



**Asia-Pacific  
Economic Cooperation**

# **Guide to Investment Regimes of APEC Member Economies**

**Investment Experts' Group**

**2010  
Seventh Edition**

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**APEC Member Economies: Australia • Brunei Darussalam • Canada • Chile • China • Hong Kong, China • Indonesia • Japan • Korea • Malaysia • Mexico • New Zealand • Papua New Guinea • Peru • Philippines • Russia • Singapore • Chinese Taipei • Thailand • The United States • Viet Nam**

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**APEC Guide to Investment Regimes ("Guide") has been published since 1993 as the only consolidated collection of investment regimes in the APEC region which provides timely and reliable source of information primarily for business people (especially investors), and also for investment promotion agencies, government policy makers, academics, and regional and international organizations in the APEC and other regions. The Guide will assist investors in making sound investment decisions and policy makers in making consistent and coherent policy decisions.**

**This version is composed of information submitted by APEC member economies by responding to the Survey Questionnaires (Annex 1). Information of some members were not available at the time of the publication and pages are kept blank but, will be included in the future edition.**

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## Introduction

### Our Location Offer

#### AUSTRALIA Location Offer

Australia has one of the most stable economic, political and social environments in the region. Its government and regulatory institutions are reliable, transparent, impartial and internationally competitive - providing investors with a safe and secure business framework.

Australia has one of the strongest economies in the world, with almost two consecutive decades of growth and the unemployment rate falling to generational lows. As a result of nearly three decades of structural and policy reforms the economy is flexible, resilient and increasingly integrated with global markets.

The strength of Australia's economy has been highlighted in recent years by its ability to withstand a number of internal and external events, including a major drought, a housing boom and the global financial and economic crises which began in 2008.

Australia's economic strengths, world leading corporate governance standards, innovative skills base, cultural diversity and political stability make it a very attractive investment destination.

Australia is endowed with a resource base which has underpinned the development of our great mining and agricultural industries. Today Australia has a sophisticated, modern economy with services industries dominating economic activity.

Australia's attraction as an investment destination is undeniable. One of the most resilient economies in the world, Australia is the gateway to the world's fastest growing region, the Asia-Pacific.

In its 2008 Economic Survey of Australia, the Organisation for Economic Co-operation and Development (OECD) described Australia's macroeconomic performance as impressive, with GDP above average growth since 2000. After weathering the global financial crisis well in 2008 - 09, the Australian economy is projected to experience strong growth in 2010 and 2011, above its trend rate.

#### Areas of economic advantage

As a result of the continuous structural and policy reforms implemented since the 1970s, Australia today has a sound, stable and modern institutional and regulatory structure that provides certainty to business and offers a welcoming destination for investment.

Australia has lowered barriers to trade and investment and there is substantial competition across the economy.

Today, Australia's infrastructure is extensive and world class, providing individuals and businesses with efficient and reliable domestic and international transport services; communications and information technology; utilities and power distribution systems; and financial services.

Changes to, and simplification of, the tax system have also led to significant reductions in business costs, especially for exporters. The goods and services tax (GST) is levied at 10 per cent and applies to almost all goods and services. There is no stamp duty on share transactions and the corporate tax rate is 30 per cent. The government also provides tax incentives to encourage businesses to invest in research and development.

Australia continues to build on the twin foundations of domestic structural reform and increased international market access, won through a competitive and innovative export base and a strong commitment to world trade liberalisation.

Australia's two-way trade in goods and services was valued at \$507 billion in 2009. China is Australia's largest trading partner, followed by Japan, the United States, Korea, the United Kingdom and Singapore.

Australia is a major regional financial centre, with a sophisticated financial system and transparent markets. According to the most recent Global Stock Market Review by Standard and Poor's, Australia's stock market is the ninth largest in the world in total market capitalisation terms and the second largest in the Asia-Pacific region, after Japan's.

#### Key industries for foreign investment

## Australia

Australia welcomes foreign investment. It recognises the important role of foreign investment in boosting economic growth, developing competitive industries, creating jobs and increasing exports. Australia welcomes investment in all industries and sub-sectors, with particular interest in:

- \* financial services
- \* clean energy and environment
- \* advanced manufacturing
- \* health and biotechnology
- \* infrastructure
- \* agribusiness
- \* ICT
- \* mining and resources
- \* professional and business services
- \* education, creative industries, sport, and tourism

Australia is also an attractive location for international companies wanting to establish a regional base to take advantage of the growing business opportunities in the Asia - Pacific region and to enter Australia's highly developed domestic market.

Companies are attracted by Australia's competitive operating costs, compared to rival regional hubs, and high local skill levels. Other factors in Australia's favour include:

- \* innovative culture with excellent R&D and infrastructure
- \* sophisticated financial, legal and management support services
- \* cost-competitive location
- \* strategic location in the fast-growing Asia-Pacific region
- \* affinity with Asia, coupled with American-European trade links and business environment
- \* attractive, safe and friendly environment, and
- \* an Asian-oriented, culturally diverse and multilingual society.

Australia also has a business-friendly regulatory environment. According to the World Bank, Australia is amongst the fastest places in the world in which to start a business, with regulatory procedures taking just two days.

The OECD has also identified Australia as having the fewest restrictions on product markets of all of its 30 member countries, the lowest level of public ownership of business and the least restrictive impact of business regulation on economic behaviour.

### Key facts

- \* Australia has had almost two decades of economic growth.
- \* Since 1991, Australia's real economy has grown by an average of around 3 per cent a year.
- \* Australia has strong global trade networks, with two-way trade in goods and services in 2009 valued at \$507 billion.

### Further information (Links)

- \* Australian Securities Exchange (<http://www.asx.com.au>)
- \* Australian Trade Commission (<http://www.austrade.gov.au>)
- \* Department of Foreign Affairs and Trade (<http://www.dfat.gov.au>)
- \* Department of Innovation, Industry, Science and Research (<http://www.innovation.gov.au>)
- \* Department of the Treasury (<http://www.treasury.gov.au>)

\* Foreign Investment Review Board (<http://www.firb.gov.au>)

## Introduction to investment regime

The Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

Foreign investment brings many benefits. It supports existing jobs and creates new jobs, it encourages innovation, it introduces new technologies and skills, it brings access to overseas markets and it promotes competition amongst our industries.

The Australian Bureau of Statistics (ABS) estimated that foreign-owned businesses employed 12 per cent of all private sector employees and contributed 25 per cent of all capital formation. In the mining sector, the ABS found that around one in four people were employed by foreign owned businesses.

The Government reviews foreign investment proposals against the national interest case by case. This flexible approach is preferred over hard and fast rules. The case by case approach maximises investment flows, while protecting Australia's interests. The Foreign Investment Review Board (FIRB) will work with an applicant to ensure the national interest is protected. On very rare occasions a proposal may be deemed to be contrary to the national interest and rejected. On other rare occasions the Treasurer may impose conditions necessary to protect the national interest.

The Government recognises community concerns about foreign ownership of certain Australian assets and the review system allows the Government to consider these concerns when assessing Australia's national interest. The national interest test also recognises the importance of Australia's market-based system, where companies are responsive to shareholders and where investment and sales decisions are driven by market forces rather than external strategic or non-commercial considerations.

## Investment priority plan/equivalent policy

Australia actions it's investment attraction mission through the Australian Trade Commission - Austrade - ([www.austrade.gov.au](http://www.austrade.gov.au)) its trade and investment development agency. Austrade attracts productive foreign direct investment into Australia to seed future industries and sustain and build the capability, competitiveness and innovation of existing industry sectors.

### State and Territory Investment Offices

All State and Territory Governments in Australia are actively involved in investment promotion. They have dedicated investment promotion personnel based domestically and most have representatives abroad who offer facilitation services to investors.

Most State and Territory Governments offer incentives to encourage new investments. The provision of financial assistance is not an automatic right, however. The level of assistance offered is assessed on a case-by-case basis and takes into account the economic benefits that will flow to the State/Territory from the new project.

Projects are assessed on the net benefits to the State/Territory including factors such as technology transfer and the development of priority sectors for that particular State or Territory.

Some States offer specific assistance packages for the attraction of Regional Operating Centres, which involve the reduction or removal of payroll taxes, land taxes and/or stamp duties. Apart from arranging meetings and negotiating with other government authorities, most State and Territory Governments offer financial assistance in the following areas: rent free periods of accommodation assistance; exemption from payroll tax, stamp duty and municipal rates; plant and equipment removal costs; support for the provision of multi-user infrastructure as an incentive for major projects; key personnel removal costs; business plan and feasibility study costs; skills training; technology development; and training.

## More information

Australian Capital Territory

Business and Industry Development

ACT Chief Minister's Department

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**New South Wales has representative offices in Guangzhou and Shanghai in China, Abu Dhabi in the United Arab Emirates and Mumbai in India**

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**Queensland has representative offices in Beijing, Guangzhou, Shanghai in China**

**Australia**

Hong Kong, London in the United Kingdom, Tokyo in Japan, Seoul in Korea, Bangalore in India, Jakarta in Indonesia, Riyadh in Saudi Arabia, Chinese Taipei, Los Angeles in the United States, Abu Dhabi in the United Arab Emirates.

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South Australia has representative offices in London in the United Kingdom, Shanghai and Jian in China; Hong Kong, Singapore, Dubai in the United Arab Emirates, Chennai in India, Ho Chi Minh City in Vietnam, Santiago in Chile.

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Victoria has representative offices in Bangalore in India, Dubai in the United Arab Emirates, Hong Kong, Kuala Lumpur in Malaysia, Nanjing and Shanghai in China, Tokyo in Japan, San Francisco, Chicago and New York in the United States, Frankfurt in Germany, and London in the United Kingdom

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Western Australia has representative offices in Shanghai and Hangzhou in China, London in the United Kingdom, Mumbai and Chennai in India, Dubai in the United Arab Emirates, Seoul in Korea, Tokyo in Japan, Kuala Lumpur in Malaysia, Jakarta in Indonesia

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

#### Regulation of foreign investment

The Australian Government takes a very open and positive stance to foreign investment. However, as a sovereign state, it still reserves the right to ensure that investments are in line with Australia's national interest. The national interest in relation to a particular application is determined by the Treasurer. In making decisions, the Treasurer takes advice from the Foreign Investment Review Board (FIRB). Key considerations include national security and economic development.

Australia's foreign investment screening regime is premised on the assumption that foreign investment is beneficial to Australia. As a consequence, it is necessary for the Treasurer to establish that a foreign investment proposal would be contrary to the national interest in order to be blocked. Australia's screening regime involves a simple process that provides certainty for foreign investors.

Australia's foreign investment framework provides for Government scrutiny of some proposed foreign purchases of Australian businesses and land through compulsory and voluntary notification requirements. At the centre of the framework is the Foreign Acquisitions and Takeovers Act 1975 (the FATA). In the majority of industry sectors, smaller proposals are exempt from notification and larger proposals are approved unless judged contrary to the national interest. The screening process undertaken by the FIRB enables comments to be obtained from relevant parties (including State and Territory governments) and other Australian Government agencies in considering whether larger or more sensitive foreign investment proposals are contrary to the national interest.

The Australian Government determines what is contrary to the national interest by having regard to the widely held community concerns of Australians. Reflecting community concerns, specific restrictions on foreign investment are in force in more sensitive sectors such as the media and developed residential real estate. The foreign investment policy document is available online at

[http://www.firb.gov.au/content/\\_downloads/Australia's\\_Foreign\\_Investment\\_Policy\\_June\\_2010.pdf](http://www.firb.gov.au/content/_downloads/Australia's_Foreign_Investment_Policy_June_2010.pdf)

#### Screening of investment proposals

The FIRB examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Australian Government on whether those proposals raise any national interest concerns.

The main functions of the FIRB are:

- \* to examine proposals by foreign interests for investment in Australia and, against the background of the Australian Government's foreign investment policy, to make recommendations to the Government on those proposals;
- \* to advise the Australian Government on foreign investment matters generally;
- \* to foster an awareness and understanding, both in Australia and abroad, of the Australian Government's foreign investment policy;
- \* to provide guidance, where necessary, to foreign investors so that their proposals may be in conformity with the policy; and
- \* to monitor and ensure compliance with foreign investment policy.

The FIRB's functions are advisory only. Responsibility for the Australian Government's foreign investment policy and for making decisions on proposals rests with the Treasurer.

The majority of foreign investment applications receive a decision within 30 days of receipt of the proposal.

## Does this apply to all investment or, are there differential treatment?

### Conditions of investment

#### Conditions of investment

#### Australia's Foreign Investment Review Framework

#### The Foreign Investment Policy and the Legislation

The Foreign Acquisitions and Takeovers Act 1975 (FATA) provides the legislative framework for our screening regime. The FATA allows the Treasurer or his delegate - usually the Assistant Treasurer - to review investment proposals to decide if they are contrary to Australia's national interest.

The Treasurer can block proposals that are contrary to the national interest or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest. When making such decisions, the Treasurer relies on advice from the FIRB.

The Policy provides guidance to foreign investors to assist understanding of the Government's approach to administering the FATA. The Policy also identifies a number of investment proposals that need to be notified to the Government even if the FATA does not appear to apply.

#### Who Needs to Apply?

#### Foreign Governments and their Related Entities

All foreign governments and their related entities should notify the Government and get prior approval before making a direct investment in Australia, regardless of the value of the investment. Foreign governments and their related entities also need to notify the Government and get prior approval to start a new business or to acquire an interest in Australian urban land (except when buying land for diplomatic or consular requirements).

#### Privately-Owned Foreign Investors - Business Acquisitions

Foreign persons should notify the Government before acquiring an interest of 15 per cent or more in an Australian business or corporation that is valued above \$231 million. They also need to notify if they wish to acquire an interest in an offshore company whose Australian subsidiaries or gross assets are valued above \$231 million (adjusted annually on 1 January).

The exception is for 'US investors', where the \$231 million threshold applies only for investments in prescribed sensitive sectors. A \$1004 million threshold applies to US investment in other sectors. To calculate the value of a business or corporation, you need to consider the value of the total issued shares of the corporation or its total gross assets, whichever is higher.

All foreign persons, including US investors, need to notify the Government and get prior approval to make investments of 5 per cent or more in the media sector, regardless of the value of the investment.

Foreign persons should also be aware that separate legislation includes other requirements and/or imposes limits on foreign investment in the following instances:

- \* foreign investment in the banking sector must be consistent with the Banking Act 1959, the Financial Sector (Shareholdings) Act 1998 and banking policy;
- \* total foreign investment in Australian international airlines (including Qantas) is limited to 49 per cent;
- \* the Airports Act 1996 limits foreign ownership of airports offered for sale by the Commonwealth to 49 per cent, with a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports;
- \* the Shipping Registration Act 1981 requires a ship to be majority Australian-owned if it is to be registered in Australia; and
- \* aggregate foreign ownership of Telstra is limited to 35 per cent of the privatised equity and individual foreign investors are only allowed to own up to 5 per cent.

Foreign persons should also notify if they have any doubt as to whether an investment is notifiable.

#### Privately-Owned Foreign Investors - Real Estate

## Australia

Foreign persons should notify the Government and get prior approval to acquire an interest in certain types of real estate. An 'interest' includes buying real estate, obtaining or agreeing to enter into a lease, or financing or profit sharing arrangements.

Regardless of value, foreign persons generally need to notify the Government to take an interest in residential real estate, vacant land or to buy shares or units in Australian urban land corporations or trust estates.

Foreign persons also need to notify if they want to take an interest in developed commercial real estate that is valued at \$50 million or more - unless the real estate is heritage listed, then a \$5 million threshold applies. An exception for developed commercial real estate applies to US investors, where a \$1004 million threshold applies instead.

Foreign persons should also notify if they have any doubt as to whether an investment is notifiable.

More Information Foreign Investment Review Board (<http://www.firb.gov.au>)

### Investment promotion and facilitation

#### Investment promotion and facilitation

The Australian Trade Commission (Austrade) is the Australian Government's trade and investment development agency. Austrade's extensive global network of offices covers more than 100 locations in over 55 countries.

Services for international investors include:

- \* introductions to networks including government agencies, professional service providers, industry associations and Australian business leaders
- \* information on the business environment and referrals to other Government departments managing local business costs, taxation, investment regulations, workforce availability and immigration law
- \* industry capability reports offering market intelligence on Australia's capabilities across a wide range of industry sectors
- \* guidance and referrals in relation to the Australian Government's investment approval process (Foreign Investment Review Board)
- \* identification of potential investment opportunities and strategic alliance partners.
- \* Australian site visit assistance to identify the most suitable location and potential partners for your business, and
- \* advice on Government programs that may be applicable to your business, including support for research, development, innovation and export activities.

Australia's priority sectors for productive FDI attraction are:

- \* clean energy and environment
- \* financial services
- \* mining and resources
- \* infrastructure
- \* advanced manufacturing/automotive
- \* professional and business services
- \* food and beverage
- \* agribusiness
- \* ICT, health and biotechnology
- \* education, creative industries, sport and tourism

**More information about the process of investing in our economy**

[Austrade \(http://www.Austrade.gov.au\)](http://www.Austrade.gov.au)

[Foreign Investment Review Board \(http://www.firb.gov.au\)](http://www.firb.gov.au)

State and Territory based web sites

[Business and Industry Development Australian Capital Territory \(http://www.business.act.gov.au\)](http://www.business.act.gov.au)

[Industry and Investment New South Wales \(http://www.business.nsw.gov.au\)](http://www.business.nsw.gov.au)

[Department of the Chief Minister Northern Territory \(http://www.dcm.nt.gov.au/home\)](http://www.dcm.nt.gov.au/home)

[Invest Queensland \(http://www.investqueensland.gld.gov.au\)](http://www.investqueensland.gld.gov.au)

[Department of Trade and Economic Development South Australia \(http://www.southaustralia.biz\)](http://www.southaustralia.biz)

[Department of Economic Development, Tourism and The Arts Tasmania \(http://www.development.tas.gov.au\)](http://www.development.tas.gov.au)

[Invest Victoria \(http://www.invest.vic.gov.au\)](http://www.invest.vic.gov.au)

[Investing In Western Australia \(http://wa.gov.au/government/services/business/investinginwa/\)](http://wa.gov.au/government/services/business/investinginwa/)

## Investment protection

### Protection of property rights and conditions for expropriation

Private property can be expropriated for public purposes in accordance with established principles of domestic and international law. Due process rights are established and respected. Prompt, adequate and effective compensation (under just terms) is paid under the overarching Section 51 provision for such compensation in the Australian Constitution.

There have been no cases of expropriation involving foreign investors in recent memory.

### More information

#### Protection of IPRs

Australia has a robust and effective intellectual property system. Intellectual property rights have been granted in Australia for over 100 years and the system is constantly being reviewed to ensure it continues to meet the market's needs.

Australian law comprehensively protects patents, trade marks, designs, new plant varieties, copyrights and integrated circuit layout rights.

Australia is a member of the:

- \* World Intellectual Property Organization (WIPO)
- \* Paris Convention for the Protection of Industrial Property
- \* Berne Convention for the Protection of Literary and Artistic Works,
- \* Universal Copyright Convention
- \* Geneva Phonogram Convention
- \* Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

Australia is committed to upholding its international obligations. Australia is a party to the following intellectual property agreements

- \* Paris Convention for the Protection of Industrial Property
- \* World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

\* International Union for the Protection of New Varieties of Plants (UPOV)

\* Trademark Law Treaty

\* Singapore Treaty on the Law of Trademarks

\* Patent Law Treaty

#### Global Protection System Agreements

\* Patent Cooperation Treaty (PCT)

\* Madrid System for the International Registration of Marks

\* Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

#### Classification Agreements

\* Nice Agreement for the International Classification of Goods and Services for the Purposes of the Registration of Marks

\* Strasbourg Agreement Concerning the International Patent Classification

IP Australia is the Australian Government agency responsible for administering Australia's IP system which includes the registration of patents, trade marks, designs and plant breeder's rights.

IP Australia produces a wide range of free information resources designed to increase awareness and understanding of the IP system.

### More information

To access these resources or for more information about Australia's intellectual property system, visit <http://www.ipaustralia.gov.au> or Tel: 61 2 6283-2999 or Fax: 61 2 6283 7999

For copyright matters contact the Intellectual Property Branch, Attorney-General's Department at: Tel 612 6250 6655; Fax 61 2 62505929; or at <http://www.ag.gov.au>

For copyright matters contact the Intellectual Property Branch, Attorney-General's Department at: Tel 612 6250 6655; Fax 61 2 62505929; or at <http://www.ag.gov.au>

### Flow of funds

The Australian dollar is a convertible currency.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The Australian Government does not maintain currency controls or limit remittance, loan and lease payments. Such payments are processed through standard commercial channels, without governmental interference or delay.

Exchange rates are determined on the basis of demand and supply conditions in the exchange market, but the Reserve Bank of Australia retains discretionary power to intervene in the foreign exchange market. There is no official exchange rate for the Australian dollar. There are no taxes or subsidies on purchases or sales of foreign exchange. Authorised foreign exchange dealers may deal among themselves, with their customers, and with overseas counterparties at mutually negotiated rates in any currency.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

### Mechanisms to review decisions, and settle disputes

## Australia

In general, for settlement of disputes associated with their investment in Australia, foreign investors would have access to the same courts and tribunals as domestic investors. In addition, they would have access to a range of alternative dispute resolution mechanisms, such as arbitration, mediation and conciliation.

What, if any, mechanism do you have for foreign investors to settle disputes?

In general, for settlement of disputes associated with their investment in Australia, foreign investors would have access to the same courts and tribunals as domestic investors. In addition, they would have access to a range of alternative dispute resolution mechanisms, such as arbitration, mediation and conciliation.

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

## ICSID

Australia signed the International Centre for Settlement of Investment Disputes (ICSID) Convention on 24 March 1975 and ratified it on 2 May 1991. The Convention entered into force for Australia on 1 June 1991 and is given effect under the International Arbitration Act 1974 (Cth). Australia generally includes a clause in its international investment agreements enabling disputes between a contracting party to the agreement and an investor of the other party to be referred to ICSID for conciliation and arbitration under the ICSID Convention provided both parties to the agreement are contracting States under the ICSID Convention.

## More information

### International investment agreements

With;

Argentina; Chile; China, People's Republic of; Czech Republic; Egypt; Hong Kong, China; Hungary; India; Indonesia; Lao, People's Democ. Rep.; Lithuania; Mexico; Pakistan; Papua New Guinea; Peru; Philippines; Poland; Romania; Sri Lanka (ex-Ceylon); Uruguay; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

International investment agreements (IIAs) - which include bilateral investment treaties (BITs), and other international agreements with investment provisions, such as some free trade agreements (FTAs) - can also provide foreign investors protection against discrimination, unfair treatment, expropriation and transfer restrictions. Coverage under an IIA could therefore be an important factor in an investment location decision, especially where the protection afforded by the law is inadequate.

## More information

In the first instance foreign investors, if concerned about protection of their rights, property rights and protection of their returns from their investments should seek appropriate advice from their legal advisers.

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

#### Movement of persons

## Australia

Foreign direct investment (FDI) frequently requires the movement of persons to the economy of the source of investment. Consequently, investors considering FDI are interested in the treatment of, and rules regulating the movement of foreign persons, senior management and the board of directors.

Conditions of entry and stay for foreign nationals or personnel of foreign firms

Permits/entry visa requirements for non-resident staff of foreign firms

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

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

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

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

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

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

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

Restrictions on the entry/sojourn of foreign technical/managerial personnel and their accompanying family members.

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

### More information

Department of Immigration and Citizenship : [www.immi.gov.au](http://www.immi.gov.au)

## Taxation

### Taxation of foreign nationals and foreign firms

Individuals and companies in Australia may be required to pay taxes or charges to all levels of government: local, state, and federal governments. Taxes are collected to pay for public services and transfer payments.

Income taxes are the most significant form of taxation in Australia, and collected by the federal government through the Australian Taxation Office. Australian Goods and Services Tax revenue is collected by the Federal government, and then paid to the states under a distribution formula determined by the Commonwealth Grants Commission.

## Australia

The taxation of income in Australia is principally determined on the basis of whether the entity is an Australian resident or a foreign resident for tax purposes. Australian residents are taxed on their worldwide income whereas foreign residents are taxed only on income sourced in Australia.

Most active business income derived by foreign residents from operations in Australia is taxed in Australia, by assessment. Australian-sourced dividends, interest and royalties paid to foreign residents are subject to a final withholding tax (unless an exemption applies) at the time of payment.

### Personal income taxes

Personal income taxes in Australia are imposed on the personal income of each person on a progressive basis, with higher rates applying to higher income levels. Unlike some other countries, personal income tax in Australia is imposed on an individual and not on a family unit.

Individuals are also taxed on their share of any partnership or trust profits to which they are entitled for the financial year ending 30 June.

Foreign resident individuals do not receive the general tax-free threshold that is available to Australian residents.

Temporary residents are essentially taxed only on their Australian sourced income and any foreign employment income, despite the fact that they would normally meet the definition of 'resident' and thus be taxed on their worldwide income. They are also exempt from interest withholding tax, receive concessional treatment in relation to employee shares and rights, and are treated as foreign residents for capital gains tax purposes.

Rates of personal taxation as at 1 July 2010 may be found at

<http://www.ato.gov.au/individuals/>

### Corporate taxes

Companies and corporations pay company tax on profits. Unlike personal income taxes which use a progressive scale, corporate taxes in Australia are calculated at a flat 30% rate. Tax is paid on corporate income at the corporate level before it is distributed to individual shareholders as dividends. A tax credit (called a franking credit) is provided to individuals who receive dividends to reflect the tax already paid at the corporate level (a process known as dividend imputation).

Additional information can be found at <http://www.ato.gov.au/businesses/>

### Capital gains tax

Capital Gains Tax (CGT) in the context of the Australian taxation system applies to the capital gain made on disposal of any asset, except for specific exemptions. The most significant exemption is the family home. Rollover provisions apply to some disposals, one of the most significant is transfers to beneficiaries on death, so that the CGT is not a quasi death duty..

The range of assets that foreign residents are liable to Australian CGT is limited to the disposal of Australian real property and the business assets of a foreign resident's Australian permanent establishment.

Further information on CGT may be found at <http://www.ato.gov.au/corporate/>

### Property taxes

Local governments are typically funded largely by taxes on land value (council rates) on residential, industrial and commercial properties.

In addition, some state governments levy tax on land values for investors and primary residences of high value. The state governments also levy stamp duties on transfers of land and other similar transactions.

### Excise taxes

The Federal Government imposes excise taxes on goods such as cigarettes, petrol, and alcohol.

### Customs duties

Customs duty and/or GST may be applicable to goods imported into Australia.

For further information visit Customs Duty and GST (<http://www.customs.gov.au/site/page4368.asp>)



## Australia

Certain goods may be brought into Australia on a temporary basis for a period of up to 12 months without the payment of duty or taxes.

For further information visit Customs Duty and GST (<http://www.customs.gov.au/site/page4370.asp>)

### Payroll taxes

Payroll taxes are a tax paid by employers to Australian state governments. The tax amount is assessed on the basis of wages paid out by an employer.

### Inheritance tax

There is no inheritance tax in Australia, with Australia abolishing what was known as death duties in 1979.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Australia negotiates tax treaties to prevent double taxation of cross border income and is a major contributor to OECD discussions on tax treaty issues.

Australia has a number of tax treaties and a schedule of the treaties may be found at [http://www.treasury.gov.au/content/tax\\_treaties.asp?ContentID=759&titl=Tax%20Treaties](http://www.treasury.gov.au/content/tax_treaties.asp?ContentID=759&titl=Tax%20Treaties)

### More information

The Australian Treasury provides advice on international tax policy issues and implements Government decisions by developing related legislation and negotiating tax treaties. The accelerating integration of the Australian economy with global markets continues to challenge Australia's international tax policy and legislative arrangements.

'International taxation arrangements' principally means arrangements relating to taxation of flows of income between Australia and other countries.

For further Information:

[http://www.treasury.gov.au/content/international\\_taxation.asp?ContentID=884&titl=International%20Taxation](http://www.treasury.gov.au/content/international_taxation.asp?ContentID=884&titl=International%20Taxation)

This version is composed of information submitted by APEC member economies by responding to the Survey Questionnaires (Annex 1). Information of some members were not available at the time of the publication and pages are kept blank but, will be included in the future edition.

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## Introduction

### Our Location Offer

Canada offers excellent opportunities for business leaders who are looking for growth, innovation and manageable risks. Home to world-leading research and education, and offering lower costs, risks and business taxes, as well as ready access to North American markets, Canada is an investment partner of choice. Canada's NAFTA advantage gives investors access to more than 443 million consumers and a combined GDP of more than US\$15.4 trillion.

Canada is a trading country and international trade is integral to its continued prosperity. Canada is the world's ninth largest exporter and tenth largest importer? trade is equivalent to more than 71% of its GDP. Household spending has been boosted by a rise in personal wealth. Strong corporate earnings, falling prices for imported capital goods, and low interest rates have facilitated business investment.

A country's greatest asset in a knowledge economy is a smart workforce and Canada is rich in talented human resources. Canada has the best educational system in the G7 and is rewarded with the most highly-educated population in the OECD. In addition, Canada also attracts the best and brightest from every corner of the globe due to its business-friendly immigration policies enable highly qualified newcomers.

Canada has a prudent fiscal policy, low inflation, interest and unemployment rates, and a corporate tax framework that is among the best in the world. Canada is an emerging energy superpower, the only stable and growing producer of this scarce commodity. Further, the country's strategic investments in technology, education and healthcare result in perfectly ideal conditions for businesses to grow and prosper.

Canada is ranked 8th out of 183 economies in the 2010 Ease of Doing Business Global Rankings. Canada is 2nd overall in terms of starting a business and 5th overall in terms of investor protection. (Ease of Doing Business Index)

In Budget 2010, the Government of Canada announced a major new initiative that will see tariffs on all manufacturing inputs reduced to zero by 2015. With most of the cuts happening in 2010, the entire country can be considered one big Free Trade Zone (FTZ) for investors. Investors considering their next investment destination now have the advantage of importing advanced machinery and equipment from their parent companies free of import duties. This duty-free treatment, together with Canada's 50% per-year straight-line depreciation method allowed for manufacturing or processing equipment, means that investors can write off their capital investments in a very short period of time and thereby reduce costs and increase the profitability of their global operations.

### Introduction to investment regime

Canada has a clear interest in providing for stability, transparency, predictability, non-discrimination and protection for Canadian companies and individuals that invest abroad, as well as for foreign investors wishing to invest in Canada. Good investment rules make for a positive economic climate, which favours growth and jobs. Canada has, therefore, consistently supported a strong, rules-based system, multilaterally, regionally and bilaterally.

Certain investments are subject to review under the Investment Canada Act. The purpose of the Investment Canada Act is to review significant investments in Canada by non-Canadians in order to ensure benefit to Canada. Investments subject to review under the Act are either restricted to high monetary thresholds or a small number of sectors.

The federal government created the Invest in Canada bureau to promote, attract and retain foreign direct investment in Canada. As a bureau of the Department of Foreign Affairs and International Trade, Invest in Canada assists multinational companies planning to invest in Canadian businesses or expand their operations in our country. Invest in Canada offers guidance through every step of the investment process, from the exploratory phase through to site selection and follow up: and can provide investors with a wealth of information about doing business in Canada and facilitate introductions to specialists who offer one-on-one assistance.

### Investment priority plan/equivalent policy

## Canada

The Government of Canada is committed to making Canada a destination of choice for global investment and innovation. The Global Commerce Strategy and Invest in Canada Bureau's 2010 Flagship Report outline Canada's priorities for attracting investment. The latter identifies key sectors in which investment is encouraged.

The priority sectors outlined in the Invest in Canada Bureau's 2010 Flagship Report include : Advanced Manufacturing: Automotive, Aerospace and Defence, Machinery and Equipment; Agri-food: Food Processing; Chemicals and Plastics; Clean Technologies: Renewable-energy technologies, Environmental technologies; Information and Communications Technology: Digital Media, Software, Wireless communications; Life Sciences: Biopharmaceuticals, Medical devices; Services: Business services and Financial services.

Please consult the Invest in Canada 2010 Flagship Report for further details on the priority sectors and what the Government of Canada is doing to encourage investment.

### More information

Invest in Canada Bureau: <http://investincanada.gc.ca/eng/default.aspx>

Department of Foreign Affairs and International Trade: <http://www.international.gc.ca>

Investment Canada Flagship Report: <http://investincanada.gc.ca/download/1099.pdf>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

Canada relies on foreign investment to further its economic development. Foreign direct investment generates benefits to Canadian communities through increased trade opportunities, the introduction of new technologies and management practices, job creation, the payment of taxes and the purchase of goods and services locally. Canada actively seeks to promote its advantages as an investment destination. Foreign direct investment promotion is carried out by the Department of Foreign Affairs and International Trade (DFAIT). Within DFAIT, the Invest in Canada Bureau is primarily responsible for providing the department with strategic leadership and support for FDI promotion and attraction.

The Investment Canada Act (ICA) is a law of general application with respect to foreign investment in Canada relating to the establishment or acquisition of a Canadian business. The ICA reflects Canada's policy of welcoming international investment and of working to attract beneficial investment. To ensure that such investments will be of net benefit to Canada, the ICA contains provisions for the review of acquisitions of control of Canadian cultural and non-cultural businesses above certain thresholds and the establishment of new cultural businesses. The ICA also contains provisions, implemented in 2009, which allow for the review of investments in Canada by non-Canadians on the basis of national security. In addition, the ICA contains guidelines, announced in December 2007, which clarify the application of the 'net benefit' assessment process for investments involving the acquisition of control of a Canadian business by a non-Canadian State-owned Enterprise.

A Notification or an Application for Review must be filed under the ICA with respect to the establishment of a new business activity or the acquisition of control of an existing Canadian business by a non-Canadian. Certain transactions are exempt from the notification and application requirements, for example, acquisitions of control of Canadian farms, share purchases by securities traders or dealers, purchases in connection with the realization of loan securities, most transactions regulated under the Bank Act, and investments by life insurance companies for the benefit of their Canadian policy holders.

In March 2009, the Government of Canada amended the ICA to authorize the government to review investments on national security grounds. When a potential national security threat associated with an investment in Canada by a non-Canadian is identified, the Minister of Industry, after consultation with the Minister of Public Safety, may refer the investment to the Governor in Council (Cabinet), which will determine whether a review should be ordered. Once the Governor in Council orders a review, the Minister of Industry will lead the review in consultation with the Minister of Public Safety. If a national security threat is confirmed, the Minister of Industry is responsible for submitting a report to the Governor in Council with recommendations. The Governor in Council will have the authority to take any measures in respect of the investment that it considers advisable to protect national security.

## Canada

All mergers, whether involving foreign or domestic parties, which directly or indirectly impact Canadian markets, are subject to review under the merger provisions of the Competition Act. This review determines whether or not the transaction is likely to result in a substantial lessening or prevention of competition and could ultimately result in an application before the Competition Tribunal for remedial action. For further information, please visit Chapter 8 of Canada's IAP chapter on Competition Policy or visit: <http://www.competitionbureau.gc.ca>.

As a WTO member, Canada adheres to the obligations of the WTO Agreement on Trade-Related Investment Measures (TRIMs). Canada is also a party to the North American Free Trade Agreement (NAFTA), Canada-Chile Free Trade Agreement (CCFTA) and Canada-Peru Free Trade Agreement, which include obligations on investment, and the Canada-Costa Rica Free Trade Agreement (CCRFTA) which did not include an investment chapter because of the existence of a bilateral investment treaty (FIPA) with Costa Rica. Canada also adheres to the OECD Guidelines for Multinational Enterprises, a set of voluntary standards of conduct recommended by Member governments regarding the operations of these enterprises in OECD markets.

Canada currently has twenty-three Foreign Investment Protection Agreements (FIPAs) in force. FIPAs are bilateral, reciprocal agreements designed to promote and protect Canada's foreign investments abroad through a framework of legally-binding rights and obligations. Canada's model FIPA incorporates several key principles: treatment that is non-discriminatory and that meets a minimum standard; protection against expropriation without compensation and restraints on transfer of funds; and dispute settlement procedures.

### **Does this apply to all investment or, are there differential treatment?**

An investment is reviewable under the Investment Canada Act if there is an acquisition of a Canadian business and the asset value of the Canadian business being acquired equals or exceeds the following thresholds:

a. For non-WTO investors, the threshold is \$5 million for a direct acquisition and over \$50 million for an indirect acquisition; the \$5 million threshold will apply however for an indirect acquisition if the asset value of the Canadian business being acquired exceeds 50% of the asset value of the global transaction.

b. Except as specified in paragraph (c) below, a threshold is calculated annually for reviewable direct acquisitions by or from WTO investors. The threshold for 2009 is \$312 million. Pursuant to Canada's international commitments, indirect acquisitions by or from WTO investors are not reviewable.

c. The limits set out in paragraph (a) apply to all investors for acquisitions of a Canadian business that:

- i. engages in the production of uranium and owns an interest in a uranium producing property in Canada;
- ii. provides any financial service;
- iii. provides any transportation service; or
- iv. is a cultural business.

2. Notwithstanding the above, any investment which is usually only notifiable, including the establishment of a new Canadian business, and which falls within a specific business activity listed in Schedule IV of the Regulations Respecting Investment in Canada, may be reviewed if an Order-in-Council directing a review is made and a notice is sent to the Investor within 21 days following the receipt of a certified complete notification.

### **Conditions of investment**

Canada's foreign investment laws are largely applied on an MFN and national treatment basis. Canada has made substantive investment commitments in the NAFTA and Canada-Chile Agreements. Any derogation from the principles of MFN and national treatment are clearly identified in these agreements.

Canada Business Corporations Act (CBCA) - Boards of Directors

## Canada

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

### CBCA - Issues, transfers, ownership of shares

The Canadian Business Corporations Act permits corporations to 'constrain' the issue, transfer and ownership of shares in federally incorporated corporations.

The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where such ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits.

### Federal Fisheries Act

Fish processing companies which have more than 49% foreign ownership are not permitted to hold Canadian commercial fishing licenses. There is no limit on foreign ownership of fish processing companies that do not hold fishing licenses.

Foreign fishing vessels are prohibited from entering Canada's Exclusive Economic Zone except under authority of a license or under treaty. Foreign vessels are those which are not 'Canadian' as defined in legislation. The Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licenses.

### Canada Transport Act

Air: Canadian legislation governing air transportation (Canada Transportation Act) allows only Canadian owned and controlled airlines to provide domestic scheduled air service and to be designated under Canada's bilateral air agreements to provide scheduled international services. Currently, the limit on voting interests in Canadian airlines that can be held by foreign investors is 25 percent.

### Book Publishing and Distribution Investment Policy

Direct acquisition by non-residents of Canadian-controlled businesses engaged in the production, distribution or sale of books is not normally allowed. Foreign investment in new businesses is considered favourably, provided the investment is through a joint venture with Canadian control. Indirect acquisitions are allowed, subject to net benefit.

### Broadcasting Investment Policy Guidelines

Broadcasting in Canada includes both broadcasting programming (e.g. 'over the air' broadcasting, pay and specialty services, video on demand) and broadcasting distribution (e.g. cable, direct-to-home satellite and wireless). Legislation (the Broadcasting Act) requires that the Canadian broadcasting system be effectively owned and controlled by Canadians. A Directive by the Governor-in-Council limits foreign ownership to 20% of voting shares in a licensee and 33 1/3 % of voting shares in the case of holding companies. Therefore, foreign ownership can comprise 46.7% of a Canadian broadcasting licensee both directly and indirectly (20% directly, plus 33% of the Canadian holding company which owns the remaining 80% of the licensee). There are no restrictions on foreign ownership of non-voting shares in a holding company or licensee. In addition, the Chief Executive Officer (CEO) plus 80% of the Board of Directors of a company, which directly holds a broadcasting license, must be Canadian.

### Film Distribution Investment Policy

## Canada

Foreign acquisition of a Canadian controlled film distributor is not allowed. Foreign Investments in new distribution business is permissible only for importation and distribution of proprietary products (the importer owns world rights or is a major investor). Direct or indirect acquisition of foreign distribution businesses in Canada by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings "in accordance with national and cultural policies".

### Periodical Publishing Investment Policy

Foreign investments in the periodical publishing sector, including investments to establish or, directly or indirectly, acquire foreign businesses to produce and sell periodicals in Canada and to access the Canadian advertising services market must meet the net benefit test, which includes a commitment to the production of majority Canadian editorial content. Foreign acquisitions of Canadian-owned and Canadian-controlled periodical publishing businesses are not permitted.

### Financial Services

Canada maintains a sized -based ownership regime for the banking sector: small (less than Can\$2 billion in equity), medium (Can\$2 billion-Can\$8 billion) and large (greater than Can\$8 billion). Large banks must remain widely held (investor, whether Canadian or foreign, can own up to 20% any class of voting shares and 30% any class non-voting shares). Medium size banks are allowed to be closely held, but must have a public float of 35% of voting shares. Small banks have no ownership restrictions other than "fit and proper" tests.

### Telecommunications Act

Foreign ownership of Canadian common carriers is limited - the carrier cannot be controlled by non-Canadians, and voting equity is limited to 20% direct and 33% indirect.

### Uranium

A minimum level of resident ownership in individual uranium mining properties of 51% at the stage of first production is required. Exceptions to this limit might be permitted if it can be established that the property is in fact 'Canadian controlled' (as defined in the Investment Canada Act). While these limits apply to the control of production facilities, there are no limits applied to foreign investment in exploration and development.

## Investment promotion and facilitation

The federal government has created Invest in Canada to promote, attract and retain foreign direct investment in Canada. As a bureau of the Department of Foreign Affairs and International Trade, they assist multinational companies planning to invest in Can

## More information about the process of investing in our economy

Invest in Canada Bureau: [www.investincanada.gc.ca](http://www.investincanada.gc.ca)

Investment Canada Act: [www.investcan.ic.gc.ca](http://www.investcan.ic.gc.ca) or <http://pch.gc.ca/invest/>

Canada's FIPAs: [www.international.gc.ca/tna-nac/fipa-en.asp](http://www.international.gc.ca/tna-nac/fipa-en.asp)

Canada Business Corporation Act: <http://laws.justice.gc.ca/en/index.html>

Federal Fisheries Act: <http://laws.justice.gc.ca/en/index.html>

Canada Transport Act: <http://laws.justice.gc.ca/en/index.html>

Book Publishing and Distribution Investment Policy: <http://pch.gc.ca/invest/bkp-eng.cfm>

Broadcasting Act: <http://laws.justice.gc.ca/en/B-9.01/index.html>

Film Distribution Investment Policy: <http://pch.gc.ca/invest/film-eng.cfm>

Periodical Publishing Investment Policy: <http://pch.gc.ca/invest/prd-eng.cfm>

Financial Services: [www.fin.gc.ca](http://www.fin.gc.ca)

Telecommunications Act: [www.fin.gc.ca](http://www.fin.gc.ca)

## Investment protection

### Protection of property rights and conditions for expropriation

Both at the federal and provincial levels, there exists legislation which gives authority to expropriate for a public purpose in accordance with due process 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.

### More information

For information about the provincial or federal legislation which relates to expropriation and compensation, please see :

Government of Canada : <http://canadagazette.gc.ca>

Government of Alberta : [www.qp.gov.ab.ca](http://www.qp.gov.ab.ca)

Government of British Columbia: [www.qp.gov.bc.ca](http://www.qp.gov.bc.ca)

Government of Manitoba: <http://web2.gov.mb.ca>

Government of New Brunswick: [www.qnb.ca](http://www.qnb.ca)

Government of Newfoundland and Labrador: [www.hoa.gov.nl.ca](http://www.hoa.gov.nl.ca)

Government of Northwest Territories : [www.gov.nt.ca](http://www.gov.nt.ca)

Government of Nova Scotia : [www.gov.ns.ca](http://www.gov.ns.ca)

Government of Nunavut : [www.gov.nu.ca](http://www.gov.nu.ca)

Government of Ontario: [www.gov.on.ca](http://www.gov.on.ca)

Government of Prince Edward Island : [www.gov.pe.ca](http://www.gov.pe.ca)

Government of Quebec: [www.gouv.qc.ca](http://www.gouv.qc.ca)

Government of Saskatchewan : [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca)

Government of Yukon: [www.gov.yk.ca](http://www.gov.yk.ca)

### Protection of IPRs

Canada supports effective intellectual property rights protection that provide certainty and transparency to encourage marketing of goods, services, technology and entertainment; investment in R&D and innovation; and licensing arrangements (transfer of technology) to establish or expand existing business investment.

Canada continues to improve intellectual property laws and their administration, to ensure adequate protection for owners of intellectual property, including effective mechanisms for enforcement of rights.

### More information



## Canada

For further information regarding the administration and registration of intellectual property laws, please visit: <http://cipo.gc.ca>

and regarding intellectual property policies, please visit:

<http://www.ic.gc.ca/epic/site/ippd-dppi.nsf/en/Home>

### Flow of funds

Canada has a flexible exchange rate system. Because we have a target for inflation that aims to preserve the domestic value of the Canadian dollar, we cannot also have a target for its external value. So, there is no set (fixed) value for our currency in terms of any other currency. The exchange rate for the Canadian dollar against the U.S. dollar, and indeed against any other currency, floats and is determined by the demand for and supply of Canadian dollars in the foreign exchange market.

And if managed, under what circumstances or purposes does your government/central bank intervene?

N/A

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Canada permits all transfers relating to investments to be made freely and without delay.

### Mechanisms to review decisions, and settle disputes

Under the Investment Canada Act, there is no provision for a judicial appeal from the decision of the relevant minister.

What, if any, mechanism do you have for foreign investors to settle disputes?

Foreign and national investors have equal access to legal procedures in Canada. In addition, under the NAFTA and Canada - Chile Free Trade Agreement, as well as the FIPAs, disputes with respect to investment obligations can be referred to investor-state dispute settlement.

Canada is a party to the Convention on the Recognition and Enforcement of the Foreign Arbitral Awards (the "New York Convention") done at New York, June 10, 1958. It entered into force for Canada on May 12, 1986.

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

### ICSID

Canada signed the ICSID Convention on December 19, 2006 and is now undertaking the ratification process. Currently, Canada provides for use of the ICSID Additional Facility Rules and the Arbitration Rules of UNCITRAL in its bilateral investment agreements, the NAFTA and the Canada-Chile FTA.

### More information

N/A

### International investment agreements

With;

Argentina; Armenia; Barbados; Chile; Costa Rica; Croatia; Czech Republic; Ecuador; Egypt; Hungary; Latvia; Lebanon; Mexico; Panama; Peru; Philippines; Poland; Romania; The Russian Federation; Slovakia; Thailand; Trinidad & Tobago; Ukraine; United States; Uruguay; Venezuela;

Please provide a brief description of these IIAs, or your IIAs in general.

Canada has embarked on an expanded FIPA work program and hopes to negotiate Foreign Investment Promotion and Protection Agreements in the near term with priority partners, including members of APEC.

Amongst APEC members, FIPAs are already in force between Canada and the Philippines, Russia and Thailand.

Canada is currently in FIPA negotiations with China, Vietnam, and Indonesia. Canada has 3 Free Trade Agreement (FTAs) with investment chapters in force: NAFTA, Peru and Chile, and is currently in FTA negotiations with Korea and Singapore. The potential for future negotiations with other APEC economies is also being explored.

### More information

Canada's FIPAs:

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/fipa-purpose.aspx?lang=>

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Entry and sojourn of personnel:

To facilitate information exchange, Citizenship and Immigration Canada (CIC) maintains a website which provides information on visiting Canada. It can be accessed at: <http://www.cic.gc.ca/english/index.asp>

Information specific to APEC economies can be found in Canada's entry in the APEC Business Travel Handbook at: [http://www.apecsec.org.sg/apec/business\\_resources/apec\\_business\\_travel.html](http://www.apecsec.org.sg/apec/business_resources/apec_business_travel.html).

Under the new Immigration and Refugee Protection Act which came into force on June 28th 2002, Canada revised its Temporary Foreign Worker Program regulations to further streamline and improve efficiency.

Short Term Business Entry:

In general, business visitors entering Canada for short term visits to engage in international business activities without directly entering the Canadian labour market do not require an employment authorization (i.e., work permit) but do require a visitor visa.

For further information, please visit: <http://www.cic.gc.ca/english/index.asp>.

Temporary Residency

Foreign nationals wishing to enter Canada's labour market are required to apply for an employment authorization to enter Canada as a temporary foreign worker. Depending on the circumstances of the individuals involved, there are several mechanisms to obtain an employment authorization as a temporary foreign worker.

### More information

Invest in Canada :

<http://investincanada.gc.ca/eng/establish-a-business/entry-requirements/business-immigration.aspx>

Citizenship and Immigration Canada: <http://www.cic.gc.ca/english/work/index.asp>

The manual on Canada's current Temporary Foreign Worker guidelines can be found at:

<http://www.cic.gc.ca/english/resources/manuals/fw/index.asp>.

## Taxation

### Taxation of foreign nationals and foreign firms

Foreign investors undertaking business activities in Canada through a separate legal entity (i.e., subsidiary) are considered residents in Canada and they are taxed as such. That is, income tax is applied to their worldwide income and appropriate relief is provided for taxes paid in foreign jurisdictions if the subsidiary also carries out business abroad (see below).

In addition to income taxes, Canadian residents, including corporations controlled by non-residents, are subject to withholding taxes on payments that they make to non-resident persons, including foreign shareholders. Such withholding taxes can be viewed, in part, as proxy for the income taxes that shareholders would pay if they were residents of Canada. However, the totality of invested capital can be repatriated tax-free before any withholding taxes start to apply.

The statutory withholding tax rate is 25%. However, the applicable withholding tax rate is usually reduced in the extensive network of tax treaties entered into with other countries. Profits may be repatriated by way of dividends. The rates may vary according to the type of payment (e.g., interest, dividends, royalties). For example, the Canada-United States tax treaty provides for withholding tax rates of 10 percent on interest and royalties and 5 percent on dividends paid to non-resident corporations with a significant ownership in the corporation.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Canada's tax treaties divide the tax jurisdiction for certain elements of income between Canada and the other signatory country. As a general rule, exclusive jurisdiction is conferred either on the country where the taxpayer resides or on the country where the income arises. Income from real property, business profits, the income earned by performers and athletes, and payments received through salaried employment are taxable only in the country where the income arises. Other elements of income are taxable only in the country of residence: this income includes capital gains arising from the sale of securities and profits on businesses not attributable to a permanent establishment situated in the other country.

Finally, for three other categories of income - dividends, interest and royalties - Canada shares income tax jurisdiction with the other signatory country, but the amount of income tax that can be levied by the country where the income arises is limited. These limitations vary depending on the country and according to the terms negotiated. As a general rule, the country where the income arises must limit the income tax it collects to 15% of gross dividends (unless the beneficial owner of the dividends is a corporation controlling at least 10% of the voting capital in the corporation that pays the dividends, in which case the tax is limited to 5%), and to 10% of gross interest.

Canada has double taxation agreements (DTAs) in force with the following countries: Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Brazil, Cameroon, Chile, Peoples Republic of China, Cyprus, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Guyana, Hungary, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Romania, Russia, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Thailand, Trinidad & Tobago, Tunisia, Ukraine, United Kingdom, United States, Uzbekistan, Zambia, Zimbabwe.

### More information

Additional information on Canada's double taxation treaties can be found at [www.fin.gc.ca](http://www.fin.gc.ca)

This version is composed of information submitted by APEC member economies by responding to the Survey Questionnaires (Annex 1). Information of some members were not available at the time of the publication and pages are kept blank but, will be included in the future edition.

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## Introduction

### Our Location Offer

China's biggest advantage to attract foreign investment lies in the domestic stable political environment, sustained high speed economic growth and sound legal environment. Its industrial supporting capabilities are another one of the attractiveness to foreign investment. Furthermore, with the continuously improved quality of labour and rich labour resources in the central and western regions, it provides abundant labour forces, with which investment can enjoy competitive advantage in abundant labour resources.

In recent years, China's infrastructure has been improved greatly. The infrastructure in transportation, communication, and water supply, electricity and natural gas is almost complete. The ability of supply and quality of energies, raw materials and components has been improved obviously, which provides foreign investors excellent external conditions in production and operation.

Since the reform and opening-up, China's manufacturing industry has enjoyed a fast development and its general scale has ranked into top places in the world. At present, as the pillar industry of the national economy of China, the manufacturing industry serves as the dominant sector for economic growth and basis for economic transformation. As an important basis for the economic and social development, the manufacturing industry is the main channel for employment in cities and towns.

Meanwhile, service industry plays an increasing role in the development of China's economy. It's envisaged that the share of service industry will continue increasing in the national economy, and will become a major industry for employment.

### Introduction to investment regime

Reform and opening up is China's basic national policy, and utilization of foreign investment is an important part of the opening up policy. The introduction of foreign investment, together with the advanced technologies and managerial expertise, has played a positive role to China's economy by upgrading industries and promoting technologies. Foreign investment enterprises have become important part of the national economy. The government makes great efforts to attract high quality foreign investment, which would make positive contribution to boost scientific and technological innovation, industrial upgrading, and coordinated development of different regions of the country. The priority policies of attracting foreign investment at present stage are to optimize structure of foreign investment, improve its regional distribution by guiding foreign investment to China's mid-west regions, enhance more variety of forms of foreign investment, intensify the regulatory reform on administration and create a fair environment for foreign investment.

### Investment priority plan/equivalent policy

According to the needs of economic development, the Chinese government drafts and revises Industrial Catalogue Guiding Foreign Investment taking into account the national industrial development plans. The present priorities for foreign investment are: upstream manufacturing; industries with high and new technologies; advanced services sectors; and industries with new energies, energy-saving and environmental protections. Foreign investment is also encouraged to go to the central and western regions of China for balanced economic development nation-widely.

### More information

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

The process for foreign entities/nationals to invest consists of 3 steps:

- \* project examination and approval;
- \* approval of contracts and articles of association; and
- \* registration.

The approval authorities at central and local levels are:

- \* National Development and Reform Commission or its local branches;
- \* Ministry of Commerce or its local branches;
- \* National Industrial and Commercial Administration Bureau or its local branches.

Investment below USD 300 million under "encouraged category" and "permitted category", and below USD 50 million under "restricted category" as listed in Industrial Catalog Guiding Foreign Investment are approved at local level. All other investment in service sectors are approved by local governments, except for financial sector, telecommunication sector, and those with specified regulation.

**Does this apply to all investment or, are there differential treatment?**

Yes, the above process applies to all foreign investment.

### Conditions of investment

For conditions imposed upon different types of foreign investment, please refer to the major foreign investment laws and regulations as below:

- a) The law of P.R. C on Chinese-Foreign Equity Joint Ventures and its implementation regulations;
- b) The law of P.R. C on Chinese-Foreign Contractual Joint Ventures and its implementation regulations;
- c) The law of P.R. C on Wholly Foreign-Owned Enterprise and its implementation regulations;
- e) Industrial Catalogue Guiding Foreign Investment; Provisions on Guiding Foreign Investment Direction;
- d) Catalogue of Advantageous Sectors for Foreign Investment in Central and Western Regions;
- f) The law of P.R. C on Protection of Taiwan Compatriots' Investment.
- g) Provision on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors and its supplementary provisions
- h) Interim Provision on Foreign Invested Stock-holding Companies

China also implements online application and approval mechanisms for different industries for a more transparent, easier and faster application and approval process.

### Investment promotion and facilitation

Response:

National and local Investment Promotion Agencies (IPAs) are established together with their representative offices overseas. There are 7 major functions which are performed, namely:

- \* To design national and regional profile;
- \* To bridge communication platform;
- \* To publish study report;
- \* To provide consulting service;
- \* To recommend investment project;
- \* To connect government-business relations; and
- \* To guide industrial development.

The services which are provided cover information exchanges, investment directions, investment completion, business operation, expiration and liquidation. Therefore, 4 priority service platforms are constructed for investment promotion, namely:

- \* Information service platform focusing on "Invest in China" website;
- \* Direct communication platform focusing on large-scale investment promotion activities such as investment symposia and fairs;
- \* Legal service platform focusing on coordination for complaints by foreign investment enterprises; and
- \* Coordinating platform for joint meetings of all nation-wide IPAs.

**More information about the process of investing in our economy**

## **Investment protection**

### **Protection of property rights and conditions for expropriation**

The inviolability of private property is recognized in the Constitution and Real Right Law of the People's Republic of China. The Constitution emphasises that citizen's lawful private property is inviolable and The State protects the rights of citizens to private property and to its inheritance. Private property is also protected by the Real Right law by providing the mechanism of protection of real right in Chapter III.

The government reserves the right to expropriate property according to the Constitution. But the expropriation shall only be carried out in order to meet the demands of public interests and in accordance with law and shall be compensated for the private property expropriated or requisitioned. And the Real Right Law sets out the circumstances under which land or other realties can be expropriated, and the compensation for the private property.

### **More information**

Constitution and Real Right Law, accessible from: [www.gov.cn/flfg/index.htm](http://www.gov.cn/flfg/index.htm)

### **Protection of IPRs**

China has an effective and comprehensive intellectual property (IP) system. China is a member of important intellectual property treaties, such as Berne Convention, Paris Convention, and Madrid Agreement and its Protocol. After its accession to the WTO in 2001, China amended its law and regulations to meet the IP protection standards provided in TRIPs.

The State Intellectual Property Office, State Administration for Industry and Commerce, State Copyright Bureau, Ministry of Commerce, Ministry of Public Security, General Administration of Customs, Supreme People's Court, and Supreme People's Procuratorate are the key agencies that have the duty to protect IP rights. To strengthen IPR protection, in 2004, China has established the State IPR Protection Task Force, headed by a vice-premier of the State Council, which is responsible to supervising and coordinating the IPR protection work throughout the country.

China affords a two-track parallel protection mode to enforce IPRs, namely, the administrative and judicial protections both at the central and local level.

Under China's law, China affords protection to patents, trademarks, copyrights, layout designs of integrated circuits, and new varieties of plants.

#### **Patents**

Patents include inventions, utility models, and designs. An application of patent may be submitted to the State Intellectual Property Office or its local Patent Representative Offices. The duration of patent right for inventions shall be twenty years, and that for utility models and designs is ten years, from the date of filing.

#### **Trademarks**

## China

Trademark is defined as any visual sign capable of distinguishing the goods or service of one natural person, legal entity or any other organization from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of colours, and their combinations. Registered trademarks include trademarks, service marks, collective marks and certification marks. China provides advanced protection to well-known marks that has good reputation among the relevant public in China. A trademark application should be filed with the Trademark Office of State Administration for Industry and Commerce. A right holder has exclusive rights to the registered trademark. A registered trademark shall not be used without proper authorization.

### Copyrights

A work shall enjoy copyright automatically upon its creation, whether the work is published or not. The term "work" includes works in forms of written works, oral works, musical, dramatic, quyi choreographic and acrobatic works, works of fine art and architecture, photographic works, cinematographic works, drawings of engineering designs and product designs, maps, sketches and other graphic and model works, and computer software. The term "copyright" embraces a wide variety of personal and economic rights.

### Layout Designs of Integrated Circuits

Layout designs shall be registered with the State Intellectual Property Office to receive protection. The term of protection of exclusive rights of layout design is 10 years, either from the date of application for registration or the date on which the lay out design is put into commercial utilization for the first time at any place in the world, whichever earlier.

### New Varieties of Plants

New varieties of plants refer to varieties of plants that are bred artificially or developed from natural plants discovered and that possess novelty, speciality, homogeneity, and stability and are duly denominated. An application for variety rights may be filed with the Office of the Protection of New Varieties of Plants in the Ministry of Agriculture or the State Forestry Administration. The term of protection for vines, forest trees, fruit trees and ornamental trees is twenty years, and that for other plants is fifteen years from the date of grant.

### Anti-Unfair Competition

China also attacks unfair competitions in various forms, including theft of business secrets. The inspecting and supervising agency is the Fair Trade Office of State Administration for Industry and Commerce.

## More information

State Intellectual Property Office: [www.sipo.gov.cn](http://www.sipo.gov.cn).

State Administration for Industry and Commerce: [www.saic.gov.cn](http://www.saic.gov.cn).

Supreme People's Court: [www.court.gov.cn](http://www.court.gov.cn).

National Copyright Administration: [www.ncac.gov.cn](http://www.ncac.gov.cn).

## Flow of funds

Since July 2005, China launched the reform of the RMB exchange rate regime and moved into a managed floating exchange rate regime based on market supply and demand with reference to a basket of currencies.

And if managed, under what circumstances or purposes does your government/central bank intervene?



While furthering the exchange rate regime reform provides a great deal of potential for future benefits, efforts would also be needed to minimize possible negative impacts. First, it is important to avoid any sharp and massive fluctuations of RMB exchange rate. Second, in the self-initiated process, the orderly floating of RMB exchange rate should reflect China's economic fundamentals and meet the needs of macroeconomic management. While a floating RMB exchange rate will promote a more balanced BOP account in general, it does not address bilateral trade imbalance with any particular country. Third, the RMB currency reform is to maintain an orderly process of industrial upgrading, maintain the international competitiveness of Chinese enterprises and provide more jobs in the service sector. Fourth, supervision and regulation on short-term capital speculation would need to be strengthened to protect China's financial system from major external shocks.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

There is no approval requirement for foreign-funded enterprises to repatriate the profits. The purchase and payment of foreign exchange can be handled in the designated banks with relevant authentic evidentiary materials. For the incomes of capital reduction, share transfers and liquidation, the foreign-funded enterprises can handle the procedures of the purchase and payment of foreign exchange with the approval of local foreign exchange department.

Regarding repaying the capital with interest for the registered foreign debts, the purchase and payment of foreign exchange can be done with the approval of local foreign exchange department.

### **Mechanisms to review decisions, and settle disputes**

Where an investor considers that his lawful rights and interests have been infringed upon by a specific administrative act, he may file an application for administrative reconsideration. If a citizen considers the provisions of rules and regulations as the basis of a specific administrative act of an administrative organ to be illegal, he may file an application to the administrative reconsideration organ for reviewing the said provisions when filing an application for the specific administrative act.

If the investor refuses to accept the administrative reconsideration decision, he may, in accordance with the provisions of Administrative Procedure Law of the People's Republic of China, bring an administrative lawsuit before a people's court. The ruling from the people's court is final.

What, if any, mechanism do you have for foreign investors to settle disputes?

For legitimate foreign investors, all disputes are subject to the same legal framework as is afforded domestic investors. This includes access to a range of dispute resolution mechanisms, such as arbitration, mediation and conciliation, and access to the National Court. Besides, foreign investors may submit the disputes with the government to international arbitration.

### **ICSID**

China signed the ICSID Convention on February 9, 1990 and ratified it on January 7, 1993. The Convention entered into force for China on February 6, 1993. As reserved by China, only disputes over compensation resulting from expropriation or nationalization could be submitted to the jurisdiction of ICSID. However, in some BITs and FTAs signed by China, there is no such reservation for the submission of claims to ICSID.

To date, China has not as yet been involved in any arbitral proceedings before the ICSID.

### **More information**

#### **International investment agreements**

With;

## China

Albania; Algeria; Argentina; Armenia; Australia; Austria; Azerbaijan; Bahrain; Barbados; Belarus; Belgium; Bulgaria; Cambodia; Cape Verde; Chile; Croatia; Cuba; Cyprus; Denmark; Ecuador; Egypt; Equatorial Guinea; Estonia; Ethiopia; Finland; France; Gabon; Georgia; Germany; Ghana; Greece; Guyana; Hungary; Iceland; India; Indonesia; Iran, Islamic Republic of; Israel; Italy; Jamaica; Japan; Kazakhstan; Korea, Republic of; Kuwait; Kyrgyzstan; Lao, People's Democ. Rep.; Lebanon; Lithuania; Macedonia, FYR; Madagascar; Malaysia; Mali; Mauritius; Moldova, Republic of; Mongolia; Morocco; Myanmar (ex-Burma); Netherlands; New Zealand; Nigeria; Norway; Oman; Pakistan; Papua New Guinea; Peru; Philippines; Poland; Portugal; Qatar; Romania; The Russian Federation; Saudi Arabia; Serbia; Singapore; Slovakia; Slovenia; South Africa; Spain; Sri Lanka (ex-Ceylon); Sudan; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Thailand; Trinidad & Tobago; Tunisia; Turkey; Turkmenistan; Ukraine; United Arab Emirates; United Kingdom; Uruguay; Uzbekistan; Viet Nam; Yemen; Zimbabwe;

Please provide a brief description of these IIAs, or your IIAs in general.

China has concluded more than 100 international investment agreements.

While the detail of these agreements varies, there are several common conditions across these agreements.

\* Most Chinese BITs ensure fair and equitable treatment to the investments by investors and contain a most-favoured-nation clause (MFN) entitling foreign investors to treatment no less favourable than that accorded by the host state to nationals of third countries.

\* Expropriation or nationalizing or any other similar measure in regard to an investment made in its territory by an investor is not allowed, except in the public interest, under due process of law and against compensation.

\* Disputes between the Contracting States concerning the interpretation or application of agreements shall be settled through consultations between the Governments of the two Contracting States. If the dispute cannot thus be settled, it may be submitted to an arbitral tribunal.

### More information

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

The Implementation Provision of the Law of the People's Republic of China on Administration over Foreigners' Entry and Departure (revised on April 24th, 2010) regulates entry and stay for foreign nationals or personnel of foreign firms.

1. Diplomatic visa, courtesy visa, official visa and ordinary visa are issued to foreigners coming to China according to their identities and types of passports. Ordinary visas shall be marked with different Chinese phonetic letters and issued to foreigners according to their stated purposes of visit to China.

1) Visa D is issued to foreigners who are to reside permanently in China ;

2) Visa Z is issued to foreigners who come to China to take up posts or employment and to their accompanying family members ;

3) Visa X is issued to foreigners who come to China for study or Job-training for a period of six months or more ;

4) Visa F is issued to foreigners who are invited to China on a visit or on a study , lecture or business tour , for scientific technological or cultural exchanges , for short - term refresher course or for Job - training , for a period not more than six months ;

## China

5) Visa L is issued to foreigners who come to China for sightseeing , visiting relatives or other private purposes(A group visa may be issued to a group of nine or more aliens on a sightseeing trip to China)

6) Visa G is issued to foreigners passing through China ;

7)Visa C is issued to train attendants , air crew members and seamen operation.

8)Visa J - 1 is issued to foreign correspondents residing in China ; visa J - 2 is issued to foreign correspondents who make short trip to China on reporting tasks .

2. Foreigners holding visas D , Z , X or J - I shall , with in 30 days of entry into China , obtain residence cards or temporary residence cards for foreigners from the local public security bureaus . The period validity of the aforementioned certificates is the duration of the holders with permission to stay in China .

3. Residence card for foreigners is issued to those who stay in China for over one year.

4. Temporary residence cards for foreigners are issued to those who stay less than one year in China .

5. Foreigners holding visas F , L , G , C or J - 2 may stay in China for the period prescribed in their visas without obtaining residence certificates.

6. Durations of residence card for foreigners can vary from 1 to 5 years. Municipal or county public security bureaus may decide according to reasons for application by foreigners.

7. Foreigners fit in with article 14 of the Law of the People's Republic of China on Administration over Foreigners' Entry and Departure, public security authorities may issue certificate for 1-5 year residence. Certificate for permanent residence could be issued to foreigners with remarkable achievements.

8. Foreigners exempt from visas under agreements signed between the Chinese and foreign Governments and wishing to stay in China for 30 days and upward , shall apply upon entry into China for residence certificates in accordance with Articles 16 and 17 of the above implementation provisions

9. Foreigners leaving China shall submit for scrutiny, valid passport and other effective documents as well as visas permitting to stay in China or certificate for residence.

10 . The Chinese government authority in the Law of the People's Republic of China on Administration over Foreigners' Entry and Departure refers to Ministry of Human Resources and Social Security of the People's Republic of China.

### More information

<http://www.mohrss.gov.cn/Desktop.aspx?PATH=rsbww/sy>

<http://www.mps.gov.cn/n16/index.html>

## Taxation

### Taxation of foreign nationals and foreign firms

#### Company profits

A Chinese resident company regardless of domestic or foreign investment is currently subject to tax at a rate of 25 per cent of its taxable income, effective from 1 January 2008. Taxable income is assessed on the basis of assessable business income less allowable business deductions. A company is resident in China for income tax purposes if it is incorporated in China or, if not incorporated in China, its effective management is located in China. Except as otherwise regulated by the State Council, China does not allow consolidated returns of enterprises for income tax purposes, and they must file separate tax returns.

#### Capital Gains Tax

## China

In General, capital gains and losses are treated in the same manner as other taxable income and losses in China. Capital Gains Tax (CGT) applies to the disposal of assets acquired (or deemed to have been acquired). A net capital gain arises if the capital gain made by a taxpayer in a year of income exceeds the capital loss made by the taxpayer in that year or carried forward from previous years. Very broadly, a capital gain arises to a taxpayer on a disposal of an asset if the proceeds received on its disposal exceed the cost base of that asset to the taxpayer.

Foreign residents who are individuals, corporations or other organizations are subject to CGT on disposals of: (1) immovable property located in China; (2) movable property if they have establishment or place in China; (3) equity investment if the invested enterprise is located in China.

### Personal income/profits

\* Under Chinese Individual Income Tax Law, the taxpayers are classified into the following two types: (1) individuals who have domicile in China or who, though without domicile in China, have resided in China for one year or more; (2) individuals who are neither domiciled nor resident in China or who do not have domicile and are resident for less than one year in China shall pay individual income tax on their income from sources within China.

\* The taxable items of Individual Income Tax are 11. Monthly wages and salaries are subject to a nine-grade progressive rates schedule arranging from 5% to 45% after total deduction of RMB 4800 yuan for foreign individuals. For Chinese resident individuals, monthly wages and salaries are subject to a nine-grade progressive rates schedule arranging from 5% to 45% after total deduction of RMB 2000 yuan.

### Repatriation of profits

\* According to the State Administration for Foreign Exchange (SAFE) instructions, remittances of after-tax profits or dividends to foreign investors must be supported by written resolutions of the board of directors and by audited financial statements, and may not be made until a tax clearance is issued by the tax authorities. They must be made from foreign exchange accounts; otherwise, conversion and payment must take place at designated foreign-exchange banks.

Dividends paid to non-residents shareholders are subject to withholding tax.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Corporate residents of China are taxed on their worldwide income, including business operations, investment and other sources. A foreign tax credit is allowed for income tax paid in other countries with some limitations. As some economies tax on a global basis, this can lead to double taxation of the activities undertaken in China. To eliminate the possible double taxation and to provide certainty for investors, China has entered into 93 Double Taxation Agreements (DTAs) and 89 of them effective currently. The general effect of a tax treaty is to limit China's taxing rights when china is on a source State status.

China generally requires tax to be withheld on interest, dividends, royalties and capital gains paid or deemed to be paid to non-residents of China. The general rate of withholding tax is 10 per cent. However, China's tax treaties provide for reduced withholding rates and some withholding tax exemptions treatments.

### More information

Introductory level information can be obtained from Ministry of Commerce at [www.mofcom.gov.cn](http://www.mofcom.gov.cn).

