



**Asia-Pacific
Economic Cooperation**

Investing Across Borders - APEC

A benchmarking report on foreign direct investment regulation in
the APEC member economies and other economies

APEC Investments Experts' Group

APEC Committee on Trade and Investment

May 2011

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PREFACE

In September 2007, APEC Leaders provided a clear mandate for work to improve investment climates by removing behind-the-border barriers to investment in order to strengthen regional economic integration (REI). In February 2009, the APEC Senior Officials established three key priorities for the REI Agenda. This report addresses Priority 2 of the REI: *Improving the Business Environment “behind-the-border”*. APEC Senior Officials have tasked the Committee on Trade and Investment (CTI) to finalize the implementation plan of APEC’s Investment Facilitation Action Plan (IFAP). This report is intended to help focus the IFAP implementation strategy of CTI and the Investment Experts Group (IEG).¹

The report presents for each APEC member economy fact-based benchmarking data on laws and regulations in selected policy areas affecting entry and operations of foreign direct investors.² The data are based on surveys and interviews with private sector intermediaries – investment lawyers, accountants, and investment promotion specialists – working with foreign investors in each of the benchmarked economies.³ The methodology for this study is based on that of the global Investing Across Borders project of the World Bank Group.⁴ Chapter 4 of this report describes in detail the methodology for data collection, verification and indicator construction.

However, like all methodologies, the IAB methodology is not without its limitations and critics. The limitations of the project are noted in the introduction and methodology chapters of this report. The World Bank Group welcomes specific suggestions on how to continue to improve the methodology of this product in its future editions.

This report does not analyze the trends in foreign direct investment (FDI) flows to the APEC member economies. Many APEC economies have done remarkably well in attracting and retaining FDI in the recent years despite the global economic downturn. A recent 2011 UNCTAD report notes that “thanks to its position as a leader in global economic recovery, FDI flows to South, East and South-East Asia [in 2010] have picked up markedly, outperforming other developing regions... FDI flows (in the non-financial sector) to China, for example, reached more than \$100 billion [in 2010]... A surge in cross-border M&As was the main factor explaining the significant increase in FDI flows to Latin America and the Caribbean.”⁵

A number of other studies have also highlighted the trend of the continuously improving business environments of the APEC member economies. The Doing Business 2011 report showed that the East Asia and the Pacific and the high-income OECD regions had some of the highest shares of economies improving business regulations in 2009/2010. Furthermore, a majority of the APEC member economies have improved their positions on some of the leading global indexes of the quality of business

¹ This report was prepared by the Investing Across Borders (IAB) team of the World Bank Group’s Investment Climate Advisory Services at the request of APEC Secretariat (APEC Project #: CTI 43/2009T).

² Please note that the presented datasets are incomplete for two APEC member economies. In the case of Brunei Darussalam, data for the Arbitrating commercial disputes indicators and some of the data for the Investing across sectors indicators were unavailable. For Papua New Guinea, data for the Investing across sectors indicators and Accessing industrial land indicators were unavailable. The IAB team’s efforts to identify and obtain these data included desktop research, targeted email and telephone communication with key public and private sector specialists, and a field visit. The IAB team would be grateful for any assistance in obtaining these data for the future editions of the IAB report.

³ The findings, interpretations, and conclusions expressed in this report do not necessarily reflect the views of the Executive Directors of the World Bank or the governments they represent. As with all such reports, the World Bank Group does not guarantee the accuracy of the data included in this report.

⁴ The methodology of the Investing Across Borders project is based primarily on that of the Doing Business report. It can be viewed online at <http://www.doingbusiness.org>. The methodology of the Global Investment Promotion Benchmarking used its own methodology; <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>. For more details, see Chapter 4: Methodology.

⁵ UNCTAD. (2011). Global Investment Trends Monitor No. 5. Geneva. (http://www.unctad.org/en/docs/webdiaeia20111_en.pdf).

environments and competitiveness – including the World Economic Forum’s Global Competitiveness Index, World Bank Group’s Ease of Doing Business Index, or Heritage Foundation’s Investment Freedom Index. In many of these indexes most of the APEC economies not only improved their absolute scores, but also their positions in the rankings relative to the other economies. This means that most of the APEC member economies have not only liberalized and improved the competitiveness of their investment climates, but have done so faster and to a greater extent than most other economies in the world. The analysis presented in the overview chapter of this report also shows that economies with low levels of legal and administrative impediments to FDI (as measured by the IAB methodology) attract more FDI.

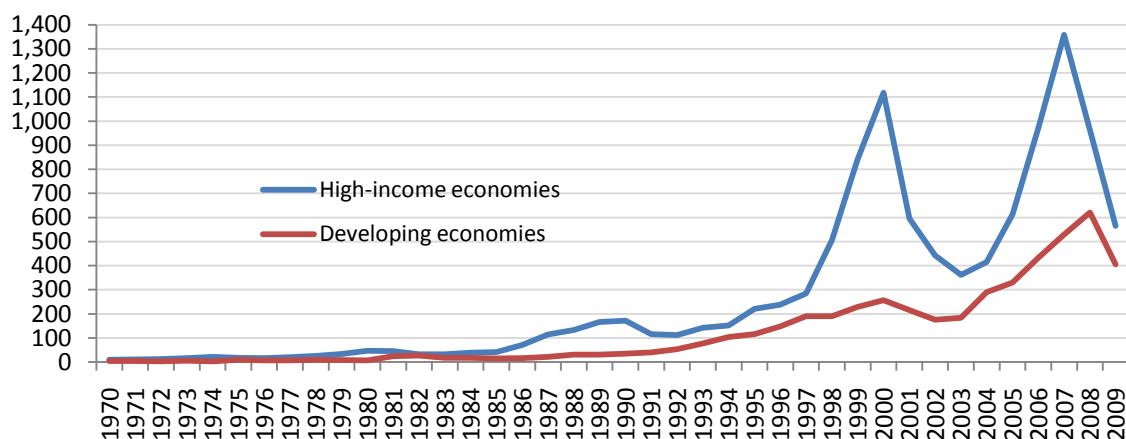
This report aims to help economies develop more competitive business environments by identifying good practices in investment policy design and implementation, facilitating peer-learning opportunities, stimulating reforms, and offering cross-country data for research and analysis. It provides indicators examining information availability to potential investors, sector-specific restrictions on foreign equity ownership, the process of starting a foreign business and accessing industrial land, and regimes for commercial arbitration. Investing Across Borders indicators do not measure all aspects of the business environment that matter to investors. For example, they do not focus on security, macroeconomic and political stability, market size and potential, corruption, skill level, or the quality of infrastructure. As a result, these indicators should be used as complements to the other available resources and as a starting point for governments wanting to improve the laws, regulations and practices affecting their FDI competitiveness.

1. INVESTING ACROSS BORDERS: AN INTRODUCTION

Like trade, foreign direct investment has occurred throughout history.⁶ From the merchants of Sumer around 2500 BCE to the East India Company in the 17th century, investors routinely entered new markets in foreign dominions. In 1970 global FDI totaled \$13.3 billion. By 2007 it was nearly 150 times higher, peaking at \$1.9 trillion.⁷

The economic crisis slashed global FDI flows by about 40% in 2009, affecting all economies, sectors, and forms of investment (Figure 1.1). Mergers and acquisitions in high-income economies contracted the quickest after the 2007 subprime mortgage crisis in the United States contributed to banking and fiscal crises in Western Europe and Japan. The contagion gradually spread, affecting new investment in emerging markets and developing economies.⁸ Still, developing economies fared marginally better during the crisis. FDI in developing economies fell 35% in 2009, compared with 41% in high-income economies.⁹ With the global recession receding somewhat, FDI will likely recover in the near future. Most indicators signal that FDI will be higher in 2011 than in 2010.

Figure 1.1 FDI in high-income and developing economies, 1970–2009
Billions of U.S. dollars at current prices and exchange rates



Source: UNCTAD, Foreign Direct Investment Online, <http://stats.unctad.org/fdi>.

⁶ According to the International Monetary Fund, FDI is a category of cross-border investment that involves residents of one economy obtaining a lasting interest in an enterprise located in another economy. A lasting interest is commonly understood to involve at least 10% of ordinary shareholding or voting power. In effect, FDI need not entail much transfer of funds and can involve a firm bringing its brand, technology, management, and marketing strengths to bear on its local interest.

⁷ The previous peak was in 2000, at \$1.4 trillion, which fell to \$561 billion in 2003 before peaking again in 2007.

⁸ This report uses *developing economies* to refer to all low- and middle-income countries with 2008 gross national income (GNI) per capita of \$11,905 or less, based on World Bank data. All economies with 2008 GNI per capita of \$11,906 or more are referred to in this report as high-income economies.

⁹ UNCTAD (2010).

The recovery in FDI is good news for economies suffering from the global economic downturn and seeking to stimulate economic growth. FDI's benefits for economic development have been well established. A global network of 80,000 multinational corporations and 800,000 foreign affiliates has helped create millions of jobs, transferred technology, upgraded skills, fostered competition, helped firms break into new markets, and contributed to the fiscal standing of many economies.¹⁰ Through capital spillovers, FDI has encouraged the adoption of new production technologies. Foreign companies have also stimulated knowledge transfers by training local workers, developing their skills, and introducing new management practices and better organizational arrangements.¹¹

INTRODUCING THE *INVESTING ACROSS BORDERS* INDICATORS

The *Investing Across Borders* (IAB) indicators measure FDI regulation in 4 specific policy areas: Regulation of foreign direct investment, establishment of a company, acquisition of land for business operations and the arbitration regime. This APEC report also presents data on the quality of investment promotion services. These indicators aim to complement existing measures of the quality of business environments. Quantitative data and benchmarking can be useful in stimulating policy debate and action, both by exposing potential challenges and by identifying where policy makers might look for lessons and good practices. Indicators can also provide a basis for analyzing how different policy approaches—and different policy reforms—contribute to broader desired outcomes such as FDI, competitiveness, and growth. The following examples illustrate how the areas of regulation measured by IAB can be reflected in foreign investors' decision making:

A company seeking to expand its global presence will assess its options before deciding on a location for its investment. One of the first determinants of location is whether the company is allowed to enter and operate in a specific market. Though most economies have liberalized and opened most sectors to foreign investment, some industries continue to be protected from foreign competition. *IAB's Investing Across Sectors indicators find that while primary and manufacturing sectors are mostly open, some industries—such as media, transportation, energy, and telecommunications—remain restricted in many economies.*

Even if a foreign company can enter a particular sector, it may face other barriers to market access and operations. Onerous start-up procedures, excessive licensing and permit requirements, and time-consuming export and import processes are among the factors that can make an economy less attractive to foreign investors. *IAB's Starting a Foreign Business indicators show that in some economies foreign companies must complete lengthy procedures to obtain investment approvals, adding weeks and sometimes months to the start-up time. In other economies the procedures can be done online and take only a few days.*

Once a foreign company has been established in a new market, it is likely to need to acquire real estate for its operations. Administrative barriers to FDI can include difficulties associated with securing access to land.¹² The ability to access land or buildings with secure ownership rights, at transparent prices, and with limited restrictions can be critical to a foreign investor's decision on whether to invest in a new market. *IAB's Accessing Industrial Land indicators find that foreign companies cannot own land in some economies. In others, leasing land can take up to 5 months. And while most economies have both cadastre and land registry systems, less than half of those in the IAB sample have systems for sharing land-related data across agencies.*

A foreign company might also be concerned about its ability to resolve disputes with commercial partners. Complex commercial contracts require reliable and flexible dispute resolution mechanisms, and companies often prefer to have alternatives to court litigation. Investors favor environments where they have flexibility in deciding on arbitration proceedings and where outcomes are more secure and easily enforceable. Thus a stable and predictable arbitration regime, as part of the broader legal framework, is another factor that can affect conditions for FDI. *IAB's Arbitrating Commercial Disputes indicators show that economies generally recognize arbitration as a mechanism for resolving commercial*

¹⁰ UNCTAD (2004).

¹¹ de Mello (1997).

¹² Muir and Shen (2005).

disputes, although some do not have special arbitration laws. Party autonomy levels and enforcement mechanisms for arbitration awards vary. For example, many economies in Eastern Europe and Central Asia have adopted rules to ensure prompt enforcement of arbitration awards.

The IAB indicators comprise measures of the characteristics of laws and regulations (de jure indicators), and their application and implementation in practice (de facto indicators). Below are overviews of the 4 principal IAB indicator topics, and the investment promotion topic:

Investing Across Sectors indicators measure the degree to which domestic laws allow foreign companies to establish or acquire local firms. The indicators track restrictions on foreign equity ownership in 33 sectors, aggregated into 11 sector groups, including primary, manufacturing, and service sectors.

Starting a Foreign Business indicators record the time, procedures, and regulations involved in establishing a local subsidiary of a foreign company in the form of the limited liability company.

Accessing Industrial Land indicators evaluate legal options for foreign companies seeking to lease or buy land in a host economy, the availability of information about land plots, and the steps involved in leasing land.

Arbitrating Commercial Disputes indicators assess the strength of legal frameworks for alternative dispute resolution, rules for arbitration, and the extent to which the judiciary supports and facilitates arbitration. The indicators compare national regimes for domestic and international arbitration for local and foreign companies.

Global Investment Promotion Benchmarking (GIPB) assesses the quality and efficiency of responses of investment promotion institutions to potential investments. It shows how effectively government agencies are promoting their economies to foreign investors.

The core IAB indicators are based on data collected through questionnaires completed by local experts in 92 economies—lawyers with expertise in investment law, business consultants, and investment promotion specialists. This report is based on data collected from more than 2,400 respondents between April 2009 and December 2010. IAB’s website provides open access to all these data (Box 1.2).

Box 1.2: The Investing Across Borders website (www.investingacrossborders.org)

The *Investing Across Borders* website (<http://www.investingacrossborders.org>) is a public database offering hundreds of previously unavailable data points on each economy covered by the report. The site:

- Provides free access to the entire IAB 2010 report.
- Allows user-friendly access to thousands of data points, sorted by economy or topic.
- Displays disaggregated underlying data for each economy and topic.
- Offers international benchmarks.
- Provides references to FDI-related laws.
- Lists thousands of leading experts on business and FDI laws and regulations.
-

The indicators are structured to reward good regulation and efficient processes. Transparent, predictable, and effective laws and regulations are critical to ensuring that foreign investment results in a win-win situation for investors, host economies, and their citizens. A solid, consistently applied legal framework gives investors confidence in the security of their property, investments, and rights. The IAB project does not advocate for reducing all regulatory barriers, but hopes to improve understanding of how to maximize the development benefits of FDI through appropriate regulatory frameworks.

GOALS OF THE IAB INDICATORS

The World Bank Group’s *Doing Business* project provides the methodological foundation for the IAB indicators.¹³ The *Doing Business* indicators compare regulation of domestically owned small and medium-size enterprises. Those indicators have helped stimulate hundreds of reforms worldwide and

¹³ *Doing Business*, <http://www.doingbusiness.org>.

draw millions of visitors to their online database every year. Many users of *Doing Business* data—including governments, policymakers, academics, and other stakeholders—have expressed interest in complementary indicators on regulation of foreign-owned companies. The IAB indicators aspire to meet different stakeholders’ needs for information, analysis, and policy action (Table 1.3).

Table 1.3: Audiences and uses for the IAB indicators

Audience	Uses
Governments and investment promotion intermediaries	<ul style="list-style-type: none"> - Identify and share regional and international good practices that help guide policy advocacy priorities. - Stimulate and advise investment policy reforms. - Strengthen the credibility of information provided by investment promotion intermediaries by using third-party evaluations of the investment climates. - Benchmark economies against one another to refine investment promotion strategies and publicize successes in improving investment climates.
Foreign investors and site location consultants	<ul style="list-style-type: none"> - Facilitate decisions on global investment locations by complementing other information sources. - Provide easy to use, practical indicators on the efficiency of investment processes and the strength of investment laws as implemented worldwide and make them available online.
Advisers and consultants on investment policy and promotion	<ul style="list-style-type: none"> - Identify legal, regulatory, and administrative impediments to economies’ attractiveness for investment. - Analyze regional and global good practices to better target and design advisory efforts. - Foster competition to strengthen FDI regulations by allowing economies and regions to compare themselves. - Monitor and evaluate the impact of investment climate reforms.

Foreign investors and governments concerned about the competitiveness of an economy’s business environment have a broad range of resources at their disposal. Table 1.4 lists some widely used international indicators and assessments of investment climates. IAB does not provide a complete picture of economies’ investment climates and should be used in conjunction with other tools to analyze business environments, diagnose their strengths and weaknesses, and, if appropriate, guide reforms.

Table 1.4: International indicators and assessments of investment climates

Country Commercial Guides (http://www.buyusainfo.net)
Country Risk Reports (http://www.ihsglobalinsight.com)
Doing Business (http://www.doingbusiness.org)
Economic Freedom of the World (http://www.freetheworld.com/reports.html)
Economist Intelligence Unit assessments and other products (http://www.eiu.com)
Enterprise Surveys (http://www.enterprisesurveys.org)
Euromonitor International (http://www.euromonitor.com)
FDI Confidence Index (http://www.atkearney.com)
FDI Profiles (http://www.vcc.columbia.edu)
fDi Intelligence (http://fdiintelligence.com)
Fitch Ratings (http://www.fitchratings.com)
Global Competitiveness Report (http://www.weforum.org/en/initiatives/gcp)
Global Location Trends (http://www.ibm.com/bcs/pli)
Global Production Location Scoreboard (http://www.global-production.com/scoreboard)
Index of Economic Freedom (http://www.heritage.org/index)
International Country Risk Guide (http://www.prsgroup.com/icrg.aspx)
Investment Policy Reviews (http://www.unctad.org/ipr)
Market Potential Index for Emerging Markets (http://globoledge.msu.edu/resourcedesk/mpi)
“Measures of Restrictions on Inward Foreign Direct Investment in Developing Countries” (http://www.swarthmore.edu/SocSci/sgolub1)
Moody’s Investor Service (http://www.moodys.com)
OCO Insight (http://www.ocoglobal.com/index.cfm?page_name=insight)
Policy Framework for Investment (http://www.oecd.org/daf/investment/pfi)
Standard and Poor’s (http://www.standardandpoors.com)
World Competitiveness Yearbook (http://www.imd.ch/research/publications/wcy/index.cfm)
World Investment Report (http://www.unctad.org/wir)

Despite this abundance of resources, IAB's value is based on its ability to identify specific, actionable and practical steps that governments can take to increase domestic investment competitiveness in the policy and regulatory areas measured by the IAB indicators. The following features differentiate IAB from other data sources:

- *Actionable, reform-oriented indicators.* The IAB indicators are actionable because they identify specific impediments to FDI in the legal, regulatory, administrative, and institutional frameworks of each economy covered. The indicators are reform-oriented because they identify problems that can be addressed in the short and medium term to strengthen an economy's investment climate. They are based on standardized questionnaires, allowing for straightforward international comparisons of results, providing examples of good practices, and encouraging exchanges of information between economies.
- *Local expertise.* The IAB indicators are based on information collected from more than 2,400 local experts and practitioners representing leading law and accounting firms, chambers of commerce, and investment promotion institutions. These experts bring a wealth of knowledge based on their experiences advising foreign investors on market entry and operations in their economies.
- *Focus on laws and their implementation.* The IAB indicators evaluate the strength of written laws and regulations as well as, where possible, their implementation and application. Many economies have adopted modern laws and rules, but these are often not applied effectively. The combined measures of de jure and de jure performance in some of the indicators provide a more comprehensive, realistic picture of business conditions.
- *Periodic updates.* The IAB report will become a regular publication measuring changes in FDI regulation worldwide. Similar initiatives have shown the power of regularly updated indicators to stimulate dialogue and actions that can lead to systemic, long-term reforms. IAB's ability to capture and recognize these improvements on a regular basis gives political actors compelling tools for engaging in strategic communication and for initiating or sustaining reform momentum. As IAB develops, it will be regularly updated to ensure it remains an effective driver of reform.

EVOLUTION AND LIMITATIONS OF THE IAB INDICATORS

The IAB indicators have limited thematic coverage. The 4 topics covered by this report were chosen from a wide range of policy variables that affect the investment climates and influence investment decisions. These include the host economy's market size and location, availability of natural resource, macroeconomic performance, infrastructure quality, labor and production costs, and quality of governance and institutions. Other factors include related and supporting industries, capital costs, trade policy and administration, access to finance and quality of life¹⁴.

Many competitive factors (such as market size, location, and natural resource availability) cannot easily be influenced by public policy. Furthermore, other policy-level drivers of FDI (such as macroeconomic performance, infrastructure quality, and human capital) can only be influenced in the medium to long run. In contrast, most of the areas of business and FDI regulation measured by IAB can be affected in the short run and at comparatively low cost to governments, providing an excellent opportunity for near-term benefits.

In its conceptual and developmental phases (2006–08) IAB considered and tested indicators measuring policy areas such as employment of expatriate workers and managers, investment incentives and promotion, currency convertibility and repatriation, expropriation, breach of contract, public procurement, environmental and social regulation, and intellectual property. The team ultimately decided on the more modest thematic coverage of the 4 topics presented in this report based on what was desirable, feasible, and practical.

IAB favored topics that could be affected by public policy in the short term and information that could be captured through surveys of local experts. It aimed for indicators that capture the treatment of a typical foreign investor and offer enough variation across economies to warrant the development of global

¹⁴ MIGA (2009); Nunnenkamp (2002); Porter (2008); UNCTAD (2005a).

indicators. While legal and regulatory frameworks for FDI are typically not the primary drivers of investment decision, they can, all other conditions being equal, they can tip an investment decision in favor of a particular economy. Strong, stable legal and regulatory frameworks help create a more transparent, predictable business environment—one more conducive to business and investment. Thus a well-designed, effectively implemented legal and regulatory framework signals to investors that foreign investment is welcome.

However, understanding the limitations of the IAB indicators is just as important as understanding their scope. This section gives an overview of the IAB project's limitations in 2 areas: substantive, focusing on the content and thematic coverage of the indicators; and methodological, concerned with the questionnaire design and data collection. These limitations pertain to the project as a whole and are discussed in greater detail in the methodology chapter, where additional limitations related specifically to each of the 4 topics covered by the project are also presented. Readers and users of the IAB indicators are urged to keep these limitations in mind when interpreting the data.

Substantive

- IAB focuses on regulation of FDI, not portfolio investment.¹⁵
- Thematic coverage is limited to 4 discrete areas that can be affected by government policy action in the short-run. Excluded from the project are significant competitive factors (such as market size, location, and natural resource availability) cannot easily be influenced by public policy. Furthermore, other policy-level drivers of FDI (such as macroeconomic performance, infrastructure quality, and human capital) can only be influenced in the medium to long run, and are also excluded from the report's thematic coverage.
- IAB data should not be used as a proxy for government reforms in general, and governments should not assume that improvements in the indicator scores will increase FDI.
- IAB focuses on national laws and, in some cases, on economies' ratifications of international conventions. It does not focus on international investment agreements.
- The project does not cover legal regimes for special economic zones (SEZs), export processing zones (EPZs), and other areas governed by special legal frameworks designed to promote FDI and exports.

Methodological

- IAB is not a survey of investor or company perceptions.
- IAB data are not based on a statistically significant sample of respondents in each economy.
- The IAB indicators are not necessarily representative of all investment projects.
- Data on the efficiency of administrative processes refer to each economy's largest business city only. Furthermore, these data are based on the specific assumptions of a case study company (for example that the foreign investment is the form of a wholly foreign-owned subsidiary incorporated as a limited liability company). This means the data cannot necessarily be generalized.
- Measures of time, captured in particular through some of the de facto indicators, involve an element of judgment by the expert respondents.¹⁶
- For indicators that quantify the length of administrative processes, the methodology assumes that an investor and its legal counsel have full information on what is required and that they do not waste time when completing procedures.
- The IAB indicators are not specifically designed to indicate whether treatment of foreign investors is more or less favorable than that of domestic enterprises.

Due to these and other limitations, the IAB indicators are only partial measures of the topics they cover. They are limited in scope and explanatory power when it comes to actual policies and business realities.

¹⁵ Portfolio investment, in contrast to foreign direct investment, represents passive holdings of securities such as foreign stocks, bonds, or other financial assets and does not convey significant control over the management or operations of the foreign firm.

¹⁶ The de facto indicators still may not capture the degree of variation an investor may experience when completing the procedures. Thus the IAB project investigates whether a measure of the degree of variation of the individual responses should be included to compare the consistency of treatment across economies. For example, if in 1 country it takes a median of 90 days to establish a foreign-owned company with a standard deviation of 5, while another takes 60 days with a standard deviation of 45, an investor is likely to want to ensure that the burden of the regulation takes 2 months rather than somewhere between 2 weeks and 4 months.

Circumstances in each economy must be considered when interpreting the indicators and their implications for policies and the investment climate.

For more information on the project, please visit
<http://www.investingacrossborders.org>

2. OVERVIEW

Investing Across Borders – APEC report presents cross-country indicators analyzing laws, regulations, and practices affecting foreign direct investment (FDI) in 92 economies including all member economies of APEC. The core IAB indicators focus on 4 thematic areas measuring how foreign companies invest across sectors, start local businesses, access industrial land, and arbitrate commercial disputes. The indicators combine analysis of laws and regulations, and their implementation. Supplemental data on the quality of investment promotion services are also presented under the section entitled “Global Investment Promotion Benchmarking”. The indicators explore differences across economies to identify good practices, facilitate learning opportunities, stimulate reforms, and provide cross-country data for research and analysis.

The project’s methodology is based on the World Bank Group’s *Doing Business* initiative.¹⁷ The IAB indicators draw on data collected through a survey of lawyers, other professional service providers (mainly accounting and consulting firms), investment promotion institutions, chambers of commerce, and other expert respondents in each of the economies measured. Between April 2009 and December 2010 more than 2,400 experts in 92 economies responded to the survey to provide data for this report.

This chapter presents the report’s main insights into laws and regulations governing FDI, and offers examples of FDI competitiveness-enhancing practices for each indicator area. It also provides key findings for each region. IAB does not measure all aspects of the business environment that matter to investors. For example, it does not measure security, macroeconomic stability, market size and potential, corruption, skill levels, or infrastructure quality. Still, the indicators provide a starting point for governments seeking to improve their competitiveness in attracting foreign investment.

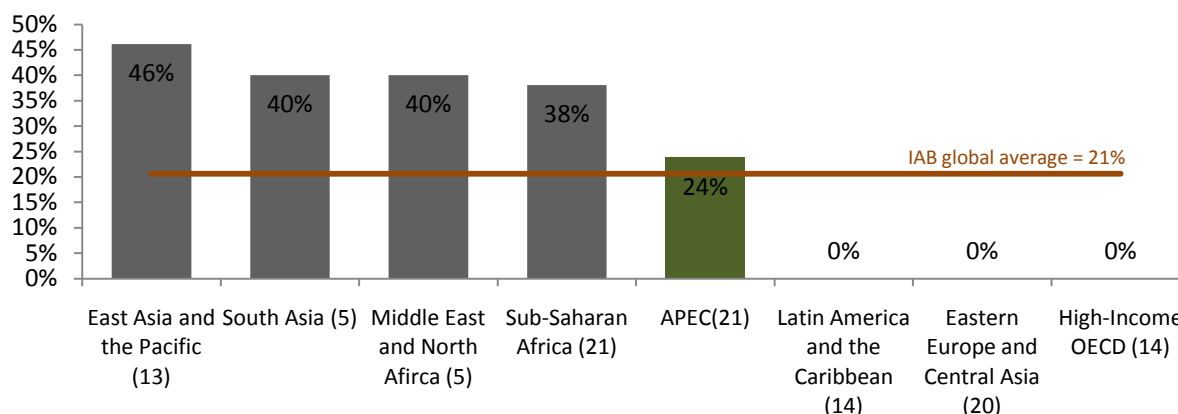
MAIN FINDINGS

Restrictive and obsolete laws and regulations impede FDI

Most of the 92 economies measured by IAB have FDI-specific restrictions that hinder foreign investment. For example, a fifth of the economies surveyed require foreign companies to go through a foreign investment approval process before proceeding with investments in light manufacturing (Figure 2.1). This requirement adds, on average, nearly 1 month to the establishment process—and in some economies up to 6 months. In contrast to the majority of other regions less than a quarter of the APEC member economies require an investment approval making it easier to invest into these economies.

¹⁷ The methodology of the *Doing Business* project can be viewed at <http://www.doingbusiness.org>.

Figure 2.1 Share of IAB economies requiring investment approval



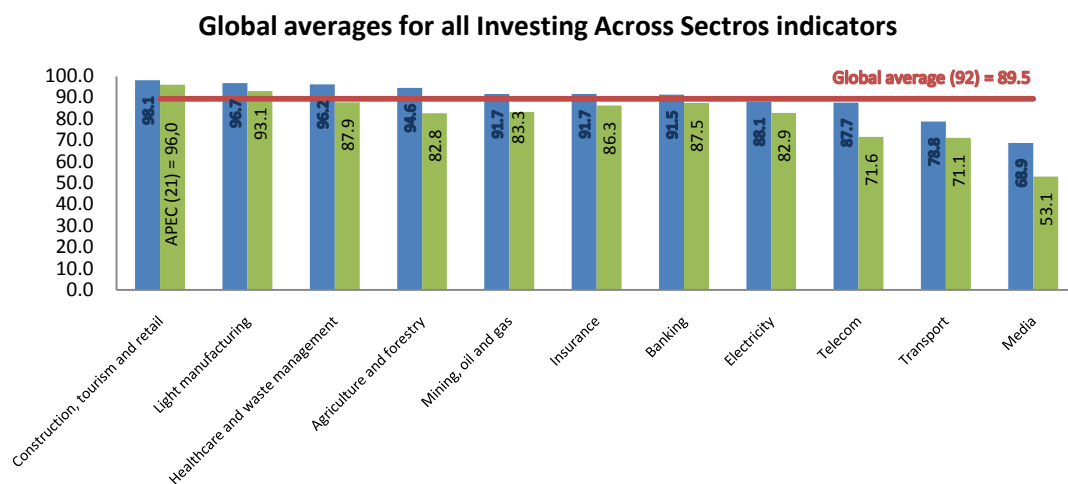
Note: The 0% denotes that none of the IAB economies in that region require an investment approval

Source: Investing Across Borders database.

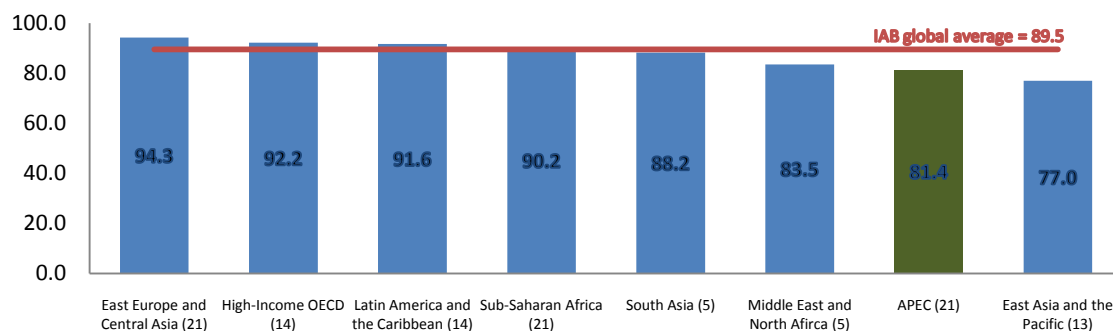
In addition, almost 90% of economies limit foreign companies' ability to participate in some sectors of their economies. While there are few restrictions on foreign ownership in the primary sectors and manufacturing, services—such as media, transportation, and electricity—have stricter limits on foreign participation (Figure 2.2). APEC member economies tend to be more restrictive in most of the sectors than the other regions as measured by IAB (Figure 2.2).

Figure 2.2 Restrictions on foreign ownership of companies vary by sector and region

Foreign equity ownership index (100 = full foreign ownership allowed)



Investing Across Sectors indicator by region



Source: Investing Across Borders database.

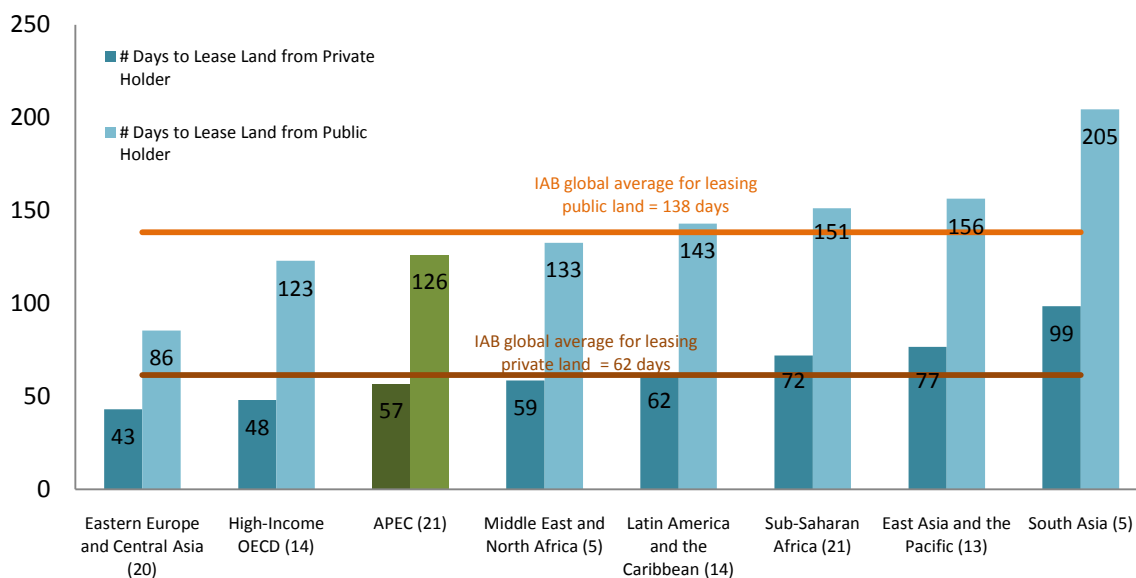
In some sectors—such as banking, insurance, and media—laws often limit the share of foreign equity ownership allowed in enterprises. In others—such as transportation and electricity—state-owned monopolies preclude both foreign and domestic private firms from engaging in the sectors. This is also true in most APEC member economies.

When it comes to international commercial arbitration, more than 10% of IAB economies do not have special statutes for commercial arbitration. Furthermore, 1 in 4 economies has not ratified the New York Convention, the ICSID Convention, or both.¹⁸ Adherence to and implementation of international and regional conventions on arbitration signal a government’s commitment to the rule of law and its investment treaty obligations, which reassures investors. All APEC economies have an arbitration statute, yet only 19% have a mediation law.

Red tape and poor implementation of laws create further barriers to FDI

The IAB indicators go beyond analyzing the text of laws and the ratification of international conventions. They also examine the typical experience of investors as they go through administrative processes and interact with public institutions. For instance, the indicators find that leasing privately held industrial land takes, on average, 2 months—and leasing public land almost 5 months (Figure 2.3). APEC member economies manage to keep both, lease from a private and from a public owner, procedures below the global averages. APEC member economies perform better than the global average on both those measures.

Figure 2.3 Far more time is needed to lease public than private land

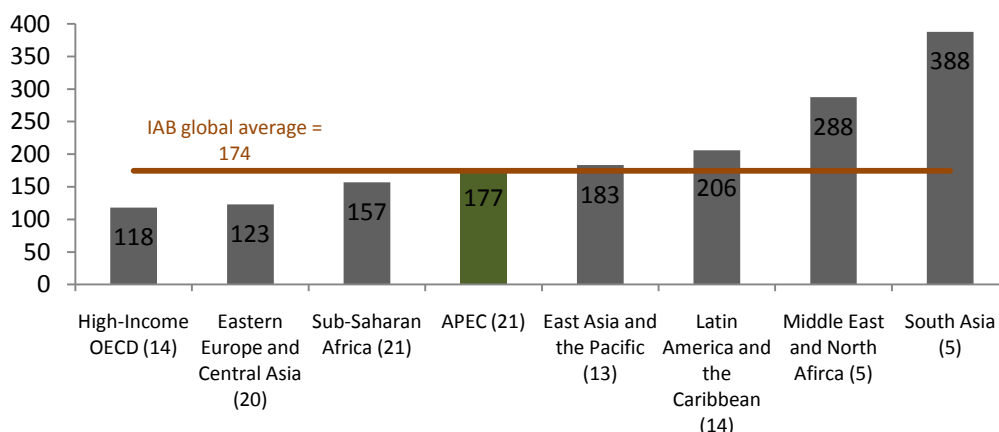


Source: *Investing Across Borders* database.

The amount of time required to enforce an arbitration award in local courts also varies by economy. On average, more than a year is needed in the South Asian economies measured by IAB. In contrast, in high-income OECD economies enforcement can be completed in less than 4 months (Figure 2.4).

¹⁸ Complete names are the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

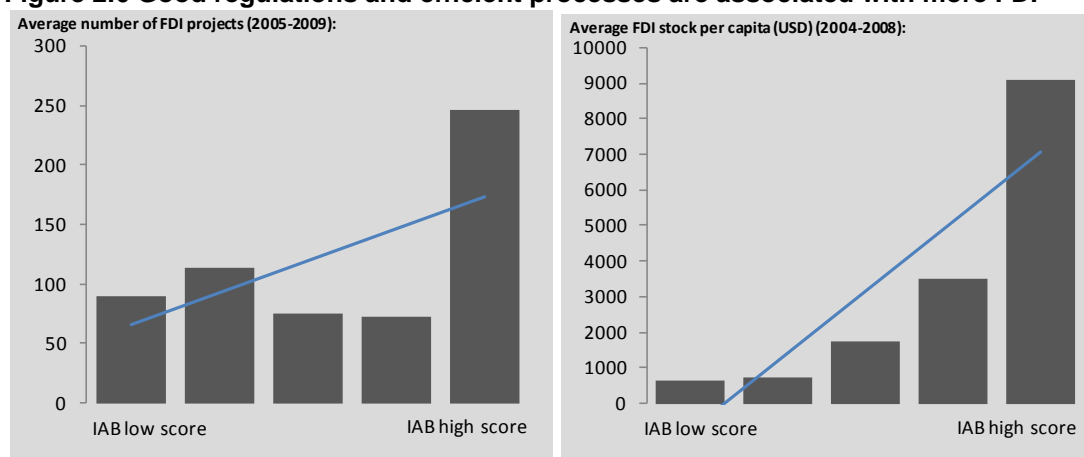
Figure 2.4 The number of days required to enforce an arbitration award varies across regions



Source: *Investing Across Borders* database.

