. The risk of the private provider failing exists as long as the service is outsourced, regardless of whether a PPP model is used or not. To help mitigate the impact on service continuity, the PPP contract should include provisions for Government to step in to manage the private sector's staff and equipment to continue delivering the service. There could also be provisions for the private financiers to identify other potential providers who can take over operations, subject to Government's approval, in the event that the original provider fails.

7.4.3. Lessons in Implementation & Planning

The tourism partnerships examined here all felt they had done a number of things well. These varied from alliance to alliance, and are described below.

*Research is Key*

Research activities are frequently viewed as a luxury. Research should be done but is often pushed off. Here are some benefits as stated by partnerships, which did take the time to undertake research.

- National research to obtain good insights and understanding of consumer needs and preferences;
- Original research used as the template for future activities

- Existing research can be used to set partnership activities in the context of the progress of industry as a whole.

*Quality Staff are Key*

Staffs are critical to a partnership's success or failure: Partnerships have reported success when they have "hired up"; obtaining committed people, with a broad background and range of capabilities, who are able to apply this experience to the challenges which will inevitably face any developing partnership.

*Education and Training*

Use of technology for communication when planning seminars: When dealing with geographically remote operators, the use of technology to communicate and agree upon topics of common relevance has been key to attracting participants to industry seminars. Obviously the primary benefit accrues to seminar participants, however some secondary benefit to the industry as a whole has also been recognized: "even if not all the operators attended, just the fact that the topic is being addressed provides enhanced awareness of it and its importance".

*Keep a Tight Focus; Know Your Product; Learn by doing*

The ECONOMUSEUMTM Network says that one of their strengths is that they now know their product. In their experience as a product-focused organization, they learned that Not-For-Profit groups don't fit their model . . . "you can't transform someone who lives by grants." They learned by trial and error, too. Last year they ventured out of their usual territory. They grouped some of their products in a catalogue to sell the products to various companies as Christmas gifts. They did make sales, but the sales cost more. This experiment didn't serve the members well. They learned the Society is not a boutique.

*Giving Partners/Members Enough Time and Opportunities to Get to Know and Trust Each Other*

The Bay of Fundy PC developed a Fundy Tour for the industry. This physically got the operators together. Each partner gained, relevant to their own perspective: operators saw what the Bay had to offer and the way others operated; provincial staff learned the benefits of working together without using provincial borders as an artificial impediment to progress. The reality-based tour allowed all of the players to get to know and trust each other, from which really constructive and focused discussions ensued.

*Ensuring Good, Transparent, Communication*

The Francophone Heritage PC did a good job of informing everyone who was interested in the product club, and continued this communication process throughout. “So it did not take too long to be known. Our strength is in bringing together the partners – which is not easy in the Francophone community, because of internal and sometimes divisive politics.”

*Replacing Competition with Cooperation for Achievement and Strong Bargaining Position*

The Golf PC conducted research which provided data needed to convince golf course operators that there was opportunity and benefit to position their industry as a regional tourism attraction from which all would benefit. But education was needed so operators would put aside the conventional idea of competition (the neighboring golf course) and support the principles of joint cooperation and promotion at the destination level. The Ski and Snowboard PC put together an advertising campaign, and negotiated such excellent advertising rates that even major organizations (such as Tourism Quebec or Hertz) could not independently get better advertising prices, and so they, too, came into the advertising campaign.

### 7.4.4. Public-private partnerships and governance

There is no precise universally agreed definition of a Public-Private Partnership (PPP) in infrastructure. However, PPPs have a number of common characteristics. They involve concessions or other contractual arrangements with public bodies (federal, state or local) whereby the private sector makes a service available to the general public. The projects also must share risks between the partners. The best formula for sharing risks is that risks are allocated to the party, which is best able to manage, and therefore minimize, the cost of risks. The need to utilize private sector management and expertise, not only the capability of raising finance, is also common.

PPPs are not advisable in all cases and should not be seen as a panacea. However, they do offer a number of benefits, namely, additional resources, new technology, speedier delivery and customer satisfaction. They cover all types of infrastructure, energy, transport telecommunications and more recently education, health, security and defense. They offer solutions and alternative options to both local and national authorities. PPPs are especially interesting for local and city authorities. Local infrastructure can be extremely expensive to develop or rehabilitate. Local authorities often seek to mobilize private capital, where the size of the capital investment required compared with a local authority's ability to incur debt renders projects unfeasible.