More detailed information can be obtained from the State Administration of Taxation at [www.chinatax.gov.cn](http://www.chinatax.gov.cn).

## Introduction

### Our Location Offer

Hong Kong, China (HKC) is committed to creating a business-friendly environment conducive to foreign investments in a free and open market principle, with emphasis on providing a level-playing field for all companies and businesses operating in HKC regardless of their origin.

Our development as the world's leading business centre and financial hub has been premised on our fundamental strengths and advantages which continue to attract multinational firms to set up or expand their operations in HKC. These include the free flow of information and capital, the rule of law upheld by an independent judiciary, a simple tax regime with low tax rates, sound economic fundamentals, clean and efficient civil service, excellent infrastructures as well as a rich pool of professionals and highly skilled workforce.

Apart from a business-friendly environment which continues to underpin sustainable economic growth, our unique position as a natural gateway to the mainland of China has reinforced our status as an ideal location for overseas companies to set up regional headquarters or offices here for sales, marketing, finance and research and development functions and form strategic partnerships with our entrepreneurs. We are also an important springboard for enterprises of the mainland of China to go global. We continue to attract high levels of foreign direct investment (FDI) due to our premier position as a business-friendly gateway to the mainland of China.

HKC has proved its enduring appeal as a world class business city and one of the most competitive economies in various global ranking reports. HKC has been ranked the freest economy in the world for 16 consecutive years by the Heritage Foundation and the Wall Street Journal and also topped the list on the 2009 Annual Report on Economic Freedom of the World by the Fraser Institute. As a corollary of this free market policy and favourable investment environment, there has been sustained growth in inward FDI. The World Investment Report 2010 ranked HKC as the fourth largest FDI recipient in the world with FDI inflows of US\$48.4 billion. For the 12th consecutive year, HKC continues to be second largest FDI in Asia, after China. In terms of FDI stock, HKC ranked the highest in Asia with US\$912.2 billion or a share of 37% in 2009.

### Introduction to investment regime

The Government of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China firmly believes in, and supports, a free market economy and a liberal investment regime. In general, there are no special legislative, regulatory or administrative guidelines governing the admission and establishment of foreign investment in HKC. There are no restrictions on foreign exchange transactions, capital movement, or repatriation of capital and returns relating to foreign investments. We are committed to creating a business-friendly environment conducive to foreign investments in a free and open market principle, with emphasis on providing a level-playing field for all companies and businesses operating in HKC regardless of their origin.

Invest Hong Kong (InvestHK) is the government department responsible for attracting FDI, supporting businesses of other economies to set up and expand in HKC. Its mission is to confirm and strengthen HKC as Asia's leading international business centre and to attract economically and strategically important investment. It provides free and customised services and partners with companies on a long-term basis and throughout any stage of their business development in HKC.

### Investment priority plan/equivalent policy

HKC has placed particular focus in attracting companies of other economies to HKC through the dedicated investment promotion efforts of InvestHK. In addition to HKC's traditional core markets in Asia, Europe and the US, InvestHK has also intensified its efforts to attract FDI from BRIC (Brazil, Russia, India and China) economies and other target emerging markets.

HKC has committed to developing the following six new growth industries where HKC enjoys clear advantages and can become "engines" of growth, in addition to our four economic pillars, namely financial services, trading and logistics, tourism, and professional services:

- education services
- medical services
- testing and certification services

- environmental industries
- innovation and technology
- cultural and creative industries

To help fortify HKC's position as a regional wine hub, the HKSAR Government has exempted the wine duty in February 2008 and has been pursuing various supporting measures including customs facilitation.

### More information

Invest Hong Kong : <http://www.investhk.gov.hk>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

There are in general no screening requirements for foreign investment process.

### Does this apply to all investment or, are there differential treatment?

There are in general no screening requirements for foreign investment process.

### Conditions of investment

#### Banking

An overseas-incorporated bank may set up a branch in the HKSAR under a banking licence or restricted banking licence. The Hong Kong Monetary Authority ("HKMA") is required to be satisfied that the bank meets all the licensing criteria before granting a licence. Subject to the approval of the HKMA, an overseas-incorporated bank may also acquire a major stake (i.e. 10% or more of the equity) of a locally-incorporated bank. There are no regulatory requirements which discriminate against overseas-incorporated banks.

#### Broadcasting: Television Services

For domestic free television programme services, a licence shall be granted to a company which is incorporated in the HKSAR. The majority of the directors and the majority of the principal officers of the licensee, including the principal officer of the company in charge of the selection, production or scheduling of television programmes, shall each be ordinarily resident in the HKSAR (Note 1) and has been so resident for at least one continuous period of not less than 7 years. The control and management of the licensee shall be bona fide exercised in the HKSAR, the majority of its directors required above shall actively participate in the direction of the company.

There are also restrictions on voting control held by unqualified voting controllers (Note 2) in a domestic free television programme service licensee as follows:

- an unqualified voting controller shall not without the prior approval of the Broadcasting Authority hold or acquire 2% or more of the total voting control of a licensee; and
- if the total voting control exercised by unqualified voting controllers at a general meeting of a licensee would otherwise exceed 49% in aggregate of the total voting control exercised on a poll, the votes cast by the unqualified voting controllers shall be attenuated in accordance with a formula to ensure that the aggregate votes cast by qualified voting controllers will always be in the majority vis-à-vis those cast by unqualified voting controllers.

More details about the licensing requirements are set out in the Broadcasting Ordinance (Cap. 562). (Available at <http://www.legislation.gov.hk/eng/home.htm>)

#### Broadcasting: Radio Services

A sound broadcasting licence may be granted to or held only by a corporation that is formed and registered in the HKSAR. The management and control of the licensee shall be bona fide exercised in the HKSAR.

## Hong Kong, China

As a condition of licence, unless otherwise approved by the Broadcasting Authority, the chairman and the managing director and the majority of the directors who take an active part in the control of a licensee shall each be ordinarily resident in the HKSAR and have been so resident for a continuous period of at least 7 years.

The aggregate of the voting shares in a licensee to or in which unqualified persons have, directly or indirectly, any right, title or interest, shall not at any time exceed 49% of the total number of voting shares in the licensee. This applies to voting shares in a licensee where the voting rights carried by such shares are for the time being exercisable as regards any question or other matter whatsoever which may be determined by a poll at general meetings of the licensee.

A person shall be deemed as an "unqualified person" unless he is ordinarily resident in the HKSAR and has been so resident for a continuous period of not less than 7 years.

More details about the licensing requirements are contained in Sections 13F to 13I of the Telecommunications Ordinance (Cap. 106) (available at <http://www.legislation.gov.hk/eng/home.htm>).

There is no additional regulatory requirement for operation which discriminate between domestic and foreign service suppliers.

### Insurance

Any company interested in carrying on insurance business in or from the HKSAR may apply to the Insurance Authority for authorisation to do so under the Insurance Companies Ordinance (Chapter 41 of the Laws of Hong Kong).

An applicant for authorisation which is a company incorporated outside the HKSAR must satisfy the Insurance Authority that it is: (a) a company incorporated in an economy where there is a comprehensive company law and insurance law; (b) an insurer under effective supervision by the authority or authorities of its home economy responsible for the proper conduct of insurance business; and (c) a well established insurer with international experience and of sound financial standing.

An overseas applicant may, if it so chooses, incorporate a subsidiary company in the HKSAR for the purpose of the application, in which event the above requirements will not apply. There is no additional regulatory requirement for operation which discriminate between domestic and foreign service suppliers.

### Securities

There is no additional regulatory requirement for operation which discriminates between domestic and foreign service suppliers.

The contact point for further information is:

Licensing Department

Securities and Futures Commission

Tel: (852) 2840 9393

Fax: (852) 2501 0375

Email: [enquiry@sfc.hk](mailto:enquiry@sfc.hk)

Website: <http://www.sfc.hk>

### Legal Services

All foreign law firms must register with the Law Society before they may practise foreign law in the HKSAR. Pursuant to section 39B(1) of the Legal Practitioners Ordinance (Cap. 159), a foreign law firm may apply to the Hong Kong Law Society for registration as a foreign law firm if all partners who intend to practise in the HKSAR are foreign lawyers or the sole proprietor is a foreign lawyer and the firm intends to have, within two months after registration, a place of business in the HKSAR for the purpose of practising or advising on foreign law.

A firm to which section 39B(1) of the Legal Practitioners Ordinance (Cap. 159) applies may be registered as a foreign law firm if it satisfies the qualifications set out in section 7 of the Foreign Lawyers Registration Rules (Cap. 159S). The Law Society may waive any of the requirements for registration as a foreign law firm if it considers appropriate in a particular case.

## Hong Kong, China

Registered foreign law firms are prohibited from practising Hong Kong law. They are also precluded from taking a Hong Kong solicitor into partnership or employing a Hong Kong solicitor or barrister who holds a practising certificate.

A registered foreign law firm may enter into association with a local law firm provided that the number of foreign lawyers to local lawyers does not exceed the ratio of 1:1.

All foreign lawyers are allowed to take specified examination (the Overseas Lawyers Qualification Examination) to gain admission as solicitors in the HKSAR.

A person from any jurisdiction may be admitted as a barrister in the HKSAR if he or she is considered to be a fit and proper person by the Court and has complied with the general admission requirements, including passing the Barristers Qualification Examination and satisfying certain residency requirements.

### Telecommunications

HKC's telecommunications market is fully liberalised. There is no foreign ownership restriction on operating telecommunications services. A telecommunications service licence may be granted to or held by any company registered in the HKSAR.

### Support Services for Air Transport

There is no regulatory requirement for foreign entry into this sector, except that the agreements with the aviation fuel supply system and the air cargo terminal franchise prohibit the acquisition of a controlling stake in the franchises by any government other than the HKSAR Government.

The contact point for further information is:

Division 4, Transport Branch

Transport and Housing Bureau

Tel: (852) 2189 7727

Fax: (852) 2524 9397

Email: enquiry@thb.gov.hk

Website: <http://www.thb.gov.hk>

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Note1: "Ordinarily resident in the HKSAR" means -

(a) in relation to an individual, residence in the HKSAR for not less than 180 days in any calendar year, or residence in the HKSAR for not less than 300 days in any two consecutive calendar years;

(b) in relation to a corporation, a corporation which satisfies the following -

(i) if the number of directors who actively participate in its direction -

(A) is 2, each is an individual;

(B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in the HKSAR in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and

(ii) the control and management of the company is bona fide exercised in the HKSAR.

Note 2: "Unqualified voting controller" means a voting controller who is not a

qualified voting controller. A qualified voting controller means, inter alia, a voting controller who -

(i) in the case of an individual, is ordinarily resident in the HKSAR

and has been so resident for at least one continuous period of not less than 7 years;

(ii) in the case of a corporation, is ordinarily resident in the HKSAR.



## Investment promotion and facilitation

Established in July 2000, InvestHK is the government department responsible for FDI, supporting other economies' businesses to set up and expand in HKC. Its mission is to confirm and strengthen HKC as Asia's leading international business centre and to attract economically and strategically important investment.

InvestHK proactively carries out its investment promotion activities through the collaborative efforts of its Head Office teams and its overseas representatives based in 26 key business cities worldwide, covering different target markets. It conducts on-going investment promotion visits and meetings as well as promotional events to attract companies to establish a presence or expand their operations in HKC.

InvestHK adopts a sector-specific approach with eight priority sectors as follows :

- \* Business & Professional Service
- \* Consumer Products
- \* Creative Industries
- \* Financial Services
- \* Information & Communications Technology
- \* Innovation and Technology
- \* Tourism and Hospitality
- \* Transport and Industrial

InvestHK offers solution-oriented facilitation and sector-specific expert guidance to companies throughout the investment process and provides aftercare services to companies already established in HKC. Specifically, it provides the following free advice and customised services :

- \* Latest information on HKC's business environment:
  - Sector-specific advice and opportunities
  - Business incorporation procedures
  - Tax and business regulations
  - Cost-of-business models
  - Employment legislation
  - Immigration requirements
  - Business networking opportunities
- \* Introductions to business contacts and service providers:
  - Lawyers, accountants, human resource specialists, consultants, designers, interior specialists and real estate agents
- \* Arrangement of visit programmes:
  - Meetings with service providers, professional associations and government officials and departments
- \* Business support facilitation:
  - Assistance with property identification, visa applications, relocation advice, business licences, trade-mark registration, intellectual property and trade regulations
  - Marketing services during launch and expansion
  - Advice on living and working in HKC, including housing, healthcare, schooling and social networking
  - Ongoing networking opportunities and advice to support the growth of companies' business

**More information about the process of investing in our economy**

Contact details of Invest Hong Kong Headquarters and 12 Investment Promotion Units operating in the Hong Kong Economic and Trade Offices overseas are as follows:

**Hong Kong**

Invest Hong Kong

25/F Fairmont House

8 Cotton Tree Drive

Central, Hong Kong

Tel : (852) 3107 1000

Fax : (852) 3107 9007

E-mail : [enq@InvestHK.gov.hk](mailto:enq@InvestHK.gov.hk)

Website : <http://www.InvestHK.gov.hk>

**New York**

Hong Kong Economic and Trade Office

115 East 54th Street

New York, NY10022

United States

Tel : (1-212) 752 3320

Fax : (1-212) 688 3155

E-mail : [hketony@hketony.gov.hk](mailto:hketony@hketony.gov.hk)

Website : <http://www.hketony.gov.hk>

**Beijing**

The Office of the Government of the Hong Kong Special Administrative Region in Beijing

No. 71, Di'anmen Xidajie

Xicheng District

Beijing (Postal Code : 100009)

China

Tel: (86-10) 6657 2880

Fax: (86-10) 6657 2062

E-mail : [bjohksar@bjo-hksarg.org.cn](mailto:bjohksar@bjo-hksarg.org.cn)

Website: <http://www.bjo.gov.hk>

**San Francisco**

Hong Kong Economic and Trade Office

130 Montgomery Street

San Francisco, CA94104

**United States****Tel : (1-415) 835 9300****Fax : (1-415) 392 2963****E-mail : [hketosf@hketosf.gov.hk](mailto:hketosf@hketosf.gov.hk)****Website : <http://www.hketosf.gov.hk>****Berlin****Hong Kong Economic and Trade Office****Jagerstrasse 33****10117 Berlin****Germany****Tel: (49) 0 3022 6677 228****Fax: (49) 0 3022 6677 288****E-mail : [cee@hketoberlin.gov.hk](mailto:cee@hketoberlin.gov.hk)****Website: <http://www.hketoberlin.gov.hk>****Shanghai****Hong Kong Economic and Trade Office****21/F, The Headquarters Building****168 Xizang Road (M), Huangpu District****Shanghai (Postal Code : 200001)****China****Tel: (86-21) 6351 2233****Fax: (86-21) 6351 9368****E-mail : [enquiry@sheto.gov.hk](mailto:enquiry@sheto.gov.hk)****Website: <http://www.sheto.gov.hk>****Brussels****Hong Kong Economic and Trade Office****Rue d'Arlon 118****1040 Brussels****Belgium****Tel : (32-2) 775 00 88****Fax : (32-2) 770 09 80****E-mail : [general@hongkong-eu.org](mailto:general@hongkong-eu.org)****Website : <http://www.hongkong-eu.org>****Sydney****Hong Kong Economic and Trade Office****Level 1, Hong Kong House,**

**80 Druitt Street**  
**Sydney, NSW 2000**  
**Australia**  
**Tel : (61-2) 9283 3222**  
**Fax : (61-2) 9283 3818**  
**E-mail : enquiry@hketosydney.gov.hk**  
**Website: <http://www.hketosydney.org.au>**  
**Chengdu**

**Hong Kong Economic and Trade Office**  
**38/F, Tower 1, Plaza Central**  
**8 Shuncheng Street, Yan Shi Kou**  
**Chengdu (Postal Code : 610016)**  
**China**  
**Tel : (86-28) 8676 8301**  
**Fax : (86-28) 8676 8300**  
**E-mail : general@cdeto.gov.hk**  
**Website: <http://www.cdeto.gov.hk>**

**Tokyo**  
**Hong Kong Economic and Trade Office**  
**Hong Kong Economic and Trade Office Building**  
**30-1, Sanban-cho, Chiyoda-Ku**  
**Tokyo 102-0075**  
**Japan**  
**Tel : (81-3) 3556 8961**  
**Fax : (81-3) 3556 8960**  
**E-mail : tokyo\_enquiry@hketotyo.gov.hk**  
**Website : <http://www.hketotyo.gov.hk>**

**Guangdong**  
**Hong Kong Economic and Trade Office**  
**Flat 7101, Citic Plaza**  
**233 Tian He North Road**  
**Guangzhou (Postal Code : 510613)**  
**China**  
**Tel : (86-20) 3891 1220**  
**Fax : (86-20) 3891 1221**

E-mail : [general@gdeto.gov.hk](mailto:general@gdeto.gov.hk)

Website: <http://www.gdeto.gov.hk>

Toronto

Hong Kong Economic and Trade Office

174 St. George Street

Toronto

Ontario M5R 2M7

Canada

Tel : (1-416) 924 5544

Fax : (1-416) 924 3599

E-mail : [info@hketotoronto.gov.hk](mailto:info@hketotoronto.gov.hk)

Website : <http://www.hketo.ca>

London

Hong Kong Economic and Trade Office

6 Grafton Street

London W1S 4EQ

United Kingdom

Tel : (44-20) 7499 9821

Fax : (44-20) 7409 0647

E-mail : [general@hketolondon.gov.hk](mailto:general@hketolondon.gov.hk)

Website : <http://www.hketolondon.gov.hk>

GovHK - One-stop portal of the HKSAR Government: <http://www.gov.hk>

Laws of Hong Kong - <http://www.legislation.gov.hk>

## Investment protection

### Protection of property rights and conditions for expropriation

Article 6 of the Basic Law of the HKSAR provides that the HKSAR shall protect the right of private ownership of property in accordance with law.

Article 105 of the Basic Law of the HKSAR further provides as follows:

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

## Hong Kong, China

Examples of the laws of the HKSAR that provide for deprivation of property and resultant compensation can be found in the Lands Resumption Ordinance (Cap. 124), the Roads (Works, Use and Compensation) Ordinance (Cap. 370) and the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276). These laws apply indiscriminately to all investors affected.

Information on HKC's Investment Promotion and Protection Agreements (IPPAs) is provided in the Section on "International investment agreements".

### More information

HKC has signed IPPAs with 17 economies. For details, please refer to the Section on "International investment agreements".

- Basic Law of the HKSAR- <http://www.basiclaw.gov.hk>
- Laws of Hong Kong- <http://www.legislation.gov.hk>
- Securities and Futures Commission (SFC)- <http://www.sfc.hk>
- SFC's Investor Portal - InvestEd- <http://www.invested.hk>

### Protection of IPRs

HKC is committed to providing effective protection of intellectual property rights through :

- \* the administration of comprehensive intellectual property and related laws which provide for civil redress for owners of intellectual property rights and criminal sanctions against the import, export, manufacture, distribution and sales of pirated and counterfeit goods;
- \* the rigorous law enforcement action taken by the Customs and Excise Department against the piracy and counterfeiting activities via intelligence-led investigations and repeated raids conducted at different levels, including import and export, manufacture, distribution and retail;
- \* the provision of an efficient and impartial judicial system to deal with law suits relating to intellectual property; and
- \* the public education and publicity programmes to promote the awareness of and respect for intellectual property rights.

Articles 139 and 140 of the Basic Law specifically stipulate that HKC should on its own develop appropriate policies and afford legal protection for intellectual property rights. Against this background, HKC has developed a comprehensive body of intellectual property law which aims to reach the highest international standards, and put HKC at the leading edge of intellectual property development and protection.

The main international intellectual property conventions which have been applied to HKC by the People's Republic of China are :

- \* the Paris Convention for the Protection of Industrial Property;
- \* the Berne Convention for the Protection of Literary and Artistic Works;
- \* the Universal Copyright Convention;
- \* the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms;
- \* the Patent Cooperation Treaty;
- \* the Convention establishing the World Intellectual Property Organization ("WIPO");
- \* the WIPO Copyright Treaty; and
- \* the WIPO Performances and Phonograms Treaty.

As a member of the World Trade Organization (WTO) in its own right, the intellectual property protection system in HKC meets the standards set out in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

## Hong Kong, China

The Intellectual Property Department of HKC (IPD) is responsible for advising on policies and legislation to protect intellectual property in HKC; for operating the Trade Marks, Patents, Registered Designs and Copyright Licensing Bodies Registries, and for promoting intellectual property protection through public education.

Under the laws of HKC, patents, trade marks, registered designs, copyright, layout-design (topography) of integrated circuits, plant breeder's rights and trade secrets are protected.

### Patents

A patent is an exclusive right granted to the inventor of an invention. An invention which is novel and involves an inventive step can be registered as a patent in HKC as long as it is susceptible of industrial application and does not belong to the excluded classes of inventions.

The Patents Ordinance (Cap 514) and the Patents (General) Rules (Cap 514C) provide for the relevant requirements under the patent registration system in HKC. In order to obtain protection as registered patents in HKC, patents must be registered under the Patents Ordinance and the Patents (General) Rules.

There are two types of patents that can be registered in HKC :

\* Standard Patent: having a maximum term of protection of 20 years counting from the date of filing of the application.

\* Short-term Patent: having a maximum term of protection of 8 years counting from the date of filing of the application.

An application for registration of a standard patent or a short-term patent must be made to the Patents Registry of the IPD. The Patents Registry would conduct formality examination of the documents required in the application form and the supporting documents. The Patents Registry would not conduct substantive examination of the application (e.g. the novelty and inventiveness of the invention).

### Patents: Standard patents

The grant of a standard patent in HKC is based on the registration of a patent granted by one of the following three patent offices, referred to as the "designated patent offices" :

1. the State Intellectual Property Office, People's Republic of China;
2. the European Patent Office (in respect of a patent designating the United Kingdom);
3. the United Kingdom Patent Office.

The application process is made in two stages by filing :

1. a "request to record" with the Patents Registry within 6 months after the date of publication of the corresponding patent application in a "designated patent office"; and
2. a "request for registration and grant" with the Patents Registry within 6 months after the date of grant of the patent by the designated patent office, or publication of the request to record by the Patents Registry, whichever is later.

### Patents: Short-term patent

The grant of a short-term patent in HKC is based on a search report from an international searching authority under Article 16, Patent Co-operation Treaty or one of the three designated patent offices. A short-term patent application in HKC is made by filing a request for grant supported by the documents and information required.

A patent gives the patent owner the exclusive right to make, use, import or put his or her invention on the market. The patent owner can take legal action to prevent any person from manufacturing, using, selling or importing the patented invention (standard or short-term patent) without his or her consent, and to apply for an injunction, delivery-up, damages or an account of the profits and a declaration that the patent is valid and has been infringed.

### Trade Marks

## Hong Kong, China

A trade mark is a sign that distinguishes the goods and services of one trader from those of others. A trade mark may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of goods or their packaging and any combination of these. A sign must be capable of being represented graphically in order for it to be registered as a trade mark.

The Trade Marks Ordinance (Cap 559) and the Trade Marks Rules (Cap 559A) provide, inter alia, the framework for HKC's trade mark registration system, the basis and criteria for registration, and the rights attached to a registered trade mark. In order to obtain protection as registered trade marks in HKC, trade marks must be registered under the Trade Marks Ordinance and the Trade Marks Rules. An application for registration of a trade mark must be made to the Trade Marks Registry of the IPD. The duration of protection of a registered trade mark is 10 years from the filing date of the application for registration, and may be renewed for further periods of 10 years.

The owner of a registered trade mark has the exclusive right to use the mark on the goods or the services for which the mark was registered. The owner can institute legal action to prevent anyone from using his or her registered trade mark in relation to those goods or services without his or her consent.

Unregistered trade marks may be protected by the common law action of passing off. Passing off is usually a more difficult action to bring than an action for infringement of a registered trade mark in HKC.

### Trade Marks: Domain names

A domain name is used for locating the internet address of a commercial presence on the "world wide web" (internet). Hong Kong Internet Registration Corporation Limited is a non-profit-making and non-statutory corporation that administers Internet domain names under '.hk' country-code top level domain. It provides registration services through its wholly-owned subsidiary, Hong Kong Domain Name Registration Company Limited. There is no specific legislation that regulates the registration of a domain name.

A domain name may be protected as a trade mark if it is registered under the Trade Marks Ordinance in HKC or, if it is unregistered, under the common law of passing off.

### Registered Designs

Designs that are new at the filing date of the application and applied to an article by an industrial process can be registered as registered designs provided that they appeal to and can be judged by the eye in the finished article.

In order to obtain protection as registered designs in HKC, designs must be registered under the Registered Designs Ordinance (Cap 522) and Registered Designs Rules (Cap 522A). The period of protection of a registered design is renewable for periods of five years up to a maximum of 25 years.

An application for registration of a design must be made to the Designs Registry of the IPD. The Designs Registry would conduct formality examination of the documents required in the application form. It would not conduct substantive examination of the application (e.g. whether the design is new or not).

The owner of a registered design has the exclusive right to prevent others from making, importing, using, selling or hiring the registered design product without his or her consent.

The right in a registered design is infringed by a person who, without the consent of the owner of a registered design, makes, imports, uses, sells or hires the registered design product. Civil legal action can be brought against the infringement of a registered design. The owner of a registered design may apply for reliefs including an injunction, damages, order for delivery up or an account of profits derived from the infringement.

### Copyright

In general, copyright is the right given to the owner of an original work. The Copyright Ordinance (Cap 528) provides comprehensive protection for recognized categories of original works. Copyright can subsist in literary works such as books and computer software, musical works such as musical compositions, dramatic works such as plays, artistic works such as drawings, paintings and sculptures, sound recordings, films, broadcasts, cable programmes and the typographical arrangement of published editions of literary, dramatic or musical works, as well as performers' performances. Copyright works made available on the Internet environment are also protected. Works created or first published anywhere in the world, irrespective of the nationality and domicile of the authors, qualify for copyright protection in HKC.



## Hong Kong, China

Copyright is an automatic right which subsists in a work when it is created and recorded. No registration formalities are required for a copyright owner to obtain copyright protection in HKC.

The Copyright Ordinance gives copyright owners certain exclusive rights known as "restricted acts". These include :

- \* copying the work;
- \* issuing copies of the work to the public;
- \* renting the work to the public;
- \* making copies of the work available to the public by wire or wireless means, e.g. on the Internet;
- \* performing, showing and playing the work in public;
- \* broadcasting the work by wireless or cable; and
- \* adapting the work

The general rule is that copyright lasts until 50 years after the creator of the work dies. However, there are minor variations to this rule, depending on the type of work.

A copyright owner can bring civil proceedings in court against any person who infringes his or her copyright. The court may grant an injunction to prevent further infringement, order the infringer to deliver up all infringing items, disclose details of the infringement and give an account of the profits derived from the infringement or pay damages to the copyright owner.

### Lay-out Design (Topography) of Integrated Circuits

The Layout-design (Topography) of Integrated Circuits Ordinance (Cap.445) protects the original layout-design for incorporation into an integrated circuit. Subject to certain exceptions, the owner is able to take civil action to prohibit others from reproducing or distributing his or her layout-design without his or her consent or without payment of royalties. There is no need to register the layout-design right and protection will be automatic.

The duration of protection afforded to a layout-design (topography) which has been commercially exploited with the owner's consent is 10 years after the end of the year in which it was first so exploited. Otherwise, the duration of protection is 15 years after the end of the year in which it was created.

### Plant varieties protection (Plant breeder's rights)

Plant varieties protection is also known as "plant breeder's rights". The Plant Varieties Protection Ordinance (Cap 490) confers proprietary rights to breeders of plant varieties. The Director of Agriculture, Fisheries and Conservation of HKC is the Registrar of Plant Variety Rights. A plant variety must be new, distinct, homogeneous and stable in order to become eligible for protection under the law. The duration of protection of plant variety rights is 25 years for trees and vines, and 20 years in other cases. A grantee of Plant Variety Rights shall have the exclusive rights to produce reproductive material of the protected variety for the purpose of commercial marketing, to sell or offer for sale reproductive material of the protected variety, to import-export reproductive material of the protected variety and licence others to carry out the aforementioned activities. In addition, the protection also covers harvested material of the protected variety.

### Trade Secrets (Undisclosed Commercial Information)

Trade secrets and undisclosed commercial information are confidential information in a commercial setting, such as formulae, methods, technologies, designs, product specifications, business plans and client lists, that have commercial value. In HKC, trade secrets and undisclosed commercial information are protected by the common law of confidence. An obligation of confidence will arise whenever the information is communicated to or acquired by a person who knows or ought as a reasonable person to know that the other person wishes to keep that information confidential. An industry or trade custom or practice may also impose an obligation of confidence. The release of trade secrets and undisclosed commercial information would be detrimental to the owner or advantageous to his or her competitors or others. The remedies available for breach of confidence include injunctions, damages, account of profits and delivery up of materials containing confidential information.

## Hong Kong, China

Protection of trade secrets and undisclosed commercial information is of particular importance when the intellectual property is not registrable or where the period of patent protection (20 years) is not long enough. Whilst patents enjoy a limited term of protection, trade secrets and undisclosed commercial information protection last until the information becomes public knowledge. However, trade secrets and undisclosed commercial information do not give you exclusive rights. Business competitors may independently invent an identical product or process or come up with the same ideas which they can exploit freely.

### More information

Laws of Hong Kong:

<http://www.legislation.gov.hk/eng/home.htm>

The Intellectual Property Department :

<http://www.ipd.gov.hk/eng/home.htm>

The Customs and Excise Department :

<http://www.customs.gov.hk/en/home/index.html>

The Agriculture, Fisheries and Conservation Department :

[http://www.afcd.gov.hk/english/quarantine/qua\\_pvp/qua\\_pvp\\_pbr.html](http://www.afcd.gov.hk/english/quarantine/qua_pvp/qua_pvp_pbr.html)

The Hong Kong Internet Registration Corporation Limited :

<http://www2.hkirc.hk/default.jsp>

### Flow of funds

HKC's linked exchange rate system has been in place since October 1983. This is essentially a currency board system in which the monetary base must be fully backed by foreign reserves at the fixed exchange rate. In HKSAR, the monetary base comprises the Certificates of Indebtedness against which banknotes are issued, notes and coins issued by the HKSAR Government, the sum of clearing account balances held by banks with the Exchange Fund for settlement purposes (i.e. the Aggregate Balance) and outstanding Exchange Fund Bills and Notes.

Certificates of Indebtedness are issued and redeemed against US dollars at the fixed exchange rate of HK\$7.80 to US\$1.00. Exchange Fund Bills and Notes are issued only when there are inflows of funds. At present, additional exchange paper is issued to absorb interest payments on existing stock of Exchange Fund papers.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The HKMA conducts foreign exchange operations to maintain exchange rate stability, which is the primary monetary policy objective of HKC. The impact of such operations on the monetary base is effected through the Aggregate Balance. Under the present arrangement, the Hong Kong Dollar (HKD) market exchange rate is allowed to move within a band of 7.75 to 7.85. When there is a decrease in demand for HKD assets and the market exchange rate weakens to HK\$7.85/US\$1.00, the HKMA is committed to buying HKD from licensed banks, leading to a contraction of the Aggregate Balance. Interest rates then rise, creating the monetary conditions conducive to capital inflows to maintain exchange rate stability. When there is an increase in demand for HKD assets and the HKD market exchange rate strengthens to HK\$7.75/US\$1.00, the HKMA is committed to selling HKD to licensed banks, leading to an expansion of the Aggregate Balance and thereby exerting downward pressure on interest rates in order to discourage continued capital inflows.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

There is no restriction regarding the repatriation of funds related to foreign investment. There is no restriction regarding the convertibility of currencies for the overseas transfer of funds.

## Hong Kong, China

HKC's IPPAs with the following 15 economies have entered into force: Australia, Austria, the Belgo-Luxembourg Economic Union, Denmark, France, Germany, Italy, Japan, the Republic of Korea, the Netherlands, New Zealand, Sweden, Switzerland, Thailand and the United Kingdom. These agreements provide for the unrestricted right to transfer investments and returns by investors of one contracting party out of the area of the other contracting party. In the agreements entered into with Australia, Denmark and New Zealand, it is stipulated that the transfer shall be subject to the laws, regulations and/or policies of each contracting party.

### Mechanisms to review decisions, and settle disputes

[See below]

What, if any, mechanism do you have for foreign investors to settle disputes?

There are a variety of ways in the HKSAR for settling disputes arising in connection with a foreign investment. These include negotiations, mediation, arbitration, and litigation.

Similar to jurisdictions in economies such as the United States of America, Canada, Australia, the United Kingdom, New Zealand and Singapore, which have embraced the use of mediation to resolve disputes, the HKSAR is also following this global trend and has taken steps to facilitate and promote the use of mediation to resolve disputes from complex commercial disputes to conflicts among ordinary citizens. Mediation service providers including the Hong Kong Mediation Council of the Hong Kong International Arbitration Centre, the Hong Kong Bar Association, the Law Society of Hong Kong, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Arbitrators, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Mediation Centre have jointly participated and set up the Joint Mediation Helpline Office ("the JMHO") to provide one-stop mediation referral services for parties in need of mediation services. The JMHO is conveniently located in readily accessible premises at the High Court Building.

The benefits of mediation have also been recognised by the courts in the HKSAR. It has been observed by the Court that skilled mediators are able to achieve results satisfactory to both parties in many cases quite beyond the power of lawyers and courts to achieve. As a measure to implement the objective to facilitate settlement of disputes, the judiciary of the HKSAR has promulgated a Practice Direction on Mediation commonly known to practitioners of the HKSAR as PD 31. The aim of PD 31 is to assist the Court to discharge the duty to facilitate settlement of disputes by encouraging the parties to use mediation. The main feature of PD 31 includes the requirement to file a Mediation Certificate, a Mediation Notice and Response. This serves to focus the minds of the parties on using mediation and to facilitate lawyers in advising their clients on mediation. It also provides a mechanism for parties to enter dialogue on mediation. There are potential cost sanctions for any party who chooses not to attempt mediation. The Court will take the conduct of the parties into account in deciding cost sanctions if any party unreasonably refuses to consider mediation.

The Arbitration Ordinance (Cap. 341) provides a comprehensive legal framework for arbitration procedures, enforcement of arbitration agreements and arbitration awards. Arbitral awards made under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and those made in the mainland by a recognized mainland arbitral authority in accordance with the Arbitration Law of the People's Republic of China are enforceable in the courts as domestic judgments with the leave of the court.

The HKSAR has a well-developed system of courts which have different jurisdiction in civil matters:

- The Court of First Instance - it has unlimited jurisdiction over all civil matters.
- The District Court - its jurisdiction is generally limited to civil actions involving claims for an amount over HK \$50,000 but not more than HK \$1 million (for legal action not related to land) and claims involving maximum value not exceeding HK \$3 million (for legal action related to land).
- The Small Claims Tribunal - it handles claims for money involving HK \$50,000 or less.
- The Lands Tribunal - it has jurisdiction to hear and adjudicate cases on possession of premises, building management disputes, cases involving compulsory sale of land for redevelopment purpose, to assess compensation when land is resumed by the HKSAR Government or reduced in value because of public developments, and to determine appeals on rating and valuation matters.

### ICSID

## Hong Kong, China

The ICSID Convention was extended to Hong Kong by the United Kingdom on 19 December 1966, and continued to be applicable to HKC since the resumption of the exercise of sovereignty by China over Hong Kong on 1 July 1997.

Over the last five years, there has been no dispute in relation to HKC brought to resolution by ICSID.

### More information

The following organisations provide services and facilities in arbitration:

- Hong Kong International Arbitration Centre- <http://www.hkiac.org>
- International Chamber of Commerce- Hong Kong, China- <http://www.icchkcbc.org>

The following organisations provide assistance to parties seeking to settle disputes by mediation:

- Hong Kong Mediation Council of the Hong Kong International Arbitration Centre- [http://www.hkiac.org/show\\_content.php?article\\_id=35](http://www.hkiac.org/show_content.php?article_id=35)
- Hong Kong Bar Association- <http://www.hkba.org>
- The Law Society of Hong Kong- <http://www.hklawsoc.org.hk>
- Hong Kong Mediation Centre- <http://www.mediationcentre.org.hk>
- Hong Kong Institute of Arbitrators- <http://www.hkiarb.org.hk>
- Hong Kong Institute of Architects- <http://www.hkia.net>
- Hong Kong Institute of Surveyors- <http://www.hkis.org.hk>
- The Chartered Institute of Arbitrators (East Asia Branch)- <http://www.ciarb.org/branches/asia/east-asia-branch>

### International investment agreements

With;

**Australia; Austria; Belgium; Denmark; Finland; France; Germany; Italy; Japan; Korea, Republic of; Kuwait; Luxembourg; Netherlands; New Zealand; Sweden; Switzerland; Thailand; United Kingdom ;**

Please provide a brief description of these IIAs, or your IIAs in general.

**To give additional assurance to overseas investors that their investments in the territory are adequately protected, and to enable our businesses to enjoy similar protection in respect of their investments overseas, HKC has signed IPPAs with 17 economies so far.**

## Hong Kong, China

These IPPAs generally provide for fair treatment of investors of the contracting parties, compensation for losses owing to non-commercial risks, free transfer abroad of investments and returns, and settlement of investment disputes under internationally accepted rules.

[Note for Belgium and Luxembourg, the investment agreement was signed with the Belgo-Luxembourg Economic Union.]

### More information

Details of HKC's IPPAs which have entered into force can be found at:

<http://www.legislation.gov.hk/table2ti.htm>

Laws of Hong Kong - <http://www.legislation.gov.hk>

Hong Kong Bar Association - <http://www.hkba.org>

Law Society of Hong Kong - <http://www.hklawsoc.org.hk>

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Nationals of about 170 foreign countries and territories may enter HKC visa-free for business, social or pleasure visits for a stay ranging from seven to 180 days provided that they-

- (a) are bona fide visitors;
- (b) have adequate funds to cover the duration of their stay without working;
- (c) hold onward or return tickets (unless in transit to the mainland of China, or Macao); and
- (d) have the incentive to return to their home country / territory.

There is no specific visa for business visits. Business persons wishing to visit HKC but do not enjoy the visa waiver concession, or if they wish to stay beyond the allowed visa-free period (if applicable), they should obtain a visit visa before coming. A person permitted to enter HKC as a visitor may engage in the following business-related activities:

- (i) Concluding contracts or submitting tenders;
- (ii) Examining or supervising the installation/packaging of goods or equipment;
- (iii) Participating in exhibitions or trade fairs (except selling goods or supplying services direct to the general public);
- (iv) Settling compensation or other civil proceedings;
- (v) Participating in product orientation; and
- (vi) Attending short-term seminars or other business meetings.

All business persons wishing to enter HKC for employment as professionals or for investment (establish or join in business), should obtain an employment or investment visa as appropriate before travelling to HKC. Professionals and talent from outside HKC who possess special skills, knowledge or experience of value to and not readily available in HKC, or who are in a position to make substantial contribution to the economy, may apply to work in HKC.

A successful applicant is only allowed to take such employment or establish or join in such business as approved by the Hong Kong Immigration Department (HKID). In this connection, admitted professionals should seek prior approval from the HKID before any change of employment or taking sideline employment.

An employment or investment visa is normally good for an initial stay of 12 months, or the duration of the employment contract, whichever is the shorter. Admitted professionals may apply for extension of stay to continue to work in HKC before their limit of stay expires. Extension of stay, if approved, will normally follow the 2-2-3 years pattern or be in accordance with the duration of the employment contract, whichever is the shorter.

## Hong Kong, China

Admitted professionals may apply to bring in their spouse and unmarried dependent children under the age of 18 to HKC. The length of stay of the dependants will be linked to that of their sponsors. Dependants are required to leave HKC when their sponsor leaves HKC. Admitted dependants can take up employment in HKC.

### More information

Hong Kong Immigration Department: Visit Visa/Entry Permit Requirements for the HKSAR - [http://www.immd.gov.hk/ehhtml/hkvisas\\_4.htm](http://www.immd.gov.hk/ehhtml/hkvisas_4.htm)

Guidebook for Entry for Visit/Transit in Hong Kong

<http://www.immd.gov.hk/ehhtml/id1004.htm>

Guidebook for Entry for Employment as Professionals in Hong Kong

<http://www.immd.gov.hk/ehhtml/id991.htm>

## Taxation

### Taxation of foreign nationals and foreign firms

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in HKC are chargeable to tax on all profits (except those arising from the sale of capital assets) arising in or derived from HKC from such trade, profession or business. There is therefore no distinction made between residents and non-residents when it comes to liability to profits tax. A resident may therefore derive profits from abroad without being charged to tax; conversely, a non-resident may be chargeable to tax on profits arising in or derived from HKC.

Salaries tax is imposed on all income arising in or derived from HKC from an office or employment or any pension irrespective of whether tax on that income has been paid in other jurisdictions. In general, full income derived from an office (e.g. directorship) in HKC is chargeable to salaries tax. This is not affected by the office holder's length of stay in HKC. Regarding an employment, if the source of employment is HKC, full income is chargeable to salaries tax even if part of the duties are performed outside HKC. If the source of employment is outside HKC, only the income attributable to the services rendered in HKC is chargeable, and it is generally computed according to the number of days the person was in HKC in a year of assessment.

Repatriation of profits: No tax is levied on the repatriation of profits.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

HKC adopts a territorial basis for taxation. Only income or profits arising in or derived from HKC are chargeable to tax. As some economies tax on a global basis, this can lead to double taxing of the activities undertaken in HKC. To overcome this problem, and prevent fiscal evasion, HKC has entered into a number of agreements with other economies. A list of these economies is at [http://www.ird.gov.hk/eng/tax/dta\\_country.htm](http://www.ird.gov.hk/eng/tax/dta_country.htm). These agreements (also referred to as "Double Tax Agreements") ensure investors will not have to pay tax twice on a single source of income and give a high degree of certainty in taxation rights for investors.

The tax law of HKC generally requires tax to be withheld on royalties to be paid to non-residents. The rate of withholding tax is 4.95 per cent. However, the Double Tax Agreement may provide for a reduced withholding rates.

### More information

More information can be obtained from the Inland Revenue Department of the HKSAR Government at <http://www.ird.gov.hk>.

## Introduction

### Our Location Offer

Indonesia has been considering setting up a framework to develop more comprehensive economic zones to accelerate investment activities in the country and recently enacted the Law No. 39/2009 on Special Economic Zone (SEZ). The law allows for zones covering a large area to exploit scale economies and encourage more diverse economic activities by eliminating the export requirements. Some areas has been identified and projected to be SEZ in the future.

#### Key areas of advantage

Indonesia is a country with great opportunity. With its large internal market, abundant natural resources and location within a dynamic region, Indonesia has a natural appeal to foreign investors.

Indonesian economy has been buoyant during the global crisis. Macroeconomic and financial stability have been safeguard and the economy grew by 4.5% in 2009, the third highest rate in the G20 after China and India. Reflecting Indonesia's strong fundamentals, key rating agencies upgraded its sovereign rating to one notch below investment grade and its sovereign outlook to positive.

#### Key industries

Indonesia is committed to being pro-growth, pro-job creation and pro-poor. Hence, the development plan focused on establishing key industries for:

- improving public welfare through poverty alleviation, greater access to quality education and health, family planning and the provision of basic infrastructure such as clean water, communication, transport and housing.
- improving food security, by improving the agriculture sector and supporting innovations within it, and increase the linkage between food commodity and other economic sectors through the formation of related industrial cluster.
- improving energy security, by managing on the supply in other hand and encouraging the awareness on energy diversifying and efficiency.

Indonesia has still drafted the Investment Roadmap (Rencana Umum Penanaman Modal, RUPM) focusing on three main sectors agribusiness, infrastructure, and energy.

### Introduction to investment regime

The Investment Law provides standard protection to investors against expropriation and enshrines national treatment. Compared to the earlier legislation, the law also offers greater transparency in terms of the sector covered, more extensive land use rights and a reduction in administrative burdens through the creation of an integrated service facility and longer work permits for key personnel.

Restriction persists on foreign equity ownership. The provision of a List of regulated sectors for investment where private investment is not permitted or where foreign investors are subject to restrictions has added to transparency, and the list has been streamlined.

The fact that Indonesia still face challenges especially on the issue of there is gap on economic development between region due to economic imbalances, Indonesia has commits to provide many incentives for investor who are willing to make such investment on certain sectors in urban region. Refer to investment realization data from The Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal, BKPM), more than 80% of total investment realization period 2005-2009 for foreign investment USD 50.931,4 million and domestic investment Rp. 144.415,1 billion, has been concentrated in Java island. For these reasons, Indonesia has created policies in favour to those regions by providing some incentives, building infrastructure and electricity needed in outer Java island.

Coordination inter government institutions, central - regional government are also urge to be improved in order to create a more sound investment climate in outer Java island. Harmonisation on regulations between central - regional and within regional government is still remains efforts by government in making sure that investment performance and economic growth are balance.

Government initiative to set up Special Economic Zone in outer Java island is to loose the regional investment imbalances, although the concentration of population in Java is still something need to be addressed by government.

## Indonesia

Despite on sectoral and regional economic imbalances issue, Indonesia has now focusing on the creation of high economic value added. On sectoral balance issue, means that government need to address on how to improve the investment performance on primary sector which lacked behind compare to secondary and tertiary sectors. The creation of investment on the basis of integrated industry could be a good alternative to tackle those issues in the same time.

Indonesia has prioritizing investment, as mentioned on the draft Investment Roadmap (Rencana Umum Penanaman Modal, RUPM) covering agriculture, infrastructure and energy, and pursuing to enhance value added in the domestic economy.

For more information please contact to:

The Indonesia Investment Coordinating Board (BKPM)

Attention: Deputy Chairman for Investment Climates Development

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

Phone: (62-21) 5252008 ext 1415, 1416

Website: [www.bkpm.go.id](http://www.bkpm.go.id)

Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id)

### Investment priority plan/equivalent policy

As mandated by the Investment Law, Indonesia is still drafted the Investment Roadmap (Rencana Umum Penanaman Modal, RUPM) focusing on three main sectors agribusiness, infrastructure, and energy which will provide strategic guidance and direction in investment policy making in these sectors.

In order to improve the infrastructure's capacity, the government has offers five infrastructure projects under Public-Private Partnership (PPP) mechanism as a top priority. Those are: Tanah Ampo Port in Karangasem, Bali; Manggarai-Soekarno Hatta Airport railway; Power Plant (PLTU) 2x1000 Mw; Medan-Kuala Namu highway; and Drinking Water in Umbulan, East Java.

Indonesia has also launched Merauke Integrated Food and Energy Estate (MIFEE) in Februari 2010. This government project was set up in order to increase food production and productivity and export purposes orientation in the same time. This integrated project was covering agriculture, plantation, and cultivation sector in the area up to 1.28 million ha.

### More information

The Indonesia Investment Coordinating Board (BKPM)

Attention: Deputy Chairman for Investment Planning

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

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Website: [www.bkpm.go.id](http://www.bkpm.go.id)

Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id)

## Regulation of foreign investment

Process for foreign entities/nationals to invest in our economy



Referring to Presidential Regulation No. 27/2009 concerning One-Stop Integrated Service (Pelayanan Terpadu Satu Pintu, PTSP), Indonesia changed the mechanism from the Letter of Approval to a Registration System, reducing the processing time from 7 days to 1 day through PTSP.

The Steps to get Investment Registration/Investment Principle Permit

1. Investor apply to BKPM
2. Review by BKPM
3. Investor receive the Registration Certificate/Investment Principle Permit
4. Investor apply for other licenses related to investment

Step 1: Investor apply to BKPM

Investor may apply for investment registration to The Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal, BKPM) by attaching required documents. In some sectors/industries in addition to registration, investor needs to get some recommendation from related ministries.

Step 2: Review by BKPM

BKPM conduct review process based on the eligibility of sectors/industries for foreign investment as stipulated by the List of Regulated Sectors for Investment (Presidential Decree No 36/2010).

BKPM has a right to reject the application if only the sector is closed for foreign investors as stipulated in the List of regulated sector for investment, or requiring documents are not completed (i.e. recommendation needed from local government or relevant ministry, if any).

Step 3: Investor receive Investment Registration Certificate / Investment Principle Permit

Investor may only take an hour working day for investor to grant the Investment Registration Certificate as soon as Front Office (FO) BKPM received the application in complete.

In order to get the Investment Principle Permit, investor will need to submit the form application by attaching required documents as required by BKPM including the investment registration certificate, any recommendations needed from related ministry for certain sectors/industries. The processing time to get this investment principle permit is vary, from 2 working days to 6 working days, depends on the type of permit.

To get investment incentives, investor may submit the proposal to BKPM for further processing and approval.

Step 4: Investor apply for other licenses related to investment

In order to start the construction process, the investor may need to go to relating ministry and local governments in order to get other licenses related to investment, such as: location permit, location use permit, Building Construction Permit (Izin Mendirikan Bangunan, IMB), Registration Certificate (Tanda Daftar Perusahaan, TDP), Disturbance Permit (Izin Gangguan, UUG/HO) etc.

For more information please contact to:

The Indonesia Investment Coordinating Board (BKPM)

Attention: Deputy Chairman for Investment Registration

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

Tel: (62-21) 5252008 ext 1112, 1113, 1114

Website: [www.bkpm.go.id](http://www.bkpm.go.id)

Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id)

**Does this apply to all investment or, are there differential treatment?**

## Indonesia

Based on article 4(2) of the Investment Law stipulates that the government, in making the basic policy on investment, is "to provide the same treatment to any domestic and foreign investors, by continuously considering the national interest. There is also separate screening mechanism for foreign investment across the board. The BKPM oversees business registrations and licenses for both foreign and domestic investors to ensure that they comply with the prevailing laws and regulations.

In many sectors, particularly in services, foreign investors face limitation on foreign equity ownership, but in many cases foreigners are allowed to hold a majority share.

Based on the Investment Law (25/2007), those guidelines and mechanisms shall only apply for FDI exclude portfolio investment. Investor who interest to make an investment on portfolio shall go through the Indonesia Stock Exchange (IDX).

Indonesia does not discriminate on the treatment to investor and their investment, either on new establishment, expansion nor merger & acquisition (here in after "M&As"), as long as the sector is eligible under Presidential Decree No. 36/2010 concerning List of regulated sector for investment.

Referring to Government Regulation No. 57/2010 concerning Merger, Consolidation and Acquisition Notification, investor shall submit post notifications for their implementation on M&A as mandatory basis to the Commission for the Supervision of Business Competition (Komisi Pengawasan Persaingan Usaha, KPPU). Investor may also submit pre-notification on M&A in voluntary basis (KPPU regulation No 1/2010), in order to seek KPPU opinion, so when acceptable, investor may register these M&A to BKPM.

### Conditions of investment

Indonesia still regulates some requirements/conditions for certain types of investment or in certain industries particularly in some sensitive sectors, such as: local content, prioritizing on the local employment usage.

Local content requirements were imposed in several sectors including the machinery, electronics and automobile industries as part of the import substitution strategy.

There are also some requirement on domestic market obligation were imposed in specific sector such as: coal and mining, oil and gas, and food security. The prioritizing on domestic market obligation has been set up by the government in order to guarantee the availability stock of mining and coal and/or to support as domestic energy resources.

### Investment promotion and facilitation

Indonesia has been active in promoting and facilitating investment as part of overall investment climate reforms. These measures have focused particularly on reducing administrative burdens on investors, especially by implementing one-stop integrated services (Pelayanan Terpadu Satu Pintu, PTSP) at both central and local levels. Implementation of PTSP has been gaining momentum. Strong government leadership and careful planning of implementation steps in consultation with stakeholders will contribute to more efficient and predictable investment services.

The Investment Law sets the overall legal framework for investment policies, consolidating former investment laws/regulations and incorporating the decentralised governance structure. Investment promotion and facilitation is an important part of the Investment Law which clarifies the role of Indonesia's investment administration and promotion agency, the BKPM.

The investment law effectively placed BKPM's role in the overall government strategy for investment facilitation and promotion. Under this framework, the relative importance of BKPM's functions is expected to shift further from investment registration to facilitation and promotion

In order to strengthen the BKPM role on the investment promotion, BKPM has implemented many strategic promotion activities including:

- streamlining administrative procedures through establishing PTSP and implementing an Electronic System for Information Services and Investment Licensing (Sistem Pelayanan Informasi dan Perijinan Investasi Secara Elektronik, SPIISE) to support PTSP;

## Indonesia

- rebranding in foreign media, international association/organization, and global economic forum; strengthening six Indonesia Investment Promotion Centre (IIPC) abroad in: Singapore, Tokyo, London, Los Angeles, Sydney, and Chinese Taipei, which provide information and consultation services for investors. BKPM plans to undertake vigorous investment promotion activities, including opening representative offices in emerging countries with potentially large investment funds such as: China, India, and Middle Eastern countries;

- focus promotion activities to targeted project and investor;

- re-functioning help desk facility, to assist investor solve problems in implementing investment projects

- setting up the aftercare unit carries out post-establishment promotion programmes by servicing existing investors and nurturing good relationship.

Indonesia has a long history of offering investment incentives, from 1967 to 2000. Incentive legislation in Indonesia started which provided concessions on taxes and other levies for investments in priority fields/activities.

### Investment Incentives

As a strategy to boost FDI inflows, Indonesia enacted Government Regulation No. 1/2007 as amended 62/2008 concerning Income Tax Facilities for Investment in certain business fields or regions, as a re-packaged version of Government Regulations No. 148/2000 on Corporate Tax Facilities. With this regulation, Indonesia offers an income tax incentives to any investors who consider to invest in certain business fields or regions, mostly covers:

- natural resources related sectors in which the country has a comparative advantage (such as forestry, paper, oil refining, rubber)

- green industries (such as coal gasification, geothermal)

- labour-intensive industries (such as textiles), and

- sectors where technology transfer is desired (such as electronics)

As governed by this regulation, investors will be granted tax allowances in certain business fields and/or regions as follows :

- an Investment Tax Allowance in the form reduction of taxable income amounted to 30 % of the realized investment spread in 6 years.

- accelerated depreciation and amortization.

- a Loss carried forward facility for period of no more than 10 years.

- a 10 % income tax on dividends, and possibly being lower if stipulated in the provisions of an existing particular tax treaty.

### Income Tax

In line with the Investment Law, Indonesia enacted the Law No. 36/2008 on Income Tax which reduced corporate law rates from 30% to 28% in 2009 and further to 25% in 2010. Publicly listed companies that have at least 40% of their shares traded in the local stock exchange may enjoy an additional reduction from the corporate income rate with certain condition.

### Import Duties

All investment projects which are approved by BKPM, including existing companies who desiring to expand their projects to produce similar product(s) in excess of 30% of installed capacities or diversifying their products, will be granted the following facilities:

\* Relief from import duty so that the final tariffs become 0 %. Import duty which is mentioned in the Indonesian Customs Tariff Book (Buku Tarif Bea Masuk Indonesia, BTBMI). This is stipulated in the Ministry of Finance's Decree No. 176/PMK.011/2009 dated November 16, 2009 which is effective from December 2009.

- On the importation of capital goods namely machinery, equipments, spare parts and auxiliary equipments for an import period of 2 years, started from the date of stipulation of decisions on import duty relief.

## Indonesia

- On the importation of goods and materials or raw materials regardless of their types and composition, which are used as materials or components to produce finished goods or to produce services for the purpose of 2 years full production (accumulated production time).

- However, the decree as above mentioned is not applied to the assembling of cars and motor bikes except for its component industries.

\* Exemption from Transfer of Ownership Fee for ship registration deed/certificate made for the first time in Indonesia.

### Bonded Zones

The industrial companies which are located in the bonded areas are provided with many incentives as follows;

a. Exemption from import duty, excise, income tax of Article 22, Value Added Tax on Luxury Goods on the importation of capital goods and equipment including raw materials for the production process.

b. Allowed to divert their products amounted to 50% of their export (in term of value) for the final products, and 100% of their exports (in term of value) for other than final products to the Indonesian customs area, through normal import procedure including payment of customs duties.

c. Allowed to sell scrap or waste to Indonesian custom area as long as it contains at the highest tolerance of 5% of the amount of the material used in the production process.

d. Allowed to lend their own machineries and equipments to their subcontractors located outside bonded zones for no longer than 2 years in order to further process their own products.

Exemption of Value Added Tax and Sales Tax on Luxury Goods on the delivery of products for further processing from bonded zones to their subcontractors outside the bonded zones or the other way around as well as among companies in these areas.

### More information about the process of investing in our economy

The Indonesia Investment Coordinating Board (BKPM)

Attention: Deputy Chairman for Investment Promotion

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

Tel: (62-21) 5252008 ext 3546, 3547

Website: [www.bkpm.go.id](http://www.bkpm.go.id)

Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id)

## Investment protection

### Protection of property rights and conditions for expropriation

Based on article 7 of the Investment Law (25 of 2007), Indonesia shall take no measure to nationalise or expropriate the property rights of investors, unless it is applies according to the prevailing laws and regulations. In the case of nationalisation, compensation shall be executed based on market values.

The investor has the right, under Indonesian law, to review by a judicial or other independent party regarding the case and the valuation. If there is no agreement reached by the government and investor on the value of compensation, the investor may bring the case to arbitration.

### More information

The Indonesian Investment Coordinating Board (BKPM)

Attention: Deputy Chairman for Investment Cooperation

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

Phone: (62-21) 5252008 ext 3637, 3638

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Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id) or [iegindonesia@gmail.com](mailto:iegindonesia@gmail.com)

### Protection of IPRs

Indonesia has seven IPR-related laws, six laws administered by Directorate General of Intellectual Property Right-Ministry of Justice & Human Rights, and the Protection of Plant Variety Law administered by Ministry of Agriculture. Those IPR-related laws are: Law No. 30/2000 regarding Trade Secret, Law No. 31/2000 regarding Industrial Design, Law No. 32/2000 regarding Lay-out Design of Integrated Circuit, Law No. 14/2001 regarding Patents, Law No. 15/2001 regarding Marks, Law No. 19/2002 regarding Copyrights, and Law No. 29/2000 regarding the Protection of Plant Variety (PVT).

Some IPR provisions are also included in other laws, such as: the Customs Law No. 10/1995 as amended by Law No. 17/2006, Law No. 18/2002 concerning the National System of Research Development and Application of Science and Technology, and Government Regulation No. 51/2007 regarding Geographical Indications.

Indonesia is also a signatory to many international treaties and conventions covering IPR, such as: Paris Convention for the Protection of Industrial Property of Industrial Property, and the Agreement Establishing the World Intellectual Property Organization (Presidential Decree 15/1997 & 24/1979), Berne Convention for the Protection of Literary and Artistic Works (Presidential Decree 18/1998), Patent Co-operation Treaty (Presidential Decree 16/1997), Trademark Law Treaty (Presidential Decree 17/1997), WIPO copyright Treaty (Presidential Decree 19/1997), and WIPO Performance and Phonograms Treaty (Presidential Decree 74/2004). Indonesia joined WIPO in 1979. According to the WTO, Indonesia has made significant progress in improving its legal framework to combat counterfeiting and reform its IPR laws.

Currently, many recent regulations relating to IPR have also been updated and drafted, partly to comply with the TRIPs obligations under the WTO. These include the implementation of optical disk regulations, amendments to the Patent, Trademark, Industrial Design and Copyright Laws.

In recent IPR enforcement effort, based on Presidential Decree No. 4/2006, National Intellectual Property Rights Task Force (NIPTF) was established. NIPTF aims are to: formulate national policies to combat IPR infringements; determine national efforts needed to prevent IPR violations; assess and stipulate measures for resolving IPR infractions, including prevention and law enforcement activities in accordance with the main duties of participating agencies; educate related government institutions, other organisations and the public at large about IPR matters; and establish and expand bilateral, regional and multilateral co-operation. NIPTF reports directly to the President and comprises the national police, customs, the attorney general, the judiciary, and members of the computer software and entertainment industries.

### More information

Ministry of Justice and Human Rights

Attention: Directorate General for Intellectual Property Rights

Jl. Daan Mogot km. 24, Tangerang 15119

Indonesia

Tel: (62-21) 5517921

Website: [www.dgip.go.id](http://www.dgip.go.id)

### Flow of funds

Indonesia adopted a freely floating exchange rate arrangement on August 14, 1997. The exchange rate is determined by supply and demand in the foreign exchange market. However, BI may intervene in the foreign exchange market to prevent undue fluctuations in the exchange rate.

And if managed, under what circumstances or purposes does your government/central bank intervene?

**N/A**

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

**Indonesia has no restriction in terms of the repatriation of funds related to foreign investment.**

**For more detail information, please contact to:**

**The Central Bank of Indonesia (BI)**

**Attention: International Directorate**

**Jl. M.H. Thamrin No. 2, Jakarta 10350**

**Indonesia**

**Phone: (62-21) 3818277**

**Website: [www.bi.go.id](http://www.bi.go.id)**

### **Mechanisms to review decisions, and settle disputes**

**Under the Investment Law (25/2007) article 32, dispute on investment between the government and investor shall first be settled amicably through out of court settlement to reach mutual agreement. Investors have access to the arbitration or alternative dispute resolution or court of law if only where a dispute fails to reach consensus through negotiation. Meanwhile, foreign investor may settle the dispute through international arbitration.**

What, if any, mechanism do you have for foreign investors to settle disputes?

**As stated above, investor, with the consent of both parties, may bring the dispute to arbitration or alternative dispute resolution when a dispute fails to reach a consensus through negotiation. Indonesia has ratified several conventions concerning alternative dispute resolution mechanisms, such as Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and the Convention of the Settlement of Investment Disputes between States and Nationals of other States (1965). Indonesia recognises that ratifying these conventions will help to attract foreign investment if investors are allowed to bring their disputes to arbitration.**

**The Law No 30/1999 concerning Arbitration and Alternative Dispute Resolution is the basic mechanism for dispute settlement in Indonesia. If both parties agree, disputes can be settled through arbitration. The Indonesia National Board of Arbitration (Badan Arbitrase Nasional Indonesia/BANI) is the most commonly used arbitration institution in Indonesia and is promoted by the Indonesian Chamber of Commerce and Industry (KADIN). Other mediators include the National Mediation Centre, the Indonesian Institute for Conflict Transformation and the Capital Market Arbitration Board for capital market activities.**

**BANI is Indonesia's permanent court of arbitration. It provides a range of services covering arbitration, mediation, binding opinion and other forms of dispute resolution. The process is expedited by the absence of appeals of the possibility of the ruling being overturned by a higher court. BANI has developed its own rules and procedures for both domestic and international arbitration taking place in Indonesia, although other rules chosen by the parties (such as UNCITRAL Arbitration Rules) may also be applied. The Arbitration Board designates arbitrators in accordance with provisions of the agreements and from candidates recommended by the Secretariat.**

**Settlement of disputes between the government and foreign investors or private entities can be facilitated through BANI under ICSID rules or any other rules stated in the Agreement (contract). BANI has signed co-operation agreements with various centres and organisations in other countries.**

### **ICSID**

**Indonesia joined as a member of the International Centre for Settlement of Investment Disputes (ICSID) since 1965. Indonesia has ratified the ICSID Convention by Law No. 5/1968.**

## More information

For more information, please contact to:

**The Indonesian Investment Coordinating Board (BKPM)**

Attention: Deputy Chairman for Investment Cooperation

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

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Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id) or [iegindonesia@gmail.com](mailto:iegindonesia@gmail.com)

**The Indonesian National Board of Arbitration (BANI)**

Jl. Mampang Prapatan No. 2, Jakarta 12760

Indonesia

Phone: (62-21) 7940542

Website: [www.bani-arb.org](http://www.bani-arb.org)

Email: [bani-arb@indo.net.id](mailto:bani-arb@indo.net.id)

## International investment agreements

With;

Algeria; Argentina; Australia; Bangladesh; Belgium; Bulgaria; Cambodia; Canada; Chile; China, People's Republic of; Croatia; Cuba; Czech Republic; Denmark; Egypt; Finland; France; Germany; Guyana; Hungary; India; Iran, Islamic Republic of; Italy; Jamaica; Japan; Jordan; Korea, Republic of; Kyrgyzstan; Lao, People's Democ. Rep.; Libya; Malaysia; Mauritius; Mongolia; Morocco; Mozambique; Netherlands; Norway; Pakistan; Philippines; Poland; Qatar; Romania; The Russian Federation; Singapore; Slovakia; Spain; Sri Lanka (ex-Ceilan); Sudan; Suriname; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Thailand; Tunisia ; Turkey; Turkmenistan; Ukraine; United Arab Emirates; United Kingdom ; United States; Uzbekistan; Viet Nam; Yemen; Zimbabwe;

Please provide a brief description of these IIAs, or your IIAs in general.

Indonesia has signed and acceded a number of International Investment Agreements (IIAs), including bilateral agreement on the promotion and protection of investment with 66 countries, i.e. Algeria, the United States of America, Argentina, Australia, Bangladesh, Netherlands, Belgium, Bulgaria, Canada, Chile, People's Republic of China, Czech Republic, Croatia, Cuba, Denmark, Finland, Germany, Guyana, Hungary, India, Iran, Italy, Jamaica, Japan, Jordan, Cambodia, Republic of Korea, Korea DPR, Kyrgyz Republic, Lao PDR, Libya, Malaysia, Morocco, Mauritius, Egypt, Mongolia, Mozambique, Norway, the Philippines, Pakistan, France, Poland, Qatar, Romania, Russia, Uni Emirates, Singapore, Slovak Republic, Spain, Sri Lanka, Sudan, Syria, Suriname, Sweden, Tajikistan, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, the United Kingdom, Ukraine, Uzbekistan, Vietnam, Yemen, Zimbabwe.

Meanwhile, Indonesia, with other ASEAN Member Countries, has signed The ASEAN Comprehensive Investment Agreement (ACIA) in 2009, to replace the former investment agreement, called ASEAN Investment Area (AIA) 1998 and ASEAN Investment Guarantee Agreement 1987.

ASEAN also has some agreements with Dialogue Partners signed in 2009, namely:

- Agreement Establishing the ASEAN-Australia-New Zealand Free Trade ASEAN;
- Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation among the Government of the Member Countries of the ASEAN and the Republic of Korea;

- Agreement on Investment of the Framework Agreement on Comprehensive Economic Cooperation Between the People's Republic of China and the ASEAN.

For more information, please contact to:

The Indonesian Investment Coordinating Board (BKPM)

Attention: Deputy Chairman for Investment Cooperation

Jl. Jend. Gatot Subroto No. 44, Jakarta Selatan 12190

Indonesia

Phone: (62-21) 5252008 ext 3637, 3638

Website: [www.bkpm.go.id](http://www.bkpm.go.id)

Email: [sysadm@bkpm.go.id](mailto:sysadm@bkpm.go.id) or [iegindonesia@gmail.com](mailto:iegindonesia@gmail.com)

### More information

Since the nature of the information may expand unlimitedly, it is appropriate for investor to contact legal advisers/lawyers and consultants if they are concern about the protection of their rights and returns of their investments.

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Indonesia, based on article 10 the Investment Law (25/2007), stipulates that the company may employ foreign experts for certain positions and skills in accordance to laws and regulations. In principle, Indonesia provides possibility for company to employ expatriates but only for certain areas of expertise which are not available. Presidential Decree No. 75/1995 concerning Employment of Expatriate regulates that Director may be fulfilled by expatriates except for position which responsible for personnel affairs.

#### Limited-Stay Visa for foreign personnel

The company, who will employ foreign personnel, shall obtain The Foreign Worker Usage Planning (Rencana Penggunaan Tenaga Kerja Asing, RPTKA). Then, they have to submit the Visa Recommendation for Working Purposes (TA.01) in order to get Limited-Stay Visa (Visa Tinggal Terbatas, VITAS). VITAS for foreign personnel shall be granted up to one year since the date of entry permit.

VITAS holders who has entry permit, shall obtain the Limited Stay Permit (Ijin Tinggal Terbatas) at latest seven days after the date of entry permit. Foreign personnel shall be granted Limited Stay Permit up to one year, and it may be extended up to one year for each extension submission consecutively.

#### Short-Stay Visa for foreign personnel

Short-stay business visitor entry provides for a stay of up to two months on each occasion for business purposes such as pursuing investment opportunities, attending business meetings or attending to business interest in Indonesia. Visa options include a multiple entry visa valid for one year.

#### APEC Business Travel Card

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

#### Restrictions on the entry/sojourn of foreign technical/managerial personnel

Foreign personnel are restricted to fulfil in certain position and for certain sectors as may be regulated by relevant authorities. As already mentioned, referring to article 5 Presidential Decree No. 75/1995 concerning Employment of Expatriate regulates that Director may be fulfilled by expatriates except for position which responsible for personnel affairs.



## More information

Ministry of Manpower and Transmigration

Attention: Directorate General for Placement Development

Jl. Jend. Gatot Subroto No. 51, Jakarta Pusat

Indonesia

Phone: (62-21) 525 5733

Website: [www.nakertrans.go.id](http://www.nakertrans.go.id)

Ministry of Justice and Human Rights

Attention: Directorate General for Immigration

Jl. H.R. Rasuna Said Kav 8 - 9 Jakarta Selatan

Indonesia

Phone : (62-21) 522-4658

Website : [www.imigrasi.go.id](http://www.imigrasi.go.id)

## Taxation

### Taxation of foreign nationals and foreign firms

#### Non resident taxpayers

The treatment of income will be applied differently to resident and non resident taxpayers. An individual shall be treated as non resident taxpayers if he has not a place of residence in Indonesia and he stays in Indonesia for more than 183 days in the period of 12 months. A body of persons shall be treated as a non resident taxpayers if it has a place of incorporation or registration outside Indonesia and it has place of domicile outside Indonesia.

#### Company profits for permanent establishment

A foreign enterprise shall be classified as a permanent establishment if it carries on business or activities in Indonesia through a permanent place of business, such as branch, workshop, office, sales outlet, exploration or exploitation of natural resources, and so on.

A permanent establishment generally will be taxed similar to those of Indonesian national corporations.

In addition, income derived by head of office that arise from activities, sales, of goods and services that similar with those provided by a permanent establishment of such enterprise in Indonesia shall attributed as taxable income, including any income derived by head office that effectively connected with such permanent establishment.

In calculating the taxable income, there shall be deduction allowed which related to the earned income.

Taxable profits of a permanent establishment will be subject to 25% tax rate and such rate is similar to those applied to Indonesian national corporations.

#### Personal income/profits

Any foreign individual who carries on business or activities through a fixed base in Indonesia shall be treated as a permanent establishment.

Any foreign individual who derives income from Indonesia shall be subject to 20% withholding tax rate.

#### Outbound income:

Income sourced in Indonesia derived by non residents shall be subject to 20% tax rate or any rate in accordance with the relevant tax treaty.

## Indonesia

Depend on the type of income, the 20% tax rate will be applied on:

- gross amount, for interest, dividend, royalties, fees on services, prizes, pensions or annuities, premium on swap or other income related to hedging transactions, gain on debt write-off.
- net amount, for any gain from alienation of property situated in Indonesia and any insurance premium paid to foreign insurance company; and
- profit after Indonesian income tax of a permanent establishment (branch profit tax).