Good regulations and efficient processes matter for FDI. Economies with poor regulations and inefficient processes for foreign companies receive less FDI and have smaller accumulated stocks of FDI (Figure 2.6). Based on IAB results, economies tend to attract more FDI if they allow foreign ownership of companies in a variety of sectors, make start-up, land acquisition, and commercial arbitration procedures efficient and transparent, and have strong laws protecting investor interests. But this correlation does not imply existence or direction of a causal relationship. Many other variables—such as market size, political stability, infrastructure quality, and level of economic development—are likely to better explain the relationship.

Figure 2.6 Good regulations and efficient processes are associated with more FDI



Note: Correlations compare aggregate IAB score with two measures of FDI. The first figure shows the correlation with the 5-year average number of new FDI projects and is significant at the 5% level. The second shows the 5-year average FDI stock per capita and is significant at the 1% level. The aggregate IAB score is the average of the share of total possible points per topic. The IAB aggregate is broken into 5 quintiles expressed as groups of economies below the 20th, 40th, 60th, 80th, and 100th percentile ranking.

Source: fDi Intelligence database, UNCTAD FDI Statistics database, World Bank Group World Development Indicators database.

IAB also finds that economies with smaller populations and markets tend to have fewer restrictions on FDI. There is a statistically significant and positive association between openness to FDI and its inflow, even after controlling for other determinants like market size, wages, quality of infrastructure and

institutions, and natural resource endowments. Economies that have done particularly well in attracting FDI (before the recent economic crisis) also score well on the IAB indicators.¹⁹

Effective institutions and efficient processes help foster FDI

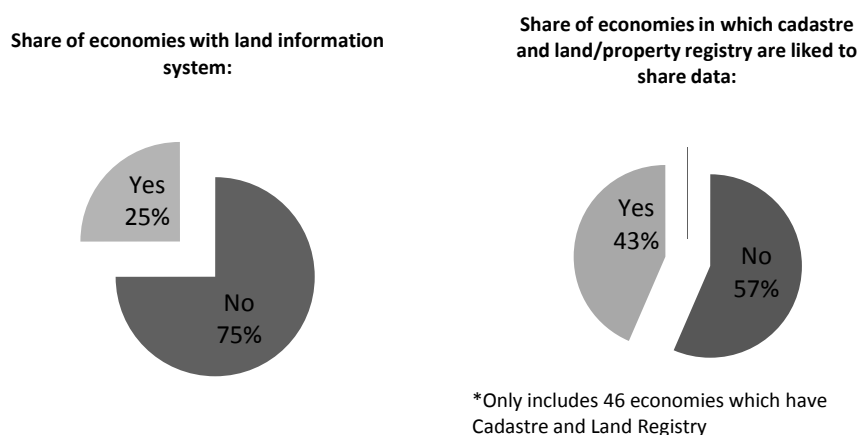
Easily accessible and reliable information and efficient and predictable actions by public institutions help create a business environment conducive to investment. For instance, studies have shown that 70% of economies miss out on foreign investment due to deficiencies of government investment promotion institutions in providing potential investors with accurate and timely information.²⁰

Electronic services can make administrative processes more efficient and transparent and do not necessarily require costly or complex technological solutions. Any public agency with a website can start by posting key information online and, over time, provide some services electronically.

The convenience of online access to laws and regulations is important to all businesses, but particularly for foreign investors not physically present in an economy. IAB shows that laws on establishing a foreign business are available online in nearly all IAB economies. In 83% of all IAB economies measured in this report, laws on commercial arbitration are available online. But many of these are not websites of government institutions, but of law firms. Economies that provide a lot of information about land, often through a land information system, usually make it accessible online.

There is significant variation in the effectiveness of institutions providing land information (mainly land registries and cadastres). Except in some Eastern Europe and Central Asia and high-income OECD economies, public land management institutions are not organized well enough to make information easily accessible. Less than a quarter of the economies surveyed have functioning land information systems, and many lack modern and coordinated land management institutions (Figure 2.7).²¹ As technology develops, access to information becomes paramount—not only to inform investors, but also to improve the economies’ business climates.

Figure 2.7 Economies vary widely on the effectiveness of land management systems



Source: *Investing Across Borders* database.

The existence of a functioning arbitral institution in an economy is an indication of a solid arbitration practice. But more than 10% of the economies surveyed do not have such an institution. In some economies such institutions are no longer active, as in Ethiopia and Liberia. In APEC 14% of the member economies do not have an arbitration institution making it harder to use arbitration as a tool for business.

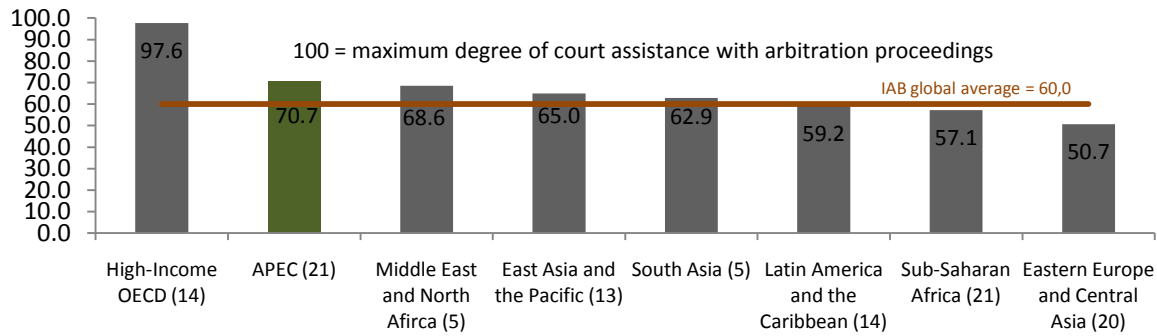
¹⁹ According to World Bank’s *World Development Indicators*, of the 87 economies measured by IAB, the countries with the highest FDI per capita between 2000 and 2007 are Austria, Canada, the Czech Republic, France, Ireland, Singapore, the Slovak Republic, Spain, the United Kingdom, and the United States.

²⁰ World Bank Group, *Global Investment Benchmarking Report 2009*, Washington, D.C.

²¹ Land information systems are parcel-based databases used to acquire, process, store, and distribute land information. They can also be used for legal, administrative, and economic decision-making and for planning and development.

Courts can make arbitration more effective. During arbitration proceedings, courts may be required to support arbitral tribunals. Similarly, if interim measures are required—such as freezing assets, making interim payments, or seizing property—courts must be approached by the party seeking the order. In many economies in East Asia and the Pacific and Eastern Europe and Central Asia laws do not expressly provide for domestic courts to assist the arbitration process with orders to produce documents or make witnesses appear (Figure 2.8). In contrast APEC member economies make an obvious effort to enhance the assistance given by courts: APEC scores second in the support of arbitration proceedings.

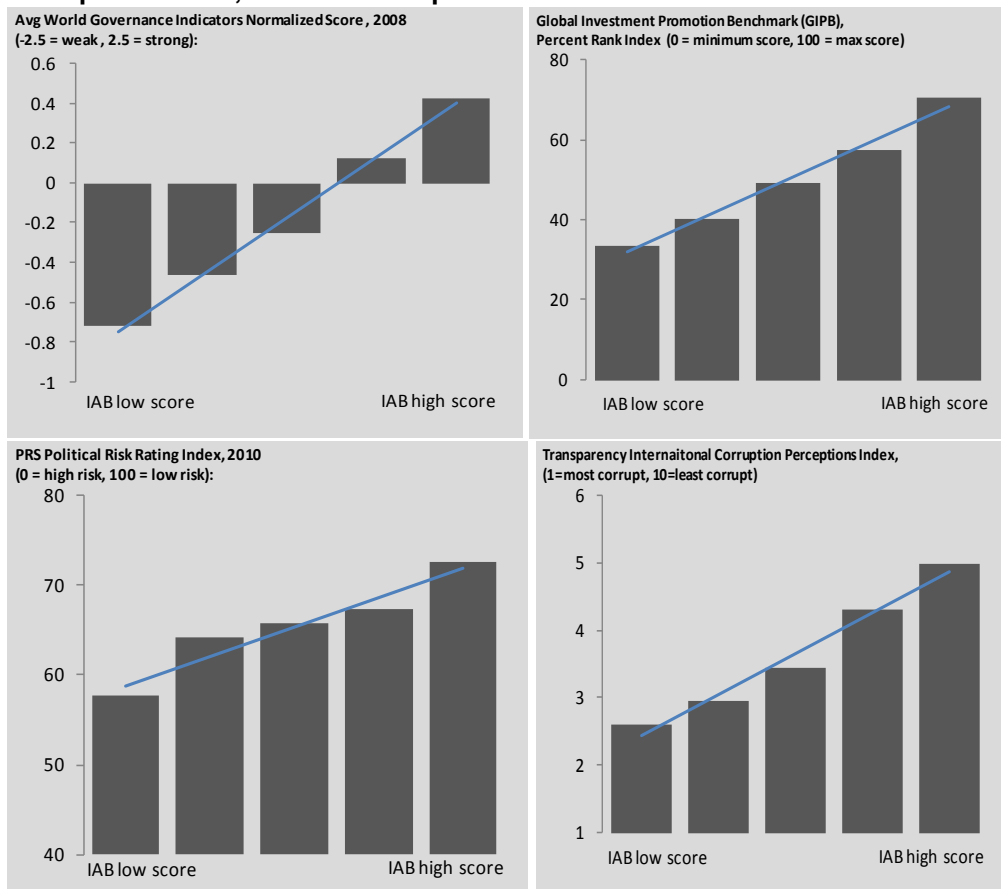
Figure 2.8 Court assistance with arbitration varies by region



Source: *Investing Across Borders* database.

In general, IAB shows that effective institutions that provide easily accessible and reliable information matter for creating an enabling investment climate. Furthermore, economies that provide their citizens with good public services, have good institutions, enjoy political stability, and do not suffer from corruption tend to score well on the IAB indicators (Figure 2.9).

Figure 2.9 Higher IAB scores are associated with good governance, higher institutional quality, lower political risk, and less corruption



Note: The first figure (top left) shows the correlation between IAB aggregate scores and the average normalized score for the six indicators that compose the World Bank Governance Indicators: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. The second figure (top right) shows the correlation between IAB aggregate scores and the Global Investment Promotion Benchmark percentile rank of each economy's investment promotion agency. This indicator measures the quality of each agency's handling of investor inquiries and its website. The third figure (bottom left) shows the correlation between IAB aggregate scores and the PRS Group's International Country Risk Guide political risk ratings. The fourth figure (bottom right) shows the correlation between IAB aggregate scores and Transparency International's Corruption Perceptions Index, which orders economies based on "the degree to which corruption is perceived to exist among public officials and politicians." The IAB aggregate scores are averages of the share of possible point score per topic. The scores have been broken into 5 quintiles ranked from the least to highest number of scored points. All correlations are significant at the 1% level.

Source: Investing Across Borders 2010 global report, World Bank Group Worldwide Governance Indicators database, World Bank Group Global Investment Promotion Benchmarking database, PRS Group Political Risk Ratings, Transparency International Corruption Perceptions Index database.

Economies can improve their FDI competitiveness

The IAB indicators are designed to identify good practices that offer governments concrete tools for improving their investment climates in the measured indicator areas. Though legal frameworks and their implementation may not be the main drivers of foreign investment decisions (see the Introduction chapter), they can tip the balance in favor of one economy over another if all other factors are equal. Economies that score well on the IAB indicators share certain features (Box 2.10).

Box 2.10 Characteristics of economies that score well on the IAB indicators

Investing Across Sectors

- *Allowing foreign ownership in the primary, manufacturing, and service sectors.* The results of the Investing Across Sectors indicators illustrate 2 key points. First, the global trend has been to liberalize a growing range of economic sectors. Second, in many economies the benefits of openness to foreign capital participation have trumped reasons for restricting certain sectors from foreign ownership. For every economy that limits or prohibits foreign equity ownership in certain sectors, several others with similar features allow unrestricted foreign ownership. But having an open economy is not enough. Other requirements include good regulation and strong investment climate fundamentals, with features such as well-functioning institutions, economic and political stability, and respect for the rule of law.

Starting a Foreign Business

- *Equal treatment of foreign and domestic investors.* The start-up process should be governed by the same rules for all companies regardless of their ownership. Any differences in treatment should be due to companies' size, legal form, or commercial activity—not the nationality of its shareholders.
- *Simple and transparent establishment process.* Economies should consolidate start-up procedures and abolish unnecessary ones (such as company seal requirements or investment approvals for small projects). Obtaining investment approvals can be burdensome for foreign investors. Economies should simplify or abolish such requirements unless foreign investment is in a sector that affects national or economic security. In addition, economies can enable investors to register businesses online. Fast-track alternatives, even if they entail higher processing fees, are also usually valuable to foreign investors. Finally, economies should not require foreign companies to go through a local third party (lawyer, notary, public entity).

Accessing Industrial Land

- *Clear, equal, secure land laws and treatment for foreign and domestic companies.* Laws should provide sufficient security to investors—foreign and domestic—so that they feel comfortable operating and expanding their businesses, and should not limit their ability to develop, renew, transfer, mortgage, or sublease land. Laws and regulations should take into account the interests of all stakeholders related to land use—including investors, governments, and local communities. Attention must also be paid to environmental protection.
- *Accessible land information.* Land records should be up-to-date, centralized, integrated (linked across relevant government agencies), easily accessible (preferably with online access), and provide information useful to investors and the general public.
- *Efficient land acquisition procedures.* An economy should have clear rules for acquiring private and

public land. Rules should remove unnecessary and burdensome steps while enabling authorities to conduct a proper process with fair protections for the greater public good.

Arbitrating Commercial Disputes

- *Strong arbitration laws (de jure) in line with arbitration practice (de facto).* Many economies have enacted modern arbitration laws. Ideally these are consolidated in one law or a chapter in civil code and are coherent, up-to-date, and easily accessible. A strong legal framework should be associated with effective arbitration practices and greater awareness of the benefits of arbitration.
- *Autonomy to tailor arbitration proceedings.* Good arbitration regimes provide a flexible choice for commercial dispute resolution. Parties should be able to choose how to run their arbitration processes, including whether they will be ad hoc or administered by an arbitral institution, the qualifications of the arbitrators, and the language of the proceedings.
- *Supportive local courts.* A good arbitration regime is associated with strong support from local courts for arbitration proceedings and consistent, efficient enforcement of arbitration awards.
- *Adherence to international conventions.* Adherence to and implementation of international and regional conventions on arbitration such as the New York Convention and the ICSID Convention signal a government's commitment to the rule of law and the protection of investor rights.

Source: *Investing Across Borders* database.

REGIONAL FINDINGS

APEC

Investing Across Sectors

Many APEC member economies restrict foreign equity participation in companies across a relatively large number of sectors. Transportation sectors, commercial banking and media are, on average, more restricted than in most other regions of the world. The telecommunications sector also tends to be restricted more than in most other regions, although wireless telecommunication is more open than fixed line. In contrast to the restrictions in many services sectors, manufacturing is fully open to FDI in nearly all APEC economies. Furthermore, construction and electricity, especially the renewables, exhibit very few ownership restrictions and signal APEC's welcoming position towards FDI in the latest technologies in sustainable and clean energy generation and distribution.

Starting a Foreign Business

In Starting a Foreign Business indicators APEC benefits from the regional mix of its member economies. In all sub-indicators measured in this topic APEC performs close to the global average. The administrative burden placed on investors to establish a subsidiary is relatively low, and the process takes less than 42 days, on average. Only 14% of the APEC member economies legally require the services of a local counsel for business registration and startup. APEC is the second highest-performing region in the provision of electronic services available to investors. More specifically, 86% of the APEC member economies offer registration forms and additional information online. Nearly a third of the APEC member economies requires a foreign investment approval and registration of incoming foreign capital. Obtaining these approvals takes, on average, 26 and 8 days, respectively. The issuance of a trade license can further extend – on average by 10 days -- the time that a foreign company needs to set up a business. Of the 21 APEC member economies only 9 have minimum capital requirements and in only 3 economies are these requirements different between domestic and foreign firms.

Accessing Industrial Land

More than two thirds of the APEC economies allow foreign-owned companies to own industrial land; however, the most preferred form of land holding is through a lease from a private owner. All APEC members allow land leases. The process of leasing private land (57 days, on average) is twice as fast as leasing publicly-owned land (126 days, on average). These processes are somewhat slower than the global average. The government approvals, needed for public leases in more than half of the APEC member economies, add on average 75 days to the process of leasing public land. The strength of the ownership and lease rights in APEC is in the top quintile globally. The strong lease rights entitle the contracting parties to specify any duration of the lease contract in most of the economies. However, only less than half of the APEC member economies allow leases to be used as collateral. This restricts companies' access to capital. The APEC member economies perform above the global average on indicators evaluating access to and availability of land information. Especially the detail and quality of information available online is outstanding. Nonetheless, only a fraction of the APEC economies has a functioning Land Information System, or a system that allows information exchange between the cadastre and land registry.

Arbitrating Commercial Disputes

Arbitration is a popular method of commercial dispute resolution in many APEC economies. All APEC economies have enacted laws on commercial arbitration that are also accessible online. However, only 4 of the 21 APEC economies have enacted mediation laws. APEC economies' arbitration laws generally provide for broad party autonomy in tailoring the arbitration proceedings, with relatively few restrictions related to parties' ability to select arbitrators with professional qualifications of their choice and foreign lawyers to represent them during arbitration proceedings. Through a well established system of court assistance in arbitrations, the speed of enforcement of arbitration awards within APEC is nearly on par with the global average. It takes 177 days to enforce an award in the APEC economies, versus the global average of 174 days. Not only is this process relatively fast, but thanks to the well-developed legislation with regards to the impartiality of arbitrators most of the APEC member economies offer parties a transparent and independent mechanism for dealing with commercial disputes.

Global Investment Promotion Benchmarking (GIPB)

Investment promotion intermediaries (IPIs) from the APEC member economies perform relatively well in GIPB 2009 when compared to the other regions. APEC IPIs rank second in the world in the inquiry handling assessment - behind the OECD group of economies- and third in the website assessment – behind the OECD and Eastern Europe and Central Asia. Encouragingly, investors are able to source most of the key economy and sector information from effective websites in most of the APEC IPIs (76%). When it comes to IPIs' performance in handling investment inquiries, splitting APEC IPIs into two groups -- those belonging to the OECD and non-OECD IPIs -- shows two very different pictures. While OECD IPIs perform quite well, with an average of 56%, non-OECD IPIs score relatively poorly, at 29%. The performance gap is smallest for availability and contactability of IPIs, and largest for customer service, followed by responsiveness and handling. This suggests that OECD and non-OECD IPIs do not differ much in the technical knowledge required to be easily contactable, but they do differ in the most important aspect of investment promotion: directly interacting with investors. Here results show that only 29% of all APEC IPIs provide the level of professional services that would maximize their chances of remaining on the investor's list of prospective investment destinations.

East Asia and the Pacific

Investing Across Sectors

East Asia and the Pacific has more restrictions on foreign equity ownership in all sectors than any other region. At the same time, the region displays the greatest intraregional variance, with less populous economies being more open. For example, Singapore and Hong Kong, China have few restrictions, while Indonesia and the Philippines impose foreign equity limits in relatively more service sectors.

Starting a Foreign Business

The ease of establishing a foreign subsidiary varies greatly across East Asia and the Pacific. Papua New Guinea (108 days), China (99), Viet Nam (94), Indonesia (86), and Cambodia (86) are among the 13 IAB economies with the longest start-up processes. On the other hand, Singapore has one of the world's fastest start-up processes (9 days). Less than half of the region's economies surveyed by IAB require investment approvals — China, Indonesia, Papua New Guinea, the Solomon Islands, Chinese Taipei and Viet Nam. In China, Papua New Guinea, and the Solomon Islands foreign companies can hold foreign currency bank accounts only after obtaining approval from authorities.

Accessing Industrial Land

Except for Malaysia, Thailand, Singapore and Chinese Taipei, none of the 13 economies surveyed in East Asia and the Pacific allows private ownership of land. Accordingly, foreign companies lease rather than buy land in the region. But lease rights are not particularly strong. In the Philippines a foreign company cannot mortgage leased land or use it as collateral to buy production equipment. Singapore offers the strongest lease rights, allowing investors to use land as collateral and to sublease and subdivide it. The time required to lease private land ranges from 1 month in Thailand to 4 months in Viet Nam. Leasing land from the government takes 3 months in Indonesia—and almost a year in Malaysia. Overall, access to and availability of land information are low in the region.

Arbitrating Commercial Disputes

All the economies surveyed in East Asia and the Pacific have laws on commercial arbitration and display them online. The laws generally offer broad party autonomy in arbitration, though some restrictions apply. For instance, Cambodia requires parties to choose an arbitrator who is a member of the National Arbitration Center. In Indonesia arbitrators must be at least 35 and have 15 years of experience in the field. Most economies in the region have active arbitration centers, with the exception of Cambodia, Papua New Guinea, and the Solomon Islands. Enforcement of arbitration awards is slow in most of the region, taking more than a year in the Philippines and Thailand. Papua New Guinea, Thailand, and Viet Nam are not parties to the ICSID Convention. In addition, Papua New Guinea has not ratified the New York Convention.

Global Investment Promotion Benchmarking (GIPB)

East Asia and the Pacific is a region with a long, distinctive investment promotion tradition. The Boards of Investment and similar ministerial agencies that predominate in this region have struggled for some years to shift emphasis from their historical regulatory functions to a more balanced approach to

investment promotion and investor servicing. Investor facilitation is a major challenge for these institutions—despite their efforts, none of the IPIs in the region has reached *best-practice* levels.

Eastern Europe and Central Asia

Investing Across Sectors

Across sectors, Eastern Europe and Central Asia is the region most open to foreign equity ownership. Georgia and Montenegro have no restrictions on foreign ownership of companies in any of the sectors measured by the IAB indicators. And every economy in the region allows full foreign ownership of companies in banking, construction, health care, retail, tourism, and waste management. Media and transportation are more restricted. Azerbaijan, Belarus, Kazakhstan, and Ukraine impose more restrictions in media than most other economies in the region. Within the region, economies in Central and Eastern Europe have fewer restrictions on foreign equity ownership than those in the Commonwealth of Independent States.

Starting a Foreign Business

Eastern European and Central Asian economies offer simple establishment processes for foreign companies. Bulgaria, Croatia, and Romania offer online business registration. Half the world's 10 economies with the fastest start-up processes are from this region—Georgia (4 days), Albania (7 days), Belarus (7 days), the Former Yugoslav Republic of Macedonia (8 days), and Turkey (8 days). Although none of the 20 economies surveyed in the region requires an investment approval, 5 require investment notifications or declarations.

Accessing Industrial Land

Foreign companies typically buy rather than lease land in Eastern Europe and Central Asia. Every economy in the region except the Kyrgyz Republic allows private ownership of land. Ownership rights are strong. Access to and availability of land information are also generally strong throughout the region, though they vary significantly by economy. In Armenia land information and geotechnical maps are publicly accessible through a land information system. But in Romania and Ukraine publicly available land information is limited. The time required to lease land from a private holder ranges from about 1 week in Georgia to nearly 5 months in Poland. The time required to lease land from the government ranges from 2 months in Kosovo to almost a year in Bulgaria.

Arbitrating Commercial Disputes

About 80% of economies in Eastern Europe and Central Asia have enacted specific laws on commercial arbitration, less than in other regions. In contrast, the region has the largest share of economies with laws on commercial mediation and conciliation (11 of 20). All economies except Kosovo are members of the New York Convention. But Eastern Europe and Central Asia also has the largest share of economies that have not ratified the ICSID Convention: the Kyrgyz Republic, Moldova, Montenegro, Poland, and the Russian Federation. Most economies in the region restrict arbitration of commercial disputes over immovable property (70%), and many restrict arbitration of intracompany disputes (55%), shareholders disputes (25%), and disputes involving patents or trademarks (20%). Enforcement of arbitration awards is fast. For domestic awards, excluding appeals, the time ranges from 38 days in Kazakhstan to more than a year in Armenia.

Global Investment Promotion Benchmarking (GIPB)

IPIs in Eastern Europe, many of them less than 10 years old, benchmark themselves against and are indeed comparable to some of the best performers in Western Europe. In GIPB 2009, the vast majority of the new European Union member economies have achieved good-practice standards and show they will continue to improve. Rapidly approaching them are IPIs in the Balkan economies, all of which performed at the world average or above (scoring over 50 percent). In particular, Croatia, Serbia, and Macedonia scored over 61 percent, with a balanced approach to online and offline information provision. In contrast, IPIs in Russia and Central Asia operate in a lower performance league. Only Armenia made it into the *good-practice* tier in responding to investor information needs.

High-income OECD

Investing Across Sectors

High-income OECD economies have relatively few restrictions on foreign equity ownership, although foreign ownership of companies in the transportation sector is far more restricted than in most other regions. In particular, foreign ownership of airlines is limited to a less than 50% stake in nearly all high-income OECD economies covered by the IAB indicators. Greece and Spain apply additional equity restrictions on airport operations, and Japan, France, and Spain have limits on foreign ownership of ports. In the Czech Republic, Ireland, and the Slovak Republic restrictions on foreign equity are limited to the transportation sector, while other economies — such as Greece and Spain — limit foreign ownership in more sectors, including electricity and media.

Starting a Foreign Business

High-income OECD economies offer easy establishment processes. New Zealand (2 days), Canada (6 days) and France (9 days) are among the world's 10 economies with the fastest start-up processes. Though none of the 14 high-income OECD economies surveyed require investment approvals, 7 require some type of investment notification or declaration — Canada, the Czech Republic, France, Japan, the Republic of Korea, the Slovak Republic, and Spain. Except for Greece and Spain, all the surveyed high-income OECD economies offer downloadable registration documents.

Accessing Industrial Land

All the surveyed high-income OECD economies allow private ownership of land and provide strong lease and ownership rights. Access to land information is relatively easy, and many economies have land and geographical information systems. New Zealand and Ireland offer extensive information on land plots, including environmental impact assessments, tax classifications, and utility connections. In Korea, however, such information is not publicly available. Overall, leasing procedures are quick relative to other regions. The time required to lease private land ranges from 1 week in New Zealand to 3 months in the Czech Republic, and the time required to lease land from the government ranges from again 1 week in New Zealand to almost 5 months in France.

Arbitrating Commercial Disputes

Arbitration is a long-established, common mechanism for resolving commercial disputes in all surveyed high-income OECD economies. All have enacted laws on commercial arbitration and make them available online. In addition, all are members of the New York Convention, and only Canada has not ratified the ICSID Convention. Party autonomy in arbitration proceedings is respected in all these economies, though Spain requires arbitrators in domestic arbitrations to be lawyers and Spanish nationals. A number of economies in the region such as Canada, the Czech Republic, France, the United Kingdom, and the United States allow online arbitration, especially for smaller claims. Enforcement of awards is faster than in any other region. For domestic awards excluding appeals, enforcement times range from about 1 month in France to almost a year in Greece.

Global Investment Promotion Benchmarking (GIPB)

Best-practice performance (81-100 percent) is currently found only in the high-income OECD economies. Also IPIs of the high-income OECD economies performed substantially better than IPIs in other regions across all three GIPB assessments (website and two project inquiries). Still, it is possible to identify IPIs in all regions that are moving toward this level with current good-performance scores (61-80 percent). With other regions' IPIs working on rapidly improving their performance in dealing with potential investors, they might catch up with this region shortly.

Latin America and the Caribbean

Investing Across Sectors

Latin American and Caribbean economies impose few restrictions on foreign equity ownership. Chile, Guatemala, and Peru are among the world's most open economies, with almost no restrictions on foreign ownership in any sectors covered by IAB. In all of the region's economies surveyed by IAB, construction, light manufacturing, retail, and tourism have no limits on foreign equity ownership. Banking, insurance, and telecommunications are also more open than in most other regions. However, a number of economies—including Bolivia, Haiti, and Mexico—impose restrictions in these sectors. The electricity

sector is more restricted in the region than the global average, with foreign equity ownership of companies limited to a less than 50% stake in Bolivia, Costa Rica, and Mexico.

Starting a Foreign Business

Establishing a foreign (as well as a domestic) business takes a long time in Latin America and the Caribbean. The region contains economies with some of the world's slowest start-up processes, including Haiti (212 days), República Bolivariana de Venezuela (179 days), and Brazil (174 days). Still, 9 of the 14 economies surveyed do not require foreign investment approval or notification. Some form of capital importation notification or certification is required in more than half the economies in the region. The use of local third parties in the establishment process is widely required in Latin America and the Caribbean. In addition, foreign companies are prohibited from holding bank accounts in foreign currency in Brazil, Colombia, and República Bolivariana de Venezuela.

Accessing Industrial Land

Foreign companies typically buy private land in Latin America and the Caribbean, and all the economies surveyed allow private land ownership. While most economies in the region offer strong ownership rights, the strength of lease rights varies. In Guatemala, there is no public inventory of lands or buildings and the land registry and cadastre are not linked to share data. By contrast, Costa Rica has a publicly accessible land information system. The time required to lease private land ranges from 3 weeks in Peru to 5 months in Nicaragua. The time to lease land from the government ranges from 3 months in Chile to more than 7 months in Haiti.

Arbitrating Commercial Disputes

Aside from Argentina, all the economies surveyed in the region have specific laws on commercial arbitration. In some economies the legal framework for arbitration is spread across various decrees and codes, resulting in legal controversies and complexities (as in Colombia). Almost half the economies surveyed in the region have also enacted laws on commercial mediation. Every economy in the region has ratified the New York Convention, but Bolivia, Brazil, Ecuador, and Mexico are not parties to the ICSID Convention. There are few restrictions on the arbitrability of commercial disputes except in Mexico and República Bolivariana de Venezuela (which restrict the arbitrability of disputes over immovable property), Colombia (which restricts the arbitrability of intracompany disputes), and Chile (which restricts the arbitrability of patent and trademark disputes). Some economies prohibit the selection of foreign nationals as arbitrators in domestic arbitrations. Some require that parties select locally licensed lawyers as arbitrators and that local language be used in domestic arbitration proceedings. Enforcement of domestic awards ranges from 85 days in Ecuador to more than a year in Colombia.

Global Investment Promotion Benchmarking (GIPB)

IPIs in the Latin American and the Caribbean region are the most homogenous. They have the smallest performance spread between website assessment and inquiry-handling scores: an average of only 21 points. Encouragingly, in the key dimension of customer care, these IPIs scored on average almost at the same level as high-income OECD economies. Investors who are long-listing locations in Latin America and the Caribbean will find contacting these IPIs to be useful. The IPIs are clearly providing service to potential investors at a level that exceeds the global average.

Middle East and North Africa

Investing Across Sectors

Relative to other regions, economies in the Middle East and North Africa are fairly restrictive on foreign equity ownership in many sectors. An exception is Tunisia, which has no limits on foreign ownership of firms in nearly all sectors measured by IAB. In several economies in the region, extractive industries (mining, oil, and gas) are much less open to foreign capital participation than in other regions, as are electricity and transportation. Morocco, Tunisia, and the Republic of Yemen restrict foreign equity ownership in electricity transmission and distribution. Equity restrictions also exist in port and airport operations. On the other hand, no economy in the region imposes limits on foreign participation in agriculture and forestry.

Starting a Foreign Business

In the Middle Eastern and North African economies surveyed by IAB, it takes twice as long to start a foreign company as it does a domestic company. Still, the start-up process in the region takes only 19 days on average, compared with the IAB global average of 42 days. Egypt (8 days) has one of the fastest establishment processes of all economies covered by IAB. In Saudi Arabia and the Republic of Yemen foreign companies are required to obtain investment approvals or authorizations, which take about 2 weeks. Foreign companies have to go through investment promotion agencies to establish subsidiaries in Egypt and Saudi Arabia. All the economies surveyed in the region except Egypt post business registration documents online.

Accessing Industrial Land

Foreign companies typically lease private land in the Middle East and North Africa. All the economies surveyed except Morocco allow private land ownership. Compared with other regions, lease rights are not very strong in the region. For example, in Saudi Arabia it is not possible to subdivide or use land as collateral under a lease contract. In Egypt both are possible. Availability of land information is on par with other regions but varies by economy. In Morocco the inventory of available land is publicly available, while in Tunisia the land registry does not provide this information. The time required to lease private land ranges from almost 4 weeks in Saudi Arabia to 3 months in Morocco, and the time it takes to lease land from the government ranges from 2 months in the Republic of Yemen to 10 months in Morocco.

Arbitrating Commercial Disputes

All the economies surveyed in the Middle East and North Africa have laws on commercial arbitration, though only Morocco has enacted a law on mediation. All the region's economies except the Republic of Yemen are parties to the New York Convention. All have ratified the ICSID Convention. There are few restrictions on subject matter arbitrability—except in Egypt, which restricts arbitration of disputes over immovable property and of intracompany disputes. In contrast, there are restrictions across the region on party autonomy in arbitration proceedings. These include a prohibition on the selection of foreign arbitrators (Saudi Arabia) and of foreign counsel to represent parties in arbitration proceedings (Egypt, Morocco, Saudi Arabia). Only in Egypt and Tunisia have courts stated pro-arbitration policies. The region's enforcement of arbitration awards in local courts is among the slowest in the world. For domestic awards excluding appeal, this time ranges from almost 3 months in Morocco to more than a year in Saudi Arabia.

Global Investment Promotion Benchmarking (GIPB)

The Middle East and North Africa region is one of the weakest performing regions. Only one IPI, Israel's, performed at *good-practice* levels (61-80 percent) thanks to its very good website. The regional average for inquiry handling is *very weak* (15 percent), only 1 percent better than Sub-Saharan Africa. While most of the IPIs in this region are contactable (average score of 68 percent), the quality of response to inquiries and customer follow-up are very poor (average 6 percent).

South Asia

Investing Across Sectors

Economies in South Asia restrict foreign ownership in the primary sector more than do most other regions. In Sri Lanka foreign equity ownership is restricted in the mining, oil, and gas sectors, and in India forestry is closed to foreign investors. On the other hand, many service sectors—including telecommunications and electricity—have fewer restrictions on foreign equity participation than in other regions. India is the only economy in the region with restrictions on foreign ownership in telecommunications, and Sri Lanka in electricity. Foreign capital participation in insurance is limited to 26% in India and 51% in Pakistan. In general, India has the region's most restrictions on foreign equity ownership.

Starting a Foreign Business

It takes on average 39 days to establish a foreign subsidiary in the South Asian economies surveyed. With 7 days and 4 procedures, Afghanistan offers one of the fastest start-up processes. Except for Pakistan, all economies in the region require some form of investment approval or notification. In Afghanistan and Sri Lanka it takes foreign companies 5 and 26 days, respectively, to obtain investment approvals, while Bangladesh and India merely require declarations. All the economies surveyed in South

Asia offer business registration documents online. Restrictions on holding foreign currency bank accounts exist in 3 of the 5 economies covered. In Pakistan and Sri Lanka foreign companies can hold such accounts only after obtaining approvals from public authorities, which take 27 and 5 days, respectively.

Accessing Industrial Land

Foreign companies typically lease land from governments in South Asia even though private ownership of land is allowed in all economies except Afghanistan. Lease rights are not particularly strong in the region. For example, in Afghanistan a foreign company cannot mortgage leased land or use it as collateral to buy production equipment. Bangladesh offers the strongest lease rights in the region, allowing land to be used as collateral and in a mortgage contract. Access to and availability of land information are generally high in the region, though they vary. The time it takes to lease land is longer than in most other regions. For private land the time required to lease ranges from 2 months in Bangladesh to 7 months in Afghanistan, and for government land from 3 months in Sri Lanka to 10 months in India.

Arbitrating Commercial Disputes

All the economies surveyed in South Asia have laws on commercial arbitration, and Afghanistan and Sri Lanka have enacted laws on mediation. In addition, all the region's economies are parties to the New York Convention and all, except India, to the ICSID Convention. Arbitration laws in the region allow broad party autonomy in arbitration proceedings, with the exception of restrictions on using foreign counsel in domestic arbitration proceedings in Bangladesh, India, and Sri Lanka. None of the laws in the region provide for the confidentiality of arbitration proceedings. In general, arbitration is not a common method of resolving commercial disputes in the region. Only India and Sri Lanka have active arbitration centers. South Asia is also the slowest region in court enforcement of arbitration awards. In Pakistan and Sri Lanka it takes more than 2 years to enforce arbitration awards.

Global Investment Promotion Benchmarking (GIPB)

South Asia comprises only nine economies, with IPIs similar to those in East Asia, namely, the Boards of Investment focused on enforcing regulation and on overseeing incentives. Starting from a very low base in 2006, South Asian IPIs have improved their overall average performance over the last two years by 25 percentage points, which makes this region, along with East Asia and the Pacific, the top regional improver in investment facilitation in the period 2006-2008. Despite this improvement, actual performance remains relatively weak. IPIs have finally moved online, yet their websites still do not meet investor information needs.

Sub-Saharan Africa

Investing Across Sectors

Sub-Saharan economies tend to be more open to foreign equity ownership than those in other regions—particularly in agriculture and forestry, where no economies except Sierra Leone and Sudan have restrictions on foreign equity ownership. On the other hand, economies such as Angola, Tanzania, and Uganda have more restrictions on foreign ownership in banking, insurance, and telecommunications than do most other economies. In Ethiopia these industries are completely closed to foreign capital participation. Indeed, Ethiopia is one of the most restricted economies measured by IAB, with foreign equity limits in most of its service sectors. In contrast, Mauritius and Zambia are among the world's most open economies to foreign ownership and have consistently been among the largest recipients of FDI per capita.