Governments must however overcome a number of challenges in implementing PPPs. These include developing and establishing:

- Strong legal and regulatory frameworks that can clarify the legal authority to grant concessions, the procurement process, the contribution from the public authority of assets that can make the project viable and the rebalancing of tariffs which will make the project viable from a financial point of view.
- Political commitment to give confidence to the partners to make investments.
- Effective public administrations: this typically means the establishment of a dedicated central PPP unit located within governments that can oversee the whole PPP process and has cross cutting authority over all Ministries.

*Governance*

Governance can be broadly defined as the exercise of political, economic and administrative authority to manage a nation's affairs. Governance is thus about the importance of institutions, the interactions between different levels of government within a country, the interaction between the public, including nongovernmental organizations and business, and government. On an international plane it entails the interaction between different governments. International organizations also play an important part. For the purposes of measuring and evaluating the governance of a country, the World Bank has further unbundled the definition into six more detailed governance concepts. They are:

- Voice and accountability (which includes political rights, civil liberties and independence of the media)
- Political stability (such as probability that the government will be overthrown)
- Government effectiveness (e.g., quality of public service provision and the competence of civil servants)
- Regulatory quality (e.g., incidence of market unfriendly or excessive regulation and inadequate banking supervision)
- Rule of law (e.g., crime, effectiveness of the judiciary and the enforceability of contracts)
- Control of corruption (e.g., the exercise of public power for private gain).

Good governance is a key condition for sustainable economic stability and security. Evidence also suggests that good governance is an essential component of sustained economic performance, particularly in transition economies. In contrast, poor governance and slow economic development appear to be mutually reinforcing. International institutions have increasingly observed the links between good governance and security. Good governance in PPPs refers to a number of inter-linked ingredients. Governance in PPPs combines at least the following six key ingredients

a. Transparency

Transparency refers to:

- The way in which the design and initiation of projects, procurement and selection process, ought to be organized.

- the taking into account the interests of all 'stakeholders', for example, local citizens, NGOs, employees/trade unions, civil society, media, investors, lenders, government.

- the limitation on use of bribes and other forms of corruption to win favors and approval for projects form governments

b. Public accountability

The public needs to know that its interests will be protected in a number of specific areas:

- That the PPP obtains 'value for money'

- That the goals of the project have been met

- That procedures for the award of the contract have been fair and according to the criteria as laid down in the project specification

- That the financing of the projects involves a subsidy from the state, the size of which is known to the citizen (financing of PPPs is a complicated exercise and creates political and regulatory risks for all the parties involved. PPP transactions create obligations of payment by a public sector body over the 20-30 years of their life, which exceeds considerably the duration of any political cycle. It involves the distribution and transfer of funds from the public to the private sector and vice versa. PPPs involve future financial obligations on the taxpayers.

c. Public management

PPPs involve a redefinition of the role of Government in the context of infrastructure projects, in terms of supervision and regulation and away from direct ownership and management. PPPs allow Governments to attract private sector funding and involvement, without incurring the adverse political repercussions sometimes associated with full-scale privatization. Government retains a significant role and can guard against any private sector excesses. It can also retain ownership of the assets in question, and avoid charges of "selling out" to foreign buyers. The PPP approach, in other words, avoids undermining the essentially "public" character of many infrastructure projects. PPPs do not happen all on their own. It is up to the governments to decide what use they wish to make of PPPs, to identify appropriate PPP projects and to ensure that they have the capabilities to procure them in an efficient and effective way. It must establish an appropriate legal and regulatory environment for the PPPs, the need to have clearly and publicly formulated objectives for the project; and the need to monitor performance after project completion. Public civil servants have a new role in PPPs A sound public management is required if such a policy is to become a reality.

d. Sustainable development

Development that is sustainable refers to a process where the economic, environmental and social processes are addressed at the same time. It requires integrated policies around these three objectives. PPPs can, in fact, because of their nature, i.e. Partnership, the involvement of different parties etc., are ideal vehicles to achieve such objectives. Policy makers must ensure that PPPs increase the delivery of services to those who need them most and should not exclude those in most need by raising tariffs beyond the purchasing power of those who are economically and socially disadvantaged.