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

According to the Income Tax Law, a resident taxpayer will be subject to tax on any income source from Indonesia and outside Indonesia, since the Law adopts the worldwide income tax principle (global income taxation).

In the other hand, a non resident taxpayer is subject to tax in Indonesia only on any income source from Indonesia. The tax due will be withheld by the payer of income as the non resident is not obliged to register as a taxpayer nor to lodge income tax return.

Indonesia is currently having tax treaties with 59 countries/jurisdictions, i.e. Australia, Bangladesh, Brunei Darussalam, India, Japan, Jordan, Korea DPR, Republic of Korea, Kuwait, Malaysia, Mongolia, New Zealand, Pakistan, the Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Taipei, Thailand, China, Uni Emirates, Vietnam, Algeria, Canada, Egypt, Mexico, Seychelles, South Africa, Sudan, Tunisia, the United States of America, Venezuela, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Luxemburg, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and Uzbekistan.

### More information

Ministry of Finance

Attention: Director General for Taxation

Jl. Jend. Gatot Subroto No. 40-42, Jakarta Selatan 12190

Phone: 62-21-5250208 / 5251609 / 5262880

[www.pajak.go.id](http://www.pajak.go.id)

## Introduction

### Our Location Offer

Japan is the center of new trends and creativity and is a coveted testing ground for new products.

Today, increasing numbers of companies around the world are partnering with Japanese companies to develop products and services, create innovative technologies, and conduct R&D projects.

10 Advantages to investing in Japan are below;

1. Japan - A Market of Enormous Potential
2. Sophisticated Consumers with High Purchasing Power and Discerning Tastes
3. Promising Markets and Industries
4. Home of the World's Top Companies
5. SMEs Possess Unique Technologies
6. Innovation Ushering in the Future
7. A Gateway to the Asian Market
8. Foreign Companies Expanding Business in Japan
9. Mature Investment Infrastructure
10. A Secure, Comfortable Living Environment

More information;

"10 Advantages to Investing in Japan": [http://www.jetro.go.jp/en/invest/whyjapan/pdf/2009\\_10ad.pdf](http://www.jetro.go.jp/en/invest/whyjapan/pdf/2009_10ad.pdf)

### Introduction to investment regime

Foreign Direct Investment (FDI) is expected as the driver of "activation of regional economy", "the increase of productivity", and "new technology of new technologies. Japan encourages and welcomes FDI, and launched the "Invest Japan" initiative, a government-wide effort to promote FDI in Japan in 2003. Under this initiative, Japan set up the Invest Japan Business Support Center (IBSC) in Japan External Organization (JETRO), which is the one stop window to provide information and support foreign investors, as well as Invest Japan information desks at concerned ministries to facilitate FDI.

In June 2010, Japan has released "New Growth Strategy - Blueprint for revitalizing Japan", which is a package of policies for the recovery of strong economy. Promoting Japan as an Asian industrial center is one of major policies of the New Growth Strategy, and its objective is to revive Japan as an Asian industrial center for multinational companies. Details of policy measures under this initiative will be launched by the end of 2010.

### Investment priority plan/equivalent policy

N/A

### More information

N/A

## Regulation of foreign investment

Process for foreign entities/nationals to invest in our economy

## Japan

Japan does not have a screening process per se for inwards Foreign Direct Investment (FDI). Japan has a highly liberalized and open investment regime, and in principle, the Foreign Exchange and Foreign Trade Law (hereafter referred to as the Foreign Exchange Law) requires only ex post facto reporting for FDI to Japan.

The exception to the above applies to investments in sectors.

1. Regulated industrial sectors complying with international rule (OECD Code of Liberalization of Capital Movements)

i) Industries related to national security (e.g. weapons, aircraft, nuclear power, spacecraft and industries manufacturing dual use items with a high probability of being converted to military uses)

ii) Industries related to public order (e.g. Electricity, gas, heat supply, communications, broadcasting, water, railroads, passenger transport)

iii) Industries related to public safety: biological chemicals, security services

2. Industrial sectors reserved under the OECD Code due to domestic circumstances in Japan: agriculture, forestry and fishing, oil, leather, air/maritime transport

To invest in our economy, prior notification is required. Once the notification is made, the investor must wait for from 2 weeks to 30 days before executing the investment, furthermore this waiting period may be shortened down to 5 business days after April, 2009 (The beginning of our fiscal year).

**Does this apply to all investment or, are there differential treatment?**

This applies to all inwards FDI.

### Conditions of investment

The following is a list of exceptional sectors or matters where Japan reserves the right to adopt and/or maintain measures that do not conform with one or more of its principle positions of providing national and most-favored nation treatment to foreign investors and prohibiting performance requirements.

1 Primary industries related to agriculture, forestry and fisheries

Legal Source or Authority: Foreign Exchange Law and: (i) for agriculture: Seeds and Seedlings Law, Seeds and Seedlings Law Enforcement Regulation; and (ii) for fisheries: Law for Regulation of Fishing Operation by Foreign Nations

2 Oil industry

Legal Source or Authority: Foreign Exchange Law and Mining Law

3 Leather and leather products manufacturing industry

Legal Source or Authority: Foreign Exchange Law

4 Heat supply industry

Legal Source or Authority: Foreign Exchange Law

5 Biological preparations manufacturing Industry

Legal Source or Authority: Foreign Exchange Law

6 Water supply and water works Industry

Legal Source or Authority: Foreign Exchange Law

7 Railway transport industry

Legal Source or Authority: Foreign Exchange Law

8 Omnibus industry

Legal Source or Authority: Foreign Exchange Law

**9 Water transport industry**

**Legal Source or Authority: Foreign Exchange Law and Ship Law**

**10 Telecommunications industry**

**Legal Source or Authority: Foreign Exchange Law and Law concerning Nippon Telegraph and Telephone Corporation, etc.**

**11 Security industry**

**Legal Source or Authority: Foreign Exchange Law**

**12 Mining industry (including oil and natural gas exploration and development)**

**Legal Source or Authority: Mining Law**

**13 Air transport industry**

**Legal Source or Authority: Foreign Exchange Law and Civil Aeronautics Law**

**14 Registration of aircraft in the national register and matters arising from such registration**

**Legal Source or Authority: Civil Aeronautics Law**

**15 Matters related to or arising from the nationality of a ship, and the acquisition of ship or of any interest in ship**

**Legal Source or Authority: Ship Law**

**16 Explosives manufacturing industry**

**Legal Source or Authority: Foreign Exchange Law**

**17 Aircraft industry**

**Legal Source or Authority: Foreign Exchange Law**

**18 Arms industr**

**Legal Source or Authority: Foreign Exchange Law**

**19 Nuclear energy industry**

**Legal Source or Authority: Foreign Exchange Law**

**20 Space industry**

**Legal Source or Authority: Foreign Exchange Law**

**21 Electricity utility industry**

**Legal Source or Authority: Foreign Exchange Law**

**22 Gas utility industry**

**Legal Source or Authority: Foreign Exchange Law**

**23 Broadcasting industry**

**Legal Source or Authority: Foreign Exchange Law and Radio Law Broadcast Law**

**24 Freight forwarding business Industry**

**Legal Source or Authority: Freight Forwarding Business Law**

**25 Financial services (in regard of Deposit Insurance)**

**Legal Source or Authority: Deposit Insurance Law (The deposit insurance system only covers financial institutions which have their head offices within the jurisdiction of Japan.)**

**26 The maintenance, establishment or disposal (including privatization) of a public monopoly or state enterprise**

Legal Source or Authority: N/A

#### 27 Subsidies

Legal Source or Authority: N/A(National treatment may not be accorded in the case of subsidies designed for R&D investments.)

#### 28 Land Transaction

Legal Source or Authority: Alien Land Law (Japan may prohibit or restrict the acquisition or lease of land properties in Japan by foreign investors, in principle, Japan will do so only on a reciprocal basis, and to date, such measures have never been executed.)

### Investment promotion and facilitation

The government of Japan continually encourages Foreign Direct Investment (FDI) in Japan and expects from FDI as the driver of 'the activation of regional economy', 'the increase of productivity' and 'the enrichment of quality of life'.

In June 2006, the Japanese government announced to accelerate efforts to achieve its goal of doubling Japan's total FDI stock to the level of 5% of GDP by 2010. Foreign Direct Investment in Japan has been steadily increasing and reached about JPY 18.4 trillion (US\$ 210 billion) as of the end of 2009.

To achieve this goal, Japanese government keeps moving on improving investment environment under "the Program for Acceleration of Foreign Direct Investment in Japan", which is the package of policy measures to enhance FDI in Japan. Especially the Ministry of Economy, Trade and Industry (METI) and Japan External Trade Organization (JETRO) have been supporting foreign firms through arranging business matching with Japanese companies as well as hosting Invest Japan Symposiums overseas to provide information on Japan's business and investment environment.

JETRO is a government related organization to promote mutual trade and investment between Japan and the rest of the world. JETRO established Invest Japan Business Support Center (IBSC), which is one stop center for a foreign investor, and IBSC provides hands-on support for individual companies who would like to set up a presence in Japan including free office space and the consultation by professional advisors such as visa and taxation. For further information, please visit [www.jetro.go.jp/en/invest](http://www.jetro.go.jp/en/invest)

If you are thinking of Japan as the invest destination, the government of Japan would like to extend the maximum support we can in tandem with local governments and JETRO.

### More information about the process of investing in our economy

Japan External Trade Organization (JETRO) : [www.jetro.go.jp](http://www.jetro.go.jp)

### Investment protection

#### Protection of property rights and conditions for expropriation

Japan provides fair and equitable treatment and full and constant protection and security to all foreign investments and investors. Any exceptional cases of expropriation or nationalization of foreign investments or any measure tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") may only be: (a) for a public purpose; (b) in a non-discriminatory manner; (c) upon payment of prompt, adequate and effective compensation; and (d) in accordance with due process of law. Compensation shall be equivalent to the fair market value of the expropriated investments when the recognition of project was notified. Investors affected have a right of access to the courts of justice or the administrative authorities.

Land Expropriation Act provided for the necessary conditions, procedures and compensation to coordinate between promotion of public benefit and the right of private property, and thereby to make a contribution to the proper and reasonable utilization of the country's land. Land Expropriation Act was applied to Japanese and foreigners indiscriminately.

### More information

N/A

## Protection of IPRs

### Industrial Property

Japan protects technology, designs and trademarks under four industrial property laws: the Patent Law, Utility Model Law, Design Law and Trademark Law. Furthermore, Japan protects well-known trademarks which have goodwill under the Unfair Competition Prevention Law.

Japan is a member of major intellectual property agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Convention Establishing the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Trademark Law Treaty, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of Deposit of Microorganisms for the Purposes of Patent Procedure. Foreign right holders are generally given the same protection as Japanese right holders under these laws.

### Copyright

In 1970, The Copyright Law was comprehensively revised. The law has been

amended almost every year since due inter alia to technological progress and the conclusion of various treaties. In addition, Japan became a Party to the following international agreements (with the year of accession in brackets):

- \* Convention Establishing the WIPO (1975);
- \* the Paris Act of the Berne Convention (1975);
- \* the Paris Act of the Universal Copyright Convention (1977);
- \* the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms ["Phonogram Convention"] (1978);
- \* the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations [Rome Convention] (1989);
- \* the TRIPS Agreement (1994);
- \* the WIPO Copyright Treaty (2000); and
- \* the WIPO Performances and Phonograms Treaty (2002).

Thus, foreigners' copyrights and related rights are protected in the same way as those of Japanese in general.

### Layout-designs (topographies) of integrated circuits

The Law Concerning the Semiconductor Integrated Layout was enacted in 1985 to protect the intellectual property rights of circuit layouts of semiconductor integrated circuits. The same protection applies to foreigners as well as Japanese under the law.

### Trade Secrets

Japan permits claims for damages and the right to request an injunction against the act of unfair acquisition, using or disclosing of trade secrets through the Unfair Competition Prevention Law. This Law gives the same protection to foreigners as Japanese.

## More information

Japan Patent Office : <http://www.jpo.go.jp/index.htm>

Agency for Cultural Affairs : <http://www.bunka.go.jp/english/index.html>

## Flow of funds

In Japan, the exchange rate is floated, with the market determining the price.

And if managed, under what circumstances or purposes does your government/central bank intervene?

**N/A**

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

**All payments relating to investments of an investor may be freely transferred into and out of Japan without delay. (In exceptional cases, a transfer may be delayed or prevented through the equitable, non-discriminatory and good faith application of its laws. Japan also reserves the right to delay or prevent transfers in the event of serious balance-of-payments and external financial difficulties or threat thereof, etc.)**

### **Mechanisms to review decisions, and settle disputes**

**In the case of suspending or modifying a prior notification of FDI, the Minister of Finance and the competent Minister(s) in charge of the industry concerned must hear the opinion of the "Council on Customs, Tariff, Foreign Exchange and Other Transactions".**

What, if any, mechanism do you have for foreign investors to settle disputes?

**For settlement of disputes associated with investment in Japan, foreign investors have access to the same courts and tribunals as domestic investors.**

### **ICSID**

**Japan signed the ICSID convention in 1965. In addition, foreign investors have access to a range of alternative dispute settlement mechanisms such as international arbitration, etc.**

**The Government of Japan has not been involved in any cases both ISDS and SIDS relating investment issues in Japan.**

### **More information**

**Japan has established a regular consultation and dialogue mechanism in its EPAs, BITs and other frameworks with some of its counterparts.**

**Especially for EPAs and BITs, Japan has established "Improvement of Business Environment" mechanism with some of its counterparts.**

**With such a mechanism, industry and Government can work together to improve the business environment and discuss investment related matters.**

**Investors collectively can raise issues at stake and show their priorities directly to the policy makers in a relatively easier way so that host economies can identify and address these issues more effectively.**

### **International investment agreements**

With;

**Bangladesh; Brunei Darussalam; Cambodia; Chile; China, People's Republic of; Egypt; Hong Kong, China; Indonesia; Korea, Republic of; Lao, People's Democ. Rep.; Malaysia; Mexico; Mongolia; Pakistan; Peru; Philippines; The Russian Federation; Singapore; Sri Lanka (ex-Ceylan); Switzerland; Thailand; Turkey; Uzbekistan; Viet Nam;**

Please provide a brief description of these IIAs, or your IIAs in general.

**While Japan already takes an open and positive stance to foreign investment, to simply and reduce barriers to cross-border investment, Japan has concluded fifteen BITs and nine EPAs. Japan is also at present under negotiations or preparing for negotiations with more than 10 countries.**



While the detail of these agreements varies, there are several common conditions in recent agreements as follows.

Preamble, Definitions, National Treatment, Most-Favored-Nation Treatment, General Treatment, Access to the Courts of Justice, Prohibition of Performance Requirements, Reservations and Exceptions, Transparency, Public Comments Procedures, Measures against Corruption, Entry, Sojourn and Residence, Expropriation and Compensation, Protection from Strife, Subrogation, Transfers, Settlement of Investment Disputes between the Contracting Parties, Settlement of Investment Disputes between a Contracting Party and an Investor of the Other Contracting Party, General and Security Exceptions, Temporary Safeguard Measures, Prudential Measures, Intellectual Property Rights, Taxation, Joint Committee, Environmental Measures, Denial of Benefits, Final Provisions

## More information

N/A

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Japan recognizes that human resources play a substantial role as a driving force in industrial growth. Securing quality personnel is essential to running a successful business. Facilitating the resident-eligibility clearance for quality foreign managers, researchers and engineers 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 requires improvement in education, medical services and pension systems. In this context, Japan is carrying out various measures such as further improving the system related to entry and sojourn of foreign nationals.

Japan issues Working Visas for foreign nationals for certain statuses of residence. "Investor/Business Manager" and "Intra-company Transferee" are examples of main types of statuses of residence related to inbound investments for Japan.

As a basic rule, a visa must be applied for at the Japanese Embassy or Consulate closest to the applicant's place of residence. Regarding visas other than "Temporary Visitor" visas, it is recommended that the applicant first obtain a Certificate of Eligibility at a local immigration office in Japan. (One may apply by a proxy.) This document is required to speed visa issuance and obviates the need to supply various documents certifying the purpose of visit.

## More information

Ministry of Foreign Affairs: [http://www.mofa.go.jp/j\\_info/visit/visa/index.html](http://www.mofa.go.jp/j_info/visit/visa/index.html)

## Taxation

### Taxation of foreign nationals and foreign firms

#### Company profits

A Japanese resident company is currently subject to tax at a rate of 30 per cent of its taxable income. Taxable income is assessed on the basis of assessable business income less allowable business deductions. A company is resident in Japan for income tax purposes if it is incorporated in Japan.

A non-resident company is taxed on Japanese-source income. A non-resident company is subject to normal Japanese corporation tax under the same rules as a resident company if it is engaged in trade or business in Japan through permanent establishment. A non-resident company not having permanent establishment in Japan is not taxed on business profits.

#### Personal income/profits

A non-resident is taxed comprehensively on Japanese-source income if he is engaged in trade or business in Japan through permanent establishment. On the other hand, a non-resident without permanent establishment in Japan is taxed separately on Japanese-source income.

Some Japanese-source income paid to a non-resident company or a non-resident is subject to withholding tax at a fixed rate (there are some exceptions).

#### Repatriation of profits

Repatriation of profits can generally be undertaken at any time as there are no foreign exchange controls on such repatriation. Dividends paid to foreign shareholders are subject to withholding tax (there are some exceptions).

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Japanese tax system imposes tax on a world-wide basis.

Japan has Double Tax Conventions with 59 economies (August 1st 2010).

#### **More information**

For further information see;

(Ministry of Finance)

<http://www.mof.go.jp/english/index.htm>.

(National Tax Agency)

[http://www.nta.go.jp/foreign\\_language/index.htm](http://www.nta.go.jp/foreign_language/index.htm).

## Introduction

### Our Location Offer

Korea occupies a strategic location with East Asia. The East Asian region is home to two-thirds of the world's population, produces one-fifth of the world's goods, and exhibits some of the world's highest economic growth rates. East Asia is expected to become the world's largest market and production center and the principal growth engine for the world economy. There are more than 61 metropolitan cities with population of at least 1 million within a three-hour flight radius of Seoul. That makes Korea a gateway to all the promising investment destinations in East Asia.

Korea's success story, which saw GNI increase 200-fold in only 40 years, is known as the "Miracle on the Han River." Over the past 30 years, Korea's industrial structure has undergone fundamental changes - we are now emphasizing manufacturing and services instead of agriculture. And our major export items have shifted from agricultural products to semiconductors and automobiles.

The number of foreign-invested companies in Korea has increased exponentially. In 1997 the number was as low as 2,000, but this year it reached 14,000. This shows the prominence foreign-invested companies are gaining within the Korean economy.

Korea possesses some of the world's best industries. These include automobiles, steel, shipbuilding, semiconductors, displays and IT. Not only that, but Korea's construction companies are doing extremely well overseas. Audiences throughout the wider Asian region enthusiastically welcome Korean dramas and pop songs. And Korea's online gaming industry is now the second largest in the world. Clearly, investing in Korea's advanced and rapidly growing industries is a wise choice for the future.

Korea is one of the most active economies in terms of pursuing FTAs with large economic blocs. Korea and the United States have already struck a deal, which is awaiting ratification in the legislatures of both economies. FTA negotiations with the European Union are complete, and we are getting ready to begin negotiations with China and Japan. In this way, we are striving to meet global standards of transparency and openness. Korea's active pursuit of FTAs will help foreign investors based here to do business more effectively in the world market.

Also among Korea's greatest strengths are its excellent pool of human resources and its optimal business environment. Korea's passion for education is well known through the world, and Korea produces more than 100,000 science and engineering graduates every year. You will be able to draw on world-class human capital if you invest in Korea. Also, Korea boasts the highest Internet penetration rate in the world - thanks to this ubiquitous Internet presence, you can get down to business as soon as you arrive.

Creating a business-friendly environment is the highest priority for the Korean government. Deregulation efforts are under way, and we have already succeeded in reducing the corporate tax rate from the 2009 level of 25 percent to 22 percent for 2010. We are hoping to reduce it to only 20 percent in 2011.

The Korean government currently offers tax relief to foreign companies with the potential to make major contributions to the Korean economy, provides them with affordable or free land, assists them with administrative procedures, and provides cash grants and other financial support under certain conditions.

Key factors affecting the attractiveness of an economy to investment are:

- access to export markets
- openness to trade and investment
- a skilled/educated labor force
- the size and purchasing power of the local market
- the quality and accessibility of its infrastructure
- investment incentives

### Introduction to investment regime

## Republic of Korea

Since the financial crisis of 1997, the Korean government has been active in its efforts to attract foreign direct investment to Korea. The enactment of the Foreign Investment Promotion Act in 1998 was an important step that facilitated these efforts. As a result, FDI has jumped over the past decade and now constitutes a major pillar of the Korean economy.

Foreign investment played a pivotal role in overcoming the economic hardships of the late 1990s. Throughout this process, Korea encountered advanced technologies, innovative production methods and improved business strategies, which in turn contributed to its economic growth.

Korea is open to all kinds of foreign investment. In particular, we are hoping to see increased investment in areas such as green growth, which is among our top priorities at the national level, and in sectors such as parts and materials where additional investment is needed to strengthen the economy's industrial structure. We also wish to promote employment and therefore are paying considerable attention to the service sector, which has immense potential to create new jobs.

All Korea's government ministries play a part in promoting FDI, and a team of high-level government officials is working to improve the economy's foreign investment environment and resolve any grievances investors may have. Korea has taken an important step toward a world-class foreign investment environment by establishing the Free Economic Zones, where investors can enjoy the benefits of deregulation and various forms of assistance and support. Furthermore, we are building infrastructure and revising outdated and cumbersome regulations concerning land development. The government is also committed to improving living conditions for foreign nations - for example, by establishing more international schools for the children of foreign business people.

### Investment priority plan/equivalent policy

#### More information

Korea Portal: [www.korea.net](http://www.korea.net)

Ministry of Knowledge Economy: [www.mke.go.kr](http://www.mke.go.kr)

Korea Trade-Investment Promotion Agency: [www.kotra.or.kr](http://www.kotra.or.kr)

Invest KOREA: [www.investkorea.org](http://www.investkorea.org)

Office of the Investment Ombudsman:

<http://www.investkorea.org/InvestKoreaWar/work/ombsman/eng/index.jsp>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

The procedures to establish a foreign investment consist of foreign investment notification, remittance of the investment capital, registration of incorporation & business registration, and FDI company registration. The procedures applied to foreigners are basically the same as for Koreans except for the two additional steps which are foreign investment notification and FDI company registration. However, in the case of registration as a private business, the step of 'registration of incorporation' is not required.

#### 1) Foreign Investment Report

Foreign investors or their agents can notify their investment at Invest KOREA (KOTRA) or Korea Business Centers (KBC) of KOTRA, headquarters and branches of domestic foreign exchange banks, or domestic branches of designated foreign banks.

Since November 1998, the principle of simplified notification policy has been applied to foreign investments. The investment notification types are divided into pre-notification prior to the acquisition of shares, equity, etc. and post-notification following the acquisition of shares or the conclusion of a contract. The details are as follows:

#### (Pre-Notification)

- Foreign investment through acquisition of new shares etc. or subscription and changes in investment details

## Republic of Korea

- Foreign investment through acquisition of existing shares etc. or change in investment details
- Foreign investment through long-term loan or changes in investment details

(Post-Notification)

- Acquisition of shares etc. through mergers etc.
- Acquisition via the issue of new shares such as reserves, revaluation reserves, etc. of foreign-invested companies
- Acquisition through mergers, spin-off, and comprehensive interchange and transfer of shares, etc.
- Investment with profits (dividends) from acquired shares
- Acquisition through purchase/inheritance/testation/donation
- Acquisition through conversion, interchange and acquisition of CBs, EBs and DRs
- Transfer of shares etc.
- Decrease in shares etc.
- Application for registration, change of registration, or registration cancellation of a foreign-invested company

### 2) Investment Fund Remittance

In principle, investment funds must be remitted through a foreign currency bank under the very foreign investor's name. Funds from domestic sources are not recognized as foreign investments. In the process of paying for stock subscription, the bank issues a stock deposit certificate for subscription payment (required for corporation establishment registration) and a foreign exchange purchase certificate (required for registering a foreign-invested company).

### 3) Corporate Establishment Registration & Business Registration

Various required documents shall be taken to the district court and tax office to conclude registration of incorporation and business registration.

### 4) Foreign-Invested Company Registration

For the following cases, a foreign investor (or their agent) or a foreign-invested company must register the foreign-invested company at the entrustment institution within 30 days of the occurrence of the causes as follows.

- Completion of payment for the investment object (new share acquisition)
- Acquisition of existing shares (existing share acquisition)
- Acquisition of shares through mergers etc. (new acquisition of CB conversion, spin-off etc.)
- Completion of a contribution to an NPO (new acquisition through contribution)

**Does this apply to all investment or, are there differential treatment?**

### Conditions of investment

Unless otherwise stipulated by law, a foreigner may carry out foreign investment activities in Korea without restrictions.

Out of a total of 1,145 categories under the Korean Standard Industrial Classification, the Foreign Investment Promotion Act protects 62 categories including public administration, diplomacy, national defense, etc. from foreign investments. Although foreigners may invest in all of the 1,083 investment categories, 28 categories such as the generation and transmission of electricity, broadcasting, telecommunications, publishing of newspapers and air transport remains have restrictions on the foreign investment ratio.

### Investment promotion and facilitation

## Republic of Korea

Invest Korea (IK), established in 2003, is the government organization officially charged with attracting foreign direct investment to Korea. IK provides a comprehensive suite of one-stop services to meet the diverse needs of foreign investors, ranging from investment and incorporation consultations to information on available incentive programs, assistance with the selection of plan sites and license and permit applications, as well as practical support related to living in Korea and post-investment support - all of which are intended to speed up the process of adaptation and settling in.

IK assigns a project manager to each of the foreign companies it assists in order to offer more personalized service throughout the entire process of investing in Korea, from investment consultations to the issuance of business licenses and permits, the launch of operations, and post-investment management. Currently, about 100 such project managers are working with foreign investors at various stages of investment to facilitate the process and ensure that investors are receiving all the benefits for which they are eligible. Project managers receive ongoing training to upgrade their skills, and new project managers are regularly recruited to expand Invest Korea's capacity for service.

The Office of the Investment Ombudsman was established within IK in accordance with the Foreign Investment Promotion Act of 1998 to resolve practical and administrative difficulties encountered by foreign-invested firms in Korea. The Ombudsman, who is appointed by the President of Korea, works in close cooperation with a team of specialists in various related fields and together they suggest appropriate solutions. In some cases, the Ombudsman recommends changes to the government's foreign investment policy or to its procedures, and delivers those recommendations to the Foreign Investment Committee. By working closely with FDI policy makers, the Ombudsman's office has successfully intervened on behalf of many foreign companies in Korea. The Office of the Investment Ombudsman's impressive track record in assisting investors has earned it the Best Post-Investment Service Award by the World Association of Investment Promotion Agencies (WAIPA), presented during the Geneva conference in March 2007.

Invest Korea Plaza is a business incubation facility dedicated exclusively to foreign investors located within a state-of-the-art intelligent building. As this building is just a stone's throw away from KOTRA's headquarters, where IK's offices are located, tenants of IKP have access to its comprehensive services. These include feasibility studies and consulting services by IK's staff of experts, as well as by representatives of Korea's government ministries and affiliated agencies. Meanwhile, the Investor Support Center with IKP provides settling-in support to foreign investors and their families to facilitate the transition.

### More information about the process of investing in our economy

Invest Korea: <http://www.investkorea.org>

Ministry of Knowledge Economy: <http://www.mke.go.kr>

## Investment protection

### Protection of property rights and conditions for expropriation

Article 23 of the Korean constitution guarantees property rights of citizens, and states as follows: (1) The right of property of all citizens shall be guaranteed. The contents and limitations thereof shall be determined by Act; (2) The exercise of property rights shall conform to the public welfare; (3) Expropriation, use or restriction of private property from public necessity and compensation therefor shall be governed by Act: Provided, That in such a case, just compensation shall be paid.

According to this regulation, Korea permits expropriation, use or restriction of property rights from public necessity only when constitutional requirements are fulfilled while ensuring free use, profiting, and disposition of specific property rights of all citizens within the principle of private ownership.

In other words, Korea rigorously protects property rights by stipulating that (1) The contents and limitations shall be determined by Act; (2) Restrictions on existing property rights shall be governed by Act; (3) The Act that restricts property rights shall be based on constitutional principles (Article 10, 11, 34, etc. of the Constitution), and limitations (Article 126, 23 of the Constitution); (4) Infringement of property rights through retroactive legislation shall not be permitted.

### More information

Constitution of the Republic of Korea, accessible from: <http://elaw.klri.re.kr>

Ministry of Justice: <http://www.moj.go.kr>

## Protection of IPRs

Korea's long-term goal is to lead the world in the protection of intellectual property rights. Since 1987, we have made continual efforts to raise public awareness of counterfeit products through various campaigns. In 2009, we expanded our network of regional anti-counterfeiting offices; implemented a system to monitor the online distribution of counterfeit goods; and sought police powers for our IPR enforcement staff.

### (Improving the Laws and Systems)

Despite the government's efforts to strengthen anti-counterfeiting measures, enforcement actions were limited to administrative measures until recently. However, owing to the need for more foreign investment as well as a higher international credit rating, there was a call from international companies for a greater level of IP enforcement. Accordingly, we worked to obtain police authority for our enforcement staff - that is, for the authority to investigate alleged offences, to execute search warrants and to seize evidence. On April 21, 2010, the National Assembly passed the relevant bill, which took effect in August 2010. We will now be able to crack down on counterfeit goods in a prompt, efficient and effective manner.

Trademarks have gained greater significance with the growth of the trademark design market, and Korea has reflected this in its domestic trademark laws. Furthermore, Korea's IPR laws are under revision in an effort to reflect the FTA between Korea and the United States.

### (Prevention of Counterfeiting)

To reinforce our anti-counterfeiting campaign, we increased the number of enforcement officers from four to 13 in 2009. We also established permanent enforcement squads in many local areas. The targeting of areas adjacent to subway stations and areas with large floating populations led to a dramatic increase in the number of warnings issued. Our enforcement officers issued 2,849 warnings in 2009, which represents a 150 percent increase over the previous year. Joint crackdowns with other investigative agencies in 2009 led to the filing of 122 criminal charges - a huge increase of 358 percent over the previous year.

In 2009, we asked the Korea Communications Standards Commission to shut down 130 websites that were being used to sell counterfeit goods. We also launched a 24 hour system to monitor suspicious online transactions. All these efforts reflect our commitment to the eradication of counterfeiting.

### (Educating the Public About IPR Protection)

Public awareness is essential to our efforts to safeguard intellectual property rights. Patent holders must know their rights and what steps to take to redress infringements, and the general public must be persuaded to reject counterfeit goods. The Korean government has produced and distributed educational videos with these purposes in mind, including material that targets teenagers. Recent PR activities have included portal site banners and quizzes and public service announcements in a variety of media. Our ads have been broadcast on trains as well as on network and cable television, and have also been featured as part of multimedia displays in subways and other public places.

Moreover, to create a new culture of IPR protection, we are encouraging bloggers to write about counterfeiting. We also work with consumer groups to urge consumers to buy genuine goods.

## More information

Korean Intellectual Property Office: <http://www.kipo.go.kr/en/>

## Flow of funds

After the Asian financial crisis in 1997, measures to limit exchange rate fluctuations were revoked. Korea's exchange rate is now determined by economic fundamentals, and supply and demand in the market.

## Republic of Korea

Korea's exchange rate policy reflects market principles, but the government undertook a smoothing operation in response to the excessive volatility and market disruptions that arose as a result of the global financial crisis, offshore speculation and other factors.

The Foreign Investment Promotion Act provides foreign direct investment with a higher level of protection than indirect investment - that is, investment in the form of securities and bonds.

With respect to the proceeds that come from the stocks, acquired by a foreign investor, proceeds from the sale of stocks, the principal, interest and service charges paid in accordance with the contract for such a loan as prescribed by the Foreign Investment Promotion Act, and the compensation paid in accordance with a contract for the introduction of technology, their remittance to foreign countries shall be guaranteed in accordance with the contents of the permission or report of the contract for foreign investment or for the introduction of technology, as of the time for the said remittance.

Under the Foreign Exchange Trade Act, the Ministry of Strategy and Finance may temporarily suspend or restrict foreign exchange transactions if such action is deemed unavoidable due to force majeure (war, natural disaster, etc.), substantial and drastic changes to internal and external economic conditions, or other equally grave circumstances. However, under the terms of the Foreign Investment Promotion Act, foreign investment is an exception to this clause in the Foreign Exchange Trade Act.

And if managed, under what circumstances or purposes does your government/central bank intervene?

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

### **Mechanisms to review decisions, and settle disputes**

Korea has had a simplified notification system in place since November 1998. Under the current system, investors are merely required to notify the government of their intentions to invest, rather than to seek approval for the investment as was the case prior to 1998.

Foreign investors may choose to settle disputes either through litigation or through alternative means such as arbitration, mediation or conciliation. As a member of both the 1958 New York Convention and the Washington Convention, and having fully adopted the UNCITRAL Model Law on International Commercial Arbitration and revised its Arbitration Act accordingly, Korea has a highly arbitration-friendly environment. The Korean Commercial Arbitration Board, the only authorized non-profit arbitration institution in Korea, has a long history and extensive experience of resolving international arbitration cases impartially and promptly. The Korean courts favor arbitration and willingly enforce the Board's decisions.

What, if any, mechanism do you have for foreign investors to settle disputes?

### **ICSID**

Korea signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States on April 18, 1966 and Korea's membership entered into force on March 23, 1967.

No disputes involving Korea have even been brought before ICSID.

### **More information**

The Korean Commercial Arbitration Board provides useful information for foreign investors investing in Korea or working with Korean corporations or government agencies. Detailed information on resolving disputes in Korea can be found at [www.kcab.or.kr](http://www.kcab.or.kr).

### **International investment agreements**

With;



## Republic of Korea

Albania; Algeria; Argentina; Austria; Azerbaijan; Bangladesh; Belarus; Bolivia; Brunei Darussalam; Bulgaria; Burkina Faso; Cambodia; China, People's Republic of; Costa Rica; Croatia; Czech Republic; Denmark; Dominica; Egypt; El Salvador; Finland; France; Gabon; Germany; Greece; Guatemala; Guyana; Honduras; Hong Kong, China; Hungary; India; Indonesia; Iran, Islamic Republic of; Israel; Italy; Jamaica; Japan; Jordan; Kazakhstan; Kuwait; Kyrgyzstan; Lao, People's Democ. Rep.; Latvia; Lebanon; Libya; Lithuania; Malaysia; Mauritania; Mauritius; Mexico; Mongolia; Morocco; Netherlands; Nicaragua; Nigeria; Oman; Pakistan; Panama; Paraguay; Peru; Philippines; Poland; Portugal; Qatar; Romania; The Russian Federation; Saudi Arabia; Senegal; Slovakia; South Africa; Spain; Sri Lanka (ex-Ceylon); Sweden; Switzerland; Tajikistan; Thailand; Trinidad & Tobago; Tunisia; Turkey; Ukraine; United Arab Emirates; United Kingdom; United States; Uzbekistan; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

Korea has IIAs with 85 countries, as indicated in the chart above. The specific details of these agreements vary, but their main features can be summarized as follows. Please note that the benefits of the IIAs apply only to those investments which are admitted in accordance with the laws and regulations of both Parties.

- National treatment and most-favoured-nation treatment are guaranteed. Investors of the other Party are ensured treatment no less favourable than the treatment accorded to domestic investors or investors of any third country.
- Expropriation of investments is generally not permitted. It is allowed only if all four conditions below are satisfied:
  1. The expropriation must be carried out to serve the public interest.
  2. It must be carried out according to due process of law.
  3. It must be carried out on a non-discriminatory basis.
  4. It must be accompanied by prompt, adequate and effective compensation.
- Investors are guaranteed the right to transfer any payments related to the investment freely in and out of the country.
- Investor-State Dispute Settlement provisions are included, enabling the investor to request international arbitration in the event that a dispute related to the investment agreement arises between one Party and an investor from the other Party.

### More information

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

A corporate investment (D-8) visa, conferring a maximum stay of five years, is issued to foreign nationals who qualify as essential specialists and who intend to work in foreign-invested companies in any of the following capacities: business administration, management, production or technology.

However, for D-8 applicants applying from abroad, the period of sojourn may be limited to a year at the discretion of the concerned Korean diplomatic office. D-8 visa holders may extend their stay for up to five years at a time provided that they are engaged in normal business activities in Korea. There is no limit to the number of extensions possible.

An eligible foreign national who has entered Korea on a short-term business (C-2) visa and completed the necessary foreign investment procedures set forth in the Foreign Investment Promotion Act (which are explained in detail in response to the third question in this questionnaire) can apply for D-8 status. Extensions of the sojourn period are available for C-2 visa holders as well.

## More information

Korea Immigration Service : [www.immigration.go.kr](http://www.immigration.go.kr)

Invest KOREA : <http://www.investkorea.org>

## Taxation

### Taxation of foreign nationals and foreign firms

#### (Company profits)

A company's taxable income is the remaining balance following the addition or deduction of exclusions stated in the tax law from the increased amount of net assets (in a financial year) calculated by the generally accepted accounting principle.

A 10 percent tax rate is imposed for taxable income of no higher than 200 million won; for income higher than this, the rate is 22 percent. In addition, the company has to pay 10 percent of the corporate tax as local tax.

#### (Personal income/profits)

In accordance with the tax law, either a separate taxation or comprehensive taxation method is applied to the different types of income obtained by an individual in a calendar year. For financial income of up to 40 million won and transfer income, a separate taxation method is applied, whereas the amount of financial income exceeding 40 million, business profits, real estate income, earned income and others are subject to comprehensive taxation.

Tax rates range from 6 to 35 percent according to the type of income, and 10 percent of the tax on personal income is local tax.

#### (Funds for repatriation)

Dividends that a non-resident receives from a Korean corporation or an organization deemed as a corporation are defined as Korean-source income and subject to deduction of withholding tax at a 20 percent rate. When the receiver's country of residence has a tax treaty with Korea, separate taxation and a limited tax rate is applied in accordance with the treaty.

A foreign-invested company's remittance of profits, which has been notified in accordance with the Foreign Investment Promotion Act, is guaranteed under all circumstances such as emergency measures imposed by the Foreign exchange Transaction Act.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

When taxing a Korean based global company, Korea applies an aggregate income tax rate to the total of its global taxable income, but provides credit for the taxes it paid overseas with the domestic tax rate as a ceiling.

Incomes generated overseas - for example, interests, dividends and royalties - are totalled and taxed in the financial year the company acquired it or obtained rights for acquiring it. The income of the company's foreign branch, however, is deemed as part of its domestic income even when the branch did not send it to the Korean headquarters.

#### Taxation of dividends

- To adjust for double taxation on dividends a company receives from an overseas subsidiary in which it invested a share of over 10 percent, Korea deducts a considerable amount of the corporate tax that the company paid overseas.

- When an interest or dividend earned from overseas becomes exempt from taxation, the company will receive foreign tax credit for the exempt amount from that country in accordance with the tax treaty it has in place with Korea.

Currently, tax treaties with 72 countries are in place.

**More information**

Introductory level information can be obtained from Invest Korea at <http://www.investkorea.org>.

More detailed information can be obtained from the Ministry of Strategy and Finance at <http://english.mosf.go.kr>.

## Introduction

### Our Location Offer

Malaysia is a country on the move, from a country dependent on agriculture and primary commodities; Malaysia has today become an export-driven economy spurred on by high technology, knowledge-based and capital-intensive industries.

Malaysia, strategically located in the heart of South East Asia, offers a cost-competitive location for investors intending to set up offshore operations for the manufacture of advanced technological products for regional and international markets.

Supported by a market-oriented economy and pro-business Government policies, Malaysia offers investors a dynamic and vibrant business environment with the ideal prerequisites for growth and profits. Malaysia's key strengths include well-developed infrastructure and productive workforce. A politically stable country with a well-developed legal system, Malaysia also provides attractive incentives for investors.

The conducive business environment in Malaysia has made the country one of the world's top investment destinations for offshore manufacturing operations. Malaysia has to date attracted more than 5,000 foreign companies from more than 40 countries to establish their operations in the country. Many of them have also expanded and diversified their operations in the country, reflecting their confidence in Malaysia as a site for their business ventures. Malaysia has also earned a position among the 10 most competitive countries in the world, according to the 2010 World Competitiveness Yearbook (WCY).

### Areas of Economic Advantage

#### Technology

Technological advancement has become an integral part of Malaysia's growth as an industrialised nation. With the help of technology, Malaysia is steadfast in providing for the modern day requirements of investor companies based in the country. Malaysia is one of the most technologically developed countries amongst industrialising nations in the ASEAN region. The nation's persistent drive to engage modern technologies proves to be a great advantage to manufacturers in Malaysia.

#### Infrastructure

Infrastructure in Malaysia is designed to serve the business community; it is one of the best in Asia. Telecommunications network served by digital and fibre optic technology, five international airports (all with air-cargo facilities), well-maintained highways and seven international seaports make Malaysia an ideal springboard to the Asia-Pacific market.

Industries in Malaysia are predominantly located in over 200 industrial estates and Free Zones developed throughout the country. These zones are categorised as export processing zones, which cater to the requirements of export-oriented industries. There are also specialised parks that have been developed to cater to the needs of specific industries.

#### Human Resources

One of Malaysia's greatest assets is her human resources. The workforce here is young, educated and productive, proving to be one of the best in the region. The Government's emphasis on human resource development ensures the continuous supply of manpower to meet the needs of the expanding manufacturing and services sectors.

#### Key Industries for Foreign Investments

Malaysia offers investors a wide spectrum of investment opportunities in services and manufacturing sectors including in resource-based and non-resource-based industries. This include advanced electronics manufacturing, R&D, biotechnology, photonics, logistics, design, innovation and a highly automated manufacturing sector, to name a few. The Government's objective is also to make Malaysia a hub for other value chain activities, such as R&D, design and development (D&D), procurement, logistics, distribution and marketing, business support services and shared services.

## Introduction to investment regime

## Malaysia

Malaysia maintains a liberal and conducive environment for investment in the manufacturing and selected services sectors. The investment regime is transparent where up to date information on investment regulations, policies and incentives are accessible through published documents and websites.

Through Malaysian Industrial Development Authority (MIDA), the Investment Promotion Agency (IPA), Malaysia continuously attracts foreign investments through its smart strategic planning, vast promotional activities, follow-up and monitoring on existing investment projects, evaluation on current investment regime, project negotiations as well as through international cooperation.

### Investment priority plan/equivalent policy

Following the progress achieved by the First and Second Industrial Master Plans in laying a firm foundation for industrial development and transforming the manufacturing sector to become a major contributor to economic growth, Malaysia launched the Third Industrial Master Plan (IMP3 for 2006-2020) as an important planning instrument in expanding the sources of growth and positioning Malaysia's long-term industrial competitiveness. 12 industries in the manufacturing sector have been targeted for further development and promotion, among others are electrical and electronics, medical devices, textiles and apparels, petrochemicals, pharmaceuticals and wood-based products. 8 services sub-sectors have been targeted such as business and professional services, distributive trade and construction.

The Economic Transform Programme (ETP) is the latest comprehensive effort that will spearhead Malaysia into a high-income nation by 2020. The Programme provides strong focus on a few key growth engines by prioritising investments in the 12 National Key Economic Areas (NKEAs):

- Oil, Gas and Energy
- Palm Oil
- Financial Services
- Tourism
- Business Services
- Improving Electronics and Electrical
- Wholesale and Retail
- Education
- Healthcare
- Communications Content and Infrastructure
- Agriculture; and
- Greater Kuala Lumpur/Klang Valley.

### More information

- 1) Ministry of International Trade and Industry (MITI) - [www.miti.gov.my](http://www.miti.gov.my)
- 2) Malaysian Industrial Development Authority (MIDA) - [www.mida.gov.my](http://www.mida.gov.my)
- 3) Performance Management and Delivery Unit (PEMANDU) - [www.pemandu.gov.my](http://www.pemandu.gov.my)

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

Over the years, Malaysia has progressively liberalised her investment measures in order to maintain its competitive edge in attracting and facilitating foreign direct investments. These include :

- Full equity liberalisation in the manufacturing sector to allow 100% foreign equity ownership irrespective of the level of exports.

## Malaysia

- Full equity liberalisation in 27 services subsectors such as computer and related services; health and social services; tourism services; transport services; sporting and recreational services; business services; rental/leasing services without operators; and supporting and auxiliary transport services.
- Further liberalisation in financial services subsector.
- Commitment to further unilaterally progressive liberalisation of the services sector, as well as through FTAs, and in-line with Bogor Goals.
- Deregulation of the Foreign Investment Committee (FIC) guidelines (further information can be obtained from the Economic Planning Unit (EPU) website, [www.epu.gov.my](http://www.epu.gov.my)).

### Approval of Manufacturing Projects

#### The Industrial Co-ordination Act 1975

Malaysia's Industrial Co-ordination Act 1975 (ICA) was introduced with the aim to maintain an orderly development and growth in the country's manufacturing sector. The ICA requires manufacturing companies with shareholders' funds of RM2.5 million and above or engaging 75 or more full-time paid employees to apply for a manufacturing licence for approval by the Ministry of International Trade and Industry (MITI). Applications for manufacturing licenses are to be submitted to the Malaysian Industrial Development Authority (MIDA), an agency under MITI in charge of the promotion and coordination of industrial development in Malaysia. Further information on the application for manufacturing licenses could be obtained from MIDA website, [www.mida.gov.my](http://www.mida.gov.my).

### Incorporating A Company

#### Methods of Conducting Business in Malaysia

In Malaysia, a business may be conducted:

- By an individual operating as a sole proprietor, or
- By two or more (but not more than 20) persons in partnership, or
- By a locally incorporated company or by a foreign company registered under the provisions of the CA 1965.

All sole proprietorships and partnerships in Malaysia must be registered with the Companies Commission of Malaysia (SSM) under the Registration of Businesses Act 1956. In the case of partnerships, partners are both jointly and severally liable for the debts and obligations of the partnership should its assets be insufficient. Formal partnership deeds may be drawn up governing the rights and obligations of each partner but this is not obligatory.

#### Procedure for Incorporation

To incorporate a company, an application must be made to the SSM at this address:

Menara SSM@Sentral

No 7, Jalan Stesen Sentral 5

Kuala Lumpur Sentral

50623 Kuala Lumpur.

Tel : 03-2299 4400

Fax : 03-2299 4411

Hotline : 03-22995500

Further information on the registration process is available in the following websites:

- 1) Companies Commission of Malaysia - [www.ssm.com.my](http://www.ssm.com.my)
- 2) Malaysian Industrial Development Authority (MIDA) - [www.mida.gov.my](http://www.mida.gov.my)

### Does this apply to all investment or, are there differential treatment?

Yes, it does apply to all types of investment.

## Conditions of investment

### A. Mining

Mining activities are subject to state government policies and regulations as these involve utilisation of state land. The State Mineral Enactments of the various states provides details of approval processes for mining activities.

### B. Oil and Gas

For oil and gas, the Petroleum Nasional Berhad (PETRONAS), a wholly government-owned corporation is responsible for regulating upstream oil and gas activities. Foreign investment in the upstream oil and gas sector takes the form of production sharing contracts. Companies which want to engage in downstream operations in processing or refining of petroleum or manufacturing of petro-chemical products from petroleum must obtain special permission as stated in the Petroleum Development Act 1974.

### C. Environmental Impact Assessment (EIA) for Prescribed Activities

The following activities are among others prescribed under the Environmental Quality (Prescribed Activities) (EIA) Order 1987, which require an EIA before project approval:

i) Agriculture

ii) Airport

iii) Drainage and Irrigation

iv) Land Reclamation

v) Fisheries

vi) Forestry

vii) Housing

viii) Housing

viii) Industries such as chemicals, petrochemicals, non-ferrous, non-metallic tonnes, iron and steel, shipyards; and pulp and paper industry

ix) Infrastructure

x) Ports

xi) Mining

xii) Petroleum

xiii) Power Generation and Transmission

xiv) Quarries

xv) Railways

xvi) Transportation

xvii) Resort and Recreational Development

xviii) Waste Treatment and Disposal

xix) Water Supply

Further information is available in the following websites:

1) Attorney General's Chambers - [www.agc.gov.my](http://www.agc.gov.my)

2) Malaysian Industrial Development Authority (MIDA) - [www.mida.gov.my](http://www.mida.gov.my)

3) Department of Environment - [www.doe.gov.my](http://www.doe.gov.my)

## Investment promotion and facilitation

The Malaysian Industrial Development Authority (MIDA) which was established in 1967 is the government's principal agency for the promotion of the manufacturing and services sectors in Malaysia. With its headquarter in Kuala Lumpur and a global network of 19 overseas offices covering Asia, Europe, United States and Australia, MIDA assists companies which intend to invest in the manufacturing and services sectors, as well as facilitates the implementation of their projects. The wide range of services provided by MIDA include providing information on the opportunities for investments, as well as facilitating companies which are looking for joint venture partners. MIDA also assists companies interested in venturing abroad for business opportunities.

To further enhance MIDA's role in assisting investors, senior representatives from key government agencies are stationed at MIDA's headquarters in Kuala Lumpur to advise investors on government policies and procedures. These representatives include officials from the Department of Labour, Immigration Department, Royal Malaysian Customs, Department of Environment, Tenaga Nasional Berhad and Telekom Malaysia Berhad.

MIDA also evaluates the following applications for projects in the manufacturing and its related services sectors:

- \* Manufacturing licenses
- \* Tax incentives
- \* Expatriate posts
- \* Duty exemptions on raw materials, components, machinery and equipment

Investors are encouraged to discuss their project interests with MIDA officers at MIDA's headquarters in Kuala Lumpur or at its overseas or state offices closest to them. Information on investing can also be obtained from the Investors' Guide section. Investors are also invited to visit MIDA's Business Information Centre (BIC) where published information on investment, trade, financing, productivity pertaining to the manufacturing and services sectors are available.

The BIC is located at:

Ground Floor, Block 4, Plaza Sentral

Jalan Stesen Sentral 5, Kuala Lumpur Sentral

50470 Kuala Lumpur

Tel : 03 2267 3633

Fax: 03 2274 7970

## More information about the process of investing in our economy

Malaysian Industrial Development Authority (MIDA) - [www.mida.gov.my](http://www.mida.gov.my)

## Investment protection

### Protection of property rights and conditions for expropriation

The general principle with regards to expropriation is that expropriation should not be undertaken by either party except under the following circumstances when the measures are:

- (a) taken for a lawful or public purpose and under due process of law;
- (b) non-discriminatory;



## Malaysia

(c) accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

All measures of expropriation relating to land is as defined in the laws and regulations relating to land acquisition.

### More information

#### Protection of IPRs

Intellectual property protection in Malaysia comprises of patents, trademarks, industrial designs, copyright, geographical indications and layout designs of integrated circuits. The Intellectual Property Corporation of Malaysia (MyIPO), established on 3 March 2003, is the lead agency that regulates IP laws and promotes IP awareness.

Malaysia is a member of the World Intellectual Property Organisation (WIPO) and a signatory to the Paris Convention (for the protection of IP consisting of patent, trademark and industrial designs) and Berne Convention (for the protection of copyright works) which govern these IPR.

Malaysia is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organisation (WTO). Malaysia provides adequate protection to both local and foreign investors. Malaysia's intellectual property laws are in conformance with international standards and have been reviewed by the TRIPs Council periodically.

### More information

Intellectual Property Corporation of Malaysia (MyIPO) - [www.myipo.gov.my](http://www.myipo.gov.my)

#### Flow of funds

Malaysia maintains a "managed float" system based on a basket of currencies. This exchange regime has been in place since 21 July 2005.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The Central Bank of Malaysia (Bank Negara Malaysia-BNM) does not actively manage or maintain the exchange rate at any particular level and economic fundamentals and market conditions are the primary determinants of the level of the ringgit exchange rate. In this regard, BNM only intervenes to minimise market volatility and to ensure that the exchange rate does not become fundamentally misaligned.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Malaysia has a liberal foreign exchange administration regime. Non-residents are free to invest in Malaysia in any form and they are free to repatriate capital, profits and income earned from Malaysia (such as interest, dividends, salaries, wages, royalties, commissions, fees and rental) as well as on loan repayments.

### Mechanisms to review decisions, and settle disputes

Malaysia maintains a liberal and conducive environment for investments in the manufacturing and selected services sectors and permits a broad range of investments except for some limited areas which affect national security, public health, morals and where there is excess capacity or shortages of raw material supply.

What, if any, mechanism do you have for foreign investors to settle disputes?

Malaysia is a signatory and ratified the provisions of the Convention on the Settlement of Investment Disputes. The domestic legal system is open and accessible. Should local administrative and judicial facilities fail to satisfy claimants, the dispute is submitted to the International Centre for Settlement of Investment Disputes (ICSID).

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC) - an inter-governmental organisation in cooperation with and with the assistance of the Government of Malaysia. Any dispute, controversy or claim arising out of or relating to a contract, or the breach, termination or invalidity shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

## ICSID

Malaysia became a member of the International Centre for Settlement of Investment Disputes (ICSID) where the ICSID Convention entered into force for Malaysia on 14 October 1966.

## More information

1) The Kuala Lumpur Regional Centre for Arbitration - [www.rcakl.org.my](http://www.rcakl.org.my)

2) Attorney General's Chambers (AGC) - [www.agc.gov.my](http://www.agc.gov.my)

## International investment agreements

With;

Albania; Algeria; Argentina; Austria; Bahrain; Bangladesh; Belgium; Bosnia and Herzegovina; Botswana;  
Burkina Faso; Cambodia; Canada; Chile; China, People's Republic of; Croatia; Cuba; Czech Republic; Denmark;  
Djibouti; Egypt; Ethiopia; Finland; France; Germany; Ghana; Guinea; Hungary; India; Indonesia; Iran, Islamic Republic of; Italy; Jordan; Kazakhstan; Korea, Republic of; Kuwait; Kyrgyzstan; Lao, People's Democ. Rep.; Lebanon;  
Luxembourg; Macedonia, FYR; Malawi; Mongolia; Morocco; Namibia; Netherlands; Norway; Pakistan; Papua New Guinea; Peru; Poland;  
Romania; Saudi Arabia; Senegal; Slovakia; Spain; Sri Lanka (ex-Ceylon); Sudan; Sweden; Switzerland; Syrian Arab Republic; Chinese Taipei; Turkey; Turkmenistan; United Arab Emirates; United Kingdom; United States; Uruguay; Uzbekistan;  
Viet Nam; Yemen; Zimbabwe;

Please provide a brief description of these IIAs, or your IIAs in general.

Malaysia's readiness to conclude Investment Guarantee Agreements (IGAs) is a testimony of the government's desire to increase foreign investor confidence in Malaysia. IGAs will:

- \* Protect against nationalisation and expropriation
- \* Ensure prompt and adequate compensation in the event of nationalisation or expropriation
- \* Provide free transfer of profits, capital and other fees
- \* Ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

Malaysia also has concluded Investment Guarantee Agreements with the following groupings:

- \* Association of South-East Asian Nations (ASEAN)
- \* Organisation of Islamic Countries (OIC)

## More information

- 1) Ministry of Finance - [www.treasury.gov.my](http://www.treasury.gov.my)
- 2) Central Bank of Malaysia - [www.bnm.gov.my](http://www.bnm.gov.my)
- 3) Malaysian Industrial Development Authority (MIDA) - [www.mida.gov.my](http://www.mida.gov.my)

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

#### General

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These passports or travel documents must be valid for at least six months beyond the date of entry into Malaysia.

Among APEC economies, only nationals from The People's Republic of China, Chinese Taipei and the holders of Certificates of Identity are required to apply for a visa prior to their arrival in Malaysia.

There are two stages in the employment of expatriates:

- i. Application for an expatriate post from relevant authorised bodies determined by the nature of the business.
- ii. Upon approval of the expatriate posts by the approving bodies, the company must submit an application to the Immigration Department for endorsement of the employment pass.

#### Work Permit Processing and Requirements (Managerial, Supervisor, Unskilled)

An employment pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years or earn a monthly income of not less than RM3,000. Other types of passes for the purpose of business visits are as follows:

##### i) Visit Pass (Professional)

This is issued to foreigners who wish to enter the country for the purpose of engaging on short-term contract with any agency.

##### ii) Visit Pass (Temporary Employment)

This is issued to persons who enter the country to take up employment for less than 24 months or earn a monthly income of less than RM3,000.

##### iii) Dependent's Pass

This is issued to wives and children of foreigners who have been issued with an employment pass. This pass may be applied for together with the application for an employment pass or after the employment pass is approved. Wives and children of foreigners who enter the country on a visit pass (temporary employment or professional) will be issued a visit pass (social)

## More information

- i) Ministry of Human Resource - [www.mohr.gov.my](http://www.mohr.gov.my)
- ii) Malaysian Industrial Development Authority (MIDA) - [www.mida.gov.my](http://www.mida.gov.my)
- iii) Immigration Department - [www.imi.gov.my](http://www.imi.gov.my)

## Taxation

### Taxation of foreign nationals and foreign firms

#### Company Tax

## Malaysia

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is exempted from tax, except in the case of the banking and insurance business, and sea and air transport undertakings. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia.

Effective from the year of assessment 2009, the corporate tax rate is at 25%. This rate is also applicable to the following entities:

- i. a trust body
- ii. an executor of an estate of an individual who was domiciled outside Malaysia at the time of his death; and
- iii. a receiver appointed by the court

### Personal Income Tax

All individuals are liable to tax on income accrued in and derived from Malaysia or received in Malaysia from outside Malaysia. Income remitted to Malaysia by a resident individual is exempted from tax. A non-resident individual will be taxed only on income earned in Malaysia.

The rate of tax depends on the individual's resident status, which is determined by the duration of his stay in the country as stipulated under Section 7 of the Income Tax Act 1967. Generally, an individual who is in Malaysia for at least 182 days in a calendar year is regarded as a tax resident.

A resident individual is taxed on his chargeable income after deducting personal reliefs at a graduated rate from 0% to 26% with effect from the year of assessment 2010.

Effective from year of assessment 2010, a non-resident individual is liable to tax at the rate of 26% without any personal relief. However, he can claim rebates in respect of fees paid to the government for the issuance of an employment work permit.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

As at 20 January 2010, Malaysia has signed the Double Taxation Agreements (DTAs) with 71 countries to provide investors with certainty and guarantees in the area of taxation.

### More information

- 1) Inland Revenue Board - [www.hasil.org.my](http://www.hasil.org.my)
- 2) Royal Malaysian Customs - [www.customs.gov.my](http://www.customs.gov.my)

## Introduction

### Our Location Offer

Mexico is an attractive and convenient destination for making investments. Its public finances are sound and sustainable, as is its banking and financial system. Mexico is a competitive destination for investment due to the certainty, security and backing of its institutions.

The business climate is one of the region's most prosperous, considering the advantages afforded by its skilled population, its strategic location, the existence of specialized clusters in certain sectors, and the development of the services and infrastructure necessary to participate actively in the international market.

In Mexico, unprecedented progress in infrastructure is being created. In the last few years, the modernization of communication routes has been carried out by channeling both public and private resources, with a view to consolidating a first-rate logistical platform.

Mexico is a viable option for investment due to its increasingly competitive regulatory and legal framework. Substantive constitutional reforms have been made in energy, taxes and the pensions system. This favorable and dynamic setting makes it easier for investment to be much more productive.

During the last decade, Mexico has fostered public policies that have consolidated its macroeconomic stability. This economic stability has attracted Foreign Direct Investment of more than 30 thousand companies that currently are doing business in the country, making Mexico a good place for doing profitable business.

Some of the more dynamic sectors in Mexico that have received important Foreign Direct Investment projects are: aerospace, automotive assembly, auto parts, electronics, software development, biotechnology and renewable energy.

Because of its business relationship with the world, Mexico benefits from having an extensive network of Free Trade Agreements, which assure preferential access to the markets of North America, the European Union, the countries of the Free Trade European Association, Israel, and other countries from Latin America as well as Japan. This preferential access together with its young and qualified labor force makes Mexico an attractive destination for investment. Mexico is member of the WTO (World Trade Organization), APEC, ALADI, OECD, among others.

### Introduction to investment regime

Since its enactment in 1993, Mexico's Foreign Investment Law (FIL) established as a general rule that all activities not specifically mentioned in the law are completely deregulated in terms of allowing up to 100% of foreign investment in most economic sectors (Article 4).

The FIL was amended in 1995, 1996, 1998, 1999, 2001, 2006 and 2008 in order to liberalize the investment regime and provide the foreign investor with greater certainty and transparency.

However, by constitutional and public policies, Mexico maintains some restrictions and regulations for FDI in various sectors and activities.

These restrictions can be classified in: i) activities reserved to the State, ii) reserved to Mexican nationals, iii) activities under specific regulations, and iv) activities subject to the approval of the National Foreign Investment Commission. (For more detail see Conditions of investment section).

On the other hand, the strategy for accelerate the dynamism of the Mexican economy, through higher productivity growth, investment, and people's capabilities is based on the following aspects:

1. Strengthening the broad determinants of competitiveness, understood as those elements that establish the productive conditions of all sectors of the economy.
2. Promoting the adequate conditions to accelerate growth in each sector of the economy, particularly in those sectors that have a high potential for doing so, that are important job creators, that will reduce regional disparity and whose development has been limited due to lack of investment or to legal and regulatory restrictions.

Among the broad determinants of competitiveness the following stand out: the Rule of Law and security; macroeconomic stability, the level of competition and the quality of norms and regulatory practices; people's capabilities; appropriate conditions for research and the adoption of new technologies; the quality of infrastructure, and the supply of goods provided by the public sector, in particular the ones related to energy.

The last two elements are also sectors of the economy; therefore, they are also part of the sector-specific strategy of growth given their high potential of development.

### Investment priority plan/equivalent policy

#### \* National Development Plan 2007-2012

The National Development Plan 2007-2012, establishes a set of objectives and strategies for a more competitive economy, with higher growth and employment generation.

Public policies will be conducive to reduce the costs of production within national territory, promote investment in infrastructure and reduce investment risk.

Strategies to achieve greater profitability and reduce the risk of investment are based on the following guidelines: strengthen the rule of law and public safety, ensuring legal certainty to persons and property; promote competition; simplify business regulation; promote investment in infrastructure; continue with trade liberalization and reduce the cost and procedures of foreign trade operations.

#### \* Strategic sectors

The strategic sectors for ProMéxico (Investment Promotion Agency) are the following:

1. **AEROSPACE:** 140 companies established in Mexico, manufacturing, giving maintenance & repair and specialized engineering & design in 13 states hiring more than 20,000 high skilled workers and engineers. 2010 First Mexican built airplane.
2. **AUTOMOTIVE ASSEMBLY:** 8 of the top manufacturers from the US, Asia and Europe have plants in Mexico. Today we are the 10th producer of cars in the world.
3. **AUTO PARTS:** 22 states have auto parts manufacturing plants.
4. **ELECTRONICS:** clusters in 14 states ranging from Audio & Video, Home Appliances, Computers, Telecoms and, Photo & Impression.
5. **SOFTWARE DEVELOPMENT:** today we are the largest software producer of Latin America, having an annual growth of more than 10% over the past years.
6. **BIOTECHNOLOGY:** There are currently 71 biotech enterprises in our country that are working in such diverse endeavors such as corn hybrids development, specific cancers treatment r & d and active proteic elements gathering, among several others.
7. **RENEWABLE ENERGY:** we have started a specialized cluster in Baja California for solar panel manufacturing with the presence of companies such as KYOCERA, SANYO and USO.
8. **REAL ESTATE AND RETIREMENT HOMES:** There are currently more than 1 million Americans living in Mexico. Between 500,000 and 1,500,000 homes in our country are owned by Americans. This also brings opportunities for investment in infrastructure, medical, tourism services among others.

#### \* National Infrastructure Program 2007-2012

The National Infrastructure Program 2007-2012 establishes the objectives, strategies, goals and actions designed to increase the coverage, quality and competitiveness of Mexico's infrastructure.

The Program is based on recognition that infrastructure is an essential factor for raising competitiveness, and seeks to consolidate Mexico as one of the world's principal logistical platforms taking advantage from the country's geographic position and network of international treaties.

Mexico's overall goal for 2030 is to be ranked at the top 20 percent of the World Economic Forum's Infrastructure Competitiveness Index.

In order to achieve this goal, the following actions are established: substantially increase public and private resources allocated for the development of infrastructure; provide efficient follow-up at the highest level for the development of strategic projects and identify and control in timely manner those factors that might jeopardize their execution; improve the planning, preparation, administration and execution of the projects, incorporating best practices and standards; strength the legal framework and actively promote public-private partnerships for the development of infrastructure; eliminate unnecessary regulations and inhibitors to investment, including, among other aspects, the revision and simplification of contracting procedures; and improve coordination among federal, state and municipal authorities as well as with the private sector for the development of infrastructure.

### More information

Promotion Agency: <http://www.promexico.gob.mx/>

Ministry of Economy: <http://www.economia.gob.mx>

Ministry of Treasury: <http://www.shcp.gob.mx>

National Statistics: <http://www.inegi.gob.mx>

Federal Commission on Regulatory Improvement: <http://www.cofemer.gob.mx/>

Central Bank: <http://www.banxico.gob.mx/sitioingles/index.html>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

Foreign Investment can participate in Mexico through the following schemes:

1. As a person of foreign nationality doing business in the country.
2. As a foreign company through the establishment of a branch or agency in Mexico.
3. As individual or direct or indirect shareholder in the share capital of Mexican companies already established or to be established in Mexico.

Specifically for the case of numeral two, foreign companies, looking to settle in the country must obtain authorization from the Ministry of Economy and will require demonstrating the following:

- \* That they are duly organized in accordance with the laws of their own country;
- \* That the corporate charter and other organizational documents are not contrary to Mexican public order established in law;
- \* They shall establish themselves in the Republic or maintain an office or branch therein,
- \* They shall maintain a representative in the place in Mexico in which they will operate, in charge of their obligations.

Any application which meets the requirements set forth above shall be granted within fifteen business days following the date of the application.

#### I. National Foreign Investment Commission

The National Foreign Investment Commission is the Federal and supreme authority of foreign investment, which is composed of ten Ministries of State and its faculties are:

- a. To issue political guidelines on foreign investment matters and to design mechanisms to promote foreign investment in Mexico;
- b. To resolve, through the Ministry, on the viability and, as the case may be, on the terms and conditions for the participation of foreign investment in activities or acquisitions with specific regulation, pursuant to Articles 8 and 9 of the FIL;
- c. To be the mandatory consulting entity on foreign investment matters for governmental agencies and entities of the Federal Public Administration;

## Mexico

d. To establish the criteria for the application of legal and regulatory provisions on foreign investment, through the issuance of general resolutions; and

e. All others entrusted to it pursuant to the Law.

If foreign investors have any doubt about the rules on foreign investment, they can apply to the National Foreign Investment Commission for consultation or confirmation of standards on any topic related to the conditions of participation of foreign investment.

Also, in case that the Ministry of Economy or the National Foreign Investment Commission, deny any of the authorizations required by the foreign investor, he may exercise his right of review in the first instance to a higher administrative authority, or trigger defense mechanisms in order to request judicial assistance to federal and local courts.

### II. National Foreign Investment Registry

The following must register in the National Foreign Investment Registry:

1. Mexican companies that hold, even through a trust, in foreign investment, neutral investment or Mexicans who have or acquire another nationality and who reside outside the Mexican territory.
2. Foreign individuals and entities or Mexicans who have or acquire another nationality and who reside outside the Mexican territory, and who usually perform business activities in Mexico.
3. Share or membership interest trusts, real estate and neutral investment trusts by virtue of which entitlements are created in favor of the foreign investment or of Mexicans who have or acquire another nationality and who reside outside the Mexican territory.

Registration shall take place within 40 business days as of the date of incorporation of the company or the foreign investment participation; of formalization or protocolization of the respective documents of the foreign society; or of incorporation of the respective trust or granting of trustee's rights in favor of the foreign investment. Persons obliged to obtain a registration, shall renew it annually; for such procedure it will be enough to submit an economic-financial questionnaire.

An authorization of the Ministry of Foreign Affairs is required for the incorporation of companies. To that effect, the Ministry of Foreign Affairs, shall grant authorization for the incorporation of companies solely when the intended corporate name or denomination has not been reserved by another company.

Likewise, if the requested corporate name or denomination includes words or terms specifically regulated by other laws, the Ministry of foreign Affairs shall condition approvals to the obtainment of other authorization required by such legal provisions.

Once an authorization has been obtained for the incorporation of a company, the applicant shall within ninety days after the Ministry of Foreign Affairs has granted such authorization, appear before a public notary to award the formalization of the incorporation of the company. Should the aforementioned term lapse without the issuance of the relevant public instrument, the authorization shall become void. In this case, the re-issuance of the voided authorization shall be applied for.

Likewise, within the six months following the issuance of the authorization for incorporation of a company, the interested party must provide notice to the Ministry of Foreign Affairs. Such notice shall refer to the insertion within the relevant instrument of the foreigners exclusion clause or, if applicable, the agreement provided for in Article 14 of the FIL (whereby the present or future foreign equity holders obligate themselves, before the Ministry of Foreign Affairs, to be considered as nationals with respect to the shares, equity participations or rights acquired from said companies; the assets, rights, concessions, participations or interests that said companies may hold, and the rights and obligations derived from the contracts to which said companies may be a party). The mentioned agreement or pact must include the waiver of invoking protection from their governments under penalty of otherwise losing the rights and assets they acquired, in favor of the Nation

### III. Property and Commerce Public Registry

The PCPR (Property and Commerce Public Registry) is a public institution that guarantees certainty, juridical security and protection to the property, its transmission, obligations and the effects of the inscribed rights, as well as the juridical acts carried out by individuals and legal entities.

A simple or certified copy of the registry of the property to be alienated or a certificate of the obligations of the real estate located in the Mexican republic, can be obtained in the PCPR; the registry offers the service to know who is the proprietor of the real estate to be purchased or for sale, and to know if a society or association (legal entity) is duly recorded in the Public Registry.



## Mexico

The PCPR is an institution subject to each State of the Mexican Republic responsible of providing security and publicity to certain juridical acts implicating real estate or business corporations.

### IV. Public Notary

The Public Notary is a legal professional, who undertakes public tasks within the framework of non-contentious activities initiated by the State, and he/she performs numerous social tasks.

The Public Notary shall intervene in:

- Real estate purchases and sales.
- Incorporation of companies.
- Granting of powers of attorney.
- Purchase and shares of companies.
- Trusts in beaches and borders.
- Wills and inheritances.
- Financial and credit operations.
- Civil and commercial arbitration, etc

**Does this apply to all investment or, are there differential treatment?**

Answer in the next section.

### Conditions of investment

By constitutional and public policies, Mexico maintains some restrictions and regulations for FDI in various sectors and activities.