Starting a Foreign Business

Establishing a foreign-owned company in Sub-Saharan Africa takes longer, on average, than in other regions. It takes twice as long to start a foreign-owned company than a domestic one. Yet while Angola (263 days) has the slowest establishment process of all the economies surveyed by IAB, Rwanda (4 days) offers the fastest. Investment approval requirements are common in the region. On average, it takes 33 days to obtain an approval—longer than in any other region. Less than a third of the Sub-Saharan economies surveyed make incorporation documents available for download, and only Mauritius allows online company registration. In 8 of the 21 economies surveyed, foreign companies are required to go through local representatives to establish a subsidiary. In some economies foreign investors can

open foreign currency bank accounts only after obtaining approval from public authorities. In Burkina Faso, Côte d'Ivoire, Mali, and Senegal the Monetary Union of West Africa (UEMOA) requires a foreign company to receive authorization from a minister of finance and ultimately the Central Bank of the West African States (BCEAO) to open a foreign currency bank account.

Accessing Industrial Land

Foreign companies typically lease land from the state in Sub-Saharan Africa. Almost half the economies surveyed in the region do not allow private ownership of land. The strength of long-term lease rights over state land varies. In Sierra Leone the maximum duration of a land lease contract is only 21 years. In addition, land cannot be subdivided, subleased, or used as collateral. On the other hand, Ghana allows leased land to be mortgaged or used as collateral. Across the region the access to and availability of land information are relatively poor, with some variations. In Nigeria it is easy to find information on land and buildings through the land registry in Lagos, while in Madagascar there is no such public registry. Land information is also publicly available in Mauritius, but not in Ethiopia. The time required to lease land from a private holder ranges from 10 days in Rwanda to 5 months in Mozambique, and the time required to lease land from the government ranges from 2 months in Mali to 10 months in South Africa.

Arbitrating Commercial Disputes

Many Sub-Saharan economies have modern arbitration statutes that incorporate international standards and good practices. None of the 21 economies surveyed impose legal restrictions on appointing an arbitrator of a different nationality. Many West and Central African economies are subject to the Law on Arbitration of the Organization for the Harmonization of Business Law in Africa (OHADA), which provides uniform provisions on arbitration, including confidentiality of arbitration proceedings. A third of the region's economies do not post their arbitration statutes online—a higher share than in other regions. And despite having modern statutes, their implementation is often problematic. In Ghana and Tanzania it takes more than a year to enforce arbitration awards. Liberia and Rwanda have no or only nascent arbitration institutions, making institutional arbitration difficult. In contrast, Mozambique and South Africa have well-functioning arbitral institutions. All Sub-Saharan economies except Angola, Ethiopia, Sierra Leone, and Sudan have ratified the New York Convention. Angola, Ethiopia, and South Africa have not ratified the ICSID Convention.

Global Investment Promotion Benchmarking (GIPB)

Only two IPIs in Africa meet investors' long-listing needs at the level of good practice: Botswana and Mauritius. Many other African IPIs in the average performance tier (41-60 percent) scored well in one project inquiry but failed to respond or provided limited information for the other inquiry. Several IPIs in the Eastern Africa region, in particular, are in this performance category. Their uneven performance in inquiry handling may be due to weak internal systems for knowledge management, different levels of preparedness for the job by IPI staff, and limited oversight by management to ensure that all investors receive similar service standards.

Table 2.11: Summary of IAB indicators

Source: Investing Across Borders database

Economy	Index	Investing Across Sectors Foreign equity ownership indexes (100 = full foreign ownership allowed)										Starting a Foreign Business			Accessing Industrial Land						Arbitrating Commercial Disputes		
		Mining, oil and gas	Agriculture and forestry	Light manufacturing	Telecommunications	Electricity	Banking	Insurance	Transportation	Media	Sector group 1 (constr., tourism, retail)	Sector group 2 (health care, waste mgt.)	Time (days)	Procedures (number)	Ease of establishment index (0 = min, 100 = max)	Strength of lease rights index (0 = min, 100 = max)	Strength of ownership rights index (0 = min, 100 = max)	Access to land information index (0 = min, 100 = max)	Time to lease private land (days)	Time to lease public land (days)	Strength of laws index (0 = min, 100 = max)	Ease of process index (0 = min, 100 = max)	Extent of judicial assistance index (0 = min, 100 = max)
Afghanistan		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	7	4	68.4	73.3	n/a	9.1	0.0	218	301	68.1	0.0	0.0
Albania		100.0	100.0	100.0	100.0	100.0	100.0	79.6	70.0	100.0	100.0	7	7	84.2	80.7	100.0	47.4	85.0	36	129	84.0	40.7	68.5
Angola		74.5	100.0	82.5	75.0	100.0	100.0	50.0	..	30.0	100.0	263	12	39.5	87.9	80.0	36.8	60.0	40	129	74.9	57.3	59.9
Argentina		100.0	100.0	100.0	100.0	100.0	100.0	79.6	30.0	100.0	100.0	50	18	65.0	79.3	100.0	44.4	85.0	48	112	63.5	72.2	55.1
Armenia		74.5	50.0	100.0	100.0	100.0	100.0	55.6	100.0	100.0	100.0	18	8	78.9	92.8	100.0	73.7	95.0	10	57	89.9	82.3	27.3
Australia		100.0	100.0	100.0	63.2	100.0	100.0	94.9	100.0	100.0	100.0	3	3	84.2	84.6	87.5	30.0	80.0	64	132	95.4	82.8	67.0
Austria		100.0	100.0	100.0	100.0	70.9	100.0	79.6	74.5	100.0	100.0	30	10	73.7	85.7	100.0	42.1	80.0	33	79	95.4	83.7	83.0
Azerbaijan		49.0	100.0	100.0	100.0	100.0	100.0	100.0	16.5	100.0	100.0	11	7	71.6	78.5	100.0	42.1	85.0	58	105	82.4	53.6	37.0
Bangladesh		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	55	9	55.3	100.0	100.0	26.3	73.7	58	240	84.9	67.5	55.3
Belarus		100.0	100.0	100.0	75.0	64.3	100.0	49.0	80.0	30.0	100.0	7	6	78.9	71.4	100.0	50.0	60.0	34	97	78.3	79.0	84.9
Bolivia		49.0	100.0	100.0	49.0	49.0	100.0	89.8	100.0	100.0	100.0	54	18	63.2	65.0	90.0	33.3	65.0	42	170	80.3	65.7	54.2
Bosnia and Herzegovina		100.0	100.0	87.3	100.0	85.7	100.0	100.0	100.0	49.0	100.0	83	14	65.8	75.0	100.0	45.0	75.0	31	n/a	72.6	57.1	76.3
Brazil		100.0	100.0	100.0	100.0	100.0	100.0	68.0	30.0	100.0	50.0	174	17	62.5	85.7	100.0	33.3	75.0	66	180	84.9	45.7	57.2
Brunei Darussalam		60.0	60.1	100.0	..	..	100.0	100.0	..	..	100.0	108	17	76.3	78.6	100.0	7.1	55.0	180	180	..	..	..
Bulgaria		100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	100.0	20	5	78.9	85.7	100.0	36.8	95.0	60	351	93.1	64.7	68.6
Burkina Faso		95.0	100.0	100.0	..	100.0	100.0	100.0	100.0	100.0	100.0	15	5	44.7	74.9	58.3	31.6	50.0	n/a	120	94.9	67.6	67.9
Cambodia		100.0	100.0	100.0	100.0	85.7	100.0	69.8	100.0	100.0	100.0	86	10	44.7	92.9	n/a	31.6	52.5	41	119	92.4	48.6	46.0
Cameroon		95.0	100.0	100.0	100.0	71.4	100.0	49.0	49.0	100.0	100.0	82	14	41.1	73.6	80.0	52.6	55.0	75	108	87.4	79.6	64.6
Canada		100.0	100.0	81.1	46.7	100.0	65.0	79.6	73.4	100.0	50.0	6	2	81.6	100.0	100.0	46.2	85.0	68	131	89.9	84.7	94.0
Chile		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	29	11	63.2	85.7	100.0	33.3	80.0	23	93	94.9	62.8	74.8
China		75.0	100.0	75.0	49.0	85.4	62.5	50.0	49.0	0.0	83.3	99	18	63.7	96.4	n/a	50.0	52.5	59	129	94.9	76.1	60.2
Colombia		100.0	100.0	100.0	100.0	100.0	100.0	100.0	70.0	100.0	100.0	27	13	68.4	85.7	100.0	52.6	80.0	40	111	93.1	52.3	18.2
Costa Rica		100.0	100.0	100.0	100.0	35.0	100.0	100.0	100.0	100.0	100.0	63	14	73.7	100.0	100.0	73.7	60.0	23	136	92.4	59.0	50.9
Côte d'Ivoire		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	42	12	52.6	86.6	72.7	47.4	75.0	62	276	94.9	82.9	55.8
Croatia		100.0	100.0	100.0	100.0	100.0	100.0	69.4	100.0	100.0	100.0	23	9	81.6	85.7	100.0	45.0	75.0	78	107	93.1	71.4	52.7
Czech Republic		100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	100.0	18	11	81.6	85.7	100.0	75.0	90.0	96	131	97.4	88.5	65.8
Ecuador		100.0	100.0	100.0	100.0	85.4	100.0	69.8	74.5	100.0	100.0	68	16	55.3	61.5	100.0	27.8	77.5	106	151	86.3	58.3	59.8
Egypt, Arab Rep.		100.0	100.0	100.0	100.0	100.0	50.0	76.0	50.0	83.0	100.0	8	7	63.2	85.7	80.0	30.0	50.0	45	..	89.9	74.9	54.2
Ethiopia		100.0	100.0	100.0	0.0	..	0.0	..	0.0	..	100.0	28	10	21.1	74.9	n/a	0.0	2.5	75	142	49.9	74.0	34.8
France		100.0	100.0	80.0	100.0	100.0	100.0	59.6	20.0	100.0	100.0	9	7	77.5	99.9	100.0	47.4	90.0	91	142	90.0	86.6	94.0
Georgia		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	4	4	84.2	86.7	100.0	52.6	80.0	8	50	85.8	75.2	53.6
Ghana		90.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	72	10	34.2	90.0	n/a	30.0	85.0	104	247	74.9	88.5	40.9
Greece		100.0	100.0	100.0	100.0	0.0	100.0	49.4	100.0	100.0	100.0	22	18	68.4	85.7	100.0	47.4	80.0	15	20	97.4	86.1	48.6
Guatemala		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	30	12	57.9	78.6	100.0	27.8	70.0	34	168	91.6	72.3	58.4
Haiti		100.0	100.0	100.0	100.0	100.0	49.0	80.0	100.0	100.0	100.0	212	13	63.2	71.4	80.0	30.0	40.0	90	219	79.9	74.9	28.5
Honduras		100.0	100.0	100.0	100.0	100.0	100.0	89.8	100.0	100.0	100.0	35	15	68.4	78.6	100.0	55.6	75.0	61	182	97.6	73.3	59.5
Hong Kong, China		n/a	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	7	4	73.7	86.7	N/A	45.0	90.0	135	162	97.4	86.1	86.2
India		100.0	50.0	81.5	74.0	100.0	87.0	26.0	59.6	63.0	83.7	46	16	76.3	92.9	90.0	15.8	85.0	90	295	88.5	67.6	53.4
Indonesia		97.5	72.0	68.8	57.0	95.0	99.0	80.0	49.0	5.0	85.0	86	12	52.6	78.6	n/a	21.4	85.0	35	81	95.4	81.8	41.3
Ireland		100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	100.0	14	5	70.0	92.9	100.0	50.0	100.0	70	77	94.9	79.6	75.8
Japan		100.0	100.0	100.0	83.3	100.0	100.0	39.8	60.0	100.0	50.0	25	10	81.6	85.7	100.0	30.8	75.0	17	96	95.4	77.7	65.9
Kazakhstan		100.0	100.0	100.0	49.0	100.0	100.0	100.0	20.0	100.0	100.0	34	9	65.8	86.7	77.3	36.8	95.0	37	159	77.5	70.4	78.2
Kenya		100.0	100.0	100.0	70.0	92.9	100.0	66.7	70.0	..	100.0	34	12	57.9	78.6	100.0	22.2	85.0	72	113	94.9	77.1	56.3
Korea, Rep.		100.0	100.0	100.0	49.0	85.4	100.0	79.6	39.5	100.0	100.0	17	11	71.1	85.7	100.0	68.4	70.0	10	53	94.9	81.9	70.2
Kosovo		100.0	100.0	100.0	100.0	100.0	100.0	90.0	100.0	100.0	100.0	54	11	73.7	85.7	100.0	47.4	65.0	25	59	74.9	63.9	27.5
Kyrgyz Republic		100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	100.0	12	4	73.7	91.2	n/a	55.6	82.5	15	154	74.9	72.3	61.7
Liberia		100.0	100.0	100.0	100.0	71.4	100.0	100.0	..	100.0	100.0	25	8	55.3	57.7	n/a	28.6	15.0	28	193	44.9	56.4	42.0

Index Economy	Investing Across Sectors Foreign equity ownership indexes (100 = full foreign ownership allowed)										Starting a Foreign Business			Accessing Industrial Land				Arbitrating Commercial Disputes				
	Mining, oil and gas	Agriculture and forestry	Light manufacturing	Telecommunications	Electricity	Banking	Insurance	Transportation	Media	Sector group 1 (constr., tourism, retail)	Sector group 2 (health care, waste mgt.)	Time (days)	Procedures (number)	Ease of establishment index (0 = min, 100 = max)	Strength of lease rights index (0 = min, 100 = max)	Strength of ownership rights index (0 = min, 1 = max)	Access to land information index (0 = min, 100 = max)	Availability of land information index (0 = min, 100 = max)	Time to lease private land (days)	Time to lease public land (days)	Strength of laws index (0 = min, 100 = max)	Ease of process index (0 = min, 100 = max)
Macedonia, FYR	100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	100.0	8	6	76.3	85.6	100.0	68.4	90.0	13	79	93.1	74.9	69.7
Madagascar	100.0	100.0	100.0	74.5	..	100.0	100.0	..	100.0	100.0	12	3	65.0	84.5	70.0	26.3	85.0	81	132	85.0	74.2	83.3
Malaysia	70.0	85.0	100.0	39.5	30.0	49.0	49.0	100.0	65.0	90.0	14	11	60.5	78.5	87.5	23.1	85.0	96	355	94.9	81.8	66.7
Mali	95.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	49.0	100.0	29	8	42.5	80.0	66.7	28.6	5.0	n/a	63	80.0	67.5	8.3
Mauritius	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	60.0	100.0	11	9	68.4	90.0	90.0	31.3	95.0	19	100	84.9	71.2	77.1
Mexico	50.0	49.0	100.0	74.5	0.0	100.0	49.0	54.4	24.5	100.0	31	11	65.8	81.3	100.0	33.3	90.0	83	151	79.1	84.7	52.7
Moldova	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	74.5	100.0	10	9	70.0	79.9	100.0	52.6	70.0	19	75	84.0	81.8	60.9
Montenegro	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	15	14	78.9	69.2	100.0	78.9	65.0	40	185	63.5	60.0	46.5
Morocco	93.8	100.0	100.0	100.0	0.0	100.0	100.0	39.8	100.0	100.0	18	8	55.3	86.8	n/a	73.7	65.0	101	296	97.6	69.5	64.7
Mozambique	100.0	100.0	100.0	75.0	100.0	100.0	100.0	100.0	20.0	100.0	34	12	65.8	53.1	n/a	33.3	62.5	148	175	95.4	80.9	22.2
New Zealand	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	2	2	84.2	84.6	100.0	95.0	80.0	7	7	97.4	84.2	65.2
Nicaragua	100.0	100.0	100.0	100.0	100.0	100.0	100.0	89.8	74.5	100.0	42	8	57.9	72.1	100.0	31.6	75.0	149	267	95.4	73.3	40.3
Nigeria	100.0	100.0	100.0	100.0	100.0	70.0	100.0	100.0	100.0	100.0	44	12	47.5	78.5	n/a	50.0	67.5	123	254	95.4	82.3	71.5
Pakistan	100.0	100.0	100.0	100.0	100.0	49.0	51.0	79.6	37.0	100.0	21	11	64.7	85.7	100.0	10.5	65.0	59	96	94.9	68.5	35.5
Papua New Guinea	..	..	..	..	..	..	..	..	..	..	108	10	48.9	..	..	..	..	..	..	59.9	55.6	26.2
Peru	100.0	100.0	100.0	100.0	100.0	100.0	100.0	89.8	100.0	100.0	43	11	72.5	79.3	100.0	44.4	75.0	20	112	97.4	83.3	62.6
Philippines	40.0	40.0	75.0	40.0	65.7	60.0	100.0	40.0	0.0	100.0	80	17	57.9	68.8	n/a	23.5	87.5	16	n/a	95.4	87.0	33.7
Poland	100.0	100.0	100.0	100.0	100.0	100.0	100.0	59.2	74.5	100.0	33	7	85.0	78.6	100.0	35.0	65.0	146	162	74.2	82.8	77.3
Romania	100.0	100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	11	7	89.5	86.7	100.0	33.3	85.0	57	65	84.8	75.2	93.2
Russian Federation	100.0	100.0	100.0	100.0	100.0	100.0	49.0	79.6	75.0	100.0	31	10	68.4	85.7	100.0	44.4	90.0	62	231	71.6	76.1	76.6
Rwanda	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	4	3	60.5	89.2	90.0	38.5	50.0	10	99	93.1	80.1	73.3
Saudi Arabia	0.0	100.0	75.0	70.0	100.0	60.0	60.0	40.0	0.0	91.7	21	6	35.0	64.3	50.0	33.3	50.0	25	60	70.0	30.4	28.6
Senegal	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	10	5	45.0	85.6	90.0	50.0	75.0	33	101	89.9	85.1	98.8
Serbia	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	74.5	100.0	14	8	84.2	78.6	100.0	45.0	75.0	67	177	95.4	71.4	90.2
Sierra Leone	100.0	..	100.0	100.0	100.0	100.0	100.0	..	100.0	100.0	43	8	65.0	44.4	n/a	26.3	30.0	210	277	65.0	70.5	20.5
Singapore	100.0	100.0	100.0	100.0	100.0	100.0	100.0	47.4	27.0	100.0	9	4	78.9	100.0	100.0	55.0	80.0	56	98	94.9	81.8	93.5
Slovak Republic	100.0	100.0	100.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	18	8	92.1	84.6	100.0	61.1	75.0	73	85	93.1	85.7	88.5
Solomon Islands	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	66	10	47.9	91.1	n/a	15.8	2.5	138	168	40.0	0.0	0.0
South Africa	74.0	100.0	100.0	70.0	100.0	100.0	100.0	100.0	60.0	100.0	65	8	78.9	84.5	100.0	47.4	85.0	42	304	82.4	79.0	94.5
Spain	100.0	100.0	100.0	100.0	100.0	100.0	100.0	39.6	50.0	100.0	61	13	71.1	100.0	100.0	61.1	90.0	32	90	97.4	76.1	75.3
Sri Lanka	40.0	100.0	100.0	100.0	71.4	100.0	100.0	..	40.0	100.0	65	6	47.9	85.7	80.0	31.6	75.0	68	91	95.4	71.3	38.0
Sudan	..	75.0	..	..	..	..	..	60.0	0.0	100.0	55	13	40.0	71.4	n/a	30.8	30.0	12	60	77.4	73.3	67.8
Chinese Taipei	75.0	0.0	100.0	58.8	92.9	100.0	100.0	44.8	50.0	100.0	34	10	65.8	63.1	87.5	80.0	85.0	14	73	84.9	66.6	58.7
Tanzania	100.0	100.0	100.0	65.0	100.0	100.0	66.0	100.0	24.5	100.0	38	14	62.5	81.2	n/a	36.8	62.5	73	82	82.4	74.7	39.1
Thailand	49.0	49.0	87.3	49.0	49.0	49.0	49.0	49.0	27.5	66.0	34	9	60.5	80.7	62.5	27.8	70.0	30	128	84.9	81.8	40.8
Tunisia	100.0	100.0	100.0	100.0	71.4	100.0	100.0	100.0	100.0	100.0	19	14	71.1	85.7	90.0	36.8	80.0	69	84	77.5	71.4	52.3
Turkey	100.0	100.0	100.0	100.0	78.6	100.0	100.0	69.4	62.5	100.0	8	8	65.8	85.7	90.0	63.2	90.0	15	72	89.9	69.5	68.6
Uganda	100.0	100.0	100.0	100.0	85.7	100.0	100.0	100.0	100.0	100.0	39	21	47.4	71.4	n/a	25.0	77.5	60	80	86.3	62.9	39.3
Ukraine	100.0	100.0	82.5	100.0	100.0	100.0	100.0	79.6	15.0	100.0	28	11	80.0	88.5	100.0	36.8	55.0	50	209	86.6	78.1	72.6
United Kingdom	100.0	100.0	65.0	100.0	100.0	100.0	100.0	79.6	100.0	100.0	14	7	85.0	100.0	100.0	50.0	80.0	53	62	99.9	87.5	94.5
United States	100.0	100.0	100.0	100.0	100.0	100.0	100.0	85.0	62.5	100.0	11	8	80.0	100.0	100.0	50.0	95.0	44	92	85.0	81.8	75.3
Venezuela, RB	74.5	100.0	100.0	100.0	85.7	100.0	100.0	20.0	20.0	100.0	179	19	42.5	72.5	100.0	44.4	75.0	87	138	89.1	57.1	52.2
Viet Nam	50.0	100.0	75.0	50.0	71.4	65.0	100.0	69.4	0.0	100.0	94	12	57.9	77.3	n/a	57.9	92.5	120	133	84.9	61.8	57.2
Yemen, Rep.	100.0	100.0	100.0	50.0	71.1	100.0	100.0	60.0	100.0	100.0	29	9	68.4	69.2	72.7	57.9	85.0	53	52	74.9	81.4	44.0
Zambia	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	58	9	47.4	71.4	n/a	37.5	75.0	104	122	97.4	65.7	77.3

3.

TOPICS

3.1 Investing Across Sectors

Introducing the Investing Across Sectors indicators

The Investing Across Sectors indicators measure overt statutory restrictions on foreign ownership of equity in new investment projects (greenfield FDI) and on the acquisition of shares in existing companies (mergers and acquisitions). The indicators focus on 33 sectors, aggregated into 11 broader sector groups that conform with economic classifications, in order to facilitate data presentation and analysis (Box 3.1: Sector coverage of the Investing Across Sectors indicators).²² While the industry coverage of the Investing Across Sectors indicators is not exhaustive, the 33 sectors capture most of the economic activity, and in aggregate account for over 80% of global GDP and FDI flows.²³

Box 3.1: Sector coverage of the Investing Across Sectors indicators

- Mining, oil and gas.
- Agriculture and forestry.
- Light manufacturing: light manufacturing, manufacturing of food products, pharmaceutical products, publishing.
- Telecommunications: fixed-line and mobile/wireless infrastructure and service provision.
- Electricity: generation (coal, hydro, biomass, solar, wind), transmission and distribution.
- Banking.
- Insurance.
- Transportation: rail, domestic and international air, airport and port operation.
- Media: newspaper and TV broadcasting.
- Sector group 1: construction, tourism and retail.
- Sector group 2: health care and waste management.

The indicators are based on the text of investment codes, commercial laws, merger and acquisition laws, and other related statutes (Box 3.2).

Box 3.2: Types of laws measured by the Investing Across Sectors indicators

- Investment laws (for example investment codes, investment promotion laws and regulations, foreign investment acts, laws and regulations governing sectors closed to foreign investment).
- Company and business organization laws (for example commercial codes, foreign company laws, company registration laws).

²² The Methodology section of this report provides more details about the nature and structure of the Investing Across Sectors indicators as well as on the aggregation methods employed in the construction of the indicators.

²³ Foreign Direct Investment database, UNCTAD (<http://www.unctad.org>); World Development Indicators database, World Bank Group, (<http://www.worldbank.org>).

- Merger and acquisition laws.
- Foreign exchange laws and regulations.
- Sector-specific laws and regulations (for example telecommunications law, energy law).
- Industrial policy orders.
- Civil codes.
- Constitutions.

Unlike trade policy, cross-country comparisons of foreign investment regimes, and especially limits on foreign ownership, have not received sufficient analysis.²⁴ Early attempts at quantifying national-level FDI restrictions have been limited to simply counting the number of policies that negatively affect FDI, without weighing the relative importance of the individual policies.²⁵ Recognizing that service sectors are more restricted than primary and secondary sectors, other attempts at a numeric presentation of FDI restrictions have primarily relied on the Mode 3 commitments of the General Agreement on Trade in Services (GATS).²⁶ Methodology chapter of this report explores the relationship between the Investing Across Sectors indicators and GATS commitments.

The design of the Investing Across Sectors indicators is based principally on an approach presented in 1997 by the Australian Productivity Commission,²⁷ and later developed further by the OECD and UNCTAD FDI restrictiveness indexes.²⁸ The indicators follow the recommendations of a 2006 UNCTAD report, which suggest that “future research should seek to verify and refine the results reported in the paper, extend the data collection and analysis to additional countries ... [and provide] more detailed analysis of the FDI laws and regulations pertaining to services in different countries.”²⁹

The Investing Across Sectors indicators place a particular emphasis on providing detailed measures of the service sectors, given the relative prevalence of FDI restrictions in services in relation to other economic sectors, as well as the growing importance of services in the global economic output and FDI flows (Box 3.3).

Box 3.3: Growing role of services in GDP and FDI

The share of services in the national products of most economies has been rising steadily, reaching 73% of GDP in high-income, 53% of GDP in middle-income, and 45% of GDP in low-income economies in 2006.³⁰ The composition of FDI has also been shifting toward the service sector. Services now account for 59% of FDI inflows worldwide, up from 50% in 1990 and 25% in the 1970s.³¹ According to the 2009 UNCTAD World Investment Report, this shift toward services and an accompanying decline in the share of FDI in natural resources and manufacturing has been the most important change in the sectoral and industrial pattern of FDI over the past quarter century.³²

The composition of services FDI itself is also changing. Until recently, it was concentrated in trade and finance, which together still accounted for 47% of the inward stock of services FDI and 35% of flows in 2002 (compared to 65% and 59%, respectively, in 1990).³³ However, industries such as electricity, water, telecommunications, and business services (including IT-enabled corporate services) are becoming more prominent. Between 1990 and 2007, for example, the value of the FDI stock in electric power generation and distribution rose 34-fold; in telecommunications, storage, and transportation 31-fold; and in business services 21-fold.³⁴ In South Africa, for instance, FDI in telecommunications and information technology has overtaken that in mining and extraction.³⁵

In summary, the Investing Across Sectors indicators measure one of the fundamental areas of market access for FDI—statutory openness to foreign equity participation in the primary, manufacturing, and service sectors. The strengths and particular advantages of these indicators

²⁴ Christiansen (2004).

²⁵ Hoekman (1997); Pierre Sauvé and Karsten Steinfatt, “Assessing the Scope for Further Investment Regime Liberalisation: An Analysis Based on Revealed Liberalisation Preferences,” OECD, unpublished.

²⁶ Pacific Economic Cooperation Council (1995).

²⁷ Hardin and Holmes (1997).

²⁸ Golub (2003), UNCTAD (2006b).

²⁹ Ibid.

³⁰ World Development Indicators database, World Bank Group, (<http://www.worldbank.org>).

³¹ UNCTAD (2004), UNCTAD (2009).

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

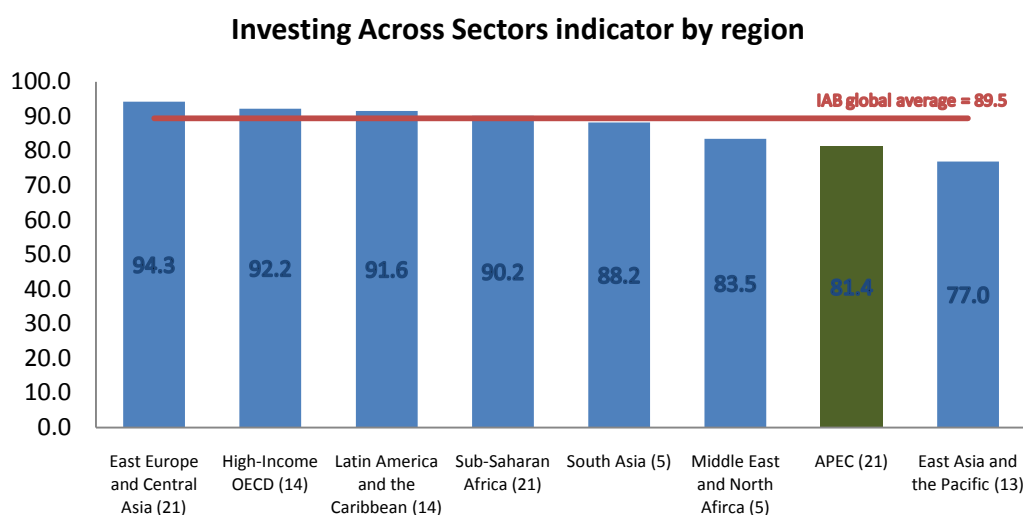
are that they explicitly, and in a publicly verifiable manner, identify restrictions on foreign companies' equity participation across sectors. The indicators however also face certain limitations, which are explored in the methodology chapter of this report.

Results of the Investing Across Sectors indicators

Most economies allow FDI in most sectors of their economies. Looking at the results through a regional lens shows that foreign ownership of companies in economies in Eastern Europe and Central Asia and Latin America and the Caribbean is relatively more encouraged by investment regimes than in East Asia and the Pacific and the APEC economies (Figure 3.4 and 3.5).³⁶ The Middle East and North Africa is also a relatively restricted region. With South Asia and Sub-Saharan Africa close to the global average, the spread is around 20 points between the most open and most restricted regions around the world making it a relatively narrow difference if seen globally.

Figure 3.4: Eastern Europe and Central Asia has the least restrictions on foreign ownership of companies

Foreign equity ownership index (100=full foreign ownership allowed)



Source: *Investing Across Borders* database.

Table 3.5: Restrictions on foreign equity ownership across sectors and regions

Foreign equity ownership index (100=full foreign ownership allowed)

	Sector group											Overall
	Mining, oil and gas	Agriculture and forestry	Light manufacturing	Telecom	Electricity	Banking	Insurance	Transport	Media	Construction, tourism and retail	Healthcare and waste management	
East Europe and Central Asia (21)	96.2	97.5	98.5	96.2	96.4	100.0	94.9	84.0	73.1	100.0	100.0	94.3
High-Income OECD (14)	100.0	100.0	94.7	88.7	89.7	97.5	100.0	73.3	77.1	100.0	92.9	92.2
Latin America and the Caribbean (14)	91.0	96.4	100.0	94.5	82.5	96.4	96.4	80.8	73.1	100.0	96.4	91.6

³⁶ The data are reported through sector-specific Foreign equity ownership indexes, where 100 denotes a sector with no equity restrictions on FDI.

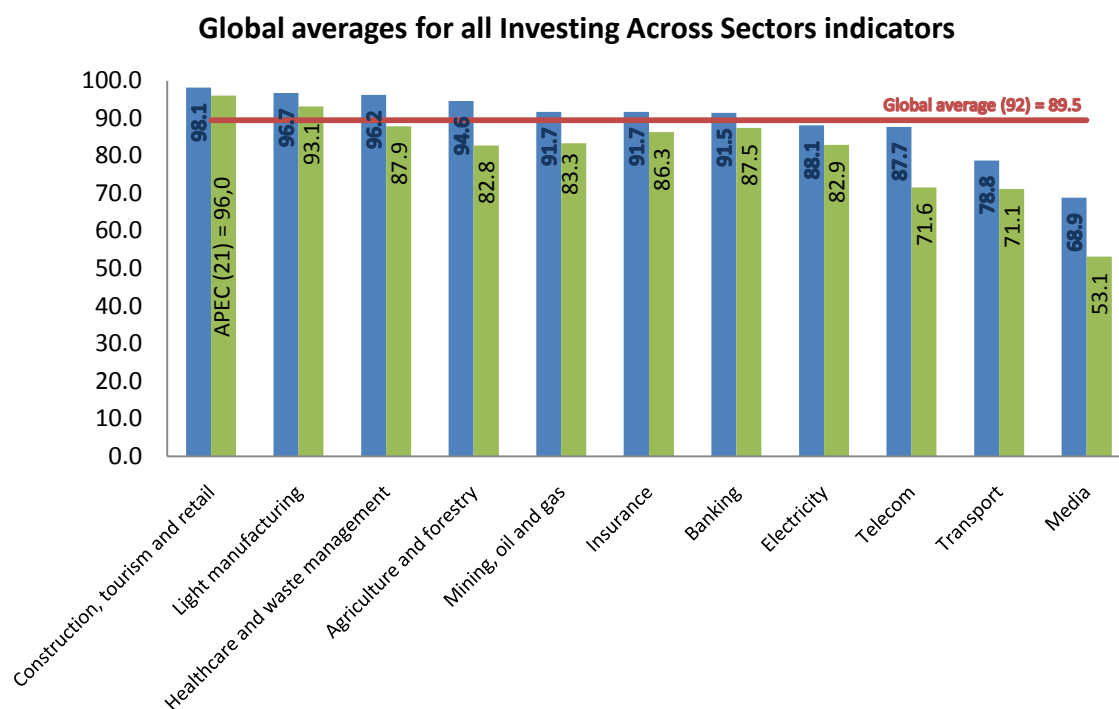
Sub-Saharan Africa (21)	95.2	97.6	98.6	84.1	90.5	84.7	87.3	86.6	69.9	97.6	100.0	90.2
South Asia (5)	88.0	90.0	96.3	94.8	94.3	87.2	75.4	79.8	68.0	96.7	100.0	88.2
Middle East and North Africa (5)	78.8	100.0	95.0	84.0	68.5	82.0	92.0	63.2	70.0	94.9	90.0	83.5
APEC (21)	83.3	82.8	93.1	71.6	82.9	87.5	86.3	71.1	53.1	96.0	87.9	81.4
East Asia and the Pacific (13)	76.4	75.5	90.1	67.6	79.6	82.0	85.7	65.3	43.1	93.1	88.1	77.0
Total	91.7	94.6	96.7	87.7	88.1	91.5	91.7	78.8	68.9	98.1	96.2	89.5

Source: Investing Across Borders database.

Results by sector

As a general trend, there are very few restrictions on foreign equity ownership in manufacturing and the primary sectors (agriculture, forestry, mining, oil and gas), whereas service sectors tend to be characterized by a larger number of limitations (Figure 3.6). This variation reflects the fact that FDI in manufacturing has been more common for a longer period of time with known evidence of cross-country impact. Services, in contrast, have become more tradable and liberalized in most economies only in recent years, and economies are less certain about the optimal balance between openness and restrictiveness. Many economies view service sectors such as media, transportation, electricity, and telecommunications as strategic assets, or industries related to national economic security. As a result, many economies tend to restrict foreign equity ownership in these sectors.

Figure 3.6: Equity limits on foreign ownership of companies vary across sectors
Foreign equity ownership index (100=full foreign ownership allowed)



Source: Investing Across Borders database.

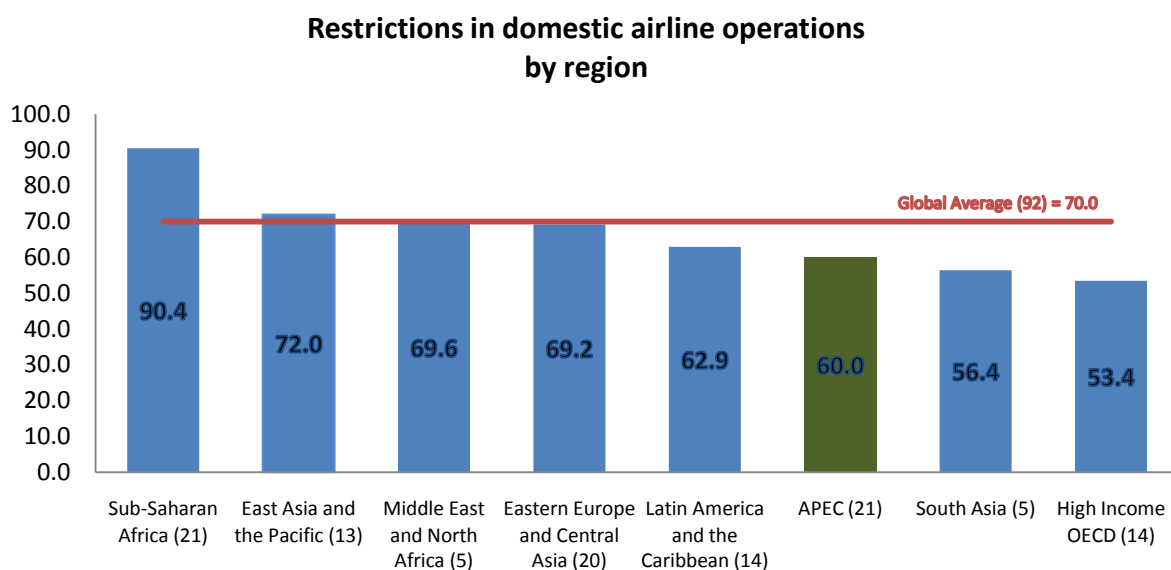
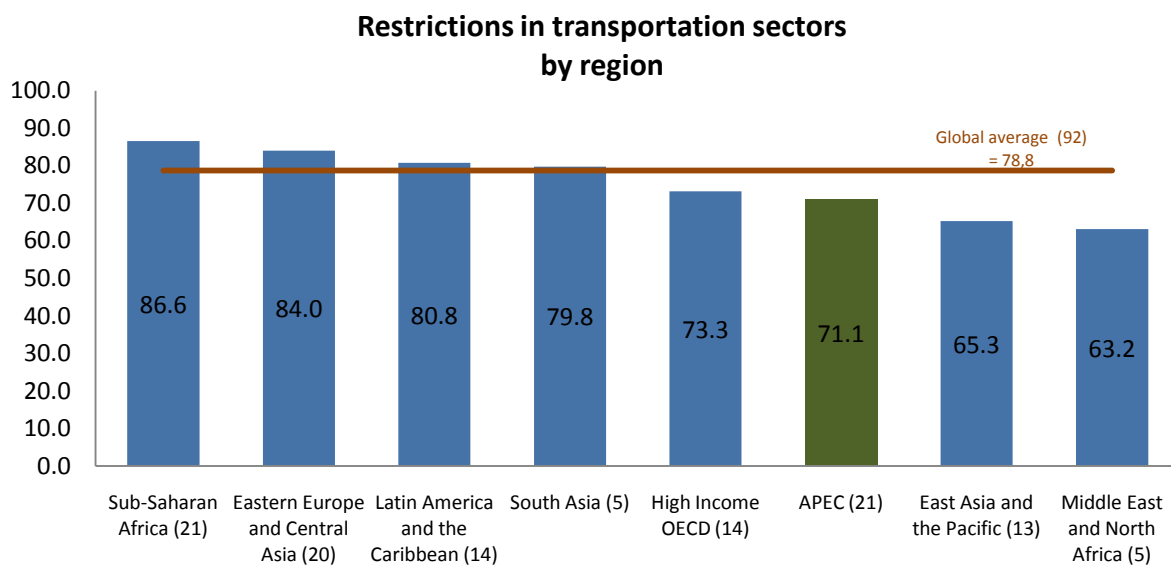
Of all sectors covered by the indicators, foreign ownership of TV broadcasting and newspaper companies is most restricted. In 8% of surveyed economies it is completely prohibited. In contrast,

almost 65% of economies allow foreign companies to own 100% of newspaper businesses. Even in the high-income OECD economies, many of whom have limits on foreign ownership in these sectors, all but one economy allow foreign capital participation in newspaper.