e. Dispute resolution

The multiplicity of parties in privately financed projects makes conflict predictable. Yet despite its perceived negative impact, conflict within PPPs can lead to creative and constructive outcomes when it is managed by encouraging open discussion that allows full exploration of the participants' needs, concerns, values, meanings, and interests – the essential ingredients of authentic communication. This process can contribute significantly to the accountability and transparency that PPPs strive for, and serves itself as a mechanism for channeling constructive conflict towards positive outcomes. However, agreed upon conflict mechanisms should be put in place prior to misunderstandings or conflict. Given the essential and critical nature of services being delivered by PPPs to the national economic life, it is important to ensure that services continue to be provided in the face of disagreement between the various parties in the project. Because of the complexity and the numerous parties involved, PPPs are prone to dispute. There must therefore be in place within the contracts a means to resolve the disputes. There must be also independent judiciary, neutral and efficient court systems that can resolve disputes that arise without undue cost.

f. Safety and security

Safety and security are paramount requirement in the delivery of infrastructure services. There is a requirement that all projects should be properly screened to examine whether they are feasible from this respective and thus there should be experts able to give advice on how projects can achieve the highest standards in these criteria.

## 7.5. Implementation in PPPs for Facilitating Tourism Investment

The above-mentioned six ingredients are key in PPPs. How are they best respected and implemented in PPP projects?

### 7.5.1. Transparency

*Procurement*

The best ways of designing suitable procurement regimes is to ensure that the process attracts bids from the most desirable companies and ensures that the possibility of winning is open to all. The achievement of these goals should not be at the expense of creating over complicated procedures or incurring excessively high bidding costs to bidders. Many PPP projects are advertised to give maximum opportunity to those wishing to make a bid.

*Involvement of stakeholders*

Taking account of the interests of all ‘stakeholders’ in projects can be done by a number of methods. Referendum is one of typical methods to solve dispute among stakeholders. It encourages an open debate. Debate would focus on potentially controversial aspects, such as traffic increase. Debate can prevent challenges to the project being raised subsequently, which can thus avoid costly delays to the project. While referendums could be are typically used in a country, there are many other methods, which can be used to achieve such desirable outcomes. This method of consulting with citizens beforehand is particularly salient in transport projects. In some countries, however, there is no formal procedure for consulting citizens who will be affected by projects.

### 7.5.2. Corruption

PPPs are no more prone to corruption than other construction projects. However, one of the main causes of corruption in PPPs is the lack of a tendering process. There needs to be in place a number of procedures that can address such a problem. These include requirements for preparing in advance feasibility studies, open procedures and known criteria for the award of contracts and mechanisms, which deter and punish offenders.

### 7.5.3. Public accountability

Public accountability requires (i) institutions to oversee the process of PPP design and implementation; (ii) performance reviews; (iii) and a free flow of information to the public especially on financing issues.

(i) An independent audit office is useful and can work to ensure that the public receive “value for money “from the PPP project. Democratic institutions in parliamentary systems can also play a role in ensures that value for money and good procedures have been carried out.

(ii) With regard to determining if projects meet their targets, many countries have established a number of checking mechanisms. For example, governments publish reports on the success of PPPs in meeting targets such as achieving completion dates. Others do consumer studies to determine if the public has found the services to be an improvement on those that had been previously delivered by the state.

(iii) On financing PPPs and avoiding excessive debts, information on the size of financial transfers made into the project by the state should be open and accounted for. The public must know what the obligations of the future generations to pay back the debt will be. It is recommended that the assets involved in a PPP should be classified as non-government assets, ant thus recorded off balance sheet for government, only if both of the following conditions are met: 1) The private partner bears the construction risk; 2) The private partner bears at least one of either availability or demand risk. In this sense, the analysis of risks borne by the parties is the key element of the assessment of the project, as regards classification of assets, to ensure the correct accounting of the impact of the government deficit of PPPs.

### 7.5.4. Sustainable Development

*Social protection*

The challenge is to achieve successful PPPs that deliver on social objectives such as poverty alleviation, and protection of the weak and vulnerable groups.