These restrictions can be classified in:

**A. Activities reserved to the State.** In this classification are the strategic areas in which only the State can participate, neither the Mexican private investment nor foreign investment can participate in these activities, such activities are:

Petroleum and other hydrocarbons; Basic petrochemicals; Electricity; Generation of nuclear energy; Radioactive minerals; Telegraph; Radiotelegraphy; Postal service; Bank note issuing; Minting of coins; Control, supervision and surveillance of ports, airports and heliports; and Others as expressly provided by applicable legal provisions.

**B. Activities reserved to Mexican nationals.** The following economic activities are reserved exclusively to Mexicans or to Mexican companies with foreigners exclusion clause:

Domestic land transportation for passengers, tourism and freight, not including messenger or courier services; Gasoline retail sales and distribution of liquefied petroleum gas; Radio broadcasting services and other radio and television services, other than cable television; Development banking institutions, under the terms of the law governing the matter; and Rendering of professional and technical services set forth expressly by applicable legal provisions.

**C. Activities under specific regulations.** The third classification refers to activities where foreign investment can participate; however, the percentage of such participation is limited in certain activities. The limitations on foreign participation ranging from 10% to 49% in the share capital of companies engaged in certain activities, and this percentage may not be directly or indirectly exceeded. These activities are:

Up to 10% in:

Cooperative companies for production;

Up to 25% in:

a) Domestic air transportation;

b) Air taxi transportation; and

c) Specialized air transportation;

Up to 49% in:

a) Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

b) Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

c) Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

d) Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

e) Insurance companies.

f) Bonding companies.

g) Currency exchange houses;

h) Bonded warehouses;

i) Repealed by an Order published in the Official Gazette of the Federation on July 18, 2006;

j) Repealed by an Order published in the Official Gazette of the Federation on July 18, 2006;

k) Repealed by an Order published in the Official Gazette of the Federation on July 18, 2006;

l) Companies to which article 12 Bis of the Securities Market Law refers;

m) Repealed by an Order published in the Official Gazette of the Federation on June 4, 2001;

n) Repealed by an Order published in the Official Gazette of the Federation on June 4, 2001;

o) Retirement funds management companies;

p) Manufacture and commercialization of explosives, firearms, cartridges, ammunitions and fireworks, not including acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities;

q) Printing and publication of newspapers for circulation solely throughout Mexico;

r) Series "T" shares in companies owning agricultural, ranching, and forestry lands;

s) Fresh water, coastal, and exclusive economic zone fishing not including fisheries;

t) Integral port administration;

u) Port pilot services for inland navigation under the terms of the law governing the matter;

v) Shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation;

w) Supply of fuel and lubricants for ships, airplanes, and railway equipment; and

x) Telecommunications Concessionaire companies as provided by articles 11 and 12 of the Federal Telecommunications Law.

D. Activities subject to the approval of the National Foreign Investment Commission. A favorable resolution by the Commission is required for foreign investment to participate in a percentage higher than 49% in the following economic activities:

i) Port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging; ii) Shipping companies engaged in the exploitation of ships solely for high-seas traffic; iii) Concessionaire or permissionaire companies of air fields for public service; iv) Private education services of pre-school, elementary, middle school, high school, college or any combination; v) Legal services; vi) Credit information companies; vii) Securities rating institutions; viii) Insurance agents; ix) Cellular telephony; x) Construction of pipelines for the transportation of petroleum and products derived therefrom; xi) Drilling of petroleum and gas wells; and, xii) Construction, operation and exploitation of general railways, and public services of railway transportation.

## Mexico

Also, when foreign investment plans to participate in more than 49% in the capital of companies engaged or will engage in economic activities that are subject to obtaining a favorable resolution of the National Foreign Investment Commission must solicit and demonstrate that the project investment meets the following criteria:

1. Impact upon employment and training of workers;
2. Technological contribution;
3. Compliance with environmental provisions included in the ecological regulations governing the matter; and
4. In general, its contribution to increase the competitiveness of the country's productive system.

On resolving upon the legal feasibility of a request, the Commission may only impose requirements which do not distort international trade.

Commission must resolve upon the requests submitted to its consideration within a period which shall not exceed forty five business days from the date of the respective request. If the Commission fails to resolve within the period indicated, the request shall be considered approved as submitted.

The foreign individuals and entities intending to acquire real estate outside of the restricted zone or to obtain concessions for the exploration and development of mines and waters anywhere within Mexico, shall previously submit before the Ministry of Foreign Affairs, a statement agreeing to the terms of Section I of article 27 of the Political Constitution of the United Mexican States and obtain the corresponding permit from that Ministry.

### Investment promotion and facilitation

ProMéxico is the Mexican Government institution in charge of strengthening Mexico's participation in the international economy. With this objective in mind, the institution supports the export activity of companies established in the country and coordinates actions to attract foreign direct investment to national territory.

ProMéxico was established on June 13, 2007, through Presidential Decree, as a sectorial public trust under the Ministry of Economy, and operates through a network of 25 offices throughout Mexico and more than 27 offices abroad.

The mandate given to ProMéxico is to plan, coordinate and execute strategies to attract foreign direct investment, promote Mexican exports of goods and services and encourage the internationalization of Mexican companies in order to contribute to the economic and social development of Mexico.

The basic guide to invest in Mexico provides orientation on various necessary aspects for starting businesses in Mexico, basic information on laws and regulations for foreign investment in the country and the main formalities that have to be carried out to start a business.

ProMéxico publishes information on specific investment opportunities and projects in Mexico, suppliers and trends of the main productive sectors in the Mexican economy; as well as data on Mexico's economic regions and states.

The executives by project service offers support in the development of investment projects through a specialized executive who will guide the company throughout its investment process in Mexico.

The ProMéxico project executive offers specialized advice and information to potential investors for the development of their project, such as:

- \* Availability and cost of specialized labor
- \* Availability and cost of basic services
- \* Linkage with local suppliers
- \* Options for placing their investment
- \* Information on industrial parks
- \* Contact with diverse professional services
- \* Linkage with government officials at various levels

- \* Relations with the promotion entities of state and municipal governments
- \* Trade agreements between Mexico and other countries
- \* Statistical and market information

#### Other Activities and Services offered by ProMéxico:

- \* Coordinates relations between investors and government agencies, educational establishments, associations and other public and private organizations, to facilitate the success of the investment project.
- \* Organizes business agendas in our country for investors. Through this service, it arranges meetings between the latter and the Mexican companies in which they are interested or with the representatives of promotion entities of the state of the Republic, as well as with the Government.
- \* It makes available facilities and services at its head office for investors, with the aim of providing support and basic logistical backing.
- \* It is the personal agent of investors in Mexico. Provides ongoing assistance to already established companies that seek to expand their operations.
- \* Organizes stands in international fairs. Those who participate in them are mainly government entities and companies interested in seeking partners for new investments in Mexico.
- \* Supports in the organization of business agendas abroad for promotion entities of the states, so that the latter present to investors the different opportunities that exist for investment and promotion of their regions.
- \* Holds events abroad at the request of government entities in order to promote and disseminate the opportunities they offer to foreign investors.

#### More information about the process of investing in our economy

Foreign Investment Law (Spanish): <http://www.diputados.gob.mx/LeyesBiblio/pdf/44.pdf>

Legal framework: <http://www.diputados.gob.mx/LeyesBiblio/index.htm>

Legislative branch: <http://www.diputados.gob.mx>

National Association of Public Notaries:

<http://www.notariadomexicano.org.mx/>

Colleges of Notaries:

<http://www.colegiodenotarios.org.mx/>

PCPR: <http://www.consejeria.df.gob.mx/home.php?direccion=NQ>

Information System of the National Foreign Investment Registry:

<http://www.si-rnie.economia.gob.mx/home.htm>

<http://www.economia.gob.mx>

Regulations to the Foreign Investment Law and to the National Foreign Investment Registry (Spanish):

<http://www.diputados.gob.mx/LeyesBiblio/regla.htm>

ProMéxico: <http://www.promexico.gob.mx>

## Investment protection

Protection of property rights and conditions for expropriation

## Mexico

In accordance with article 27 of the Political Constitution of the United Mexican States, the Nation has an original right of property over the lands and waters within the boundaries of the national territory. The same Article provides that the Nation has and will have the right to transfer its property's domain to private individuals in order to create private property rights.

During the agricultural distribution (which ended in 1992 with the amendment to the article 27 of the Constitution), social property was constituted, comprised of the ejidal or common lands that were granted or recognized.

Therefore, three types of property are identified:

- a) The goods that are property of the Nation (defined specifically in Article 3 of the General Law of National Goods);
- b) The goods granted in private property to individuals, through a legally issued title, and
- c) The goods granted in ejidal and common land, which constitute the social property.

Foreign investment can participate in these types of property, subject to limitations as provided for in the law.

\* Limitations on private property:

Only those persons recognized as Mexicans by birth or by naturalization as well as Mexican corporations shall have a right to acquire legal domain over lands, waters and their accessories. The State can grant the same right to foreigners as long as they agree with the Ministry of Foreign Affairs to be considered as Mexican nationals with respect to such real state and not to invoke the protection of their governments with respect to such real estate. Within a 100 kilometers strip along Mexico's borders and of 50 kilometers inland from its coasts, foreigners may not acquire property rights (dominio directo) over lands and waters.

The small rural property shall be considered as such when it does not exceed per individual a hundred hectares of irrigation or of first class humidity or their equivalent in any other kind of soil.

\* Limitations on social property:

Companies shall not be allowed to own agricultural, stockbreeding or forestry lands which exceed more than twenty five times the limits that have been set down for small individual property. Foreign investment may participate up to 49% in companies owning agricultural, stockbreeding and forestry lands.

\* Limitations on national property concessions:

Concessions on goods that are property of the Nation can be granted to private individuals (including foreign nationals) and Mexican corporations in accordance with the limitations and conditions established by the law.

\* Mechanisms for protection:

The laws of the States and the Federal Penal Code establish crimes that are sanctionable for those who attempt against property rights.

Expropriations of private property.

Article 27 of the Mexican Constitution provides that expropriations of private property shall only be for a public purpose (which modalities are expressly listed in the law) and through payment of compensation.

Federal and local authorities have the right to expropriate private property in accordance with legal provisions. This procedure is currently characterized by prior notification and respect for the guarantee of audience and legality provided for in the Constitution.

Social property can only be expropriated by the Agrarian Reform Secretariat, also through payment of compensation and for a public purpose.

### More information

Political Constitution of the United Mexican States (article 27);

Agrarian Law;

General Law of National Goods;  
 Expropriation Law;  
 Expropriation laws of the States;  
 Penal codes of the States;  
 Regulations to the Agrarian Law concerning the zoning of rural property,  
 Accessible from: <http://www.diputados.gob.mx/LeyesBiblio/>  
 Agrarian Reform Secretariat: <http://www.sra.gob.mx>

## Protection of IPRs

### Intellectual Property System

#### I. Responsible Authorities

In Mexico, there are several institutions that regulate different aspects of Intellectual Property rights, among others we can mention:

The Mexican Institute of Industrial Property (IMPI) is a decentralized body of the Ministry of Economy and is responsible, inter alia, for granting protection through patents, registration of utility models and industrial designs, registration of trademarks and trade notices and publication of trade names: it also authorizes the use of appellations of origin and regulates industrial secrets; prevents and combats acts that infringe intellectual property rights; and applies the corresponding sanctions.

The National Copyright Institute INDAUTOR is a desconcentrated body of the Ministry of Public Education and is the administrative entity mainly responsible for promoting and protecting copyright and related rights, and for keeping the Public Copyright Register.

The Attorney General (PGR), is primarily responsible for investigating and prosecuting federal crimes, who chairs the police and experts in criminal law.

SAGARPA, through the National Seed Inspection and Certification Service (SNICS) is responsible, inter alia, for the registration of new plant varieties.

COFEPRIS is a desconcentrated body of the Ministry of Health and is the administrative entity mainly responsible for the sanitary control of products and services.

#### II. International Legal Framework :

Mexico is a founding member of the World Trade Organization (WTO) and has fully applied the "Agreement on Trade-related Aspects of Intellectual Property Rights" (TRIPS Agreement), since January 2000.

Mexico has undertaken commitments on intellectual property rights under the eleven free-trade Agreements it has signed, (except with Bolivia). The overall objectives on intellectual property rights in these agreements are similar and expand the provisions contained on TRIPS Agreement.

On May 27 1997, Mexico and the European Communities signed an Agreement on the mutual recognition and protection of designations for spirit drinks. The Agreement includes the obligation to recognize as originating in the Parties the designations used to protect the spirits indicated in two lists, one Mexican and the other European; as well as the commitment to prevent the marketing of spirits covered by the protected designations if they do not originate in the parties.

Mexico is also member of the World Intellectual Property Organization (WIPO) and has signed most of the International Agreements on Intellectual property rights.

#### III. National Legal Framework :

Mexico's legislation covers all the major aspects mentioned in the TRIPS Agreement. In some of these, including industrial designs, trademarks and copyright, Mexico grants rights that exceed the minimum terms laid down in the Agreement.

\* Copyright and related rights

## Mexico

Original works susceptible of disclosure or reproduction by any medium related, among other spheres of activity, to literature, music, drama, dance, photography, architecture, audiovisual arts, radio and television, computer programs and compilations, including databases. Both moral and economic rights are recognized.

Related rights include moral rights as well as the rights of performers and of broadcasting organizations. No registration is necessary for protection.

Economic rights are protected for the life of the author and one hundred years after his death. Unless otherwise specified, economic rights are transferred for five years and only for over fifteen years in exceptional circumstances. Moral rights have no limitation period.

Some exceptions: It is not considered that there has been infringement if the works are not used to obtain direct financial benefit or are used for educational or research purposes. No authorization is required, inter alia, for the reproduction of articles on current affairs, unless the owner of the rights has expressly prohibited it; partial reproduction for research purposes; reproduction by individuals or teaching or research institutes of a single copy of a work without gainful intent. (Federal Copyright Law)

### \* Patents

Known as any invention that is new and involves an inventive step and is susceptible of industrial application. Protection granted for twenty years from the date of filing and not renewable. (Mexican Industrial Property Law, Title II, Chapter II, Articles 15 - 26).

Technology areas excluded from the concession of patents: biological processes for the reproduction and propagation of plants and animals; biological and genetic material present in nature; breeds of animals, the human body and its living parts; new plant varieties; computer programs; schemes for presenting information.

Important: a compulsory license may be granted if a patent is not worked within three years after it has been granted, or four years after filling of the application, unless it has been worked, including by means of imports. In addition, Public interest licenses may be granted for use of a patent in cases of emergency or national security

### Utility models

Accordingly to the Mexican Industrial Property Law are subject to registration under the figure of Utility models: objects, utensils, appliances or tools which offer a different function with respect to their component parts. Protection granted for ten years from the date of filing are not renewable. (Mexican Industrial Property Law, Title II, Chapter III, Articles 27 - 30).

### \* Industrial designs

Accordingly to the Mexican Industrial Property Law are subject to registration under the figure of Industrial designs: any new design susceptible of industrial application, including those industrial designs for ornamentation purposes. Protection granted for 15 years from the date of filing, not renewable. (Mexican Industrial Property Law, Title II, Chapter IV, Articles 31 - 37).

### \* Layout designs of integrated circuits

The layout designs and circuits are protected for ten years from the date of filing, not renewable. Important to notice that layout designs, which have been commercially used for over two years are not subject of registration. (Mexican Industrial Property Law, Title V Bis, Articles 178 Bis - 178 Bis9).

### \* Undisclosed information

Information, whose industrial or commercial application would confer a comparative advantage, deemed to be confidential and protected as such in documents and other media. Protection conceded, as long as it remains confidential. (Mexican Industrial Property Law, Title III, Articles 82 - 86 Bis1).

### \* Trademarks

Accordingly to the Mexican Industrial Property Law are subject to registration under the figure of trademarks any visible sign, which distinguishes products or services from others of the same type or category on the market, including appellations and trade names. Protection conceded for ten years from the date of filing and renewable for equal periods of time.

Important: It is excluded of protection by the figure of trademark: any geographical appellations, names that may mislead with regard to their origin, appellations similar to trademarks well known in Mexico. (Mexican Industrial Property Law, Title IV, Chapter I, Articles 87 - 95).

#### \* Geographical indications

Appellations of origin are defined as the name of a region used to designate a product originating therein whose characteristics are due exclusively to the geographical environment. Protection conceded as long as the grounds which led to its protection persist

The State owns the appellation of origin, which may only be used by virtue of the authorization issued by the Mexican Institute of Industrial Property. (Mexican Industrial Property Law, Title V, Chapters I and II, Articles 156 - 178).

#### \* New plant varieties

Protection conceded to plant varieties that are new, distinct, stable and uniform. A year of priority rights is given for foreign applications of members of UPOV.

Term of protection: eighteen years for perennials (including forest and fruit trees and vines); fifteen years for others.

Important: the consent of the right holder is not required, inter alia, for research or consumption by the breeder. (Federal Law of Plant Varieties)

#### IV. Transmission of Intellectual Property Rights

Intellectual Property Rights give the owner the possibility to obtain financial compensation derivative of creative and economic efforts invested, exploited by themselves or a third party. They also give the possibility to transfer those rights to a third party so he can exploit them. In this sense, Mexico recognizes different ways of transmitting those rights:

##### \* License:

A license contract is an atypical mercantile contract, by which the owner of an Intellectual Property Right (licensor) allows another person (licensee) to use and exploit goods and services. It is important to mention that the rights that are conferred by a patent or a registration can be transmitted totally or partially according to the terms and formalities that are established by a Common Law. (Mexican Industrial Property Law, Articles 62 to 77 and 136 to 150).

##### \* Franchise

The Mexican Legislation establishes that there will be a franchise when a written trademark license of use, transmits technical knowledge or provides technical assistance. The individual whom acquires the concession will be able to produce, not sell, or provide service in an uniform way and with an operative, commercial and administrative methods established by the owner of the trademark, maintaining quality, prestige and image of the products or services that are distinguished by the Law. (Mexican Industrial Property Law, Articles 142 to 142 Bis 3).

##### \* Compulsory License

This type of rights transmission is possible when the Authority (Government) grants the license to companies or individuals other than the patent owner, in order to use the patents rights to manufacture, use, sell or import a product protected by a patent without the authorization of the owner, as long as some procedures and special conditions are fulfilled. These specifications are established in the Mexican Industrial Property Law (Articles 69 to 76 and 187 Bis). Mexico has never granted a Compulsory License.

#### V. Defense Procedures of Intellectual Property Rights

These procedures are contemplated in the Mexican Industrial Property Law and in the Federal Copyright Law, to protect intellectual property rights (trademarks, patents, industrial designs, utility models, copyrights, related rights) as well as the transmission of intellectual property rights (license and franchise).

#### VI. Administrative Declaration Procedure



## Mexico

The main objective of this kind of procedure is to solve the existing differences according to the Mexican Industrial Property Law. This Law establishes that the competent authority is the Mexican Institute of Industrial Property (IMPI). It is important to mention that the resolutions issued by IMPI are administrative (Article 214). These resolutions can be appealed at the Federal Tax and Administrative Tribunal.

These are the different procedures that can be followed:

### \* Nullity

When a registration issued by the Mexican Institute of Industrial Property is requested to being revoked or cancelled, based on nullity grounds established in the Mexican Industrial Property Law (Mexican Industrial Property Law, Articles 65 78, 138, 151 and, 187 to 199 Bis 8).

### \* Expiry

This Action is taken when a registration issued by IMPI has concluded because of not being used (distinctive sign) or lack of annually payments (inventions) based on grounds established in the Mexican Industrial Property Law (Mexican Industrial Property Law, Articles 65, 80, 130, 152 and 187 to 199 Bis 8).

### \* Cancellation

It is requested when the registration of a trademark has caused its transformation into a generic denomination and therefore lost its distinctiveness. (Mexican Industrial Property Law, Articles 65, 138, 153 and 187 to 199 Bis 8).

### \* Administrative Infringement of Industrial Property Rights

When executing unfair competition acts or is using and/ or exploiting a right granted by the Mexican Institute of Industrial Property without the owner knowledge. (Articles 187 to 199 Bis 8 and 213).

The sanctions established in Article 214.

It is important to mention that the Mexican Industrial Property Law establishes in Article 223 and 223 Bis the offences that could be followed by the offended party and which can be sanctioned by the following sentences:

\* From 2 (two) to 6 (six) years of prison; and,

\* The fine could go from 100 to 10,000 days of minimum daily wage valid in Mexico City;

\* Ex-officio criminal enforcement

### \* Trade Related Copyright Administrative Infringement

It is the action that punishes those who are using works protected by copyright, marketing copies thereof or related rights that could be registered at the National Institute of Copyright, for direct or indirect profit making purposes and without consent of the author or the right holder. (Federal Copyright Law, Articles 231 to 236).

The Mexican Institute of Industrial Property (IMPI) shall punish the infringements related to commerce. In this sense, the IMPI will be able to adopt provisional measures foreseen in the Industrial Property Law (Federal Copyright Law, Article 234).

### \* Provisional Measures

Those measures can be applied before or during any administrative infringement procedure relating to the violation of any Intellectual Property Rights protected by the Industrial Property Law or the Federal Copyright Law. Article 199 Bis.

The sanctions established in the Federal Copyright Law, Article 232.

The offences established in the Federal Criminal Law, Article 424 to 429

## VII. Amendments to Mexican Federal Laws

Recently, the Mexican Intellectual Property Law has been modified, in order to strengthen the protection of Intellectual Property Rights. In this sense, by Decree of Law there are various Articles and subparagraphs that have been amended

## VIII. Mexican Intellectual Property Law

**Mexico**

- Article 188 authorizes the Mexican Institute of Industrial Property to initiate an administrative procedure by their own initiative or by petition of someone who has legal interest. (June 18th, 2010)
- Article 199 Bis by which the Mexican Institute of Industrial Property will take into account the gravity and nature of the infringement in order to adopt any measure or fix a bail for it. (June 18th, 2010)
- Article 213 related to Administrative Infringements in the field of trademarks to any person that use a combination of distinctive signs; operate items; and images to identify products or services identical or confusingly similar to others protected by the IP law, incurring unfair competition. (June 18th, 2010)
- Article 223 Bis enables the authority to act ex officio to prevent the retail of counterfeit goods to final consumers in public places. (June 28th, 2010)

Likewise, the Federal Criminal Law has also shown modification to enhance to protection of IP rights:

**IX. Federal Criminal Law**

- Article 429 (June 28th, 2010). Enables the authority to act ex officio to prevent any infringement committed against copyright, with the exception of those acts contained on:
- Articles 424, fraction II: The editor, producer or writer who on purpose produce more numbers of copies of a piece, protected by the Federal Law of Copyright, as authorized by the owner of rights;
- Article 427, who deliberately publish a work by replacing the author's name by another name.

**More information**

The websites where you can find more detailed information on protecting Intellectual Property rights are the following:

<http://www.impi.gob.mx/>

<http://www.indautor.sep.gob.mx/>

<http://www.pgr.gob.mx>

<http://pirateria.pgr.gob.mx/>

**Flow of funds**

Mexico's de jure exchange rate regime is free floating. The exchange rate of the peso is determined in the foreign exchange market.

And if managed, under what circumstances or purposes does your government/central bank intervene?

Even though Mexico's exchange rate is not managed, the Central Bank of Mexico (Banco de México) has carried out discretionary interventions in order to address disorderly market conditions.

In early February 2009, it intervened in the market through direct sales to individual participants in the market for an aggregate amount of US\$1.835 billion.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

In accordance with the information, the Central Bank has regarding its functions.

There are no restrictions on the repatriation of funds related to a foreign investment.

The Mexico' legal framework contemplates that all transfers relating to a foreign investment to be made freely and without delay.

Such transfers include profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment.

## Mexico

Notwithstanding the above, Mexico may prevent a transfer through the equitable and non-discriminatory application of its laws in case of bankruptcy, insolvency, protection of the rights of creditors, issuing, trading or dealing in securities, criminal offenses, or with the aim of ensuring the satisfaction of judgments in adjudicatory proceedings.

### I. Legislation:

- a) Bankruptcy Law (Ley de Quiebras), Article 169;
- b) Federal Code of Criminal Procedure (Codigo Federal de Procedimientos Penales), Articles 181, 182-E, 182-G, 182-H;
- c) Federal Tax Code (Codigo Fiscal Federal) Articles 40, 145, 145-A, 151, and
- d) Federal Code of Civil Procedure (Codigo Federal de Procedimientos Civiles) Articles 389, 390 and 402.

### II. International Agreements signed by Mexico:

- a) Chile, Article 9-10;
- b) Bolivia, Articles 12-17 and 15-08;
- c) Japan, Article 63;
- d) United States of America and Canada, Article 1109;
- e) European Union, Articles 19, 27, 30, 31;
- f) Iceland, Norway, Liechtenstein and Switzerland, Article 46;
- g) Colombia, Articles 12-17 and 17-07;
- h) Nicaragua, Articles 13-17 and 16-08;
- i) El Salvador, Guatemala y Honduras, Article 11-17, and
- j) Uruguay, Article 13-10.

## Mechanisms to review decisions, and settle disputes

If foreign investors have any doubt about the rules on foreign investment they can apply to the National Foreign Investment Commission for consultation or confirmation of standards on any topic related to the conditions of participation of foreign investment.

Also, in case the Ministry of Economy or National Foreign Investment Commission denied any of the authorizations request by the foreign investor, it may exercise its right of review in the first instance to the administrative authority higher than that issued act, or trigger defense mechanisms in order to request judicial assistance to federal and local courts.

What, if any, mechanism do you have for foreign investors to settle disputes?

Foreign investors have access to all local, federal courts and to the Supreme Court if the controversy falls under its jurisdiction. All disputes are subject to the Mexican legal framework as afforded to domestic investors. Foreign investors have access to all courts and to all dispute resolution mechanisms available to Mexican nationals.

Regarding an Investment dispute controversy, the foreign investor, depending on the applicable Bilateral Investment or Trade Agreement, has access to the dispute settlement mechanism established on the Treaty.

## ICSID

Although Mexico is not a party to the ICSID Convention nor a member, the majority of its Investor-State arbitrations have been conducted under the ICSID Additional Facility Rules But few cases have been conducted under UNCITRAL rules, such as International Thunderbird Gaming Corporation and GAMI Investments, Inc. cases

## Mexico

International investment agreements (IIAs) - which include bilateral investment treaties (BITs), double taxation treaties (DTTs) and other international agreements with investment provisions, such as some free trade agreements (FTAs) - can also provide foreign investors protection against discrimination, unfair treatment, expropriation and transfer restrictions. Coverage under an IIA could therefore be an important factor in an investment location decision, especially where the protection afforded by the law is inadequate.

### More information

The website of the Supreme Court of Justice of Mexico:  
<http://www.scjn.gob.mx/Paginas/PaginaPrincipal2008.aspx>

The Ministry of Economy can provide documents of the most relevant cases where Mexico has been part: [http://www.economia.gob.mx/swb/es/economia/p\\_solucion\\_controversias\\_inversionista](http://www.economia.gob.mx/swb/es/economia/p_solucion_controversias_inversionista)

[http://www.economia.gob.mx/swb/es/economia/p\\_promocion\\_proteccion\\_APPRIs](http://www.economia.gob.mx/swb/es/economia/p_promocion_proteccion_APPRIs)

### International investment agreements

With;

Argentina; Australia; Austria; Barbados; Belarus; Belgium; Bolivia; Brazil; Canada; Chile; China, People's Republic of; Colombia; Costa Rica; Cuba; Czech Republic; Denmark; Ecuador; El Salvador; European Union; Finland; France; Germany; Greece; Guatemala; Honduras; Iceland; India; Indonesia; Ireland; Israel; Italy; Japan; Korea, Republic of; Liechtenstein; Luxembourg; Netherlands; New Zealand; Nicaragua; Norway; Panama; Poland; Portugal; Romania; The Russian Federation; Singapore; Slovakia; Spain; Sweden; Switzerland; Trinidad & Tobago; United Kingdom ; United States; Uruguay;

Please provide a brief description of these IIAs, or your IIAs in general.

#### \* Bilateral Investment Treaties

Recently, Mexico has strived to become an attractive investment destination and in this context the country's IIAs have reached their full potential.

Currently, Mexico has 27 BITs in force. BITs improve the foreign direct investment environment and strengthen Mexico's capacity to attract foreign resources by giving out positive signs and providing legal certainty to the international business community.

1. The BIT establishes a minimum standard of treatment and full protection and security, as well as national treatment and most favored nation treatment as its principles.
2. Expropriation is established under customary law principles.
3. Investment disputes can be settled first by consultations or negotiations, and if not solved, Parties can submit their claim to international arbitration.
4. Claims to arbitration may be submitted under the ICSID Additional Facility Rules or UNCITRAL Arbitration Rules.
5. The agreement is subject to review at the 10 year period for either re-negotiation or a 12-month period of expiration after one of the Parties has expressed its intention of terminating it. In the case of termination of the agreement, its provisions would still be effective for 10-15 years on the investments that were made prior to the date of termination.

#### \* Double Taxation Treaties

Mexico has Double Taxation Treaties in force with the following countries: Australia, Austria, Barbados, Belgium, Brazil, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Singapore, Slovakia, Spain, Sweden, Switzerland, United Kingdom and United States.

There are some common features across the Double Taxation Treaties mentioned above:

- \* Clauses of Limitation on Benefits and broad exchange of information.
- \* They follow the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD), in matters such as non-discrimination, exchange of information and assistance in collection, among others.
- \* The applicable rates for dividends range from 0% to 15%; for interest range from 4.9% to 15% and royalty payments from 10% to 15%.
- \* In the case of Mexico, the treaties apply to the federal income tax and the business flat rate tax.
- \* Dividend, interest and royalty payments are taxed on both a source and residence basis.

## More information

You can find more information regarding the exchange rate regime on the web page of Banco de México.

<http://www.banxico.org.mx/sitioingles/PortalesEspecializados/TiposCambio/TiposCambio.html>

Ministry of Economy of Mexico:

Internet link for Free Trade Agreements including investment provisions:  
[http://www.economia.gob.mx/swb/es/economia/p\\_regiones](http://www.economia.gob.mx/swb/es/economia/p_regiones)

Internet link for Bilateral Investment Agreements:  
[http://www.economia.gob.mx/swb/es/economia/p\\_promocion\\_proteccion\\_APPRIs](http://www.economia.gob.mx/swb/es/economia/p_promocion_proteccion_APPRIs)

For more information about the status and the texts of Double Taxation Treaties that Mexico has signed or is currently negotiating, click on "Estatus de los Convenios" or the name of the treaty you are interested to consult (available only in Spanish):

[http://www.sat.gob.mx/sitio\\_internet/informacion\\_fiscal/legislacion/52\\_3558.html](http://www.sat.gob.mx/sitio_internet/informacion_fiscal/legislacion/52_3558.html)

For more information about taxation in Mexico, please visit:

[http://www.sat.gob.mx/sitio\\_internet/informacion\\_fiscal/legislacion/52\\_17377.html](http://www.sat.gob.mx/sitio_internet/informacion_fiscal/legislacion/52_17377.html) and click on "Ley del Impuesto sobre la Renta" for accessing the income tax law (available only in Spanish).

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

The following APEC member economies do not require a visa to travel to Mexico: Australia, Canada, Chile, Hong Kong, Japan, Korea, New Zealand, Singapore and the United States. Also it should be noted that APEC Business Travel Card (ABTC) holders do not require a visa for travelling to Mexico.

At the port of entry foreign nationals should fulfill the Multiple Migratory Form (FMM) which grants a stay in Mexico of up to 180 days, provided that the activities they carry out in national territory are not lucrative, that is, that their main source of remuneration or earnings is not located in Mexico.

Foreign nationals requiring a visa to travel to Mexico need to apply for it at the nearest Mexican consular representation in their country, or the company, institution or person that invites and will have the responsibility for the foreign national, can start the process before the National Immigration Institute (INM).

The Migratory Procedures and Criteria Manual (MCTM) in its section 2.11 indicates the requirements for obtaining the status of Non Immigrant, category of Visitor and Business Person modality, provided that the main source of remuneration or earnings of the foreign national is not located in Mexico and with a stay of up to 180 days.

If the foreign national will stay more than 180 days or will carry out activities in which the source of remuneration or earnings is located in Mexico, he can enter as Non Immigrant, category of Visitor, Business and Investor modality. Once in national territory foreign nationals must change the issued visa for a Non Immigrant Migratory Form (FMNI). The requirements are established in section 2.3 of the Migratory Procedures and Criteria Manual (MCTM).

### 2.11 Non Immigrant status, category of Visitor, Business Person modality

Applicable to the foreign national who enters the country on a temporary basis and for the purpose of:

- \* Carrying out trade in goods or services; or
- \* Establishing, developing or managing a foreign capital investment; or
- \* Providing specialized services previously agreed or contemplated in a contract of transfer of technology, of patents and trademarks, of sale of machinery and equipment, of technical training of personnel or any other production process of a company established in Mexico; or
- \* Carrying out activities at a professional level in terms of Free Trade Agreements signed by Mexico; or
- \* Attending shareholders' meetings or board of directors meetings of companies legally established in Mexico; or
- \* Carrying out management or executive functions, or functions that involve expertise in a company or one of its subsidiaries or branches established in Mexico.

Provided that the main source of remuneration or earnings of the foreign national is not located in Mexico and with a stay of up to 180 days.

### 2.3 Non Immigrant status, category of Visitor, Business and Investor modality

Applicable to the foreign national who intends to enter the country on a temporary basis or is already inside the country and with the purpose of knowing different investment alternatives, making or supervising a direct investment, representing a foreign company or carrying out commercial transactions.

## More information

National Immigration Institute (INM): <http://www.inm.gob.mx/>

Migratory Procedures and Criteria Manual (MCTM) (available only in Spanish):  
[http://www.inm.gob.mx/marcojuridico/manuales/03\\_MANUAL\\_DOF\\_29-ENE-2010.pdf](http://www.inm.gob.mx/marcojuridico/manuales/03_MANUAL_DOF_29-ENE-2010.pdf)

## Taxation

### Taxation of foreign nationals and foreign firms

Taxation of foreign individuals and foreign firms:

#### I. Company income:

According to the Federal Tax Code a company is deemed to be resident in Mexico if the principal center of administration is located in the country; permanent establishments (PE) of foreign residents located in Mexico are generally taxed under the same rules as resident entities with respect to the income attributed to such PE.

Mexican law establishes two different federal taxes to which the Mexican resident taxpayers are subject to on their worldwide income:

a) Federal Income Tax (ISR for its capitals in Spanish). It is calculated at a rate of 30%. Taxable income is determined based on the gross income for the fiscal year diminished by the legally-authorized expenses and the losses carried forward from prior fiscal years. The regular fiscal year coincides with the natural calendar year, and the income tax must be calculated and paid on yearly basis. However, taxpayers are required to make advance payments of income tax on the 17th day of each month.

The Mexican tax system allows that once a corporation has paid its income tax, after-tax earnings may be distributed to shareholders with no tax charge at the corporate level, which means that no tax withholding is to be made, regardless of the tax residence of the recipient, since it is considered that such income has been already taxed.

## Mexico

However, if there is a distribution of earnings that have not been subject to corporate income tax, the corporation will be subject to corporate tax on the grossed-up distributed earnings. Such tax, paid on dividends distributed in excess of previously taxed earnings, can be credited against the corporate income tax of the year or in two fiscal years following the year in which the distribution has been made.

b) Flat tax (IETU for its capitals in Spanish). It is calculated at a rate of 17.5%. IETU is determined on a "cash flow" basis by subtracting the expenses actually paid from the income actually collected, excluding expenses on salaries and wages, employer contributions to the social security system and non-taxable employee benefits. IETU is computed per calendar year; nevertheless, advanced monthly flat tax payments are to be filed.

As a general rule, taxpayers are required to pay the higher between the income tax due for the year and the flat tax of the same year. There are no state taxes on corporate income.

### II. Personal income:

#### 1. Subordinated personal services:

Income on subordinated personal services includes wages and salaries, as well as any compensation arising from an employment relationship. Independent services fees for services rendered mainly to a single boss are considered to be assimilated to salaries.

Mexican resident employers are required to withhold and pay the income tax caused on compensation payments, in despite of the tax residence of the employee. The maximum withholding tax rate applicable to income on subordinated personal services is 30%.

In case that the employer is a nonresident, only when the compensation derives from services rendered in Mexico, the individual is required to file monthly tax payments on the gross income received as compensation, according to the following:

- a) There is no tax caused on the first \$125,900 Mexican pesos obtained in the corresponding calendar year.
- b) A 15% tax rate will be applied to the income exceeding the amount above mentioned and up to \$1,000,000 Mexican Pesos obtained in the corresponding calendar year.
- c) A 30% tax rate will be applied to the income exceeding \$1,000,000 Mexican Pesos obtained in the corresponding calendar year.

#### 2. Independent professional services:

According to Mexican tax law, the resident individuals who obtain income on the performance of independent professional services are subject to two different federal taxes on their worldwide income:

a) Income Tax (ISR for its capitals in Spanish). It is calculated on a yearly basis at a rate of 30%. Individuals are required to file advanced monthly tax payments on the 17th day of the month following the one when the income has been obtained. Taxable income is determined based on the gross income for the fiscal year diminished by the legally-authorized expenses.

In the cases that an individual renders professional services to a corporation, the latter one is required to withhold and pay income tax at a 10% rate on the gross amount paid to the individual rendering such services. Such income tax withholdings are creditable against the monthly tax payments.

b) Flat tax (IETU for its capitals in Spanish). It is calculated at a rate of 17.5%. IETU is determined on a "cash flow" basis by subtracting the expenses actually paid from the income actually collected. IETU is computed per calendar year; nevertheless, advanced monthly flat tax payments are to be filed.

As a general rule, individual taxpayers are required to pay the higher between the income tax due for the year and the current year flat tax. There are no state taxes on personal income.

Nonresidents are subject to income tax on professional services fees, solely in the cases that the services are rendered in Mexico. The income tax is caused at a 25% rate, when the person who pays the fees is a Mexican tax resident it is compelled to withhold and pay such tax; in any other case, the nonresident individual taxpayer is required to file the corresponding tax 15 days after the income is obtained.

### III. Capital Gains:

## Mexico

Mexican tax residents are taxed on their worldwide capital gains, whereas non-residents are only subject to Mexican tax on gains arising from sales of real estate property located in Mexico, as well as from sales of securities when the issuer of such securities is a Mexican resident, or when at least 50% of the accounting value of the securities derive directly or indirectly from real estate property located in Mexico, regardless of the location where the sale takes place.

1. **Securities:** Gains are determined based on the gross earnings from the sale of shares and other type of securities diminished by their cost basis (adjusted for inflation and depreciation per the official pricing indexes during the period between the acquisition date and the date of the sales transaction).

Gains obtained by nonresidents on shares issued by Mexican entities are subject to a withholding tax at the rate of 25% on the gross sales proceeds or, at the election of the nonresident, at the maximum tax rate applicable for individuals (30% for 2010) applied to the net profit obtained. This election is available only if the foreign stockholder is a resident of a country that is not considered a tax haven or a country with a territorial tax system. In this case, the selling resident has to appoint a representative in Mexico and must obtain a statutory tax audit report on the transfer of shares issued by a public accountant. When shares are sold between related parties and the seller is a resident abroad and exercises the option to determine tax on the profit of the sale, the public accountant issuing the report must specify the market value of the shares sold and explain the factors used in determining such price.

In certain specific cases, when the sale of shares or other kind of securities is made through the Mexican Stock Exchange Market by nonresidents, provided that those securities are reachable for the general investing public, the gains obtained by the nonresident are subject to a reduced income tax rate of 5 per cent. When the transfer of the shares results from a reorganization within a group, prior to the transfer, the tax authorities may well authorize a deferral for payment of the tax on the profit until the 15 days following the date when a subsequent sale of such shares out of the group is made (adjusted for inflation from the date it is caused until the date of actual payment).

2. **Real Estate:** The taxable gain will be determined by subtracting the cost basis of the sales of land and buildings (adjusting per inflation during the time the assets have been held) from the gross earnings. Similar rules apply to nonresidents electing to be taxed on the net income at a rate of 30% by appointing a representative. Otherwise, a 25% withholding tax on gross income applies to nonresidents.

Gains from the sale of the taxpayer's principal residence are exempt, provided the taxpayer occupied it as such during the two years before the sale.

### Funds for repatriation:

Regarding equity reimbursements, the Income Tax Law establishes that all the reimbursements are to be made based on the balance of the corporation's Contributed Equity Account (CUCA for its capitals in Spanish). This account is increased by the equity contributions made by the shareholders and the stock subscription net premiums, and it is diminished by the equity diminutions. Additionally CUCA account must be adjusted per inflation.

Once the corporation has determined its CUCA account balance, the Taxable Distributed Profit is calculated as follows:

Primarily the reimbursement per share is compared to the CUCA per share.

a) If the reimbursement per share is higher than the CUCA per share, the Taxable Distributed Profit (TDP) is calculated based on the multiplication of the difference by the number of shares to be distributed.

$TDP = \text{Number of shares} * (\text{Reimbursement per share} - \text{CUCA per share})$

b) If the reimbursement per share is lower than the CUCA per share, the Taxable Distributed Profit is calculated based on the total equity account balance diminished by the CUCA account balance.

$TDP = \text{Total equity account balance} - \text{CUCA account balance}$

If the total equity account balance is lower than the CUCA account balance there are no tax implications resulting from the equity reimbursement.

Equity reimbursements are tax exempt provided that the balance of the Previously Taxed Earnings Account (CUFIN for its capitals in Spanish) corresponding to the number of shares to be distributed is bigger than the Taxable Distributed Profit. In such cases where there is no tax caused, the CUFIN account balance has to be reduced in the amount corresponding to the number of shares distributed.



## Mexico

**In the cases when the Taxable Distributed Profit does not arise from the CUFIN account, the corporation will be subject to income tax at a rate of 30% on the grossed-up distributed earnings**

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

### **Taxation of foreign nationals and foreign firms.**

**Residents in Mexico are subject to taxation on a global basis. Non residents having a permanent establishment in Mexico are taxed on all the revenues attributable to said permanent establishment. Non residents are taxed in respect of revenues proceeding from sources of wealth located in national territory, when such persons possess no permanent establishment in Mexico or when possessing a permanent establishment, said revenues are not attributable to it.**

**In order to remove barriers for investment, Mexico has thirty eight Double Taxation Treaties in force, and also two Tax Information Exchange Agreements in force (with U.S. and Canada). Six Double Taxation Treaties are signed and ten are in negotiation. Additionally, Mexico has signed three Tax Information Exchange Agreements and fifteen are in negotiation.**

**The Mexican tax legislation does not impose a withholding tax on dividend distributions to non residents if these dividends are paid out of net income; otherwise the applicable rate is 30%. In the case of interest, the law provides for a withholding tax rate of 4.9% on interest proceeding from negotiable instruments placed through banks or stock brokerages in countries with which Mexico has entered into a Double Taxation Treaty and 10% in the absence of a treaty; 15% on the interest paid to reinsurers, 21% for interests paid to foreign suppliers for alienation of machinery and equipment forming a part of the fixed assets of the acquirer and 30% in other cases. The rate applicable to royalties obtained from temporary use or advantage of patents, certificates of invention or improvement, trademarks, trade names or advertising is 30% and for technical assistance and other royalties the rate is 25%. However, Mexico's Double Taxation Treaties provide for reduced rates applicable to dividend, interest and royalty payments.**

### **More information**

**Essential information regarding tax treatment of foreign residents can be found at the Mexican Tax Administration System's webpage [www.sat.gob.mx](http://www.sat.gob.mx). Detailed information can be obtained directly from different applicable laws, also available at the Tax Administration System website. There are also available some commercial translations of these regulations.**

**For more information about the status and the texts of Double Taxation Treaties that Mexico has signed or is currently negotiating, click on "Estatus de los Convenios" or the name of the treaty you are interested to consult (available only in Spanish):**

**[http://www.sat.gob.mx/sitio\\_internet/informacion\\_fiscal/legislacion/52\\_3558.html](http://www.sat.gob.mx/sitio_internet/informacion_fiscal/legislacion/52_3558.html)**

**For more information about taxation in Mexico, please visit: [http://www.sat.gob.mx/sitio\\_internet/informacion\\_fiscal/legislacion/52\\_17377.html](http://www.sat.gob.mx/sitio_internet/informacion_fiscal/legislacion/52_17377.html) and click on "Ley del Impuesto sobre la Renta" for accessing the income tax law (available only in Spanish).**

## Introduction

### Our Location Offer

Astounding commercial success has resulted from the right partnerships between overseas capital and New Zealand businesses. From marine navigation to blockbuster films, New Zealand's culture of innovation and excellence delivers results.

The first nation to the sunrise, New Zealand provides a home for hundreds of international corporations, and attracts a highly educated and multilingual labour force with a culture of innovation. New Zealand's success in attracting foreign investment is obvious: during 2008/09 the flow of foreign investment grew by 4.4%.

As an investment destination, New Zealand offers:

- \* a safe and secure environment;
- \* economic and political stability;
- \* economy open to trade and investment;
- \* abundant natural resources: water, arable land and energy;
- \* a place free from corruption;
- \* extensive free-trade agreements; and
- \* active government support for investment.

New Zealand's stable economy makes it ideal for long-term international competitiveness. The privatisation of utilities and state services has created one of the world's most efficient, competition-friendly economies. A free and independent press ensures corporate and government decision-making is transparent and fair.

This openness and competitiveness extends to international companies doing business in New Zealand. The country ranks second in the world for ease of doing business, according to the World Bank index, 2010.

New Zealand's close trade and legal relationship with Australia gives businesses operating from New Zealand duty free access to a population of 22.3 million.

Free trade relationships, including those with People's Republic of China, Singapore and Thailand, significantly increase the size of the New Zealand consumer market.

Key infrastructure in New Zealand is modern and provided at internationally competitive prices. International comparisons show that New Zealand is one of the most connected among global economies: it is ranked 9th worldwide in number of internet users per capita (Global Competitiveness Yearbook, 2010) and 16th most globalised country out of 72 surveyed by AT Kearney (AT Kearney / Foreign Policy Globalisation Index, 2007).

New Zealanders and guests of the country enjoy an exceptional quality of life, with the country renowned for its tourism assets. Auckland, the country's largest city, is 4th in the Mercer Quality of Living 2010 and 12th in the Mercer Eco-Cities ranking 2010. Wellington, the capital, is 12th on quality of living and 5th as an eco-city, in the same surveys.

The New Zealand Government actively supports an environment that enables international investors to relocate, and/or collaborate with New Zealand companies. New Zealand Trade and Enterprise, the Government's economic development agency, has a specialist investment team that provides support for international investors.

### Introduction to investment regime

New Zealanders are used to foreign investment being an important part of the economic landscape. Foreign investment is crucial to the continued success of New Zealand, providing 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, international management expertise and overseas markets.

## New Zealand

Consequently, New Zealand takes a very open stance to foreign investment, encouraging and facilitating it.

Some investment is screened to ensure that the proposal aligns with the economic development objectives of New Zealand, but this in practice applies only to a small percentage of investments. The responsibility for the screening process lies with the Overseas Investment Office.

New Zealand facilitates investment through its economic development agency, New Zealand Trade and Enterprise, where a team of dedicated investment specialists provide support and incentives to investment in New Zealand.

### Investment priority plan/equivalent policy

New Zealand has a number of existing areas of competitive advantage, where the country has a strong international position. Dairy, meat, forestry, minerals, boat-building are examples of such areas. Emerging areas of advantage are clean technology, animal-based therapeutics, digital entertainment content, and aquaculture.

The strategy for investment promotion, delivered by the investment team of New Zealand Trade and Enterprise, regularly reviews the identified range of core domestic sectors that have compelling and sustainable competitive advantage and where it is believed investment will help New Zealand develop strong industries that will contribute significantly to New Zealand's economy.

While foreign investment is encouraged across the board, and incentive programmes do not have a sector bias, proactive promotion and facilitation of investment by Government is focussed on only a few industries at a time. The medium term plan is to focus on the following areas within New Zealand:

- \* Food and Beverage - Dairy, Meat, Aquaculture, Horticulture, Functional Foods
- \* Biotechnology - Animal-Based Therapeutics, Agricultural Biotechnology
- \* Resources and Minerals - Oil & Gas, Minerals, Forestry & Wood Processing, Aviation
- \* Infrastructure - Utilities, ICT, Clean Technology, Public-Private Partnerships
- \* Capital Markets - Venture Capital, Angel Funding, Private Equity

### More information

New Zealand Trade and Enterprise - Investment team: <http://www.investmentnz.govt.nz>

Overseas Investment Office: <http://www.linz.govt.nz/overseas-investment/index.aspx>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

New Zealand maintains an open stance towards overseas investment. Foreign Direct Investment (FDI) is regarded as making a positive contribution to New Zealand through increased jobs, capital and access to export markets. New Zealand's approach is to target FDI screening in a few areas of critical interest: sensitive land, significant business assets and fishing quota. Where sensitive land is defined in Schedule 1 of the Overseas Investment Act 2005 and includes non-urban land of over 5 hectares, land on offshore islands, and land that is over 0.4 hectares and includes or adjoins reserves, historic or heritage areas. Similarly, significant business assets is defined as the acquisition of securities or business assets with a value exceeding \$NZ100 million

The acquisition of sensitive land and significant business assets by "overseas persons" or an associate of an overseas person requires consent under the Overseas Investment Act 2005 (the Act). Persons are "overseas persons" if they are not a New Zealand citizen or ordinarily resident in New Zealand, or for companies, incorporated overseas, or are persons (including companies) that are 25% or more owned or controlled by an overseas person or persons. "Associate" is defined in section 8(1) of the Act, and includes persons who are controlled by, an overseas person or are subject to an overseas person's direction.

## New Zealand

The acquisition of fishing quota requires consent under sections 56 to 58B of the Fisheries Act 1996 (the overseas investment fishing provisions). The overseas investment fishing provisions are read as if they were part of the Act.

The Act and the overseas investment fishing provisions are administered by the Overseas Investment Office, which is a regulatory unit within a government department, Land Information New Zealand.

Part 1 of the Act states when consent is required.

Part 2 of the Act prescribes the consent process that an overseas investor must undertake. The role of the Overseas Investment Office is to consider the application and advise the relevant Minister or Ministers (the Minister of Finance and the Minister for Land Information for land applications, the Minister of Finance for significant business applications, or the Minister of Finance and the Minister of Aquaculture and Fisheries for fishing quota applications) as to whether or not consent should be granted to the application. In some cases, the relevant Minister or Ministers have delegated the decision-making powers to officials within the Overseas Investment Office.

In order for consent to be granted, the relevant Minister or Ministers must be satisfied that all relevant criteria have been met. Conversely, if the relevant Minister or Ministers are not satisfied that all the relevant criteria have been met, the application must be declined.

The criteria for consent differ accordingly to investment type and are listed in the Overseas Investment Act 2005 and the Fisheries Act 1996. However, all investors must meet an "investor test" (made up of four criteria that consider business experience and acumen, demonstrated financial commitment to the investment, good character, and eligibility for exemptions or permits under New Zealand's immigration legislation).

If the proposed investment involves the acquisition of sensitive land, then the investment must meet a criterion that considers whether the investment is of benefit to New Zealand (or part of it, or a group of New Zealanders). "Benefit to New Zealand" is assessed by reference to factors that are listed in the Act and the Overseas Investment Regulations 2005 (Regulations). If the land is non-urban and exceeds 5 hectares, the benefit must be substantial and identifiable.

If the land includes farm land, then there is an additional criterion that considers whether the land has been advertised on the open market for sale (or exempted from that requirement).

There are also additional criteria that also must be met for consent to be granted to acquire fishing quota - that the overseas person is a body corporate and that the interest in quota is capable of being registered in a Quota Register. Applications to acquire fishing quota must meet a "national interest" test. "National interest" is assessed by reference to 7 factors set out in the Fisheries Act 1996.

The Act does not specify a time frame within which an application for consent must be decided.

Within five working days of an application being received by the Overseas Investment Office the application undergoes an initial assessment to check the application contains sufficient information and is accompanied by the prescribed fee.

If the application is accepted, the Overseas Investment Office will register it and start its assessment of the application. The Overseas Investment Office will seek further information if needed. At its discretion, the Overseas Investment Office may also consult with third parties about the application.

If the OIO does not accept the application for assessment, it will be returned to the applicant for further action.

The Overseas Investment Office aims to make a decision on high quality, straightforward applications, where no third party consultation is required, within 50 working days of the date of registration.

On 27 September 2010 the New Zealand Government announced several changes to the Regulations. They include two new factors under the "Benefit to New Zealand" criterion for sensitive land:

\* A new "economic interests" factor allowing ministers to consider whether New Zealand's economic interests are adequately safeguarded and promoted. This will improve ministerial flexibility to respond to both current and future economic concerns about foreign investment, such as large-scale ownership of farmland.

\* A new "mitigating" factor enabling ministers to consider whether an overseas investment provides opportunities for New Zealand oversight or involvement.

## New Zealand

The New Zealand Government will also provide more clarity on overseas investment in sensitive assets, and this will be set out in a new ministerial directive letter from the Minister of Finance to the Overseas Investment Office. This will provide advice to the Overseas Investment Office about which factors in applying the "Benefit to New Zealand" criterion are likely to be more or less important in relation to particular assets.

The changes are expected to be made in December 2010 and will only apply to applications received after the new regulations come into effect.

### Does this apply to all investment or, are there differential treatment?

FDI screening in New Zealand is targeted at a few areas of critical interest: sensitive land, significant business assets and fishing quota. It does not apply to all investment, and investment that does not come within the specified thresholds or asset categories is not screened. In addition, some types of sensitive land are exempted from the screening regime, as are some specified types of transaction or persons. Some portfolio investors and New Zealand controlled overseas persons can also be exempted from the requirement for consent provisions of the Act.

The Overseas Investment Office does have a helpful and comprehensive website <http://www.lin.govt.nz/overseas-investment/index.aspx> but the Office does not give advice as to whether the screening regime applies in a particular instance. If prospective investors are uncertain whether the screening process is applicable, it is recommended a reputable firm of New Zealand solicitors be engaged.

### Conditions of investment

Consents granted under the Overseas Investment Act 2005 or the overseas investment fishing provisions of the Fisheries Act 1996 can be unconditional or subject to such conditions that the relevant Ministers think appropriate. In practice, all consents are subject to conditions. The conditions attaching to some consents may be more extensive than others, depending on the type and relative sensitivity of the asset being acquired. Often conditions are imposed to ensure that proposed benefits to New Zealand are delivered by the investor.

### Investment promotion and facilitation

New Zealand promotes foreign direct investment through its economic development agency, New Zealand Trade and Enterprise. The specialist investment team within New Zealand Trade and Enterprise is tasked with:

- \* Attracting foreign companies to invest in New Zealand through Greenfield, Brownfield, mergers and acquisitions, or partnership business opportunities.
- \* Attracting foreign funds (sovereign wealth, institutional, etc ) to invest in New Zealand through participation in domestic funds, fund-of-funds, Venture Capital funds, private equity, or direct investment.
- \* Assisting New Zealand businesses to expand and invest overseas.
- \* Assisting New Zealand businesses to attract funding via foreign direct investment.
- \* Contributing to or influencing government policy to help make New Zealand more competitive and attractive to investors.
- \* Undertaking market development research and implementing schemes aimed at improving the capital and investment markets in New Zealand.

New Zealand-based investment specialists offer advice and support across the key investment sectors in New Zealand. The international investment representatives are located in these key business centres: Sydney, Singapore, Hong Kong, Tokyo, Seoul, London, and Los Angeles.

The Government offers co-funding through the Strategic Investment Feasibility Study Grants programme (SIF) to support significant direct investment in New Zealand and New Zealand firms looking to expand their operations offshore. SIF is designed to support investment cases with the potential to generate significant economic benefit for New Zealand.

## New Zealand

Potential investors may also be invited to New Zealand under the Visiting Investor Programme which supports visits by contributing to the costs.

Other incentives include the Government undertaking preliminary exploration work on its petroleum estate and providing packages of seismic information to potential investors free of charge through its agency Crown Minerals.

### More information about the process of investing in our economy

The New Zealand Government's investment promotion website: <http://www.investmentnz.govt.nz>

Investing in minerals and petroleum in New Zealand: <http://www.crownminerals.govt.nz>

## Investment protection

### Protection of property rights and conditions for expropriation

The property rights of foreigners who invest in New Zealand are protected under domestic law.

The Land Transfer Act 1952 is the primary landholding statute in New Zealand and applies to nearly all the land in New Zealand. It provides for the registration and transfer of land interests and registration gives validity and certainty to land transactions. The estate of a registered proprietor is paramount subject to the interests affecting the land, such as easements and covenants, noted on the register and the exceptions, such as fraud, stated in the Act. The State is responsible for the register and will compensate people for loss caused by errors in the register.

The Property Law Act 2007 provides general rules for the creation, disposition and control of real and personal property. This Act governs transfers, leases, mortgages and similar dealings in property. Other protections for people investing in New Zealand are contained in our contract statutes and general law which governs the ways in which property rights can be structured and changed.

The government may compulsorily acquire land for essential public works under the Public Works Act 1981 but compensation may be payable to the landowner. Similarly, under the Local Government Act 2002 a local authority may construct works on private land and compensation may be payable.

The Proceeds of Crimes Act 1991 and the Terrorism Suppression Act 2002 allow interests in land to be forfeited to the Crown in cases of serious criminal offending. There are provisions in these Acts for the relief of innocent third parties.

### More information

N/A

### Protection of IPRs

New Zealand has a robust intellectual property regime providing both effective protection and enforcement. As a member of the WTO, New Zealand's intellectual property regime provides the minimum standards of protection as set out in the TRIPS Agreement to patents, trade marks, industrial designs, copyright, plant variety rights, geographical indications, trade secrets and circuit layout designs.

New Zealand is also a member of a number of important WIPO administered intellectual property treaties, such as the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and the Patent Cooperation Treaty. In addition, New Zealand is currently working towards implementation of the Protocol Relating to the Madrid Agreement Concerning International Registration of Marks (the Madrid Protocol).

In New Zealand, some intellectual property rights are automatically protected, while others are protected after application and examination against the relevant criteria by government agencies:

\* The Ministry of Economic Development is responsible for legislation protecting intellectual property rights.

## New Zealand

\* The Intellectual Property Office of New Zealand, a business unit of the Ministry of Economic Development, administers patents, trade marks, design and plant variety (or breeder's) rights registers.

\* There is no register for copyright, copyright and related rights protection arises automatically when certain criteria set out under the Copyright Act 1994 are met.

Under New Zealand law, patents, trade marks, industrial designs, copyright, plant variety rights, geographical indications, trade secrets and circuit layout designs are all protected as required by the WTO TRIPS Agreement.

### Patents

A New Zealand patent provides a legal right to stop third parties from manufacturing, using and/or selling an invention in New Zealand for up to 20 years. A patent can be bought, sold, transferred or licensed on agreed terms.

In New Zealand, a patent can be granted for new manners of manufacture (inventions) that meets certain criteria relating to novelty, inventiveness and utility:

\* **Novelty** - if the invention has already been used, displayed or otherwise made available in New Zealand, or been described in any public document within New Zealand it will not normally be patentable.

\* **Inventiveness** - the invention cannot be obvious to a person skilled in the art.

\* **Useful** - the invention must be industrially applicable.

### Trade Marks

A trade mark may not be registrable if it is merely descriptive (i.e. indicates the kind, quality, quantity, intended purpose or dollar value of the good/service) unless these features are presented in a unique or unusual way, or incorporated into a trade mark as one of its elements. To be registrable, a trade mark must be able to be graphically represented and capable of being distinctive of a single trader's goods or services. Colloquial or generic terms that have been commonly used to describe a characteristic of the goods or services may not be registrable. Trade marks may be registered for a term of 10 years and registration may be renewed, indefinitely, for further periods of 10 years.

### Industrial Designs

Designs comprising new or original features of shape, configuration, pattern or ornament that are applied to an article by any industrial process or means, being features which appear to and are judged solely by the eye, can be protected through a registration regime for a period of up to 15 years.

A registered design can become a valuable business asset that can be bought, sold, transferred or licensed like other forms of IP.

Industrial designs may also be protected under copyright law, provided that it meets the copyright protection requirements of being a new and original work, with some artistic quality or level of skill. If so, copyright protection is automatic and immediate. Copyright protection is free and does not require registration. Protection of copyright in industrial designs is for a period of up to 16 years.

However, without registration an individual may never know if copyright provides adequate protection for their design until it is challenged by another person or business. Registration with Intellectual Property Office of New Zealand provides a higher degree of protection than relying on copyright because it requires that Intellectual Property Office of New Zealand first search for similar or identical New Zealand registered designs.

### Plant Variety Rights

A grant of Plant Variety Rights for a new plant variety provides the owner with the exclusive right to produce for sale and sell the propagating material of that variety. In the case of vegetatively-propagated fruit, ornamental and vegetable varieties, Plant Variety Rights provide the additional exclusive commercial right to propagate the protected variety for the commercial production of fruit, flowers or other products of the variety. Exceptions to Plant Variety Rights protection include the use of the variety for private and non-commercial purposes, for experimental purposes, and for breeding other plant varieties.

Plant Variety Rights may be sold, licensed, mortgaged or assigned to another person or business. Rights holders often collect royalties from the commercialisation of their protected varieties.

## New Zealand

As with other types of Intellectual Property, Plant Variety Rights entitle the rights holder to bring civil action against persons or businesses infringing their rights. For example, a rights holder would be entitled to seek an injunction against, or if appropriate, claim damages from, another person or business that deliberately sold seeds or plants of the protected variety without permission.

The rights holder can also take action against another party using the approved denomination (registered name) of the protected variety to sell propagating material of another variety of the same genus or species.

### Copyright

In New Zealand, copyright is an automatic unregistered right that comes into existence every time an original work is created, published and performed. Copyright law in New Zealand covers the following categories of works: literary works, dramatic works, musical works, artistic works, sound recordings, films, communication works, and typographical arrangements.

The Copyright Tribunal is a statutory body that hears disputes relating to the provision of collective licensing regimes allowing the copying, performing and broadcasting of copyright works. In addition, some proposed or operative schemes for licensing can be referred by interested parties.

Any person who believes that the operator of a collective licensing regime has unreasonably refused to grant a licence for the copying, performing or broadcasting of a copyright work may apply to the Tribunal. The Tribunal decides whether the applicant is entitled to a licence and on what terms. This only applies where the copyright owner has set up a scheme for licensing the use of copyright works.

### More information

Intellectual Property Office of New Zealand:

[www.iponz.govt.nz](http://www.iponz.govt.nz)

### Flow of funds

Since March 1985 the New Zealand dollar has been freely floating.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The Reserve Bank has the option to intervene in two circumstances:

\* In cases of extreme market dis-order to help preserve the functioning of the market.

\* In support of monetary policy if it is judged that intervention might be helpful in meeting the Bank's Policy Targets Agreement obligations. Details on the Bank's intervention policy can be found at <http://www.rbnz.govt.nz/research/search/article.asp?id=3802>

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

There are no exchange controls relating to either residents or non-residents.

### Mechanisms to review decisions, and settle disputes

Decisions made under the Overseas Investment Act 2005 or the overseas investment fishing provisions of the Fisheries Act 1996 can only be judicially reviewed. "Judicial review" is the review by a judge of the High Court of New Zealand of any exercise of, or non-exercise of, a decision-making power in order to determine whether or not the decision was lawful or valid. The courts are primarily concerned with the process of decision making rather than the outcome or merits of the decision.

The most likely grounds for review are that, in making the decision in question, the decision maker:

\* acted outside the scope of the power or discretion;

\* misinterpreted the applicable law;



## New Zealand

- \* did not make up his or her own mind on the matter that he or she has been called on by law to determine (acted "under dictation");
- \* took into account irrelevant considerations;
- \* failed to take account of relevant considerations; or
- \* did not act "fairly" in that he or she failed to hear from or consult with persons or groups who would be affected by, or otherwise had an interest in, the particular decision.

What, if any, mechanism do you have for foreign investors to settle disputes?

Once a foreign investor has received approval to invest in New Zealand all disputes are subject to the same legal framework as is afforded domestic investors. This includes access to a range of dispute resolution mechanisms, including the Courts, and, where relevant, specialist Tribunals (e.g. the Copyright Tribunal), arbitration, mediation, and conciliation. The Arbitration Act 1996 adapts the UNCITRAL Model Law on International Commercial Arbitration.

There are a number of providers of alternative dispute resolution services in New Zealand. The principal groups are the Arbitrators and Mediators Institute of New Zealand (AMINZ - [www.aminz.org.nz](http://www.aminz.org.nz)) and the Association of Dispute Resolvers (LEADR - [www.leadr.co.nz](http://www.leadr.co.nz)). The AMINZ Arbitration Appeals Tribunal provides an alternative appeals service on points of law from arbitral awards to appeals to the Courts.

New Zealand is party to international agreements which permit investors from China, Malaysia and ASEAN to take the New Zealand government to binding arbitration for breaches of obligations in those agreements.

### ICSID

New Zealand signed the ICSID Convention on September 2, 1970 and ratified it on April 2 1980. The Convention entered into force for New Zealand on May 2, 1980 and is given effect under the Arbitration (International Investment Disputes) Act 1979.

### More information

Arbitrators and Mediators Institute of New Zealand (AMINZ):

[www.aminz.org.nz](http://www.aminz.org.nz)

Association of Dispute Resolvers (LEADR):

[www.leadr.co.nz](http://www.leadr.co.nz)

### International investment agreements

With;

Australia; Brunei Darussalam; Chile; China, People's Republic of; Hong Kong, China; Myanmar (ex-Burma); Philippines; Singapore; Thailand; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

New Zealand has entered into two bilateral investment treaties and eight free trade agreements to further promote the flow of inward and outward foreign direct investment.

While the details of these agreements vary, common features include:

- \* Provisions to secure market access for investors, including through national treatment, most favoured nation treatment, and prohibitions on performance requirements and senior management and board of director requirements.
- \* Comprehensive investment protection provisions to safeguard investors' interests, including provisions relating to expropriation, minimum standard of treatment, transfer of capital/funds, and dispute settlement.

\* Enhanced requirements on transparency which set minimum standards for the publication of laws affecting investment, review and appeal of administrative decisions, administrative proceedings, and contact point.

## More information

N/A

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

New Zealand has a wide range of immigration options open to foreign nationals intending to visit or reside in New Zealand. They are more facilitative than New Zealand's WTO commitments. The policy suite includes immigration categories specifically for transferring personnel of foreign firms, business people on short and long-term engagements and potential investors. Visa-free arrangements with many countries mean that, in many cases, no immigration application need be made before arrival. New Zealand's immigration policies are flexible in nature - there are no maximum limits on the duration of stay, and it is possible to extend or change one's immigration status while onshore.

## More information

Immigration New Zealand: [www.immigration.govt.nz](http://www.immigration.govt.nz)

Investment New Zealand: [www.investmentnz.govt.nz](http://www.investmentnz.govt.nz)

## Taxation

### Taxation of foreign nationals and foreign firms

New Zealand income tax is imposed under the Income Tax Act 2007. Resident individuals and companies are taxed on their world-wide income. Non-residents are subject to tax on income sourced from New Zealand. The rules for determining taxable income are generally the same for both individuals and companies. The tax year for both individuals and companies is 1 April to 31 March, but non-standard balance dates can be applied for (for example, for a subsidiary to match the balance date of its parent). New Zealand tax law features many rules that are common amongst OECD member countries, such as a consolidation regime for companies.

The tax base is broad, but New Zealand generally does not tax capital gains (with some exceptions, such as capital gains from loan arrangements or from trading in 'capital' items). There are no export incentives or investment holidays in the New Zealand tax system. There are, however, a number of concessionary rules that pertain to particular activities - such as mining, farming, forestry and films. There are also some concessionary rules for venture capital investment into New Zealand. An individual who becomes resident for tax purposes, having previously been non-resident for at least 10 years, will enjoy a four year exemption from many categories of foreign-sourced income (provided they satisfy the "transitional resident" criteria).

The company tax rate is currently 30%, but is set to reduce to 28% for tax years commencing on or after 1 April 2011. Individuals are taxed at progressive rates which, from 1 April 2011, will range from 10.5% on the first dollar earned to 33%.

Companies are resident in New Zealand for tax purposes if they are incorporated or have their head office or centre of management in New Zealand. They are also resident if control of the company by its directors is exercised in New Zealand.

Tax is paid at the company level and again at the shareholder level when profits are distributed. An imputation system operates to prevent double taxation by providing that a credit for the company tax paid is allowed against the shareholder's tax liability. Imputation credits can only be claimed by resident shareholders. However, imputation credits are also generally of value to non-resident shareholders - see below.

## New Zealand

Non-residents can operate business activities in New Zealand in a number of different ways - these include through a branch of a non-resident company, as a partnership or limited partnership, through a trust, or as an individual.

Entities that meet the definition of a "portfolio investment entity" (generally referred to as a PIE, and which is broadly akin to a managed fund) can elect into the PIE rules. PIEs generally pay tax on investment income based on the tax rates of their investors (capped at the company tax rate which is currently 30%), rather than at a flat rate. However, the tax rate for non-resident investors is currently always at the capped rate.

Repatriation of profits to a non-resident shareholder of a New Zealand resident company can generally be undertaken at any time as there are no foreign exchange controls on such repatriation. Withholding taxes may apply - see below.

New Zealand legislation includes both a general anti-avoidance rule and a number of specific anti-avoidance regimes (such as thin capitalisation and transfer pricing rules).

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Resident individuals and companies are taxed on their world-wide income. Non-residents are subject to tax on income sourced from New Zealand.

To help eliminate double taxation on income taxed in New Zealand, residents may claim credits for tax paid overseas (limited to the applicable amount of New Zealand tax). In addition, New Zealand has an extensive network of tax treaties with other countries (also referred to as "Double Tax Agreements" or "Double Tax Conventions"), that provide more comprehensive relief of double taxation and reduce withholding taxes on dividends, interest and royalties.

Outbound dividends may or may not be subject to withholding tax, depending on a number of factors. A fully imputed dividend (that is, a dividend in respect of which full company tax has been paid, and which therefore carries a full imputation credit) paid to a non-resident shareholder will generally either be exempt from withholding tax (if paid to an investor with a holding of 10% or greater in the company paying the dividend) or will be subject to relief under the supplementary dividend mechanism -see below. The part of a dividend that is not fully imputed will be subject to 30% withholding tax under domestic law, but this will generally be reduced if the shareholder resides in a country with which New Zealand has a tax treaty. The maximum withholding tax rate allowable under New Zealand's tax treaties is 15%, but treaties concluded since 2009 include lower (including nil) rates for some categories of investment.