The second most restricted sector is transportation, measured by the indicators through including railway freight, air transportation (domestic and international), and airport and port ownership (Figure 3.7). Of these, foreign ownership is most restricted in air transportation. In particular, foreign capital participation in domestic airlines tends to be limited in many economies across the globe. Ownership of foreign equity in the air transportation sector is most severely restricted in the high-income OECD economies. Although generally open in the transportation sectors, in domestic air transportation APEC is also below the global average.

Figure 3.7: Foreign ownership of domestic airlines is more restricted than other transportation sectors

Foreign equity ownership index (100=full foreign ownership allowed)

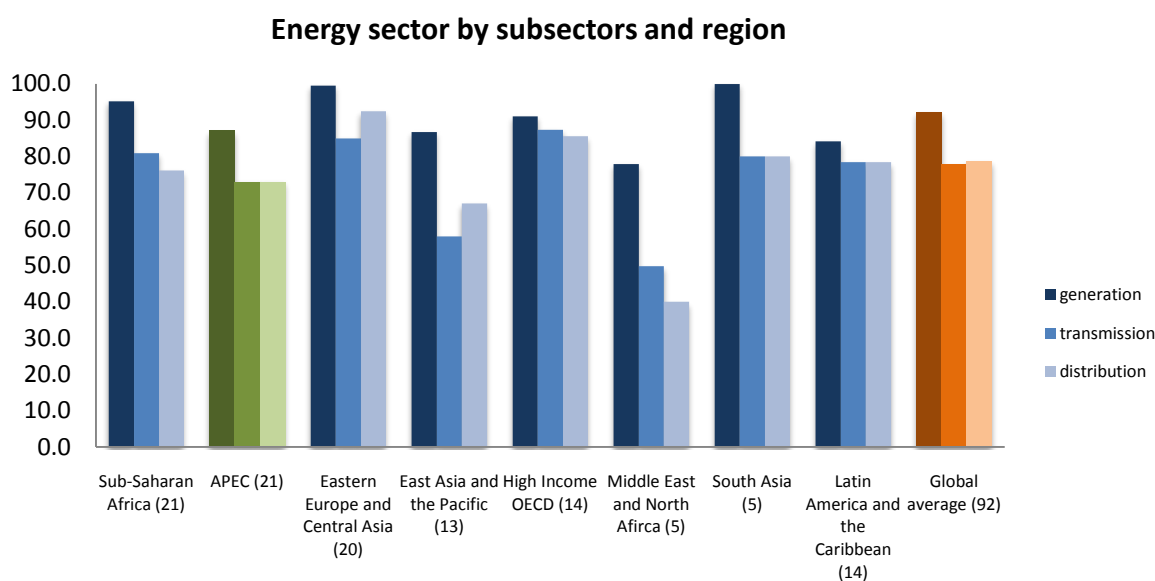


Source: Investing Across Borders database.

The electricity sector presents an interesting case. Foreign ownership in electricity generation is less restricted than the downstream activities of electricity transmission and distribution (Figure 3.8). The most severe restrictions on foreign ownership of electricity transmission and distribution companies can be found in the Middle East and North Africa and East Asia and the Pacific. In comparison to the other service industries, electricity also has the highest concentration of public monopolies, compounding the effect of equity restrictions on FDI access. APEC economies are mostly open, and more so in energy generation than transmission or distribution. On average, all three energy sectors are more open in APEC than the global average.

Figure 3.8: Foreign ownership in electricity generation is less restricted than in electricity transmission and distribution

Foreign equity ownership index (100=full foreign ownership allowed)



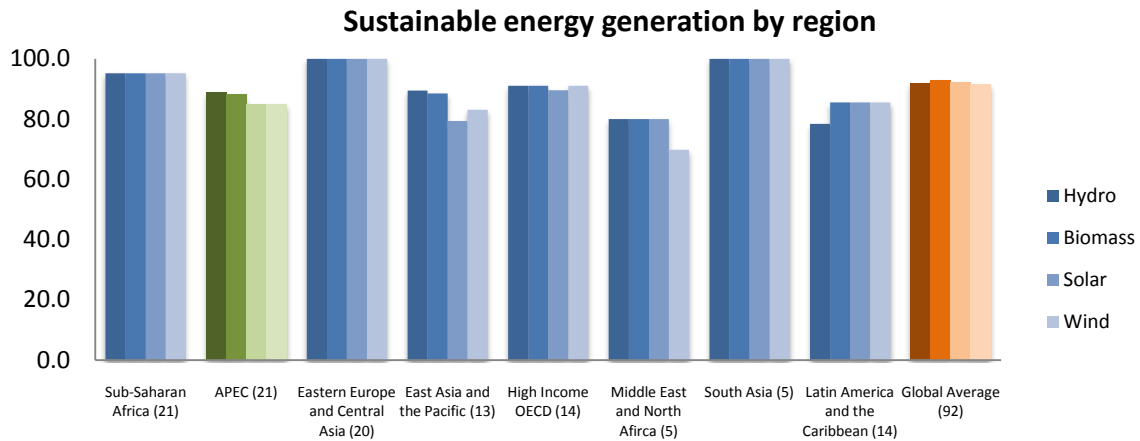
Source: *Investing Across Borders* database.

As climate-sensitive sectors rapidly gain importance on a global scale, IAB has placed a particular emphasis on measuring foreign ownership restrictions in clean energy sectors—that is, generation of electricity from renewable sources, including solar, wind, hydro, and biomass. Results demonstrate that all regions of the world are highly open to foreign capital participation in these sectors (Figure 3.9). On a relative scale, Eastern Europe and Central Asia region and South Asia are most open, with hardly any restrictions. In contrast, East Asia and the Pacific as well as Middle East and North Africa are more restrictive. In most economies the laws afford investors the same degree of access to clean energy generation as they do to coal-based electricity generation. It should be noted, however, that in some economies the renewable energy sector is only presumed to be open to foreign capital, as it is not explicitly covered by energy or investment legislation. As a consequence, it is unclear whether the relative absence of foreign ownership restrictions in alternative energy is a result of a conscious national policy choice, or whether these sectors are too new to have yet been properly regulated.

On average across all APEC member economies, the indicators show a more FDI-welcoming approach to sustainable energy generation than in most other economies. Especially FDI in hydro and biomass energy generation appears to be encouraged in the APEC economies.

Figure 3.9: Most regions welcome FDI in alternative energy

Foreign equity ownership index (100=full foreign ownership allowed)



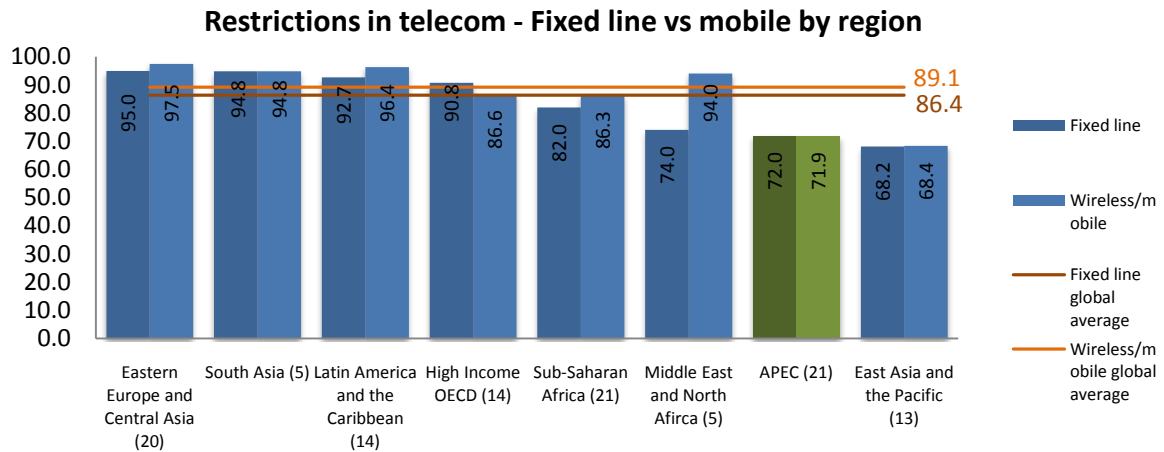
Source: Investing Across Borders database.

In telecommunications, fixed-line infrastructure and services sectors are less open to foreign ownership than the wireless/mobile sector. Provision of wireless services is the most open business activity within the telecommunications sector.

In nearly all regions except high-income OECD the wireless infrastructure operation and services are more open than fixed-line, reflecting the growing demand for highly mobile telecommunications services around the world. This interesting difference might be explained by the former state monopolies in fixed-line telecommunication services in Europe.

Figure 3.10: Foreign ownership in the fixed-line telecommunications sector is more restricted than in the wireless/mobile sector

Foreign equity ownership index (100=full foreign ownership allowed)

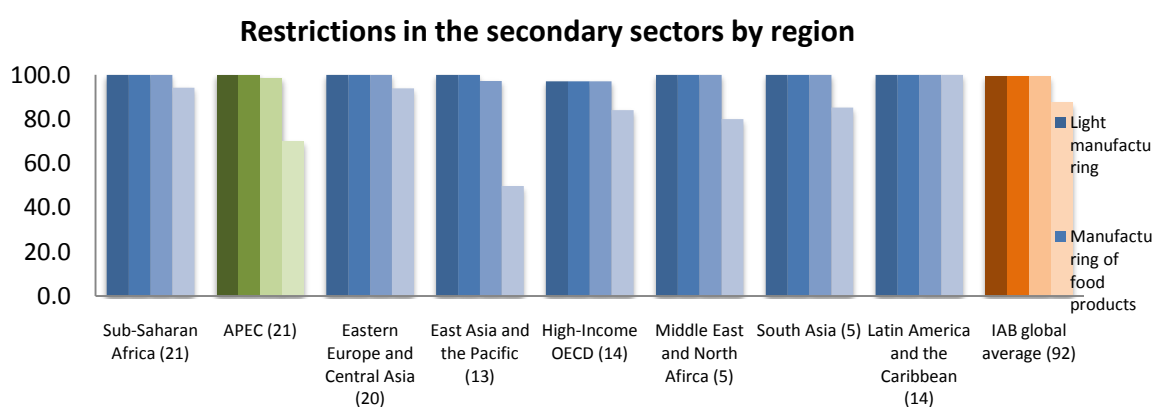
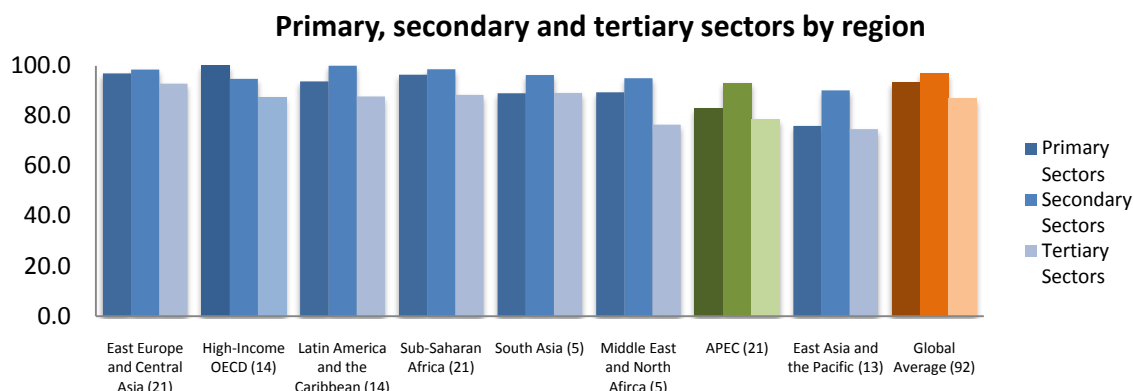


Source: Investing Across Borders database.

Foreign ownership is largely unrestricted in the primary sectors. Agriculture is the least restricted industry, followed by mining and forestry (Figure 3.11). APEC economies tend to be more restrictive in the primary sectors than most of the other regions.

All measured manufacturing (i.e. secondary sectors) are almost universally open to FDI in all regions, including light manufacturing, agribusiness, pharmaceuticals, and publishing. Whereas the first three sectors are almost universally open to foreign capital participation, publishing is subject to foreign ownership restrictions in some economies around the globe. In particular, economies in East Asia and the Pacific tend to restrict foreign equity ownership in this industry. APEC, Middle East and North Africa, South Asia, as well as the high-income OECD economies also achieve a lower than average score in publishing.

Figure 3.11: Secondary sectors are on average the most open globally.
Foreign equity ownership index (100=full foreign ownership allowed)



Source: Investing Across Borders database.

Box 3.12: The apparent paradox of East Asia and the Pacific

The fact that FDI has played a crucial role in supporting economic growth in parts of East Asia and the Pacific over the past 40 years is well known. Yet, in this report the average foreign equity ownership index for economies in East Asia is lower than in all other regions. Should one then infer that the relationship between overall openness to foreign equity ownership and actual FDI inflow is tenuous? The answer is no. Here is why:

1. The Investing Across Sectors indicators only measure the percentage of foreign equity ownership allowed in a sector. This is an incomplete measure of overall openness to FDI. Economy X can allow 100% of foreign equity participation in a sector, yet impose any number of the dozen or so restrictions permitted under WTO agreements (such as limiting the number of licenses, or capping the value of transactions).³⁷ Economy Y can let in 75%, but with no other conditions. Which economy is more open to FDI is debatable. The IAB indicators do not provide a full answer to this issue as they only focus on restrictions to foreign ownership of equity.
2. Although the foreign equity ownership index for East Asia and the Pacific is the lowest among the regions, as explained earlier in the report, actual FDI inflows are determined by a range of factors from the size and growth prospects of an economy, to low transaction costs, predictability and stability, among others. In many of these factors East Asia and the Pacific does rather well. What is certain is that economies with blanket restrictions in many sectors will get little FDI, but an average equity ceiling of around 75% appears to have been deemed sufficient for FDI to pour into East Asia and the Pacific region. It is only in relative terms, that is when compared to the average equity limit of other regions, that East Asia and the Pacific ranks low. However, it could be hypothesized that East Asia could attract even more FDI if some sectors were more open. In China and Viet Nam, for example, foreign equity limit in

³⁷ World Trade Organization, Guidelines for the scheduling of specific commitments under the General Agreement on Trade in Services (GATS) (http://www.wto.org/english/tratop_e/serv_e/s192.doc).

banking is approximately 60%, and in insurance and telecom it is under 50%. The limits are even lower in electricity and transport services. But again, these equity ceilings alone are not a major deterrent to FDI, and economies may feel there are good “market failure” reasons to regulate sectors whose tradability is nascent and evidence on benefits is less robust.

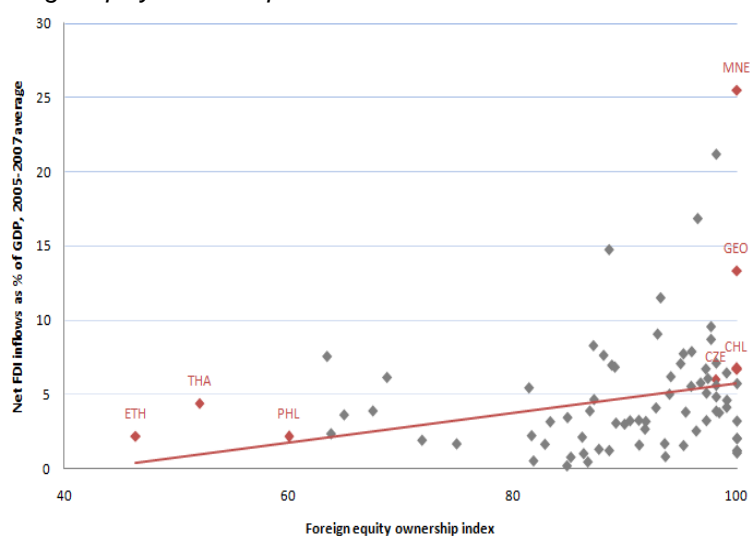
- It is also the case that the performance of FDI inflows to East Asia and the Pacific is uneven, and varies with the yardstick used. According to UNCTAD, between 2000 and 2007, China, Malaysia, Singapore, and Thailand received among the highest average FDI flows in the region in absolute terms.³⁸ However, when FDI flows and stock data are calculated on a per capita basis, only Korea, Malaysia, and Singapore stand out. China, the Philippines, and Viet Nam, among others, perform below average of the 92 economies in the IAB sample. And when FDI flows or stock data are ranked relative to the economy’s size (GDP), Korea, Malaysia, Singapore, and the Solomon Islands do relatively well, while the other economies in the region rank below the average of the economies included in the IAB 2010 report.

In summary, the analysis of Investing Across Sectors data highlights the fact that restrictions on foreign equity ownership are still more prominent in service sectors than in manufacturing and other export-oriented industries. In particular, many sectors that are considered of strategic importance to economies, such as media, transportation, electricity, and telecommunications, still show a relatively high level of restrictiveness. In terms of the regional differences, economies in Eastern Europe and Central Asia as well as Latin America and the Caribbean tend to have fewer restrictions than economies in East Asia and the Pacific and Middle East and North Africa. Many APEC member economies restrict foreign equity participation in companies across a relatively large number of sectors. Transportation sectors, commercial banking, and media are, on average, more restricted than in most other regions of the world. In contrast, manufacturing sectors are fully open in nearly all APEC economies.

Conclusions and implications

Simple correlation analysis shows a weak but positive and statistically significant association between FDI and openness to foreign equity ownership (Figure 3.13).³⁹ Economies that restrict foreign ownership of companies do not attract much FDI, while many economies—such as Chile, the Czech Republic, and Georgia—that have opened up major sectors of their economies have attracted significant FDI. These results do not imply a causal relationship between openness and FDI, nor do they indicate a direction of the association.

Figure 3.13: Statutory restrictions on foreign equity ownership limit FDI
Foreign equity ownership index and net FDI inflows as % of GDP



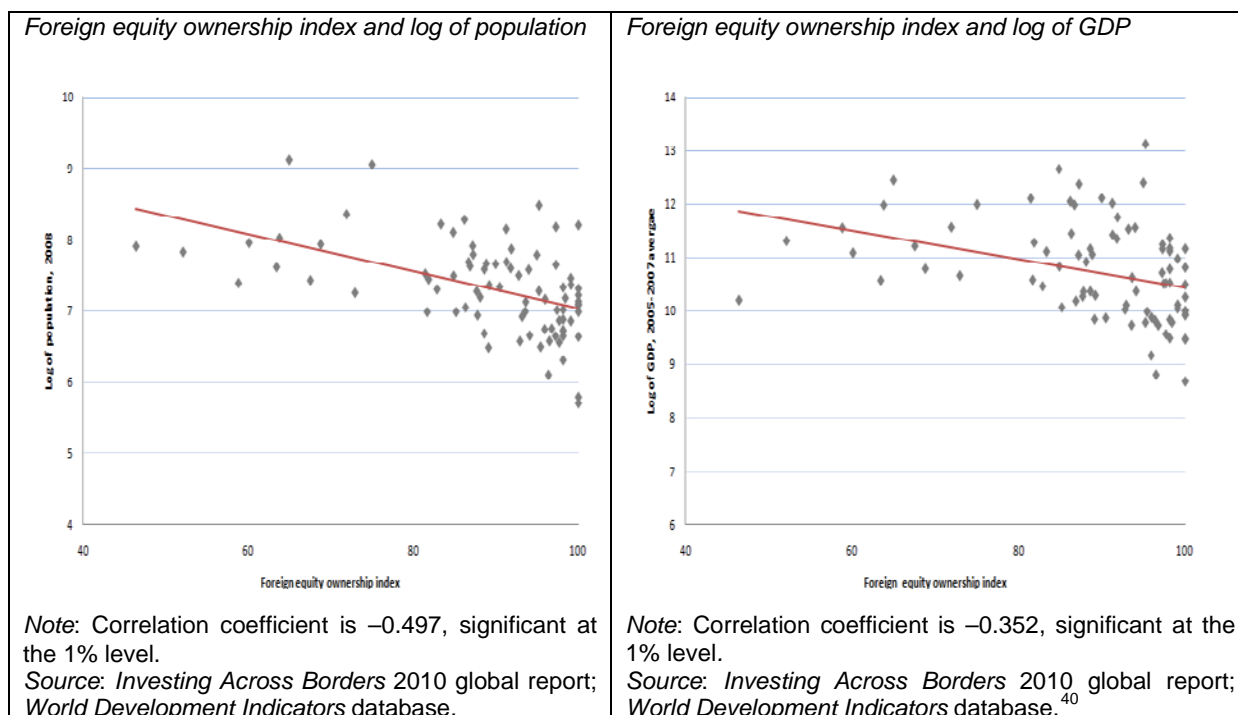
³⁸ UNCTAD, Key Data from WIR Annex Tables, (<http://www.unctad.org/templates/Page.asp?intItemID=3277&lang=1>).

³⁹ For the purposes of this analysis, net FDI inflows expressed as a percentage of GDP have been considered in order to account for the varying sizes of economies across the data sample.

Note: Correlation coefficient is 0.267, significant at the 5% level for CHL (Chile), CZE (the Czech Republic), ETH (Ethiopia), GEO (Georgia), MNE (Montenegro), PHL (the Philippines) and THA (Thailand).
 Source: *Investing Across Borders* 2010 global report; *World Development Indicators* database.

There is also a negative and statistically significant association between openness to foreign equity ownership and economy size (Figure 3.14). Economies with smaller populations or markets—such as Chile, Montenegro, and Rwanda—have opened up more of their sectors to FDI. In contrast, larger economies—such as China, India, and Mexico—can rely more on the pull of their large markets to attract investment.

Figure 3.14: Small economies have fewer restrictions on foreign equity



Overall, the openness of sectors to foreign equity ownership—as measured by the Investing Across Sectors indicators—is a necessary but insufficient condition for attracting FDI. Having a relatively closed economy (as in Ethiopia or Sudan) restricts and in some cases prohibits FDI in certain sectors. On the other hand, having an economy completely open to foreign capital participation does not guarantee success in attracting more FDI. Other factors are also involved, including market size, infrastructure quality, political stability, and economic growth potential.

For political, economic, security, cultural, and other reasons some economies have restricted foreign ownership in some sectors. But the Investing Across Sectors indicators illustrate 2 key points. First, until the recent financial crisis, the global trend was to liberalize a growing range of economic sectors. Second, in many economies the benefits of openness to foreign capital participation have trumped reasons for restricting certain sectors from foreign ownership. For every economy that limits or prohibits foreign equity ownership in certain sectors, several others with similar features allow unrestricted foreign ownership.

However, an open economy cannot substitute for a well-regulated economy with strong investment climate fundamentals such as well-functioning institutions, economic and political stability, respect for the rule of law, and other key drivers of investment. The main goal of the Investing Across Sectors indicators is to help economies benchmark their policies against those of their peers—and to use these comparisons to inform their policy decisions.

⁴⁰ Ibid; Adler and Hufbauer (2008), Lim (2001).

3.2 Starting a Foreign Business

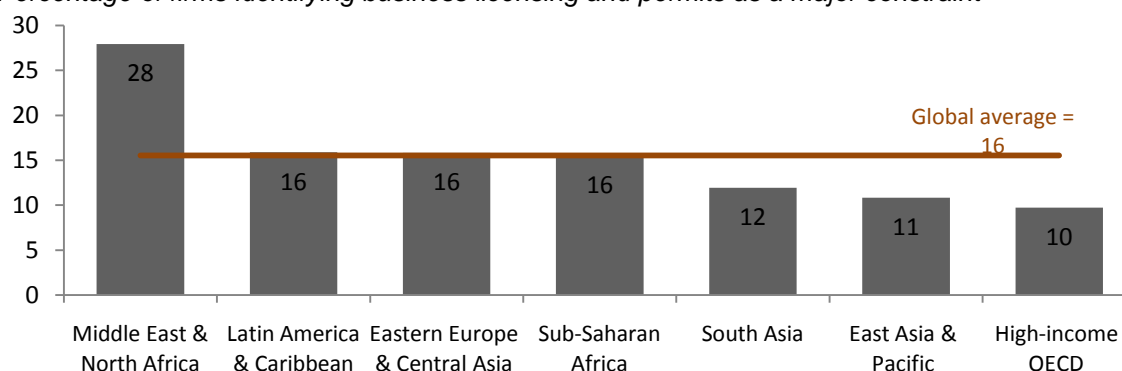
How the process of setting up a foreign-owned subsidiary matters for foreign direct investment

Anywhere in the world, a foreign company deciding on where to establish its next subsidiary may be attracted by large markets, natural resources, or low input prices. Beyond these factors, an economy's regulatory framework can also greatly affect the investment process. On the one hand, there is little a government can do about its economy's size or natural resource endowment. On the other hand, it can create a legal and regulatory environment that makes the economy more attractive to FDI. Easing business start-up is one important area where the government can implement positive changes.

Companies seek to avoid administrative hurdles when setting up business in foreign economies. In a survey of companies worldwide, 16% of firms polled identified business licensing and permits as a major constraint (Figure 3.15).⁴¹ In addition, a recent study measuring restrictions on FDI in the service sector finds that the difficulty of navigating the various requirements involved in starting a foreign business can have an important impact on companies' investment decisions.⁴²

Figure 3.15: Business licensing can be perceived as a major constraint

Percentage of firms identifying business licensing and permits as a major constraint



Source: Enterprise Surveys database, World Bank Group.

The starting a business indicator of the *Doing Business* project has shown that establishment procedures for domestic enterprises vary widely from economy to economy. In a study reviewing the effects of entry regulation on domestic small and medium enterprises, the authors note that, "[i]n a cross-section of economies...stricter regulation of entry is associated with sharply higher levels of corruption, and a greater relative size of the unofficial economy."⁴³ The same argument can be made by analogy for foreign companies, which, as pointed out in that same study, frequently face additional verifications and other procedures.

Similarly, legal and administrative requirements for establishing foreign-owned subsidiaries also vary in scope and stringency.⁴⁴ An IFC study on FDI found that foreign investments are often subject to official approvals or registration requirements. Where investment approvals are required, additional complications often arise from dispersal of authority. While some economies have centralized their approvals in a single agency, many economies require multiple-agency approvals or worse yet, approvals by a minister or prime minister. Navigating through the approval process in

⁴¹ World Bank Enterprise Surveys (<http://www.enterprisesurveys.org>).

⁴² Golub (2006).

⁴³ Djankov (2002).

⁴⁴ UNCTAD (2006b).

certain economies can take months or even years, and the uncertainty of the outcome, or even the process, dissuades potential investors from applying.⁴⁵

Of the 10 indicator topics covered by *Doing Business*, the one that measures the process of starting a business has elicited the most reforms. Since 2004, 140 economies have facilitated the start-up process through 296 reforms. Some of the advantages of easier start-up procedures include, among others, greater entrepreneurial activity, higher productivity, increased growth, and lower perceived level of corruption.

Introducing the Starting a Foreign Business indicators

While some argue that strict entry regulations provide more legal protection, global practice shows that legal certainty does not require costly and complex procedures.⁴⁶ The Investing Across Borders (IAB) data confirm that fast and efficient start-up systems are often found in investor-friendly economies known for their effective legal frameworks.

The Starting a Foreign Business indicators quantify the procedural burden that foreign companies face when entering a new market. The indicators provide information for economies looking to reform their start-up procedures. They are designed to reward an effectively regulated environment, provide examples of good practices that protect markets without overburdening investors, and suggest improvements in areas where certain administrative requirements add little value. They build on the data gathered by the *Doing Business* starting a business indicator and highlight areas that are of specific interest to foreign investors. Consideration is given to both the regulatory framework and its implementation in practice, thus ensuring a more comprehensive measure of the business environment faced by investors.

Structure of the Starting a Foreign Business indicators

The Starting a Foreign Business indicators comprise 3 components measuring the time needed, procedural steps required, and regulatory regime for establishing a foreign-owned subsidiary (Box 3.16).

Box 3.16: What the Starting a Foreign Business indicators measure

1. Procedures (number): This indicator covers the number of procedural steps involved in establishing a wholly foreign-owned subsidiary. Both pre- and post-incorporation procedures that are officially required for a foreign investor to formally operate a business are recorded.

2. Time (days): This indicator measures the number of days needed to go through each of the procedural steps for establishing a subsidiary of a foreign company.

3. Ease of establishment index: this index evaluates the regulatory regimes for business start-up. It focuses on the following areas:

- Restrictions to the composition of the board of directors or appointment of managers.
- Requirements forcing the use of a local third party (counsel, notary, investment promotion agency) during the establishment process.
- Possibility to expedite establishment procedures through an official channel (availability of fast-track procedures).
- Requirement of an investment approval (nature of investment approval requirement, possibility of appeal, minimum required size of investment, period of validity).
- Limitations of the business registration process.
- Restrictions on holding a foreign currency commercial bank account.
- Minimum capital requirements.
- Availability of electronic services (online laws, regulations, documents, and registration).

⁴⁵ International Finance Corporation (1997).

⁴⁶ *Doing Business* (2010).

The Starting a Foreign Business indicators do not cover all aspects of economies' start-up regimes for foreign companies. The methodology chapter of this report provides an extensive list of the indicators' substantive and methodological limitations, including guidance for how to interpret and use the data.

Case study assumptions

To ensure consistency and comparability of data across all 92 economies, the Starting a Foreign Business indicators are based on a case study that sets out assumptions about a foreign company hoping to establish a local subsidiary. The most critical elements of this case study are provided below. The methodology section of this report provides additional general case study assumptions.

The foreign company:

- Plans to manufacture electric household appliances (such as refrigerators, electric or microwave ovens).
- Is locally/domestically incorporated in the largest business city as a limited liability company (LLC).
- Plans an initial capital investment of \$10 million.
- Plans to initially employ 50 people, including 3 expatriate managers.
- Is not applying to receive any special benefits and privileges (extraordinary tax holidays/breaks/exemptions, customs duty exemptions), apart from the investment incentives available automatically on a legal basis.
- Will not be investing in an export processing zone (EPZ), special economic zone (SEZ), or any other zone governed by a special FDI regime.
- Plans to sell its manufactured product locally as well as to export it.
- Will import about 60–70% of the value of its production inputs other than its capital equipment.

Key laws evaluated by the Starting a Foreign Business survey

Below are some of the laws evaluated by the Starting a Foreign Business indicators. Some economies have enacted specific investment-related laws, while others have included relevant stipulations in various business and civil laws. A vast majority of the economies in the IAB sample have made these laws publicly available online.

Box 3.17: Key laws relating to starting a foreign business

- Investment-related laws: Investment codes, investment promotion laws and regulations, foreign investment acts.
- Company and business organization laws: Commercial codes, foreign company laws, company and legal entities registration laws, business laws and company laws. (corporations), laws for business associations, foreign exchange transactions laws, private international law codes, trade laws, tax laws, labor laws.
- Civil codes and civil procedure codes/rules.
- Ministerial and presidential decrees.
- Constitutions.

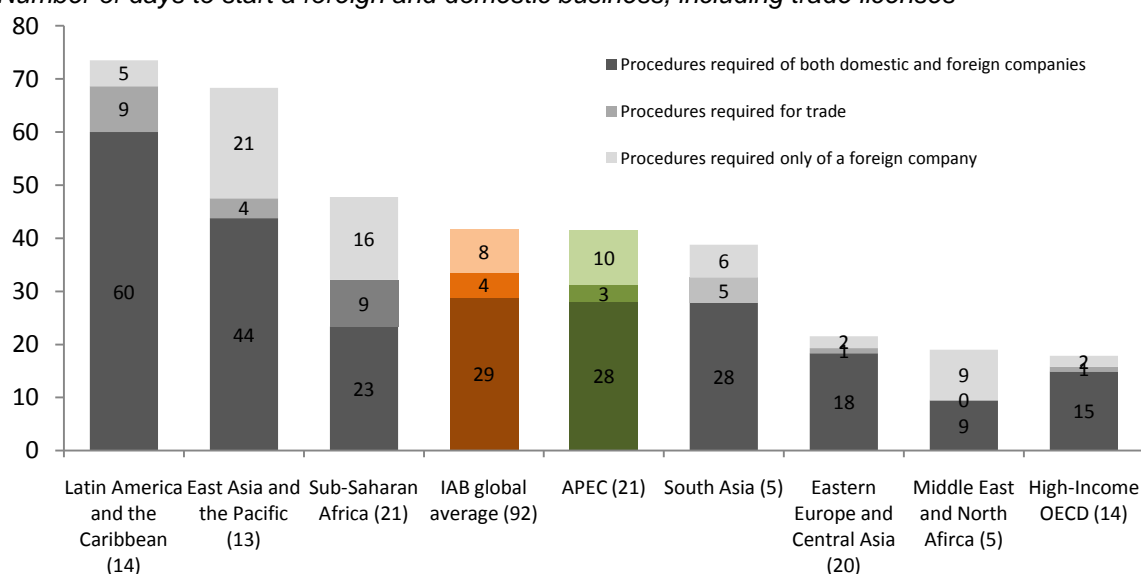
Results of the Starting a Foreign Business indicators

Perhaps unsurprisingly, establishing a local subsidiary of a foreign company takes longer and requires more steps than establishing a domestic enterprise. On average, this process takes a foreign business 13 more days and 2 more procedures than a domestic enterprise in that same economy (Figures 3.18 and 3.19). The results are most striking in Sub-Saharan Africa and Middle East and North Africa, where it takes twice as long to start a foreign company as it does a domestic one. Overall the process takes longest for companies in Latin America and the Caribbean, where over 2 months are required, on average, to establish a domestic or a foreign-owned business. In contrast, the process of starting a wholly foreign-owned subsidiary is rather similar to establishing a domestically owned company in the high-income OECD economies and in

Eastern Europe and Central Asia. APEC's performance as a group is on par with the global average.

Figure 3.18: It takes longer to start a foreign business

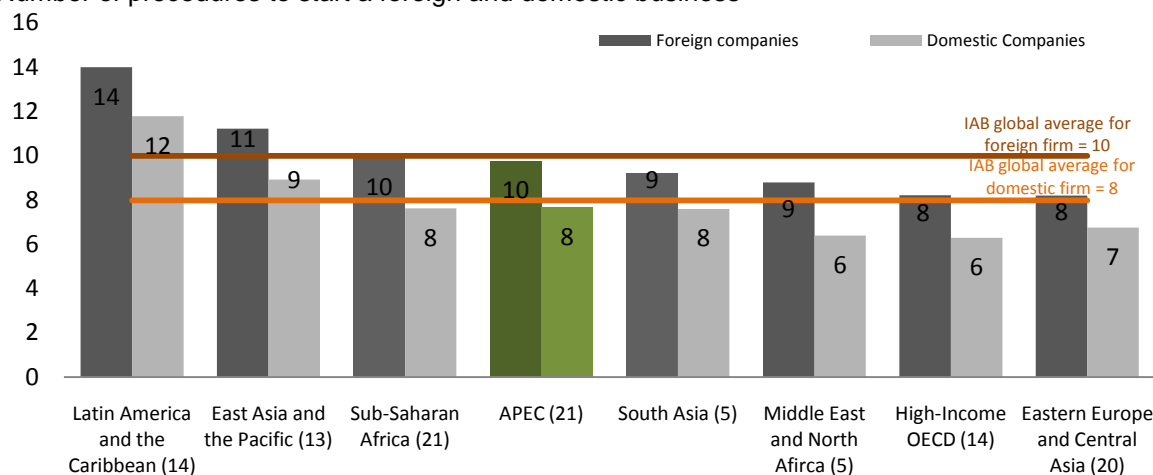
Number of days to start a foreign and domestic business, including trade licenses



Source: Doing Business 2010 and Investing Across Borders database.

Figure 3.19: More procedures are required to start a foreign business

Number of procedures to start a foreign and domestic business



Source: Doing Business 2010 and Investing Across Borders database.

For domestically owned small and medium enterprises, some of the most common procedures include (but are not limited to):⁴⁷

- Searching for a company name.
- Notarizing articles of association.
- Opening a bank account.
- Registering with a business registry.
- Obtaining a tax identification number (tax office registration).
- Registering with retirement and pension funds.
- Registering for social security.

⁴⁷ Doing Business, starting a business indicators (<http://www.doingbusiness.org/ExploreTopics/StartingBusiness/>).

The Starting a Foreign Business indicators of the *Investing Across Borders* project document the additional procedures required of foreign companies looking to engage in international business transactions. These procedures include:

- Authentication of the parent company's legal documents abroad.
- Foreign investment approval or notification.
- Certificate of capital importation or registration with the central bank.
- Trade (import/export) license or customs registration certificate (the assumption is that the foreign company will want to engage in international trade).

Providing electronic services is one of the tools that economies can use to make administrative processes more efficient and transparent. Electronic services do not necessarily require costly and complex technological solutions. Any public agency with a website can start by posting the key information online, and, over time, enabling the provision of some of its services electronically. Box 3.20 assesses how common it is for economies to make their laws and other information available on the Internet, and to allow online registration.