*Environmental improvement*

Environment improvement also is very prominent in many of today's PPPs.

### 7.5.5. Dispute resolution

Specific mechanisms for dispute resolution in PPPs include conflict preventive mechanisms (substantive and procedural arrangements that anticipate and offset the potential for conflicts to develop), conflict escalation mechanisms that identify emergent conflicts so they can be addressed early, third party facilitation, mediation, negotiation, or adjudication, and conflict resolving mechanisms that provide assistance to parties in moving their dispute towards a positive outcome (mediation, facilitation, training, advisory mediation, expert decision-making).

### 7.5.6. Security and Safety

Provision by the private sector of transport, health, tourism and other services raises concerns about security and safety. However these issues are being dealt with in contracts and current practices in most PPPs. One critical element is environmental safety in large-scale energy projects, which involve shipping huge quantities of oil. An Environmental Impact Assessment (EIA) by the Environment Ministry identified needs for:

- A detailed oil spill response plan to be developed and coordinated prior to commissioning of the terminal
- A self-monitoring program to be developed and agreed
- The neighboring countries to be informed about the project and its potentially adverse trans-boundary impacts if unforeseen disaster struck.

Such a project demonstrates the importance PPPs give to environmental security.

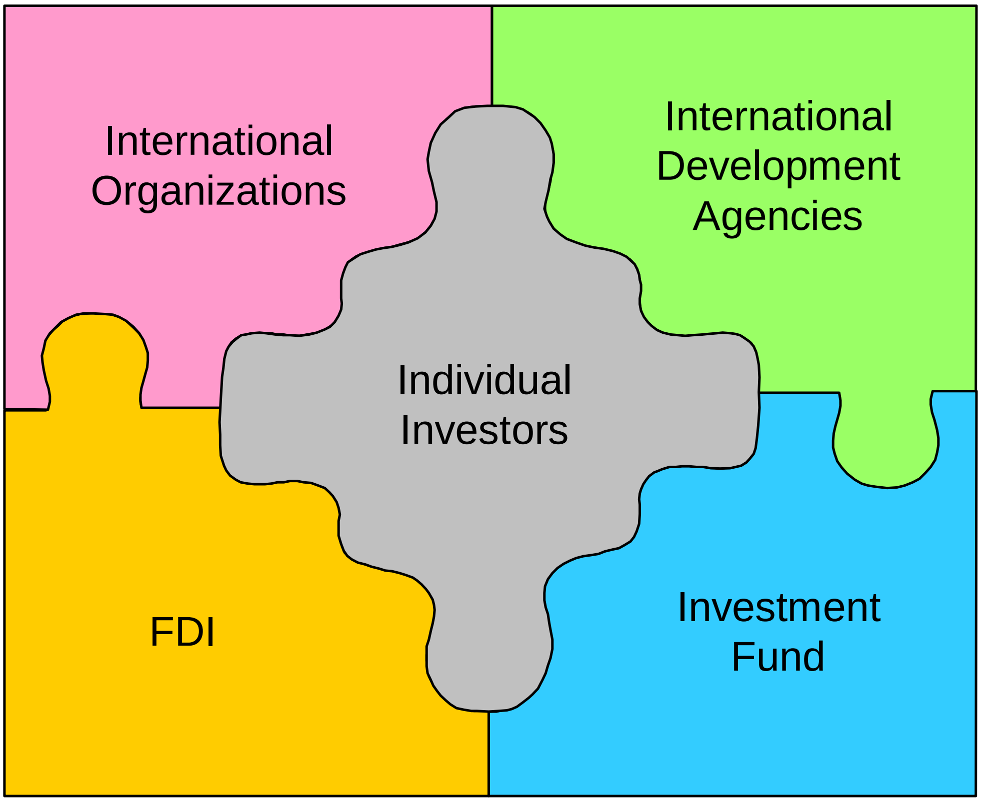
# 8. SOURCES OF FINANACING

Private sector funding of infrastructure usually brings the risk of foreign currency mismatches in the financing package; income is in local currency, but the need to resort to foreign debt and equity markets means that debt service requires substantial foreign currency. The root problem is inadequate depth in capital markets in most developing economies which prevents a tailoring of local currency debt to long-lived assets. The need to resort to foreign debt (and equity) creates substantial risks, which have been exposed in the recent crisis. Few infrastructure consortia can withstand an exchange rate depreciation of 40 to 50 percent, let alone the 80 percent decline experienced in Indonesia when their product is sold for local currency. Hence the priority on programs to deepen the domestic capital market.