The supplementary dividend mechanism (known prior to 2010 as the foreign investor tax credit regime) is designed to reduce the combined total of company tax and withholding tax on non-resident equity investors to the New Zealand company tax rate (currently 30%, reducing to 28% for tax years commencing on or after 1 April 2011). The mechanism operates by allowing a company an income tax credit, calculated as a portion of the imputation credits attached to dividends paid to non-resident shareholders, if the company pays a supplementary dividend of the same amount to its non-resident shareholders. Because it is based on the amount of imputation credit attached to a dividend, the mechanism applies only to the extent that company tax has actually been paid.

Interest paid offshore is nominally subject to 15% withholding tax, reducible to 10% under New Zealand's tax treaties. However, if the borrower has elected to pay a 2% levy (known as the approved issuer levy, or AIL), the rate of withholding tax is reduced to 0%. A borrower may only elect to pay AIL if certain criteria apply - the principal criterion being that they and the lender must not be associated persons.

Royalties paid offshore are subject to 15% withholding tax, reducible to either 10% or 5% under New Zealand's tax treaties.

### More information

All New Zealand legislation is available online at <http://www.legislation.co.nz>. More detailed information on the New Zealand tax system, including tax publications, can be obtained from the New Zealand Inland Revenue website at [www.ird.govt.nz](http://www.ird.govt.nz). New Zealand's tax treaties can be accessed at <http://taxpolicy.ird.govt.nz>.

This version is composed of information submitted by APEC member economies by responding to the Survey Questionnaires (Annex 1). Information of some members were not available at the time of the publication and pages are kept blank but, will be included in the future edition.

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## Introduction

### Our Location Offer

The strategic location of Peru in the central coast of the South Pacific facilitates the development of a regional commercial hub to strategically connect economies from Asia and North America to the Brazilian and the Andean economies.

Peru maintains a proactive attitude regarding the participation in free trade agreements that allow the access to expanded markets. Investors, who are established in the country, may have access to them.

Beyond being a country that shows a stable macroeconomic situation, with less risk in comparison with other countries in the region and clear comparative advantages that it presents in various sectors of the economy, Peru is a country that has one of the most attractive policies to face private investment and in particular foreign investment.

Peru is consolidating as an attractive investment destination, projecting itself as an efficient exportation platform which thanks to the signed Trade Agreements, offers preferential access to a market of over 2 million people.

General Principles of favorable policy to investment development:

- \* The private initiative is free. It is practiced within a social market economy. Under this scheme, the government guides the development of the country, and operates mainly in the areas of promotion of employment, health, education, security, public utilities and infrastructure.
- \* Only authorized by express law, the State may execute subsidiarily business, directly or indirectly by reasons of high public interest or manifest national interest.
- \* The government promotes and monitors the free competition. It fights against any practice that limits it and the abuse of dominant or monopolistic positions. No law or arrangement may authorize or establish monopolies.
- \* The domestic and foreign investment is subject to the same conditions. The production of goods and services and foreign trade is free.

### Introduction to investment regime

Within the context of the economic objectives, Peru aims to foster sustainable development to improve the livelihoods of Peruvian nationals by welcoming foreign investment in order to develop comparative and competitive advantages of the country, increase productivity in potential areas of investment, and expand growth of employment rates.

Peru offers an open Foreign Investment Regime based on core international principles, an opened and deregulated economy involved in the globalization process, modern competition policies, relaxed labour regulations and a simplified tax regime. The State promotes private domestic and foreign investment, given the important role it plays in the country's economic development.

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

WTO commitments are fully abide by. In that sense, no selection mechanism or performance requirement is applied or demanded to foreign investment. In cases where investments enjoy benefits coming from the subscription of legal stability agreements with the State, requirements are the same than those established for national investors.

The legal framework provides a regime to guarantee the stability of important investment rules and bilateral and multilateral instruments consolidates a stable and predictable investment climate. Peru is a member of the Multilateral Investment Guarantee Agreement - MIGA of the World Bank, the International Constitutive Settlement of Investment Disputes - ICSID, and UNCITRAL.

In 2008, Peru became 41 st adherent to the organization of Economic Cooperation and Development (OECD) Declaration on International Investment and Multinational Enterprises in acknowledgement to its impressive progress in fostering political reforms and improving business climate in the country.

### Investment priority plan/equivalent policy

Investment priorities drive to the sustainable development of the country, based on the exploitation of our vast natural resources. Thus, the development of infrastructure is our main objective, in order to promote competitiveness and to facilitate the later development of agribusiness, aquaculture, tourism, wood industry and petrochemical.

In order to improve the business climate and encourage private investment growth, the Plan to Improve the Business Climate - July 2009-July 2010 is being implemented. This plan includes reforms in ten areas where the country needs to keep improving in order to attract more investments and foster stronger business development.

The target is to dramatically improve our current position in the business climate attractiveness worldwide ranking by the end of 2011. The plan incorporates reforms in the following areas: business set up, construction permits, contracts enforcement, foreign trade, tax payment, property registration, and investors' protection.

### More information

The Private Investment Promotion Agency of Peru - ProInversion: [www.proinversion.gob.pe](http://www.proinversion.gob.pe)

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

To start companies in Peru there is no special authorization or special licensing in the case of foreign investment. Public institutions shall approve and publish the pertaining Unique Text of Administrative Procedures (TUPA in Spanish) in order to avoid delays and facilitate start-up business activities.

These activities include operating license formalities in Municipal Governments, the Ministry of Production, several Ministries and public organizations, registration with the Taxpayers Registry (National Superintendence of Tax Administration) and registration with other institutions such as the Public Registry for real estate property, corporate bodies, individuals and goods and chattels.

According to a report of the World Bank in "Doing Business", there are nine procedures to start up a company and the average time of the implementation process is about 41 days. Currently, there is an administrative simplification process under way to reduce overtaking time and fees. However, the main focus is being placed on administrative processes that face strong bureaucratic obstacles.

#### Timing and Step Process to start Companies

##### 1. Check the uniqueness of the proposed company name

Time to complete: 1 day

Cost to complete: USD 1.47 per search and USD 5.58 per reservation. Based on UIT (Tax Unit) of S/. 3,55 as of January 01, 2009.

Before the company name is selected, a search must be conducted in the Public Registry to verify that the name is unique. This search takes no more than one day. The proposed name may be reserved or blocked for 30 days in the Public Registry so that no other company can register the same name during that time.

##### 2. Notarize company documents by a notary

Time to complete: 5 days

Cost to complete: USD 200 notary fee (both fees depend on market conditions)

The incorporation documents, duly authorized by an attorney and signed by the company's shareholders, must be presented to the notary public. In turn, the notary drafts the public deed and files it with the Mercantile Registry in 30 days. Notary fees are up to 1% of capital, depending on the company size, the length of the public deed, and the initial capital contribution.

The incorporation documents must include, at least, (a) the company name; (b) its purpose and duration; (c) the company domicile; (d) the initial capital contribution; (e) the shares nominal value and the total number of shares; (f) the classes of shares, if needed; (g) the name, nationality, marital status, occupation, and residence of any individual shareholder; (h) the names of the initial directors, managers, and agents; and (i) the date of startup operations.

### 3. Deposit at least 25% of capital in a bank and obtain proof thereof

Time to complete: 1 day

Cost to complete: 0.06% of transaction value

Each share must be fully subscribed and at least 25% of its nominal value must be paid in. Payment may be made in cash, goods or real estate. It is recommended that the initial contribution be made in cash, in this case this is done by depositing the funds in a bank account and obtaining proof (most banks require a marginal deposit to open an account, USD 400 for example). Initial contributions in goods and real estate must be appraised and the appraisal must be approved by the board after the registration of the company and before the shares may be issued.

### 4. Register the incorporation documents with the local legal entities public registry

Time to complete: 1 day

Cost to complete: 0.3% of capital + USD 15 for performing the registration + USD 08 per appointment of each director, manager or other representative, up to the limit of PEN 3,550 (equivalent to 1 UIT - Peruvian Tax Unit for FY 2009).

The notary public submits the notarized agreement, including the (a) the company's name; (b) capital stock and purpose; (c) the address of its head office and branches; (d) the name, nationality, marital status, occupation, and residence of any individual shareholder; (e) the names of directors; (f) capital structure and contributions; (g) proposed bylaws; (h) start date of company operations; and (i) proof of capital deposit in a bank account.

By law, every corporation (sociedad an?nima) must have at least three directors and one manager, except for the closed corporation (sociedad an?nima cerrada), which may choose not to have a board of directors.

### 5. The notary stamps the accounting book and the minute book

Time to complete: 1 day

Cost to complete: USD 7 per book of no more than 100 pages. Most companies have between 5 and 9 of these books. Thus, the cost will range between USD 35 and USD 63.

### 6. Obtain taxpayer identification number (Registro Unico del Contribuyente, RUC) at the National Superintendency of Tax Administration (Superintendencia Nacional de Administracion Tributaria, SUNAT)

Time to complete: 1 day

Cost to complete: no charge

Companies are no longer required to register with the Peruvian Institute of Social Security. Now they register with EsSalud. EsSalud and the Oficina de Normalizacion Previsional (ONP) are the State entities providing health and pension coverage, respectively. However, employees may elect to get this coverage from private companies. Contributions to the state social security system (EsSalud and ONP) are collected by the National Superintendency of Tax Administration, (Superintendencia Nacional de Administracion Tributaria - SUNAT). No further action on the matter is required.

This taxpayer identification card is used to identify companies for tax purposes with the Peruvian government, including income tax, value-added tax, municipal tax, and any other fiscal matters. To register for the card, only the Unified Taxpayer Registry form must be duly completed and submitted, upon showing: (a) company incorporation documents; (b) original identification card of legal representative; and (c) original voucher of water or electric services of the registered office for one of the past 2 months. The company must indicate in the form what taxes will apply to its activities.

SUNAT became the front desk for all social and other contributions that private companies have to pay to comply with national tax regime in the country. None of payroll books need to be stamped physically, or Ministry of Labor needs to be visited for that matter. This procedure could be done in electronic format. Once the company is incorporated it will receive its taxpayer identification number (RUC) and a special login and password -"clave SOL". This pass allows to undertake electronic payments and provide information through the web-based system; [www.sunat.gob.pe](http://www.sunat.gob.pe). Additionally, since January 2008, there is electronic payroll system "Programa de Declaracion Telematica- PDT -601". To date, 98% of incorporated companies, both small and medium size, use this electronic system.

#### 7. Obtain a Certificate of Compatibility from the District Council

Time to complete: 6 days

Cost to complete: USD 40 depending on the District Council, some of them don't charge for the certificate

Companies must obtain a certificate of compatibility before obtaining a municipal license from the District Council (Procedure 10). The certificate of compatibility indicates that the proposed business is compatible with the area where its offices will be located and that these offices meet certain prerequisites, such as parking lots.

#### 8. Obtain technical report of approval from the National Institute of Civil Defense (Instituto Nacional de Defensa Civil, INDECI)

Time to complete: 5-15 days

Cost to complete: USD 2 per square meter (with a maximum of \$1,000)

According to law, all companies that plan to operate an office or any other kind of establishment must obtain a Technical Report of Approval from the National Institute of Civil Defense (Instituto Nacional de Defensa Civil, INDECI). The certificate is valid for a year. The technical inspection consists of complying with the minimum security conditions and identifying the risks from the facility or construction. This process is required to determine the basic equipment necessary to adequately react in case of emergency.

Most district governments request that companies obtain this report as a prerequisite to granting the municipal license to operate. As a result of accidents during 2003, the reports are more difficult to obtain, adding more time to companies whose activities concentrate people in their facilities.

#### 9. Obtain municipal license from the City Council

Time to complete: 15 days

Cost to complete: USD 90 (varies depending on the City Council where the company's office is located)

This procedure must be done after Procedures 6, 7, 8, and 9 are completed. A municipal license, required to operate commercially, is obtained from the municipality of the jurisdiction where the company is located. Some district councils require a provisional license while the permanent license is being processed. In most cases, the district council requires a copy of the incorporation documents, the public deed, the distribution plan, property title documents (if applicable) and the certificate of compatibility approved by the district council. Ordinance No. 857 simplified the license application process in the metropolitan municipality of Lima (Municipalidad Metropolitana de Lima). The certificate of compatibility, the technical approval report, and the definite business license can be obtained at the municipality in 7 days as part of a one-step process. In this municipality, the cost was also reduced and ranges from USD 30 to USD 150, depending on the company's activities.

#### Does this apply to all investment or, are there differential treatment?

No screening mechanism is applicable to foreign investment in Peru. There is no minimum size of investment restriction on FDI. No restrictions apply exclusively to foreign investors as to the degree of ownership interest or management control that they may exercise in any form of investment.

#### Conditions of investment



Peru maintains very few restrictions on foreign investment. Foreign nationals and firms are not authorised to acquire directly or indirectly land and water resources located within 50 kilometres of the Peruvian border. Exceptions are possible subject to the authorisation by a Supreme Decree approved by the Council of Ministers in the case of expressly declared public necessity. Such authorisations have been granted for example in the mining sector.

Broadcasting is open only to Peruvian nationals and juridical persons organised under Peruvian law and domiciled in Peru. Foreign national may not own more than 40% of the total shares or equity in such a corporation and must be owners or shareholders in a radio or television broadcasting enterprise in their country of origin. If a foreign national is, directly or indirectly, a shareholder, partner or associate in a corporation, that corporation may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin.

In air transport, at least 51% of capital must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. This limitation shall not apply to the enterprises constituted under the Law No. 24882 which may maintain the ownership percentage set in this law (70 % of foreign ownership) Six months after the company is authorised to provide commercial transportation services, foreign national or foreign citizens may own 70% of the company's capital.

Only companies with majority Peruvian ownership (51% of the paid-in capital) may supply water cabotage services (i.e. maritime, lakes and rivers). Water transport and related services supplied in bay and port areas (such as fuel replenishment services, diving, transport of persons) must be supplied by natural persons domiciled in Peru and corporations incorporated and domiciled in Peru and properly authorised Peruvian flag vessels and equipment. In some cases, such as fuel replenishment services, to get the authorisation for the Peruvian flag, the company must be a national ship enterprise.

## Investment promotion and facilitation

The Private Investment Promotion Agency of Peru (ProlInversi?n) was established in 2002 by merging three agencies previously responsible for such activities, namely (i) the Commission for Promotion of Investment (COPRI), which implemented the privatisation process of state-owned enterprises, (ii) the National Commission for Foreign Technologies and Investment (CONITE) responsible for foreign investment, and (iii) the Economic Division of the Peruvian Promotion Agency ( PROMPERU).

ProlInversion is member of WAIPA and it has received technical assistance from a number of international agencies such as FIAS, UNCTAD and IFC. It has also concluded several cooperation agreements and memoranda of understanding with different agencies, notably the US Overseas Private Investment Corporation (OPIC), the Finnish Fund for Industrial Cooperation (FINNFUND), the Italian Agency SIMEST, the Japan Institute for Overseas Investment (JOI), Korea Trade-Investment promotion Centre (KOTRA), China Council for promotion of International Trade (CCPIT) and China Investment Promotion Agency. Similar agreements are currently negotiated with Brazil's APEX, PROMEXICO, Czheinvest, Export Development of Canada.

ProlInversion?s investment promotion activities abroad are supported by the Ministry of Foreign Affairs through Peruvian Embassies abroad.

ProlInversion's scope of action includes promoting concession granting among its investment promotion responsibilities, such as developing public-private partnerships, asset sales or fostering joint ventures or management agreements for State-owned interests or property. ProlInversion is responsible for encouraging both local and foreign private investment, in order to foster competitiveness and sustainable development in Peru to improve the welfare of Peruvian people; it provides information and guidance concerning the possibilities of investing in Peru, solves inquiries and organizes the agenda of visiting potential investors to Peru. ProlInversion also advises and assists investors on the procedures for investing, promotes local business initiatives among foreign potential investors, and taps alternative foreign funding sources for local investments.

Additionally, ProlInversion proposes and executes policies on foreign investment. It signs agreements to provide State-backed guarantees to investors on the stability of basic rules governing their investments, identifies obstacles to investment, and proposes measures to remove them. This is possible because ProlInversion's Board sits five Ministers of State in the production and investment fields Prime Minister, Ministry of Economy and Finance, Ministry of Housing and Construction, Ministry of Energy and Mining, Ministry of Agriculture and the Ministry of Transportation and Communications), and because ProlInversion has signed cooperation and assistance agreements with several Regional and Local Governments.

ProlInversion's strategy seeks to assist in the socioeconomic development in large projects' areas of influence through different mechanisms. To do so, it coordinates work by various government agencies.

ProlInversion seeks to strengthen new high productivity poles or cities with acknowledged competitive capacities through such private investment shocks.

The main services provided by ProlInversion to investors may be found at [www.proinversion.gob.pe](http://www.proinversion.gob.pe).

ProlInversion does not have a One Stop Shop for investor's formalities. Although, ProlInversion is making joint efforts with other Public and private entities to identify and remove administrative barriers in order to have an efficient administrative simplification for formalities related to investments in Peru.

## More information about the process of investing in our economy

The Private Investment Promotion Agency of Peru - ProlInversion: [www.proinversion.gob.pe](http://www.proinversion.gob.pe)

## Investment protection

### Protection of property rights and conditions for expropriation

Peruvian legal framework provides high protection standards for foreign investment covering matters on transfer, expropriation and compensation, intellectual property rights and settlement of disputes.

No prior authorization is required for foreign exchange operations. Every individual or corporate body is entitled to remit abroad or keep foreign currency in the country. Convertibility or transfer of funds related to foreign investment is free.

According to the current legislation, foreign investors are entitled to remit abroad the following, without prior authorization:

\* The full amount of their capital generated from investments registered with the competent agency (ProlInversion), including the sale of shares, participation of rights, capital reduction or partial or total wind-up of the companies; and,

\* The full amount of verified dividends or net profits generated from their investments, as well as the payment for the use or usufruct of goods physically located in the country and registered with the national competent agency

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

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

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

The IIAs signed by Peru grant investors protection against eventual non-commercial risks, such as State measures that may affect, without justification, the ownership of their investment or the normal management and exploitation of it. IIAs establish compensation in cases where an action or measure with expropriation effect is taken.

Likewise, IIAs signed by Peru guarantee that all transfers relating to a covered investment be made freely and without unjustified delay. Nevertheless, Peru holds the faculty to keep the security, solvency and integrity of its financial system through the equitable, non-discriminatory and good faith application of certain measures.

### 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 twenty 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.

IAs protect against direct expropriation and indirect expropriation having an effect equivalent to nationalization or expropriation, including tax measures that may have confiscating effects. Compensation mechanisms for losses in case of armed conflict or civil war are taken under national treatment.

### More information

The Private Investment Promotion Agency of Peru - ProInversion: [www.proinversion.gob.pe](http://www.proinversion.gob.pe)

### Protection of IPRs

Legislation in force protects national or foreign intellectual and industrial property rights. Article 2, item 8) of the Political Constitution sets forth that every person has the right to freedom of intellectual, artistic, technical and scientific creation, as well as to the property of those creations and their product. Besides, complementary provisions focused on protection of intellectual property have been given. As to industrial property, Legislative Decree N° 823 is aimed at regulating and protecting the constitutive elements of intellectual property and invention patents. The protection of copyright is given through Legislative Decree No 822 - Law on Copyrights.

Contracts for the use of technology, patents, trademarks or another element of intellectual property of foreign origin, technical assistance, basic and detailed engineering, management and franchising are freely negotiated between the parties and further registered with the National Institute of Defense of Competition and Protection of Intellectual Property - INDECOPI. The remittance of royalties is freely made through the national financial system, prior payment of the corresponding taxes.

Peru has adhered to the Paris Convention for the Protection of Industrial Property and the Inter-American Convention for the Protection of Trademarks and Commerce of Washington.

The State facilitates and supervises free competition, fights any limiting practice and regulates the exercise of dominant position in the market.

### More information

National Institute of Defense of Competition and Protection of Intellectual Property - INDECOPI: [www.indecopi.gob.pe](http://www.indecopi.gob.pe)

### Flow of funds

The exchange rate in Peru is based on the market rules.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The entity in charge of implementing the monetary and currency exchange policy is the Central Reserve Bank of Peru- BCRP. This entity only intervenes in case of sudden volatility of the exchange rate which hinders the normal performance of the economic activity and triggers risk creating problems for payment to companies and people who operates with foreign currency.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

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

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

b) Access to the most favourable exchange rate for currency conversions for inward and outward remittances.

### **Mechanisms to review decisions, and settle disputes**

In the understanding that the question refers to the process of approval of applications for investment, it's important to mention that, the legal framework governing foreign investments in Peru is based on national treatment. Thus, foreign investments are allowed, without restrictions, in most economic activities. On that sense, there are no decisions to be reviewed because there is no prior authorization required for foreign investments.

What, if any, mechanism do you have for foreign investors to settle disputes?

In accordance with Peruvian's Political Constitution, enacted in 1993, and at present in force, national and foreign investors are allowed to submit disputes arising out of contracts to judicial or arbitration courts, by virtue of the protection mechanisms established in those contracts or in the law.

Furthermore, in order to be prepared to attend claims arisen out of breaches of the obligations contained in treaties, contracts and other agreements signed between public entities and foreign or national investors that include provisions regarding international dispute settlement mechanisms, Peru has implemented an investment disputes legal framework.

The Law 28933, Law of the System of Coordination of the State before the arising of international investment disputes, enacted in 2005, (Investment Disputes System), constitutes the main Peruvian law related to investment disputes. Between its objectives are found the creation of a system to optimize the response and coordination of the public entities before the arising of investment disputes, allowing a timely and appropriate response to them.

The Law mentioned above creates a Special Committee comprised by representatives of the Ministry of Economy and Finance, Ministry of Foreign Affairs, Ministry of Justice, and the Private Investment Promotion Agency - PROINVERSION, the Ministry of Foreign Trade and Tourism and the public entity responsible of the arising of the investment dispute if necessary -in these two last cases, depending on the matters involved in the dispute. This Committee is a co-operative body with competence to attend the dispute claims submitted by investors before itself in the previous stage of consultations and negotiations and, as the case may be, coordinate the arbitral or conciliation procedure.

### **ICSID**

Peru is a member of the Multilateral Investment Guarantee Agreement - MIGA of the World Bank, the International Constitutive Settlement of Investment Disputes - ICSID, and UNCITRAL.

Peru signed the ICSID agreement on September 14, 1991 and it entered into force on September 8, 1993. Peru also adhered to the New York Convention "Convention on the Recognition and Enforcement of Foreign Arbitral Awards) on July 7, 1988.

Besides, Peru subscribed the Convention Establishing the Multilateral Investment Guarantee Agency on December 19, 1990 and ratified it on April 1991 (Legislative Resolution No 25312).

### **More information**

The Private Investment Promotion Agency of Peru - ProInversion: [www.proinversion.gob.pe](http://www.proinversion.gob.pe)

### **International investment agreements**

With;

Argentina; Australia; Belgium; Bolivia; Brazil; Canada; Chile; China, People's Republic of; Colombia; Czech Republic; Denmark; Ecuador; El Salvador; European Union; Finland; France; Germany; Italy; Japan; Korea, Republic of; Luxembourg; Malaysia; Netherlands; Norway; Paraguay; Portugal; Romania; Singapore; Spain; Sweden; Switzerland; Thailand; United Kingdom ; United States; Venezuela;

Please provide a brief description of these IIAs, or your IIAs in general.

Up to date, 35 International Investment Agreements have been signed with economies from the Pacific Basin, Europe and Latin America.

Most of the bilateral investment treaties were negotiated under a post-establishment approach during the '90s. In the present decade, Peru has adopted a new approach. The current "model" includes a broad definition on investment together with a pre and post-establishment scope and a negative list approach.

This new approach is reflected in the investment chapters included in the FTAs with the USA, Canada, Chile, China, Singapore, the European Free Trade Association and somehow in the Trade Agreement with the European Union.

Currently, Peru is negotiating FTAs including investment chapters with Korea, Japan, Mexico and also with Vietnam, Malaysia, New Zealand, Australia, Brunei, in the framework of the Trans-Pacific Partnership Economic Agreement.

Peru has concluded double taxation treaties with Brazil, Canada and Chile.

### More information

The Private Investment Promotion Agency of Peru - ProInversion: [www.proinversion.gob.pe](http://www.proinversion.gob.pe)

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Hiring of foreign personnel is based on Legislative Decree No 689, which sets forth that local companies are entitled to hire foreigners up to 20% of their work force, provided that their salaries do not exceed 30% of the total wages paid by the company. Employers shall be exempt from the limiting percentage in the case of highly skilled technical and professional personnel. Workers may freely remit their after-tax salaries abroad.

Specific restrictions on personnel managerial aspects are established in:

- \* Services of investigation and security - Only Peruvian personnel is allowed to be hired (Regulations on private security services - Supreme Decree No 005-94-IN).
- \* Services of maritime transportation - Companies are allowed to hire only Peruvian personnel for tasks as loading and unloading, transship and mobilization of cargo in trading ships, from dock to ship and vice verse, and on bay.

The employer is empowered to guide and regulate labour relationships, give orders for the correct execution and punish any breach thereof.

Workers cannot be fired unilaterally and arbitrary by the employer. Nevertheless, it shall be considered that some kind of contracts, such as part-time contracts or contracts for specific tasks, exclude from this protection.

Labour controversies or disputes that may rise between the employer or worker initially may be submitted to conciliation process. In case, the solution is not reached by this process, controversies may be submitted to the Court where specialized tribunals solve them.

Applicable legislation is contained in the Unique Arranged Text of Legislative Decree No 728, approved by Supreme Decree No 002-97-TR; General Law on Labour Surveillance, approved by Legislative Decree No 910, and, Process Labour Law, approved by Law 26636.

Peruvian migration laws consider the existence of different migratory status, which allow foreigners to carry out several activities.

**Business:** Foreigners are allowed the entry and sojourn up to 90 days, extended to 30 days more. In this case, foreigner cannot receive any income from Peruvian source, nevertheless, he may entered into contracts or make transactions. This kind of visa is temporary.

**Worker:** Foreigners are allowed to stay in Peru with the purpose of carrying out labour activities, as the result of labour contracts. The time authorized for living in Peru depends on the extension of the contract, previous approval from the Labour Ministry. In this case, the visa is a residence visa.

**Free lance:** Foreigners are allowed to live indefinitely in Peru to make investments, receive any income or to make free lance labours. The visa is a residence visa.

## More information

Ministry of Labour: [www.mintra.gob.pe/PERUINFOMIGRA/](http://www.mintra.gob.pe/PERUINFOMIGRA/)

## Taxation

### Taxation of foreign nationals and foreign firms

The taxes are created, amended or repealed, or an exemption is established only by law (Congress of the Republic) and Legislative Decree (Executive Branch) in case of delegation of Congress powers, unless tariffs (imports) and rates (administrative procedures), which are regulated by Supreme Decree. Town councils can create, modify and eliminate contributions and rates, or exempt from them, within their jurisdiction and within the limits prescribed by law.

The State, exercising the taxing power, must respect the reservation principles of the law reserve, equality and respect of the fundamental human rights. No tax shall have a confiscatory effect. The "legal reserve" means that all essential tax elements (obligors, tax base, aliquot, etc.), should be prescribed by law and having not entrusted the regulation of such matters to the regulations or to tax raising authorities.

Tax regulation issued in violation of the rules indicated in the preceding two paragraphs; simply do not take legal effect.

### Central Government

The main taxes are:

- \* **Income Tax :** rate applicable to domiciled legal persons is 30%, except for agricultural, agribusiness and aquaculture activities, for which is in effect a promotion regime that establishes a rate of 15%. There is also a promotional regime for the development of economic activities in the Amazonian and exemption from all taxes for certain productive activities in five industrial zones.
- \* **Dividends and other forms of profit distribution** are subject to a rate of 4.1% applicable to the payment of dividends. The interest payable on foreign loans are taxed at a rate of 4.99% in the case of an interest to refute that does not exceed in more than three points the prime rate prevailing in the home market - it is worth mentioning that the interest paid abroad by multiple operating companies, established in the country, as a result of domestic use of its credit lines abroad pay a rate of 1% - the fee for technical assistance are taxed at a rate of 15%, while royalties for the use of know-how and intellectual property rights and other income payable abroad are subject to a rate of 30%.
- \* **General Sales Tax:** value added tax that affects sales, imports, service provisions and construction activity, with a rate of 19%, which includes the rate of Municipal Promotion Tax.
- \* **Excise Tax:** tax on the sale in the country, at the producer level, and imports of goods such as cigarettes, alcoholic drinks, soft drinks, mineral water, other luxury goods, fuels, and casino and bet games, applying rates of between 0% and 300% depending on the type of good or service. In some cases, it anticipates the payment of fixed amounts depending on the taxed product or service.
- \* **Financial Transaction Tax:** temporary tax which tax at the rate of 0.05%, banking transaction in local or foreign currency (both debit and credit.) The tax will be in force until December 31, 2010. The tax will be deductible for purposes of income tax.
- \* **Temporary Tax on Net Assets:** temporary tax that was in force until December 31, 2009. It is applied to the value of net assets to December 31 of the last year. For payments to be made during 2010, the tax shall be determined by applying on its taxable base the cumulative progressive scale as follows:

o Rate: 0.0% Net Assets: Up to S/. 1 million

o Rate: 0.4% Net Assets: For more than S/. 1 million

o The properly paid tax may be used as a credit against payments on account or adjustment payments of income tax.

#### Local Governments

\* Property Tax: rates vary between 0.2 and 1% according to the value of the property.

\* Sales tax: Tax property purchaser with a rate of 3% (they are exempt of the first 10 UIT ).

#### Others

Social contributions, including contributions to the Pension System (the employee will contribute 13% of his salary if he is affiliated in the national system, or proximately 12% if he is affiliated in the private system) and the contribution to EsSalud (employer shall contribute with 9% of worker's remuneration).

Others, such as contribution to SENCICO (0.02%) and contribution to SENATI (0.75%).

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

In order to solve the problems of international double taxation, Peru has begun a process of bilateral negotiations for the signing of "Agreements to Avoid Double Taxation." To date, agreements have been signed with Chile, Canada, Brazil and Spain. The agreements signed with Chile and Canada are in force since 2006. The agreement with Brazil will be implemented from 2010, while the agreement signed with Spain is in ratification process by the Congress of each country.

In addition, for investments among member countries of the Andean Community, there is the regime contained in Decision 578 issued by this organization.

#### More information

National Superintendence of Taxes Administration (SUNAT):  
<http://inversionistaextranjero.sunat.gob.pe/index.php?lang=en>

## Introduction

### Our Location Offer

Currently ranked the fourth largest economy in Southeast Asia and the 36th in the world by the International Monetary Fund (based on purchasing power parity; 2009 estimates), the Philippines remains to be a competitively favorable business destination for many companies. It hosts the biggest corporations across various industries, and continues to attract a lot more, thanks to the plethora of sustainable advantages the country offers that help secure their competitive position in the market amid an increasingly challenging business environment.

The Philippines is strategically located right in the heart of Asia, traversed by a network of international sea lanes and air traffic routes going to the Asian mainland. This makes the Philippines a prime location for export-oriented businesses, which are highly dependent on effective and on-time import and export schedules. Access to the ASEAN market of more than 550 million people and other major Asian markets is easy, as its capital, Manila, can be reached within 2-4 hours by plane and 24 hours by ship from key Asian cities.

Considering the archipelagic makeup of the Philippines, it has established robust infrastructures to ensure the seamless flow of goods, services, and people across its 7,107 islands. The three major islands of Luzon, Visayas, and Mindanao are made accessible by a network of roads, expressways, waterways, and airports. Among the major physical infrastructures are nine international and 20 domestic airports, three connecting railways which span across the Metro, and 12 roll-on/roll-off ports.

Digital connectivity is also well established. The Philippines offers a redundant international connectivity that allows 24x7x365 operations. Telco providers offer multiple infrastructures, with fiber optic cable as the primary backbone network and satellites as backup. There are 11 international gateway facilities and two satellites supporting international telecommunications.

A number of economic zones and IT parks are all equipped with support capabilities, such as ample and up-to-date telecommunications systems; a clean, uninterrupted power supply and computer security; and building monitoring and maintenance systems.

Presently, there are also emerging growth areas being explored and developed to cater to the growing needs and special business requirements of many enterprises. One of which is the services sector, the largest of its kind in the Philippines. It contributes around 50% to the country's gross domestic product (GDP) and is the fastest growing sector, which is highly driven by the BPO boom in the Philippines. From a non-entity in 2001, BPO has been lifted to the status of a sunshine industry, with its phenomenal 48% compound annual growth rate from 2004-2007.

A newly industrialized economy, the Philippines is also strong in the manufacturing industry such as electronics assembly, processed food, textile and garments, chemicals, pharmaceutical, and petroleum refining. Having abundant and diverse natural resources, from land to marine to mineral resources, other major industries include renewable energy, mining, agribusiness (commercial production/ processing), and fishing.

While the Philippines has wide array of investment offerings, its best value proposition still lies in the people-the Filipinos. Its labor force, which now totals over 38 million, is well equipped with high levels of education. Literacy rate is more than 94%, and 70% of the population are fluent in English, making the Philippines one of the largest English-speaking countries in the world. Every year, around 450,000 students graduate from college across a wide range of disciplines. In addition, there is a pool of skill-certified workers in the fields of automotive, construction, metals and engineering, information and communications technology, health and wellness, and tourism. The Filipino worker is a showcase in itself of professionalism, high level of commitment and loyalty, strong customer orientation, technical prowess and high trainability.

The Philippines has a business-friendly environment. The government has instituted a broad range of economic reforms and initiatives designed to spur business growth and foreign investments in the country. Key industries like manufacturing, telecommunications, petroleum, retail trade, financial sector, shipping, aviation, and water have been deregulated to allow a freer operation of market forces. Hundred percent foreign equity participation is allowed and basic rights and interests of investors are guaranteed.

Likewise, one-stop shops inside the zones and other investment promotion agencies are institutionalized to facilitate ease in business procedures and transactions.



## Republic of the Philippines

Providing support to investors is the Board of Investments, the lead government agency responsible for the promotion of investments in the Philippines. BOI assists investors to venture and prosper in desirable areas of economic activities, through the various services it offers to improve the ease of doing business in the country.

### Introduction to investment regime

The government has made it an official policy to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations and governments. As a general rule, there are no restrictions on the extent of foreign ownership of export-oriented enterprises. The objective of this policy is to channel this investment into activities contributing significantly to the process of industrialization and socio-economic development within the Philippines, while at the same time remaining within the limit set by the constitution and laws of the country.

The Foreign Investments Act of 1991 (Republic Act (RA) No 7042 as amended by RA No. 8179) governs the entry of foreign investments and the conduct of doing business in the Philippines. There are also other investment legislations that provide the investment incentives rules by which foreign and local investments may qualify, such as the Omnibus Investment Code of 1987 (Executive Order (EO) No. 226) and the relevant laws of free ports and ecozones.

The government has embarked on several proven measures directed towards establishing an atmosphere that stimulates continuous flow of investments and deter capital flights, as follows:

1. ensure that the country manifests stable economic growth.
2. maintain active engagement in several multilateral and bilateral trade and investment agreements.
3. provide competitive investment incentives program to promote the priority sectors. First is the liberal program of fiscal and non-fiscal incentives being offered to investors, such as tax holidays, special income tax rates, tax exemptions on local purchase of goods and services, employment of foreign nationals and unrestricted use of consigned equipment. Second, are the reforms introduced in the bureaucracy to allow for a more expedient and efficient facilitation of businesses in the country.
4. actively implement, through the Philippine Board of Investments, investment promotion and facilitation activities such as the conduct of outbound and inbound missions, investment briefings/seminars, capability-building training programs on investment promotion for LGUs, business matching, pre-investment facilitation services, policy advocacies, and provision of marketing information.
5. continuously implement the Strategic Investors Aftercare Program (SIAP) to establish a strong partnership with the private sector by proactively touching base with investors and offering services ranging from issues and concerns facilitation to assistance for future investment plans that would help the company grow hand in hand with our economy.

### Investment priority plan/equivalent policy

Investment opportunities in the Philippines abound and the areas of investments are listed in the Investment Priorities Plan (IPP), which is annually prepared by the Philippine Board of Investments.

The IPP lists economic activities and industries which are encouraged and considered desirable for the overall economic development of the country and thus entitled to incentives.

Priority Sectors for promotion based on the 2010 IPP are as follows:

1. Agriculture/Agri-business and Fishery
2. Infrastructure
3. Manufactured products
4. Business Process Outsourcing (BPO)
5. Creative Industries

- 6. Strategic Activities
- 7. Green Projects
- 8. Disaster Prevention, Mitigation and Recovery Projects
- 9. Research, Development and innovation

### More information

For details on the list, please visit the website: <http://www.boi.gov.ph>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

#### PROCESS OF DOING BUSINESS IN THE PHILIPPINES

##### 1. Register

###### a. For corporation/partnership

\* Securities and Exchange Commission (SEC)

\* Filing fee :

- 1/5 of 1% of the authorized capital stock-general requirement for domestic enterprise and processing period is more or less 10 working days for domestic enterprise.

- 1/10 of 1% of the actual inward remittance for Branch and Representative Office and processing period is more or less 30 working days.

\* SEC website: [www.sec.gov.ph](http://www.sec.gov.ph)

###### b. For Single Proprietorship

\* Department of Trade and Industry (Regional Operations Development Group)

\* Filing Fee:

- P315.00 (including documentary stamp) for Filipino applicant

- P515.00 (including documentary stamp)

\* Processing time is within the day

\* DTI website: [www.bnrs.dti.gov.ph](http://www.bnrs.dti.gov.ph)

##### 2. Secure the following permit:

###### a. T.I.N

\* Bureau of Internal Revenue (BIR)

\* No filing fee and processing time is within 1 day

\* BIR website: [www.bir.gov.ph](http://www.bir.gov.ph)

###### b. Barangay Clearance Certificate

\* Barangay/Municipality of the Local Government Unit where the business is located

\* Filing fee is P300.00 to P500.00 and processing time is within the day

###### c. Mayors Permit (License to Operate)

\* Local Government Unit (Office of the Mayor) where business is located

\* Filing fee:

## Republic of the Philippines

- Initial fee- based on business activity
- Garbage Fee is based on land/floor area
- License fee - P0.25 for every P1,000.00 of company's capital
- \* Note: Above details depends on the LGU requirements and processing period is within two (2) weeks

### d. Environmental Compliance Certificate (ECC)/or Certificate of Non-coverage (CNC)

- \* Department of Environmental and Natural Resources (DENR)
- \* Filing fee :
  - ECC Non-Critical: P4,000 and processing period is 20 working days
  - ECC Critical : P6,000 and processing period is 40 working days
  - CNC : P100.00 and processing period is 1 working day
- \* DENR website: [www.emb.gov.ph](http://www.emb.gov.ph)

### 3. Apply for employer/employee Social Security Registration

- \* Social Security System (SSS) nearest branch where business is located
- \* No filing fee and processing time is within the day
- \* SSS website: [www.sss.gov.ph](http://www.sss.gov.ph)

### 4. For installation of utilities

#### a. Telephone Landline or Mobile, etc.

- \* PLDT (171 Customer service)
  - Filing fee depends on the categories, type of model unit, processing time is within the day
  - PLDT website: [www.pldt.com.ph](http://www.pldt.com.ph)
- \* SMART 888-1111 (Customer hotline)
  - SMART website: [www.smart.com.ph](http://www.smart.com.ph)
- \* GLOBE 730-1000 (customer hotline)
  - GLOBE website: [www.globe.com.ph](http://www.globe.com.ph)

#### b. Water

- \* Maynilad Water Services (1626)
  - Maynilad website: [www.maynilad.com.ph](http://www.maynilad.com.ph)
- \* Manila Water Co.,Inc (1627)
  - Filing fee of both water services depends on the capacity requirement per cubic meter and processing time is within two (2) to four (4) weeks

#### c. Electric

- \* Manila Electric Company (16-211;631-111)
  - Filing fee depends on the capacity requirement per KWH and processing time is within two (2) to four (4) weeks
  - Website: [www.meralco.com.ph](http://www.meralco.com.ph)

### 5. OPTIONAL

To avail of incentives, apply with the concerned Investment Promotion Agency. For more information, please visit the BOI website: [www.boi.gov.ph](http://www.boi.gov.ph)

### **Does this apply to all investment or, are there differential treatment?**

In general, the process of doing business indicated in the preceding section applies to all types of businesses. However, special services are extended to micro, small and medium enterprises as provided below:

#### **Assistance to Micro, Small and Medium-Sized Projects**

The BOI extends the following:

- Preparation of simplified project application for BOI registration
- Identification of MSME support companies
- Sourcing financing support

In addition, the following assistance are further provided to micro and small enterprises:

- Exemption from application and registration fees for micro enterprises
- Seventy five percent (75%) reduction in application and registration fees for small enterprises
- Exemption from the twenty five percent (25%) equity requirement
- Simplified reportorial requirements
- Simplified application for incentives
- One-day processing of application for registration
- Reduced fees for incentives availment

### **Conditions of investment**

#### **National Treatment**

The Philippines does not apply national treatment to certain investments areas as specified by its Constitution and the Foreign Investment Act (FIA) of 1991 (RA No. 7042, as amended by RA No. 8179)

#### **Most Favored Nation Treatment**

The Philippines does not discriminate against any investment source economy. The FIA provides the rules and regulations for foreign investments. The law states that the domestic market is open to foreign investors as long as the activity is not included in the foreign investment negative list. For an export enterprise, which exports 60% or more of its output, there are no restrictions on the extent of foreign ownership unless the activity falls within the negative list.

The current negative list, the 8th Regular Foreign Investment Negative List (EO No. 858 dated 09 February 2010), may be accessed at this website: <http://www.neda.gov.ph>.

#### **Sector-Specific Laws and Policies**

Some sector-specific laws and policies were promulgated to provide support for the development of the sector. Among such laws/policies are:

- a. Agriculture
- b. Telecommunications

The Policy to Improve the Provision of Local Exchange Carriers Service (EO No. 109, s. 1993) opened up the telecommunications sector to new players to participate in the supply of telecommunication facilities all over the country.

- c. Mining

The Philippine Mining Act of 1995 (RA No. 7942) allows exploration, development and utilization of mineral resources up to 40% foreign equity. However, 100% foreign equity is allowed for purposes of granting exploration permit, financial or technical assistance agreement or mineral processing.

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### d. Automotive

The Motor Vehicle Development Program (EO No. 877-A) allows foreign-owned enterprises to engage in the manufacture/assembly of motor vehicles for the primary purpose of establishing and/or expanding production facilities.

### e. Renewable Energy

The Renewable Energy Act (RA No. 9513) provides for the accelerated development and advancement of renewable energy resources and the implementation of a strategic program to increase its utilization.

### f. Tourism

The Tourism Act of 2009 (RA No. 9593) provides for the development of the country as a prime tourist hub in Asia by promoting sustainable development and encouraging private sector participation.

### g. Oil

The Downstream Oil Industry Deregulation Act (RA No. 8479) provides for the liberalization and deregulation of the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality petroleum products.

### h. Book Publishing

The Book Publishing Industry Development Act (RA No. 8047) provides for the promotion of the continuing development of the book publishing industry, with the active participation of the private sector, to ensure an adequate supply of affordable quality-produced books not only for the domestic market but also for the export market.

### i. Infrastructure

RA No. 6957, otherwise known as the Build-Operate-Transfer Law, as amended by RA No. 7718, provides for authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector and the provision of the most appropriate incentives to mobilize private resources for the purpose.

## Investment promotion and facilitation

To meet investors' diverse requirements, BOI offers specialized services which include:

- \* Information assistance to local and foreign investors
- \* Timely investment advice and facilitation regarding investor's business transactions
- \* Assistance in the selection of investment location
- \* Joint venture matching services for international local and foreign entrepreneurs
- \* Investment advice and facilitation for Small and Medium Entrepreneurs (SMEs)
- \* Business linkages with public and private sector
- \* Evaluation and supervision of investment applications
- \* Facilitation of Environmental Clearance Certificate and advocacy for environment-related projects
- \* Investment briefings, inbound and outbound missions, seminars and conferences for local and foreign investors
- \* Aftercare service, by the establishment of a high quality, trust based working relationship with the investors through the Strategic Investors Aftercare Program (SIAP) and the facilitation of investors' issues and concerns through the Investment Promotion Unit (IPU) Network National Competitiveness Council- Transaction Costs and Flows (NCC-TCF), and Anti-Red Tape Task Force (ARTTF).
- \* Entrepreneurial assistance to Overseas Filipino workers
- \* Industry sectors planning and preparation of industry sector profiles

In terms of investment incentives, the following are offered:

## Republic of the Philippines

### 1. Incentives Offered Under the Omnibus Investments Code of 1987 -

- a. Income Tax Holiday (ITH) or Exemption from Corporate Income Tax for four (4) years (for "Non-Pioneer" projects) or six (6) years (for "Pioneer" projects), extendable to a maximum of eight (8) years
- b. Duty-free importation of capital equipment until June 16, 2011 (unless extended by law)
- c. Additional deduction for labour expense equivalent to 50% of the wages of additional skilled and unskilled labour force.
- d. Tax and duty free importation of breeding stocks and genetic materials.
- e. Tax credit on domestic breeding stocks and genetic materials.
- f. Simplified customs procedures for the importation of equipment, spare parts, raw materials and supplies and exports of processed products.
- g. Importation of consigned equipment.
- h. Employment of foreign nationals in supervisory, technical or advisory positions. Foreign nationals may hold indefinitely the position of president, general manager and treasurer (or their equivalent) of foreign-owned registered enterprises.
- i. Tax credit for taxes and duties paid on raw materials, supplies and semi-manufactured products used in the manufacture of export products and forming part thereof.
- j. Access to bonded manufacturing/trading warehouse system.
- k. Exemption from wharfage dues and export tax, duty, impost and fees.
- l. Exemption from taxes and duties on imported spare parts.
- m. Additional deduction for necessary and major infrastructure works.

### 2. Incentives Offered Under the Special Economic Zone Act of 1995

The Philippine Economic Zone Authority (PEZA) grants the following incentives to registered ecozone enterprises:

- a. Income Tax Holiday (ITH) or Exemption from Corporate Income Tax for four (4) years (for "Non-Pioneer") or six (6) years (for "Pioneer" projects), extendable to a maximum of eight (8) years.
- b. Upon expiry of the ITH, exemption from all local and national taxes, and in lieu thereof, payment of the special tax of 5% on Gross Income.
- c. Exemption from duties and taxes on imported capital equipment, spare parts, supplies and raw materials.
- d. Zero % Value Added Tax (VAT) on local purchases of goods and services, including telecommunications, power and water bills.
- e. Exemption from payment of local government fees such as Mayor's Permit, Business Permit, etc.
- f. Exemption from export tax, imports, fees and wharfage dues.
- g. Simplified import and export procedures.
- h. Employment of foreign nationals.
- i. Special non-immigrant visa with multiple-entry privileges for foreign investors and employed foreign nationals and immediate family members.

### 3. Incentives Offered Under the Bases Conversion and Development Act of 1992

The Subic Bay Metropolitan Authority and the Clark Development Corporation grant the following incentives to registered enterprises located at the Subic Special Economic Zone (SSEZ) and Clark Freeport Zone (CFZ), respectively.

- a. Exemption from all national and local taxes but in lieu thereof, payment of a final tax of 5% of their gross income earned from sources within the economic zone or Freeport.
- b. Tax and duty free importation of raw materials and capital equipment.

## More information about the process of investing in our economy

- o Board of Investments - [www.boi.gov.ph](http://www.boi.gov.ph)
- o Philippine Economic Zone Authority - [www.peza.gov.ph](http://www.peza.gov.ph)
- o Bases Conversion Development Authority - [www.bcda.gov.ph](http://www.bcda.gov.ph)
- o Clark Development Authority - [www.clark.com.ph](http://www.clark.com.ph)
- o Zamboanga Freeport Authority - [www.zambofreeport.com.ph](http://www.zambofreeport.com.ph)
- o Subic Bay Metropolitan Authority - [www.sbma.com.ph](http://www.sbma.com.ph)

## Investment protection

### Protection of property rights and conditions for expropriation

The Philippine constitution provides for the following:

#### a. Basic rights and guarantees provided in the Constitution such as:

- \* Article 3, Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
- \* Article 13, Section 1. The congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

#### b. Executive Order No. 226 otherwise known as "The Omnibus Investment Code of 1987 as amended provides protection of investments and entitles investors, as follows:

- \* Repatriation of Investments. The right to repatriate the entire proceeds of the liquidation of the investment was originally made and at the exchange rate prevailing at the time of repatriation;
- \* Remittance of Earnings. The right to remit earnings from the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance;
- \* Freedom from Expropriation. Freedom from expropriation except for public use or in the interest of national welfare or defense and upon payment of just compensation and the right to remit sums received as compensation in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance; and
- \* No Requisition of Investment. No requisition of property except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid and payments maybe remitted in the currency in which the investment was originally made and the exchange rate prevailing at the time of remittance.

Foreign investors are entitled to the payment of just compensation in the event that their investments are expropriated for public use. In such cases, foreign investors shall have the right to transfer the 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.

The relevant laws and rules on expropriation include:

- \* Section 9, Article III of the 1987 constitution
- \* Rule 67 (Expropriation) of the rules of court which provides for the procedures to be followed in expropriation proceedings.
- \* Republic Act No. 8974 (An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes)

## More information

BOI website : [www.boi.gov.ph](http://www.boi.gov.ph)

DOJ website : [www.doj.gov.ph](http://www.doj.gov.ph)

## Protection of IPRs

### i) Intellectual Property Laws -

RA No. 8293, also known as the Intellectual Property Code of the Philippines (IP Code), codified the minimum IPR system committed under the WTO Agreement in particular the Agreement on Trade-Related Aspects of IPR (TRIPs). The Philippine IP system follows the first-to-file rule as most countries in the world.

The IPRs recognised by the law are: patents (inventions, utility models and industrial designs), copyright and related rights, trademarks and service marks, geographical indications, industrial designs, lay-out designs of integrated circuits and undisclosed information.

The protection of lay-out design of integrated circuit is embodied in a separate law, Republic Act 9150. A sui generis protection for new Plant Varieties is provided for under Republic Act 9168.

### ii) Enforcement Efforts -

Since the launching in 2005 of a comprehensive and concerted IPR strategy, the Philippine government has significantly improved its performance in all critical areas of its "Strengthening the IPR Regime Strategy", as follows: (1) Public Outreach; (2) Institution and Capacity Building; (3) IPR Enforcement; (4) Judicial and Adjudication Reforms; (5) Legislation and Policy Reform; and (6) International Cooperation.

On June 21, 2008, Executive Order No. 736 creating the National Committee on Intellectual Property Rights (NCIPR) was promulgated. The NCIPR is composed of the Department of Trade and Industry (DTI) as Chair, Intellectual Property Office (IPO) as Vice-Chair, with the following as members: Department of Justice (DOJ), Department of the Interior and Local Government (DILG), Bureau of Customs (BOC), National Telecommunications Commission (NTC), National Bureau of Immigration (NBI), Philippine National Police (PNP), Optical Media Board (OMB), National Book Development Board (NBDB), Bureau of Food and Drugs (BFAD), and other agencies to be determined by the committee chair. The creation of the committee is aimed to strengthen inter-agency support and collaboration among government agencies in the forefront of IPR enforcement. It is hoped that the NCIPR will effectively formulate and implement plans and policies and strengthen the protection and enforcement of intellectual property rights in the country.

### iii) Enforcement Procedures and Penalties for Infringement -

Infringement cases may be filed before the regular trial court regardless of amount claimed. The Bureau of Legal Affairs (BLA) of the Intellectual Property Office of the Philippines can take cognizance of administrative complaints for violations involving intellectual property rights when the total damages claimed are not less than Two Hundred Thousand pesos (P200,000.00). Other administrative penalties may be imposed by the Director of Legal Affairs for violations of laws on intellectual property rights.

Without prejudice and in addition to administrative penalties, the Intellectual Property Code provides for criminal actions that may be prosecuted before the regular courts. If found guilty, imprisonment and/or fine shall be imposed upon the infringer.

The IP code also provides for a dispute settlement or mediation mechanism involving technology transfer payments and terms of a license involving author's right to public performance or other communication of his work. The service is also offered to parties who have filed administrative cases with the Bureau of Legal Affairs of IPO Philippines.

### iv) International Treaties -

The Philippine is a signatory to several international treaties on intellectual property rights:

- Berne Convention for the Protection of Literary and Artistic Works (August 1, 1951)
- Paris Convention for the Protection of Industrial Property (September 27, 1965)
- Convention Establishing the Intellectual Property Organization (October 21, 1981)



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- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure (1981)
- Rome Convention (Performers, Producers of Phonographs and Broadcasting Organizations (September 25, 1984))
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1995)
- Patent Cooperation Treaty ( August 17, 2001)
- WIPO Copyright Treaty (October 4, 2002)
- WIPO Performances and phonograms Treaty (October 4, 2002)

### Other related laws:

- Republic Act No. 8792 or the Electronic Commerce Act, an act providing for the use of electronic commercial and non-commercial transaction, penalties for unlawful use thereof and other purposes (June 2000)
- Republic Act No. 9150, an act providing for the protection of layout designs (topographies) of integrated circuits (August 22, 2001)
- Republic Act No. 9168 or the Plant Variety Protection Act of 2002, an act providing for the protection to plant varieties, and establishing the National Plant Variety Protection Board, and for other purposes (June 7, 2002)
- Republic Act No. 9239 or the Optical Media Act, an act regulating optical media, reorganising for this purpose the Videogram Regulatory Board, providing penalties therefore and for other purposes, (February 2004)
- Republic Act No. 9502 or the Universally Accessible Cheaper and Quality Medicines Act of 2008, an act providing for cheaper and quality medicines, amending for the purpose Republic Act No. 8923 or the Intellectual Property Code, Republic Act. No. 6675 or the Generic Act of 1988, and the Republic Act No. 5921 of the Pharmacy Law and for other purposes (June 6, 2008).
- Republic Act No. 10088 or the Anti-Camcording Act of 2010, an act prohibiting and penalizing the unauthorized use, possession and/or control of audiovisual recording devices for the unauthorized recording of cinematographic films and other audiovisual works and/or their soundtracks in an exhibition facility, providing penalties therefore and for other purposes (May 13, 2010)

### More information

Intellectual Property Rights

Website: [www.ipophil.gov.ph](http://www.ipophil.gov.ph)

Atty. Ricardo R. Blancaflor

Director General

### Flow of funds

At present, the country's exchange rate policy supports a freely floating exchange rate system whereby the Bangko Sentral ng Pilipinas (BSP) leaves the determination of the exchange rate to market forces. Under a market-determined exchange rate framework, the BSP does not set the foreign exchange rate but instead allows the value of the peso to be determined by the supply and demand of foreign exchange.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The BSP's participation in the foreign exchange market is limited to temper sharp fluctuations in the exchange rate. On such occasions of excessive movements, the BSP enters the market mainly to maintain order and stability. When warranted, the BSP also stands ready to provide some liquidity and ensure that legitimate demands for foreign currency are satisfied.

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Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Dividend and profit remittances as well as capital repatriation of foreign investments are not regulated. Foreign investors are free to remit dividends and profits from their own foreign exchange sourced from outside the domestic banking system. However, if the foreign exchange will be sourced from authorized agent bank (AABs) and AAB affiliate foreign exchange corporations (AAB-forex corps), there is a need for the foreign investments to have prior registration with the BSP.

### Mechanisms to review decisions, and settle disputes

All agencies that administer investment applications and grant incentives are also responsible for handling complaints and related appeals thereon. In addition, the Office of the Resident Ombudsman can receive and act on reports or complaints against officials and employees of the above agencies.

What, if any, mechanism do you have for foreign investors to settle disputes?

Foreign investors have recourse to dispute settlement and processing of grievances existing under laws, regulations and administrative procedures.

The various bilateral and regional investment agreements to which the Philippines is a party generally contain articles on investor dispute settlement and settlement of disputes between contracting parties.

#### Disputes between Private Parties and Government

The various bilateral and regional investment agreements to which the Philippines is a party contain an article on investor-state dispute settlement. It provides for the amicable settlement of disputes through negotiations. It also provides the investor the option to submit the dispute to the competent court of the Philippines or to international arbitration or conciliation.

#### Disputes between Private Parties

The Philippines recognizes various forms of alternative dispute resolution in the settling of commercial disputes such as negotiation, mediation, conciliation and arbitration.

Existing laws, rules and regulations on disputes between private parties include:

- \* R.A. No. 9285 (Alternative Dispute Resolution Act of 2004) provides for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases;
- \* Department of Justice Department Order No. 98 (Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004) promulgated in December 2009.
- \* Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules) issued by the Supreme Court in September 2009.
- \* RA No. 876 (Arbitration Law) prescribes the procedures for arbitration in civil controversies;
- \* PD No. 1746 authorizes the Philippine Domestic Construction Board to adjudicate and settle claims and disputes in the implementation of public and private construction contracts;
- \* EO No. 1008 (The Construction Industry Arbitration Law) establishes the Construction Industry Arbitration Commission, the body which has original and exclusive jurisdiction over disputes arising from or connected with contracts entered into by parties involved in construction in the Philippines, whether government or private contracts;
- \* RA No. 8293 (The Intellectual Property Code of the Philippines) provides for a dispute settlement mechanism for disputes between parties to a technology transfer payments. It also provides the Director-General of the Intellectual Property Office with the original jurisdiction to resolve disputes relating to the terms of license involving the author's right to public performance or other communication of his work.

The Philippine Dispute Resolution Center Inc. (PDRCI) of the Philippine Chamber of Commerce and Industry (PCCI) promotes and encourages the use of arbitration as an alternative mode of settling commercial transaction dispute and provides dispute resolution services to the business community.

## Republic of the Philippines

### ICSID

The Philippines signed the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) on 26 September 1978 and ratified the same on 17 November 1978. The Convention entered into force for the Philippines on 17 December 1978.

### More information

International investment agreements (IIAs) - which include bilateral investment treaties (BITs), double taxation treaties (DTTs) and other international agreements with investment provisions, such as some free trade agreements (FTAs) - can also provide foreign investors protection against discrimination, unfair treatment, expropriation and transfer restrictions. Coverage under an IIA could therefore be an important factor in an investment location decision, especially where the protection afforded by the law is inadequate.

### International investment agreements

With;

Argentina; Australia; Austria; Bahrain; Bangladesh; Belgium; Cambodia; Canada; Chile; China, People's Republic of; Czech Republic; Denmark; Equatorial Guinea; Finland; France; Germany; India; Indonesia; Iran, Islamic Republic of; Italy; Japan; Korea, Republic of; Kuwait; Lao, People's Democ. Rep.; Mongolia; Myanmar (ex-Burma); Netherlands; Pakistan; Portugal; Romania; The Russian Federation; Saudi Arabia; Spain; Sweden; Switzerland; Syrian Arab Republic; Thailand; Turkey; United Kingdom ; Venezuela; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

List of Economies which the Philippines have an international investment/tax agreement:

#### a. Bilateral Investment Treaty (BIT) only

1. Argentina
2. Australia
3. Cambodia
4. Chile
5. Equatorial Guinea
6. Iran, Islamic Republic of
7. Kuwait
8. Lao, People's Democratic Republic
9. Mongolia
10. Myanmar (ex-Burma)
11. Portugal
12. Turkey
13. Saudi Arabia
14. Syrian Arab Republic
15. Venezuela

#### b. Bilateral Investment Treaty (BIT ) and Double Taxation Treaty (DTT)

1. Austria

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2. Bahrain
3. Bangladesh
4. Belgium
5. Canada
6. China. People's Republic of
7. Czech Republic
8. Denmark
9. Finland
10. France
11. Germany
12. India
13. Indonesia
14. Italy
15. Japan
16. Korea, Republic of
17. Netherlands
18. Pakistan
19. Romania
20. Russia (Russian Fed.)
21. Spain
22. Sweden
23. Switzerland
24. Thailand
25. United Kingdom
26. Vietnam

### More information

BOI-Legal Services Department: [moramos@boi.gov.ph](mailto:moramos@boi.gov.ph)

Bureau of Internal Revenue website: [www.bir.gov.ph](http://www.bir.gov.ph)

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

#### A. Conditions for approval of foreign employees

##### (Managerial and Supervisory Positions)

Foreign nationals who wish to come to the Philippines can enter as a tourist without visa under EO 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 fifty-nine (59) days, extendible to a year.

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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 country to secure the new visa.

### B. Work permit processing and requirements

(Managerial and Supervisory Positions)

#### Alien Employment Permit (AEP)

Article 40 of the Labor Code provides that any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an Alien Employment Permit (AEP) from the Department of Labor and Employment (DOLE). After DOLE has determined the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the Foreign National is desired. The AEP is a pre-requisite in the issuance of working visa by the Bureau of Immigration.

#### Foreign nationals required to apply for an AEP

\* All foreign nationals who intend to engage in gainful employment in the Philippines shall apply for an AEP. (Source: Sec. 1, Department of Labor and Employment Department Order No. 97, Series of 2009)

#### Exempted from securing an AEP

- \* All Members of the diplomatic services and foreign government officials accredited by and with reciprocity arrangement with the Philippine government;
- \* Officers and staff of international organizations of which the Philippine government is a member, and their legitimate spouses desiring to work in the Philippines; (Note: Exact wording of DOLE Department Order No. 97, Series of 2009)
- \* Foreign nationals elected as members of the Governing Board who do not occupy any other position, but have only voting rights in the corporation;
- \* All foreign nationals granted exemption by law;
- \* Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between universities or colleges in the Philippines and foreign universities or colleges; or between the Philippine government and foreign government; provided that the exemption is on a reciprocal basis;
- \* Owners and representatives of foreign principals, whose companies are accredited by the Philippine Overseas Administration (POEA), who come to the Philippines for a limited period solely for the purpose of interviewing Filipino applicants for employment abroad.
- \* Permanent Resident Foreign Nationals probationary or temporary resident visa holders

#### AEP Application Procedure

##### Where to File the Application

All applications for AEP shall be filed and processed at the DOLE Regional Office or field office having jurisdiction over intended place of work. The documentary requirements are:

1. Duly accomplished application form;
2. Photocopy of passport with visa or certificate of recognition for refugees;
3. Contract of employment/appointment or Board secretary's certification of election;
4. Photocopy of Mayor's permit to operate business or in case of locators in economic zones, certification from the Philippine Economic Zone Authority or the Ecozone Authority that the company is located and operating within the ecozone; and
5. Photocopy of current AEP (if for renewal).

Applications are processed within 24 hours after publication and payment of required fees and fines, if there any.

## Republic of the Philippines

The AEP is valid for the position and the company for which it was issued for a period of one year, unless the employment contract consultancy services, or other modes of engagement provides otherwise, which in no case shall exceed five years.

### Multiple Entry Visa Holder Requirements

The expatriates of BOI-registered firms who qualify for special non-immigrant visa under Section 47(a)(2) of the Philippine Immigration Act may apply for multiple entry visa by securing an Emigration Clearance Certificate (ECC) and multiple Special Return Certificate (SRC) before departure from the Philippines with the Bureau of Immigration. ECCs serve as their Exit Clearance while SRC's enable them to be admitted upon their return to the country under the same category when they left.

Any alien, except nationals classified restricted by the Department of Foreign Affairs and who meets the following qualifications may be issued the following types of visas:

#### (a) Special Investors Resident Visa (SIRV)

\* Granted to investors with investments of at least Seventy Five Thousand US dollars (US\$75,000.00)

\* Holder of the special visa has the privilege to reside in the Philippines for as long as his/her investment exists

\* Investor's spouse and unmarried children under twenty-one (21) years of age who are joining him in the Philippines may be issued the same visa.

#### (b) Pre-arranged employment Visa under Sec. 9(g) of the Philippine Immigration Act

\* Granted to foreigners to be employed in any technical, executive or managerial position

#### (c) International Treaty Investors Visa under Sec. 9(d) of the Philippine Immigration Act

\* Granted to investors with investments of at least Three Hundred Thousand pesos (P300,000.00). Only Germans, Japanese and Americans are parties with the Philippines to this treaty

\* Employment in any technical, executive or managerial position

#### (d) Special Non-Immigrant Visa under Presidential Decree (PD) No. 1034

\* Granted to foreign personnel of offshore banks duly licensed by the Bangko Sentral ng Pilipinas to operate as an offshore banking unit

\* Entitled to multiple entry privileges and are exempt from the payment of immigration fees, fingerprinting, and registration with the Bureau of Immigration

#### (e) Special Non-Immigrant Visa under Section 47(a)(2)

\* Granted to foreigners to be employed by enterprises registered under EO No. 226 and RA No. 7916 in supervisory, technical, or advisory position under Section 47(a)(2) of Philippine Immigration Act during its first five years of registration

\* Majority foreign-owned registered enterprises may employ foreign nationals as President, treasurer and general manager beyond the five (5) - year period

#### (f) Special Non-Immigrant Visa under RA No. 8756

\* Granted to foreign national executives of Regional Headquarters or Regional Operating Headquarters of Multinational Companies

\* Entitled to a special non-immigrant multiple entry visa

#### (g) Special Subic Work Visa

\* Granted to foreign nationals employed as executives of Subic Bay Freeport zone enterprises and other foreign nationals possessing highly technical skills

### Practice of Professions

## Republic of the Philippines

Foreign nationals may be allowed to practice their professions subject to the Professional Regulation Commission Philippines (PRC) Modernization Act, which provides that upon recommendation of the Professional Regulatory Board concerned, PRC may:

- 1) Approve the registration of and authorize the issuance of a certificate of registration/license and professional identification card with or without examination to a foreigner who is registered under the laws of his state or country and whose certificate or registration issued therein has not been suspended or revoked: Provided, that the requirements for the registration or licensing in the laws of the Philippines and that the laws of such foreign state or country allow the citizens of the Philippines to practice the profession on the same basis and grant the same privileges as those enjoyed by the subjects or citizens of such foreign state or country; or
- 2) Authorize the issuance of a certificate of registration/license or a special temporary permit to foreign professionals who desire to practice their professions in the country under reciprocity and other international agreement, consultants in foreign-funded, joint venture or foreign-assisted projects of the government, employees of Philippine or foreign private firms or institutions pursuant to law, or health professionals engaged in humanitarian mission for a limited period of time.

Agencies, organizations or individuals whether public or private, who secure the services of a foreign professional authorized by law to practice in the Philippines for reasons aforementioned, shall be responsible for securing, a special permit from PRC and DOLE, pursuant to PRC and DOLE rules.

**Regulations Relating to Standards and Conditions of Employment.**

The Wage Rationalization Act created regional tripartite wage and productivity boards to determine and fix minimum wage rates on the regional level, which may vary across provinces, industries and types of establishment therein.

Books III and IV of the Labor Code of the Philippines set the minimum standards and conditions of employment pertaining to hours of work, holidays, wages, health and safety and social welfare benefits.

The Occupational Safety and Health Standards promulgated pursuant to Article 162 of the Labor Code prescribe the different rules for the protection of workers from workplace hazards.

### More information

Department of Labor and Employment website: <http://www.dole.gov.ph>

Bureau of Labor and Employment Statistics website: <http://www.bles.dole.gov.ph>

Professional Regulation Commission website: <http://www.prc.gov.ph>

National Wages and Productivity Commission website: <http://www.nwpc.dole.gov.ph>

Bureau of Immigration website: [www.immigration.gov.ph](http://www.immigration.gov.ph)

## Taxation

### Taxation of foreign nationals and foreign firms

**Foreign corporations doing business in the Philippines**

1. Generally, foreign corporations doing business in the Philippines ("resident foreign corporations") are subject to income tax only with respect to income derived from sources in the Philippines and at the rate of 30 percent based on their taxable income. Taxable income means the pertinent items of income specified in the National Internal Revenue code of 1997 ("Tax Code of 1997"), as amended, less the deductions for such types of income under the Tax Code or other special laws. Domestic corporations are subject to the same tax rate based on their taxable income but covers income from sources in and outside the Philippines. Net capital gains from the sale of unlisted shares of stock derived by a resident foreign corporation are subject to income tax at the rate of 5 percent for gains not over PhP100, 000.00, and 10 percent for gains in excess of PhP100,000.00.

2. Regional or area headquarters are exempt from income tax. A regional or area headquarters means a branch established in the Philippines by multinational companies, which does not earn or derive income from the Philippines, and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets.

## Republic of the Philippines

3. Regional operating headquarters are subject to income tax at the rate of 10 percent based on their taxable income. A regional operating headquarters means a branch established in the Philippines by multinational companies engaged in any of the following services: general administration and planning, business planning and coordination; sourcing and procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services; and product development; technical support and maintenance; data processing and communications; and business development.

4. Foreign corporations doing business in the Philippines and registered with the Philippine Economic Zone Authority ("PEZA") are subject to tax at the rate of 5 percent based on their gross income directly connected with their activities.

### Foreign corporations not doing business in the Philippines

Generally, foreign corporations not doing business in the Philippines ("non resident foreign corporations") are subject to income tax only with respect to income derived from sources in the Philippines and at the rate of 30 percent based on their gross income. Net capital gains from the sale of unlisted shares of stock derived by a resident foreign corporation are subject to income tax at the rate of 5 percent for gains not over PhP100,000.00 and 10 percent for gains in excess of PhP100,000.00.

### Personal Income/Profits

#### Taxation of foreign nationals

1. Generally, foreign nationals doing business in the Philippines ("resident aliens" and non-resident aliens doing business in the Philippines" alike) are subject to income tax only with respect to income derived from sources from sources in and outside the Philippines and at the rate of 5,10,15,20,25 and 32 percent, depending and based on their annual taxable income. Resident Philippine nationals are subject to the same tax rate based on their taxable income but covers income from sources in and outside the Philippines. In computing taxable income, individuals may deduct from their gross income, personal exemptions in the amount of PhP50,000.00, plus, in the case of married individuals with children not to exceed four and whose age is below 21 years old, additional exemption in the amount of PhP25,000.00 for each child. Net capital gains from the sale of unlisted shares of stock derived by a resident foreign corporations are subject to income tax at the rate of 5 percent for gains not over PhP100,000.00, and 10 percent for gains in excess of PhP100,000.00.

2. Foreign nationals not doing business in the Philippines ("non-resident aliens not doing business in the Philippines") are subject to income tax only with respect to income derived from sources in the Philippines and at the rate of 25 percent based on their gross income.

3. Foreign nationals employed by regional or area headquarters, regional operating headquarters, offshore banking units, or petroleum service contractors and subcontractors, are subject to income tax at the rate of 15 percent of their gross salaries, wages, annuities, compensation, remuneration and other emoluments.

#### Funds for Repatriation

1. Generally, dividends paid by a domestic corporation to a foreign corporation are subject to income tax at the rate of 30 percent. However, such dividends may be subject to 15 percent if the country of domicile of the foreign corporation allows it a tax deemed paid credit equivalent to 15 percent, which is the difference between the regular income tax of 30 percent of non-resident foreign corporations and the reduced 15 percent income tax on dividends. A lower rate of income tax on dividends may apply under some tax treaties.

2. Profits remitted by a branch office in the Philippine of a foreign corporation are subject to income tax at the rate of 15 percent based on the gross amount of the profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the PEZA). A lower rate of income tax on branch profits may apply under some tax treaties.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

As mentioned, domestic corporations are subject to income tax on income derived from sources in and outside the Philippines (global), while foreign corporations (resident and non-resident alike) are subject to income tax on income derived from sources in the Philippines only.