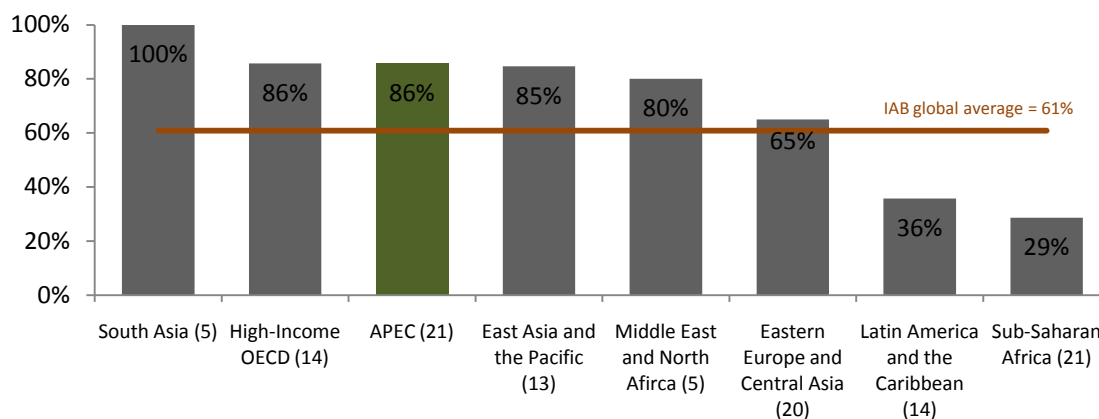
Box 3.20.: Availability of electronic services

The convenience and efficiency of access to online information is important to all businesses, but in particular to foreign investors who are not physically present in the economy. For this reason, it is helpful if information on laws and regulations are available online. Better yet is the availability of registration forms and other related documents for download, and the possibility of e-registration and monitoring.

Companies are able to download registration forms in 56% of IAB economies, but only 18% of them offer electronic registration services. In Sub-Saharan Africa, less than 30% of the economies have documents available for download. Eighty-six percent of APEC members offer an online download for registration documents. This makes APEC the second highest performing region when it comes to the availability of registration documents online.

Figure 3.21: All surveyed economies in South Asia offer downloadable registration documents.

Availability of registration documents online by region

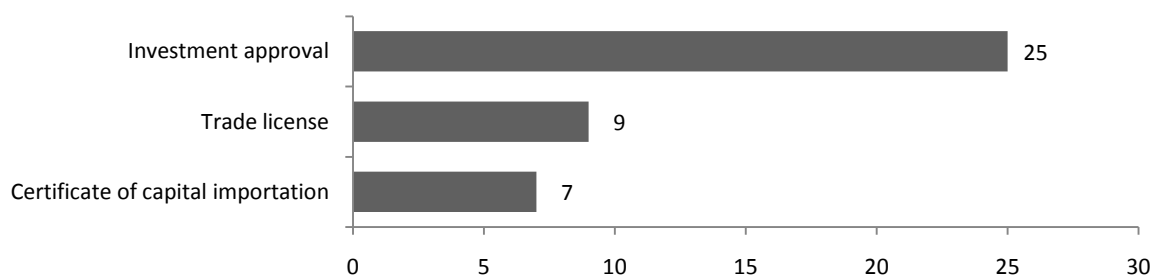


Source: *Investing Across Borders* database.

IAB finds that foreign investment approvals, foreign exchange certificates, and trade licenses are among the procedures most commonly required of foreign companies in addition to the registration requirements for domestic firms. On average, these 3 procedures take 25, 9, and 7 days, respectively, in the IAB economies (Figure 3.22). Authentication of the documents of the foreign parent company is also a common start-up procedure in many economies. IAB has, however, excluded this administrative step from figure 3.22 because the time needed to comply with this requirement depends on a number of factors beyond the control of the foreign company and authorities in the host economy.

Figure 3.22: Investment approval is the most time consuming additional procedure for foreign investors

Average time required to comply with additional procedures, in days



Source: Investing Across Borders database.

Box 3.23: The Hague Apostille Convention

The Apostille Convention of 1961 facilitates the circulation of public documents executed in one State party to the Convention and to be produced in another State party to the Convention. It does so by replacing the cumbersome and often costly formalities of a full legalization process (chain certification) with the mere issuance of an Apostille (also called Apostille Certificate or Certificate). For companies, this is especially useful as it greatly facilitates the recognition of the parent companies' documents during the registration process in a new economy.

Currently, a total of 99 states are contracting States to the Hague Apostille Convention—over 40 of them are economies surveyed by IAB.

Following is the list of the economies measured by IAB. **The Convention applies to those in bold font.**

Sub-Saharan Africa: Angola; Burkina Faso; Cameroon; Côte d'Ivoire; Ethiopia; Ghana; Kenya; **Liberia**; Madagascar; Mali; **Mauritius**; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; **South Africa**; Sudan; Tanzania; Uganda; Zambia.

East Asia and the Pacific: **Brunei Darussalam**; Cambodia; China; **Hong Kong, China**; Indonesia; Malaysia; Philippines; Papua New Guinea; Singapore; Solomon Islands; Chinese Taipei; Thailand; Viet Nam.

Eastern Europe and Central Asia: **Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Georgia; Kazakhstan**; Kosovo; Kyrgyz Republic (will come into force on 31 July 2011); **Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Turkey; Ukraine.**

Latin America and the Caribbean: **Argentina**; Bolivia; Brazil; Chile; **Colombia**; Costa Rica; **Ecuador**; Guatemala; Haiti; **Honduras; Mexico**; Nicaragua; **Peru; Venezuela, RB.**

Middle East and North Africa: Egypt, Arab Rep.; Morocco; Saudi Arabia; Tunisia; Yemen, Rep.

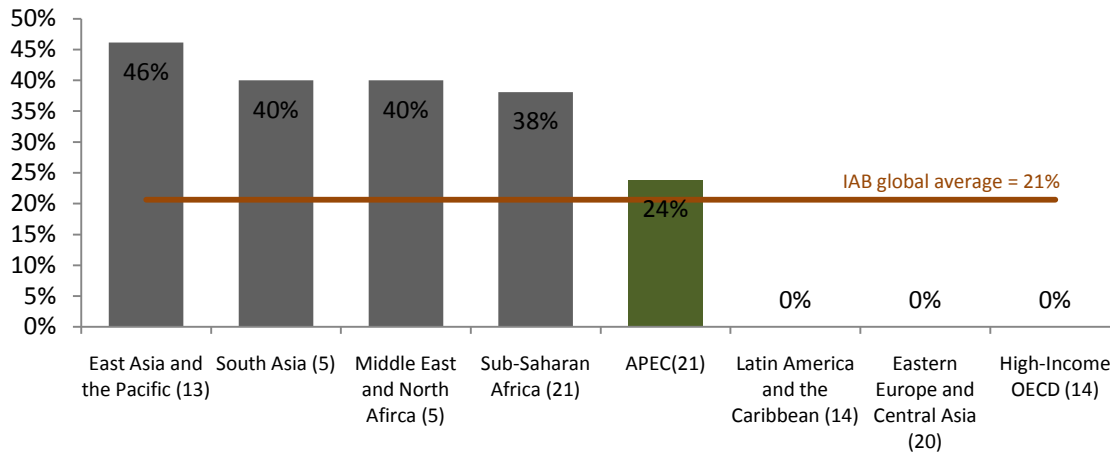
South Asia: Afghanistan; Bangladesh; **India**; Pakistan; Sri Lanka.

High-income OECD: **Australia; Austria; Canada; Czech Republic; France; Greece; Ireland; Japan; Korea, Rep.; New Zealand; Slovak Republic; Spain; United Kingdom; United States.**

Foreign investment approval and notification requirements

Many economies require foreign investors to go through an approval or authorization process before proceeding with their planned investment. Twenty-one percent of the 92 IAB economies require such an approval (Figure 3.24). Five APEC member economies have a foreign investment approval requirement. These are China, Indonesia, Papua New Guinea, Chinese Taipei and Viet Nam.

Figure 3.24 Twenty one percent of all IAB economies require a foreign investment approval
Percentage of economies requiring a foreign investment approval, by region



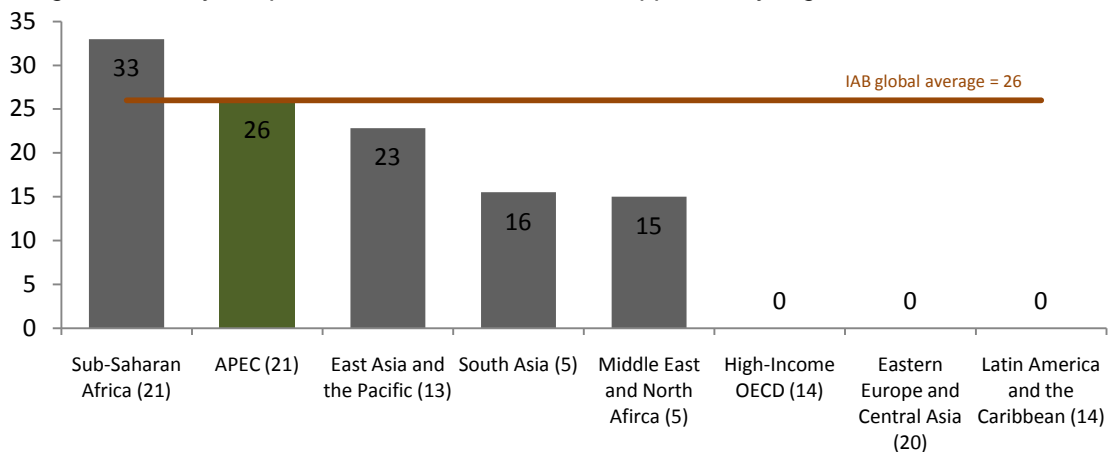
Note: 0% denotes that none of the economies in that region require an investment approval.

Source: *Investing Across Borders* database.

Obtaining an approval takes on average 26 days, both globally as well as among those APEC economies where such an approval is required (Figure 3.25). The process takes longest in Sub-Saharan Africa.

Figure 3.25: Investment approvals take longest in Sub-Saharan Africa

Average time in days required to obtain an investment approval, by region



Note: 0 denotes regions in which investment approvals are not required.

Source: *Investing Across Borders* database.

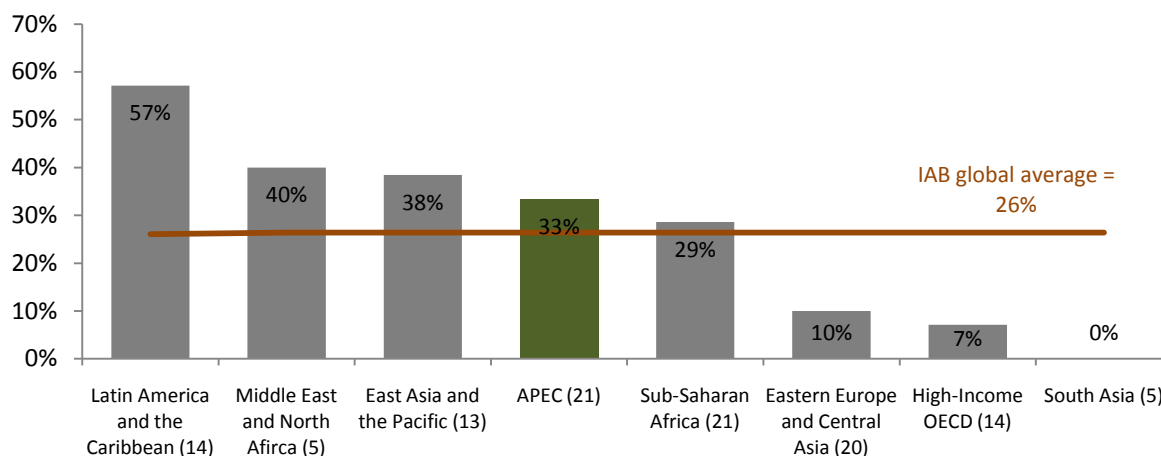
Capital importation requirements

In many economies, companies that bring in foreign capital require some form of authorization. Usually foreign investors must have their investment capital or external loans registered with the national bank of the economy in which they are investing. In many cases, this registration is required for the purposes of future payments abroad or the repatriation of profits when necessary.

Some form of capital importation notification or certificate is required in 26% of all IAB economies (Figure 3.26). While it is not required in any of the South Asian economies surveyed by IAB, 57% of Latin America and the Caribbean economies have some form of notification requirement, usually a registration with the central bank. Thirty three percent of APEC member economies require a capital importation notification or certificate from the investor, a result slightly worse than the global average. In the Eastern Europe and Central Asia and high-income OECD regions, less than 10% of the economies require a capital importation notification or certificate.

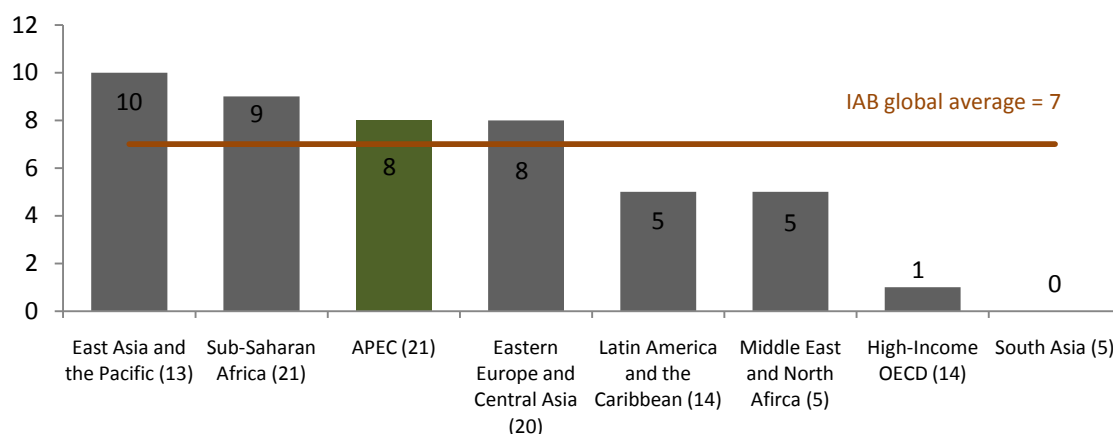
Looking at the time it takes to acquire a capital importation notification or certificate, APEC (8 days) scores nearly on par with the global average of 7 days (Figure 3.27).

Figure 3.26: Incoming foreign capital requires notification in many economies
Percentage of IAB economies that require incoming foreign capital registration, by region



Note: 0% denotes that none of the economies in that region requires a foreign capital notification.
 Source: *Investing Across Borders* database.

Figure 3.27: Importing capital takes only 1 day in high-income OECD economies
Number of days it takes on average to complete a foreign capital registration, by region

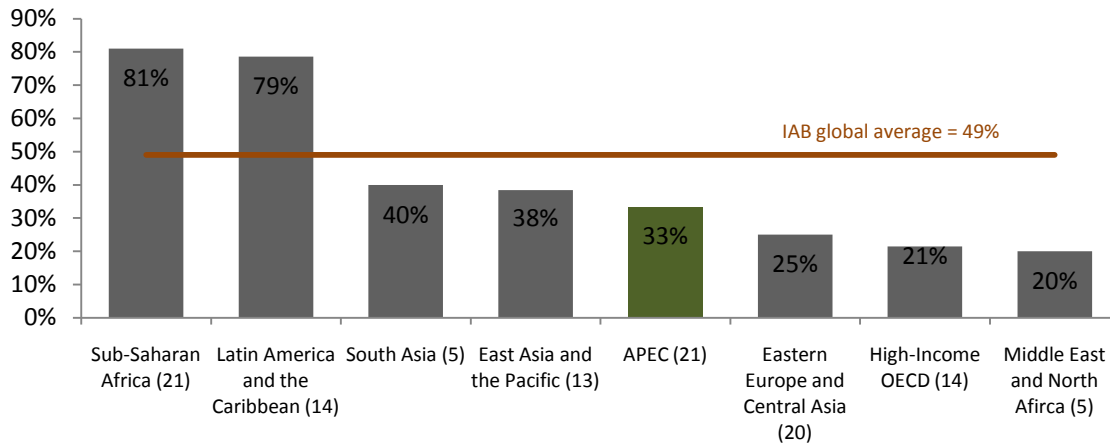


Note: 0 denotes regions in which notifications are not required.
 Source: *Investing Across Borders* database.

Trade licenses and other customs-related procedures

As mentioned earlier, the IAB case study assumes a foreign company is interested in importing and exporting goods. Almost half of all IAB economies require companies to get a trade-related license or authorization in order to import and export (Figure 3.28). Such licenses are most common in Sub-Saharan Africa (required of 81% of IAB economies) and in Latin America and the Caribbean (required in 79% of IAB economies). All other regions perform better than the global average. One in 3 APEC economies requires such a license. This puts the region very close to the top performances, and significantly better than the global average.

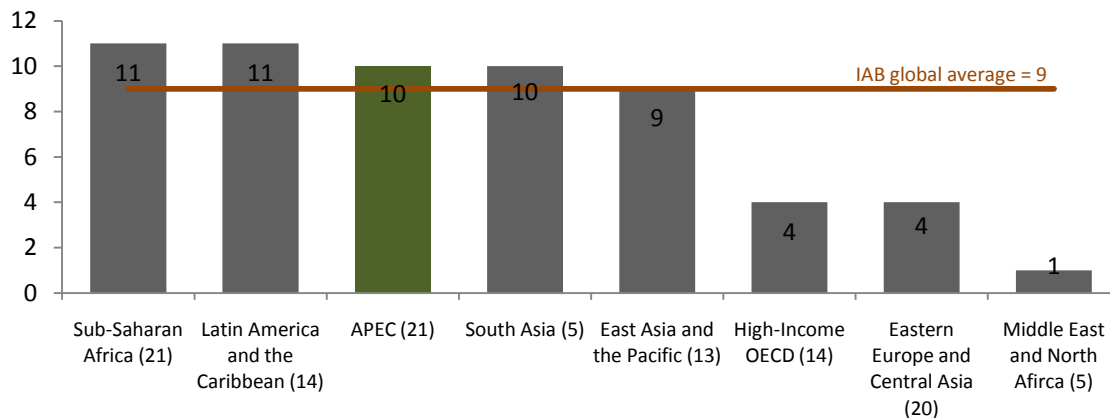
Figure 3.28: Half of the IAB economies require a trade license for international trading
Percentage of IAB economies that require an international trade license, by region



Source: *Investing Across Borders* database.

Obtaining a trade license takes on average 9 days (Figure 3.29). In all but three regions (high-income OECD, Eastern Europe and Central Asia, and Middle East and North Africa) the process of getting a trade license takes longer than the global average. In APEC economies it takes 11 days, on average.

Figure 3.29: Obtaining an international trade license can take as little as 1 day
Number of days it takes on average to obtain a trade license, when required, by region



Source: *Investing Across Borders* database.

The discussion thus far has focused on the various administrative steps required to start a foreign company. The laws of each economy also regulate other aspects of the establishment process, such as composition of the board of directors, possible requirements to use local third parties, or minimum capital requirements. The rest of this chapter presents IAB results in these areas.

Restrictions on nationality or residency of company board members or managers

Many economies impose certain conditions on the composition of the board of directors or the appointment of managers of a company. These restrictions, though not targeted at foreign-owned companies, mostly deal with issues of nationality and residence, and are hence particularly relevant for foreign companies. Specifically, some economies require the directors or managers of foreign-owned companies to be nationals or permanent residents of the economy of incorporation. Such requirements limit the foreign companies' freedom to appoint any executives that the parent company feels would be most competent in managing the local subsidiary's operations.

One in 7 economies around the globe imposes such legal barriers to FDI. Such restrictions are particularly common in the Middle East and North Africa (40% of economies), followed by the

high-income OECD economies (25%) and APEC (24%). South Asia and Eastern Europe and Central Asia have no restrictions.

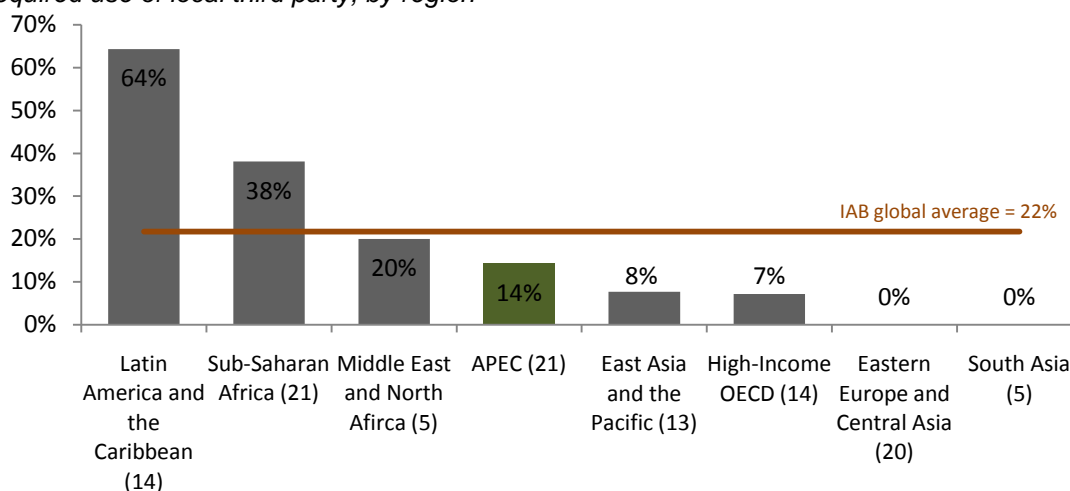
Required use of a local third party

It is unlikely that a large company establishing a subsidiary in a foreign economy will want to do so without consulting a local lawyer. Depending on its understanding of the local laws and regulations, it might, however, be able to do it alone with its in-house counsel. Certain economies allow this, while others require going through a local counsel or an investment promotion agency for certain start-up procedures, a requirement that might burden foreign companies with unnecessary expenses and lengthy delays. Such obstacles are most commonly found in Middle East and North Africa and Latin America and the Caribbean. In contrast, they are absent in all economies in South Asia or Eastern Europe and Central Asia surveyed by IAB.

Only 14% of the APEC member economies legally require some form of local assistance during the establishment phase of a foreign-owned company. This result is better than the global average of 26%.

Figure 3.30: Foreign investors are legally allowed to establish a subsidiary on their own in South Asia and Eastern Europe & Central Asia

Required use of local third party, by region



Note: 0% denotes that none of the economies in that region requires foreign companies to go through a local third party to establish themselves.

Source: Investing Across Borders database.

Minimum capital requirements

Minimum capital requirements are usually a larger obstacle for small and medium enterprises than they are for foreign investors. A foreign company will, in most cases, be investing more than the minimum capital requirement even though some smaller multinational companies might find even the lower thresholds to be an impediment. However, high minimum capital requirements may still discourage companies from investing and do not offer much protection against unscrupulous entrepreneurs.

Fifty out of the 92 economies surveyed by IAB (54%) have some form of minimum capital requirement for LLCs. In 10 IAB economies, the minimum capital requirement is different for domestic and foreign companies. In some cases, the amount required of foreign companies is higher than that required of domestic businesses. In other cases, foreign companies are subject to minimum capital requirements while domestic companies are not. Out of the 21 APEC member economies 9 have minimum capital requirements. Of these only 3 have different rules for foreign

companies. This means that only 14 % of all APEC members treat foreign companies differently from domestic firms concerning minimum capital requirements.

Conclusions

While the establishment procedures alone are typically not a strong determinant of FDI inflows, burdensome administration processes can be an irritant and at times a deal breaker, particularly for small and medium multinational corporations. As the first interactions the foreign investor has with an economy's administration, start-up procedures can quickly seal an economy's reputation as being investor-friendly or not. Reforms in start-up procedures have been shown to lead to improved governance, reduced corruption, and send the signal that the government is open for business, including FDI.⁴⁸

The Starting a Foreign Business data for the 92 economies surveyed point to the following good practices:

- **Equal treatment of foreign and domestic investors:** The start-up process should be governed by the same regime and rules for all companies irrespective of their ownership. Any differences in treatment should be due to the companies' size, legal form, or commercial activity, rather than the nationality of its shareholders.
- **Simplification of the establishment process:** While it takes only about 4 to 6 days to establish a foreign-owned subsidiary in certain economies, this process can take more than several months in others. Economies can improve the establishment process by consolidating procedures and abolishing the unnecessary or obsolete ones (for example, company seal requirement, investment approval for small projects). Also, economies can computerize the business start-up process, which enables investors to register their businesses online. The availability of fast-track alternatives, even if they entail a higher processing fee, is usually valuable to foreign investors. Last but not least, one other hurdle that makes the establishment process burdensome to foreign companies is the requirement to go through a local third party (lawyer, notary, public entity). Economies can make this requirement optional.
- **Simplification of the investment approval:** The foreign investment approval can be a burdensome requirement for foreign investors. They must in some instances prove minimum projected annual sales or demonstrate net economic benefits in order to be allowed to enter the market. In other cases, the requirements are unclear and give public authorities discretion to approve or decline an investment approval request. To remedy this, economies can simplify their investment approval requirement, making it a simple notification or abolishing it altogether, unless the foreign investment is made in a strategic sector that might have an impact on national or economic security.

The Starting a Foreign Business indicators measure effective regulation, leading to predictable and transparent administrative processes for foreign investors. In an increasingly competitive world, an investor-friendly regime for FDI entry is often viewed by foreign companies as an important signal and indication of the overall regulatory environment that they can expect in the host economy. This report has presented examples of a number of economies at various levels of income and institutional development that have well-organized systems for business start-up.

⁴⁸ Djankov (2002).

3.3 Accessing Industrial Land

Why land access matters to foreign investors

The World Bank's Enterprise Surveys find that, on average, one in 5 firms considers access to land a major or severe obstacle to operating and expanding their business.⁴⁹ This obstacle is greatest in Sub-Saharan Africa, Eastern Europe and Central Asia, and East Asia and the Pacific. Accessing land can impede foreign investment and doing business more generally for many reasons, including:

- *Mistrust and discrimination.* Foreign investors seeking to acquire land often face sensitive land issues rooted in historical, indigenous, and colonial traditions.⁵⁰ Mistrust of private ownership, particularly foreign ownership, still exists in many economies, leading to policies that discriminate against foreign companies or individuals.⁵¹ Such policies may include restrictions on ownership, types of land that can be acquired, and approvals for foreign investors.⁵²
- *Weak legal framework for land.* Once a company obtains rights to an investment site, weak land use rights can impede its ability to operate and plan for the long term. Limits on land use rights can include short lease terms, obstacles to renewing and transferring land rights, and restrictions on the ability to mortgage land or use it as collateral.⁵³
- *Burdensome acquisition procedures.* It may be difficult to obtain clear land titles⁵⁴ and acquiring industrial land is often inefficient, nontransparent, and a source of corruption.⁵⁵
- *Lack of information.* Foreign investors often face major challenges in finding suitable investment locations. Challenges can include insufficient information about encumbrances, valuation, geographic characteristics, utility connections, and environmental and social risks.⁵⁶

Improving access to land and ensuring its security provides significant benefits for foreign investors, governments, and other stakeholders. Effective, efficient, secure land administration is one of the drivers of foreign investment. Better access to land can also facilitate investment—foreign and domestic—and may increase prosperity. Secure land rights can unleash an economy's economic potential,⁵⁷ with benefits for domestic and foreign investors alike. In addition, improving land security can encourage private investment,⁵⁸ diversify labor force allocation,⁵⁹ increase the market value of land,⁶⁰ boost productivity,⁶¹ raise income and consumption,⁶² and reduce poverty.⁶³

But better access to land for investment can also pose significant socioeconomic and political risks. There is justified concern that improving foreign access to land may hurt environmental and social protections in the host economy. Critics often claim that land reforms are not pro-poor and ignore customary ownership systems that have been in place for centuries.⁶⁴ They also argue that improving access to land can increase speculation and encourage governments to allow affluent

⁴⁹ www.enterprisesurveys.org

⁵⁰ Seidman (2003).

⁵¹ FIAS (2006).

⁵² McAuslan (2010).

⁵³ FIAS (2005).

⁵⁴ Adams, Turner and White (2004)

⁵⁵ FIAS (2001).

⁵⁶ FIAS (2004).

⁵⁷ de Soto (2000).

⁵⁸ Besley (1995), di Tella, Galiani, and Schargrodsky (2007).

⁵⁹ Field (2007).

⁶⁰ Feder, Onchan, Chalamwong, and Hongladarom (1988), and Jimenez (1984).

⁶¹ Hornberger (2007), and Iyer and Do (2008).

⁶² Deininger, Jin, and Nagarajan (2008).

⁶³ Deininger and Mpuga (2009).

⁶⁴ Kingwell, Cousins, Cousins, Hornby, Royston, and Smit (2006).

foreigners to buy or lease prime real estate at prices well below its market value, leaving communities without land to live on.⁶⁵ These concerns should not be ignored.

Improving access to land for private investment requires striking a balance between efficient and effective regulation that is both pro-business and supports economic development. The Accessing Industrial Land indicators do not specifically examine the issue of more versus less regulation. Instead they measure good regulation and efficient processes.

Transparent, predictable, and effective laws and regulations with proper safeguards are critical to ensuring that foreign investment results in a win-win situation for all stakeholders—including investors, host economies, and their citizens. A solid legal framework gives investors confidence in the security of their land, investments, and rights. That framework also allows governments to ensure that investors respect the law and that their activities in host economies enhance socioeconomic development.

Making land a tool for economic development requires more than providing easy access to land for investors. It also requires ensuring that access is secure and complemented by inputs such as natural resources, working and human capital, and institutions for credit, finance, insurance, infrastructure, land registration, and contract enforcement, including land's ability to be used as collateral.⁶⁶ In addition, it requires balancing the needs of investors, governments, and citizens, with proper protections to safeguard the environment and the people living on the land.⁶⁷

The Accessing Industrial Land indicators do not encourage governments to promote land transactions at the cost of environmental and social protections. Despite efforts to balance the benefits and costs of regulation in the indicators, major limitations remain. The indicators do not specifically highlight issues related to environmental and social protections, though the IAB survey did examine these in the context of leasing land. In most economies an environmental or social impact assessment (or both) is not conducted when a foreign company leases or buys land. Instead, such assessments occur when a company intends to construct on land or begins operations in an environmentally sensitive sector.

When interpreting and using these indicators, it should be kept in mind that they focus primarily on laws and regulations governing foreign companies' access to industrial land, and less on legal protections for economies' citizens and environments. Like many indicator sets, the IAB indicators should not be considered in isolation, but in conjunction with other indicators and reports—such as the Land Governance Assessment Framework (LGAF)⁶⁸—that reflect economy's other factors, needs, and socioeconomic development. The methodology chapter of this report provides an extensive list of the indicators' substantive and methodological limitations, including guidance for how to interpret and use the data.

Introducing the Accessing Industrial Land indicators

The Accessing Industrial Land indicators quantify 3 aspects of land administration regimes important for foreign companies seeking to acquire land for their industrial investment projects. The indicators focus both on the legal framework and its implementation in practice. In doing so they provide detailed information for economies looking to reform their land administration frameworks and policies. The indicators are structured to reward predictable, transparent, and well-regulated land administration systems, which do not overburden investors and provide sufficient protections to land holders. The indicators also provide a useful reference of examples of good practices.

Structure of the Accessing Industrial Land indicators

The Accessing Industrial Land indicators comprise the following 3 components:

⁶⁵ Mitchell (2004).

⁶⁶ de Janvry and Sadoulet (2005).

⁶⁷ Ibid.

⁶⁸ Burns and Deininger (2009).

- **Strength of land rights:** These indicators compare economies on the types of land rights available and the strength of legal rights they offer to investors—for instance, land-holding options that are available to foreign companies, whether or not there is different treatment for foreign and domestic companies and whether the land can be sub-leased, subdivided, mortgaged, transferred or used as collateral.
- **Access to and availability of land information:** These indicators benchmark economies regarding the access to and availability of key pieces of land information.
- **Ease of leasing land:** These indicators measure the time it takes to lease land from both a private holder and the government.

More details on how the indicators are constructed and what they include are presented in table 3.31 below. The methodology chapter of this report provides an exhaustive list of specific issues evaluated in each of the components.

Table 3.31: Accessing Industrial Land indicators

Thematic area	Indicator	Measures
Land rights	Strength of lease rights index	<ul style="list-style-type: none"> • Ability of foreign-owned companies to lease land without entering into partnership with a domestic company or individual • Whether leasing procedures are the same for foreign as for domestic companies • Whether there is a statutory maximum duration of lease contracts • Whether there is a statutory maximum on the size of land plot a foreign-owned company may lease • Ability of foreign-owned companies to renew, transfer, sublease, subdivide, and/or mortgage leased land, or use it as collateral
	Strength of ownership rights index	<ul style="list-style-type: none"> • Ability of foreign-owned companies to purchase land without entering into partnership with a domestic company • Whether purchase procedures are the same for foreign as for domestic companies • Whether there is a statutory maximum on the size of land plot a foreign-owned company may buy • Ability of foreign-owned companies to renew, transfer, sublease, subdivide, use as collateral and/or mortgage purchased land
Land information	Access to land information index	<ul style="list-style-type: none"> • Whether the land registry and/or cadastre have a publicly available inventory of private and/or public lands • Whether the land registry and/or cadastre have a publicly available and online inventory of private and/or public lands • Whether the land registry and/or cadastre share data about land • Whether there is a publicly available land information system (LIS) and/or geography information system (GIS).
	Availability of land information index	<ul style="list-style-type: none"> • Availability to foreign investors of the following 18 pieces of information about land plots: <ul style="list-style-type: none"> - previous land contracts - plot size - land value - street address - mailing address - immovable property on the land - spatial information about the land - geotechnical description - documentation on environmental impact assessment - zone classification - tax classification - information on surroundings - carrying capacity of the land - local population density - utility connections - encumbrances - existing land claims - legal jurisdiction of the land
Ease of leasing land	Time to lease private land	<ul style="list-style-type: none"> • Total number of days to lease land from a private owner
	Time to lease public land	<ul style="list-style-type: none"> • Total number of days to lease land from the government

Key laws evaluated by the Accessing Industrial Land survey

Box 3.32 presents some of the principal laws evaluated by the Accessing Industrial Land indicators. Some economies have land-specific laws and regulations, while others regulate land matters through relevant stipulations of civil and commercial codes, or as part of the Constitution. Many economies have land-related laws and regulations in all of the sources listed in the box.

Box 3.32: Key laws measured by the Accessing Industrial Land indicators

- Land or property laws, which may take the following forms depending on the economy: Land title act, land title registration act, land registry act, state lands act, government lands act, municipal property act, property registration act, mortgage acts, conveyancing act, deeds registries act, cadastre and property register act, agricultural land ownership and use act, lands commission act, foreigners land acquisition act, state property and contracts act, land tenure ordinance
- Investment codes, laws, or acts
- Civil codes and civil procedure codes or rules
- Commercial laws or codes
- Constitutions

Results of the Accessing Industrial Land indicators

Context for understanding Accessing Industrial Land indicators

Understanding the context of how a wholly foreign-owned, locally incorporated subsidiary (for the rest of this chapter this legal form will be referred to as a 'foreign company') accesses industrial land is important for comparing the characteristics of economies' land administration regimes. These contextual aspects are not included in the construction of the indicators, and they are presented in this chapter to provide the appropriate setting for the subsequent presentation and discussion for the Accessing Industrial Land indicator results.

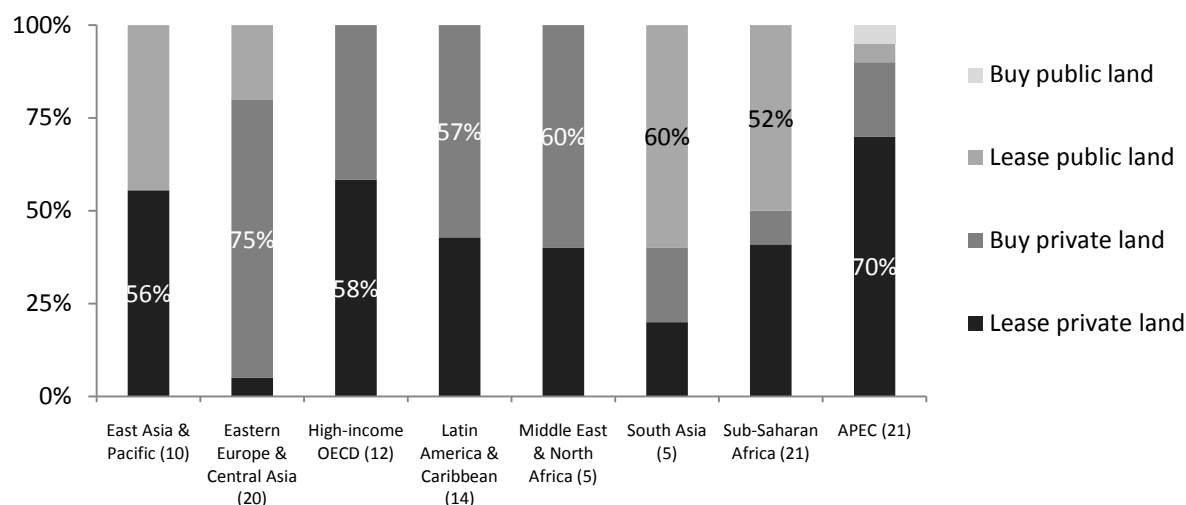
How investors acquire land

There is a wide degree of variation around the world in the way foreign companies prefer to hold land (Figure 3.33). Typically, this preference depends mostly on the availability of local legal options. Given that investors commonly prefer the maximum security over land, in economies which allow full private ownership of land investors tend to prefer to lease or buy private land rights (as opposed to public land rights). The choice of whether to lease or buy typically depends on the nature of the company's commercial activity and the size of investment (both in terms of capital invested and amount of land needed). In economies which do not allow private ownership of land because all land is held by the state, foreign companies will typically lease public land from the government.

Foreign companies prefer, on average, to buy private land for the realization of their investment projects in the following regions of the world: Eastern Europe and Central Asia, Latin America and the Caribbean, and Middle East and North Africa. In East Asia and the Pacific and high-income OECD economies foreign companies most commonly lease rather than buy private land. Finally, in South Asia and Sub-Saharan Africa investors are more likely to lease land from the government, as private ownership is prohibited in many economies in these regions. In APEC foreign companies mostly tend to lease private land. The second most commonly used practice is buying privately owned land.