In principle, currency matching requires that the bulk of debt funding of infrastructure services such as transport, water supply, electricity and other urban services should be in local currency. In the absence of the necessary capital market reforms, it is hard to see how private sector provision of infrastructure can proceed on the scale required to meet future demand. A priority, therefore, given the recent experiences, is that international development agencies such as World Bank and ADB expand their role both in facilitating political risk insurance and in fostering the development of domestic capital markets in Asia, particularly bond markets.

Direct foreign investment will remain an important source of funds for the development of the infrastructure sectors. However, it will take time to restore investor confidence and, given the experience of Indonesia, Philippines, Republic of Korea and others, governments will naturally seek to limit their exposure to these funds in preference to local sources of capital, if possible. The development of domestic long-term capital markets will be critical for private sector investment in infrastructure, but these markets must have much better regulation as well.

In this session, we set out below a summary of the many possible sources of finance that may be considered for public private partnership projects over and above simple commercial bank debt which is now available from a considerable number of national and international banks in infrastructure financing.




[Figure 8-1] Sources of Financing

## 8.1. World Bank

The World Bank comprises four association institutions:

- The International Bank for Reconstruction and Development (IRBD) generally referred to as World Bank;
- The International Development Agency (IDA);
- The International Finance Corporation (IFC);
- The Multilateral Investment Guarantee Agency (MIGA).

8.1.1. IBRD and IDA

The IBRD lends funds at fine margins to governments of creditworthy developing countries, on the strength of government guarantees, repayable generally over 12 to 15 years. The IDA provides assistance to countries with a very low GDP per capita.

8.1.2. International Finance Corporation (IFC)

The IFC promotes growth in the private sector by the provision of equity and loans (sometimes in co-operation with other investors) and, unlike IBRD, does not require government guarantees. Investments are normally to up to US$50m and usually restricted to no more than 25% of project cost.

The IFC offers financial products to the private-sector in developing countries. It helps private companies in the developing world mobilize financing in international financial markets and can provide technical advice. To be eligible for IFC financing, a project must be located in a developing country which is an IFC member, technically, environmentally and socially sound, benefit the local economy and have good prospects of being profitable.

*Creating Financing Syndicates and Partnerships*

Working through intermediaries, the IFC extends long-term financing to private-sector companies -- particularly small and medium enterprises -- which usually carry high transactional costs. Examples include credit and equity lines to banks for lending to local companies, private equity placements and investments in emerging market and venture capital funds which help channel capital to companies that large investors usually do not notice.

*Small and Medium Enterprise Department*

The Small and Medium Enterprise Department works to promote small business growth in developing countries. It focuses on building better businesses environments. It seek to make the regulatory, tax and trading environments more business-friendly, improve the skills of small and medium enterprises through technical assistance and capacity building, and increase access to capital and information technology.

*Consultative Group to Assist the Poorest (CGAP)*

This organization is a consortium of 28 public and private development agencies which work together to.

IFC offers a wide variety of financial products to private sector projects in developing countries. In order to be eligible for IFC funding, a project must meet a number of IFC criteria:

- The project must be located in a developing country* that is a member of IFC.
- It must be in the private sector.
- It must be technically sound.
- It must have good prospects of being profitable.
- It must benefit the local economy.
- It must be environmentally and socially sound, satisfying IFC environmental and social standards as well as those of the host country.

A company or entrepreneur, foreign or domestic, seeking to establish a new venture or expand an existing enterprise can approach IFC directly by submitting an Investment Proposal. After this initial contact and a preliminary review, IFC may proceed by requesting a detailed feasibility study or business plan to determine whether or not to appraise the project. A large chunk of IFC financing is channeled to private sector projects in developing countries through intermediaries. IFC uses its full range of financial products to provide finance to a wide variety of financial intermediaries. Working through intermediaries allows IFC to extend its long-term finance more companies, in particular to small and medium enterprises (SMEs) and microfinance entrepreneurs.