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The Philippines has effective tax treaties with thirty-seven (37) countries namely, Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Canada, China, Czech, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Malaysia, Netherlands, New Zealand, Norway, Pakistan, Poland, Romania, Russia, Singapore, Spain, Sweden, Switzerland, Thailand, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, and Vietnam.

### More information

Bureau of Internal Revenue website: [www.bir.gov.ph](http://www.bir.gov.ph)

This version is composed of information submitted by APEC member economies by responding to the Survey Questionnaires (Annex 1). Information of some members were not available at the time of the publication and pages are kept blank but, will be included in the future edition.

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## Introduction

### Our Location Offer

Singapore is a small country located in the heart of a growth region - Asia. It is a globally connected, multi-cultural and cosmopolitan city-state which offers a conducive environment to creative and knowledge-driven industries. Global businesses will find it advantageous to site their headquarters in Singapore. Strong trade and investment makes Singapore the most competitive Asian country (Global Competitiveness Report 2010). The World Bank also ranks the Republic as the world's easiest place to do business (Doing Business 2010 report).

Singapore's particular competitive factors which set it apart from other locations are: its trusted and corrupt-free government; a highly skilled and educated workforce; and its geographic location which provides easy access to three billion people in Asia within a seven hour flight radius.

Singapore remains the highest ranking Asian city in Mercer's "2010 Quality of Living Index", and it strives to be the choice destination for top talent to work, live and play, so that companies can choose from the best talent when they come to Singapore. One in four people working and living in Singapore is a non-resident. Singapore welcomes talent because it is a key growth driver for companies and industries and in turn, generates more jobs.

Cities in Asia including Singapore are becoming "hot" spots for expatriates. Singapore offers a unique blend of the East and West. It is a highly liveable city offering a good quality of life, easy regional access, safety, infrastructure, and a cosmopolitan and global lifestyle.

Rated the most business friendly country in the World Bank's "Doing Business 2010" report, Singapore has attracted 36,000 international companies to its shores. There are more than 7,000 multinationals based here, of which 60 per cent perform various types of headquarter services for the region and even globally.

### Introduction to investment regime

Singapore welcomes all forms of enterprise and investment. Along with Singapore's pro-business environment, it has instituted a tax regime that is simple and responsive to business needs. Overall Singapore's tax regime is designed to support an economy with substantive investments and business activities.

Singapore also has a reputation for strong rule of law and companies that situate their headquarter operations here benefit from Singapore's network of over 60 tax agreements with other economies. They also gain from Singapore's many free trade agreements (FTAs) and 36 Investment Guarantee Agreements. These FTAs have enable Singapore to establish a network to countries that contribute at least 60% of global GDP. Companies can always rely on protection of their ideas and innovations through Singapore's rigorous enforcement of its strong intellectual property laws.

The Singapore Government facilitates investment through its investment promotion agency - The Singapore Economic Development Board (EDB). The EDB provides a range of financial assistance and tax incentive schemes to help businesses establish and expand their operations in Singapore.

### Investment priority plan/equivalent policy

In the coming years, Asia will stage the strongest growth story, and Singapore's strategy is to expand its role in the Global-Asia interplay and position itself as a good home in Asia for US and European. At the same time, Asian companies with international ambitions are making Singapore their springboard for going global. Businesses will find Singapore a good partner to develop innovative, future ready solutions to meet the challenges and opportunities arising from the rapid urbanisation of emerging cities around the world.

Singapore will ensure that the necessary capabilities and infrastructure are in place to help companies differentiate and compete in their respective industries. This could be in the areas of manufacturing, research and development, or branding and marketing. A key priority will be to help companies undertake more pan-Asian and global functions from Singapore. For instance, Singapore is building up a deep base of consumer insight capabilities. This will be necessary for businesses to better understand the needs and wants of customers in Asia.

## Singapore

Underpinning Singapore's success is its ability to be the place where companies harness global talent to drive business and innovation for Asia and the world. To this end, Singapore is building an environment where employers and talents can gain access to world-class industry-relevant training and education programmes, as well as best practices in leadership and human capital management.

### More information

Ministry of Trade and Industry: [www.mti.gov.sg](http://www.mti.gov.sg)

Singapore Economic Development Board: [www.sedb.com](http://www.sedb.com)

Agency for Science, Technology and Research: [www.a-star.edu.sg](http://www.a-star.edu.sg)

Contact Singapore: [www.contactsingapore.com](http://www.contactsingapore.com)

International Enterprise Singapore: [www.iesingapore.gov.sg](http://www.iesingapore.gov.sg)

JTC Corporation: [www.jtc.gov.sg](http://www.jtc.gov.sg)

SPRING Singapore: [www.spring.gov.sg](http://www.spring.gov.sg)

Singapore Tourism Board: [www.stb.gov.sg](http://www.stb.gov.sg)

Singapore Government Information: [www.gov.sg](http://www.gov.sg)

Accounting and Corporate Regulatory Authority: [www.acra.gov.sg](http://www.acra.gov.sg)

Inland Revenue Authority of Singapore: [www.iras.gov.sg](http://www.iras.gov.sg)

Buy Singapore: [www.buysingapore.com](http://www.buysingapore.com)

National Marketing Division: [www.sg](http://www.sg)

Talent Capital Singapore: [www.talentcapital.sg](http://www.talentcapital.sg)

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

Singapore welcomes all forms of enterprise and investment. Much of the information that investors require about doing business in Singapore is available online at the EnterpriseOne website ([www.business.gov.sg](http://www.business.gov.sg)).

All businesses must be registered with the Accounting & Corporate Regulatory Authority (ACRA). This includes any individual, firm or corporation that carries out business for a foreign company.

A foreign company that wants to set up a branch in Singapore will need to appoint two local agents to act on its behalf. These agents must be Singapore residents, that is, either citizens or permanent residents, or foreigners with employment or dependant passes. Information on registering a branch of a foreign company is available at [www.acra.gov.sg](http://www.acra.gov.sg).

Special licenses and permits are required for certain industry sectors such as banking, insurance and stock broking. Special licenses are also required for the manufacture of goods such as cigars and firecrackers.

A step-by-step guide to registering a business or company in Singapore is provided at the [business.gov.sg](http://business.gov.sg) website.

For Startups, SPRING Singapore offers assistance in financing, capabilities and management development, technology and innovation, and access to markets.

While Non-Governmental Organisations (NGOs) that are not-for-profit can be legally set up as either a society with the Registry of Societies or a company limited by guarantee with ACRA. NGOs with charitable objectives are eligible to apply for incentives under the Charity Status and the Institution of Public Character Status within 3 months of incorporation in Singapore. Details of the conditions, application process and the application forms can be found on the Inland Revenue Authority of Singapore website ([www.iras.gov.sg](http://www.iras.gov.sg)).

## Does this apply to all investment or, are there differential treatment?

Nil.

### Conditions of investment

Generally, there are no regulations or conditions imposed on investments in most industries or sectors, with the exception of the banking.

#### Banking Industry

Substantial shareholders / controllers of designated financial institutions will have to be assessed on a case-by-case basis, as provided for under sections 15A and 15B of the Banking Act. Any foreign acquisition of a designated financial institution requires approval to be sought at the thresholds of 5%, 12% and 20%. Any proposed increase in the stakes of designated financial institutions is judged on a case-by-case basis and on its merits. Section 15(A)/(B) of our Banking Act provides the Monetary Authority of Singapore (MAS) with the power to prohibit any acquisition of substantial shareholdings unless the Minister is satisfied that:

- i. the person is a fit and proper person; and
- ii. having regard to the likely influence of the person, the designated financial institution will or will continue to conduct its business prudently and comply with the provisions of this Act; and
- iii. the Minister is satisfied that it is in the national interest to do so.

This treatment is applied consistently to all domestic and foreign investors.

Note: Designated financial institution" means -

- a. a bank incorporated in Singapore; or
- b. a financial holding company;

### Investment promotion and facilitation

The Singapore Economic Development (EDB) is the lead government agency for planning and executing strategies to enhance Singapore's position as a global business centre and grow the Singapore economy. EDB dreams, designs and delivers solutions that create value for investors and companies in Singapore. In so doing, it generates economic opportunities and jobs for the people of Singapore; and help shape Singapore's economic future.

'Host to Home' articulates how EDB is sharpening its economic development strategies to position Singapore for the future. It is about extending Singapore's value proposition to businesses not just in helping them improve their bottom line, but also in helping them grow their top line. EDB plans to build on existing strengths and add new layers of capabilities to enable Singapore to become a 'Home for Business', a 'Home for Innovation' and a 'Home for Talent'.

### More information about the process of investing in our economy

Singapore EDB: [www.sedb.com](http://www.sedb.com)

Future Ready Singapore: [www.singaporebusiness.com](http://www.singaporebusiness.com)

### Investment protection

Protection of property rights and conditions for expropriation

## Singapore

1. In land scarce Singapore, where many individuals own private properties and where properties are commonly used as collateral by investors for business activities, land rights are of vital social and economic importance. Our land related legislations and computerized systems of keeping records on ownership and boundaries of land ensure that property rights are properly safeguarded and enforced. The main legislations are the Land Titles Act, Land Titles (Strata) Act and the Boundaries and Survey Maps Act. The Singapore Land Authority, a statutory board under the Ministry of Law, administers land-related policies.

2. Singapore has a Land Titles Registration System (also known as the Torrens System). Under this system, contracts executed by parties alone do not result in a valid title to the land. Instead, title to land must be registered by the Registrar of Titles or his duly authorised officer. This system ensures that all valid titles to land are registered with the State. Titles are guaranteed by the State. In this respect, the Land Titles Act provides for the establishment of an Assurance Fund which provides monetary compensation to any person who is deprived of land through the omission, mistake or misfeasance of the Registrar.

3. For each property, a cadastral survey is carried out to obtain an accurate measurement of the boundaries. The survey is required primarily for or in connection with the registration of any title to the land or a property. The completed survey yields a survey plan, which shows the full details establishing the location of the property and its boundaries: its area, lot number, boundary marks on the property and approved location coordinates. These plans must be approved by and filed in the office of the Chief Surveyor of Singapore. Landowners will therefore have access to valid survey plans of their property, as well as a registered title.

4. Land can only be compulsorily acquired by the Government under the Land Acquisition Act for a public purpose. All proposals for acquisition are carefully scrutinized and must be submitted to Cabinet for approval. Compensation is determined after the Collector of Land Revenue has conducted an inquiry on the affected site, and the affected landowner can provide further information (such as his own valuation report) during this process. Affected landowners will be paid compensation based on current market value. If the affected landowner is dissatisfied with the amount of compensation, he can appeal to the Appeals Board (Land Acquisition). A further appeal can be made to the Court of Appeal, if the appeal involves points of law.

### More information

Singapore Statutes Online : <http://statutes.agc.gov.sg>

### Protection of IPRs

Singapore provides a strong intellectual property rights protection framework to encourage innovation and create a "knowledge-based economy". Protection is accorded to the following types of intellectual property in line with Singapore's commitments and obligations under various free trade agreements (FTAs), international treaties and conventions:

- \* Patents
- \* Trademarks
- \* Copyrights
- \* Registered designs
- \* New plant varieties
- \* Geographical indications
- \* Layout-designs of integrated circuits
- \* Confidential information

Singapore is party to several international treaties. Some examples of these are the Patent Cooperation Treaty, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Budapest Treaty, the Singapore Treaty on the Law of Trademarks and the Nice Agreement.

## Singapore

Singapore has also acceded to the Madrid Protocol on Registration of Marks, the International Convention for the Protection of New Plant Varieties, the Hague Agreement concerning the International Registration of Industrial Designs, the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Being party to these treaties has enabled Singapore to implement an IP regime that is in line with international standards.

Enforcement of intellectual property rights in Singapore is based on cooperation between the authorities, rights-holders, as well as through ex-officio action. The High Court, the Registrar of Patents, the Registrar of Trade Marks, the Registrar of Designs and the Copyright Tribunal oversee matters involving infringement of IP rights arising under the Patents Act, the Trademarks Act, Geographical Indications Act, Layout Designs of Integrated Circuits Act, Copyright Act and the Registered Designs Act, 2000 (Cap. 266). Appeals on High Court decisions may be referred to the Court of Appeal. Civil remedies may include injunctions to stop infringement, damages including recovery of profits and expenses, and destruction of infringing goods. The courts may also order punitive damages if appropriate. Besides civil remedies, criminal proceedings may also be instituted in cases of copyright infringement or counterfeit trademarks involving commercial goods or services.

In the 2010-2011 Global Competitiveness Report by the World Economic Forum, Singapore was ranked first in Asia for Property Rights and Intellectual Property Protection.

### More information

For more information on Singapore's IP regime, please visit: [www.ipos.gov.sg](http://www.ipos.gov.sg)

### Flow of funds

The Monetary Authority of Singapore (MAS) operates a managed float regime for the Singapore dollar. Since 1981, monetary policy in Singapore has been centred on the exchange rate, with the objective of promoting price stability as a sound basis for sustainable economic growth. The Singapore dollar is managed against a basket of currencies of the country's major trading partners and competitors. The trade-weighted exchange rate is allowed to fluctuate within a prescribed policy band, that is periodically reviewed to ensure that it remains consistent with the underlying fundamentals of the economy.

And if managed, under what circumstances or purposes does your government/central bank intervene?

MAS' intervention operations generally 'lean against the wind'. If the trade-weighted Singapore dollar threatens to breach the prescribed policy band on either side, or if there is undue volatility or speculation in the exchange rate, MAS will intervene in the FX market, in the form of the purchase or sale of Singapore dollar against the US dollar. The frequency of these interventions is indeterminate, but MAS will refrain from intervention as far as possible and allow market forces to determine the level of the Singapore dollar exchange rate within the policy band.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Singapore does not impose any significant exchange controls, and funds may be freely remitted into and out of Singapore. There is also no restriction on the repatriation of profits. Subject only to tax liabilities, a company incorporated in Singapore may pay dividends to foreigners not resident in Singapore. Similarly, profits arising from the operations of a branch may, subject only to tax liabilities, be freely remitted to the head office.

### Mechanisms to review decisions, and settle disputes

Singapore has no domestic investment tribunals. Accordingly, Singapore does not have in place any specific mechanism to have decisions about foreign investment reviewed.

What, if any, mechanism do you have for foreign investors to settle disputes?

## Singapore

All foreign investors have access to the same range of dispute resolution mechanisms as domestic investors to settle disputes, such as litigation in the Singapore High Court or the District Court, arbitration, mediation and conciliation. Foreign investors with commercial disputes can resort to our court system to resolve them or employ any of the wide range of alternative dispute resolution mechanisms that are available, be it negotiation, mediation or arbitration. Singapore's well-established legal framework and independent judiciary have been ranked among the top in the world by the World Economic Forum (WEF), the International Institute for Management Development (IMD) and Political & Economic Risk Consultancy Ltd (PERC) for its efficiency, integrity and independence.

Growth of international arbitration has been encouraged in Singapore with the ratification of international conventions, enactment of supporting laws and the creation of arbitration and mediation bodies.

In addition to the Convention on the Settlement of Investment Disputes (the ICSID Convention) which is discussed in detail below, Singapore acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in 1986. Singapore joined ASEAN to strengthen the available formal dispute settlement mechanism with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in November 2004.

Singapore enacted the Arbitration Act to provide for the conduct of arbitration, the Arbitration (International Investment Disputes) Act to implement the ICSID Convention and the International Arbitration Act to make provision for the conduct of international commercial arbitrations based on the Model Law on International Commercial Arbitration adopted by the UNCITRAL and conciliation proceedings and to give effect to the New York Convention.

The Singapore International Arbitration Centre was established in 1991 as an independent non-profit organization to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution. The Singapore Mediation Centre was set up in 1997 as a non-profit organization to promote mediation and to provide a full range of alternative dispute resolution services.

Singapore's legislative framework is also supportive of arbitration and adopts international best practices. We adopted the 1985 United Nations Commission on International Arbitration Act (UNCITRAL) Model Law into our International Arbitration Act in 1994. Singapore is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and arbitration awards from Singapore are enforceable in over 140 countries across the world. We have also adopted an open regime for the practice of arbitration. Parties who arbitrate in Singapore are free to engage lawyers of any nationality and use any governing law, not just Singapore-qualified lawyers or Singapore law. A 2008 report by the International Chamber of Commerce - International Court of Arbitration ranked Singapore the top city in Asia for ICC arbitrations and one of the five most popular venues alongside Paris, London, Geneva and Zurich.

### ICSID

Singapore signed the ICSID Convention on 2 February 1968 and ratified it on 14 October 1968. The Convention entered into force for Singapore on 13 November 1968 and is given effect under the International Arbitration Act (1966). There have been no disputes involving Singapore as a party brought to resolution by ICSID.

### More information

Singapore International Arbitration Centre: [www.siac.org.sg](http://www.siac.org.sg)

Singapore Mediation Centre: [www.mediation.com.sg](http://www.mediation.com.sg)

### International investment agreements

With;



## Singapore

Australia; Bahrain; Bangladesh; Belarus; Belgium; Brunei Darussalam; Bulgaria; Cambodia; Canada; China, People's Republic of; Czech Republic; Egypt; France; Germany; Hungary; Iceland; India; Indonesia; Japan; Jordan; Korea, Republic of; Lao, People's Democ. Rep.; Liechtenstein; Luxembourg; Malaysia; Mongolia; Myanmar (ex-Burma); Netherlands; New Zealand; Norway; Oman; Pakistan; Panama; Peru; Philippines; Poland; Saudi Arabia; Slovakia; Slovenia; Sri Lanka (ex-Ceylan); Switzerland; Thailand; Turkey; Ukraine; United Kingdom ; United States; Uzbekistan; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

The Singapore Government actively encourages foreign investment and also encourages its companies to invest abroad. There are no restrictions on investment except for national security purposes and in certain industries in Singapore. There is no screening of potential foreign investments in Singapore. Hence, no screening forms are issued. No authorization is required on threshold in value of investment in Singapore. Investors need only to register their businesses with the Accounting and Corporate Regulatory Authority (ACRA). This requirement that a new business has to register with ACRA applies to all new businesses in Singapore. Guidelines, conditions, requirements, laws and regulations apply to investors irrespective of nationality.

Although Singapore has thirty-six IIAs in force, in reality more than thirty-six countries enjoy protection of their investment in Singapore as one of the IIAs is an ASEAN IIA to which a few ASEAN member states are parties to. In addition, Singapore has concluded eighteen free trade agreements (FTAs) which also guarantee the protection of investment made by our free trade partners.

The usual provisions in our IIAs include the principle of fair and equitable treatment of investments made by the other contracting parties, the principle of non discrimination (National Treatment and/or Most Favoured Nation Treatment), compensation in the event of expropriation, a guarantee to investors that they can freely transfer their capital and the returns from their investments on a non-discriminatory basis and investor-state dispute settlement mechanism.

### More information

Singapore Economic Development Board

250 North Bridge Road

#28-00 Raffles City Tower

Singapore 179101

Phone: 65-68326832

Fax: 65-68326565

<http://www.sedb.com>

International Enterprise Singapore

230 Victoria Street

7th Storey Bugis Junction

Office Tower

Singapore 188024

Phone: 65-63376628

Fax: 65-73376898

<http://www.iesingapore.com>

Spring Singapore

2 Bukit Merah Central

Singapore 159835

Phone: 65-62786666

Fax: 65-62786667

<http://www.spring.gov.sg>

<http://www.business.gov.sg>

<http://www.siac.org.sg>; and <http://www.mediation.com.sg>

Tax information is available at: <http://www.iras.gov.sg>

Domestic legislation is available at: <http://statutes.agc.gov.sg>

Full text of the international investment agreements are available at: <http://app.mti.gov.sg/default.asp?id=2785>

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Singapore has developed a system of pro-business policies to make it easy for corporations to do business in Singapore.

#### Entering Singapore for Business

For the investor within the company, Singapore offers several ways in which one can enter and re-enter the country with relative ease.

\* The Global Investor Programme eases the way for foreigners to set up and operate businesses in Singapore. More information on the Global Investor Programme and the application process can be found at the Contact Singapore website ([www.contactsingapore.sg](http://www.contactsingapore.sg)).

\* The Multiple Journey Visa (MJV) visa facilitates the entry of business executives from countries that require a visa into Singapore. Holders of this visa are permitted to enter Singapore as often as required within the validity period of the visa. The holder may stay up to 30 days per visit. This is ideal for investors who anticipate the need to make frequent trips to and from Singapore. Upon a successful application, the Immigration and Checkpoints Authority (ICA) may be issued a 1, 2 or 5-year MJV, in accordance with ICA's existing visa guidelines in Singapore. More information on the MJV and the application process can be found at the ICA website ([www.contactsingapore.sg](http://www.contactsingapore.sg)).

\* The Long-Term Visit Pass for Entrepreneurs (LTVP) is for entrepreneurs who require a longer term stay in Singapore to explore business opportunities, conduct feasibility studies or business negotiations for starting a business in Singapore. The pass allows the entrepreneur to leave and re-enter Singapore within the validity period without having to re-apply each time.

\* The EntrePass is designed to facilitate the entry and stay of entrepreneurs who will be actively involved in the starting up and operation of the company in Singapore. The EntrePass has an initial validity period of up to 2 years and will be issued upon the submission of a sound business proposal. The EntrePass also allows the immediate family to live in Singapore while the entrepreneur starts and grows his business here. With the EntrePass the entrepreneur may leave and re-enter Singapore frequently with ease. It is renewable for as long as the business remains viable.

#### Recruiting international talent

Singapore welcomes international talent. It takes less than two weeks to get employment passes for foreign staff. If a company should require a specialist or manager to come to Singapore for a short-term project, approval can be issued in just three working days. Full details of the various kinds of employment passes, as well as dependency passes for family members, are available at the Ministry of Manpower website ([www.mom.gov.sg](http://www.mom.gov.sg)).

### More information

Ministry of Manpower: [www.mom.gov.sg](http://www.mom.gov.sg)

Contact Singapore: [www.contactsingapore.sg](http://www.contactsingapore.sg)

## Taxation

### Taxation of foreign nationals and foreign firms

Singapore has one of the most competitive tax regimes in the world and it is easy to do business in Singapore. It has a one-tier corporate tax system which took effect on 1 January 2003.

#### Corporate Tax

Corporate income tax: 17 per cent<sup>1</sup>

Capital gains tax: Not taxable

Withholding tax<sup>2</sup> - dividends: Not taxable

Withholding tax<sup>2</sup> - interest: 15 per cent

Withholding tax<sup>2</sup> - royalties: 10 per cent

Net operating losses (years) - carried forward: Unlimited

Net operating losses (years) - carry back: With effect from the year of assessment 2006, companies can carry back losses of up to \$100,000 from one year back

<sup>1</sup> This applies to both Singapore-incorporated subsidiaries as well as branches of foreign companies. It also applies equally to resident and non-resident companies.

<sup>2</sup> Withholding taxes at the corporate income tax rate also apply to certain other payments to non-residents, such as technical assistance fees and management fees.

<sup>3</sup> A one-tier corporate taxation system took effect on 1 Jan, 2003. It replaced the imputation system of taxing dividends, where taxes paid by a company can be imputed or passed on to shareholders.

#### Personal Income Tax

Singapore's Personal Income Tax structure is one of the friendliest and most competitive in the world. Personal income tax is payable annually on a preceding year basis. Overseas income received in Singapore is not taxable. This, however, does not apply to overseas income received in Singapore through partnerships in Singapore.

Almost all income accrued in Singapore by a person or business is subject to income tax. All sales transactions that occur in Singapore or monies received in Singapore are taxable. Taxable income includes income from business, salary from employment, interest earned on deposits and rental income. For the purpose of taxation the Inland Revenue Authority of Singapore (IRAS) has assigned two categories of taxpayers - Tax Residents and Non-residents.

Tax rates differ on the basis of residency of the taxpayer.

For the purpose of taxation an individual is considered a tax resident for a particular Year of Assessment (YA) if he/she is:

\* A Singapore citizen or permanent resident who resides permanently in Singapore.

\* A foreigner who has stayed/worked (but not in the capacity of company director) in Singapore for 183 days or more, in the year preceding the YA.

Personal income tax rates for tax residents follow a progressive pattern where the rate ranges from 0%-20%. The maximum tax rate, for income above S\$320,000, has been reduced over time and has reached the present rate of 20% since YA 2007.

All other individual taxpayers who are not tax residents are known as non-residents and are subject to withholding tax. Withholding Tax is a form of levy placed on payments made to non-resident tax entities including employees, business partners and overseas agents. In accordance with IRAS tax rules, a person has a legal obligation to withhold a percentage of the payment, when he makes payments of a specified nature under the Singapore Income Tax Act, to a non-resident, and hence the Withholding Tax. More information can be obtained from IRAS at [www.iras.gov.sg](http://www.iras.gov.sg).

### Repatriation of profits

There is also no restriction on the repatriation of profits. Subject only to tax liabilities, a company incorporated in Singapore may pay dividends to foreigners not resident in Singapore. Similarly, profits arising from the operations of a branch may, subject only to tax liabilities, be freely remitted to the head office.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Singapore taxes on a territorial basis. Income earned in Singapore, or income earned overseas but received in Singapore, is subject to tax. Group relief provisions were introduced in the 2003 assessment year. Inter-company transactions must be concluded at an arms' length basis.

From 1 June 2003, foreign dividends, branch profits and service income received in Singapore is tax exempt, provided:

1. the income was remitted from countries with a headline tax rate of at least 15%.
2. the income was subject to some form of tax in the foreign country.

(This condition is deemed to be met if the income was not subject to tax due to a tax incentive being awarded in the foreign country for the conduct of substantial business activities.)

The tax year is known as a year of assessment and runs from 1 January to 31 December. Tax is imposed on a preceding year basis. For example, profits for the 2009 financial year are taxed in the 2010 year of assessment.

### More information

More information can be obtained from EDB at [www.sedb.com](http://www.sedb.com) or from IRAS at [www.iras.gov.sg](http://www.iras.gov.sg)

## Introduction

### Our Location Offer

Chinese Taipei is located at the heart of the Asia-Pacific region, which puts it in an advantageous position to make use of global production resources and marketplace. Chinese Taipei's north is the world's third largest economy-Japan, its south are the 10 countries of the Association of Southeast Asian Nations and India. Chinese Taipei's east is the world's largest economy-the US, and its west is mainland China-the world's second largest economy and the center of the world's economic growth. The average flying time from Taipei to the seven major cities (Hong Kong, Shanghai, Manila, Seoul, Tokyo, Singapore and Sydney) in Western Pacific is merely 2 hours and 55 minutes. And the average sailing time from Kaohsiung harbor to the 5 major Asia-Pacific harbors is merely 53 hours. Chinese Taipei is the hub of Asian transportation and the logistic center in the East-Asian region.

Chinese Taipei is very active in R&D and product innovation. It provides quality products and services, which enable the development of international brands. Chinese Taipei also has easy access to mainland China's production resources, which makes rapid achievement of mass production possible. It is a superior innovation and R&D base. Chinese Taipei's wealthy production experience, capability to commercialize innovative products rapidly and its global deployment are factors that help Chinese Taipei create a value-added global production chain. Chinese Taipei has become a production base for quality products. Furthermore, the scale and maturity of Chinese Taipei's capital market can assist Chinese Taipei businesses in mainland China in listing in Chinese Taipei's exchange market and encourage international capital funds to participate in Chinese Taipei businesses' overseas deployment. Chinese Taipei is in a position to be the capital fund center for international manufacturing industry and the base for strategic alliance between multi-national companies. These advantages help attract overseas technological professionals to come to Chinese Taipei to start their business, and attract foreign companies to come to Chinese Taipei to participate in cross-strait technological projects. Chinese Taipei has products that are designed for global ethnic Chinese markets and is also a testing platform for ethnic Chinese markets. These are also advantages to attract foreign companies to invest in Chinese Taipei.

The location of Chinese Taipei makes it a perfect place for international corporations to establish their headquarters in Asia Pacific region. As the hub that connects Europe, the United States, Japan and the emerging Asian markets, Chinese Taipei is very crucial in terms of its high economic and strategic value. Chinese Taipei's enterprises have been aspiring to integrate manufacturing and service industries. They have fostered a good collaborative relationship with some famous European and American enterprises. Chinese Taipei now plays a central role in the supply chain of IT industry. It has also become the center for high-tech OEM/ODM as well as the center for product R&D and testing in the Chinese market. Since the cross-strait relations have normalized and trade between the two sides continues to grow, Chinese Taipei is definitely the best choice for enterprises to enter into the Chinese market and to further expand their business in the world. Key factors affecting the attractiveness of Chinese Taipei to investment are:

- Operations Hub in Asia-Pacific
- Global Logistics Capabilities
- Comprehensive Industrial Cluster
- Intellectual Advantage
- Superior Innovation Capability
- Complete Infrastructure
- Sound legal Framework
- Comprehensive IP Protection
- Abundant Capital Funds

### Introduction to investment regime

Chinese Taipei has always welcomed foreign direct investment and established a stable and comprehensive legal system under which multinational enterprises are protected and afforded the same rights as domestic enterprises.

## Chinese Taipei

Chinese Taipei places great importance on foreign investment. Laws and regulations governing such investment are amended as necessary in accordance with domestic development conditions and the international economic and trade situation, and every effort is made to remove investment obstacles and improve investment conditions. The government also provides other assistance to foreign nationals in Chinese Taipei.

Chinese Taipei opened its door to foreign portfolio investment in 1983. A sequential policy was adopted to first allow the indirect investment of funds raised overseas by domestic investment trust companies, followed by direct investment by qualified foreign institutional investors (1991) and then finally by all foreign natural persons (1996). Now, all foreign investors can invest in the securities market after simply registering with the Taiwan Stock Exchange Company (TSEC).

Chinese Taipei has been striving to further the goals of investment liberalization and facilitation and has made the following progress in terms of regulatory reforms:

The Business Mergers & Acquisitions Law was revised again and the latest amendment was promulgated on 5 May 2004. In addition to relaxing restrictions on acquisition limits, the procedures for merging a parent company and its subsidiaries are also simplified.

The National Immigration Agency has adopted measures to facilitate the mobility of business visitors from The People's Republic of China (PRC). These measures include relaxing restrictions on enterprises inviting people from the PRC to come to Chinese Taipei to engage in business activities; lifting the requirement that senior foreign executive of the company that a foreign professional works for must act as a guarantor for that professional's PRC spouse who comes to Chinese Taipei; canceling the requirement that the PRC spouse of foreign professional leave their passports in the custody of the authorities upon arrival in Chinese Taipei; giving permission to PRC professionals who have resided in Chinese Taipei for more than six months to buy cars or apply for credit cards in Chinese Taipei; and simplifying the procedure for the spouses of PRC personnel to apply to join them in Chinese Taipei, including making it much easier for them to obtain entry-exit permits and to apply for extension of stay or re-entry.

On 24 May, 2005 and 2 May 2006, the Council of Labor Affairs lowered the threshold for foreigners working in Chinese Taipei by announcing a revision of the Qualifications and Criteria Standards for Foreigners Undertaking the Jobs Specified in Items 1 to 6, Paragraph 1 of Article 46 of the Employment Service Act.

On 1 July 2004, the Financial Supervisory Commission (FSC), consisting of nine commissioners, was formally established. The establishment of the FSC is intended to strengthen the independence and the professional capabilities, and to enhance the effectiveness of financial supervision so as to bring Chinese Taipei's financial institutions and enterprises in line with the norms and standards of the international financial market.

On 2 August 2005, the FSC issued the Regulations Governing Offshore Funds, which allows offshore funds to be offered, sold, advertised, and promoted in Chinese Taipei.

**Free Trade Zones:** currently, five Free Trade Zones have been established in Chinese Taipei - Keelung Harbor, Kaohsiung Harbor, Taichung Harbor, Port of Taipei, and Taoyuan Air Cargo Park. The management of Free Trade Zones is designed on the concept of "within physical territory but outside customs territory", with a high degree of autonomy in company operations replacing administrative control by the government through the establishment of a single-window facility to boost administrative efficiency.

On 4 October 2006, the Ministry of Economic Affairs (MOEA) implemented a Stage I Industrial Development Package Program, which has the goals of achieving US\$ 30,000 per capita GDP by 2015. In the area of "Building a Superior Investment Environment," the government will implement measures providing land on preferential terms, ensuring an ample labor supply, providing financing assistance, improving the administrative efficiency of Environmental Impact assessment, and establishing mechanisms for encouraging corporate investment. Apart from these measures to establish a superior investment environment, the government will also help companies to eliminate investment barriers, thus laying a solid foundation for industrial development and economic growth.

### Investment priority plan/equivalent policy

## Chinese Taipei

On July 9 2009, the Executive Yuan approved the "Service Industry Development Plan" proposed by the Council for Economic Planning Development (CEPD) with the aim of building Chinese Taipei's service industry into an engine for upgrading industrial value added, creating jobs, enhancing quality of life, and stimulating economic growth. The plan's targets are for the service industry to contribute a gross domestic product of NT\$11 trillion in 2012, to create 120,000 jobs per year, and to account for 1.2% of the global value of service exports.

In its proposal the CEPD noted that the value added of Chinese Taipei's service industry now accounts for over 70% of the island's GDP and that its importance is increasing year by year, but that it still has plenty of room for improvement in terms of export competitiveness, R&D investment, productivity, and basic data quality. The proposed plan includes solutions to developmental bottlenecks in the hope of upgrading the industry from the basics and of producing a mutually supporting effect with the flagship plans that are being implemented by the government.

The key areas in the first stage of the Service Industry Development Plan encompass four of the six emerging industries that are currently being promoted by the Executive Yuan: tourism, creative and cultural industry, health care, and LOHAS agriculture. They also include logistics, telecommunications, and technical services. The CEPD notes that in terms of strategy, the effort will start out with "enhancing the international competitiveness of the service industry," "strengthening R&D and innovation," "creation of differentiated services," "reinforcement of manpower training and recruitment from abroad," and "improving service industry statistics."

To enhance the international competitiveness of the service industry, the government will promote the export of duplicable services by assisting companies to take advantages of quick duplicating models to position themselves in overseas markets and strengthen the support function of overseas offices. In addition, controls on various kinds of service industries will be continuously reviewed and the long-term promotion of deregulation will be carried out.

In the strengthening of R&D and innovation, expenditures on service R&D and innovation will be increased, incentives and financing will be provided, and the appraisal of intangible assets will be promoted. Cross-industry cooperation will be promoted, industrial-academic cooperation will be reinforced, and support for innovation will be provided through government-subsidized institutions and research bodies.

In the creation of differentiated services, vigorous assistance will be given to companies to develop brands and reinforce brand marketing. International certification and evaluation systems will be promoted as a means of enhancing service quality. At the same time manufacturing industries will be encouraged to become more service-oriented; businesses will be assisted in expanding their value chains and developing derivative services; and the service industry will be urged to enhance the level of its technology so as to improve service processes and efficiency. It will also be encouraged to apply ICT in the development of new forms of distribution channels and business opportunities.

In regard to the reinforcement of manpower training and recruitment, practical education and competence training in the service industry will be strengthened and measures to strengthen foreign-language capabilities will be worked out so as to upgrade the quality of service personnel. At the same time, better conditions will be provided for overseas professionals and the recruitment of overseas personnel will be stepped up.

To improve service industry statistics, Chinese Taipei will draw on the experience of advanced countries and promote statistical methods that are consistent with international practice. Service industry statistical indicators will be expanded and adjusted in line with market trends. In addition, budgetary statistics for government promotion of industrial development will be established for use in assessing the efficiency of policy implementation.

### More information

Department of Investment Services, Ministry of Economic Affairs: [www.dois.gov.tw](http://www.dois.gov.tw)

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

Foreign entities/nationals who wish to invest in Chinese Taipei are required to first submit an application to the Investment Commission, Ministry of Economic Affairs (MOEA) in accordance with the "Statute for Investment by Overseas Chinese" or "Statute for Investment by Foreign Nationals" ([http://www.moeaic.gov.tw/system\\_external/ctrl?PRO=LawsLoad&lang=1&id=27](http://www.moeaic.gov.tw/system_external/ctrl?PRO=LawsLoad&lang=1&id=27)).

## Chinese Taipei

All industrial and service sectors are open for foreign investment except those restricted or prohibited by law, which are stipulated in the "Negative List for Investment by Overseas Chinese and Foreign Nationals" ([http://www.moeaic.gov.tw/system\\_external/ctrl?PRO=LawsLoad&lang=1&id=32](http://www.moeaic.gov.tw/system_external/ctrl?PRO=LawsLoad&lang=1&id=32)).

Different requirements apply for various types of business entities, e.g. setting up a firm, a company, or a branch office. Investment can also be made in acquiring an existing enterprise. Chinese Taipei would therefore illustrate, in general, the standard procedures for foreign investment application in establishing a new enterprise as follows:

(1) Information and consultation regarding foreign investment can be obtained from our Department of Investment Services (DOIS), MOEA, <http://investtaiwan.nat.gov.tw>. You may wish to consider it as your first access point in all FDI related matters into Chinese Taipei.

(2) Apply for reservation of a company name and its business scope (in Chinese language) (Department of Commerce, MOEA, <https://gcis.nat.gov.tw/eicm/eicm/prefixedit/index.jsp>). Department of Commerce will then issue an approval slip within 1 working day.

(3) Apply for Foreign Investment Approval from the Investment Commission, MOEA, <http://www.moeaic.gov.tw>. The Investment Commission will issue an approval letter if all requirements are met (e.g. necessary documents, certificates are complete). Processing time for each application may vary, an average time line is given below.

(4) Remittance of capital (banks).

(5) Capital verification and approval (Investment Commission, MOEA). The Investment Commission will issue a capital verification letter within 3 working days.

(6) Company registration (Department of Commerce, MOEA, when paid-in capital exceeds NT\$500,000,000 - approximately US\$15.6 millions. When paid-in capital is less than NT\$500,000,000, this registration procedure is carried out by the Central Office of MOEA (in Nantou, Taiwan), or local governments (e.g. Taipei City Government, Kaohsiung City Government, or Taipei County Government)).

The average processing time required for each application in step (3):

(a) Investments in nonrestrictive industries and investment amount (or increased capital) less than NT\$500,000,000 (approximately US\$15.6 millions): 2 - 4 working days.

(b) Investments in nonrestrictive industries and investment amount (or increased capital) less than NT\$1,500,000,000 (approximately US\$46.8 millions): 3 - 5 working days.

(c) Investments in restricted industries, or the investment amount exceeds NT\$1,500,000,000 (approximately US\$46.8 millions), or mergers, acquisitions, and spin-offs: 10 - 20 working days.

(d) Multi-national mergers, acquisitions, and spin-offs; or extraordinary applications: 20 - 30 working days.

A graphical flow chart of the procedures described above can be viewed on-line at: [http://www.moeaic.gov.tw/system\\_external/ctrl?PRO=DownloadFile&t=2&id=315](http://www.moeaic.gov.tw/system_external/ctrl?PRO=DownloadFile&t=2&id=315).

And a detailed approval flow chart of investment application by foreign national can be viewed at: [http://www.moeaic.gov.tw/system\\_external/ctrl?PRO=DownloadFile&t=2&id=271](http://www.moeaic.gov.tw/system_external/ctrl?PRO=DownloadFile&t=2&id=271).

In addition, for further information in setting up other business types (e.g. branch/representative office), or to invest in Export-Processing Zones, Free Trade Zones, Science-Based Parks etc., please visit:

[http://investtaiwan.nat.gov.tw/matter/show\\_eng.jsp?ID=6&MID=6](http://investtaiwan.nat.gov.tw/matter/show_eng.jsp?ID=6&MID=6)

### Does this apply to all investment or, are there differential treatment?

Process for all FDI applications are principally the same, however, minor variations exist. For instance, investment in acquiring an existing enterprise does not need to deal with every step in aforementioned section. In such case step (2): "applying for company name reservation" is not necessary. And after the investment application is approved by the Investment Commission, capital remittance made and verified (steps 3-5), the investor may need to apply for "change of company registration" instead of "company registration" (step 6).



## Conditions of investment

**Telecommunications** - According to Article 12 of Telecommunications Act, the chairman of the Board of a Type I telecommunications enterprise shall be a national of Chinese Taipei. The total direct shareholding by foreigners may not exceed forty-nine percent, and the sum of direct and indirect shareholding by foreigners may not exceed sixty percent.

**Manufacturing** - In order to promote Chinese Taipei's industrial innovation, improve industry environments, and enhance the competitiveness of industries, the Statute for Industrial Innovation (SII) was formulated as a replacement for the Statute for Upgrading Industries (which had provided various tax incentives for certain industries and expired at the end of 2009). The SII has come into force with its formal promulgation by the President on May 12, 2010. The SII retains preferential tax status for R&D - companies can deduct 15% of the year's R&D expenses from business income tax due.

**Insurance** - Foreign insurers that meet regulatory requirements are allowed to set up subsidiaries and branch offices in Chinese Taipei. As of the end of June 2010, the FSC has approved 9 subsidiaries, 16 foreign branches and 13 representative offices.

**Securities** - (1) Securities Firms and Futures Related Enterprises - Based on the principle of national treatment, domestic and foreign investment in securities firms, SITEs, SICEs and futures related enterprises is subject to the standards governing the establishment of the type of enterprise in question (e.g. Standards Governing the Establishment of Securities Firms, etc.). No particular condition is imposed upon foreign investment in that sector. Qualified foreign investors may set up the above-mentioned enterprises through mergers and acquisitions of existing corresponding enterprises in Chinese Taipei based on the standards governing the establishment of the type of enterprise in question. (2) Other industries - Only a few strategic industries are still subject to foreign investment caps under relevant acts or regulations, such as public utilities, airlines, and postal services, which are common limitations in other countries.

**Banking** - The Banking Act and related prudential requirements lay the legal foundation for foreign investment in the banking sector in Chinese Taipei. Qualified foreign financial institutions may set up commercial banks through mergers and acquisitions of troubled financial institutions in Chinese Taipei based on the Standards Governing the Establishment of Commercial Banks.

**Shipping** - Chinese Taipei has the limitations of foreign capital equity under national-flag vessel. However, in WTO maritime transport service negotiations, "Establishment of registered company for the purpose of operating a fleet under the nation flag" is not an item that will be requested to make commitment to offer. Therefore, most nations do have limitations on foreign investment in this item, like at least 50% of the carrier's capital must be of domestic origin. Chinese Taipei's related regulations are based on national security and interests, which are governed by Shipping Law and Law of Ships. However, for further liberalization, Chinese Taipei is planning to amend the proportion of foreign investment on domestic shipping companies from 33% to 50% (not included).

## Investment promotion and facilitation

The government of Chinese Taipei welcomes foreign investment as a matter of policy. The Department of Investment Services under the Ministry of Economic Affairs serves as an investment promotion agency and will provide investors with necessary assistance.

The InvesTaiwan Service Center, established on August 8, 2010, provides custom made one-stop solutions for domestic and foreign investment as a result of the directive from the Executive Yuan's Global Investment Task Force. All current and future cases are to be served by this center, including cases referred from government ministries and local government offices.

## More information about the process of investing in our economy

Department of Investment Services, Ministry of Economic Affairs: [www.dois.gov.tw](http://www.dois.gov.tw)

Investment Commission, Ministry of Economic Affairs, <http://www.moeaic.gov.tw>.

## Investment protection

## Protection of property rights and conditions for expropriation

To meet the need of land for various developments, the Ministry of the Interior reviews and evaluates applications from all divisions of national and city governments regarding expropriation of private land for use by public utility enterprises. Before applying for expropriation of land, the applicant shall select the proper location and area of lands according to the nature of the sponsored undertakings and actual needs. Any expropriation of land shall be carried out on localities where damage can be kept at the minimum level if the purpose of the expropriation is not hindered, and cultivated lands shall be avoided if possible.

The government reserves the right to be able to expropriate property according to Land Expropriation Act. The content of Regulation for Land Expropriation is as following:

- a. Before obtaining approval of business authority, promoter of undertaking should hold public hearing to collect opinions from land owners and relevant people.
- b. The approval authority should set Land Expropriation committee to consider projects of expropriation.
- c. If original owners of expropriation died, compensation would be divided to his heirs.
- d. Prior to the application of expropriation, the promoter of undertaking shall negotiate with land owners on obtaining of land by purchasing, or by any other means. Only if negotiation breaks, expropriation can be applied. When land is expropriated, original owners of expropriation may still apply to claim the land on the amount equal to the original value of compensation, or to abolish the expropriation, in accordance with Article 9 or Article 49 of the Regulation for Land Expropriation regarding to limit on promoter of undertaking.
- e. The compensation of an expropriated land shall be the current value issued at the correspondent public notice or publications. When necessary, the compensation may be raised to a reasonable level for making up for the land owners. The percentage to be raised to the compensation shall be evaluated at the time when appraising the yearly current value of land to the public by Land Expropriation Committee, which shall be a normal transaction value offered by competent authorities of city government or county city government.

## More information

The Land Expropriation Act (2000), accessible from:  
[www.land.moi.gov.tw/law/enhtml/lawquerydetail.asp?elid=87&ntitle=Land%20Expropriation%20Act](http://www.land.moi.gov.tw/law/enhtml/lawquerydetail.asp?elid=87&ntitle=Land%20Expropriation%20Act)

Dept Of Land Administration: [www.land.moi.gov.tw](http://www.land.moi.gov.tw)

## Protection of IPRs

Chinese Taipei strives to create a sound IPR protection environment because it understands that it is crucial to foster innovation and investment.

The Intellectual Property Office in Chinese Taipei (TIPO) is the competent authority responsible for patent, trademarks, copyrights, integrated circuit layouts, trade secrets

and other IP-related matters. To develop a healthier IPR protection environment through the implementation of an adequate and effective IPR protection, TIPO has adopted the following measures:

(1) Legal aspect: IPR protection laws in Chinese Taipei consist of the Copyright Act, the Trademark Act, the Patent Act, the Trade Secrets Act, the Plant Variety and Plant Seed Act, the Integrated Circuit Layout Protection Act, the Tobacco and Alcohol Administration Act, and the Fair Trade Act. Chinese Taipei's IPR legislation has been in full consistency with the TRIPS Agreement since our accession to the WTO. However, to accommodate a highly developed science and technology and changes in international intellectual property environment, Chinese Taipei has taken a series of substantial revisions and amendments to laws and regulations governing copyright, patent and trademark. Chinese Taipei has also improved transparency and consultation process on the draft of IP laws.

(2) IP court has started functioning since July 2008. The IP Prosecutors Office of the Taiwan High Prosecutors Office has been in smooth operation since its establishment in July 1, 2008. With these judicial efforts, IP trials will be carried out more professionally in Chinese Taipei.

## Chinese Taipei

(3) In January 2003, the government established the IPR Police; an "IPR Action Plan" has also been implemented since 2003 in order to coordinate IPR protection work among different agencies and departments. The Ministry of Education also started implementing its Campus IPR Action Plan since 2007. Progress is made in many areas, including campus Internet management, campus photocopying management and enhancing awareness of IPR protection. Chinese Taipei's enforcement efforts have been highly recognized internationally.

Moreover, Chinese Taipei has also put in lots of efforts in the cultivation of IP professionals and innovation assistance. For example, the Taiwan Intellectual Property Training Academy (TIPA) was established in 2005 to cultivate professional working in intellectual property-related fields. To showcase the latest inventions and technologies, Taipei International Invention Show & Technomart has been held annually since 2005.

Chinese Taipei's achievements in IPR related areas have contributed to the improvement in national competitiveness. Chinese Taipei was ranked eighth in IMD's annual World Competitiveness Report among the 58 economies covered in the rankings.

### More information

Intellectual Property Office, MOEA: [www.tipo.gov.tw](http://www.tipo.gov.tw)

### Flow of funds

Prior to February 1979, management of foreign exchange in Chinese Taipei was characterized by a central clearing and settlement system. Following the establishment of the Taipei Foreign Exchange Market in February 1979, a managed float exchange rate system was formally implemented.

And if managed, under what circumstances or purposes does your government/central bank intervene?

In principle, the NT dollar exchange rate is determined by market forces. However, when the NT dollar exchange rate is disrupted by seasonal or irregular factors and becomes more volatile than what can be explained by economic fundamentals, the Central Bank will step in to restore order in the foreign exchange market.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Remittances related to foreign investments approved by competent authorities are completely liberalized. That is, a company incorporated in Chinese Taipei or a foreign company registered in Chinese Taipei may freely repatriate profits, dividends, royalties

or loan payments.

### Mechanisms to review decisions, and settle disputes

In case a potential investor disagrees with the decision made by the Investment Commission, MOEA, he/she may file an appeal to the "Petitions and Appeals Committee" of the Executive Yuan (the highest administrative agency). The Executive Yuan will then review the case and make ruling whether the decision made by the Investment Commission, MOEA is appropriate. The potential investor can re-submit the application where Executive Yuan rules in his/her favor, or on the other hand, if the potential investor is still not satisfied with the ruling of the Executive Yuan, he/she has the final option of seeking remedy from the "High Administrative Court".

What, if any, mechanism do you have for foreign investors to settle disputes?

Once a foreign investor has received approval to invest in Chinese Taipei all disputes are subject to the same legal framework as is afforded domestic investors. This includes access to a range of dispute resolution mechanisms, such as arbitration, mediation and conciliation. Furthermore, foreign investors have access to Civil procedure.

### ICSID

## Chinese Taipei

Chinese Taipei has neither signed nor acceded to the International Centre for Settlement of Investment Disputes.

### More information

#### International investment agreements

With;

Argentina; Belize; Burkina Faso; Costa Rica; Dominican Republic; El Salvador; Gambia, the; Guatemala; Honduras; India; Indonesia; Liberia; Macedonia, FYR; Malawi; Malaysia; Marshall Islands; Nicaragua; Nigeria; Panama; Paraguay; Philippines; S Vincent & Grenadines; Saudi Arabia; Senegal; Singapore; Swaziland; Thailand; United States; Viet Nam;

Please provide a brief description of these IIAs, or your IIAs in general.

Chinese Taipei has so far signed Bilateral Investment Agreement with 29 countries. All these investment agreements cover investment promotion and protection, yet not including liberalization. Chinese Taipei is working towards signing BIAs with more countries in order to attract more foreign investments.

### More information

Department of Investment Services, MOEA: [www.dois.gov.tw](http://www.dois.gov.tw)

## Movement of persons

#### Treatment of foreign nations or personnel of foreign firms

Foreign investors or representatives of foreign corporations, who intend to stay for more than 6 months in Chinese Taipei for business purpose, may pursuant to the following principles, and with a certificate issued by the competent authority in charge of the investment, apply to Ministry of Foreign Affairs for single entry resident visas:

(I) Approved foreign investment with a verified investment amount of more than US\$200,000 may apply for single entry resident visa for up to two persons.

(II) Approved foreign investment with a verified investment amount exceeding US\$200,000 may apply for an additional person's single entry resident visa for each US\$500,000 investment increased, the maximum number of persons for additional visa application is seven.

### More information

"Regulations Governing Visits, Residence, and Permanent Residence of Aliens"  
([http://law.moj.gov.tw/Eng/news/news\\_detail.aspx?id=3939](http://law.moj.gov.tw/Eng/news/news_detail.aspx?id=3939));

"Statute Governing the Issuance of Visas in Foreign Passports"  
([http://law.moj.gov.tw/Eng/news/news\\_detail.aspx?id=717](http://law.moj.gov.tw/Eng/news/news_detail.aspx?id=717))

## Taxation

#### Taxation of foreign nationals and foreign firms

##### Company profits

Chinese Taipei's profit-seeking enterprise ("PSE") income tax is levied as follows:

## Chinese Taipei

For a PSE with a head office located in Chinese Taipei, income tax is levied based on the worldwide income of the PSE. However, income tax paid on offshore income in the jurisdictions of foreign countries can be credited against the PSE's overall income tax liability. The amount of the deductible foreign tax credit is limited to the increase in Chinese Taipei income tax liability resulting from inclusion of foreign source income calculated at the applicable domestic tax rate.

For a PSE with a head office located outside Chinese Taipei generating Taiwan-source income, income tax is levied based on the Taiwan-source income of the PSE. A PSE with a fixed place of business or business agent within the territory of Chinese Taipei should file the income tax return. A PSE without a fixed place of business or business agent within the territory of Chinese Taipei but having Taiwan-source income should have the tax withheld at source by the withholding tax agent; while the income tax is not withheld, the PSE should report the income and pay the underlying tax due based on the regulated withholding rate. The income tax brackets and tax rates for profit-seeking enterprise income tax are as follows?

Tax year 2010 and after:

Bracket ( NT\$ )	Tax Rate
120,000 or less	None
Over 120,000	17% of total taxable income, but income tax liability may not exceed 50% of the portion of taxable income over \$120,000

Personal income/profits

The individual income tax in Chinese Taipei is taxed on the taxpayers' Taiwan-source income. Taxpayers are categorized as residents or non-residents, regardless of their nationalities. Regulations relating to residents and non-residents are as follows?

A resident is defined as a person who has a domicile in Chinese Taipei and habitually resides in Chinese Taipei, or who does not have a domicile in Chinese Taipei but stayed in Chinese Taipei for 183 days or more cumulatively in a given calendar year. Those who have Chinese Taipei source income should file individual income tax returns and pay the tax in accordance with Paragraph 1, Article 2 and Article 71 of the Taiwan Income Tax Act.

Non-residents having Chinese Taipei source income should pay the withholding tax at source in accordance with Paragraph 2, Article 2 of the Taiwan Income Tax Act.

The net taxable income of an individual is subject to the following progressive tax rates?

Tax year 2010 and after:

Brackets(NT\$)	Tax Rates	Progressive Differences (NT\$)
0 - 500,000	5%	0
500,001 - 1,130,000	12%	35,000
1,130,001 - 2,260,000	20%	125,400
2,260,001 - 4,230,000	30%	351,400
4,230,001 and above	40%	774,400

Funds for repatriation

When foreign companies come to invest in Chinese Taipei to set up representative offices or branches, they should pay income tax on income generated within Chinese Taipei. However, companies are exempt from income tax when they remit their after-tax surplus income back to their companies, because it is not considered as a dividend. As for the subsidiaries established by foreign companies, they are subject to the levy of income tax on all the consolidated income generated both inside and outside Chinese Taipei, as well as income tax on after-tax dividends.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

## Chinese Taipei

For an individual, the individual income tax in Chinese Taipei is taxed on the taxpayers' Taiwan-source income. However, individual overseas income, including income the source of which is not from Chinese Taipei and is excluded from gross consolidated income according to Article 2 of Income Tax Act, as well as the income exempt from gross consolidated income according to Paragraph 1, Article 28 of the Act Governing Relations with Hong Kong and Macau, shall be included in the amount of basic income for resident individuals as of 1st January, 2010 in accordance with Paragraph 1 and Paragraph 7, Article 12 of the Income Basic Tax Act.

For a profit-seeking enterprise ("PSE"), a PSE with a head office located in Chinese Taipei, income tax is levied based on the worldwide income of the PSE. For a PSE with a head office located outside Chinese Taipei, income tax is levied based on the Taiwan-source income of the PSE.

When the same person (individual or PSE) is taxed in respect of same object by two authorities, double taxation may occur. In order to avoid double taxation, tax evasion, and promote bilateral relations, Chinese Taipei is active in seeking to promote ties with countries with which it has close trading ties by signing tax agreements. As of 30th June, 2010, 18 comprehensive income tax treaties and 14 international transportation income tax agreements have been signed and brought into force.

Comprehensive income tax treaties which cover all income flows:

1. Asia : Indonesia, Israel, Malaysia, Singapore, Vietnam
2. Oceania : Australia, New Zealand
3. Europe : Belgium, Denmark, Macedonia, the Netherlands, Swaziland, Sweden, the UK
4. Africa : Gambia, Senegal, South Africa
5. South America : Paraguay

International transportation income tax agreements: Canada, the European Union, Germany, Israel, Japan, Korea, Luxembourg, Macau, the Netherlands (Shipping, Air Transport), Norway, Sweden, Thailand and the United States

### More information

Introductory information can be obtained from "Invest in Taiwan" at <http://investtaiwan.nat.gov.tw>. More detailed information can be obtained from the Taxation Agency, MOF at <http://www.dot.gov.tw>

## Introduction

### Our Location Offer

Thailand enjoys a strategic location and serves as a gateway into the heart of Asia - home to what is today the largest growing economic market.

- \* Convenient trade with China, India and the countries of the Association of Southeast Asian Nations (ASEAN), and easy access into the Greater Mekong sub-region, where newly emerging markets offer great business potential.
- \* Close economic cooperation with other ASEAN member nations, and Thai manufactured products and services have access to their markets, which includes all 10 ASEAN countries. ASEAN is home to more than half a billion people, GDP in excess of US\$1.5 trillion and total trade of well more than US\$1 trillion per year.
- \* Well-defined investment policies focus on liberalization and encourage free trade. Foreign investments, especially those that contribute to the development of skills, technology and innovation are actively promoted by the government.
- \* Thailand consistently ranks among the most attractive investment locations in international surveys, and the World Bank's 2010 Ease of Doing Business report places Thailand as the 12th easiest country in the world in which to do business.
- \* The Board of Investment offers a range of tax incentives, support services and import duty exemptions or reductions to an extensive list of promoted activities.
- \* The Board of Investment coordinates the activities of the One-Stop Service Center for Visas and Work Permits, which enables foreign staff of BOI-promoted companies to obtain work permits and long-term visas within three hours or less. Additionally, set up the One Start One Stop Investment Center to facilitate a full range of services and streamline investment procedures by bringing representatives from more than 20 government agencies under one roof.

### Introduction to investment regime

To relieve the fiscal burden of the government and to respond to current and future economic situations, the Board of Investment (BOI) prescribes policies for investment promotion as follows:

1. Privileges will be granted to projects that actually benefit the economy, and good governance will be used to manager and supervise the application of tax and duty privileges. Promoted entities will report the operating results of their promoted projects to the BOI for review prior to the application of tax and duty privileges for that year.
2. To promote development of quality and production standards that will enhance Thailand's competitiveness in the world market, every promoted project that has investment capital of 10 million bath or more (excluding cost of land and working capital) must obtain ISO 9000 certification or similar international certification.
3. Previous conditions on exports and use of local materials have been repealed, making the criteria for promotion in line with international trade and investment agreements.
4. Special investment promotion will be given to regions or areas with low income and inadequate investment facilities. Maximum tax and duty privileges will be given to these regions or areas.
5. Priority is given to small and medium-sized industries by applying a minimum level of investment capital of 500,000 baht (excluding cost of land and working capital) for activities, as per BOI announcement No. 1/2553, and of not less than one million baht (excluding cost of land and working capital) for other activities.
6. Priority is given to agricultural activities and agricultural products, projects related to technological and human resource development, public utilities, infrastructure and basic services, environmental protection and conservation and targeted industries.

### Investment priority plan/equivalent policy

## Thailand

Thailand aims to gear the country towards sustainable development. Studies will be conducted in order to launch investment promotion measures that contribute to the country's development in economic, social and environmental development, as well as transition the industrial sector into becoming knowledge-based and value-added.

Thailand Board of Investment will start working with related organizations to develop investment policies for sustainable development. It also review measures that expired of the end of last year which are in line with this direction, such as Thailand Investment Year 2008-2009, to improve efficiency of production processes and measures to solve environmental problems.

In addition, the details of new investment promotion measures will be studied in order to develop human resources to support knowledge-based industries, to build strength in science and technology, to promote environmental and community friendly investment, such as Eco Town or Eco Industrial Estate, and finally to build industry and services on cultural uniqueness and value-added creativity.

### More information

Office of the Board of Investment: [www.boi.go.th](http://www.boi.go.th)

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

The process for foreign entities/nations to invest in your economy

There are several choices of business organization recognized under Thai Law ranging from sole proprietorship, partnership, private company, and public limited company. Hence, private limited Company, Branches of Foreign Companies, Representative Office of Foreign Companies, and Regional Operating Head Quarter are among the most popular form of organization of Foreign Entities. Please see business guide to Thailand for more information. [www.boi.go.th/english/download/faq/Bizzg.pdf](http://www.boi.go.th/english/download/faq/Bizzg.pdf)

Generally there are two main procedures to start up a business in Thailand for private limited company. One is for general procedure; the other is the special procedure in order to obtain the special privilege under Investment Promotion Act (in short to obtain BOI promoted incentives). The two procedures can be processed at the parallel timeline.

#### General Procedure to start up company limited

##### 1. Registration of the company at Minister of Commerce

This procedure will require a minimum of 3 promoters for private limited company and the promoter must be individual (not business entities).

The registering of the company occurs at the MOC can be accomplished on the same day as the registration of the memorandum of association (subject to full compliance with the required procedures). If the company falls under the definition of "foreign" (as defined in the Foreign Business Act), it will normally require to obtain Cabinet approval or a Foreign Business License prior to commencing operation. However, the BOI Promoted Company normally can use the BOI document to obtain the Foreign Business Certificate.

The process of the registration is consisting of (1) Corporate Name Reservation (2) Filling a Memorandum of Association-to define the share structure (3) Convening a Statutory Meeting -when the minimum 25 percent of the par value of each subscribed share must be paid. (4) Registration within the 3 months of the date of the statutory meeting, the directors must submit the application to establish the company. (5) Registering for Tax Documents

##### 2. Accounting and Financial Report Requirements

The companies must keep books and follow accounting procedures specified in the Civil and commercial code, the Revenue Code and the Accounts Act. The basic accounting principles practiced in the United States are accepted in Thailand as are accounting methods and conventions sanctioned by Law.

##### 3. Industrial Licensing and Regulation



## Thailand

The companies wish to established a factor in Thailand has to comply with the Factory Act 1969 (amended in 1972,1975,1979, and 1992) and a factory or any premise that uses machinery equivalent to five horsepower or more, or that employs seven or more workers for manufacturing, producing, assembling, packing, repairing, maintaining, testing, improving, processing, conveying, storing or destroying anything included in the classes or types of factories presently listed in the Ministerial Regulations.

A factory license issued by the department of Industrial works, Ministry of Industry -see [www.diw.go.th](http://www.diw.go.th) If the premise is required to obtain the notification or license, this must be obtain prior to the construction of a factory. After the construction is completed and prior to the commencement of operations, the operator must inform the official at least 15 days in advance.

For environmental purpose, some of the factory has to conduct an Environment Impact Assessment-see [www.onep.go.th](http://www.onep.go.th)

4. The other applications, that should be considered depending on the type of business, are patent, trademark and some specific industry regulation (explain in the following question)

5. The Land Act in Thailand.

In order to obtain the land, the foreign entities can use the channel through BOI or IEAT to obtain the right to own land for their business. Apart from that, all has to comply by the Land Act.

6. Foreign Worker in Thailand

Foreigner works in Thailand must obtain work permits from the Foreigner's Occupation Control Division of the Department of Skill Development or the One-Stop Service Center for the visa and work permit (for BOI promoted mainly). Reports on all changes in employment of foreigners must be filed by the employers with the Department of Skill Development.

The procedure to apply for BOI promotion incentives:

Thailand Board of Investment has offered a wide range of incentives for Business Start-up in Thailand for both Thai Nationality and Foreigner under the same national treatment basic. For more information on the BOI rules and regulation, please visit the [www.boi.go.th](http://www.boi.go.th) and download the publication : A guide to the Board of Investment at [www.boi.go.th/english/services/a\\_guide/index.htm](http://www.boi.go.th/english/services/a_guide/index.htm)

The incentives for Foreigner is included the right to own land (for manufacturing purpose) the service to bring in XPAT via one stop service center, the tax and non-tax incentives etc.

### **Does this apply to all investment or, are there differential treatment?**

Foreigners in Thailand basically have the same rights with Thai nationalities. The limitation is restricted in some area for security reason such as Nationality Act, Foreigner Registration Act, Immigration Act, Land Code, Foreigner Employment Act etc.

For Manufacturing or real sector, foreigner shareholder can own up to 100 % of the business except for those listed under List 2-3 of Foreign Business Act that require special certificate from Ministry of Commerce. (please note that activities fall under List 1 in Foreign Business Act shall be reserved only for Thai Nationality for security reason. For more information on the Foreign Business Act, please view [www.dbd.go.th](http://www.dbd.go.th)

In additional to this, foreigner can enjoy further rights and privileges derive from different treaty that Thailand has committed to such as FTA, APEC, ASEAN AIA, and Treaty of Amity. Please view [www.thaifta.com](http://www.thaifta.com) for extended details on each FTA.

### **Conditions of investment**

Please note that, in special sector, mainly liquid investment, financial sector and investment related for security issue, such as commercial banks, insurance companies, commercial fishing, aircraft, commercial transportation, commodity export, mining and other enterprises shall be control by different statutes, cabinet policies, and trade association's regulations.

Thailand therefore has an international standard rules and regulations for a certain security and safety related issue such as the consumer protection laws, food, drugs, cosmetics and medical devices laws, trade competition law etc.

## Investment promotion and facilitation

The office of the Board of Investment is the government agency under the Ministry of Industry. Its main roles and responsibility are in promoting investment, prescribed under the investment promotion Act B.E. 2520 and the respective Amendment Acts No. 2 B.E. 2534 and No. 3 B.E. 2544

OBOI has 13 branches in 9 economies, which are listed in alphabetically as Beijing, Frankfurt, Guangzhou, Los Angeles, New York, Osaka, Paris, Seoul, Shanghai, Sydney, Stockholm, Taipei, and Tokyo. Investors interested in learning more about investment in Thailand and BOI incentives and the application process can contact the BOI through different branches or by e-mail to [head@boi.go.th](mailto:head@boi.go.th)

Furthermore, Thailand Government has set up the OSOS or the One start one Stop investment Center in November 23, 2009. The OSOS, which operates as part of the Board of Investment, consolidates staff from numerous investment-related agencies at the permanent location to assist investors with procedural matters. Staffs from numerous agencies will be on hand to consult with investors on a range of topics and the matter can be addressed by the various experts at the OSOS.