Figure 3.33: Most common type of land acquisition varies by region

Most common form of land acquisition, share of economies per region



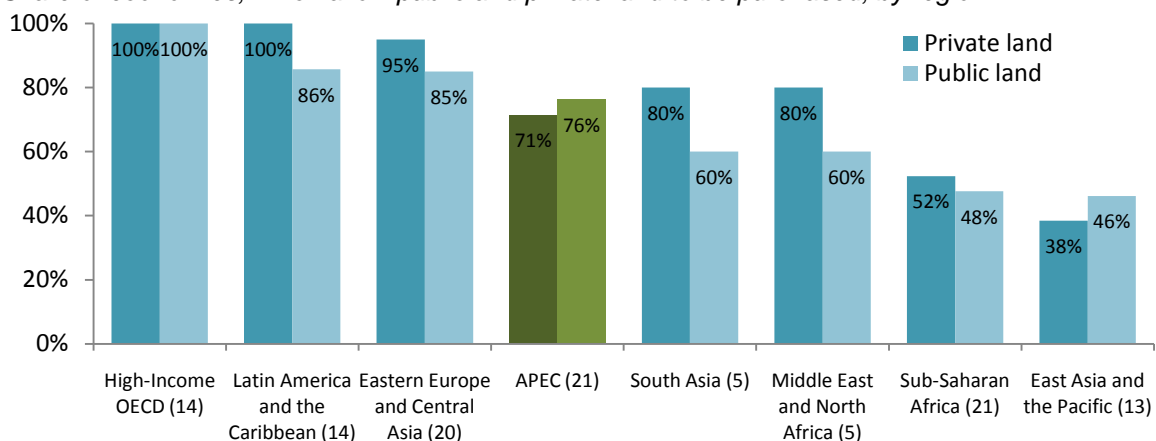
Note: Values are provided only for that type of landholding that is commonly preferred by most foreign companies. These data are not part of the Strength of Land Rights index analyzed in the previous section, or of any other indicator that scores economies' performances. They offer only contextual information.

Source: Investing Across Borders database.

Nineteen of the 92 economies surveyed do not allow any form of private ownership of land, often due to the legal and political history of an economy. In other economies, despite allowing private ownership of land, the overwhelming majority of land remains state owned.⁶⁹ Most economies in East Asia and the Pacific and Sub-Saharan Africa do not allow foreign companies to own private or public land (Figure 3.34). APEC member economies, on the other hand, are on average more open to legally allowing both approaches -- the purchase of public or private land.

Figure 3.34: Regions vary on whether or not foreign companies can own land

Share of economies, which allow public and private land to be purchased, by region



Source: Investing Across Borders database.

Differences in legal treatment between domestic and foreign companies and individuals

In the majority of economies surveyed, legal provisions for access to land apply to all locally incorporated companies irrespective of whether they are domestically- or foreign-owned. In these economies the Accessing Industrial Land indicators are not necessarily FDI-specific since they are

⁶⁹ Undeland (2010).

also applicable to domestic companies. Nevertheless, many economies around the world still have specific legal restrictions on rights to occupy and use land by foreign companies and individuals. In 8 economies surveyed, foreign individuals cannot own commercial land and in 16 economies foreign companies cannot own agricultural land despite the fact that nationals can.⁷⁰ This phenomenon is not restricted to developing and transition economies. Many high-income OECD economies also have restrictions against foreigners.⁷¹

Another form of discrimination concerns legal treatment of wholly foreign-owned, locally incorporated companies seeking to acquire and use land. Seventy three percent of the economies surveyed would consider this type of a company as a domestic company and give it equal treatment before the law in the land leasing processes. However 23 of the 92 economies would still consider the company a foreign company. These economies have specific restrictions on foreign companies, including different leasing procedures, additional costs, required partnerships with nationals to acquire land, or additional approvals from the government for selling land (Table 3.35).

Table 3.35: Comparison between legal treatments of foreign companies seeking to acquire land

Survey question:	For the purpose of leasing land a wholly foreign owned, locally incorporated company is considered a domestic or foreign company (share of economies)?	
	Considered domestic:	Considered foreign:
Number of economies surveyed	73%	27%
Different procedures for leasing private land?	5%	10%
Different procedures for leasing public land?	2%	21%
Additional cost for leasing private land?	0%	15%
Additional cost for leasing public land?	2%	11%
Require partnership with a national to own land?	18%	56%
Require permission from government to sell purchased land?	2%	18%

Source: *Investing Across Borders* database.

Strength of land rights indicators

The Strength of land rights indicators consist of 2 quantitative indicators evaluating the legal framework governing land rights for foreign companies. The first is the Strength of lease rights which includes all 92 economies surveyed and measures the strength of rights a land lease contract offers foreign companies. The second is the Strength of ownership rights which includes only those 71 economies surveyed which allow private ownership of land.

Strength of lease rights index--Overall results

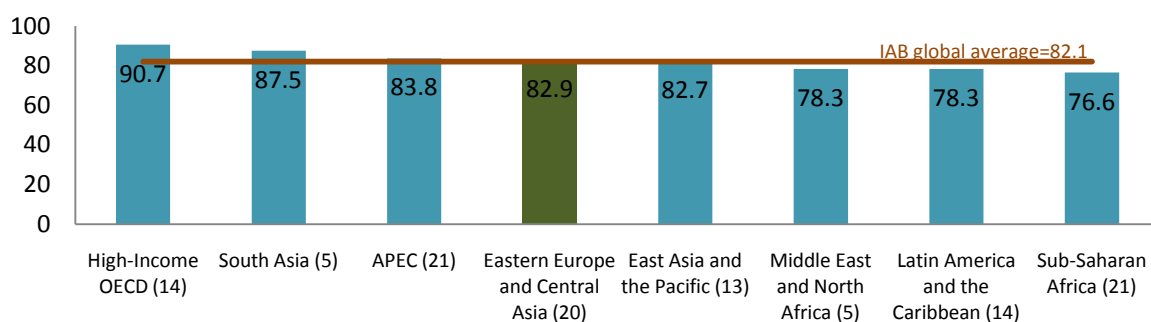
High-income OECD economies provide foreign companies with a strong set of lease rights and options regarding land use (Figure 3.36). In contrast, in Latin America and the Caribbean land leases are less common and using leased land for collateral and other purposes is thus not typical. Instead, most economies in the region provide stronger ownership rights. In contrast, in the Sub-Saharan African economies where land is typically held in long-term leases, the lower index scores illustrate the fact that many economies do not allow foreign companies to subdivide leased land or use land as collateral. On average, lease rights in the APEC member economies are slightly stronger than the global average would suggest.

⁷⁰ These types of restrictions are not included in the measurements of the Accessing Industrial Land indicators which focus strictly on access to industrial land by foreign companies, not individuals.

⁷¹ Ibid

Figure 3.36: Strongest lease rights are available in high-income OECD economies

Strength of lease rights index (100 = strongest rights), by region



Note: Please refer to the methodology section of this report for identification of all components of the Strength of land rights index.

Source: Investing Across Borders database.

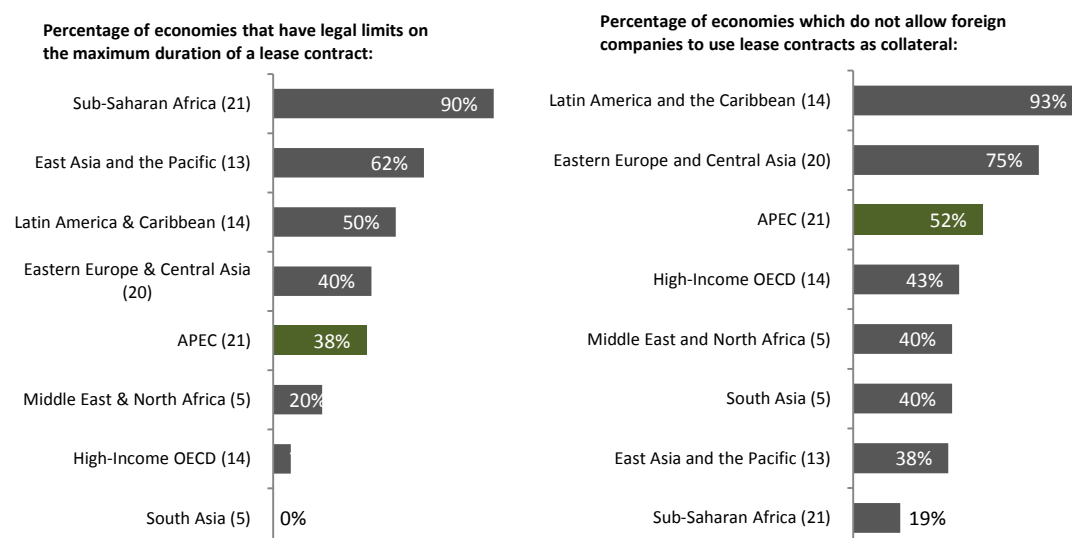
Limits on use of lease contracts

All 92 economies surveyed allow foreign companies to lease land. However, there are distinctions across regions on the legal limits for maximum lease duration, and on how leased land can be used for business activities. Many economies, especially in Sub-Saharan Africa and East Asia and the Pacific have legal limits on the maximum duration of a lease contract (Figure 3.37). If the terms are too short foreign companies may be limited in their capacity to plan long-term

The data reveal that more than half of the 92 economies surveyed do not allow foreign companies to use land leases as collateral to obtain credit for purchase of machinery or production equipment. This is mostly the case in Latin America and the Caribbean where most of the economies surveyed do not allow leased land to be used as collateral, although all of them allow purchased land to be used as collateral.

APEC economies have a liberal approach regarding the lease rights. Only 38% of all APEC members have set a maximum duration of lease contracts and about a half have restrictions on the use of leased land as collateral. This means that APEC economies as a group give companies high flexibility in using leased land as an instrument for further development of investment projects.

Figure 3.37: Nearly all economies in Sub-Saharan Africa have legal limits on the duration of lease contracts

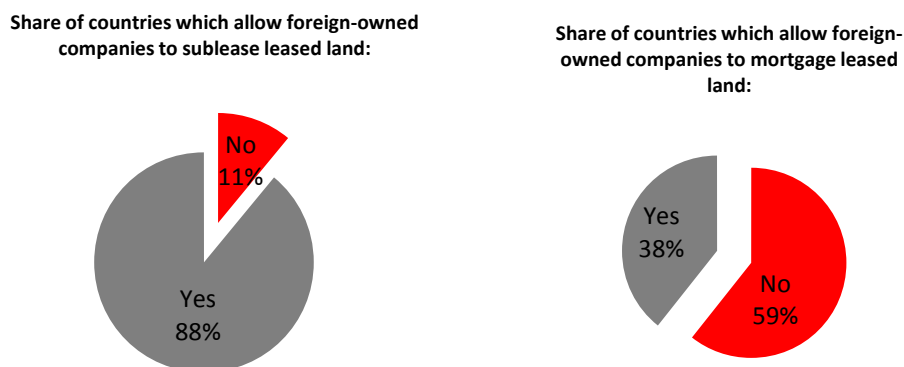


Note: None of the 5 economies surveyed in the South Asia had either a limit on the maximum duration of a lease contract or a restriction on whether a lease could be used for collateral, thus the region is reported as showing 0%.

Source: Investing Across Borders database.

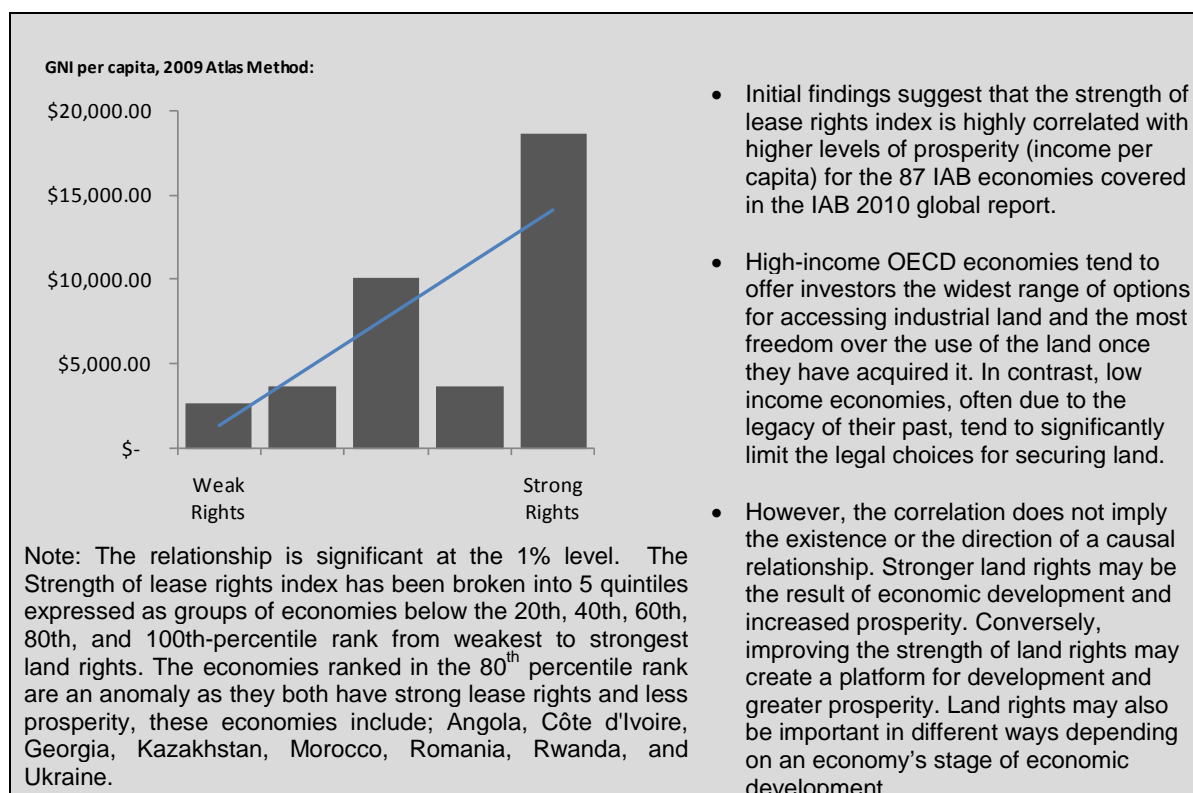
Other issues covered in the Strength of lease rights index include whether or not foreign companies can sublease or subdivide their leased land, and whether or not leased land can be mortgaged. Eighty-eight percent of economies surveyed allow leased land to be subleased to another company, but only 38% allow leased land to be mortgaged (Figure 3.38).

Figure 3.38: Many economies have limitations on long term lease contracts for foreign companies



Source: Investing Across Borders database.

Box 3.39: Stronger lease rights security is associated with greater prosperity



Source: Investing Across Borders 2010 global report, World Bank Development Indicators, 2010.

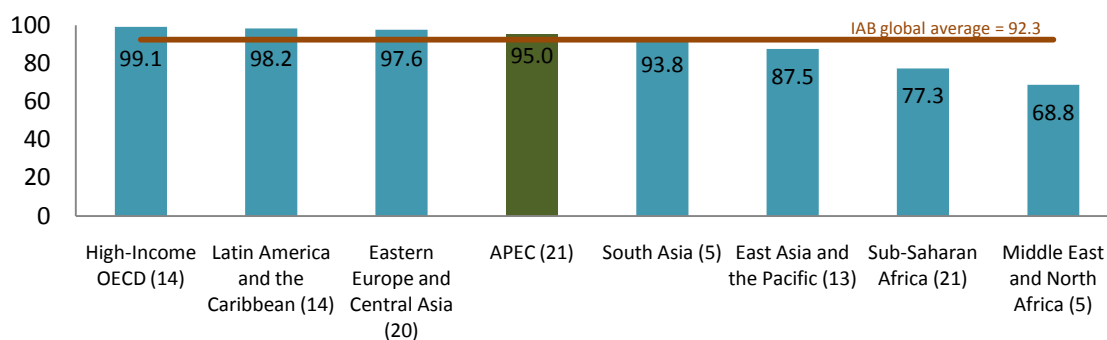
Strength of ownership rights index -- Overall results

Only 71 of the 92 economies surveyed allow private ownership, and it is only these that are measured by the Strength of ownership rights index. The remaining 21 economies which do not allow private ownership are not evaluated. The global average for the Strength of ownership rights

index is 92.3, which is rather high. It indicates that most economies provide foreign companies with a strong set of land rights and options regarding land use. The region with the most restrictions on the use of ownership contracts by foreign investors is Middle East and North Africa (Figure 3.40). The other extreme are the high-income OECD economies that give land owners nearly complete freedom within the framework of rights measured by the IAB Strength of ownership rights index. APEC performs slightly above the global average in the Strength of ownership rights index. With 95.0 points out of 100 possible, those members of APEC that allow private land ownership put a strong emphasis on the strength of ownership rights thus providing a solid basis for investments.

Figure 3.40: Most economies in the world offer strong ownership rights

Strength of ownership rights index (100 = strongest rights), by region



Note: Please refer to the methodology section of this report for identification of all components of the Strength of land rights index.

Source: Investing Across Borders database.

Access to and availability of land information indicators

Once a foreign company has decided to invest in an economy, it begins the process of looking for a suitable investment location. This typically involves identifying the relevant government authorities regulating land, hiring a local real estate agency or consultancy to look for a plot of land as well as beginning due diligence online and in person. The land information indicators evaluate economies around the world on 2 important factors related to public land information for foreign companies. First, the access to information about land through the economies' land administration systems—land registries, cadastres and land information systems, among others. Second, the indicators access the availability of key information at these public sources.

The indicators do not measure a third and often even more critical factor—which is the quality of land information provided by public institutions. In many economies around the world the quality of information located within public land management institutions is very poor. As quality of land information is not the focus of the Accessing Industrial Land indicators, interested readers are encouraged to use other resources, including economy-specific reports, to find this complementary information.

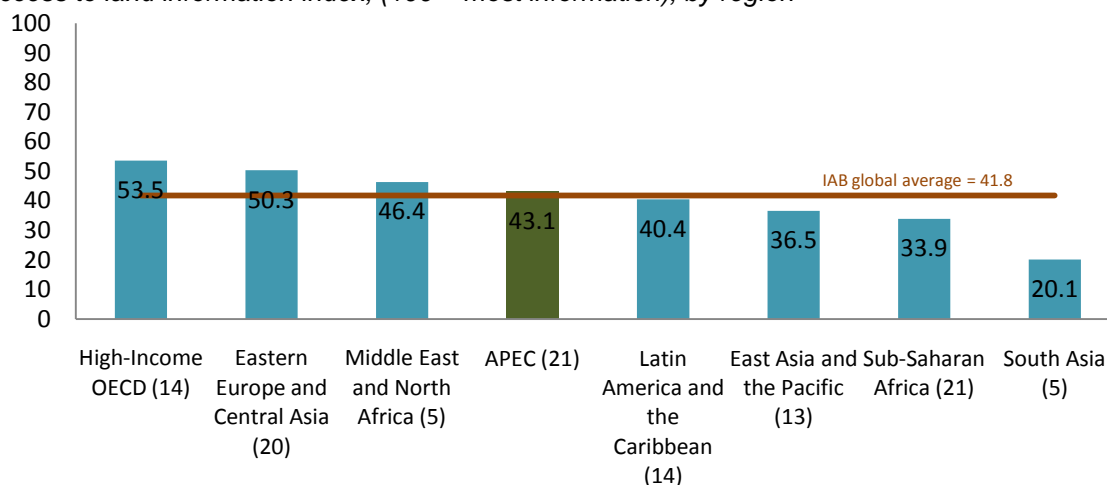
Access to land information index -- Overall results

There is significant variation across economies in the ease of access by private parties to public land information through public institutions and in the modernity of those systems. In general most economies surveyed perform relatively poorly on the Access to land information index, as public land management institutions are not well coordinated and in many economies not very modern (Figure 3.41).

APEC performs slightly above average, but is still more than 56 points away from the possible maximum of 100. Considering, however, that even the high-income OECD and Eastern Europe and Central Asia regions score considerably below the maximum, on a relative basis, when compared to the other regions, APEC economies do not lack markedly in providing land-related information to potential investors.

Figure 3.41 Access to land information index

Access to land information index, (100 = most information), by region

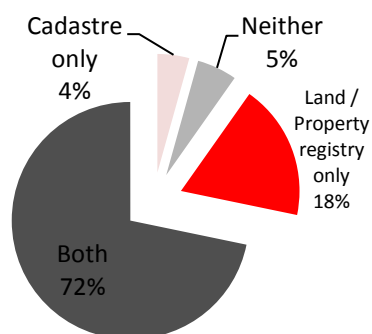


Source: Investing Across Borders database.

Modern land administration systems and their integration

There are as many different types of institutions that house land-related information as there are different legal and cultural traditions that govern land use around the world. Typically, an economy has some form of land or property registry⁷² or cadastre,⁷³ regardless of whether it is of civil or common law origin. Nearly three-quarters of economies surveyed by IAB have both a land or property registry and a cadastre (Figure 3.42).

Figure 3.42: Share of economies with land registry and cadastre



Source: Investing Across Borders database.

Many economies around the world do not have functioning land information systems (LIS).⁷⁴ More specifically, many economies do not have modern or coordinated land management systems. This can be a serious problem contributing to land-related disputes. And in many economies, the largest backlogs in the courts are due to the large number of disputes arising from poor land information provided by the public land-related institutions, which often do not contain information on all land, as not all land is properly registered.

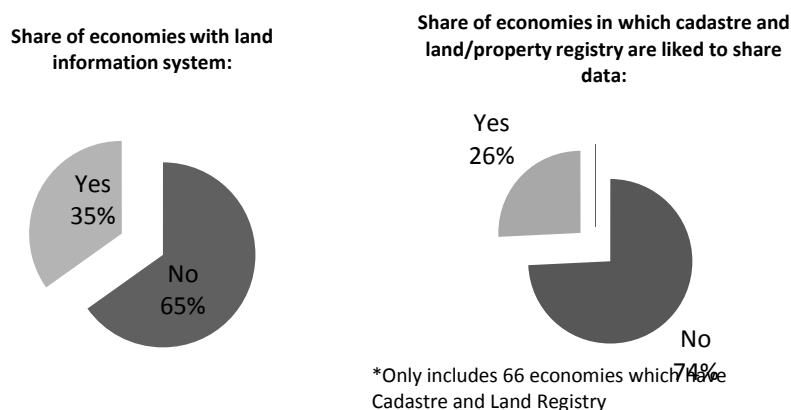
⁷² A property registry provide the definitive record of all registered properties, and comprises the registered details for each property.

⁷³ A cadastre is a parcel-based land-information system containing a record of interests in land (rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, and ownership or control of those interests, and often the value of the parcel. A cadastre is more common in civil law jurisdictions than in common law jurisdictions.

⁷⁴ LIS is a parcel-based land database system, used for acquiring, processing, storing, and distributing land-related information. It can also be a tool for legal, administrative, and economic decision making and an aid for planning and development.

Only 35% of the economies surveyed have a functioning LIS and only 26% of the 37 economies with both a land registry and cadastre have information technology systems set up that allow the two institutions to share information (Figure 3.43).

Figure 3.43: Large variations across economies on the modernity of land-management systems

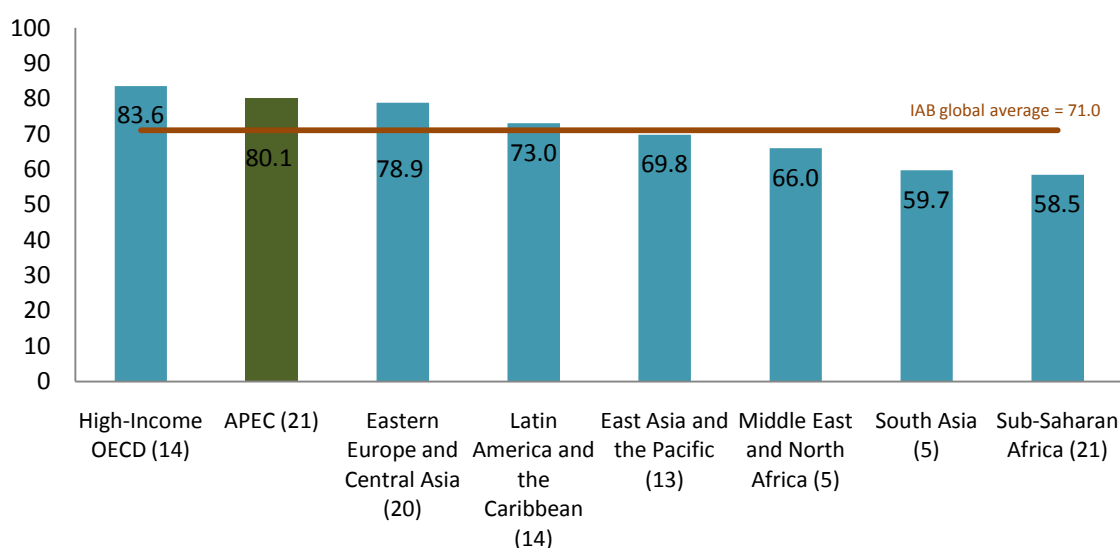


Source: Investing Across Borders database.

Publicly available land information

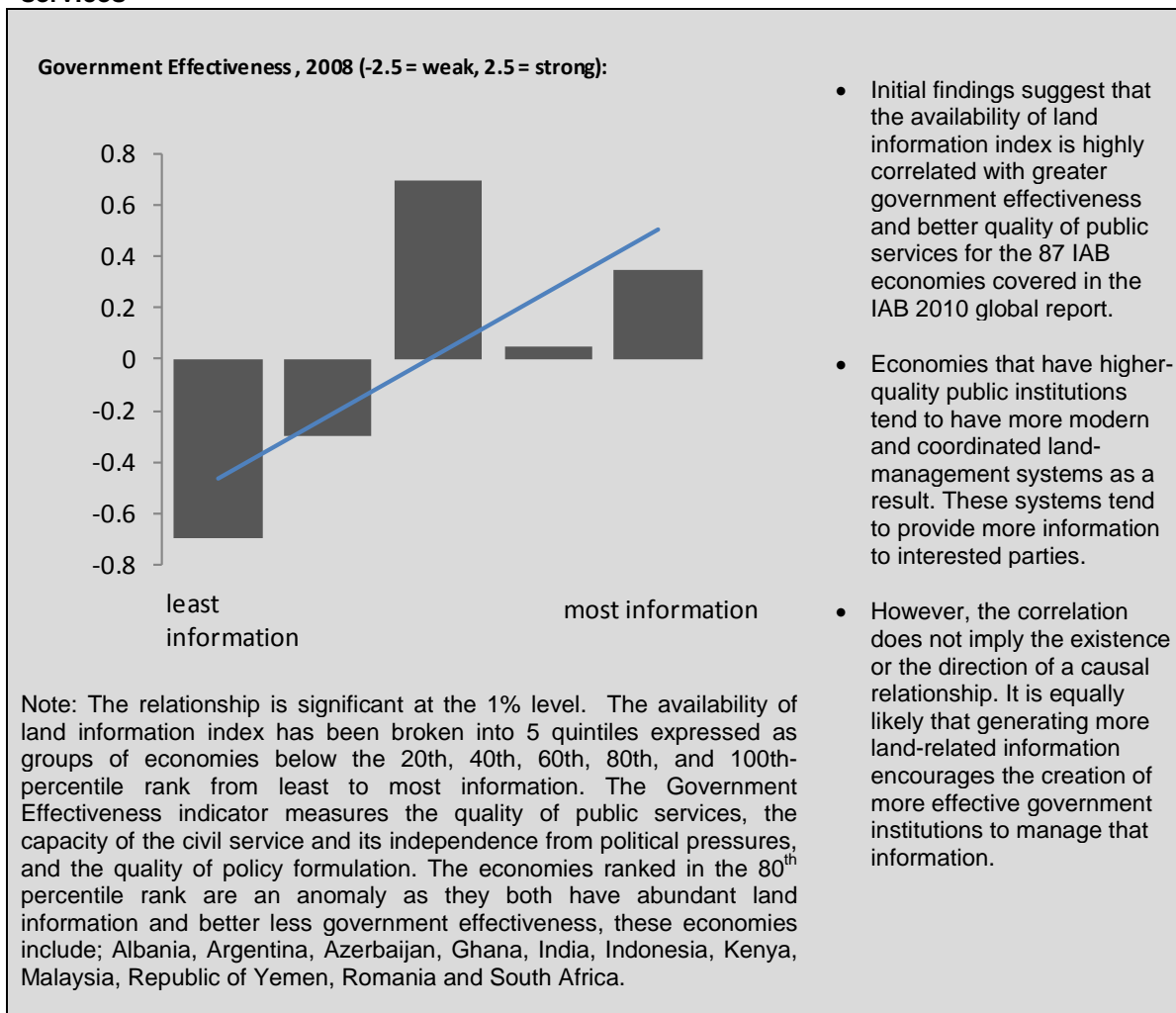
In many economies in East Asia and the Pacific the governments retain tight control over land and land-related information and this information is not always publicly available to interested third parties (Figure 3.44). Still regions like South Asia and Sub-Saharan Africa have even less information available for the public and provide the least accessible platforms for inquiry. The APEC economies as a group, on the other hand, are very service-oriented and are second in the world in allowing wide access to information about land and properties.

Figure 3.44: Availability of land information
(100 = highest ease of access), by region



Source: Investing Across Borders database

Box 3.45: Providing more land related information is associated better quality of public services



Source: *Investing Across Borders* 2010 global report, *World Bank Governance Indicators* (2008).

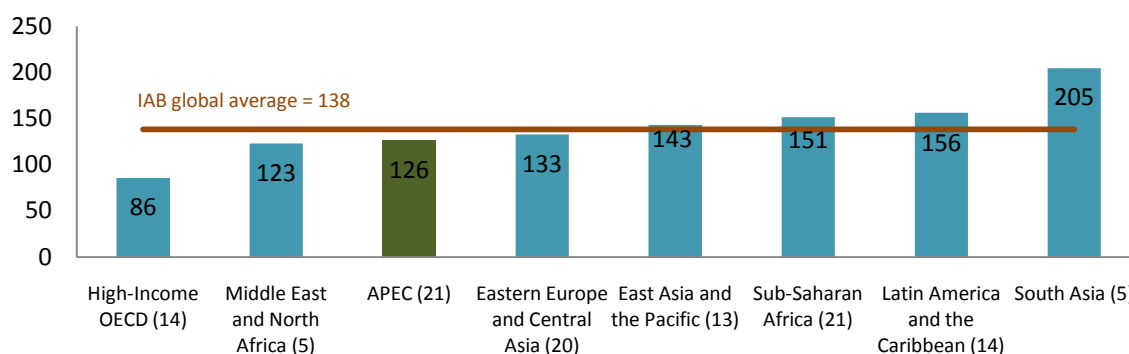
Ease of leasing land indicators

After a foreign company has located a suitable piece of land for its investment it will need to buy or lease the land from its holders. The process of leasing both private and public land differs from economy to economy. It involves different procedures and interactions with different authorities and takes varying amounts of time to complete, from a few days to several months, and, in some instances, over a year.

Overall results

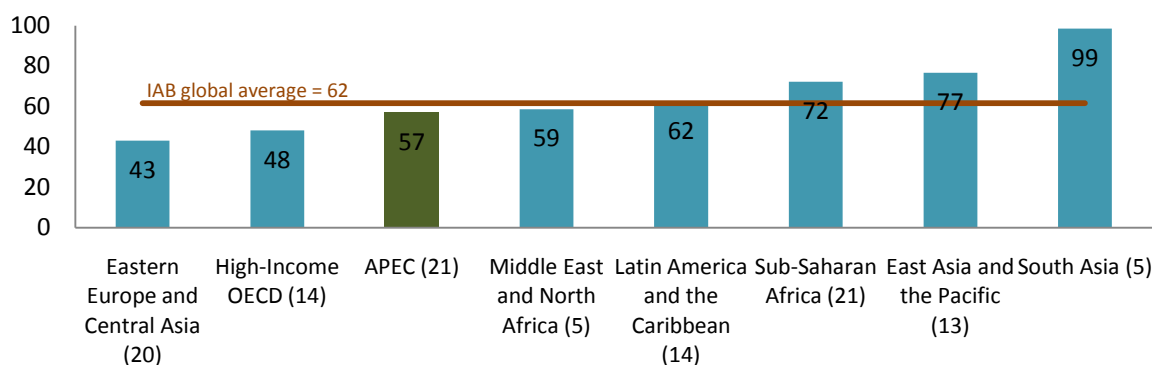
The Accessing Industrial Land indicators measure the time required to lease land. The indicators exclude the process of buying land, because land ownership is not allowed in many of the measured economies. The time required to lease land from both private holders and the government varies (Figure 3.46). Foreign companies seeking to lease private land are globally facing an average time of 62 days (Figure 3.47).

Figure 3.46: Time needed to lease public land
Number of days



Source: Investing Across Borders database.

Figure 3.47: Time needed to lease private land
Number of days

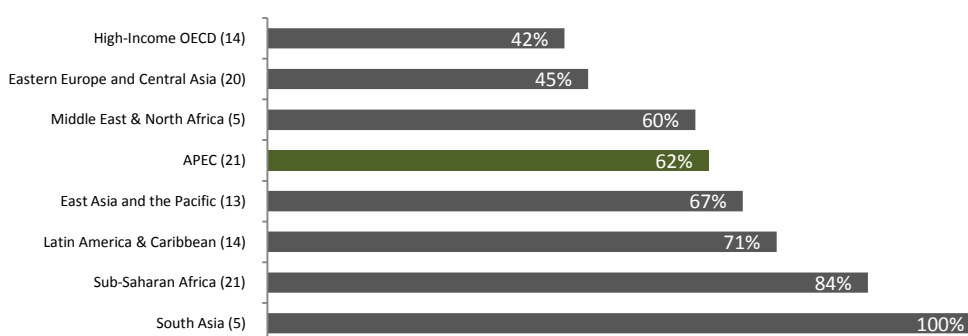


Source: Investing Across Borders database.

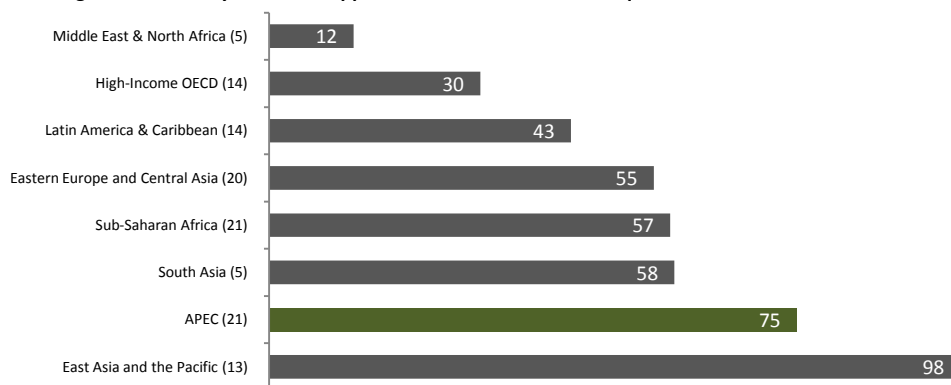
On the other hand, it takes an average of 138 days to lease public land on a global average. This is because in addition to the procedures required to lease land from a private holder, one must often obtain a government approval and/or go through formal process such as an auction, concession, or tender. Of the economies surveyed, 66% require an additional approval to authorize the lease of government-held land to foreign companies (Figure 3.48). This additional approval takes nearly 2 months, on average, significantly extending the overall process of acquiring land.

Figure 3.48: Obtaining government approvals adds significant time to leasing procedures
Share of economies which require approvals and average time it takes to obtain approval

Share of economies which require an approval in government lease:



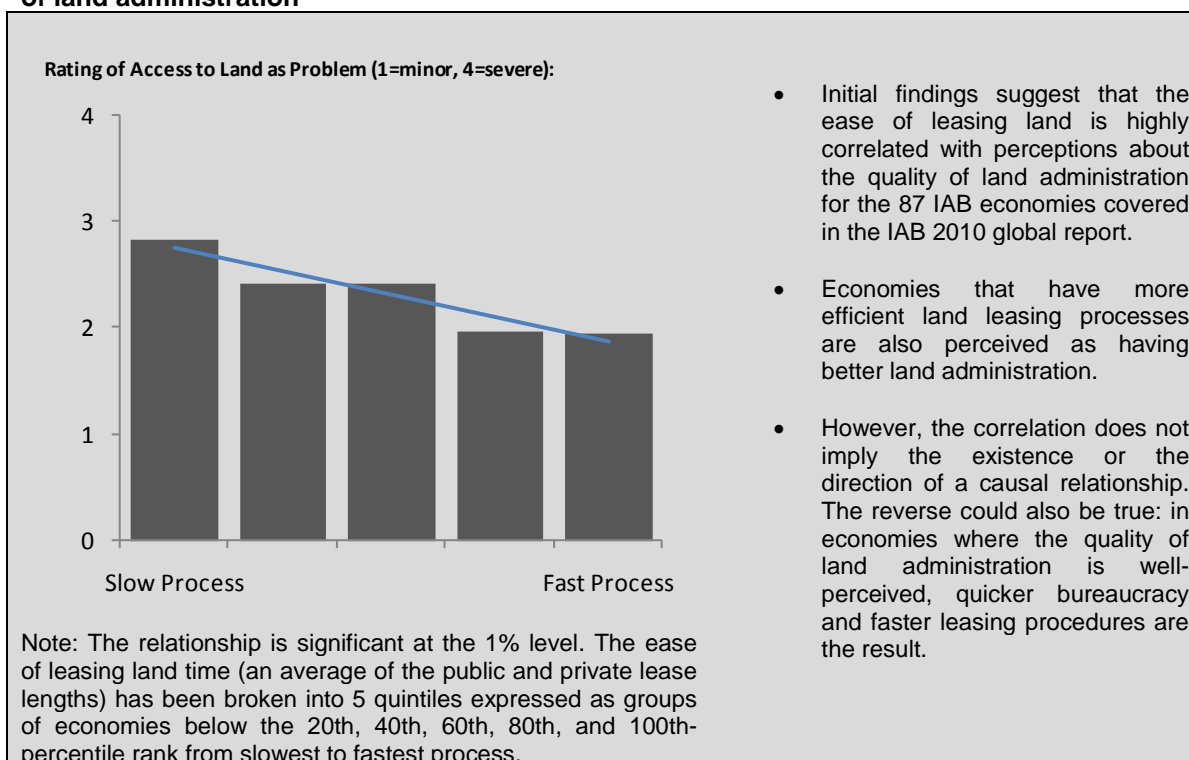
Average number of days to obtain approval for economies which require one:



Source: *Investing Across Borders* database.