8.1.3. Multi-Lateral Guarantee Agency (MIGA)

MIGA encourages foreign investment in developing countries by providing guarantees to companies involved in equity and equity-linked loan investments. The cover can be against the risks of currency transfer, expropriation, war and civil disturbance and breach of contract. Base premium rates range from 0.45% to 0.8% for each category of risk, but this will be adjusted up or down, depending on the risk profile of an investment. In the event that cover is sought for an investment, the application to MIGA should be made before the investment is irrevocably committed.

## 8.2. Financing Framework for ADF

The current financial objective for the Asian Development Fund (ADF) is that it should become self-financing by the time of ADF XI, that is to say in a dozen years or so. The strategy consists of (i) maximizing commitment authority in a prudent and sustainable manner from nondonor resources; (ii) broadening and strengthening the donor resource base; and (iii) maximizing the commitment authority from the synergy of donor and nondonor resources. ADF was designed as a regularized donor fund to finance new commitments. With long maturities and zero interest rates, self-sufficiency was not one of the original goals. To achieve the new goal of self-sufficiency, ADF has been redesigned as a revolving fund. An expanded advance commitment authority (EACA) scheme has been introduced to manage ADF resources. Essentially, this scheme involves loan repayments from past ADF loans to generate commitment authority by matching future repayments with disbursements. During ADF VI, the ratio of commitment authority between nondonor and donor resources was 1:7. During ADF VII, this rose to 1:1.

In addition to facilitating the introduction of the EACA scheme, the new financial planning framework is also designed to alleviate the impact of exchange rate volatility on ADF commitment authority. ADF resources are provided and maintained in national currencies while ADF loans are denominated in Special Drawing Rights (SDRs). This mismatch causes major problems in financial management and the resulting shortfalls in commitment authority lead to reduced ADF operations. Further, the Bank has to ensure that it has sufficient resources to fulfill the financial obligations associated with disbursements.

The fundamental principle underpinning all ADF replenishments is fair burden sharing through which donors are expected to contribute according to their relative position globally and/or within the region. This principle has provided a disciplined framework for undertaking concessional replenishments. It can be applied at three levels: a pledge at the end of a replenishment negotiation, a promissory note payment for each tranche release, and encashment of promissory notes in an appropriate and timely manner. While the first level gets the most prominence, the other two levels are critical in the management of ADF resources.

Burden sharing discussions are a regular feature of ADF negotiations. During the ADF VII negotiations, the focus was on burden sharing between nonregional and regional donors which changed from 57:43 in ADF VI to 53:47 in ADF VII. The target during ADF VIII is 50:50. With the expected increase in self-sufficiency, and with the expected 50:50 share of nonregional to regional donors, the burden on nonregional donors is likely to decline, while the burden borne by the Bank and the region may well rise.

An important outcome of the new financing strategy for ADF is that donor replenishments will be triggered only when the prioritized concessional needs of the borrowers exceed the capacity of the Bank to generate the required resources. During the ADF VII negotiations, donors agreed that $6.3 billion of ADF operations were needed during the ADF VII period. Assuming the needs of borrowers remain at this level, in nominal terms, during the ADF VIII period, the question is: How will it be financed? The EACA projections indicate that the Bank can generate $2.7 billion of commitment authority during the ADF VIII period from nondonor resources. Therefore, the donors should contribute $3.6 billion. The principle of fair burden sharing among donors will be critical in ensuring this level of donor contributions.

Donor contributions play two roles. First, they will help finance the prioritized development needs of the poorest borrowing countries of the region during the ADF VIII period. Second, these contributions will play a crucial role in reaching self-financing. During the ADF VII negotiations, donors acknowledged that self-sufficiency would take time and that substantial donor contributions would be needed during the interim period. Projections indicate that if donor contributions of $3.6 billion in ADF VIII are followed by donor contributions of $3.3 billion in ADF IX and $2.1 billion in ADF X, ADF could become self financing at a nominal level of $6.3 billion from ADF XI onwards.

In short, the challenge for ADF is to overcome financial constraints and meet the prioritized development finance needs of the region's poorest borrowing countries. Two contrasting approaches emerge for the ADF. One maintains a strategic equivalence between donor resources and the level of ADF operations. The other leverages all resources, including donor resources, to meet the prioritized development finance needs of the poorest borrowing countries. The Bank has chosen the latter.