The agencies represented at OSOS are included 10 business related Ministries such as

Ministry of Commerce , Ministry of Finance, Ministry of Energy, Ministry of Industry, Ministry of Interior, Ministry of Labor, Ministry of Natural Resources and Environment, Ministry of Public Health, Ministry of Tourism and Sports, Ministry of Transport. Please see : <http://osos.boi.go.th> or email: [osos@boi.go.th](mailto:osos@boi.go.th)

## More information about the process of investing in our economy

Thailand Board of Investment

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Chatuchak Bangkok 10900

Tel: +662-553 8111

e-mail: [head@boi.go.th](mailto:head@boi.go.th)

website: [www.boi.go.th](http://www.boi.go.th)

### INTERNATIONAL ORGANIZATIONS

Asian Development Bank (ADB)

Thailand Resident Mission

23rd Floor, Central World, 999/9 Rama I Road, Wangmai, Pathumwan, Bangkok 10330

Tel: (66) 2263-5300

Fax: (66) 2263-5301

Website: <http://www.adb.org/thailand>, <http://www.adb.org/trm>

Asian Institute of Technology (AIT)

58 Moo 9, km. 42, Paholyothin Highway, Klong Luang, Pathumthani 12120

(or P.O. Box 4, Klong Luang, Pathumthani 12120)

Tel: (66) 2516-0110

Fax: (66) 2516-2126

Website: <http://www.ait.ac.th>

European Commission Delegation in Bangkok

19th Floor, Kian Gwan House II, 140/1 Wireless Road, Bangkok 10330

Tel: (66) 2305-2600, 2305-2700

**Fax: (66) 2255-9113**

**Website: <http://www.deltha.ec.europa.eu>**

**International Bank for Reconstruction and Development (IBRD)**

**The World Bank Office Bangkok**

**30th Floor, Siam Tower, 989 Rama I Road, Pathumwan, Bangkok 10330**

**Tel: (66) 2686-8300**

**Fax: (66) 2686-8301**

**United Nations Development Programme (UNDP)**

**12th Floor, UN Building, Ratchadamnern Nok Avenue, Bangkok 10200**

**Tel: (66) 2288-2138**

**Fax: (66) 2280-0556**

**Website: <http://www.undp.or.th>**

**United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)**

**United Nations Building, Rajadamnern Nok Avenue, Bangkok 10200**

**Tel: (66) 2288-1234**

**Fax: (66) 2288-1000**

**Website: <http://www.unescap.org>**

**United Nations Industrial Development Organization (UNIDO)**

**5th Floor, Department of Industrial Works Building**

**57 Phrasumen Road, Banglamphoo, Pranakorn, Bangkok 10200**

**Tel: (66) 2280-8691**

**Fax: (66) 2280-8695**

**Website: <http://www.unido.org>**

**World Bank Group**

**The World Bank Office, Bangkok**

**30th Floor, Siam Tower, 989 Rama 1 Road, Pathumwan, Bangkok 10330**

**Tel: (66) 2686-8300**

**Fax: (66) 2686-8301**

**Website: <http://www.worldbank.or.th>**

**World Health Organization (WHO)**

**4th Floor, Permanent Secretary Building 3, Tiwanon Road, Nonthaburi 11000**

**Tel: (66) 2590-1524, 2591-8198**

**Fax: (66) 2591-8199**

**Website: <http://www.whothai.org>**

**PUBLIC SECTOR INSTITUTIONS**

**Government House**

**Government House, Thanon Nakhon Pathom, Bangkok 10300**

Tel: (66) 2280-3000

Website: <http://www.thaigov.go.th>

Ministry of Foreign Affairs

443 Sri Ayudhaya Road, Tungphayathai, Rajthewi, Bangkok 10400

Tel: (66) 2643-5000

Fax: (66) 2643-5180

Website: <http://www.mfa.go.th>

#### INVESTMENT

Office of the Board of Investment (BOI)

555 Vibhavadi-Rangsit Road, Chatuchak, Bangkok 10900

Tel: (66) 2537-8111-55

Fax: (66) 2537-8177

Website: <http://www.boi.go.th>

Office of the National Economic and Social Development

962 Krung Kasem Road, Watsomanas, Pom Prab Sattru Phai, Bangkok 10100

Tel: (66) 2280-4085

Fax: (66) 2281-3938

Website: <http://www.nesdb.go.th>

One-Stop Service Center for Visas and Work Permits

16th Floor, Rasa Tower 2, 555 Phaholyothin Road, Chatuchak, Bangkok 19000

Tel: (66) 2937-1155-66 ext. 220 (Visa), ext. 303, 318 (Work Permit)

Fax: (66) 2937-1191

Securities and Exchange Commission (SEC)

15th Floor, GPF Wittayu, 93/1 Wireless Road, Lumpini, Pathumwan, Bangkok 10330

Tel: (66) 2263-6499

Fax: (66) 2256-7755

Website: <http://www.sec.or.th>

The Stock Exchange of Thailand (SET)

The Stock Exchange of Thailand Building

62 Ratchadapisek Road, Klongtoey, Bangkok 10110, Thailand

Tel: (66) 2229-2222

Website: <http://www.set.or.th>

#### INDUSTRY

Department of Industrial Promotion

Rama VI Road, Rajathevee, Bangkok 10400

Tel: (66) 2202-4414-18, 2202-4511

Fax: (66) 2246-0031

Website: <http://www.dip.go.th>

Industrial Estate Authority of Thailand (IEAT)

618 Nikom Makkason Road, Rajathevee, Bangkok 10400

Tel: (66) 2253-0561

Fax: (66) 2253-4086

Website: <http://www.ieat.go.th>

Ministry of Industry (MOI)

Rama VI Road, Rajathevee, Bangkok, 10400

Tel: (66) 2202-3000

Fax: (66) 2202-3048

Website: <http://www.m-industry.go.th>

Office of Industrial Economics (OIE)

75/6 Rama VI Road, Rajathevee, Bangkok 10400

Tel: (66) 2202-4274, 2202-4276

Fax: (66) 2644-7023

Website: <http://www.oie.go.th>

Thai Industrial Standards Institute (TISI)

Rama VI Road, Rajathevee, Bangkok 10400

Tel: (66) 2202-3301-4

Fax: (66) 2202-3415

Website: <http://www.tisi.go.th>

TRADE

Department of Export Promotion

Ratchadapisek office:

22/77 Ratchadapisek Road, Bangkok 10900

Tel: (66) 2511-5066-77

Fax: (66) 2512-2670

Nonthaburi office:

44/100 Nonthaburi 1 Road, Bang Krasor, Muang, Nonthaburi 11000

Tel: (66) 2507-7999

Website: <http://www.thaitrade.com>, <http://www.depthai.go.th>, <http://www.thaitradefair.com>

Department of Foreign Trade (DFT)

44/100 Nonthaburi 1 Road, Bang Krasor, Muang, Nonthaburi 11000

Tel: (66) 2547-4771-86

Fax: (66) 2547-4791-2

Website: <http://www.dft.moc.go.th>

Ministry of Commerce (MOC)

44/100 Nonthaburi 1 Road, Bang Krasor, Muang, Nonthaburi 11000

Tel: (66) 2507-8000

Fax: (66) 2507-7717

Website: <http://www.moc.go.th>

#### TOURISM

Airport of Thailand Public Company Limited (AOT)

333 Moo 7 Cherdwutagard Road, Srikan, Don Muang, Bangkok 10210

Tel: (66) 2535-1111

Fax: (66) 2535-4061

Website: <http://www.airportthai.co.th>, <http://www.airportthai.com>

Immigration Bureau

507 Soi SuanPlu, Sathorn Tai Road, Bangkok 10120

Tel: (66) 2287-3101-10

Fax: (66) 2287-1310, 287-1516

Website: <http://www.immigration.go.th>

Ministry of Tourism and Sports

4 Ratchadamnoen Nok Road, Pom Prab Sattru Phai, Bangkok 10100

Tel: (66) 2283-1555

Fax: (66) 2356-0746

Website: <http://www.mots.go.th/tourism/index.php>

Suvarnabhumi International Airport

999 Moo 7 Racha Thewa, Bang Phli, Samut Prakan 10540

Tel: (66) 2723-0000, 2132-1888

Fax: (66) 2723-0010, 2132-1889

Website: <http://www.suvarnabhumiairport.com>

Thai Airways International Public Company Limited

89 Vibhavadi-Rangsit Road, Bangkok 10900

Tel: (66) 2545-1000

Website: <http://www.thaiair.com>

Tourism Authority of Thailand (TAT)

1600 New Phetchaburi Road, Makkasan, Rajathevee, Bangkok 10400

Tel: (66) 2250-5500

Fax: (66) 2250-5511

Website: <http://www.tourismthailand.org>

#### FINANCE

Bank of Thailand (BOT)

273 Samsen Road, Bangkhumprom, Bangkok, 10200

Tel: (66) 2283-5353

Fax: (66) 2280-0449

Website: <http://www.bot.or.th>

Excise Department of Thailand

1488 Nakornchaisri Road, Dusit, Bangkok 10300

Tel: (66) 2241-5600-19, 2668-6560-89 Ext. 54232 and 54233

Fax: (66) 2668-6398

Website: <http://www.excise.go.th>

Ministry of Finance (MOF)

Rama VI Road, Samsen-Nai, Phayathai, Bangkok 10400

Tel: (66) 2273-9021

Fax: (66) 2293-9408

Website: <http://www.mof.go.th>

Small and Medium Enterprise Development Bank of Thailand (SME Bank)

SME BANK Tower, 310 Paholyothin Road, Samsen-Nai, Phayathai, Bangkok 10400

Tel: (66) 2265-3000

Fax: (66) 2265-4000

Website: <http://www.smebank.co.th>

The Customs Department, Ministry of Finance

1 Sunthon Kosa Road, Klongtoey, Bangkok 10110

Tel: (66) 2249-0431-40, 2249-9017

Website: <http://www.customs.go.th>

The Revenue Department

90 Revenue Department Building, Soi Paholyothin 7, Bangkok 10400

Tel: (66) 2272-8018, 2617-3605-13

Fax: (66) 2617-3616

Call Center: (66) 2272-8000

Website: <http://www.rd.go.th>

## COMMUNICATIONS

Communications Authority of Thailand (CAT)

99 Moo 3, Chaengwathana Road, Paholyothin, Bangkok 10002

Tel: (66) 2573-0099

Fax: (66) 2574-6054

Website: <http://www.catt telecom.com>

Ministry of Transport

38 Ratchadamnoen Nok Road, Pom Prab Sattru Phai, Bangkok 10100

Tel: (66) 2283-3000, 2281-3871

**Fax: (66) 2281-3049**

**Website: <http://www.mot.go.th>**

**Telephone Organization of Thailand (TOT)**

**89/2 Moo 3 Chaengwatthana, Tung Song Honk, Laksi, Bangkok 10210**

**Tel: (66) 2505-4500**

**Fax: (66) 2574-9533**

**Website: <http://www.tot.co.th>**

#### **UTILITIES**

**Electricity Generating Authority of Thailand (EGAT)**

**53 Charan Sanit Wong Road, Bang Kruai, Nonthaburi 11130**

**Tel: (66) 2436-0000**

**Fax: (66) 2436-4723**

**Website: <http://www.egat.co.th>, <http://www.egat.com>**

**Metropolitan Electrical Authority (MEA)**

**30 Soi Chidlom, Ploenchit Road, Pathumwan, Bangkok 10330**

**Tel: (66) 2254-9550, 2251-9586**

**Fax: (66) 2253-1424**

**Website: <http://www.mea.or.th>**

**Metropolitan Waterworks Authority (MWA)**

**400 Moo 4, Prachachuen Road, Laksi, Bangkok 10210**

**Tel: (66) 2504-0123**

**Website: <http://www.mwa.co.th>**

**Provincial Electrical Authority (PEA)**

**200 Ngam Wongwan Road, Chatuchak, Bangkok 10900**

**Tel: (66) 2589-0100-1**

**Fax: (66) 2589-4850-1**

**Website: <http://www.pea.co.th>**

**Provincial Waterworks Authority (PWA)**

**72 Chaeng Wattana Road, Laksi, Bangkok 10210**

**Tel: (66) 2551-1020**

**Fax: (66) 2551-1239, 2552-1547**

**Website: <http://www.pwa.co.th>**

#### **ASSOCIATIONS**

**The Federation of Thai Industries**

**4th Floor Zone C Queen Sirikit National Convention Centre**

**60 New Ratchadapisek Road, Klongtoey, Bangkok 10110**

**Tel: (66) 2345-1000**



**Fax: (66) 2345-1296-99**

**Website: <http://www.fti.or.th>**

**The Lawyers Council of Thailand**

**7/89 Mansion 10, Rajdamnoen Avenue, Pranakorn District, Bangkok 10200**

**Tel: (66) 2629-1430**

**Fax: (66) 2282-9907-8**

**Website: <http://www.lawyerscouncil.or.th>**

**The Thai Bankers' Association**

**4th Floor, Lake Rajada Office Complex (Building 2), CDF House**

**195/5 Ratchadaphisek Road, Klongtoey, Bangkok 10110**

**Tel: (66) 2264-0883-6**

**Fax: (66) 2264-0888**

**Website: <http://www.tba.or.th>**

**The Foreign Bankers' Association**

**19th Floor Sathorn Thani Building 2, 92/55 North Sathorn Road, Bangkok 10500**

**Tel: (66) 2236-6070-2**

**Fax: (66) 2236-6069**

**Website: <http://www.fba.or.th>**

**Thai Hotels Association**

**203-209/3 Ratchadamnoen Klang Avenue, Bowonniwet, Bangkok 10200**

**Tel: (66) 2281-9496**

**Fax: (66) 2281-4188**

**Website: <http://www.thaihotels.org>**

**Thai Auto-Parts Manufacturers Association (TAPMA)**

**1st Floor, Bureau of Supporting Industries Development (BSID)**

**86/6 Soi Trimit, Rama IV Road, Klongtoey, Bangkok 10110**

**Tel: (66) 2712-2246-7 , 2712-2971 , 2712-3594-6**

**Fax: (66) 2712-2970, 2712-3597**

**Website: <http://www.thaiautoparts.or.th>**

**Thai Airfreight Forwarders Association**

**874 Ploenchit Road, Lumpini, Pathumwan, Bangkok 10330**

**Tel: (66) 2254-5780-3**

**Fax: (66) 2254-5784**

**Website: <http://www.tafathai.org>**

**Thailand Textile Institute**

**Soi Trimitr, Kluaynamtai, Rama IV Road, Klongtoey, Bangkok 10110**

**Tel: (66) 2713-5492-9**

Fax: (66) 2712-1592-3

Website: <http://www.thaitextile.org>

The Thai Synthetic Fiber Manufacturers' Association (TSMA)

9th Floor, Suite M, Phayatai Plaza Building

128/111 Phayathai Road, Rajthavee, Bangkok 10400

Tel: (66) 2216-5739-40

Fax: (66) 2216-5722

Website: <http://www.thaitextile.org/TSMA>

The Thai Textile Manufacturing Association (TTMA)

454-460 Sukhumvit Road 22, Klongton, Klongtoey, Bangkok 10110

Tel: (66) 2258-2023, 2258-2044

Fax: (66) 2260-1525

Website: <http://www.thaitextile.org/TTMA>

The Thai Weaving Industry Association (TWIA)

54/87-88 Moo 5, Rama II Road, Jomthong, Bangkok 10150

Tel: (66) 2427-6668-9

Fax: (66) 2427-6669

Website: <http://www.thaitextile.org/TWIA>

The Association of Thai Textile Bleaching, Dyeing, Printing and Finishing Industries (ATDP)

Queen Sirikit National Convention Center, Zone D

3rd Floor, Room D301/3, 60 New Ratchadapisek Road, Klongtoey, Bangkok 10110

Tel: (66) 2229-3431-2

Fax: (66) 2229-3431-2

Website: <http://www.thaitextile.org/ATDP>

The Thai Garment Manufacturers Association (TGMA)

31st Floor, Panjathani Tower, 127/36, Nonsee Road, Chongnonsee, Yannawa, Bangkok 10120

Tel: (66) 2681-2222

Fax: (66) 2681-0231-2

Website: <http://www.thaigarment.org>

The Thai Silk Association (TSA)

Textile Industry Division, Soi Trimitr, Rama IV Road, Klong Toey, Bangkok 10110

Tel: (66) 2712-4328

Fax: (66) 2258-8769

Website: <http://www.thaitextile.org/TSA>

The Textile Merchants Association (TMA)

4th Floor, Espreme Building

562 Soi Watgunmatuyalarm, Rajchawong Road, Samphantawong, Bangkok 10100

Tel: (66) 2622-6711-3

Fax: (66) 2622-6714

Website: <http://www.thaitextile.org/TMA>

The Bobae Garment Association (BOBAE)

94/24 Trok Thamma Rongmuang, Pathumwan, Bangkok 10330

Tel: (66) 2221-8050

Fax: (66) 2221-4996

Website: <http://www.thaitextile.org/BOBAE>

## Investment protection

### Protection of property rights and conditions for expropriation

The Royal Thai Government has developed a clear policy to promote effective protection of intellectual property rights. This intention can be inferred from both in the new Constitution of the Kingdom of Thailand B.E. 2550, which gives special emphasis on providing protection on intellectual property in line with international accepted standard, as well as the National Policy of the current royal Thai Government that places high priority on the development of intellectual property system. Accordingly, the Department of Intellectual Property (DIP), as the principal agency in the development of intellectual property system in Thailand, with cooperation from related agencies, has developed measures so as to ensure a sustainable development in the intellectual property system of the country. These measures range from the promotion of intellectual property creation to the establishment of an effective information database system to a reliable intellectual property examination process and the promotion of the utilization of intellectual property for commercial purposes.

The Department of Intellectual Property has coordinated with universities, National Innovation Agencies and National Science and Technology Development Agency to promote the creation of innovations and intellectual property subject means. The Department of Intellectual Property has also cooperated with the Office of Small and Medium Enterprises Promotion and the universities to provide knowledge on commercialization of intellectual property rights for innovations and entities in business circles in order to assist them to make full use of their rights.

With regard to infringement of intellectual property rights, the Department of Intellectual Property has coordinated closely with related agencies to suppress intellectual property violations in an integrated manner with clear target and expected results. Especially for the optical disc piracy, the Department of Intellectual Property, the Royal Thai Police and the Department of Special Investigation have jointly conducted numerous numbers of raids, with the focus on the suppression of large scale violations. The counterfeiting and pirated goods seized in the intellectual property infringement cases are destroyed to prevent them from re-entering the market.

With regard to future work plan, the Royal Thai Government will focus on consistent implementation to ensure concrete and significant outcome, both in terms of expediting legal reforms and intensifying coordination among related agencies to effectively suppress intellectual property violations in all dimensions. Indeed, the Royal Thai Government is fully confident that all of the efforts will help to resolve the intellectual property issues in the country and, more importantly, assure a continual and sustainable development of the intellectual property system in Thailand.

### More information

The Department of Intellectual Property: [www.ipthailand.go.th](http://www.ipthailand.go.th)

### Protection of IPRs

## Thailand

As a member of WTO, Thailand provides intellectual property protection according to the requirements of the TRIPS Agreement and the flexibilities provided therein. It has a sui-generis law on the protection of geographic indication that protects the name of the geographical area associated with quality and identity of products. Thailand excludes certain inventions from patentability as provided by Article 27.2 and 27.3 of the TRIPS Agreement. It also provides sui-generis protection to plant variety under a specific law governed by the Ministry of Agriculture and Corporate.

As far as international treaties are concerned, Thailand is a signatory to the World Intellectual Property Organization (WIPO), the Berne Convention, the Paris Convention, and since 24 December 2009, Thailand has effectively become a party to the Patent Corporation Treaty (PCT).

Thailand realises the gravity of the rapid changing of technology. It, therefore, is in the process of reviewing numbers of IPR related legislations. The Copyright Act is being revised, among other things, to cope up with the protection of work in digital environment. The trademark definition is being expanded to cover non-conventional marks. Thailand is also in the process of enacting an anti-camcording law and landlord liability in the term of IPR violation. Most of the legislations' reviewing and drafting are actively in process at the moment.

Thailand criminalizes all IPR violations with penalties vary from fine to imprisonment, provided that some of the defenses require closer participation from the right holders in the procedure. The damaged party could also seek for remedies in the civil cases for its lost. It is worth noting that, since 1997, Thailand has had the Central Intellectual Property and International Trade Court whose procedures is aimed to facilitate parties in IPR violation cases.

Thailand values close corporation among concerned government agencies. In January 2009, the Cabinet set up a National Committee on IPR Policy chaired by the Prime Minister with high level executives from various Ministries as members. The committee's National Strategy on IP was later approved by the Cabinet as well as the Proactive Plan on Prevention and Suppression of IPR Violation, one priority of which is to ensure the harmonious efforts among agencies in combating IPR violation in the country. It was reported that the enforcement statistic has significantly improved during the past year. At the same time, destruction of infringing goods seized has been periodically commenced to ensure they will not leak back into the market.

### Intellectual Property Law of Thailand

- \* Patent Act B.E. 2522 (1979)
- \* Trademark Act B.E. 2534 (1991)
- \* Copyright Act B.E. 2537 (1994)
- \* Protection of Layout-Design of Integrated Act B.E. 2543 (2000)
- \* Trade Secret Act B.E. 2545 (2002)
- \* Protection of Geographical Indication Act B.E. 2546 (2003)
- \* Optical Disk Production Act B.E. 2548 (2005)

### More information

The Department of Intellectual Property: [www.ipthailand.go.th](http://www.ipthailand.go.th)

### Flow of funds

Since July 1997, Thailand has adopted the managed-float exchange rate regime, which is also consistent with the inflation targeting regime that has been in place since 2000. Under the inflation targeting framework and the managed-float, the value of the baht is allowed to be determined by market forces, reflecting demand and supply for the baht in the foreign exchange market.

And if managed, under what circumstances or purposes does your government/central bank intervene?

Under the managed float, the Bank of Thailand (1) does not target a fixed level for the exchange rate, (2) stands ready to intervene in the case of excess volatility, particularly resulting from speculative capital flows, in a manner consistent with the Bank's inflation targeting framework.

## Thailand

The Bank of Thailand aims to ensure that the value of the baht is allowed to fluctuate under the following conditions; (1) volatility of the exchange rate is at a level that the economy can tolerate, (2) maintaining national competitiveness, as measured through the Nominal Effective Exchange Rate (NEER), which comprises currencies of important trading partners - and not just the US Dollar, and (3) any intervention does not go against economic fundamentals which would otherwise lead to further imbalances.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Repatriation of investment funds and repayment of overseas loans can be remitted freely upon submission of supporting documents to an authorized financial institution. In the case of repatriation of investment funds or a dividend payment, these supporting documents include (1) evidence of sale or transfer of such investments or (2) evidence of a dividend payment. In the case of loan repayments, these supporting documents include (1) evidence of inward remittance of such loan and (2) the loan agreement.

For more information, please contact Bank of Thailand: [www.bot.or.th](http://www.bot.or.th)

### Mechanisms to review decisions, and settle disputes

According to the Foreign Business Act 1999, in the case where the Director - General of the Department of Business Development does not permit the foreigners to operate the businesses under List 3, the Director - General shall notify the foreigners of the decision in writing within 15 days and the reasons for disapproval shall be expressly indicated. The foreigners are entitled to lodge an appeal with the Minister within 30 days of the date on which they receive the notification.

What, if any, mechanism do you have for foreign investors to settle disputes?

There are a wide range of dispute resolution mechanisms available to foreign investors in Thailand. These include domestic regulatory framework, such as access to national courts of justice, administrative tribunals, the Central Intellectual Property and International Trade Court, or alternative dispute resolution mechanisms: arbitration, mediation and conciliation. Some investors with International Investment Agreements (IIA) with Thailand can also enjoy additional protection through such investment agreements.

### ICSID

Thailand signed the ICSID Convention on 6th December 1985; however the Convention has not yet been ratified. Meanwhile, investors with International Investment Agreements with Thailand might use ICSID Additional Facility, if stipulated in the Agreement, as their mechanism for dispute resolution.

### More information

Ministry of Foreign Affairs: [www.mfa.go.th](http://www.mfa.go.th)

### International investment agreements

With;

Argentina; Bahrain; Bangladesh; Brunei Darussalam; Bulgaria; Cambodia; Canada; China, People's Republic of; Czech Republic; Egypt; Finland; Germany; Hong Kong, China; Hungary; India; Indonesia; Jordan; Korea, Republic of; Lao, People's Democ. Rep.; Luxembourg; Peru; Philippines; Poland; Romania; The Russian Federation; Singapore; Slovenia; Sri Lanka (ex-Ceylan); Sweden; Switzerland; Chinese Taipei ; Tajikistan; Turkey; United Kingdom ; Viet Nam; Zimbabwe;

Please provide a brief description of these IIAs, or your IIAs in general.

Thailand has signed 42 bilateral investment treaties ("BITs"), 35 of which have entered into force. The said complete list appears in Attachment I.

## Thailand

Besides BITs, Thailand is party to a number of Free Trade Agreements (FTAs) or regional agreements with substantive investment provisions or chapters, namely FTA between Thailand and Japan , Thailand and Australia , Thailand and New Zealand , ASEAN and China , ASEAN and Korea , ASEAN and Australia-New Zealand , and ASEAN Comprehensive Investment Agreement (ACIA). In addition, Thailand is a party to the ongoing negotiations of the FTA, including the provision of investment, between ASEAN, BIMSTEC, and India and ASEAN and Japan.

Most of the investment provisions in these FTAs share common characteristics, for example, the matters of coverage of direct investment, expropriation, fair and equitable treatment, national treatment and most-favoured nation treatment, free transfer, investor-state dispute settlement, state-to-state settlement, etc.

### More information

Ministry of Foreign Affairs: [www.mfa.go.th](http://www.mfa.go.th)

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

#### Short Term Business Entry

The Non-Immigrant "B" Visa exists to facilitate short-term business travels for foreign nationals. Foreign citizens who wish to visit Thailand for business purposes may apply for the three-year Non-Immigrant "B" Visa. This type of visa may be issued to businessmen for multiple-entries and is valid for 3 years. It allows holder to visit Thailand as often as required for as long as the visa remains valid and allows holder to stay in Thailand for a period of not exceeding 90 days during each visit. Employment of any kind is strictly prohibited for holder of this particular visa.

As for the ABTC Scheme, at present (August 2009) Thailand has more than 4,157 active ABTCs in circulation in Thailand. In order to facilitate border processing for ABTC holders, Thailand has set up APEC lanes (and/or Diplomatic, Crew lanes) at 5 main international airports, namely : Suvarnabhumi, Don Meaung, Chiang Mai, Phuket and Had Yai.

Thailand operates a One-Stop Service Centre to facilitate visa and work permit requests and extensions as well as all related arrangements within 3 hours for foreign business people.

#### Temporary Business Stay

Foreign nationals who wish to enter Thailand for any type of employment or investment must obtain an appropriate visa and permit.

Thailand, specifically the Thai Immigration Bureau, continues to comply with the processing standard for applications for temporary STAY including those received from executives and senior managers on intra company transfers and specialists.

Thailand has established a One-Stop Service Centre to facilitate visa and work permit extensions. Such applications are processed within three hours.

### More information

Department of Employment: [www.doe.go.th](http://www.doe.go.th)

One -Stop Service Center for Visas and Work Permits, BOI: [www.boi.go.th](http://www.boi.go.th)

Visas for short-term business visits to Thailand, please see the APEC Business Travel Handbook website at:

<http://www.businessmobility.org/travel/displayForm.asp?id=21&fid=1>

General information on Thailand's visas: [www.mfa.go.th/web/2637.php](http://www.mfa.go.th/web/2637.php)

Immigration Bureau: [www.immigration.go.th](http://www.immigration.go.th)

## Taxation

### Taxation of foreign nationals and foreign firms

#### Double Taxation Treaties

Thailand first concluded the double taxation treaties (DTT) with Sweden in 1963. The Thai DTT network continues to be expanded and updated. Currently Thailand has concluded DTT s with 53 countries, namely Armenia, Australia, Austria, Bahrain, Bangladesh, Belgium, Bulgaria, Canada, China P.R., Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Korea, Kuwait, Laos, Luxembourg, Malaysia, Mauritius, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Romania, Russian, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Seychelles, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United State of America, Uzbekistan and Vietnam. In general the DTT applies only income taxes, which are personal income tax, corporate income tax and petroleum income tax.

#### Taxation of Foreign Nationals and Foreign Firms

##### Company Profits

In Thailand, there are many kinds of business identities. The tax rates and tax benefits are subject to type of business.

In general, the most common types of business are:

1. Thai company - A company registered under Thai law.
2. A company carrying on business in Thailand but registered under foreign law.
3. A company not carrying on business in Thailand but deriving income from Thailand.

Detailed information:

##### 1. Thai Company

A Thai company generally pays tax at 30% of net profit. However, some types of company are entitled to a rate reduction.

Rates:

- Small business with paid-up capital less than 5 million baht

15% of net profit < 1 million baht

25% of net profit 1-3 million baht

- Association and foundation

2% or 10% on gross receipts

##### 2. Foreign Company

A foreign company carrying on business in Thailand, whether it has a branch, an office, an employee or an agent in Thailand shall pay 30% tax only on profit deriving from business in Thailand. However, international transportation company shall pay tax at the rate of 3% on gross receipts.

##### 3. Foreign Company Abroad

A foreign company that does not carry on business in Thailand will be subject to withholding tax on certain categories of income derived from Thailand. The withholding tax rates may be further reduced or exempted depending on types of income under the provision of Double Taxation Agreement.

Rates: Remittance of profits 10%

- Dividends 10%

- Other income such as interests, royalties, capital gains, rents and professional fees 15%

### Tax Benefits

A company that chooses to register under Thai law shall enjoy various tax benefit schemes such as;

- Income tax holiday from 3 to 8 years for business with Investment Promotion Privileges.
- Reduction or exemption of import duties on raw material and imported machinery for business with Investment Promotion Privileges or industries setting up in Export Processing Zone and Free Trade Zone.
- Double deduction for the cost of transportation, electricity and water supply for industries with Investment Promotion Privileges.
- 200% deduction for the cost of hiring qualified researchers doing research and development project.
- 150% deduction for the cost of employee's training in order to improve human capital.
- Small and medium size company can choose to deduct special initial allowance on the date of acquisition for computer (40%), plant (25%) and machinery (40%).
- Under Regional Operational Headquarter (ROH) scheme, certain type of income is exempted and reduced.

### Personal Income/Profits

Individual Taxpayers are classified into "resident" and "non-resident". "Resident" means any person residing in Thailand for a period or periods aggregating more than 180 days in any tax (calendar) year. A resident of Thailand is liable to pay tax on income from sources in Thailand as well as on the portion of income from foreign sources that is brought into Thailand. A non-resident is, however, subject to tax only on income from sources in Thailand.

With respect to Thai Revenue Code, income chargeable to the personal income tax (PIT) covers income both in cash and in kind. Therefore, any benefits provided by an employer or other persons, such as a rent-free house or the amount of tax paid by the employer on behalf of the employee, is also treated as assessable income of the employee for the purpose of PIT. To calculate tax amount, certain deductions and allowances are allowed.

### Tax Rates

Personal income tax rates applicable to taxable income are as follows.

#### - Progressive Tax Rates

Taxable Income (baht)	Tax Rate (%)
0 - 150,000	Exempt
150,000 - 500,000	10
500,000 - 1,000,000	20
1,000,000 - 4,000,000	30
Over 4,000,000	37

#### - Separate Taxation

There are several types of income that the taxpayer shall not include or may not choose to include such income to the assessable income in calculating the tax liability.

#### - Income from sale of immovable property

Taxpayer shall not include income from sales of immovable property acquired by bequest or by way of gift to the assessable income when calculating PIT. However, if the sale is made for a commercial purpose, it is essential that such income must be included as the assessable income and be subject to PIT.

#### - Interest



## Thailand

The following forms of interest income may, at the taxpayer's selection, be excluded from the computation of PIT provided that a tax of 15 per cent is withheld at source:

- (1) interest on bonds or debentures issued by a government organization;
- (2) interest on saving deposits in commercial banks if the aggregate amount of interest received is not more than 20,000 baht during a taxable year;
- (3) interest on loans paid by a finance company;
- (4) interest received from any financial institution organized by a specific law of Thailand for the purpose of lending money to promote agriculture, commerce or industry.

### - Dividends

Taxpayer who resides in Thailand and receives dividends or shares of profits from a registered company or a mutual fund which tax has been withheld at source at the rate of 10 per cent, may opt to exclude such dividend from the assessable income when calculating PIT. However, in doing so, taxpayer will be unable to claim any refund or credit.

#### Tax Credit for dividends

Any taxpayer who domiciles in Thailand and receives dividends from a juristic company or partnership incorporated in Thailand is entitled to a tax credit of 3/7 of the amount of dividends received. In computing assessable income, taxpayer shall gross up his dividends by the amount of the tax credit received. The amount of tax credit is creditable against his tax liability.

#### Fund for Repatriation

Repatriation of profits is subject to withholding tax. However, some can be tax exempted.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Taxation of all business in Thailand is on a national basis. However, some businesses are also considered on global basis. Currently, we have tax treaties with 54 countries. For more information, please refer to the Revenue Department's website: <http://www.rd.go.th>.

### More information

Ministry of Finance provides "Income Tax Guide for Foreign Investors" in the Revenue Department's website: <http://www.rd.go.th>

## Introduction

### Our Location Offer

With more than 300 million people and the largest economy in the world, the United States is an attractive investment destination for any company. The American workforce ranks as one of the best educated, most productive and most innovative in the world. As a place to do business, the United States offers a predictable and transparent legal system, outstanding infrastructure, and access to the world's most lucrative consumer market. Key elements of the U.S. location offer include:

- \* **Economy:** The United States has the largest economy in the world, with a per capita GDP of approximately \$46,500. The systems of regulation and taxation in the United States give foreign investors ample operational freedom, and the United States consistently ranks at or near the top of major indicators of an attractive business and investment climate.
- \* **Consumer Market:** The United States accounted for 42 percent of the global consumer goods market in 2007, with a per capita disposable income of approximately \$35,000. The United States also maintains free trade agreements with 17 partner countries with a combined GDP of approximately \$5 trillion, giving foreign investors in the United States unparalleled access to large and diverse markets.
- \* **Research and Development:** The United States is the global center for innovation, responsible for 40 percent of total worldwide research and development expenditure, and ranking first in the world for availability of venture capital. It is home to nearly three-fourths of living Nobel laureates, publishes over 60 percent of the world's "highly cited publications," and is responsible for nearly 40 percent of patented new technology created within the OECD.
- \* **Education and Workforce:** The United States is home to the best higher education and research centers in the world, with more than 4,000 universities and colleges. More than 600,000 international students enroll in American institutions every year. Many community colleges in the United States have training programs tailored to investors who locate facilities in their area, while federal, state and local governments also spend billions of dollars on workforce training each year. The highly adaptable U.S. workforce leads the world in labor productivity per person employed.
- \* **Transportation/Infrastructure:** The United States has the largest paved roadway system and railway network in the world, as well as the world's largest number of airports. Three of the world's top ten airports by air cargo volume are in the United States, including the busiest cargo airport in the world. The United States is also home to some of the world's busiest international bulk cargo and container ports.

### Introduction to investment regime

It is the policy of the United States government to regulate foreign investment as little as possible. An open investment regime fosters economic growth, increases the competitiveness of companies, and promotes job creation. As international competition for capital intensifies, it becomes increasingly important for countries to offer investors a stable and non-discriminatory policy and regulatory environment. The United States continues to offer such an investment environment, and it seeks to encourage the development of similar policy regimes in other economies.

U.S. policies on foreign investment have changed little over the past several decades. The U.S. investment regime is characterized by a high degree of openness, and is based on the principle of national treatment. Foreign investors benefit from an open, transparent, and non-discriminatory investment climate. The United States also offers foreign investors non-discriminatory legal recourse in the event of an investment-related dispute; free transferability of capital and profits; guarantees against uncompensated expropriation; and advanced physical and financial infrastructure.

### Investment priority plan/equivalent policy

The United States does not have a general policy of economic planning, nor does it as a general policy matter seek to influence the flow of private investment into specific areas of economic activity. Individual government programs may, however, provide incentives (in the form of grants or tax credits, for example) that encourage investment in particular areas of economic activity. For example, federal government programs include incentives for investment in research and development in the areas of renewable energy, high-speed rail, information technology, and broadband infrastructure. A multitude of additional incentive programs are administered by individual U.S. states.

## More information

Information about incentives and programs available to investors, including links to programs administered by U.S. states, is available at the website of the Department of Commerce's Invest in America program: <http://www.investamerica.gov>.

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

The United States does not screen foreign investment. The United States has a longstanding policy of welcoming foreign investment and provides foreign investors non-discriminatory treatment both as a matter of law and policy. Foreign investors are generally free either to establish new businesses or to acquire existing ones, subject only to laws and regulations that are applicable to all firms, irrespective of nationality.

The Committee on Foreign Investment in the United States (CFIUS) is an inter-agency committee authorized to review mergers, acquisitions, and takeovers that could result in control of a U.S. business by a foreign person ("covered transactions"), in order to identify and mitigate any risk to U.S. national security posed by any such transaction. CFIUS reviews examine only M&A transactions, not greenfield investments, and generally commence with the voluntary submission of a notice by the parties to a proposed or pending transaction. CFIUS has up to 30 days to conduct an initial review of a notified covered transaction, focusing solely on genuine national security considerations. CFIUS concludes consideration of most covered transactions after only an initial review. If, however, national security concerns remain after the 30-day review, and in certain other circumstances, CFIUS may initiate a subsequent 45-day investigation. Only the President may prohibit a transaction. In those very rare cases in which CFIUS refers a case to the President for a final decision, the President has up to 15 days after CFIUS completes its investigation to make a decision.

More information about CFIUS, including links to, and summaries of, the applicable statute, executive order, and regulations, as well as additional published guidance on the CFIUS process is available at the website of the U.S. Department of the Treasury: <http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>.

### Does this apply to all investment or, are there differential treatment?

Foreign investors are generally free either to establish new businesses or to acquire existing ones, subject only to non-discriminatory, generally-applicable laws and regulations. Federal-level measures that treat foreign and domestic investors and investments differently are discussed in the next section.

## Conditions of investment

Federal-level measures treat foreign and domestic investors and investments differently in only a small number of sectors. In most cases, the extent of differential treatment is narrow and does not prohibit foreign investment in the particular sector or subsector. A full description of each of these measures is available in the non-conforming measures annexes of recent U.S. BITs and FTAs, available at [www.ustr.gov](http://www.ustr.gov).

U.S. state and local governments maintain laws and regulations that can affect the operations of investments located in their territories. State laws outside the areas of company law, real estate, banking, and insurance (areas in which Congress has specifically delegated regulatory authority to the states) generally apply equally to all persons residing in a state and to all companies or other entities doing business in its territory. Most differences in the treatment of domestic and foreign investors at the state or local level are minor and can frequently be eliminated through incorporation in a particular state or locality. A few U.S. states restrict foreign ownership of land. The U.S. GATS schedule provides detail on such measures.

## Investment promotion and facilitation

## United States

The United States government encourages foreign investment as a matter of policy, but does not maintain an investment promotion agency. The Department of Commerce's Invest in America program, established in 2007, performs functions such as facilitating foreign investment inquiries and educating international investors about investment in the United States. As part of their work on broader issues of economic development, several federal government agencies engage in activities that encourage investment in the United States. The Economic Development Administration (EDA) of the U.S. Department of Commerce, for example, provides financial assistance to economically disadvantaged regions in the form of business loan guarantees and revolving loan funds. Other federal agencies that provide financial assistance for economic development are the Small Business Administration and the U.S. Department of Agriculture. Foreign-owned firms and foreign investors in the United States generally receive national treatment with respect to the limited number of federal government fiscal or financial incentives that are used to stimulate investment, productivity, and employment in the domestic economy. There are no significant programs at the federal level that provide non-financial economic development incentives.

The vast majority of incentives and other policy initiatives promoting domestic and foreign investment in the United States are maintained by state and local governments. State-level incentives are offered on a national treatment basis. State governments typically offer some combination of the following incentives to potential investors: financial incentives, such as direct loans, loan guarantees, and grants; incentives in relation to corporate income taxes, sales and use taxes, and property taxes; special incentives such as "enterprise zones" (which offer packages of incentives for businesses locating in a certain area), development credit corporations (which offer capital for business construction and expansion), and employment training; issue-specific programs such as high technology development; and non-financial assistance such as business consulting and research and development assistance. Some states also offer special services to foreign firms in the areas of language training, relocation assistance, and cultural assimilation.

### More information about the process of investing in our economy

Information about foreign investment in the United States, including links to state-level investment promotion agencies, is available at the website of the Department of Commerce's Invest in America program: <http://www.investamerica.gov>.

## Investment protection

### Protection of property rights and conditions for expropriation

Property rights are protected in the United States by the United States Constitution and by the constitutions of individual states, as well as under federal, state, and local laws. The United States recognizes the sovereign power of governments to take private property for public use without the owner's consent (sometimes called the power of "eminent domain" or the power to expropriate). The "Takings Clause" of 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." Within its own jurisdiction, each state also possesses the power of eminent domain, subject to the limits in its constitution and the limits imposed by the Fifth Amendment. Federal and state laws provide procedures by which governments can take various forms of property.

U.S. trade and investment agreements and U.S. takings jurisprudence address two types of expropriation: direct and indirect. The U.S. Supreme Court has not established a fixed standard or test for determining the point at which regulation of property becomes a taking for which just compensation is due (an indirect expropriation). The Court has, however, identified several factors that it will examine when determining whether governmental regulation of property constitutes a taking: 1) the economic impact of the regulation on the owner; 2) the extent to which the regulation interferes with the owner's reasonable, investment-backed expectations; and 3) the character of the governmental action. Only in rare circumstances have non-discriminatory regulatory actions that were designed and applied to protect legitimate public health and welfare objectives (such as public health, safety, and the environment) been found by U.S. courts to constitute indirect expropriations.

## United States

The legislature normally determines what constitutes "public use" for purposes of a government's execution of its eminent domain power. Courts are usually deferential to the legislature's "public use" determination. As long as the legislature has authority over an activity, it may exercise its eminent domain power with respect to that activity. The legislature may authorize the exercise of this power of eminent domain directly, may delegate this power to another governmental entity, or may delegate the power to private corporations promoting a public interest (e.g., public utilities). Both tangible and intangible interests (e.g., patents) have been found by U.S. courts to be property for the purposes of the Takings Clause.

The "just compensation" provision of the Takings Clause has been interpreted by U.S. courts to require that the owner of taken property be restored to the same pecuniary position he occupied just prior to the taking. Just compensation for a permanent taking is typically the fair market value of the property at the time of the taking. When compensation occurs after a taking, interest is typically paid to the owner to compensate for the delay. Property owners that successfully challenge a taking in litigation are entitled to be reimbursed for reasonable costs and expenses, which may include attorney fees, that are incurred as a result of such litigation.

### More information

#### Protection of IPRs

Intellectual property is effectively protected by a comprehensive system of federal and state laws in the United States. The federal government has exclusive competence regarding patents, copyrights, and integrated circuit layout designs. Trademarks and service marks are principally protected by federal law, although state laws and common law also provide additional protection, particularly for unregistered marks. In addition, many states provide protection for trade names, either by statute or through the common law. Trade secrets are protected by state statute or common law. The majority of states have adopted the Uniform Trade Secrets Act.

The United States is a party to a large number of international intellectual property conventions, including the Paris Convention for the Protection of Industrial Property (Stockholm, 1967); the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971); the Universal Copyright Convention (Paris, 1971); the Patent Cooperation Treaty; the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty; the International Convention for the Protection of New Varieties of Plants (1991); the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms; and the Convention Establishing the World Intellectual Property Organization.

The United States has fully implemented its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). The United States, for example, provides twenty years of patent protection from date of filing for all inventions, whether products or processes, in all fields of technology, provided that they satisfy statutory requirements for novelty, utility, and non-obviousness. The United States provides ten years of renewable protection for registered trademarks and service marks and imposes no special requirements encumbering the use of such marks. Geographical indications are protected in the United States through the trademark system. Federal statutes also protect industrial designs and plant varieties. The United States provides copyright protection consistent with the Berne Convention for literary and artistic works, including computer programs and data bases. For works created after 1978, the duration of copyright protection is the life of the author plus 70 years; where the work is anonymous, pseudonymous, or a work for hire, copyright protection extends 95 years from first publication or 120 years from creation, whichever expires first. Sound recordings are protected by copyright law in a manner fully consistent with the TRIPS Agreement. Integrated circuit layout designs are protected for a term of 10 years by federal statute. The states provide TRIPS-consistent levels of protection for trade secrets by statute and common law.

The United States provides extensive enforcement, both internally and at the border, for intellectual property rights. Severe criminal penalties (including prison sentences) are imposed on copyright pirates and trademark counterfeiters. Damages and injunctive relief (including provisional remedies) are available for infringement of patents, trademarks, service marks, copyrights, trade secrets, geographic indications of origin, plant varieties, industrial designs, and integrated circuit layout designs. The United States also provides extensive border enforcement measures for trademarks and copyrights through U.S. Customs and Border Protection and for patents and other forms of intellectual property rights through administrative proceedings before the U.S. International Trade Commission.

## More information

Additional information about U.S. intellectual property law and policy is available at the website of the United States Patent and Trademark Office: <http://www.uspto.gov/>.

## Flow of funds

The U.S. exchange rate regime is free floating; the exchange rate of the dollar is determined freely in the foreign exchange market.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The U.S. exchange rate regime is free floating; the exchange rate of the dollar is determined freely in the foreign exchange market. Foreign exchange interventions are not formally ruled out in the United States, but they are rarely used. The Secretary of the Treasury is responsible for the formulation and implementation of international monetary and financial policy, including exchange market intervention policy. The Federal Reserve (Fed) has separate legal authority to engage in foreign exchange operations. The Fed's foreign exchange operations are conducted in close and continuous consultation and cooperation with the Treasury to ensure consistency with U.S. international monetary and financial policy. The Treasury and the Fed have closely coordinated their foreign exchange operations since early 1962, when the Fed commenced such operations at the request of the Treasury. Operations are conducted through the Federal Reserve Bank of New York, as fiscal agent of the United States and as the operating arm of the Federal Reserve System. Interventions are reported in the Treasury and Federal Reserve Foreign Exchange Operations quarterly bulletin.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

The United States generally imposes no restrictions on the repatriation of investment-related funds. In support of national security or foreign policy objectives (e.g. combating terrorism, limiting the proliferation of weapons of mass destruction, or restricting cross-border flows of illegal narcotics), the United States sometimes imposes restrictions on transactions between U.S. persons and designated foreign governments, entities, or persons. These restrictions could affect the repatriation of funds by foreign investors in the United States. More information on sanctions involving outflows of capital and investment can be found at the website of the Department of Treasury's Office of Foreign Assets Control (OFAC): <http://www.ustreas.gov/offices/enforcement/ofac/>.

All U.S. FTAs and BITs include an obligation to permit inward and outward transfers relating to an investment. The text of the transfers article that has been included in the investment chapters of recent U.S. FTAs and in recent U.S. BITs obliges each party to permit all investment-related transfers into and out of its territory to be made freely, without delay, and in a freely-usable currency valued at the market rate of exchange prevailing at the time of the transfer. These agreements do not include balance of payments exceptions, but they permit parties to restrict investment-related transfers in limited circumstances, including through the equitable, non-discriminatory, and good-faith application of national laws relating to bankruptcy, insolvency, or the protection of the rights of creditors; dealings in securities and other portfolio investments; criminal or penal offenses; financial reporting or record-keeping in relation to law enforcement or financial regulation; and ensuring compliance with orders or judgments in judicial or administrative proceedings.

## Mechanisms to review decisions, and settle disputes

The United States does not screen foreign investment. Foreign investors are generally free either to establish new businesses or to acquire existing ones, subject only to laws and regulations that are applicable to all firms, irrespective of nationality. In general, all investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor.

What, if any, mechanism do you have for foreign investors to settle disputes?

## United States

In general, all investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor. Investment disputes are usually 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 also usually resolved in domestic courts, where available, although U.S. BITs and the investment chapters of U.S. FTAs permit foreign investors to opt for international arbitration in certain disputes. Under these agreements, an investor may choose to submit certain claims either to local courts or to international arbitration, but, in making such a choice, the investor may forfeit the right to bring the dispute before the other forum.

### ICSID

The United States is a party to the ICSID convention, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and the Inter-American Convention on International Commercial Arbitration (Panama Convention). The United States signed the ICSID Convention on August 27, 1965; the convention entered into force with respect to the United States on October 14, 1966.

### More information

A summary of investor-State dispute settlement cases in which the United States has been a respondent party, as well as documents relating to each of these cases, is available at website of the Department of State, Office of the Legal Advisor (<http://www.state.gov/s/l/c3741.htm>). The same website also includes information about cases filed against other NAFTA parties (Canada and Mexico) under the investor-State dispute settlement provisions of that agreement.

### International investment agreements

With;

Albania; Argentina; Armenia; Australia; Azerbaijan; Bahrain; Bangladesh; Bolivia; Bulgaria; Cameroon; Canada; Chile; Congo; Congo, Dem. Rep. of the; Costa Rica; Croatia; Czech Republic; Dominican Republic; Ecuador; Egypt; El Salvador; Estonia; Georgia; Grenada; Guatemala; Honduras; Jamaica; Jordan; Kazakhstan; Kyrgyzstan; Latvia; Lithuania; Mexico; Moldova, Republic of; Mongolia; Morocco; Mozambique; Nicaragua; Oman; Panama; Peru; Poland; Romania; Senegal; Singapore; Slovakia; Sri Lanka (ex-Ceylon); Trinidad & Tobago; Tunisia; Turkey; Ukraine; Uruguay;

Please provide a brief description of these IIAs, or your IIAs in general.

The United States negotiates BITs on the basis of a model, one substantively similar to the investment chapters of recent U.S. FTAs. The basic aims of the U.S. BIT program are to protect investment abroad in economies where investor rights are not already protected through existing agreements (such as modern treaties of friendship, commerce, and navigation, or free trade agreements); to encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; and to support the development of international law standards consistent with these objectives.

U.S. BITs provide investors with six core benefits: 1) they require that investors and their "covered investments" be treated as favorably as the host party treats its own investors and their investments, or investors and investments from any third country. U.S. BITs afford national treatment and most-favored-nation treatment for the full life-cycle of investment - from establishment or acquisition, through management, operation, and expansion, to disposition; 2) they establish clear limits on the expropriation of investments and provide for payment of prompt, adequate, and effective compensation when expropriation takes place; 3) they provide for the transferability of investment-related funds into and out of a host country without delay and using a market rate of exchange; 4) they restrict the imposition of performance requirements, such as local content targets or export quotas, as a condition for the establishment, acquisition, expansion, management, conduct, or operation of an investment; 5) they give covered investors the right to engage the top managerial personnel of their choice, regardless of nationality; and 6) they give investors from each party the right to submit an investment dispute with the government of the other party to international arbitration.

## United States

Note--the United States has listed here only the economies with which it has concluded BITs and FTAs with investment chapters (and only those agreements that have entered into force are listed); the entry does not include a list of economies with which the United States has concluded DTTs, information about which can be found in the next section.

### More information

Information about U.S. investment agreements (BITs and FTAs) can be found at the website of the Office of Services and Investment of the Office of the United States Trade Representative (<http://www.ustr.gov/trade-topics/services-investment/investment>) and the website of the Office of Investment Affairs of the U.S. Department of State (<http://www.state.gov/e/eeb/ifd/oia/index.htm>).

The list of U.S. investment agreements identified herein includes only economies with which the United States has concluded BITs and/or FTAs with investment chapters; it does not include a list of U.S. DTT partners. Comprehensive information about U.S. DTTs, including treaty texts and a list of partner economies, is available at the website of the U.S. Internal Revenue Service: <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>.

General information about U.S. tax treaties is available at the website of the Department of Treasury's Office of Tax Policy: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx>.

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

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

#### Business Visitors

A temporary visitor for business must establish that he or she has a residence abroad which he or she does not intend to abandon; is coming to the United States for a defined temporary period; will depart upon the conclusion of the visit; has permission to enter a foreign area after his or her stay in the United States; and has access to sufficient funds to cover the expense of the visit and return travel. "Business" does not generally include gainful employment, but it does include almost any other legitimate commercial activity. A business visitor may come to consult with business associates, negotiate a contract, buy goods or materials, settle an estate, participate in business or professional conventions or conferences, or undertake independent research.

#### Traders and Investors

The entry categories for treaty traders and treaty investors are made available to nationals of countries that are parties to treaties of friendship, commerce, and navigation with the United States. Nationals of countries that are parties to certain other agreements, including free trade agreements (FTAs) and bilateral investment treaties (BITs), may also qualify. The treaty trader entry category allows a foreign national to enter the United States to carry on substantial trade, which may include trade in services or technology, principally between the United States and the treaty partner. The treaty investor entry category also allows a foreign national to enter the United States for the purpose of developing and directing the operation of a substantial and active investment in a commercial enterprise. The investor must have committed or be in the process of committing a substantial amount of capital to the investment.

#### Intra-Company Transferees

U.S. law provides for the temporary entry into the United States of managers, executives, and employees of a multinational firm with specialized knowledge. In order to qualify for entry, the U.S. employer must file a petition with the Department of Homeland Security (DHS) demonstrating that the employee has been employed overseas by the transferring organization for at least one continuous year within the past three years and that the employee will be performing duties in the United States for the same employer or for a subsidiary or affiliate. Upon approval of the petition, the alien may apply for the requisite non-immigrant visa.



## Professionals

With respect to professionals, the United States allows for the entry of temporary workers in specialty occupations. A specialty occupation is defined as one that requires the theoretical and practical application of a body of highly specialized knowledge and completion of a bachelor's or equivalent degree in the specialty, or experience equivalent to such a degree. U.S. employers must file an attestation of compliance with U.S. labor laws with the Department of Labor. Following that, the U.S. employer must file a petition with the DHS. Once the petition has been approved, the alien may apply for a visa at a U.S. consulate overseas.

The United States has an annual limit on the number of approvals of petitions for workers in specialty occupations. The current annual petition cap is 65,000, plus 20,000 for workers with a master's- or higher-level degree from a U.S. academic institution. (Workers in specialty occupations who are petitioned for or employed at an institution of higher education or its affiliated or related non-profit entities, a non-profit research organization, or a government research organization are not subject to a numerical cap.) Citizens of Australia may also qualify to enter the United States "to perform services in a specialty occupation" under a special visa classification. No petition is required, and the annual cap is 10,500.

In addition, citizens of Canada, Mexico, Chile and Singapore may also qualify to enter the United States as professionals under specific provisions of relevant FTAs. Citizens of Mexico and Canada may qualify for entry to the United States as professionals under provisions of the NAFTA. Citizens of Chile and Singapore may qualify for entry to the United States as professionals under provisions of the U.S.-Chile and U.S.-Singapore FTAs.

Under the NAFTA, a citizen of a NAFTA country in a professional occupation may work in another NAFTA country, provided that the profession is on the NAFTA list (NAFTA Chapter 16, Appendix 1603.D.1); the alien possesses the specific qualifications for that profession; the prospective position requires someone in that professional capacity; and the alien will engage in prearranged business activities at such a professional level for a U.S. or foreign employer. Under the U.S.-Chile and U.S.-Singapore FTAs, a citizen of Chile or Singapore may work in the United States in occupations that require the theoretical and practical application of a body of specialized knowledge and that require completion of a bachelor's or equivalent degree in the specialty. U.S. employers must file an attestation of compliance with U.S. labor laws with the Department of Labor. Following that, the alien may apply for a non-immigrant visa at a U.S. consulate overseas. Annual numerical limitations apply to professionals under these FTAs: for the U.S.-Chile FTA the numerical limitation is 1,400, and for the U.S.-Singapore FTA the numerical limitation is 5,400.

## Senior Management

U.S. BITs and the investment chapters of U.S. FTAs include an obligation on parties to allow covered investments to engage top managerial personnel of their choosing, regardless of nationality, and subject only to limited and narrowly defined exceptions. In the case of the United States, restrictions on the nationality of senior managers and board members exist in only two sectors: air transport and maritime transport.

## More information

More information about U.S. visa policy and procedures is available at the website of the Department of State, Bureau of Consular Affairs: [http://travel.state.gov/visa/visa\\_1750.html](http://travel.state.gov/visa/visa_1750.html).

## Taxation

### Taxation of foreign nationals and foreign firms

The U.S. federal tax system has three major components: an individual income tax; a corporate income tax; and payroll, or employment, taxes (Social Security and Medicare). In general, the individual income tax is levied on taxable income, defined as gross income less certain exclusions and deductions. Graduated rates are applied to taxable income to determine tax liability, which is reduced by available credits (some of which may be refunded to the extent they exceed tax liability).

The corporate income tax applies to gross income less allowable deductions and is currently subject to a top rate of 35 percent. Social Security and Medicare taxes are generally collected through payroll withholding from employees and contributions from employers. As of late 2010, the rates on covered wages are 12.4 percent for Social Security and 2.9 percent for Medicare.

## United States

The U.S. federal tax system uses income as the primary economic base for taxation, as opposed to using consumption (for example, through a value added tax) or wealth (for example, through property taxes). Taken together, income and payroll taxes generate approximately 93 percent of total federal revenues. Although the U.S. system taxes income, not all income is treated similarly. Individual income derived from investments, such as capital gains or dividends, is currently subject to lower rates than wage or interest income.

### The Corporate Income Tax

Corporate income generally is taxed at the corporate level at rates ranging from 15 percent to 35 percent (as of late 2010). When a corporation distributes earnings to shareholders as dividends, the income generally is taxed again at the shareholder level. When shareholders sell their stock, gains from the sale are taxed as capital gains. Thus, income distributed as dividends and retained corporate income (reflected in the value of stock) can be taxed twice. In contrast, investors who conduct business activity in a flow-through business entity, such as a partnership or sole proprietorship, are taxed once on their earnings at the individual income tax rate.

Corporations (and other businesses) are provided a variety of special provisions that reduce taxes for particular types of activities, industries and businesses. Most of these provisions were intended by Congress to encourage particular types of activities, such as research and development.

### The Individual Income Tax

Except as specifically excluded, all income is subject to the income tax (but only income net of personal exemptions and deductions is actually taxed). For most income, there are (as of late 2010) 6 statutory rate brackets ranging from 10 percent to 35 percent; most capital gains and dividends are (as of late 2010) subject to 0 percent and 15 percent statutory rates. Several other special rates may apply, and interactions and phase outs may produce higher effective marginal tax rates. There are many provisions that exclude, limit, or defer the tax on some items, and there are over 25 separate tax credits. A separate alternative minimum tax (AMT) can further increase tax liability.

### Taxation of Foreign Persons

The United States generally taxes foreign persons (individuals not resident in the United States and foreign corporations (corporations which are organized under the laws of a foreign country or U.S. possession)) only on income originating in the United States. Two systems are provided for taxing such income. First, if a non-resident individual or foreign corporation carries on a trade or business in the United States (a "U.S. trade or business"), tax is imposed at the regular, graduated rates that apply generally to U.S. taxpayers on taxable income that is "effectively connected" with that U.S. business. Second, if a foreign person has fixed or determinable, annual or periodic income (most types of income, including interest, dividends, rents, royalties, but not gains from the disposition of property) that is from U.S. source income and is not effectively connected with a U.S. trade or business (because the person does not have a U.S. business or because the income is not related to a U.S. business), the income is subject to a gross basis tax at a rate of 30 percent (subject to reduction or elimination under an applicable income tax treaty, as discussed below). The key difference between these two systems concerns the allowability of deductions. "Effectively connected" taxable income is determined on a net basis - deductions generally are allowed for expenses that are directly connected with the effectively connected income. The 30-percent tax, however, is a gross-basis tax, and therefore no deductions are allowed.

One significant exception to the 30 percent gross-basis tax is "portfolio interest." Portfolio interest generally is interest other than from bank loans and obligations held by 10 percent or greater owners of the debtor. The 30 percent gross-basis tax is also often reduced or eliminated by treaty. The United States has bilateral income tax treaties with approximately 60 countries.

### Capital Gains Tax

Foreign persons are not subject to U.S. tax on gains from the disposition of property unless the gains are effectively connected with a U.S. trade or business. The Foreign Investors Real Property Tax Act (FIRPTA), however, taxes gains on sales of U.S. real property by non-resident individuals and foreign corporations by treating the amount of any gain on a sale of a "U.S. real property interest" as effectively connected income. A U.S. real property interest includes real property located in the United States and stock of a domestic corporation if U.S. real property interests generally constitute at least 50 percent of the value of the corporation's assets.

### Repatriation of Profits

## United States

The United States also imposes branch profits and branch-level interest taxes if a foreign corporation conducts a U.S. trade or business through a branch. The branch taxes do not apply to income from a U.S. trade or business conducted by a non-resident individual. These branch taxes are intended to provide parity between the taxation of a foreign corporation's operations in the United States whether those operations are conducted directly as a branch or through a U.S. subsidiary. If a foreign corporation does business in the United States through a U.S. subsidiary, profits of the subsidiary are subject to two U.S. taxes - a corporate income tax when earned by the U.S. subsidiary, and a withholding tax on the dividends when these profits are repatriated to the foreign parent corporation. The branch profits tax is a tax on profits earned in the United States through a branch and deemed repatriated by the foreign corporation owning the branch. It is intended to be comparable to the withholding tax on dividends that would be applicable if the business were conducted through a U.S. subsidiary. Similarly, if a U.S. subsidiary borrows to fund its operations, interest on the debt paid is generally deductible, but is U.S. source income to the creditor, which may be subject to withholding tax if the debtor is a foreign person. The branch-level interest tax is intended to provide comparable tax results to the extent that debt of the foreign corporation is allocable to and deductible against the income from the U.S. operations.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

The United States taxes its citizens, residents, and domestic corporations on their worldwide income. (Foreign persons are only taxed by the United States on income originating in the United States.) The United States provides a foreign tax credit to relieve the double taxation which might occur when a U.S. person is also taxed by another country on the same income. The credit is only allowed for income taxes. A payment to a foreign government is considered a tax only if it is compulsory and is not a payment for a specific economic benefit received from the government. Generally, a tax is an income tax only if it is designed to reach "net gain" in the usual circumstances in which it applies. Various anti-abuse rules deny the credit for some types of foreign income taxes and taxes paid to some foreign countries.

The United States has tax treaties with a number of countries. Under these treaties, residents (not necessarily citizens) of foreign countries are taxed at a reduced rate, or are exempt from U.S. taxes on certain items of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and specific items of income. Information regarding U.S. text treaty partners is available at the website of the U.S. Internal Revenue Service: <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>.

### More information

Additional information about U.S. taxes is available at the website of the Department of the Treasury's Office of Tax Policy (<http://www.treasury.gov/resource-center/tax-policy/Pages/default.aspx>) and the website of the Internal Revenue Service (<http://www.irs.gov/>). Information about U.S. tax treaties, including a list of partner countries and treaty texts, is available at the website of the U.S. Internal Revenue Service (<http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>).

This version is composed of information submitted by APEC member economies by responding to the Survey Questionnaires (Annex 1). Information of some members were not available at the time of the publication and pages are kept blank but, will be included in the future edition.

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## **Survey Questionnaire**

### *Introduction*

#### **Your location offer**

*Please describe your location offer, highlighting key industries and key areas of advantage that may be relevant to foreign investors.*

#### **An introduction to your investment regime**

*Please highlight the defining characteristics of this investment regime including your broad investment policy/strategy. Include the methods used to attract investment, and the desired purpose of investment (e.g. capital accumulation, employment, technology transfer, etc.)*

*Do you have an investment priority plan, or an equivalent policy used to identify key economic activities in which investment is encouraged? If so, please provide a brief description.*

### *Regulation of foreign investment*

#### **The process for foreign entities/nationals to invest in your economy**

*Please describe the steps that an investor must go through to invest in your economy. Because this process may differ across types of investment, please provide a high-level overview of this process.*

*In describing this process, can you please identify:*

- *licenses or formal registration that needs to be obtained,*
- *notification mechanisms, and*
- *the average time taken for each step of the process.*

*Does this apply to all investment? Please provide information about different treatments if there are any. (For differential treatment by sector, please respond in next section.)*

#### **Conditions of investment**

*Are any conditions imposed upon certain types of investment or in certain industries?*

#### **Investment promotion and facilitation**

*Please describe the operational strategy employed by your investment promotion agency (IPA).*

*Where can an investor find more information about the process of investing in your economy? Please provide sources of additional information including your investment promotion agency website.*

## *Investment protection*

### **How property rights are protected in your economy**

*Describe what protection is provided of property, and under what conditions it can be expropriated.*

*Describe what protection of intellectual property rights is provided.*

### **Flow of funds**

*What kind of exchange rate regime do you have?*

*And if managed, under what circumstances or purpose does your government/central bank intervene?*

*Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?*

### **Mechanisms to review decisions, and settle disputes**

*What is the process to have decisions about foreign investment reviewed?*

*What, if any, mechanism do you have for foreign investors to settle disputes?*

*Has your economy signed or acceded to the International Centre for Settlement of Investment Disputes (ICSID) and if so, when?*

### **International investment agreements**

*Please mark against the list of economies below (not attached), the economies with which you have an international investment agreement. Please provide a brief description of these IIAs, or your IIAs in general below.*

*Where can an investor find more information about the protection of their rights, and returns from their investments? Please provide sources of additional information and website addresses, if relevant.*

## *Movement of persons*

### **Treatment of foreign nationals or personnel of foreign firms**

*Please describe the conditions of entry and stay for foreign nationals or personnel of foreign firms.*

*Please provide sources of additional information and website address if available.*

## *Taxation*

### **Taxation of foreign nationals and foreign firms**

*Please describe the tax treatment of:*

- *Company profits*
- *Personal income/profits*
- *Funds for repatriation*

*Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?*

*Where can an investor find more information about the tax treatment of foreign nationals and firms? Please provide sources of additional information and website addresses, if relevant.*

## APEC NON-BINDING INVESTMENT PRINCIPLES

**Jakarta, November 1994**

In the spirit of APEC's underlying approach of open regionalism,

Recognising the importance of investment to economic development, the stimulation of growth, the creation of jobs and the flow of technology in the Asia-Pacific region,

Emphasising the importance of promoting domestic environments that are conducive to attracting foreign investment, such as stable growth with low inflation, adequate infrastructure, adequately developed human resources, and protection of intellectual property rights,

Reflecting that most APEC economies are both sources and recipients of foreign investment,

Aiming to increase investment including investment in small and medium enterprises, and to develop supporting industries,

Acknowledging the diversity in the level and pace of development of member economies as may be reflected in their investment regimes, and committed to ongoing efforts towards the improvement and further liberalisation of their investment regimes,

Without prejudice to applicable bilateral and multilateral treaties and other international instruments,

Recognising the importance of fully implementing the Uruguay Round TRIMs Agreement,

APEC members aspire to the following non-binding principles:

### Transparency

- Member economies will make all laws, regulations, administrative guidelines and policies pertaining to investment in their economies publicly available in a prompt, transparent and readily accessible manner.

### Non-discrimination between Source Economies

- Member economies will extend to investors from any economy treatment in relation to the establishment, expansion and operation of their investments that is no less favourable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.

### **National Treatment**

- With exceptions as provided for in domestic laws, regulations and policies, member economies will accord to foreign investors in relation to the establishment, expansion, operation and protection of their investments, treatment no less favourable than that accorded in like situations to domestic investors.

### Investment Incentives

- Member economies will not relax health, safety, and environmental regulations as an incentive to encourage foreign investment.



### Performance Requirements

- Member economies will minimise the use of performance requirements that distort or limit expansion of trade and investment.

### Expropriation and Compensation

- Member economies will not expropriate foreign investments or take measures that have a similar effect, except for a public purpose and on a non-discriminatory basis, in accordance with the laws of each economy and principles of international law and against the prompt payment of adequate and effective compensation.

### Repatriation and Convertibility

- Member economies will further liberalise towards the goal of the free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidations, in freely convertible currency.

### Settlement of Disputes

- Member economies accept that disputes arising in connection with a foreign investment will be settled promptly through consultations and negotiations between the parties to the dispute or, failing this, through procedures for arbitration in accordance with members' international commitments or through other arbitration procedures acceptable to both parties.

### Entry and Sojourn of Personnel

- Member economies will permit the temporary entry and sojourn of key foreign technical and managerial personnel for the purpose of engaging in activities connected with foreign investment, subject to relevant laws and regulations.

### Avoidance of Double Taxation

- Member economies will endeavour to avoid double taxation related to foreign investment.

### Investor Behaviour

- Acceptance of foreign investment is facilitated when foreign investors abide by the host economy's laws, regulations, administrative guidelines and policies, just as domestic investors should.

### Removal of Barriers to Capital Exports

- Member economies accept that regulatory and institutional barriers to the outflow of investment will be minimised.

## Excerpt from the Osaka Action Agenda 2002 Update

**4. INVESTMENT****OBJECTIVE**

APEC economies will achieve free and open investment in the Asia-Pacific region by:

- a. liberalizing their respective investment regimes and the overall APEC investment environment by, *inter-alia*, progressively providing for MFN treatment and national treatment and ensuring transparency; and
- b. facilitating investment activities through, *inter-alia*, technical assistance and cooperation, including exchange of information on investment opportunities.

**GUIDELINES**

Each APEC economy will:

- a. progressively reduce or eliminate exceptions and restrictions to achieve the above objective, using as an initial framework the WTO Agreement, the APEC Non-Binding Investment Principles, any other international agreements relevant to that economy, and any commonly agreed guidelines developed in APEC including the Menu of Options for Investment Liberalization and Business Facilitation;
- b. seek to expand APEC's network of bilateral and regional investment agreements and contribute to multilateral work on investment;
- c. facilitate investment flows within the Asia-Pacific region through promoting awareness of investment opportunities, enhancing market access conducive to investment, undertaking capacity building and technical cooperation activities, and implementing measures such as those in the Menu of Options; and
- d. examine ways to incorporate new investment forms and activities for the sound and sustainable economic growth and development of the Asia-Pacific region including investment forms and activities that support the new economy.

**COLLECTIVE ACTIONS**

APEC economies will:

**1. Transparency****Short-term**

- a. Increase the transparency of APEC investment regimes by:
  - (i) Updating the APEC Guidebook on Investment Regimes;
  - (ii) Establishing software networks on investment regulation and investment opportunities;
  - (iii) Improving the state of statistical reporting and data collection; and
  - (iv) Increasing understanding among member economies on investment policy-making issues.

**2. Policy Dialogue****Short-term**

- b. Promote dialogue with the APEC business community on ways to improve the APEC investment environment.

- c. Continue a dialogue with appropriate international organizations dealing with global and regional investment issues.

3. Study and Evaluation

**Short-term**

- d. Define and implement follow-on training to the WTO implementation seminars;
- e. Undertake an evaluation of the role of investment liberalization in economic development in the Asia-Pacific region.
- f. Study possible common elements between existing subregional arrangements relevant to investment.

**Medium-term**

- g. Refine APEC's understanding of free and open investment.

**Long-term**

- h. Assess the merits of developing an APEC-wide discipline on investment in the light of APEC's own progress through the medium-term, as well as developments in other international fora.
- i. Study the advantages and disadvantages of creating investment rules – bilateral, regional, or multilateral – with a view to fostering a more favorable investment environment in the Asia-Pacific region.

4. Facilitation

Short-term and continuing

- j. Undertake practical facilitation initiatives by:
  - (i) Progressively working towards reducing impediments to investments including those investments related to e-commerce;
  - (ii) Undertaking the business facilitation measures to strengthen APEC economies; and
  - (iii) Initiating investment promotion and facilitation activities to enhance investment flow within APEC economies.

5. Economic and Technical Cooperation

*Short-term*

- k. Identify ongoing technical cooperation needs in the Asia-Pacific region and organize training programs which will assist APEC economies in fulfilling APEC investment objectives.

6. Capacity Building Initiatives

- l. Undertake new activities that contribute to capacity building.

7. Menu of Options

- m. Ongoing improvement of the Menu of Options.

## Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies - For Voluntary Inclusion in Individual Action Plans

APEC leaders and ministers at Bogor, Osaka, Subic, and Vancouver have committed their economies to create free and open investment by 2010 and 2020. They endorse Individual Action Plans (IAPs) as a core instrument in this process. They have called for transparency in, and the annual improvement of IAPs. ABAC has also called on APEC economies to make progress in the investment area.

In response to both government and business, the Investment Experts Group, at St. Johns, Canada, undertook to compile a "menu of options" for helping economies to identify policy measures that member economies may include unilaterally in their IAPs for implementation of this objective. There was a consensus that the project should focus on concrete measures, rather than on continued philosophical debate. APEC ministers endorsed the "menu" initiative at Vancouver.

With these instructions in mind, the following document is a non-exhaustive "*master menu*" of investment-liberalizing and business-facilitating measures from which economies may voluntarily select any of a number of *options* to make progress toward creating a free and open investment regime. It is intended as a *reference tool* that economies may refer to when updating their IAPs.

The APEC approach to liberalization and facilitation of trade and investment, as reiterated by APEC Leaders at Vancouver, recognizes the diversity that exists among APEC economies. This "menu of options" is consistent with this recognition of diversity, providing members with a broad range of choices suitable for different circumstances. The items are not prescriptive and, where chosen, may be modified to suit particular circumstances. The menu is not designed to set out the steps in the liberalization process and will evolve over time.

The IEG intends to update this menu on a regular basis, starting in 1999, so as to capture the benefit of APEC economies' increasing experience and changing views.