On a regional level the differences are also extreme. To lease public land an investor has to wait more than twice as long in South Asia than in the high-income OECD region. APEC member economies are faster than the global average. Looking at the lease of private land, in South Asia the process takes twice as long, on average, as in Eastern Europe and Central Asia. The APEC economies are on average 5 days faster than the global average.

Box 3.49: Ease of leasing land is negatively associated with perceptions about the quality of land administration



- Initial findings suggest that the ease of leasing land is highly correlated with perceptions about the quality of land administration for the 87 IAB economies covered in the IAB 2010 global report.
- Economies that have more efficient land leasing processes are also perceived as having better land administration.
- However, the correlation does not imply the existence or the direction of a causal relationship. The reverse could also be true: in economies where the quality of land administration is well-perceived, quicker bureaucracy and faster leasing procedures are the result.

Note: The relationship is significant at the 1% level. The ease of leasing land time (an average of the public and private lease lengths) has been broken into 5 quintiles expressed as groups of economies below the 20th, 40th, 60th, 80th, and 100th-percentile rank from slowest to fastest process.

Source: *Investing Across Borders* 2010 global report.

Conclusions

This chapter has shown the wide range of practices across regions on the strength of land rights, the amount of available land information, and the ease of leasing land. Some regions allow foreign companies to buy industrial land. Others—mostly in East Asia and the Pacific and Sub-Saharan

Africa—do not. Some regions, mainly high-income OECD and APEC, provide easily accessible information about land plots that is shared across multiple government agencies. But many regions do not. Finally, while some regions have quick and transparent procedures for leasing land, others—such as South Asia and Sub-Saharan Africa—make the process administratively burdensome and time-consuming.

Improving access to land does not guarantee that an economy will attract more FDI. However, all other things being equal, serious constraints to land access can be deal killers for interested investors. As a result, the strength of land rights, availability of information, and ease of leasing land can affect an economy's investment climate and overall competitiveness.

The Accessing Industrial Land indicators point to the following good practices:

- *Efficient land acquisition procedures.* An economy should have clear rules for acquiring private and public land. Rules should remove unnecessary and burdensome steps while enabling authorities to conduct a proper process with fair protections for the greater public good. Land administration institutions should provide businesses with a single point of access—and if the land acquisition process is lengthy, the option to use a fast-track option for a higher fee.
- *Clear, equal, and secure land laws and treatment for foreign and domestic companies.* Laws should provide sufficient security to investors—foreign and domestic—so that they feel comfortable operating and expanding their businesses, and should not limit their ability to develop, renew, transfer, mortgage, or sublease land. Laws and regulations should take into account the interests of all stakeholders related to land use—including investors, governments, and communities. Attention must also be paid to environmental protection.
- *Accessible land information.* Land records should be up-to-date, centralized, integrated (linked across relevant government agencies), easily accessible (preferably with online access), and provide information useful to investors and the general public.

Land administration is affected by a wide range of issues. The Accessing Industrial Land indicators focus on the administrative and regulatory framework for foreign companies seeking to access industrial land. Despite this limited focus, the indicators can play a crucial role in filling an information gap, benefiting foreign investors and a wide range of other stakeholders, including domestic investors and governments. The indicators may help governments determine how to prioritize land policy reforms that constrain their competitiveness. Finally, the indicators provide a platform for dialogue among governments, businesses, and civil society—dialogue that could trigger needed reforms.

3.4 Arbitrating Commercial Disputes

WHY AN EFFECTIVE COMMERCIAL ARBITRATION REGIME MATTERS FOR FOREIGN INVESTORS

For governments interested in attracting foreign direct investment (FDI), improving the rule of law, including the economy's dispute resolution mechanisms, is a top priority. A stable, predictable arbitration regime, as part of the broader framework for the rule of law, is one of the factors that drive foreign investment. An effective commercial arbitration regime matters for foreign investors for 2 main reasons:

- *Complex commercial contracts require reliable, flexible dispute resolution mechanisms.* Arbitration and other forms of alternative dispute resolution—such as mediation—give commercial parties considerable autonomy to create systems tailored to their disputes.⁷⁵ The characteristics of arbitration—confidentiality, flexible procedures, party autonomy, and easy enforcement—cater to businesses' concerns in dispute resolution.⁷⁶
- *Companies often prefer to have alternatives to court litigation.* Formal resolution through domestic litigation can be slow and ineffective. Even if courts treat foreign companies fairly, domestic firms are more familiar with court procedures and can use their own lawyers and language.⁷⁷ Foreign firms view a well-established, predictable arbitration regime as mitigating risk by providing legal security to investors (including assurance of contract enforcement rights, due process, and access to justice).⁷⁸

From an economy's perspective, not only does an arbitration regime assist in attracting FDI, but it eases the strain on local courts—which are often congested and have huge case backlogs—by providing an alternative method of dispute resolution that can have fewer procedural rules than litigation. Straightforward commercial disputes, without public policy concerns, might not need to be litigated in domestic courts.

Foreign companies prefer to use international arbitration rather than domestic litigation to resolve disputes, whether with a private party or the state.⁷⁹ More than two-thirds of corporations prefer international arbitration, either alone or combined with other alternative dispute resolution mechanisms, to resolve cross-border disputes.⁸⁰

Although international commercial arbitration is often the preferred method for resolving disputes, its availability and predictability are problematic in some regions. The Arbitrating Commercial Disputes indicators of the IAB project quantify the legal and practical challenges that foreign companies face when choosing to use arbitration in the host economy of their investments. The current legal framework and practice for arbitration are perceived as a significant obstacle to foreign investors in South Asia, East Asia and the Pacific, and the Middle East and North Africa (Figure 3.50). Only in high-income OECD and APEC economies is the legal framework for arbitration generally perceived as only a minor obstacle or no obstacle to foreign investors. Some of the problems faced by private investors when using commercial arbitration and other forms of alternative dispute resolution include lack of awareness of alternative dispute resolution mechanisms in the economy, lack of modern and coherent arbitration legislation, practice that is not always consistent with the legal framework, and slow enforcement of arbitration awards by local courts.⁸¹

⁷⁵ UNCTAD (2005).

⁷⁶ PWC and Queen Mary University (2006). In a 2006 survey, conducted by PriceWaterhouseCoopers, more than 150 international companies cited flexibility, enforceability, privacy, and selection of arbitrators as the 4 most important advantages of international commercial arbitration as a dispute resolution mechanism. See also, UNCTAD (2005).

⁷⁷ PWC and Queen Mary University (2006); UNCTAD (2005).

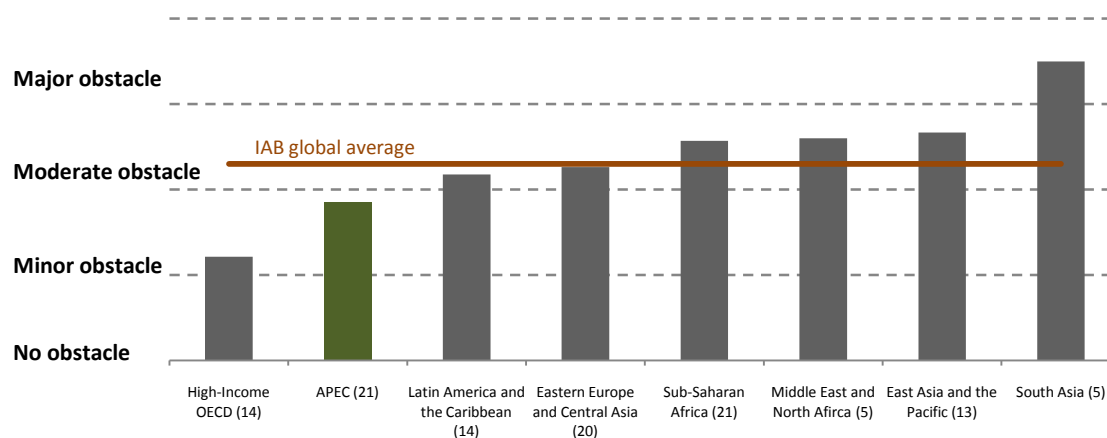
⁷⁸ Moran and West (2005).

⁷⁹ USAID (2005); USAID (1998).

⁸⁰ PWC and Queen Mary University (2006).

⁸¹ These are some of the problems pointed out by IAB survey respondents in 87 countries, *Investing Across Borders* (2010).

Figure 3.50: Many arbitration regimes are undeveloped and do not encourage FDI
The extent to which an economy's arbitration regime is an obstacle to FDI, by region



Source: *Investing Across Borders* database.

Corporations want simple arbitration proceedings that are easily enforced, with limited court intervention in the proceedings.⁸² Though many modern arbitration statutes limit court intervention, there is little an arbitration tribunal can do if a jurisdiction allows courts to intervene.

At the same time, arbitration bears a close relationship to domestic courts at certain stages of the arbitration process—such as in the enforcement of arbitration awards. Accordingly, it is important that national courts support arbitration as a means of resolving commercial disputes.⁸³ Although arbitration reforms can be undertaken independently, governments should keep in mind their overall institutional framework, and encourage judicial support of alternative forms of dispute resolution.

INTRODUCING THE ARBITRATING COMMERCIAL DISPUTES INDICATORS

The Arbitrating Commercial Disputes indicators of the IAB project aim at measuring the legal, institutional, and administrative regimes for commercial arbitration of 92 economies across the globe. The indicators focus on domestic and international commercial arbitration between 2 companies, or between a company and a state entity acting in its private capacity. The indicators also explore the regulation of commercial mediation.

A number of studies have been conducted in the area of international arbitration, including perception surveys, legal assessments, and practitioners' guides.⁸⁴ However, there is no report or online database that provides consistent and objective data on commercial arbitration regimes and covers all world regions, including Sub-Saharan Africa; allows for cross-country benchmarking by translating qualitative information into numeric indicators; and provides an in-depth comparison between economies on a regular basis. This is precisely how the Arbitrating Commercial Disputes indicators seek to add value. Further information is set out in the methodology chapter.

Structure of the Arbitrating Commercial Disputes indicators

The Arbitrating Commercial Disputes indicators comprise 3 principal components:

⁸² As proved by the results of the survey conducted by PWC and Queen Mary University (2006).

⁸³ Ball (2006), p. 73.

⁸⁴ See, for example, ICC International Court of Arbitration Bulletin (2008); Wegen, Wilske, and Lutz, eds., (2010); Rowley, ed., (2006); The International Comparative Legal Guide (2009); PWC and Queen Mary University (2006); PWC and Queen Mary University (2008).

- Strength of laws index (0–100): analyzes the strength of economies’ legal frameworks for alternative dispute resolution, as well as the economies’ adherence to the main international conventions related to international arbitration;
- Ease of arbitration process index (0–100): assesses the ease of the arbitration process, and whether there are restrictions or other obstacles that the disputing parties face in seeking a resolution to their dispute;
- Extent of judicial assistance (0–100): measures the interaction between domestic courts and arbitral tribunals, including the courts’ willingness to assist during the arbitration process and their effectiveness in enforcing arbitration awards.

The Arbitrating Commercial Disputes indicators do not cover all aspects of economies’ arbitration regimes. The methodology chapter of this report provides guidance on how to interpret and use the data, as well as an extensive list of the indicators’ substantive and methodological limitations.

Assumptions underlying the Arbitrating Commercial Disputes indicators

To help ensure consistency across all 92 economies, the Arbitrating Commercial Disputes indicators are based on simple standard case studies (Box 3.51). The methodology chapter of this report includes additional general case-study assumptions.

Box 3.51: Case-study assumptions and IAB definitions

There are 2 different case studies relating to (i) **domestic commercial arbitration** and (ii) **international commercial arbitration**.

- The first case study relates to a **domestic arbitration** between 2 companies incorporated in the same economy. Company A is 100% foreign-owned by a multinational corporation. Company B is owned by a domestic investor.
- The second case study relates to an **international arbitration** between the local Company B and a multinational Company C, which is incorporated and operates in a foreign economy. Both arbitrations take place in the same economy.

Accordingly, IAB assumes 3 different types of arbitral awards:

- A domestic arbitration award given in the respective host economy.
- An international arbitration award given in the respective host economy in favor of a foreign company.
- A foreign arbitration award rendered in a foreign economy following arbitration proceedings in an economy other than the host economy.

Respondents are asked questions relating to the domestic and international arbitration regime and process in their host economy, as well as the ease of enforcing foreign awards.

The types of laws evaluated by the Arbitrating Commercial Disputes indicators are set out below (Box 3.52).

Box 3.52: Key laws measured by the Arbitrating Commercial Disputes indicators

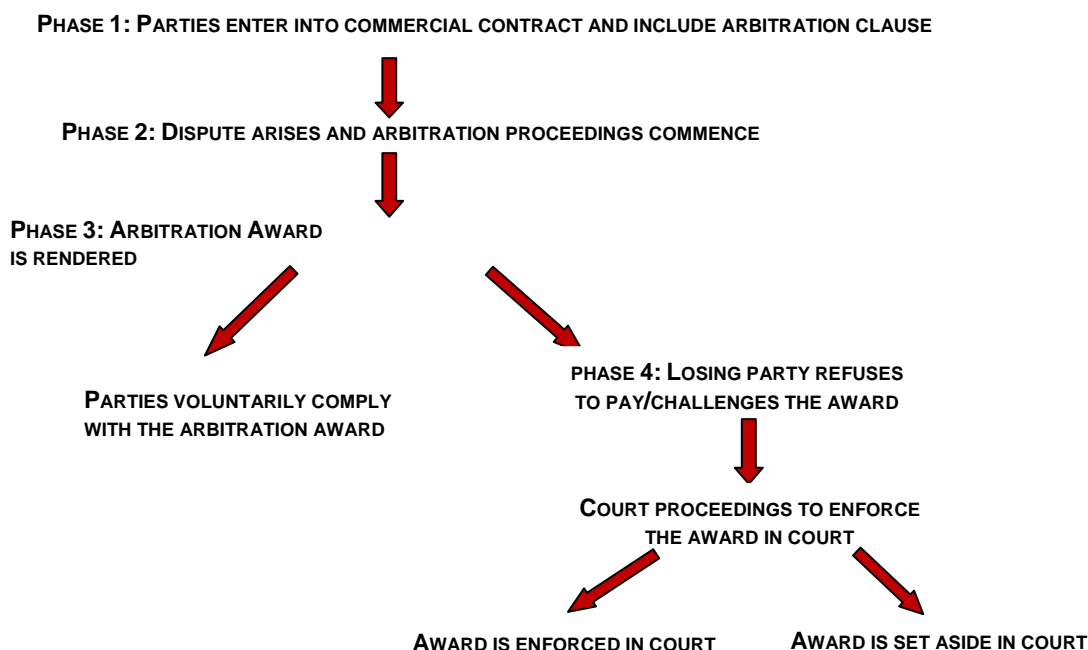
The Arbitrating Commercial Disputes indicators evaluate the following types of laws insofar as they relate to alternative dispute resolution (arbitration and mediation):

- Alternative dispute resolution laws (including civil code provisions) on commercial arbitration and on mediation and leading court decisions.
- Civil codes, civil procedure codes/rules, regulations.
- Investment laws and codes.
- Ratification of international treaties: New York Convention; ICSID Convention.

RESULTS OF THE ARBITRATING COMMERCIAL DISPUTES INDICATORS

This section examines a sample of results from the Arbitrating Commercial Disputes indicators in the context of a typical commercial arbitration. It illustrates how the data might affect investors when they contemplate using commercial arbitration as a dispute resolution tool. First, a brief summary of the principal stages of commercial arbitration is set out below (Figure 3.53). The rest of this section describes the indicators' results for each of the key steps and phases in the arbitration process.

Figure 3.53: Key steps of an arbitration process (simplified)



Phase 1: The parties enter into a commercial contract and include an arbitration agreement

When 2 companies enter into a commercial contract, they must decide how to resolve a dispute that might arise from a breach of that contract. Given its advantages, the companies might voluntarily agree to use commercial arbitration to resolve their dispute. They might also choose to use other mechanisms for alternative dispute resolution, such as mediation, where the parties attempt to reach a mutual settlement with the help of a mediator. Alternatively, they might decide to rely on traditional litigation in the host economy's domestic courts. Assuming that the parties agree to include an arbitration clause in their contract, there are several issues that arise for their consideration at the drafting stage of the contract.

Does the host state recognize arbitration, and if so, how?

Given that the arbitration process is usually governed by the law of the host state, it is important to know whether arbitration is even recognized as a dispute resolution mechanism in that economy. Our survey results show that arbitration is recognized as a dispute resolution tool in all 92 economies in our sample. Of those economies, 92% have a specific commercial arbitration statute or a chapter in a civil code setting out provisions governing commercial arbitrations in their economy. The other 8% have some provisions scattered throughout civil codes and other laws which do not provide sufficient regulation of arbitration.

All APEC economies have an arbitration statute. In comparison, only 34% of the 92 economies have a formal law regulating commercial mediation (Figure 3.54). Within APEC, 19 % of

economies have a mediation law. Having such laws gives parties the security of predictability and enhances the economy's appeal as a legal forum for domestic as well as international disputes.

Figure3.54: Only 34% of economies have mediation laws, but 92% have arbitration laws
Share of economies worldwide with a specific law on mediation and commercial arbitration

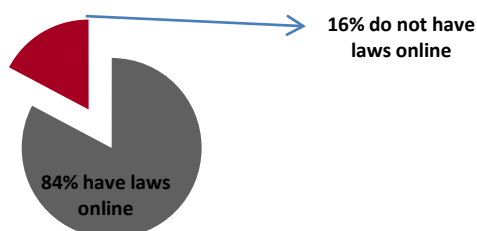


Source: *Investing Across Borders* database.

Is the law easily accessible?

To facilitate access to information, arbitration laws should be available online. Eighty four percent of economies in our sample are able to provide websites where these laws could be found (Figure 3.55). In comparison, 95% of the APEC economies were able to provide such a website. However, many of these websites are not official government websites but rather websites of private law firms, which provide laws for their clients' purposes. In contrast, 55% of economies provide official government websites relating to the establishment of companies.⁸⁵ As technology continues to develop, ease and speed of access to information is becoming paramount, not only for foreign investors, but also for the general development of an economy's business climate.⁸⁶

Figure3.55: Economies need to exploit technology to improve investors' access to laws
Ease of access to arbitration statutes online, global sample



Source: *Investing Across Borders* database.

What are the formal requirements for an arbitration agreement?

Some economies set formal requirements for the conclusion of arbitration agreements that need to be followed. In circumstances where the contract is considered invalid for example, because the contract is against an economy's public policy, the arbitration agreement contained therein might still be autonomous and binding. Such "severability" of the arbitration agreement provides parties with the security that they have an effective dispute resolution mechanism in place.

Eighty-six percent of the economies in our sample recognize severability of the arbitration agreement. However, only 10% recognize that an arbitration agreement does not have to be "written" in the traditional sense of the word. Within APEC, these results are 90% and 14%,

⁸⁵ See the Starting a Foreign Business chapter of this report.

⁸⁶ Malecki (1997).

respectively. As the Revised Articles of the UNCITRAL Model Law illustrate, good arbitration practice is adopting a liberal approach to the meaning of a written arbitration agreement, and an oral agreement that is recorded in any form constitutes an arbitration agreement.⁸⁷

Do the parties have freedom of choice in how to conduct their arbitration proceedings?

As described above, arbitration provides a flexible choice for dispute resolution, which is very attractive to companies. Parties can choose how to run their arbitration process, deciding whether the arbitration should be administered by a specific arbitral institution (or whether it is ad hoc),⁸⁸ determining the qualifications of the arbitrators and selecting the language of the proceedings. Domestic laws, however, might set out certain restrictions that limit the parties' freedom in organizing arbitration proceedings. The Arbitration Disputes indicators assess the parties' freedom of choice by aggregating certain elements of choice into a *party autonomy index* (Box 3.56).

Box 3.56: Components of IAB party autonomy index

The **party autonomy index** is an aggregate index that evaluates countries' laws in relation to the parties' freedom of choice in choosing:

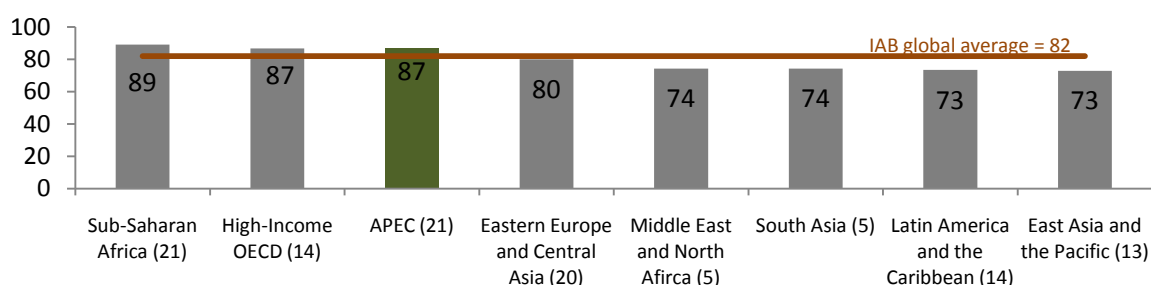
- Arbitrators of their choice
- Foreign counsel to represent them in the arbitration proceedings
- Language of the proceedings
- Any arbitral institution

Results show that high-income OECD economies are the most liberal in promoting party autonomy (Figure 3.57). Sub-Saharan Africa also scores highly. Many of the Sub-Saharan economies have recently adopted modern legislation that recognizes fundamental principles of arbitration.⁸⁹ In Sub-Saharan Africa, however, there is often a disconnect between the strength of legal provisions and arbitration practice on the ground. The reform of arbitration systems should therefore be extended to the level of practice. Such reform would also assist in developing domestic legal institutions. APEC economies offer the third most flexible party autonomy regime with only some restrictions related to parties' ability to select arbitrators and foreign lawyers to represent them during arbitration proceedings.

The Middle East and North Africa region, in contrast, has several restrictions on party autonomy, including the choice of language of the proceedings. In the Latin America and the Caribbean region, many economies have protectionist legal regimes that affect party autonomy. For example, foreign counsel is not permitted to represent parties in arbitration proceedings, even if counsel does not appear before the domestic courts.

Figure 3.57: Which economies provide parties with most flexibility?

Regional comparison of party autonomy given to parties in arbitration



Source: *Investing Across Borders* database.

⁸⁷ 61/33. Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958.

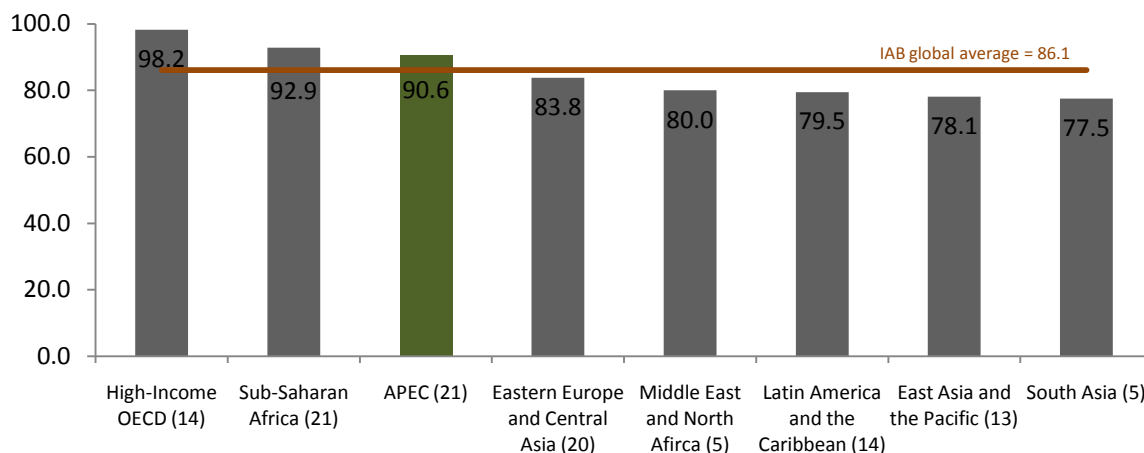
⁸⁸ Ad hoc arbitrations are not administered by arbitral institutions, but rather require parties to formulate their own rules governing the procedure of the arbitration, the selection of arbitrators, etc.

⁸⁹ Angola's law, for example, is from 2003, Sudan's from 2005, and Mauritius's and Rwanda's from 2008.

The extent to which national law restricts parties from selecting an arbitrator of their choice is examined below, taking into account restrictions based on nationality, gender and professional qualifications (Figure 3.58).

Figure 3.58: Parties are most restricted in selecting arbitrators in South Asia

Degree of party autonomy in selecting arbitrators, by region



Source: *Investing Across Borders* database.

All but one high-income OECD economies do not restrict parties' ability to select arbitrators' nationality and professional qualifications in domestic arbitrations. Many middle-income economies have restrictions regarding parties' choice of an arbitrator. In Eastern Europe and Central Asia, many economies' laws specify that arbitrators be locally barred lawyers in domestic arbitrations. In some economies in the Middle East and North Africa region women are rarely appointed as arbitrators. In general, regulation is stricter for domestic arbitrations than for international ones. In some economies in Eastern Europe and Central Asia and East Asia and the Pacific, for example, the parties can only choose someone with legal qualifications and certain language skills to act as an arbitrator in their domestic arbitration. These restrictions do not apply to international arbitrations.

Phase 2: A dispute arises under the contract and arbitration proceedings commence

Indicators associated with Phase 2 of an arbitration process look at what occurs if a dispute arises and the aggrieved party commences arbitration proceedings. If the parties have agreed that an arbitral institution will administer the arbitration, the relevant rules of that institution will guide the arbitration procedure. The rules might specify arbitrators' fees, the time frame for the submission of pleadings, and the procedural timetable.

Is there a domestic arbitral institution that can administer the arbitration?

The existence of a functioning arbitral institution in an economy is an indication of a solid arbitration practice and a useful channel that can be used to improve resources, public awareness and education relating to arbitration. Most surveyed economies have at least one active arbitral institution but there are still some which do not (Box 3.59). Nearly all APEC economies have such an institution.

Box 3.59: IAB economies without an active arbitral institution

Ten countries have no arbitration institution, which is indicative of a weak or nonexistent domestic arbitration practice:

Afghanistan, Angola, Bangladesh, Cambodia, Kosovo, Montenegro, Papua New Guinea, Rwanda, Sierra Leone, and Solomon Islands.

Some countries have institutions that are no longer active, such as in Ethiopia and Liberia.

Source: *Investing Across Borders* database.

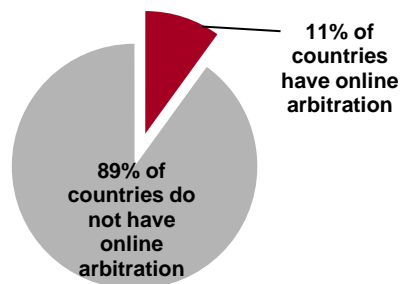
Some economies have several arbitral institutions, which is a strong indication of a thriving arbitration practice. The East Asia and the Pacific region includes economies with numerous operational and active arbitral institutions. In some economies, external arbitral institutions, such as the ICC in China and Malaysia, have also started to administer arbitrations due to growing demand.⁹⁰ Many economies in Latin America and the Caribbean also have numerous active arbitral institutions in the capital, as well as in other major cities.

Are technological advances being applied?

The parties might also have the option of choosing electronic or online arbitration, which can significantly cut down on costs and logistics. Online arbitration can be especially effective for small commercial disputes or domestic disputes. Such disputes can be simpler, and less administratively intensive than international disputes. They therefore benefit greatly from the speed of online communication and being able to avoid hearings in person, such as procedural hearings to regulate the arbitration process. Only 11% of all IAB economies (yet 31% of the APEC members) have developed the technology to offer online arbitration as a method of administering commercial disputes (Figure 3.60). However, as technology develops, it is expected that online arbitration will continue to offer cost and time savings to disputing parties.

Figure 3.60: Which economies offer online arbitration?

Economies that offer online arbitration as a method of dispute resolution



Source: *Investing Across Borders* database.

Are the courts supportive of arbitral tribunals during arbitration proceedings?

During arbitration proceedings, domestic courts may be required to support arbitral tribunals, notably in relation to third parties over whom arbitral tribunals have no authority. For example, if a party refuses to produce key witnesses or certain documents as part of their evidence, the other party can seek an order from the domestic court forcing such production. Similarly, if any interim

⁹⁰ Indeed, recent articles have observed the growing arbitration practice in East Asia and the Pacific and report results that show that the number of arbitrations in the region is beginning to surpass that in the high-income OECD countries. See Shahla (2009), p. 3. (<http://www.allbusiness.com/legal/labor-employment-law-alternative-dispute-resolution/12384454-1.html>).

measures are required, such as freezing assets, making interim payments, or seizing property, the domestic courts must be approached by the respective party seeking the order.

It is important that domestic laws contain explicit provisions for domestic courts assistance with the production of evidence and with provisional measures. The court assistance index (Box 3.61) feeds into the overall judicial assistance index, and examines the extent to which domestic courts support the use of arbitration as a tool to resolve disputes.

Box 3.61: Components of IAB court assistance index

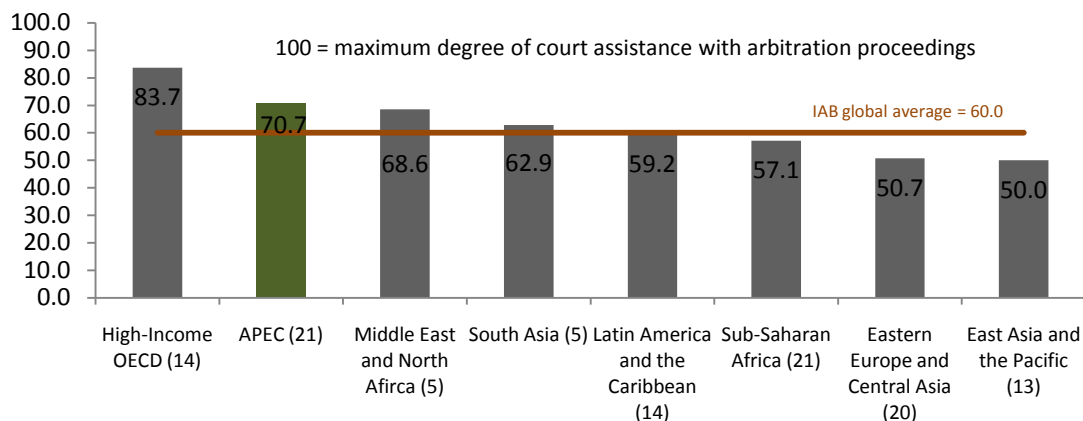
The **court assistance** index evaluates 4 issues:

- Whether local courts follow a general policy in favor of enforcing domestic and international arbitration agreements, a “pro-arbitration policy”
- Whether tribunals are able to decide whether a dispute falls within their own jurisdiction or competence as opposed to domestic courts deciding the forum
- Whether the national law provides for local courts’ assistance with orders on the production of evidence or the appearance of witnesses
- Whether the national law provides for local courts’ assistance with orders of interim relief

While high-income OECD and APEC economies score high in the court assistance index, results show that Eastern Europe and Central Asia economies lag behind, mainly because local laws do not expressly provide for domestic courts to assist the arbitration process with orders for production of documents or appearance of witnesses (Figure 3.62).

Figure 3.62: Court assistance is weak in Eastern Europe and Central Asia and East Asia and the Pacific

IAB regional average index of the degree of court assistance with arbitration proceedings



Source: *Investing Across Borders* database.

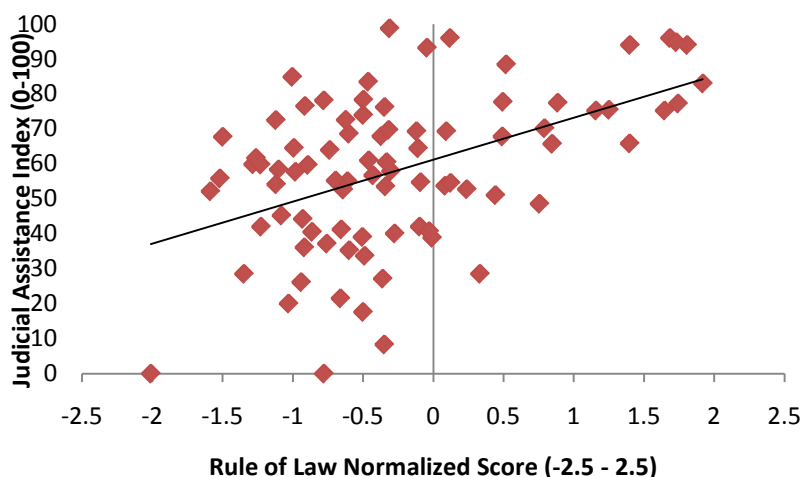
How does judicial support of arbitration proceedings enhance the strength of the rule of law?

When economies attempt to improve the strength of their arbitration regimes, they cannot just examine arbitration in isolation. There is a relationship between private arbitral proceedings, domestic courts, and the general legal climate of an economy that can be explored through a comparison of the Rule of Law index of the Worldwide Governance Indicators (WGI)⁹¹ with the Arbitrating Commercial Disputes judicial assistance index (Figure 3.63). Results show that there is a strong positive correlation between these 2 measures. This correlation implies that economies

⁹¹ Worldwide Governance Indicators (WGI) of the World Bank Institute aggregate individual governance indicators for 212 countries and territories. One of the six dimensions of governance that these indicators measure is the rule of law.

that have a strong rule of law⁹² also tend to have good arbitration regimes. Such a comparison suggests that where the broader legal climate and public legal institutions are effective, arbitration regimes can thrive.

Figure3.63: Economies with a strong rule of law tend to have efficient arbitration regimes
Correlation between the Worldwide Governance Indicators (WGI) and IAB rankings



Source: *Investing Across Borders* database and *Worldwide Governance Indicators (WGI)*, World Bank Group.
Note: Once the parties in a dispute have submitted their arguments and evidence, there is an arbitration hearing in the chosen economy. The arbitral tribunal renders a binding arbitration award,⁹³ specifying which party has won, and the compensation the company is entitled to receive. The issues which might concern the parties at this stage of the arbitration process are explored below.

Are arbitrators obliged to be independent and keep arbitration confidential?

One of the perceived advantages of commercial arbitration is that proceedings are typically confidential, unlike in litigation cases where court judgments are published. Confidentiality is an important aspect of arbitration at all stages of the process. Furthermore, arbitrators should be impartial and independent, without a bias toward either party. The tribunal integrity index looks at whether laws specify that arbitrators are obliged to keep the proceedings confidential, as well as remain impartial and independent during the arbitration process (Box 3.64).

Box3.64: Components of IAB tribunal integrity index

The **tribunal integrity index** is an aggregate index that measures whether countries have legal provisions that relate to:

- Arbitrators' independence in the proceedings
- Arbitrators' impartiality in the proceedings
- Arbitrators' confidentiality of the proceedings/award

It further examines whether countries discriminate between how they regulate arbitrators in domestic arbitrations and international arbitrations.

Many laws in the South Asia, East Asia and the Pacific and the high-income OECD economies do not expressly bind arbitrators to confidentiality of arbitration proceedings, as they should. In

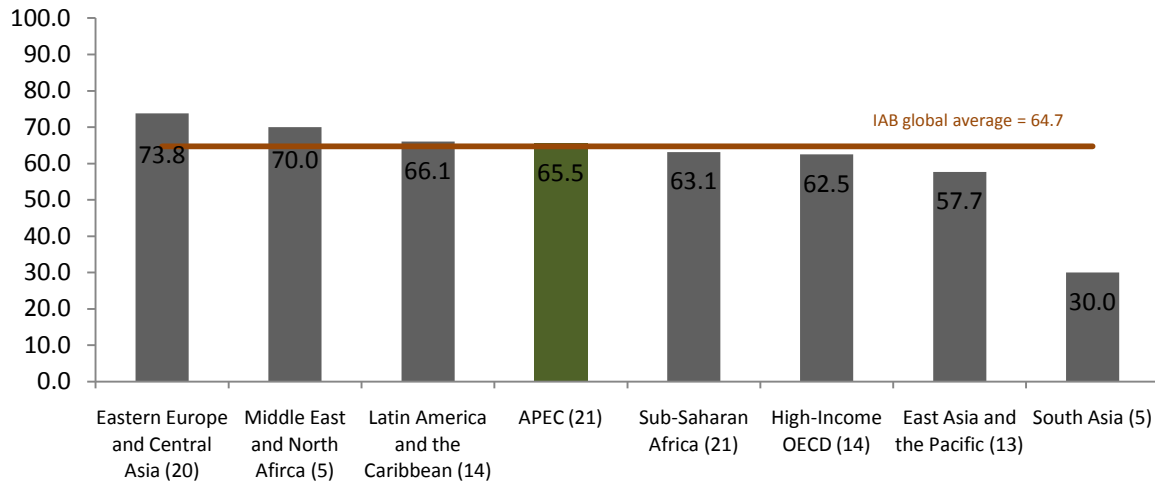
⁹² The Rule of Law is defined as “the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, and the likelihood of crime and violence” (WGI), available at <http://info.worldbank.org/governance/wgi/pdf/rl.pdf>.

⁹³ Note that the final and binding nature of arbitration, which is agreed to by the parties, is what distinguishes arbitration from other nonbinding forms of alternative dispute resolution, such as mediation.

contrast, nearly all Eastern European and Central Asian economies in our sample have legal provisions asserting the independence and impartiality of the arbitrators in international arbitrations, and more than 66% of the economies within APEC have included such provisions in their arbitration laws.

Figure 3.65: High share of APEC economies have legal provisions asserting the independence and impartiality of arbitrators in international arbitrations

Regional comparison on the Tribunal Integrity Index (100=maximum)



Source: *Investing Across Borders* database.