## 8.3. Other Financing Sources

8.3.1. Overseas Economic Co-operation Fund (OECF)

The OECF is a Japanese semi-governmental institution which specializes in concessional loans. The OECF is also a provider of untied finance on a bilateral basis. The approach for such finance is initiated by the government which will be the recipient, whereupon the finance will be made available after the project has been assessed in Tokyo. It is then up to the government to initiate an international tender for the award of any contract associated with this funding. The OECF also takes equity participations in major projects and they plan to support private sector infrastructure development projects in future.

8.3.2. Foreign Aid

Foreign aid is generally provided on a bilateral basis between two countries. Nearly all foreign aid is tied to the procurement of goods and services from the private sector of the country providing the aid.

8.3.3. Overseas Private Investment Corporation (OPIC)

OPIC is a US government agency assisting American investors through three principal activities:

- financing of businesses through loans and loan guarantees;
- insuring investments against a broad range of political risks; and
- providing a variety of investor services.

OPIC assistance is available for new investments, privatizations, and for expansions and modernisation of plants sponsored by US investors. Acquisitions of existing operations are eligible if the investor contributes additional capital for modernisation and/or expansion. In the case of a project with foreign ownership, only the portion relating to the US investor will be supported by OPIC. Support is not available if a project can attract adequate finance from commercial sources.

Political risk insurance is the main component of its business, with business volume projected at US$6.5bn for 1995, compared to US$2.5bn allocated for direct investment. The agency also sponsors 20 investment funds, geographically designated, which make equity investments on the premise that the investor will realise a profit in a 3 to 7 year investment period. OPIC itself does not invest directly in these funds, but acts as an adviser and a guarantor for up to 75% of the fund’s capital.

8.3.4. Export Credit Agencies (ECAs)

The export credit agencies normally cover the export of capital goods and services from a specific country. ECAs play an important role in the financing of the development projects in as far as they will finance the export of capital equipment and services from specific countries.

8.3.5 General and Rule 144A Bond Issues

The capital markets offer, in certain cases, significant advantages that project borrowers may not be able to realize in the bank market. First and foremost, they offer longer maturities and back-end weighted repayment structures that help to support equity returns. This difference tends to be even more pronounced where there is a strong element of market risk. To this extent, capital market issues have often been used to take out short term construction loans offered by banks. Secondly, the capital markets may offer attractive fixed rate pricing. After adjusting for the pricing difference between fixed and floating rate debt, most capital markets issues are priced on a par with bank loans for comparable project. This pricing comparability can become an absolute advantage in later years when banks deals usually have significant steps-up in pricing often accompanied by cash sweeps whereby positive cash balances must be deposited as collateral against the loan or applied to the early repayment of the debt. Thirdly, the capital markets offer simplified governance procedures. Important business decisions like the incurrence of additional debt or the disposition of certain assets usually do not require lender's approval. The lengthy and labor intensive process associated with seeking feedback from lenders is avoided. Instead, capital markets investors are very much dependent on pre-determined financial tests or the rating agencies to act as their agents. This can be a crucial consideration in choosing the appropriate financing avenue.

8.3.6. Medium Term Notes (MTN)

An MTN program is a shelf bond document which allows notes to be offered on a continuous basis to investors for maturities from 9 months to 30 years. MTNs differ from bonds in the manner in which they are distributed to investors when they are initially sold. MTNs have traditionally been distributed on a best-effort basis by either an investment banking firm or other broker/dealers acting as agents. MTNs are usually sold in relatively small amounts on a continuous or an intermittent basis whilst bonds are sold in larger amounts where liquidity is important. Pricing, since note issuance is often satisfying particular investor demand, can frequently be better than larger, stand-alone bond issues. The setting up of an MTN program may take a few months but the documentation issues are similar to standard bond issues. The pricing scheme depends largely on the rating of the company's debt and on the market conditions at the time of the issuance. Indeed, the notes may be issued from time to time in one or more series, within a maximum principal amount fixed by the program. An issue of MTNs can be in almost any currency and on a floating rate or fixed rate basis. It is highly unlikely that a company without a rating will participate in an MTN program.

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