Item No.	Description
<b>GENERAL</b>	
1.01	<p>Broaden definitions of investment and foreign investment in existing legislation, regulations and administrative procedures to permit the widest variety of forms of investment and allow for newly emerging forms to be covered, without a need for future changes in domestic legislation/ regulations.</p> <p>-- The definition might include – illustratively - not just new ("green field") investments, but also acquisition of shares of domestic enterprises, management contracts, long-term leases, all forms of business organization (e.g. wholly owned, subsidiaries, partnerships, branches, joint ventures, smart partnerships, strategic alliances, venture capital), certain kinds of debt instruments, intellectual property, etc.</p>
1.02	<p>Permit and promote all forms of investment through means other than, or additional to, broadening the definitions of investment and foreign investment in existing legislation, regulations and administrative procedures.</p>
1.03	<p>Commit to locking in current treatment for investors in specific sectors (i.e. standstill on restrictions).</p>

<u>On prior authorization requirements:</u>	
1.04	Eliminate or phase out prior authorization requirements. If appropriate, replace them with post-establishment notification.
1.05	Make approval within any existing prior-authorization mechanism automatic except in limited specified situations.
1.06	Raise the threshold (value of an investment) above which prior authorization is required. If appropriate, announce progressive raising of the threshold, according to a schedule with a certain date to eliminate most or all prior authorization requirements.
1.07	Limit the requirement for prior authorization to selected sectors. If appropriate, replace it with post-establishment notification.
<u>Involving other economies:</u>	
1.08	Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional, and/or multilateral agreements or arrangements for the protection of investment that provide commitments to the current level of protection and openness for investors/ investment.
1.09	Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional and/or multilateral agreements or arrangements for the protection of investment with enhanced protection and openness for investors/ investments (e.g. fewer restricted sectors of an economy, fewer restrictions within sectors, stronger mechanisms for resolving disputes).
<b>TRANSPARENCY</b>	
2.01	Make available to investors timely updates of changes to investment regimes, including via the APEC Secretariat (who will use it for the APEC investment guidebook).
2.02	Publish and/or make widely available through other means, on a timely basis, information on an economy's investment code, investment laws and regulations, and procurement procedures, with an eye to ensuring transparency in the administration of investment laws, regulations and procedures at federal/central, provincial/state and local authority levels.
2.03	If screening is used, publish and/or make widely available through other means the guidelines for evaluating and scoring projects for their approval.
2.04	Conduct briefings (in appropriate fora) on the current investment policies and future directions to be undertaken by the government.
2.05	Give advance notice of proposed regulations and laws, and provide an opportunity for public comment.
2.06	Clarify procedures and practices regarding application, registration, government licensing and procurement by: <ul style="list-style-type: none"> <li>-- Publishing (and widely disseminating) clear and simple instructions, and an explanation of the process (the steps) involved in applying/bidding/registering;</li> <li>-- Publishing (and widely disseminating) definitions of criteria for assessment of investment proposals;</li> <li>-- Publishing (and widely disseminating) contact points for inquiries on</li> </ul>

	<p>standards, technical regulations, and conformity requirements;</p> <p>-- Conduct periodic reviews of prior authorization requirement procedures to ensure they are simplified and transparent;</p> <p>-- Make available to investors all rules and information relating to investment promotion schemes.</p>
<b>NON-DISCRIMINATION</b>	
<u>Related to MFN</u>	
3.01	Commit to MFN treatment economy-wide, except in a few limited cases as may be specified by individual member economies, immediately or over a publicly announced period of time.
3.02	For economies that have already committed to MFN treatment, review where MFN exceptions to it taken in the past can be eliminated or reduced (in other words, review whether the "few limited cases" of exceptions to MFN can be narrowed even further).
<u>Related to National Treatment or both MFN and National Treatment Sectors</u>	
3.03	Extend national treatment now (or starting on a particular date) in one or more sectors.
3.04	Extend national treatment economy-wide except in a few limited cases now, or starting on a certain date; or
3.05	Progressively extend national treatment to one more sectors.
3.06	Open additional sectors to participation by foreign investors, or permit foreign investment economy-wide with only limited exceptions. In other words, reduce the size of the list of sectors that are closed or partially restricted to foreign investment.
3.07	Eliminate or phase out sectoral restrictions on a foreign investment.
3.08	Review existing agreements, treaties, and laws to see if any exceptions to national treatment can be eliminated.
<u>Ownership</u>	
3.09	Allow all investors to choose their form of establishment within legislative and legal frameworks.
3.10	Update regulations to eliminate joint venture requirements for establishment.
3.11	<p>Permit greater foreign equity ownership in sectors partially opened to foreign investment, or permit greater foreign equity ownership economy-wide.</p> <p>-- Prepare a schedule now for future increases in foreign equity ownership.</p> <p>-- Accelerate implementation of dates for liberalizing sectors where possible.</p>
3.12	Eliminate or phase out conditions for foreign ownership in relation with export ratios or domestic sales.
3.13	Reduce areas with joint-venture criteria under investment promotion schemes to allow greater foreign participation.

3.14	Implement (and announce) a policy of not requiring the divestiture or dilution of the ownership of investments on the basis of nationality. Eliminate or phase out requirements to transfer ownership to local firms over a period of time.
3.15	Eliminate or phase out restrictions for foreign investors on the establishment of local branches.
3.16	Eliminate or phase out restrictions for foreign investors to diversity operations.
3.17	Eliminate or phase out restrictions on foreigners with respect to operational permits and licenses.
3.18	Where a time period for foreign investors to find local partners is specified, extend the period of time.
<i>Finance and Capitalization</i>	
3.19	Update regulations to reduce or eliminate restrictions on foreign borrowing by corporations.
3.20	Liberalize foreigners' access to domestic financial instruments (e.g. money market instruments, corporate bond markets).
3.21	With respect to the entry of foreign investment, eliminate or phase out requirements to deposit certain guarantees for foreign investors.
3.22	Reduce, reduce progressively, or eliminate minimum capitalization requirements in sectors where such capitalization requirements are not needed for prudential reasons.
3.23	Eliminate or phase out subsequent additional investment or reinvestment requirements for foreign investors.
3.24	Open existing investment incentive programs to participation by foreign investors, so they are equally available to domestic as well as foreign investors.
<i>Other Measures</i>	
3.25	Eliminate or ease discriminatory restrictions on imports needed to support foreign investment.
3.26	Change policies, guidance, regulations, or laws to eliminate pricing by state-designated monopolies that is discriminatory on the basis of nationality.
3.27	Change policies, guidance, regulations or laws to eliminate discriminatory access to local raw materials and inputs.
<b>EXPROPRIATION AND COMPENSATION</b>	
4.01	Consistent with international law standards/principles, limit permissible expropriation to cases involving a public purpose where expropriation is undertaken in a non-discriminatory manner, under due process of law, and accompanied by payment of prompt, adequate and effective compensation.  -- Take steps to amend expropriation laws and regulations based on the above-mentioned standards/principles of international law with respect to expropriation.
4.02	Included in bilateral, regional or multilateral investment treaties, agreements, and/or arrangements a commitment on compensation in cases of expropriation.

4.03	To improve transparency, define, publish and disseminate to investors the relevant investment treaties and arrangements.
<b>PROTECTION FROM STRIFE AND SIMILAR EVENTS</b>	
5.01	Decide - and, as possible, commit in investment agreements/arrangements between governments and private investors and in bilateral/multilateral government-to-government treaties, agreements, and/or arrangements - that the government will accord treatment that is non-discriminatory on the basis of nationality to investments with respect to losses that investments may suffer in the government's territory that are due to war, other armed conflict, revolution, national emergency, insurrection, civil disturbance, or other similar events.
<b>TRANSFERS OF CAPITAL RELATED TO INVESTMENTS</b>	
6.01	Remove or reduce restrictions on the transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidations - all in a freely convertible or a freely usable currency.  -- Eliminate or phase out restrictions that impede recovery of profit, such as ceilings on royalties, technical assistance fees or special taxes, restrictions on access to foreign exchange, and control over the allocation of foreign currencies.
6.02	Make a binding commitment, in treaties, agreements or arrangements, to eliminate or progressively reduce restrictions on the transfers of funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidation - all in freely convertible or freely usable currencies.
6.03	Guarantee the right to transfer capital related to an investment in and out of an economy, without delay and at market rates of exchange, with only limited exceptions.
<b>PERFORMANCE REQUIREMENTS</b>	
7.01	Publish and implement a phase-out plan for WTO TRIMs-inconsistent programs identified on TRIMs illustrative list.
7.02	Reach consistency with WTO TRIMs' illustrative list by 2000. Take steps to accelerate implementation of phase-out plans where possible.
7.03	Eliminate, phase out, or relax unilaterally and/or through government-to-government agreements and treaties, on an economy-wide or sectoral basis, requirements such as:  -- local hiring requirements,  -- local training requirements,  -- requirements to manufacture locally,  -- local sales requirements,  -- required technology transfer,



	<p>-- required local research and development,</p> <p>-- export requirements (e.g. those expressed as requirements to generate foreign exchange or achieve a particular export target).</p>
<b>ENTRY AND STAY OF PERSONNEL</b>	
8.01	Consistent with an economy's visa laws regarding the entry and stay of personnel, allow the temporary entry and stay of personnel needed to establish, develop, administer or advise on the operation of an investment of theirs (i.e. investor and key managerial or technical personnel and advisers).
8.02	Offer visas for investors that facilitate entry and reentry (or identify other ways, consistent with domestic laws and policy, to facilitate investors' ability to enter and reenter for investment purposes).
8.03	Take steps to permit investors/project sponsors to hire the top managerial advisory talent of their choice, regardless of nationality.
8.04	Take steps to permit investors/project sponsors to hire the top technical. and/or advisory talent of their choice, regardless of nationality.
<b>SETTLEMENT OF DISPUTES</b>	
9.01	Develop effective mechanisms for resolving disputes and mechanisms for enforcing the solutions found to those disputes.
9.02	Take steps to become a member of the International Convention on the Settlement of Investment Disputes (ICSID) and/or other widely recognized international arbitration bodies.
	<i>Note: We defer to the APEC Dispute Mediation Experts Group for specific menu options for IAPs related to improvements in dispute mediation.</i>
<b>INTELLECTUAL PROPERTY</b>	
10.01	Develop adequate protection for intellectual property.
10.02	Provide protection for intellectual property that at least meets the standards established in the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS).
10.03	<p>Provide adequate and effective enforcement measures, including as appropriate, administrative, civil, and criminal, against infringement of intellectual property rights.</p> <p>-- Increase cooperation among agencies responsible for the administration and enforcement of intellectual property matters and between IPR agencies and those responsible for regulatory issues.</p> <p>-- Provide and streamline, as appropriate, judicial and administrative procedures to ensure timely processing of enforcement actions.</p> <p>-- Increase public education about the importance of intellectual property and its role in the economy as well as the need for effective and efficient enforcement of intellectual property rights.</p> <p>-- Enhance cooperative relationship between different law enforcement agencies.</p> <p>-- Ensure close and efficient cooperation between enforcement</p>

	agencies and the right holders.
10.04	<p>Develop and implement programs that require official agencies in member economies to respect intellectual rights in their operations, such as by using only legitimate software in an authorized manner.</p> <p>-- To the extent possible, provide an adequate budget for purchase of legitimate software.</p>
10.05	<p>Develop/further improve intellectual property regimes:</p> <p>-- Where possible, give effect to international norms for intellectual property protections.</p> <p>-- To the extent possible, cooperate with other nations in international for a.</p>
<p><i>Note: We defer to the APEC Intellectual Property Rights( IPR) Group for specific menu options for IAPs related to IPR improvements.</i></p>	
<p><b>AVOIDANCE OF DOUBLE TAXATION</b></p>	
11.01	<p>Sign, where appropriate, bilateral avoidance of double taxation agreements that are in conformity with international norms. Expand coverage of such agreements as appropriate.</p>
<p><b>COMPETITION POLICY AND REGULATORY REFORM</b></p>	
12.01	<p>Ensure consistency between investment policies and competition and regulatory reform policy.</p>
<p><i>Note: We defer to the APEC Competition Policy Group for specific menu options for IAPs related to improving competition.</i></p>	
<p><b>BUSINESS FACILITATING MEASURES TO IMPROVE THE DOMESTIC BUSINESS ENVIRONMENT</b></p>	
13.01	<p>Reduce discriminatory use of bureaucratic discretion, by means such as:</p> <p>-- preparing and distributing written in-house guidelines for administrative practices related to the handling of applications, registrations, licensing, etc.</p> <p>-- establishing in-house decision appeal mechanisms, as well as appeal mechanisms available to the public.</p>
13.02	<p>Streamline application, registration, government licensing and government procurement procedures by:</p> <p>-- simplifying forms;</p> <p>-- simplifying the submission (e.g. permitting electronic submission, or centralizing approval offices in a "one-stop shop");</p> <p>-- shortening processing time of such applications/registrations, and</p> <p>-- reducing unnecessary steps.</p>
13.03	<p>Take positive steps to assist investors by measures such as:</p> <p>-- establishing an office to serve as a clearinghouse (one-stop agency/unit) for interested investors to learn market opportunities and</p>

	<p>potential investment partners;</p> <p>-- providing a network of all the government agencies that the investors or businesspersons have contact with in doing investments;</p> <p>-- establishing/designating one government agency to handle investors' complaints (e.g. investment ombudsman).</p>
13.04	Examine the role and effects of investment incentives at all levels of government: federal/central, state/provincial and local.
13.05	<p>Offer incentives which are voluntary, non-discriminatory, and limited in duration, such as:</p> <p>-- tax breaks,</p> <p>-- loans guarantees,</p> <p>-- grants, subsidies and industrial development bonds,</p> <p>-- employment training programs,</p> <p>-- programs aimed at helping companies achieve greater efficiency,</p> <p>-- WTO-consistent export promotion programs,</p> <p>-- small business development,</p> <p>-- high technology development programs,</p> <p>-- measures to support development of new industries,</p> <p>-- industrial linkage programs,</p> <p>-- mobilization of domestic resources.</p>
13.06	<p>Introduce measures to assist companies seeking to achieve greater efficiency such as:</p> <p>-- zero inventory</p> <p>-- just in time program</p> <p>-- other related programs</p>
13.07	Establish legal and taxation systems in areas such as stock exchanges, corporate division and mergers and acquisitions to enable flexible corporate reorganization.
13.08	Introduce accounting and financial reporting systems that follow internationally accepted accounting standards.
13.09	Develop and streamline bankruptcy law systems that facilitate corporate reorganization.
13.10	Establish a financial system that enables a variety of financing and capital raising methods.
13.11	Strengthen and promote improved standards of corporate governance.

13.12	Develop a labor market that facilitates domestic labor mobility, taking into account national labor market conditions and policies.
13.13	Improve standards of professional services, such as legal and accounting services.
<b>TECHNOLOGY TRANSFER</b>	
14.01	Improve the transparency of related laws and regulations.
14.02	Reduce the restrictions on the transfer of technology consistent with the protection of essential security interests (for example by modifying as appropriate existing laws and regulations) to facilitate the flow of technology for the economic development of member economies.
14.03	Develop legislation, regulations and measures for the adequate and effective protection of technology and related interests arising from technology transfer.
<b>VENTURE CAPITAL AND START-UP COMPANIES</b>	
15.01	<p>Introduce measures to assist businesses in different stages including start-up companies seeking equity funding, such as:</p> <ul style="list-style-type: none"> <li>-- establishment of a legal and taxation system to assist the development of the venture capital industry and investment banking; and</li> <li>-- establishment of sound and transparent initial public offering (IPO) markets for small and medium enterprises (SMEs).</li> </ul>

**LEADERS' STATEMENT TO IMPLEMENT APEC TRANSPARENCY STANDARDS**

Los Cabos, Mexico  
27 October 2002

Bangkok, Thailand  
21 October 2003

Santiago, Chile  
21 November 2004

We, the Economic Leaders of APEC, reaffirm the commitment made in the Shanghai Accord to pursue implementation of APEC's transparency principles. In so doing, we observe that transparency:

- is an important element in promoting economic growth and financial stability at the domestic and international levels;
- is conducive to fairer and more effective governance and improves public confidence in government;
- is a General Principle in the Osaka Action Agenda which requires its application to the entire APEC liberalization and facilitation process;
- is a basic principle underlying trade liberalization and facilitation, where the removal of barriers to trade is in large part only meaningful to the extent that the members of the public know what laws, regulations, procedures and administrative rulings affect their interests, can participate in their development, can participate in administrative proceedings applying them and can request review of their application under domestic law;
- in monetary, financial and fiscal policies, and in the dissemination of macroeconomic policy data ensures the accountability and integrity of central banks and financial agencies, and provides the public with needed economic, financial and capital markets data; and
- will be enhanced through well-targeted, demand-driven capacity building to assist developing economies make progress toward greater openness.

Accordingly, we are committed to implementing the following transparency standards, taking into account the General Principles in the Osaka Action Agenda. We recognize that

implementation of these standards will be an important APEC-led contribution to achieving a successful outcome for the WTO Doha Development Agenda.

## **Transparency in Trade and Investment Liberalization and Facilitation**

### General Principles

1.
  - (a) Each Economy will ensure that its laws, regulations, and progressively, procedures and administrative rulings of general application respecting matters in Section C of Part One of the Osaka Action Agenda are promptly published or otherwise made available, for example via the Internet, in such a manner as to enable interested persons and other Economies to become acquainted with them.
  - (b) Each Economy will have or designate an official journal or journals and publish any measures referred to in paragraph 1 in such journals. Each Economy will publish such journals on a regular basis and make copies of them readily available to the public.
  - (c) An Economy may comply with subparagraph (b) by publication on the Internet.
  - (d) Each Economy will promote observance of the provisions of this paragraph by the regional and local governments and authorities within its customs territory.
2. When possible, each Economy will:
  - (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
  - (b) provide where applicable interested persons a reasonable opportunity to comment on such proposed measures.
3. Upon request from an interested person or another Economy, an Economy will endeavor to promptly provide information and respond to questions pertaining to any actual or proposed measure referred to in paragraph 1.
4. Each Economy will ensure in its administrative proceedings applying any measure referred to in paragraph 1 that:
  - (a) wherever possible, persons of another Economy that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
  - (c) its procedures are in accordance with domestic law.
5. Where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding matters covered by these Standards, that:
- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
  - (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
  - (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
  - (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.
6. For purposes of these Standards, administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include: (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Economy in a specific case; or (b) a ruling that adjudicates with respect to a particular act or practice.

#### Specific Principles

7. Consistent with the above Standards, Economies will follow the transparency provisions contained in the following documents:
- (a) APEC Group on Services Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment;
  - (b) APEC Investment Experts Group Options for Investment Liberalization and

Business Facilitation to Strengthen the APEC Economies-For Voluntary Inclusion in Individual Action Plans;

- (c) APEC Principles to Enhance Competition and Regulatory Reform;
  - (d) APEC Sub-Committee on Standard and Conformance objective to ensure transparency according to the WTO Agreements on Technical Barriers to Trade and Sanitary and Phytosanitary Measures, and the SCSC 1994 Declaration of an APEC Standards and Conformance Framework and 1998 Terms of Reference; and
  - (e) APEC Principles on Trade Facilitation.
8. (a) APEC sub-fora that have elaborated the above transparency provisions should review these regularly and, where appropriate, improve, revise or expand them further.
- (b) APEC sub-fora that have not developed specific transparency provisions should do so.
- (c) APEC sub-fora that develop such new or revised transparency provisions should present them to Leaders upon completion for incorporation into this Statement.

#### **Transparency in Monetary, Financial and Fiscal Policies and the Dissemination of Macroeconomic Policy Data**

9. Prior to our agreement in the Shanghai Accord to implement APEC transparency principles, we agreed in Brunei Darussalam in 2000 to support the key standards identified by the Financial Stability Forum. Three of these key standards focus on transparency:
- (a) Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles;
  - (b) Code of Good Practices on Fiscal Transparency; and
  - (c) General and Special Data Dissemination Standards.
10. Following APEC Finance Ministers' decision to support the assessment of Economies' implementation of these transparency codes through the IMF-led Reports on the Observance of Standards and Codes (ROSCs), Economies are encouraged to participate fully in the ROSC program. As voluntary disclosure of ROSC modules promotes transparency, Economies should, where practicable, disclose the results of these assessments.



### **Confidential Information**

11. The provisions of this Statement will not require any Economy to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular persons or enterprises.

### **Area-Specific Transparency Standards**

12. (a) Economies are committed to implementing the area-Specific Transparency Standards contained in Sections A-H below in a manner consistent with the Standards in paragraphs 1-6 and 11 above.<sup>1</sup>
- (b) Economies agree to review periodically the Area-Specific Transparency Standards contained in Sections A-H below and, where appropriate, improve, revise or expand them further.

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<sup>1</sup> Economies in accession to the WTO accept the area-Specific Transparency Standards on the understanding that this will neither influence the outcome of their on-going WTO accession negotiations nor prejudice the results of the relevant WTO negotiations.

## **A. Services**

### **Introduction**

Economies agree to implement, in respect of services, the General Principles contained in paragraphs 1-6 and paragraph 11 of the Leaders' Statement to Implement APEC Transparency Standards ("Leaders' Statement").

Economies believe that, in the services context, it is particularly important to emphasize Leaders' observation that transparency contributes to: good governance; improving public confidence in, and legitimacy of, regulatory regimes; better understanding of regulatory objectives; more efficient markets; and a more attractive investment climate in both small and large economies.

Economies take note of Leaders' recognition that implementation of these standards will be an important APEC-led contribution to achieving success in the WTO Doha Development Agenda (DDA) GATS negotiations.

### **Transparency Standards on Services**

1. (a) Each economy will, in the manner provided for in paragraph 1 of the General Principles in the Leaders' Statement, ensure that its laws, regulations, and administrative procedures related to applications for licenses or authorizations (including, inter alia, licensing procedures and requirements/criteria, qualification procedures and requirements, and technical standards) and their renewal or extension are promptly published or otherwise made available in such a manner as to enable interested persons and other Economies to become acquainted with them.
- (b) Economies will use the Internet as much as possible, and specifically, official government web sites, to fulfill this obligation.
2. Economies will publicize and maintain at least one enquiry point that will endeavor to promptly provide information and respond to questions from an interested person or another Economy pertaining to any actual or proposed measure. Economies will also make the names, official addresses, and other contact information (including website, telephone, facsimile) of its enquiry point(s) publicly available.
3. Economies will diligently complete and provide annual updates to their electronic Individual Action Plans (E- IAPs) for services sectors.
4. Regarding authorizations and licensing procedures, when possible:
  - (a) the competent authorities of an Economy will, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision

concerning the application. The competent authorities will establish deadlines for processing of completed applications under normal circumstances.

- (b) at the request of the applicant, the competent authorities of the Economy will provide, without undue delay, information concerning the status of the application, including any reason for denial. Applicants will also be given the opportunity to resubmit or amend their application for further review, or file an appeal if an application is denied or found in violation of public regulations.
  - (c) Economies will publish the time schedule for and costs of examinations required as part of the application process for a license or authorization in accordance with paragraph 1 of the Leaders' Statement.
5. These Standards should be administered in a reasonable, objective and impartial manner.

## **B. Investment**

### **Introduction**

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed APEC sub-fora that have elaborated transparency provisions to review these regularly, and, where appropriate, improve, revise or expand them further. Economies were further instructed that such revised transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the following set of transparency standards on investment were developed for incorporation into the Leaders’ Statement. These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos and also build on the Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies – For Voluntary Inclusion in Individual Action Plans. Economies agree to implement, in respect of investment, the General Principles contained in paragraphs 1 through 6 and paragraph 11 of the Leaders’ Statement.

These principles provide specific guidance for implementation within an investment context.

### **Transparency Standards on Investment**

1. Each Economy will, in the manner provided for in paragraph 1 of the Leaders’ Statement, ensure that its investment laws, regulations, and progressively procedures and administrative rulings of general application (“investment measures”) are promptly published or otherwise made available in such a manner as to enable interested persons and other economies to become acquainted with them.
2. In accordance with paragraph 2 of the Leaders’ Statement, each Economy will, to the extent possible, publish in advance any investment measures proposed for adoption and provide a reasonable opportunity for public comment.
3. In accordance with paragraph 3 of the Leaders’ Statement, upon request from an interested person or another Economy, each Economy will:
  - (a) endeavor to promptly provide information and respond to questions pertaining to any actual or proposed investment measures referred to in paragraph 1 above; and
  - (b) provide contact points for the office or official responsible for the subject matter of the questions and assist, as necessary, in facilitating communications with the requesting economy.

4. Where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding investment matters covered by these standards, that:
  - (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the investment matter;
  - (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
  - (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
  - (d) ensure subject to appeal or further review under domestic law, that such decisions will be implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.
5. If screening of investments is used based on guidelines for evaluating projects for approval and for scoring such projects if scoring is used, in accordance with paragraph 1 of the Leaders' Statement each Economy will publish and/or make publicly available through other means those guidelines.
6. Each Economy will maintain clear procedures regarding application, registration, and government licensing of investments by:
  - (a) publishing and/or making available clear and simple instructions, and an explanation of the process (the steps) involved in applying/government licensing/registering; and
  - (b) publishing and/or making available definitions of criteria for assessment of investment proposals.
7. Where prior authorization requirement procedures exist, each Economy will conduct reviews at the appropriate time to ensure that such procedures are simple and transparent.
8. Each Economy will make available to investors all rules and other appropriate information relating to investment promotion programs.
9. When negotiating regional trade agreements and free trade agreements that contain provisions with an investor/state dispute settlement mechanism, each Economy should consider whether or not to include transparency provisions.

10. Each Economy will participate fully in APEC-wide efforts to update the APEC Investment Guidebook.

## **C. Competition Law and Policy and Regulatory Reform**

### **Introduction**

In October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that APEC sub-fora that have not developed specific transparency provisions should do so, and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the following set of transparency standards on competition and deregulation for incorporation into the Leaders’ Statement were developed.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos, and provide specific guidance for implementation within the context of competition law and policy and regulatory reform.

### **Transparency Standards on Competition Law and Policy**

1. In furtherance of paragraph 1 of the General Principles of the Leaders’ Statement, each Economy will ensure that its competition laws, regulations, and progressively, procedures, administrative rulings of general application and judicial decisions of general application are promptly published or otherwise made available in such a manner as to enable interested persons and other Economies to become acquainted with them.
2. In furtherance of paragraphs 4 and 5 of the General Principles of the Leaders’ Statement, each Economy will ensure that before it imposes a sanction or remedy against any person for violating its national competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and that an independent court or tribunal imposes or, at the persons request, reviews any such sanction or remedy. Proceedings subject to this paragraph are to be in accordance with domestic law.

### **Transparency Standards on Regulatory Reform**

1. In furtherance of paragraph 1 of the General Principles of the Leaders’ Statement, each Economy will ensure that its laws, regulations, procedural rules and administrative rulings of general application relating to regulatory reform are promptly published or otherwise made available in such a manner as to enable interested persons and other economies to become acquainted with them.
2. In furtherance of paragraphs 2 and 3 of the Leaders’ Statement, Economies recognize the importance of ensuring transparency in the regulatory reform process

and of soliciting and responding to inquiries from interested persons and other Economies. Accordingly, each Economy will, where possible (a) publish in advance regulatory reform measures that it proposes to adopt, and (b) provide where applicable interested persons a reasonable opportunity to comment on such proposed measures. In addition, upon request from an interested person or another Economy, each Economy will endeavor to promptly provide information and respond to questions pertaining to any actual or proposed regulatory reform measure.

### **Confidential Information**

Economies agree that nothing in these standards requires any Economy to disclose confidential information.<sup>2</sup>

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<sup>2</sup> The Leaders' Statement includes a provision for the protection of confidential information. This statement is included here to emphasize the importance of the protection of confidential information in the contexts of both competition law and policy and regulatory reform.



## **D. Standards and Conformance**

### **Introduction**

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the Subcommittee on Standards and Conformance (SCSC) developed the following set of transparency standards for incorporation into the Leaders’ Statement.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos and the obligations of the WTO Agreements on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Measures.

### **Transparency Standards on Standards and Conformance**

1. In accordance with paragraph 1 of the Leaders’ Statement, and the WTO Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary (SPS) Measures, each Economy will:
  - (a) promptly publish or otherwise make available to all interested parties, through readily accessible, widely available media, for example via the Internet, information on its laws, regulations, policies, administrative rulings, certification, qualification and registration requirements, technical regulations, standards, guidelines, procedures and practices relating to standards and conformance; and,
  - (b) have or designate an official journal or journals and publish in them information on technical regulations, sanitary and phytosanitary measures and related conformity assessment procedures on a regular basis and make copies of them readily available to the public.
2. As far as practicable, each Economy will maintain one centrally located website for the information referred to above.
3. In accordance with paragraph 2 of the Leaders’ Statement and the WTO TBT and SPS Agreements, each Economy will publish in advance any standards or conformance requirement that it proposes to adopt and provide interested persons a reasonable opportunity to comment on such proposed measures and take those comments into account before a final measure is adopted. Each Economy that is a WTO member will notify proposals to the WTO as required by the TBT and SPS Agreements.

4. In accordance with paragraph 3 of the Leaders' Statement, upon request from an interested person or another Economy, each Economy will endeavor to promptly provide information and respond to questions pertaining to any actual or proposed standards and conformance measure.
5. Recognizing that standards and conformance measures can have an adverse impact on trade and development, each Economy will ensure that such measures are developed and administered in a transparent manner, and in compliance with WTO TBT/SPS obligations, as well as the APEC Guidelines for the Preparation, Adoption and Review of Technical Regulations, and the APEC SCSC Principles and Features of Good Practice for Technical Regulations so as to prevent the creation of unnecessary or arbitrary barriers to trade.
6. Each Economy will promote awareness of and compliance with the transparency provisions of the WTO TBT and SPS Agreements.
7. Each Economy that is a WTO Member will cooperate in the Triennial Reviews of the TBT Agreement to promote awareness of and compliance with the transparency provisions of the TBT Agreement, the APEC Guidelines for the Preparation, Adoption and Review of Technical Regulations, and the APEC SCSC Principles and Features of Good Practice for Technical Regulations.
8. Each Economy will continue to provide updated information for the SCSC Contact List which is maintained on the APEC Secretariat's website and includes a range of contacts for each economy relevant to standards and conformance activities.
9. Each Economy will, as appropriate, promote the observance of these transparency standards by the regional and local governments, and non-governmental standardizing bodies within its territory.

## **E. Intellectual Property**

### **Introduction**

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the Intellectual Property Experts Group (IPEG) developed the following set of transparency standards on intellectual property for incorporation into the Leaders’ Statement.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos, and provide specific guidance for implementation within an intellectual property context.

### **Transparency Standards on Intellectual Property**

1. In accordance with paragraph 1 of the Leaders’ Statement, each Economy will promptly publish in its domestic language or otherwise make available its laws, regulations, and progressively, all procedures concerning the protection, including enforcement, of intellectual property rights in such a manner as to enable interested parties to become acquainted with them.
2. Furthermore, each Economy will clarify procedures and practices regarding application, issuance, and registration of intellectual property rights by publishing the following information:
  - (a) Clear and simple instructions, and an explanation of the steps involved regarding the application and registration process,
  - (b) Examination guidelines and assessment criteria used to review an application for approval, if applicable,
  - (c) Contact points for inquires on standards, technical regulations, and other requirements,
  - (d) Provisions that are directed to SMEs.
3. Each Economy will also provide a system for the registration of industrial property, which shall include:

- (a) Providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark or grant a patent;
  - (b) Providing to the applicant an opportunity to respond to communications from the relevant government authorities, to contest an initial refusal, and to have a higher authority review any refusal to register a trademark or grant a patent;
  - (c) An opportunity for interested parties to petition to oppose or to challenge a trademark or patent application or to seek cancellation after a trademark has been registered or a patent has been granted; and
  - (d) A requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.
4. Each Economy will provide that final judicial decisions or administrative rulings, those where appeals are no longer possible, of general applicability pertaining to the protection, including enforcement, of intellectual property rights shall be communicated to the parties to the proceedings. Each Economy will also provide for publication of such decisions or rulings, or where such publication is not practicable, made publicly available, in a domestic language in such a manner as to enable governments and rights holders to become acquainted with them.
  5. In accordance with paragraph 2 of the Leaders' Statement, each Economy will, when possible, publish in advance any proposed changes to laws, regulations, and progressively, all procedures concerning the protection, including enforcement, of intellectual property rights, and provide where applicable interested persons a reasonable opportunity for public comment. Each Economy will also make available to all interested parties timely updates of changes to intellectual property law statutory regimes, including as appropriate via the APEC Secretariat.
  6. In addition to paragraphs 3, 4, and 5 of the Leaders' Statement, each Economy will conduct as appropriate periodic reviews of administrative regulations, rules, and procedures to ensure they are simplified, consistent, and transparent. Outstanding issues raised by the reviews will be resolved where possible in a timely manner.
  7. Where possible, each Economy will publish information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal system, including any statistical information that the Economy may collect for such purposes.
  8. Each Economy will conduct regular briefings in appropriate fora to provide updates on the status of intellectual property protection and enforcement as well as future policy direction, if appropriate

**Confidential information**

Nothing in the provisions of this statement shall require an Economy to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

## **F. Customs Procedures**

### **Introduction**

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the United States proposes that the Sub-Committee on Customs Procedures develop the following set of transparency standards on customs for incorporation into the Leaders’ Statement.

The following customs transparency standards flow from, and are to be read consistently with, the General Principles on Transparency agreed to by APEC Leaders in Los Cabos, and provide specific guidance for implementation within the customs context.

### **Transparency Standards on Customs Procedures**

1. In furtherance of paragraph 1 of the Leaders’ Statement, each Economy, will promptly publish and make available on the Internet, information on its customs laws, regulations, procedures and administrative rulings of general application in such a manner as to enable interested persons to become acquainted with them.
2. In furtherance of paragraph 2 of the Leaders’ Statement, each Economy will, to the extent possible, publish in advance any regulations of general application governing customs procedures proposed for adoption, and provide a reasonable opportunity for comments from interested persons.
3. In furtherance of paragraph 4 of the Leaders’ Statement, and taking into account Economies’ individual circumstances, upon request from an interested person in its territory, each Economy wherever possible will provide for the issuance, of advance rulings based on specific facts and circumstances provided by such requester prior to the importation of a good into its territory, for areas such as:
  - (a) tariff classification;
  - (b) the application of the provisions set forth in the WTO Agreement on Customs Valuation;
  - (c) the application of duty drawback;
  - (d) country of origin marking requirements;

- (e) the application of rules of origin under free trade agreements and other preferential tariff regimes; and
  - (f) admissibility requirements.
4. Subject to domestic confidentiality requirements, each Economy, will make such advance rulings publicly available for purposes of ensuring application of the rulings to other goods where the facts and circumstances are the same as those under which the rulings are issued.
5. In furtherance of paragraph 5 of the Leaders' Statement, where warranted each Economy will maintain procedural transparency and fairness in customs procedures by:
- (a) providing for the prompt review and correction of customs administrative actions;
  - (b) ensuring that importers are provided with the right to a level of administrative review independent of the employee or office issuing the determination subject to review; and
  - (c) maintaining the availability of judicial review of customs administrative determinations.
6. Each Economy will, maintain one or several contact points to which interested parties can address questions concerning customs matters, and shall make available on the Internet information concerning the procedures for making such inquires.

## **G. Market Access**

### **Introduction**

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the Market Access Group developed the following set of transparency standards on market access for incorporation into the Leaders’ Statement.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos, and provide specific guidance for implementation within a market access context.

### **Transparency Standards on Tariff and Non-Tariff Measures**

1. (a) In accordance with paragraph 1 of the Leaders’ Statement, each Economy will promptly publish or otherwise make available to all interested parties, through readily accessible, widely available media (for example via the Internet), information on its laws, regulations, and progressively, procedures and administrative rulings relating to tariff and non-tariff measures.
  - (b) Such information could include publication of the following measures:
    - (i) tariff schedules, with current applied tariff rates, on the Internet;
    - (ii) details of preferential tariff programs;
    - (iii) tariff rates applicable under Free Trade Agreements and Regional Trade Agreements; and
    - (iv) NTMs maintained by member economies.
2. In accordance with paragraph 2 of the Leaders’ Statement, when possible each Economy will endeavour to publish in advance any tariff or non-tariff measure that it proposes to adopt, and provide interested persons a reasonable opportunity to comment on such proposed measures.
3. In accordance with paragraph 3 of the Leaders’ Statement, upon request from an interested person or another Economy, each Economy will endeavour to promptly



provide information and respond to questions pertaining to any actual or proposed measures referred to in paragraph 1 above.

4. Each Economy will endeavour to ensure that non-tariff measures are administered in a transparent manner, so as to mitigate their effect on the trade and development of other Economies.
5. Each Economy that is a WTO Member will, where possible, provide information on non-tariff measures when requested by other WTO Members in the context of the WTO negotiations on market access and will participate actively in these negotiations as they move forward.
6. Each Economy that is a WTO Member will comply with notification procedures under the WTO Agreement on Import Licensing Procedures.
7. Each Economy that is a WTO Member will submit its updated tariff data (both bound, and, where possible, current applied) and trade data to the WTO Integrated Data Base on a timely basis. Economies in the process of acceding to the WTO will, where possible, submit current applied tariff and trade data to the WTO Integrated Data Base. Each economy will also submit current applied tariff data to the APEC tariff database in a timely manner.
8. Each Economy will provide to the APEC Secretariat for inclusion on the website of the Market Access Group (MAG) links to individual government websites, including, where possible, links to specific officials responsible for developing, administering, implementing and/or enforcing policies related to tariff and non-tariff measures. Each Economy further agrees to provide current information on import regulations for the MAG's Import Regulation website. Each Economy will also provide as much information as possible on rules and procedures, and details of enquiry points, in its e-Individual Action Plan.

## **H. Business Mobility**

### **Introduction**

Since its inception, the APEC Business Mobility Group (BMG) has recognized that transparent and predictable business mobility procedures are essential to a stable and open trading regime. As a consequence many BMG initiatives have facilitated openness, transparency and information exchange in an effort to ensure that APEC members make immigration measures (new and amended, including those in international agreements) publicly available to all interested parties. Economies have provided up to date, information on rules and procedures governing temporary residency, processing standards and contact points in the *APEC Business Travel Handbook* and have shared information on immigration legislation, trade agreements, policies and technologies on the BMG web site.

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the “Statement to Implement APEC Transparency Standards” (hereinafter referred to as the “Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005. In paragraph 8 APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement.

The following Business Mobility Standards relate to immigration laws, regulations, policies, administrative rulings, procedures and practices related to the temporary entry and stay of business persons, at the pre-arrival, entry, stay and departure phases.

### **Transparency Standards on Business Mobility**

#### **Publication and Access**

1. In accordance with paragraph 1 of the Leaders’ Statement, each Economy will promptly publish or otherwise make available to all interested parties, through readily accessible, widely available media, for example via the Internet, information on its immigration laws, regulations, policies, and progressively, administrative rulings of general application, procedures and practices as they relate to business persons, collectively referred to as “immigration measures”. Economies will ensure that immigration regulations and requirements based on policy are clear, concise, current, simple, transparent and readily available, and meet applicable Standards for Pre-Arrival and Entry and will:
  - (a) Provide user-friendly application forms, instructions and reference materials.

#### **Consultation**

2. In accordance with paragraph 2 of the Leaders’ Statement, each Economy will, when possible, publish in advance using the media and other mechanisms as appropriate proposed immigration measures that might affect business mobility and where

applicable provide interested persons a reasonable opportunity to comment on such proposed measures. Such measures should include:

- (a) A set of rules and regulations that provide sanctions for the production, sale and use of fraudulent documents;
- (b) Effective rules and regulations that are precise in specifying what constitutes document fraud and what the sanctions are for producing, selling or using fraudulent documents; support inspectors, investigators and prosecutors in apprehending and taking action against fraudulent document producers, vendors and users; and promote business facilitation as well as protect the country's inhabitants;
- (c) In respect to professional service, a comprehensive Code(s) of Conduct that sets out in very practical terms the behavior expected of all immigration officials, including employee's responsibilities, service policies and standards, clear guidance and practical examples, and that is developed in consultation with internal and external stakeholders as appropriate; and
- (d) Mechanisms for reporting or filing complaints on code of conduct breaches without fear of reprisal or prejudice.

#### **Information Services**

- 3. In accordance with paragraph 3 of the Leaders' Statement, upon request from an interested person or another Economy, each Economy will endeavor when possible to promptly provide information and respond to questions pertaining to any actual or proposed immigration measures and will provide:
  - (a) Points of inquiry for business persons or businesses with questions;
  - (b) Simple, quick and user-friendly application processes with clear information and instructions on requirements relating to any exemptions, fees and charges;
  - (c) Information that is easily accessible to internal/external stakeholders (Customer Help Desks/Call Centres or Industry Consultative Committees, Internet, displays and signs); and
  - (d) Where appropriate, will provide mechanisms so that stakeholders' service charters are developed which clearly state the level of service they can expect, and are displayed in public areas such as airports, Immigration offices and overseas missions.

#### **Decision Making**

- 4. In accordance with paragraph 4 of the Leaders' Statement, each Economy will ensure that immigration measures are administered in a transparent manner, including, wherever possible, reasonable notice in accordance with domestic procedure when a proceeding is initiated, and an opportunity to present facts and arguments in support

of their positions, when time, the nature of the proceeding, and the public interest permit, and that the procedure is in accordance with domestic law. Economies shall

- (a) Strive for transparency in decision-making that is based on an economy's prevailing employment and immigration policies and procedures and, where applicable, provide decisions that are in writing and denials that provide reasons based on requirements and information on any right of appeal or waivers;
- (b) Strive for reasonable processing times for decision-making in an effort to avoid unnecessary delay or uncertainty on the part of business travelers;
- (c) Ensure that decisions are consistent with published guidelines and requirements through regular quality control reviews;
- (d) Ensure that employees are trained in decision-making procedures and have access to current written guidelines and instructions relating to interpretation of regulations and laws;
- (e) Ensure that authority to make decisions includes appropriate checks and balances, and is strictly controlled to prevent abuse of power;
- (f) Provide periodic review mechanism of systems and procedures to ensure uniformity and consistency in decision making; reviews undertaken in consultation with employees to eliminate "red tape;"
- (g) Develop and implement mechanisms which monitor and evaluate the organization's performance against established service standards;
- (h) To the extent possible, have a system in place for monitoring consistency between different offices, provinces or regions concerning decisions, procedures and information provided;
- (i) Where appropriate, clearly define and make publicly available the basis or criteria upon which discretionary power is exercised by officials; and
- (j) To the extent possible, convey reasons for decisions to applicants and document grounds for decisions clearly and retain these for monitoring and review.

#### **Review**

5. In accordance with paragraph 5 of the Leaders' Statement and its own immigration laws, where warranted, each Economy will provide procedures that are simple, consistent, and easily accessible for review and appeal of immigration decisions and, where warranted, prompt correction of final administrative actions, regarding immigration measures which provide parties to the proceeding with a reasonable opportunity to present their respective positions, a decision based on the evidence and submissions in the administrative record, tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and

have no substantial interest in the outcome of the matter, and implementation of the final decision. To ensure transparent administrative regulations and decision-making, Immigration Administrations shall have

- (a) To the extent possible, objective performance standards for managers to ensure compliance and accountability for the Standards on Professional Conduct;
- (b) To the extent possible, guidelines and policies that clearly state management responsibilities in employee development and in the promotion and monitoring of ethical practices and integrity; and
- (c) Selection criteria for managerial positions that include demonstrated ability to accept responsibility and accountability for implementation of the Standards on Professional Conduct.

## **I. Government Procurement**

### **Introduction**

The Government Procurement Experts Group (GPEG) was established in 1995 to consider ways to increase transparency of, and liberalise, government procurement markets in accordance with the goals of the Bogor Declaration. APEC identified and agreed a collective action plan for government procurement. A key component of the plan was to develop a set of non-binding principles on government procurement. This was in line with the APEC General Principle of flexibility, enunciated in the Osaka Action Agenda: “Considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalisation and facilitation process”.

In 1999 GPEG completed the Non-Binding Principles on Government Procurement (NBPs) that identify elements and illustrative practices on the principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination. The NBPs have the support and commitment of all Economies and have been adopted as the basis of the Government Procurement section of APEC economies' annually revised Individual Action Plans recording progress towards the Bogor goals of free and open trade and investment.

The NBPs have been a major contributor to the success of Economies and GPEG in promoting transparency in government procurement. The majority of GPEG members have completed their voluntary reviews and reports of their government procurement systems against the non-binding principle of Transparency. Through this process, Economies are exploring how best to implement the principles and to voluntarily bring their systems into conformity with them. This general transparency principle applies to all aspects of government procurement, including the elements of the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts. Establishing and maintaining transparent procurement markets not only assists Economies to learn from each other but also enables industry to obtain a clear understanding of the procurement markets operating within member economies.

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the “Statement to Implement APEC Transparency Standards” (“Leaders' Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

Paragraph 7 of the Leaders' Statement states that, consistent with the transparency standards in paragraphs 1-6 of the Leaders' Statement, Economies will follow the transparency provisions contained in the APEC Government Procurement Experts Group (GPEG) NBPs. In paragraph 8 of the Leaders' Statement, APEC Leaders instructed that “APEC sub-fora that have elaborated transparency provisions should review these regularly and, where appropriate, improve, revise or expand them further,” and also instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders' Statement. Ministers Responsible for Trade meeting in

Khon Kaen on June 2-3 “instructed officials to complete work underway to develop area-specific Transparency Standards.”

The Transparency Standards on Government Procurement, as set out below, are consistent with and fully reflect the General Principles in the Leaders' Statement and the transparency-related provisions of the NBPs. Implementation of both the Transparency Standards on Government Procurement and the NBPs will promote transparency in government procurement in the Asia-Pacific region.

### **Transparency Standards on Government Procurement**

Transparency in the government procurement context means that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium. This applies to all aspects of government procurement, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts.

1. Consistent with paragraph 1 of the Leaders' Statement, each Economy will:

- (a) ensure that its laws, regulations, and progressively judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set asides for certain categories of suppliers), procedures and practices (including procurement methods) related to government procurement (collectively referred to as “procurement rules”) are promptly published or otherwise made available, for example, via the Internet, in such a manner as to enable interested persons and other Economies to become acquainted with them;
- (b) designate an official journal or journals and publish the procurement rules in such journals on a regular basis and make copies of the journals readily available to the public (e.g., via the Internet); and
- (c) promote observance of the provisions of this paragraph by the regional and local governments and authorities within its customs territory.

2. Each economy will disseminate information on its procurement rules, for example, by:

- (a) publishing either a positive or negative list of the procuring entities subject to its rules; and
- (b) providing a description of its procurement rules on the APEC Government Procurement Experts Group Home Page and linking its government procurement Home Page, where available, with the APEC Government Procurement Experts Group Home Page.

3. Consistent with paragraph 2 of the Leaders' Statement, when possible each Economy will publish in advance any procurement rules that it proposes to adopt; and provide, where

applicable, interested persons a reasonable opportunity to comment on such proposed procurement rules.

4. Consistent with paragraph 3 of the Leaders' Statement, each Economy will endeavor upon request from an interested person or another Economy to promptly provide information and respond to questions pertaining to any actual or proposed rules. Each Economy will also establish contact points for such inquiries.

5. Consistent with paragraph 4 of the Leaders' Statement, in administrative proceedings applying to any procurement rule, each Economy will ensure that:

- (a) wherever possible, persons of another Economy that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

6. Consistent with paragraph 5 of the Leaders' Statement, where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding matters covered by these Standards, that:

- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
- (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
- (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
- (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

7. Each Economy will endeavour to maximize transparency in access to procurement opportunities. This should be accomplished where possible by:



- (a) where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g., on the Internet);
- (b) making the same information on procurement opportunities available in a timely manner to all potential suppliers;
- (c) publishing contact details of purchasers, and their product/ service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities that may not be publicly advertised;
- (d) making available early advice of complex high-value procurement needs through staged procedures such as public requests for information, requests for proposals and invitations for pre-qualification, and allowing adequate time for interested suppliers to prepare and submit a response;
- (e) making publicly available requirements and procedures for pre-qualification of suppliers; and
- (f) any time limits established for various stages of the procurement process.

8. Each Economy will make available for suppliers all the information required to prepare a responsive offer. This should include where possible:

- (a) providing in procurement notices the following information: the nature of the product or service to be procured; specifications; quantity, where known; time frame for delivery; closing times and dates; where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained;
- (b) providing any changes to participating suppliers; and
- (c) providing tender documentation and other information to suppliers promptly on request.

9. Each Economy will maintain transparent criteria for evaluating bids and evaluate bids and award contracts strictly according to these criteria. This should be done where possible by:

- (a) specifying in procurement notices or tender documentation all evaluation criteria, including any preferential arrangements; and
- (b) maintaining, for a predetermined period proper records of decisions sufficient to justify decisions taken in the procurement process.

10. Each Economy will award contracts in a transparent manner. This should be accomplished where possible by:

- (a) publishing the outcome of the tender including the name of the successful supplier and the value of the bid; and
- (b) as a minimum promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

11. Consistent with paragraph 11 of the Leaders' Statement, an Economy does not need to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or that would be contrary to the public or national interest, or compromise security of the economy concerned or that would prejudice the legitimate commercial interests of particular persons or enterprises. Each economy will keep commercially sensitive information secure and prevent its use for personal gain by procurement officials or to prejudice fair, open and effective competition.

## **APEC Investment Facilitation Action Plan (IFAP)**

### **Introduction – the benefits of investment**

There is strong international consensus on the benefits of investment, across the spectrum of its activities: from tangible assets to intellectual property. Such investment drives economic productivity, builds jobs, raises incomes, strengthens trade flows and spreads international best technologies and practices. Investment bolsters economic growth for developed and developing economies alike.

APEC's member economies recognise the significant economic benefits of investment and are active in promoting investment and facilitating cross-border investment flows. Facilitating investment requires work: a concerted national and international effort to create and sustain the most conducive climate for investment

APEC has been instrumental in this effort in the Asia-Pacific region beginning with its adoption in 1994 of the non-binding investment principles. These are designed to improve and further liberalise investment regimes and they include measures on facilitation. To reinforce APEC's work in this area, in 2007 in Sydney APEC Leaders agreed to the development of an Investment Facilitation Action Plan (IFAP) aimed at further promotion of investment in APEC member economies. Effective investment facilitation can make a significant contribution to the sort of broader investment climate reform efforts widely practiced by APEC member economies.

### **What is investment facilitation?**

To harness the advantages of foreign investment, it is critical that governments have investment procedures in place that do not unnecessarily increase the costs or risk of doing business, or constrain business competition (which individually or collectively lower productivity and growth). Investment facilitation refers to actions taken by governments designed to attract foreign investment and maximise the effectiveness and efficiency of its administration through all stages of the investment cycle.

Investment facilitation covers a wide range of areas, all with the ultimate focus on allowing investment to flow efficiently and for the greatest benefit. Transparency, simplicity and predictability are among its most important principles. The costs of opacity far outweigh the costs of enhancing transparency. Investors look for an investment environment that is stable, and that offers international best practice standards of protection, including the swift and equitable resolution of investment disputes.

A sound investment facilitation strategy ensures that all investment applications are dealt with expeditiously, fairly and equitably. Investment facilitation also requires creating and maintaining transparent and sound administrative procedures that apply for the lifetime of the investment, including effective deterrents to corrupt practices. Finally, investment facilitation is enhanced by the availability of quality physical infrastructure, high-standard business services, talented and flexible labour forces, and the sound protection of property rights.

### **Multilateral Investment Facilitation**

Several multilateral organisations have active programs in support of strengthening facilitation practices as part of broader investment promotion policies. The World Bank is at the forefront of these efforts, providing information services and diversified technical assistance to help governments and relevant intermediaries involved in promoting investment enhance their ability to respond effectively to investor needs.

UNCTAD analyses trends in FDI and their impact on development, compiles data on FDI, provides advisory services and training on international investment issues, helps developing countries improve policies and institutions that deal with FDI, and assists these countries to participate in international negotiations on investment. The OECD has developed investment policy instruments, such as the *Framework for Investment Policy Transparency* and the *Policy Framework for Investment*, to assist governments in developing frameworks for investment facilitation.

APEC's IFAP is designed constructively to complement these existing international efforts. It is a consensus plan on investment facilitation that reflects the specificities and priorities of APEC members. While it is non-binding, the IFAP reinforces APEC's commitment to significantly enhanced regional economic integration.

### **APEC and investment facilitation**

Since its inception in 1989, APEC has emphasised the importance of investment facilitation through practical activities in its work program. In 1995, APEC Leaders adopted the Bogor Goals of free and open trade and investment in the Asia-Pacific region by 2020. At the same time they committed to accelerate APEC's trade and investment facilitation programs. Investment facilitation accordingly is one of the aims of the 1995 Osaka Action Agenda (OAA).

APEC member economies are continuing efforts to enhance transparency of investment regimes, improve investment climates and encourage and facilitate free and open investment in the region. The 2007 report on *Strengthening Regional Economic Integration* emphasises the need to improve further the investment climate in APEC member economies and refocuses APEC's investment liberalisation and facilitation agenda on concrete initiatives that accelerate regional economic integration and reduce behind-the-border barriers.

Among APEC's achievements that have included investment facilitation so far are:

- APEC Non-Binding Investment Principles (1994);
- Options for Investment Liberalisation and Business Facilitation to Strengthen APEC Economies (1997);
- Guide to the Investment Regimes of APEC Member Economies (6<sup>th</sup> edition, 2007); and
- Study on *Enhancing Investment Liberalisation and Facilitation in Economic Development in the Asia-Pacific Region*, which examined ways to reduce 'behind-the-border' barriers to domestic investment.

These initiatives were undertaken in recognition of the diversity that exists among APEC member economies, and they provide members with a broad range of policy choices suitable for different economic circumstances.

### **Aims of APEC's IFAP**

The main aims of the IFAP are to:

- strengthen regional economic integration;
- strengthen the competitiveness and sustainability of economic growth of APEC's member economies;
- expand prosperity and employment opportunities in the APEC region; and
- make further progress toward achievement of the Bogor Goals.

### **APEC's investment facilitation principles**

The following principles are not exhaustive. They provide a guide to the kind of provisions that would constitute better practice in investment facilitation. They will not prejudice the positions of APEC members in any of their current or future unilateral actions or negotiations with investment provisions.

## A working framework

<b>Principles</b>	<b>Government role</b>	<b>Business impact</b>
<ul style="list-style-type: none"> <li>▪ <i>Promote accessibility and transparency in the formulation and administration of investment-related policies</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide full, clear and up-to-date picture of investment regime, including advance notice of proposed changes</li> <li>▪ Ensure readily available information, including through “one-stop” or special enquiry points and on-line services where appropriate</li> <li>▪ Promote legislative simplification including plain language drafting</li> <li>▪ Publicise outcomes of periodic reviews of investment regime</li> </ul>	<ul style="list-style-type: none"> <li>▪ Encourages business interest and enables business decisions</li> <li>▪ Allows business to include prospective changes in its planning decisions</li> <li>▪ Gives business confidence that laws, regulations and policies are consistent across different areas and levels of government</li> <li>▪ Promotes a perception in business that the government aims to maintain a good investment climate</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Enhance stability of investment environments, security of property and protection of investments</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Provide an environment which is politically and economically stable.</li> <li>▪ Provide secure property rights covering tangible and intangible assets including land use rights.</li> <li>▪ Provide well-performing court systems.</li> <li>▪ Facilitate effective contract enforcement.</li> <li>▪ Limit and review the use of regulatory expropriation and guarantee prompt adequate and effective compensation.</li> <li>▪ Encourage development of effective, reasonable cost mechanisms for resolving disputes including private arbitration services.</li> <li>▪ Consider membership of recognised international arbitration bodies.</li> <li>▪ Provide a mechanism for the enforcement of arbitral awards.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Reduces non-commercial risk associated with investment</li> <li>▪ Links more appropriately effort and reward increasing incentive to invest.</li> <li>▪ Increases business confidence in the domestic legal system</li> <li>▪ Increases ability to raise finance especially for SMEs</li> <li>▪ Provides investor guarantee of compensation for regulatory takings.</li> <li>▪ Gives recourse to impartial channels of dispute settlement</li> <li>▪ Gives an additional layer of protection in cases of disputes</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Enhance predictability and consistency in investment-related policies</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Systematise and institutionalise common application of investment regulations.</li> <li>▪ Give equal treatment in the operation and application of domestic laws and regulations on investment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ensures certainty to encourage business decisions</li> <li>▪ Simplifies business transactions and builds business confidence</li> <li>▪ Reassures investors that they are being given equal treatment</li> <li>▪ Reduces cost of doing business and</li> </ul>

<b>Principles</b>	<b>Government role</b>	<b>Business impact</b>
	<ul style="list-style-type: none"> <li>▪ Avoid discriminatory use of bureaucratic discretion</li> <li>▪ Establish clear criteria and transparent procedures for administrative decisions including with respect to investment approval mechanisms.</li> </ul>	<ul style="list-style-type: none"> <li>adds to competitiveness</li> <li>▪ Reduces scope for corruption</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Improve the efficiency and effectiveness of investment procedures</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Simplify, streamline and quicken investment regime and processes .</li> <li>▪ Provide timely, relevant and prompt advice.</li> <li>▪ Encourage and foster institutional cooperation and coordination</li> <li>▪ Where appropriate, establish “one-stop” approval authority – eg an active investment promotion agency with adequate funding</li> <li>▪ Clarify policy roles and accountabilities between different levels of government.</li> <li>▪ Keep the costs to the investor of the investment approval process to a minimum.</li> </ul>	<ul style="list-style-type: none"> <li>▪ More attractive investment environment</li> <li>▪ Speeds up investment processes</li> <li>▪ Avoids duplication and double-handling at different levels of government</li> <li>▪ Lowers the cost of doing business, especially for small and medium sized enterprises with higher barriers to entry</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Build constructive stakeholder relationships</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Maintain mechanisms for regular consultation and dialogue with interested parties including investors.</li> <li>▪ Provide framework to identify and address problems encountered by investors.</li> <li>▪ Promote improved standards of corporate governance.</li> <li>▪ Promote responsible business conduct.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Enables business to help shape productive investment environment</li> <li>▪ Ensures problems can be dealt with expeditiously</li> <li>▪ Strengthens private-public sector partnerships</li> <li>▪ Enables business to operate in a more socially responsible manner</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Utilise new technology to improve investment environments</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Apply new technology to improve information, application and approval processes.</li> <li>▪ Promote the adoption of new technology, including through training of officials at all levels of government in their use.</li> <li>▪ Provide adequate and effective protection of technology and related intellectual property rights.</li> <li>▪ Develop strategies to meet the intellectual property needs of</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increased accessibility and reduced business costs</li> <li>▪ Enhanced security through measures such as passwords and e-signatures</li> <li>▪ Encourages business to invest in research and development and to train personnel in the use of new technologies</li> <li>▪ Encourages business to invest in continuous improvement for new technologies and processes</li> </ul>

<i>Principles</i>	<i>Government role</i>	<i>Business impact</i>
	SMEs.	
<ul style="list-style-type: none"> <li>▪ <i>Establish monitoring and review mechanisms for investment policies</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Maintain mechanism for regular evaluation of investment regime.</li> <li>▪ Benchmark and measure performance of institutions involved in facilitating investment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Maximises effectiveness of investment regime, including in line with current international best practice</li> <li>▪ Encourages business to be innovative and forthcoming with new ideas</li> </ul>
<ul style="list-style-type: none"> <li>▪ <i>Enhance international cooperation</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Consider joining international instruments promoting international investment.</li> <li>▪ Encourage investment facilitation through bilateral agreements, including free-trade agreements.</li> <li>▪ Make use of international and regional initiatives aimed at building investment expertise, including information sharing.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Promotes international competitiveness of the economy</li> <li>▪ Increases predictability of the investment environment through binding treaty action</li> <li>▪ Especially relevant to companies with investments in more than one economy</li> </ul>

### **APEC's broader business facilitation agenda**

APEC's investment facilitation work cannot be considered in isolation from APEC's broader business facilitation activities. APEC continues to be the regional leader in promoting trade and investment liberalisation and facilitation, which remains a cornerstone for strengthening regional economic growth and integration. APEC's agenda is also increasingly focused on structural economic reform, so-called 'behind the border' initiatives to bolster trade and investment in the region. This includes areas such as domestic regulatory reform, corporate and public governance, critical infrastructure and capacity building. Ongoing reform in these areas is integral to underpinning productivity growth, increasing economic growth and stability and boosting trade and investment flows. APEC also has a growing human security agenda in support of stronger trade and investment environments, such as countering the threat of terrorism, food security and emergency management.

IFAP is intended to complement and reinforce existing APEC work on investment facilitation (outlined at Attachment A). In the same way, it is intended to work hand in glove with business and industry stakeholders. An important partner in this work is the APEC Business Advisory Council (ABAC). Ongoing consultation with these stakeholders is a feature of the IFAP.

### **Capacity Building**

An important feature of IFAP is provision for capacity building and technical cooperation to assist lesser developed APEC member economies with implementation. Such capacity building may include activities such as

- APEC activities aimed at improving capacity in developing economies; and
- participation in activities — including training and where appropriate use of other capacity building initiatives such as toolboxes — offered bilaterally or organised by multilateral or regional organisations such as the World Bank, UNCTAD and OECD.

In the course of developing Key Performance Indicators (KPIs) for IFAP actions, sub-fora may consider to identify a minimum of one capacity building need and mechanism to address this. Such mechanisms may include assistance from individual APEC member economies, cooperative activities in APEC, and, on occasion, assistance from international and regional institutions.

## **Measurement and Reporting**

CTI has agreed to develop a work program on implementation of the actions in the IFAP including related to methodologies for reporting progress.

### **Critical Dates**

#### **2008**

- MRT:
  - CTI/SOM to finalise IFAP drafting for Ministers' endorsement
  - Ministers to consider endorsement of the IFAP
  
- SOM III:
  - CTI to consider recommendations on KPIs and reporting methodologies for endorsement
  - CTI to consider capacity building proposals for endorsement
  
- Leaders: Report progress to Leaders

#### **2009**

- SOM I:
  - CTI to consider report by sub-fora and fora on implementation of IFAP
- SOM III:
  - CTI to consider report by sub-fora and fora on implementation of IFAP
- Leaders: Report progress to Leaders



## Investment facilitation – menu of actions and measures

<i>Specific actions</i>	<i>Timetable</i>
<b><i>Promote accessibility and transparency in the formulation and administration of investment-related policies</i></b>	
<ul style="list-style-type: none"> <li>▪ Publish laws, regulations, judicial decisions and administrative rulings of general application, including revisions and up-dates.</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Adopt centralised registry of laws and regulations and make this available electronically.</li> </ul>	By 2010
<ul style="list-style-type: none"> <li>▪ Establish a single window or special enquiry point for all enquiries concerning investment policies and applications to invest</li> </ul>	2008
<ul style="list-style-type: none"> <li>▪ Make available all investment-related regulations in clear simple language, preferably in languages commonly used by business</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Establish an Investment Promotion Agency (IPA), or similar body, and make its existence widely known</li> </ul>	2009 and beyond
<ul style="list-style-type: none"> <li>▪ Make available to investors all rules and other information relating to investment promotion and incentive schemes</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Allow investors to choose their form of establishment within legislative and legal frameworks.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Ensure transparency and clarity in investment-related laws</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Establish an APEC-wide website or e-portal to replace the hard copy publication the APEC Investment Guidebook (IEG)</li> </ul>	By end 2009
<ul style="list-style-type: none"> <li>▪ Encourage on-line enquiries and on-line information on all foreign investment issues</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Publish and/or make widely available screening guidelines for assessing investment proposals</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Maintain a mechanism to provide timely and relevant advice of changes in procedures, applicable standards, technical regulations and conformance requirements</li> </ul>	
<ul style="list-style-type: none"> <li>▪ To the extent possible, provide advance notice of proposed changes to laws and regulations and provide an opportunity for public comment</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Explore the possibility of using the international benchmarks on a voluntary basis as a reference point for peer dialogue and measuring progress</li> </ul>	2009
<b><i>Enhance stability of investment environments, security of property and protection of investments</i></b>	
<ul style="list-style-type: none"> <li>▪ Establish timely, secure and effective systems of ownership registration and / or property use rights for land and other forms of property.</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Create and maintain an effective register of public or state owned property.</li> </ul>	2010
<ul style="list-style-type: none"> <li>▪ Ensure costs associated with land transactions are kept to a minimum including by fostering competition.</li> </ul>	Continuing

<b>Specific actions</b>	<b>Timetable</b>
<ul style="list-style-type: none"> <li>▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Registering Property” as the basis for peer dialogue and benchmarking and measuring progress across APEC</li> </ul>	2010
<ul style="list-style-type: none"> <li>▪ Foster the dissemination of accurate market reputation information including creditworthiness and reliability</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Enforcing Contracts” as the basis for peer dialogue and benchmarking and measuring progress across APEC</li> </ul>	2009
<ul style="list-style-type: none"> <li>▪ Encourage or establish effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions, such as judicial, arbitral or administrative tribunals or procedures</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Facilitate commercial dispute resolution for foreign investors by providing reasonable cost complaint-handling facilities, such as complaint service centres, and effective problem-solving mechanisms</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Encourage the adoption of a dispute settlement framework that reflects the <i>International Convention on the Settlement of Investment Disputes between States and Nationals of Other States</i> (ICSID)</li> </ul>	2008 and beyond
<ul style="list-style-type: none"> <li>▪ Take steps to accede to an arbitral convention</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Protecting Investors” as the basis for peer dialogue and benchmarking and measuring progress across APEC</li> </ul>	2009
<b>Enhance predictability and consistency in investment-related policies</b>	
<ul style="list-style-type: none"> <li>▪ Increase use of legislative simplification and restatement of laws to enhance clarity and identify and eliminate inconsistency.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Provide equal treatment for all investors in the operation and application of domestic laws and principles on investment.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Reduce the scope for discriminatory bureaucratic discretion in interpreting investment-related regulations</li> </ul>	Beginning in 2008
<ul style="list-style-type: none"> <li>▪ Maintain clear demarcation of agency responsibilities where an economy has more than one agency screening or authorising investment proposals or where an agency has regulatory and commercial functions</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Establish and disseminate widely clear definitions of criteria for the assessment of investment proposals</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Establish accessible and effective administrative decision appeal mechanisms including where appropriate impartial “fast-track” review procedures</li> </ul>	2009
<ul style="list-style-type: none"> <li>▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Dealing with Licenses” as the basis for peer dialogue</li> </ul>	2009

<i>Specific actions</i>	<i>Timetable</i>
and benchmarking and measuring progress across APEC	

<i>Specific actions</i>	<i>Timetable</i>
<b><i>Improve the efficiency and effectiveness of investment procedures</i></b>	
<ul style="list-style-type: none"> <li>▪ Simplify and streamline application and, registration, licensing and taxation procedures and establish a one-stop authority, where appropriate, for the lodgement of papers</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Simplify and reduce the number of forms relating to foreign investment and encourage electronic lodgement</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Shorten the processing time and procedures for investment applications.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Promote use of “silence is consent” rules or no objections within defined time limits to speed up processing times, where appropriate</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Ensure the issuing of licences, permits and concessions is done at least cost to the investor</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Simplify the process for connecting to essential services infrastructure</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Starting a Business” as the basis for peer dialogue and benchmarking progress across APEC</li> </ul>	2010
<ul style="list-style-type: none"> <li>▪ Establish and disseminate widely clear and simple instructions and explanations concerning the application and registration process</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Implement strategies to improve administrative performance at lower levels of government.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Facilitate availability of high standard business services supporting investment</li> </ul>	
<b><i>Build constructive stakeholder relationships</i></b>	
<ul style="list-style-type: none"> <li>▪ To the extent possible, establish a mechanism to provide interested parties (including business community) with opportunity to comment on proposed new laws, regulations and policies or changes to existing ones prior to their implementation.</li> </ul>	2008
<ul style="list-style-type: none"> <li>▪ Continue to share APEC member economies’ experiences of successful stakeholder consultative mechanisms</li> </ul>	2009
<ul style="list-style-type: none"> <li>▪ Promote the role of policy advocacy within IPAs as a means of addressing the specific investment problems raised by investors including those faced by SMEs</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Continue to share APEC member economies’ experiences of successful public private dialogue to take advantage of the information on successes and problems encountered by established investors</li> </ul>	Continuing
<ul style="list-style-type: none"> <li>▪ Promote backward investment linkages between businesses,</li> </ul>	

<b><i>Specific actions</i></b>	<b><i>Timetable</i></b>
especially between foreign affiliates and local enterprises including through the promotion of industry clusters	
<ul style="list-style-type: none"> <li>▪ Encourage high standards of corporate governance through cooperation aimed at promoting international concepts and principles for business conduct, such as APEC's programs on corporate governance and anti-corruption.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Examine and share APEC member economies' experience with responsible business conduct instruments.</li> </ul>	Continuing
<b><i>Utilise new technology to improve investment environments</i></b>	
<ul style="list-style-type: none"> <li>▪ Promote the introduction and use of new technologies aimed at making the investment process simpler and faster</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Maintain adequate and effective protection of technology and related intellectual property rights</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Where possible, give effect to international norms for property protection</li> </ul>	
<b><i>Establish monitoring and review mechanisms for investment policies</i></b>	
<ul style="list-style-type: none"> <li>▪ Conduct periodic reviews of investment procedures ensuring they are simple, transparent and at lowest possible cost.</li> </ul>	2008 and 2009
<ul style="list-style-type: none"> <li>▪ Establish indicators for monitoring the performance of the special inquiry points or Investment Promotion Agencies such as those set down by the Multilateral Investment Guarantee Agency</li> </ul>	2010
<b><i>Enhance international cooperation</i></b>	
<ul style="list-style-type: none"> <li>▪ To the best extent possible, accede to, or observe, multilateral and/or regional investment promotion and facilitation conventions</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Make use, where appropriate, of international and regional initiatives aimed at building investment facilitation and promotion expertise, such as those offered by the World Bank, UNCTAD and OECD</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Ensure measures exist to ensure effective compliance with commitments under international investment agreements</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Review existing international agreements and treaties to ensure their provisions continue to create a more attractive environment for investment.</li> </ul>	Continuing

**Investment facilitation actions already under way**

<b><i>Principle</i></b>	<b><i>Action under way</i></b>
<i>Accessibility and transparency</i>	<ul style="list-style-type: none"> <li>• Tourism Destinations using Planning Processes to Facilitate Investment (TWG)</li> <li>• Capacity Building on Tourism Satellite Account as basis for Promoting Liberalization and Facilitation on Tourism Services (TWG 01/2008T)</li> <li>• Reducing Trade, Regulatory, and Financing Barriers to Accelerate the Uptake of Clean Coal Technologies by Developing Economies in the Asia Pacific Region (EWG 01/2008T)</li> <li>• ABAC: Business Statements on the importance of Transparency to Facilitate Investment</li> </ul>
<i>Stability, security and protection</i>	
<i>Predictability and consistency</i>	<ul style="list-style-type: none"> <li>• Seminar on Good Governance on Investment Promotion (CTI 10/2008T)</li> <li>• Cross-border Mergers and Acquisitions on Exports, FDI and Competition Policy (EC)</li> <li>• ABAC: Business Statements on the importance of Harmonisation of Rules to Facilitate Investment</li> </ul>
<i>Efficiency and effectiveness</i>	<ul style="list-style-type: none"> <li>• APEC-UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment (Stage 1) (CTI 03/2008A)</li> <li>• APEC-UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment (Stage 2) (CTI 04-2008A)</li> <li>• Doing Business - Investment at the Sub-National Level to Promote Economic Integration (Phase 1) (CTI 35/2008T)</li> <li>• Measures Affecting Cross Border Exchange and Investment in Higher Education in the APEC Region (HRD 02/2008T)</li> <li>• Study on Measures of Ease of Doing Business in APEC (EC)</li> <li>• ABAC: Business Statements on the importance of Simplification of Approvals Processes to Facilitate Investment</li> </ul>
<i>Constructive stakeholder relationships</i>	<ul style="list-style-type: none"> <li>• Workshop on SMEs' Financing in Asia-Pacific Region (SMEWG 02/2008A)</li> <li>• Capacity Building for Investment Liberalisation and Facilitation (HRDWG project for 2007-2008) (HRD 01/2007T)</li> <li>• Capacity Building for Sharing Success Factors of Improvement of Investment Environment (CTI 32/2008T)</li> <li>• ABAC: Matrix of Successful Investment Facilitation Measures</li> </ul>
<i>Use of new technology</i>	
<i>Monitoring and review</i>	

<b><i>Principle</i></b>	<b><i>Action under way</i></b>
<i>Enhance international cooperation</i>	<ul style="list-style-type: none"><li>• Seminar on Recent Trends on Investment Liberalization and Facilitation in Transport and Telecommunications Infrastructure (CTI 09/2008T)</li><li>• APEC Energy Trade and Investment Study and Roundtable (EWG)</li><li>• Capacity Building for International Investment Agreements (CTI 02/2008T)</li><li>• Core Elements in International Investment Agreements Project (Phase II) (CTI 34-2008T)</li><li>• APEC Seminar for Sharing Experience in APEC Economies on Relations between Competition Authorities and Regulator Bodies (CTI 13/2008T)</li></ul>