Phase 3: Once an award is rendered, it can be complied with, enforced, or set aside

The previous 2 sections explore what happens when parties enter into an arbitration agreement at the contractual stage of their relationship, and trace the arbitration process from when a dispute arises until arbitrators decide on a final and binding arbitration award. Once an arbitration award is rendered, the losing party must compensate the winning party. In most cases, the parties voluntarily comply with the award, and no further action is necessary.⁹⁴ If the losing party refuses to pay, the winning party may bring enforcement proceedings in the local courts.⁹⁵ Alternatively, the losing party may dispute the arbitration award and ask the domestic court to set it aside or annul it.⁹⁶

What is the expertise of the domestic court in enforcement proceedings?

Domestic courts that have sufficient expertise to deal with arbitration awards will ensure an efficient enforcement process. Given the technical nature of arbitration awards, high level courts or specially designated courts, rather than lower-level general courts of first instance, might be more appropriate for dealing capably and consistently with commercial arbitration awards.⁹⁷ Of the 92

⁹⁴ The PwC 2008 survey estimates that in 80% of cases, arbitration awards are voluntarily complied with, PwC and Queen Mary University (2008).

⁹⁵ Enforcement proceedings are legal proceedings that take place in the domestic court where the assets are located. They convert an arbitration award into a court judgment, which the winning party can then rely upon to collect the money owed to him.

⁹⁶ Proceedings to set an arbitration award aside are legal proceedings requesting domestic courts to order that the arbitration award have no effect and that it is invalid on certain limited grounds.

⁹⁷ Chen, (2005), p. 4, available at <http://www.oecd.org>: "...[I]n order to more strongly prevent the reverse and negative effect of "local protectionism" imposed on the recognition and enforcement of a foreign award, and also in order to more effectively prevent the possible mistakes made by some judges of local courts in judicial examination and supervision over a foreign arbitral award (probably due to their lower professional proficiency), some advanced experience in the practice of international arbitration enactments should be taken for reference. That is, the supervision power to conduct both procedural and substantive examination over domestic and foreign arbitral awards is authorized without exception to some high level courts, which would have judges of a higher caliber, so as to show prudence and to guarantee both justice and efficiency."

economies sampled, less than half designate a higher-level or specialized court to handle foreign arbitration awards, for both domestic and international arbitration awards (Figure 3.66).

Figure 3.66 Fifty-five percent of economies enforce foreign arbitration awards in general first instance courts

Share of economies that use a specialized or higher level court in enforcement proceedings



Source: *Investing Across Borders* database.

Eastern Europe and Central Asia has the highest share of economies (60% of the economies in the region) that designate a high level court to with the supervision power to conduct both procedural and substantive examination over domestic and foreign arbitral awards. In Sub-Saharan Africa, 57% of the economies sampled designate a high-level court. The share in East Asia and the Pacific is 50%, and 40% of the APEC economies designate a higher level court.

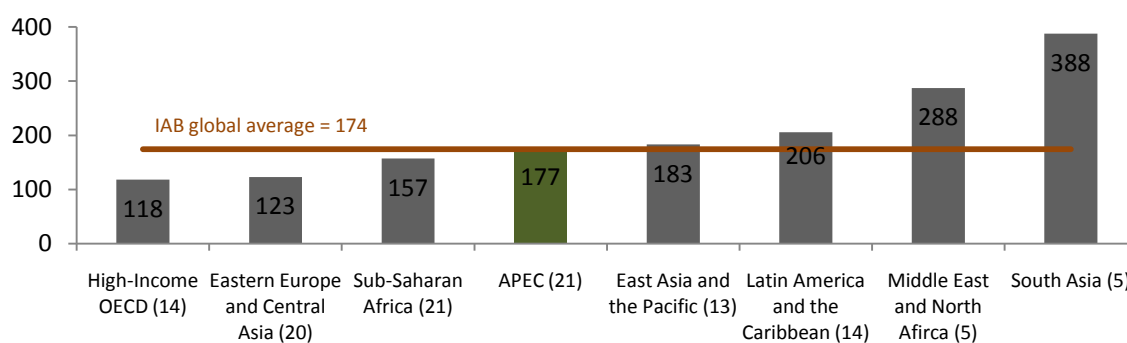
Designating a special court to handle enforcement proceedings may not be necessary or even practical in large economies or in economies with a high volume of enforcement proceedings where judges are knowledgeable about the process and issue consistent decisions. In smaller economies with little arbitration practice, however, lower-level courts can have difficulty applying newly enacted arbitration laws and self-executing international conventions. In such economies, endowing a higher court to enforce or vacate domestic awards could ensure faster and more predictable results.

How long does it take to enforce an arbitration award?

On average across the globe, it takes nearly 6 months to enforce an arbitration award in court. The IAB project measured this by asking private practitioners to estimate the length of time from filing an application for enforcement of an arbitration award (handed out in the respective economy) to attaching the losing party's assets (Figure 3.67). It does not take into account the length of an appeal, which can greatly increase the length of time. As can be imagined, the length of enforcement of an award is a very important consideration for the winning party. There is no point in having an award if it cannot be enforced in an easy and timely manner to allow the winning party to collect easily. Courts in the high-income OECD economies are the fastest to enforce arbitration awards. In contrast, South Asian courts are the slowest. The APEC group is towards the middle of the regional distribution with 177 days, which is slightly slower than the global average of 174 days.

Figure 3.67: It takes roughly 6 months to enforce an award in the APEC economies

Regional average of the number of days to enforce an arbitration award in court



Source: *Investing Across Borders* database.

Many economies in Eastern Europe and Central Asia have adopted special rules to ensure a speedy and uninterrupted enforcement process: eliminating the possibility for an appeal of the first instance court decision on enforcement and establishing a special authority outside of the judiciary, which issues a writ of execution for 7 days. At the other extreme, courts in South Asia and Latin America and the Caribbean can take several years to enforce an arbitration award, and longer if an appeal(s) is made. This undermines the benefit of a faster and more efficient dispute resolution process through arbitration.

Foreign awards might require recognition proceedings

Imagine arbitration proceedings taking place in Paris between an Indian and a Chilean multinational company. The Chilean company wins and wants to attach assets held by the Indian company in New Delhi. This foreign arbitration award will need to be “recognized” by Indian courts before it can be enforced. Recognition is the process by which the domestic courts of an economy give validity to a foreign arbitration award. Given the extent of cross-border transactions in today’s world, as well as the numerous locations for holding assets, recognition of an award can be a very important stage of the arbitration process.

There are international legal instruments, such as conventions and treaties, to help regulate recognition. The 1958 New York Convention on the Recognition and Enforcement of Arbitration Awards (New York Convention) is the most global of these conventions. It requires that the domestic courts of contracting states give effect to arbitration agreements and recognize and enforce awards made in other states, subject to limited exceptions discussed above. It is therefore a powerful instrument in international arbitration, and is widely subscribed to by 142 economies. Nonetheless, there are still 8 of the sampled economies that have not yet ratified the New York Convention: Angola, Ethiopia, Kosovo, Papua New Guinea, Solomon Islands, Sudan, Chinese Taipei, and the Republic of Yemen.

Commercial arbitration with the state and state entities

Arbitrating with the state is a specialized form of arbitration. The dispute might arise from an alleged breach on the part of the host state of an investment treaty.⁹⁸ As discussed above, Arbitrating Commercial Disputes indicators do not examine investment treaty arbitration in any detail. However, looking at which economies have signed the ICSID Convention provides further evidence of the strength of an economy’s general arbitration climate. Of the 92 economies, 19 have not yet ratified the ICSID Convention (although some of these 19 economies have signed it): Angola, Bolivia, Brazil, Brunei Darussalam, Canada, Ethiopia, Ecuador, India, Kyrgyz Republic, Mexico, Moldova, Montenegro, Papua New Guinea, Poland, Russian Federation, South Africa, Chinese Taipei, Thailand, and Viet Nam.

The Arbitrating Commercial Disputes indicators investigate the ability of a party to arbitrate with a state or state entity disputes arising out of its contracts with foreign-owned companies. For

⁹⁸ UNCTAD Series on International Investment Policies for Development (2008).

example, if a company enters into a contract with a state-owned oil company, can they use arbitration to resolve their disputes? Are there any restrictions on arbitrating over certain subject matter, such as natural resources or concession agreements? Of the 92 economies in our sample, 17 economies restrict foreign companies' abilities to arbitrate disputes arising from specific types of contracts with the state or state entities (Table 3.68).

Table 3.68: Restrictions on arbitrating with the state or state companies

IAB-surveyed economies with restrictions	Restricted arbitrability of concession agreements	Restricted arbitrability of infrastructure contracts	Restricted arbitrability of contracts dealing with natural resources
Belarus	✓		✓
Bolivia	✓		✓
Costa Rica			✓
France	✓	✓	✓
Georgia	✓		✓
Guatemala			✓
Kazakhstan	✓	✓	✓
Madagascar	✓	✓	✓
Mexico			✓
Poland	✓		
Romania	✓	✓	
Russian Federation		✓	
Saudi Arabia	✓	✓	✓
Tunisia	✓	✓	✓
Ukraine	✓		
United States	✓	✓	✓
Venezuela, RB	✓	✓	✓

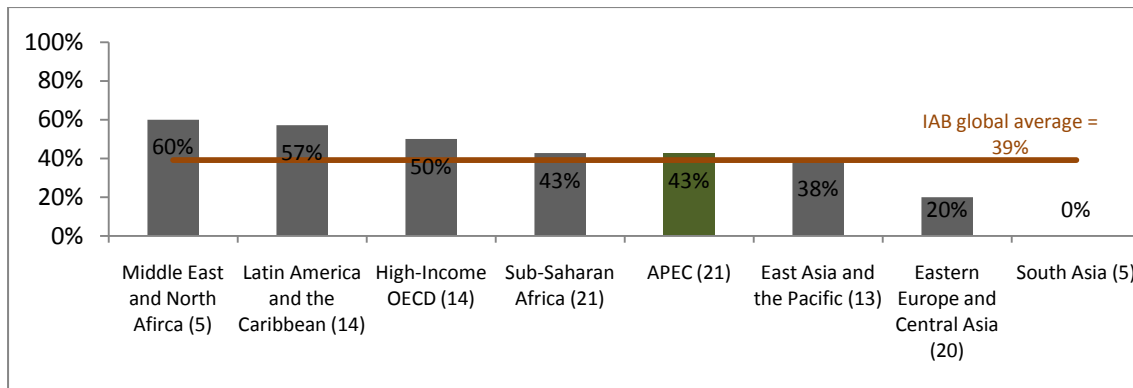
Source: *Investing Across Borders* database.

Is there a designated point of contact with a state entity?

Certain economies have designated special agencies or units in the government to deal with claims against the state. These economies tend to have more streamlined methods of handling claims than economies with no established point of contact for disputes involving public entities. In particular, IAB data illustrates that regions that have experienced investor-state arbitrations in the past often appoint an authority in the government to manage such cases, thereby facilitating proceedings. More than half of the Middle East and North Africa and Latin America and the Caribbean economies sampled have designated a special public authority to handle administrative, logistical, and other issues related to investors' disputes with the state or a state entity (Figure 3.69). In contrast, none of the economies in the South Asia region have a designated authority to deal with claims against the state. Less than half of the APEC economies have designated an authority to deal with disputes involving public entities.

Figure 3.69: Relatively few economies designate a public authority

Share of economies in each region that designate a public authority to handle issues related to arbitration with the state (% Yes)



Source: Investing Across Borders database.

CONCLUSIONS

The Arbitrating Commercial Disputes indicators illustrate that most economies recognize the importance of an efficient, stable regime for alternative dispute resolution in their efforts to attract foreign investment.

Motivated by the growing preference of businesses to use arbitration to resolve commercial disputes, economies have made substantial progress in improving their arbitration frameworks. Economies with good scores on the Arbitrating Commercial Disputes indicators have focused on modernizing their legal frameworks and ensuring their consistent implementation. Economies that score well also work on increasing awareness, resources, and court support to ensure that their arbitration regimes are effective and in compliance with international standards.

The Arbitrating Commercial Disputes data for the 92 economies surveyed show that economies which perform well on the indicators share the following characteristics:

- *Clear arbitration provisions consolidated in one law or a chapter in a civil code.* Having coherent, up-to-date, and easily accessible legislation increases legal certainty and transparency.
- *Strong party autonomy to tailor arbitration proceedings.* Good arbitration regimes provide a flexible choice for commercial dispute resolution, which is very attractive to companies. Parties should be able to choose how to run their arbitration process including deciding whether arbitration will be administered by a specific or ad hoc arbitral institution, determining the qualifications of the arbitrators and selecting the language of the proceedings. Such flexibility should be available to the extent possible for both domestic and international arbitration proceedings in the same economy.
- *Strong arbitration laws (de jure) in line with arbitration practice (de facto).* Many economies have enacted modern arbitration laws. But practice is rare or nonexistent, and where it does exist, it often does not conform to the law. Having a strong legal regime should be associated with a healthy arbitration practice, supportive domestic courts, and solid awareness of what arbitration entails as a dispute resolution tool.
- *Supportive local courts.* A good arbitration regime is associated with strong support from local courts for arbitration proceedings and consistent, efficient enforcement of arbitration awards. In many economies courts perceive arbitration as a threat to their jurisdiction. They have not articulated pro-arbitration policies and do not always support tribunals with interim injunctions or orders related to evidence. Many economies have extremely long enforcement proceedings, which undermine arbitration as a faster and cheaper way to resolve disputes.
- *Adherence to international conventions.* Adherence to and implementation of international and regional conventions on arbitration such as the New York Convention and the ICSID Convention signal a government's commitment to the rule of law and its investment treaty obligations, which reassures investors. Economies with good arbitration regimes are also members of the main international arbitration conventions and regional treaties which regulate or provide for arbitration.

The Arbitrating Commercial Disputes indicators measure the clarity and effectiveness of ADR regulation, including the reliability and stability of the arbitration frameworks and fast and predictable enforcement processes. This report has presented examples of economies at various levels of income and institutional development that have well-established systems for alternative dispute resolution. The Arbitrating Commercial Disputes indicators should stimulate interest in reforms, identify good practices that economies can learn from, and enhance knowledge of arbitration.

3.5 Global Investment Promotion Benchmarking

I: Overview of global results

GIPB examines how IPIs provide information to investors

Today's economic environment makes effective promotion of foreign investment a highly competitive activity. The ability of economies to influence investment decisions with relevant economy and sector information and other facilitation efforts is more crucial than ever. The provision of timely and accurate information can lessen investors' perceptions of risk and their transaction costs during the site-selection process, thereby making locations more competitive.

Investment Promotion Intermediaries (IPIs) are the institutionalization of an economy's commitment to attracting FDI to promote growth. Their role is to translate this strategy into actual results, namely productive FDI that increases the economy's gross domestic product. GIPB 2009 evaluated the IPIs in 181 economies by replicating the decision-making process of foreign investors in the early "long-listing" stage of site selection, and found that over 70% of IPIs miss out on investment and job-creating opportunities by failing to provide accurate and timely information to potential investors.⁹⁹

Specifically, GIPB assessed the ability of IPIs to meet foreign investors' information needs in two ways:

- The extent to which IPI websites offer a business-support gateway for prospective foreign investors;
- IPI capacity to deliver information directly requested by prospective foreign investors.

The assessments were conducted in English, the dominant international business language, between March and September 2008. GIPB scores are presented in the form of an index, with 100% being the highest possible score. Final scores were generated as a combination of an IPI's performance in the website assessment (50% of score) and the two inquiry-handling assessments (25% of score each).

While GIPB 2009 does not tell the whole story about an economy's investor friendliness or its ability to host FDI, it does indicate which locations offer foreign companies useful support and guidance through the investment-location selection process - and where that support and guidance are lacking.

Excellence is emerging in all regions

GIPB 2009 found examples of exceptional capability and performance among IPIs. As a group, IPIs of the high-income OECD economies performed substantially better than IPIs in other regions (Figure 3.70). The group of APEC member economies, with an average total score of 52%, with a breakdown of 68% for website and 37% for inquiry handling.

⁹⁹ *Global Investment Promotion Benchmarking 2009: Summary Report*, available at: www.globalinvestmentpromotion.com

Figure 3.70: OECD high-income economies retain investment facilitation lead

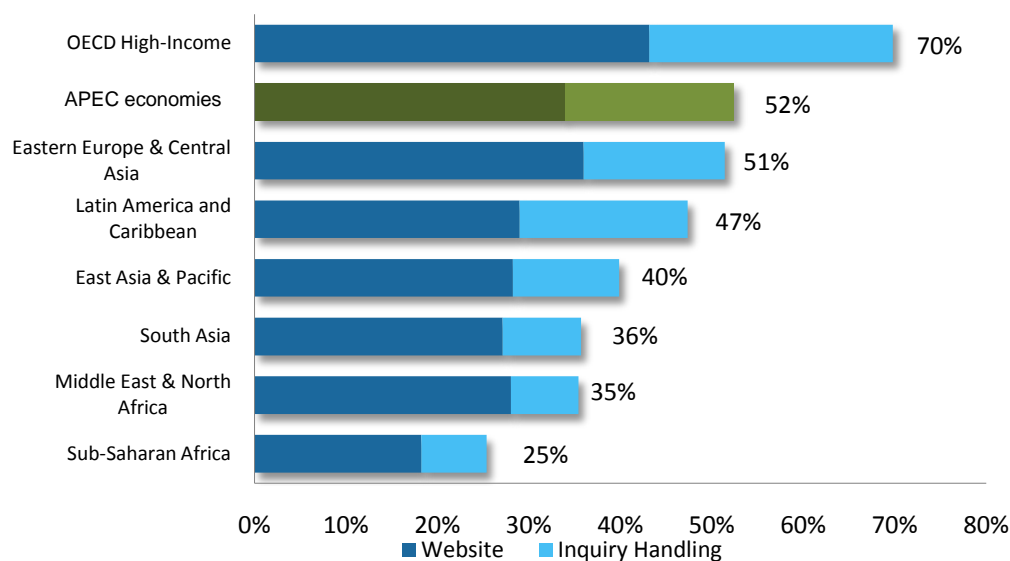
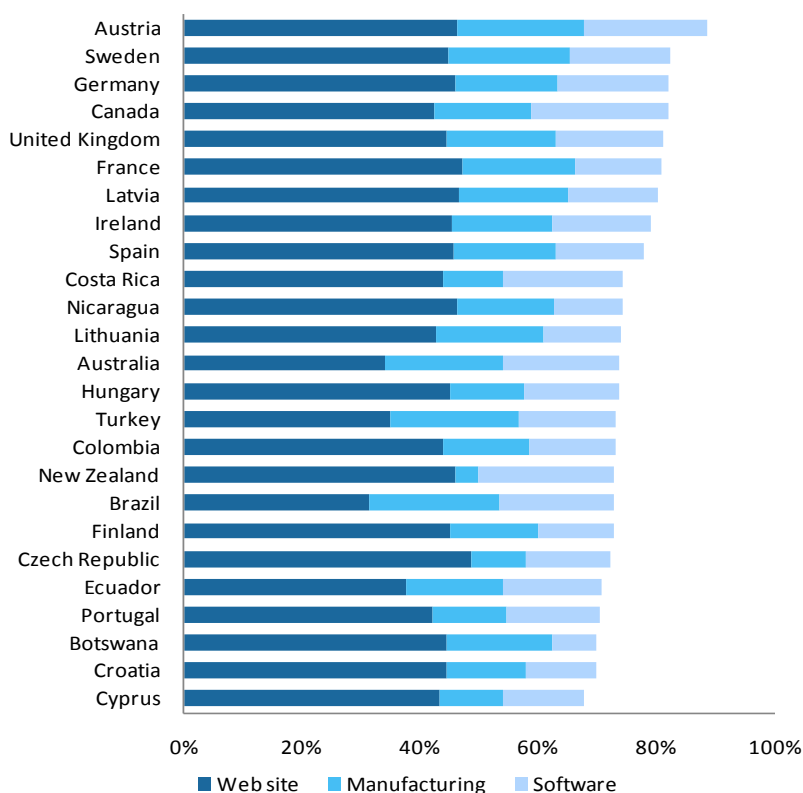


Figure 3.71 shows the top-performing IPIs in GIPB 2009. Three APEC member economies (Australia, Canada and New Zealand) were among the world's Top 25 performers. Invest in Canada, the best performing IPI among APEC members, achieved a Best Practice score of 82 points. Austrade and Investment New Zealand achieved over 70 points each, falling into the Good Practice tier.

Figure 3.71: Top national IPIs



An important finding of GIPB 2009 is that a nation's wealth is not a determinant of excellence in investment promotion. Many middle-income economies, such as Malaysia and Peru among APEC members performed very well, outperforming some OECD and other high-income economies.

Moreover, two lower-middle-income APEC economies, Thailand and the Philippines, obtained scores of over 50%, placing them well ahead of numerous higher-income economies in the rest of the world.

IPI performance varies within regions

The distribution of scores varied across the regions. OECD IPIs tend to cluster in the 61-80% range. Some of the traditionally best-practice IPIs in the world belong to this group, such as the Industrial Development Agency of Ireland, UK Trade & Investment, and Invest in Sweden Agency. APEC IPIs show clustering in the 61-80% and 41-60% ranges. Indeed, out of 21 APEC IPIs, nine achieved “Good” scores of over 60 points, with only one IPI (Invest in Canada) achieving a “Best Practice” score of over 80 points. Another six IPIs achieved “Average” scores of over 40 points. However, the remaining six IPIs achieved weak scores below 40 points.

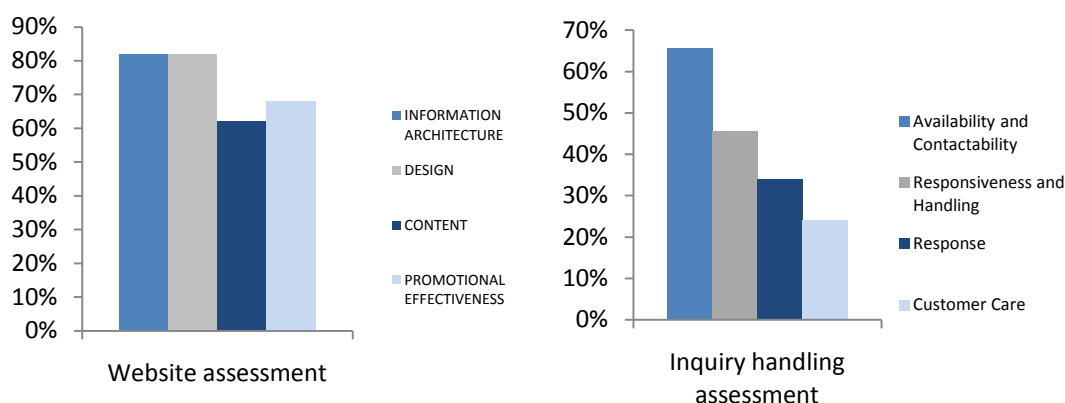
Inquiry handling proves more challenging than promoting online

APEC IPIs performed better in the website assessment than in the inquiry handling assessment. The worldwide average score for website assessment was 58%, while the worldwide average score in inquiry handling was only 28%. This pattern was repeated in all regions. In APEC, the average scores were 68% and 37% respectively, well above worldwide averages.

Unfortunately, the most important component of websites – their content - was not as good as other aspects, such as their design and architecture (Figure 3.72). This means that a prospective investor may not find in IPIs’ websites the specific information needed to make an informed decision, and would need to look elsewhere for such information. This would make the search more time-consuming and costly, therefore making the location less attractive.

Similarly, in inquiry handling the low average score showed that generally IPIs struggle with providing the specific information that an investor requests when researching investment locations. In addition, most IPIs miss out on the opportunity to establish an ongoing relationship with the prospective investor by offering little or no customer service.

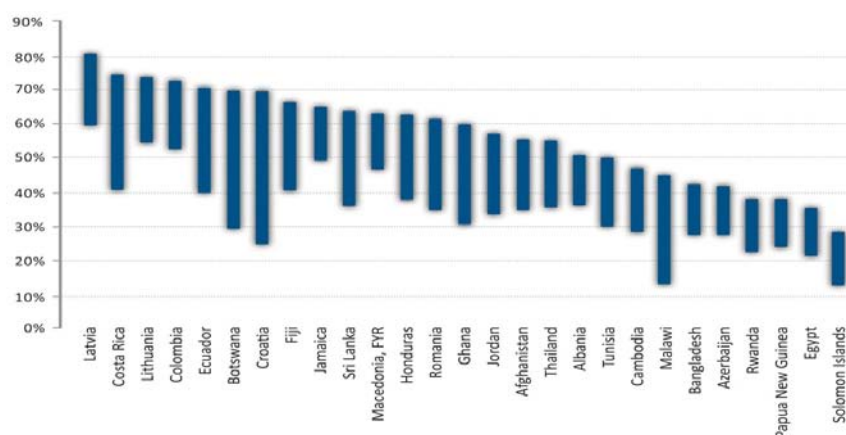
Figure 3.72: APEC IPIs’ performance falls in the most important aspects of investment facilitation



Nevertheless, facilitation standards are rising

Of the 95 IPIs that were surveyed in both 2006 and 2008, some 66 IPIs saw an improvement in their performance with an overall average improvement in score of 14 percentage points. Of the 21 APEC members, nine were assessed both in 2006 and 2008. Six out of nine IPIs improved their GIPB score, with an average improvement of 10 points. This is very encouraging, and is consistent with the fact that most APEC members belong to the regions that have improved the most in 2009: Latin America and the Caribbean, and East Asia and the Pacific.

Figure 3.73: Major improvers since 2006



Website improvement was the main driver behind the higher scores obtained by most IPIs in GIPB 2009. This means that investors will now find easier to navigate and more informative websites than they did in 2006. They will not, however, necessarily experience a much improved inquiry handling service, as in more than half of the world's IPIs inquiry handling scores remained unchanged or declined slightly.

II. What does it take to sell a location online?

Online marketing is a cost-effective way to promote investment locations to companies or consultants that are doing preliminary site-selection research. An IPI website is usually the first contact a company has with a potential investment location during the desk research carried out by investors in the long-listing phase of an investment decision. Indeed, a survey of executives with direct site selection responsibilities for large U.S. companies revealed that 64 percent of executives would use the IPI website in their next location search.¹⁰⁰

Best-practice IPI websites are those that clearly show that they understand investors' needs and will support the investment-location decision process by presenting the information they need in a fast and effective way. With this in mind, GIPB assessed each IPI website in four key dimensions:

- Information architecture: how easy it is to find economy and sector-specific information on the website.
- Design: how information is presented to support the online promotion effort.
- Content: how relevant and accurate is the economy and sector information for targeted foreign investors.
- Promotional effectiveness: how well the site markets the location and IPI services.

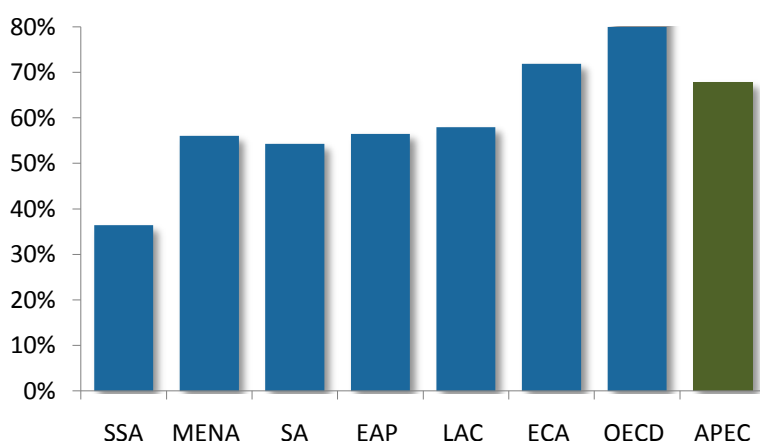
As the number of questions used to test each dimension varies, a weighting system was applied to ensure that final scores reflect the actual importance of each dimension from the investor's perspective. Website content (core economy information and sector information) is the most heavily weighted dimension.

¹⁰⁰ Development Counsellors International (DCI), "A View from Corporate America: Winning Strategies in Economic Development Marketing", July 28, 2008.

APEC online among the leading performers in the world

Investment promotion has moved online. Of the 181 economy IPIs assessed in GIPB 2009, 165 have a website. All 21 APEC IPIs have a website as well. Worldwide, IPI website performance was generally strong. The world average score was 58%. Figure 3.74 shows scores by group.

Figure 3.74: Regional performance in the website assessment

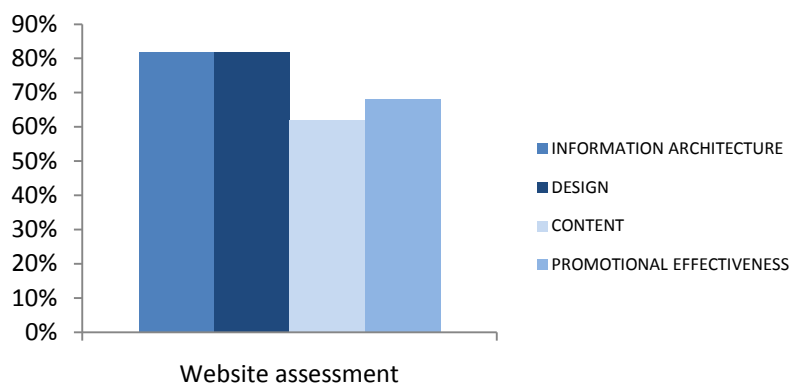


On average, APEC IPIs obtained a score of 68% and were the third highest ranking group, behind the OECD and Eastern Europe and Central Asia.

APEC websites excel in design and architecture, but not so much in content

The average score of 68 points places APEC websites in the *Good* performance category. *GIPB 2009* revealed that most APEC websites have an attractive design and demonstrate strong technical competence, as is reflected by high scores achieved in both information architecture and design (Figure 3.75). However, scores in the most important category, content, were generally lower, showing that websites often fail to provide the kind and quality of economy- and sector-level information that foreign companies need to make informed location decisions.

Figure 3.75 : APEC website scores per dimension



Box 3.76: What do top APEC websites have in common?

Although with very different designs, websites of APEC's top performing IPIs share a number of key features, such as:

- A clear navigation system with standard navigation bars which allow investors to access the most relevant information with only a couple of clicks.
- Clear and well developed reasons for investing in their location, supported by data and statistics.
- A prominent section highlighting the sectors being promoted, with comprehensive information on each one of them.
- Success stories or investor case studies highlighting the location's advantages.
- Easy to find and complete contact information that allows investors to get in touch with the IPI to request further information or to organize a site visit.

In sum, these websites clearly understand what investors look for in an IPI website, and ensure that they get it in a fast and easy way.

How would a model website look like? It would be a compilation of the key strengths of the four websites achieving the highest scores for each of the four dimensions assessed:

- **Information architecture:** A simple and straightforward menu allows prospective investors to find the information they need with only one click. The website also includes breadcrumbs and a sitemap to further aid navigation.
- **Design:** With every page branded and the coloring, style and imagery reinforcing its branding, this website is visually attractive and simultaneously easy to read, with uncluttered pages, a clear font, and images that complement the written content.
- **Content:** This site offers a wealth of relevant information. It explains the advantages of investing in the economy, and supports every claim with statistics and graphs. It explains how to set up a business and includes cost data. Sector information is detailed and comprehensive. Furthermore, a well thought-out Frequently Asked Questions section addresses most of the concerns a typical investor may have.
- **Promotional effectiveness:** A website is easy to find on major search engines, and immediately makes clear the key advantages of investing in the economy. The website further strengthens its claims by including testimonials and investor case studies in its homepage. The site has an excellent "Contacts" page, with full contact details for every specialist.

From good to best: Improving APEC's online promotion

Given that the IPI website is probably the first interaction of a foreign investor with the economy, IPIs should make every effort to create a good impression from the start. With this in mind, APEC IPIs should strive to make improvements in two key dimensions: their website's content and their promotional effectiveness.

The first step is to ensure that IPI management understands the importance of and adequately assigns responsibility for the website. An investment promotion officer with marketing knowledge (not the webmaster who is usually an information technology staff) should be responsible for content development and website maintenance.

More specifically, IPIs seeking to maximize their online presence to attract FDI and service potential investors should follow these steps:

- First design the FDI strategy and the IPI marketing plan, and only then develop the website as a marketing tool that should help implement the FDI strategy.
- Get a good web team: A webmaster is not enough. A permanent editorial committee made up by senior strategy/promotion/facilitation and PR staff should contribute to the website monthly.
- Manage the website budget efficiently. Websites are not a one-time outsourced design effort. Funds must also cover site development: research, content development, and regular updating.

- Ensure that the IPI contact information is complete (including a telephone number, e-mail and street address) and that it is clearly visible. A website's goal is to prompt investors to want to know more about the location and to contact the IPI for further information. The IPI should make this as easy as possible.
- Make the content clear, consistent, and readable, in common and relevant international business languages for the economy. Basic information should be prominent on the home page and other content should be targeted and succinct so that users can learn a lot just by scanning.
- Most importantly, make the content relevant to investors. Websites need to convey specific promotional and informational messages that are structured around sectors of the economy most likely to attract investment and that show why companies should invest in these sectors.
- Make the content credible. Do not just claim your location is best. Use statistics, testimonials, news stories, and images to prove that it is.
- List IPI services for investors in a way that shows the value added. Descriptions should not focus on an IPI's bureaucratic or regulatory activities but on specifically how it can help an investor.

Finally, understand the competition and benchmark location factors. IPIs should understand how their location compares with competing ones and with investor norms, and include this information on their websites.

III. Responding to investors' information inquiries

Inquiry handling is key to investment promotion. It offers IPIs an opportunity to interact directly with the investor, thus enabling them to influence company perceptions and win investment projects. Although resource constraints often call for prioritization of inquiries according to the importance of the sector to which it belongs, every inquiry deserves a response as it represents a potential investment.

GIPB evaluates the inquiry handling performance of IPIs based on four main themes:

- Availability and contactability: how easy it is to find the IPI online and contact a knowledgeable project manager.
- Responsiveness and handling: how skillfully IPI staff engages with the prospective investor over the telephone and by e-mail.
- Response: how relevant, thorough, and professional the IPI's response is to specific inquiries
- Customer care: how well IPI follow up to convert initial interest of an investor into a firm lead (a further inquiry or site visit).

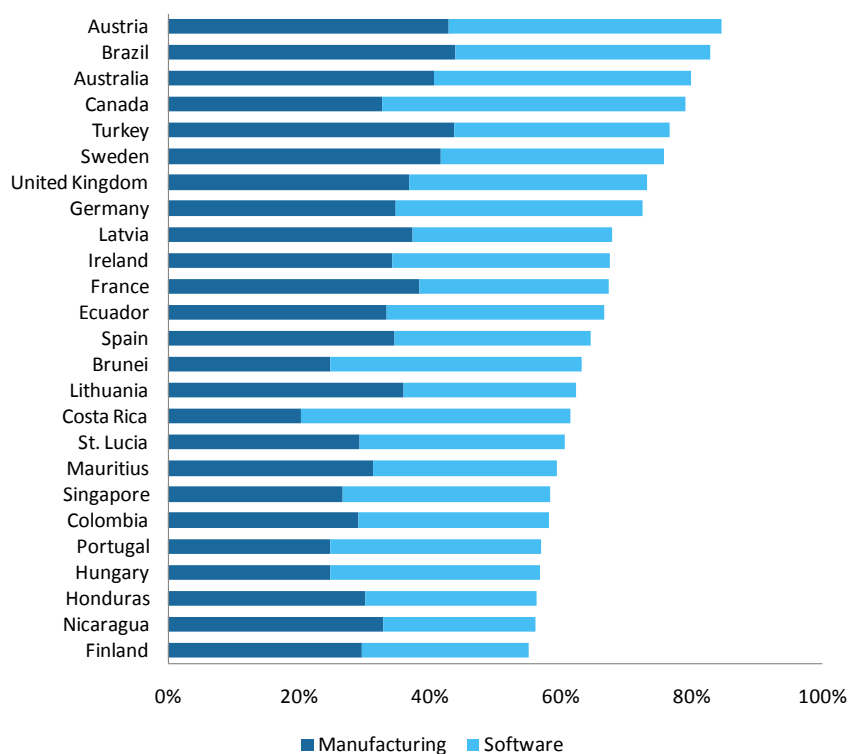
Because service consistency offers important insights into IPI capabilities, the GIPB methodology called for assessing each IPI's inquiry-handling abilities twice, using a "mystery shopper" methodology. The first assessment related to a beverage manufacturing project with a research and development component, and the second was a software development center inquiry.

Similar to the website assessment, the content of the responses submitted by IPIs is the most heavily weighted element (55%).

National rankings reveal substantial variation in capabilities

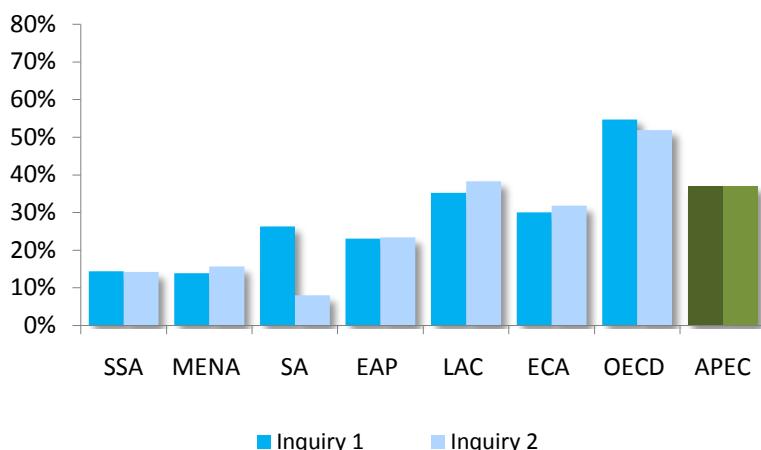
A clear top tier of IPIs emerged from the GIPB inquiry-handling assessments (Figure 3.77). IPIs with scores 75% and higher provide a consistently high level of service in both inquiries. IPIs scoring 65-75% also provide excellent service, but often not as consistently, therefore achieving a lower overall score. The high-income OECD economies once again dominated the top positions, but there was some strong competition from IPIs from APEC, Latin America and the Caribbean and Eastern Europe and Central Asia, who had several IPIs in the top 25. In the rest of the regions, however, the service provided to investors was generally weak and inconsistent.

Figure 3.77: Top IPIs in inquiry handling



High-income OECD economies achieved an average score of 53% in inquiry handling, followed most closely by APEC and Latin America and the Caribbean (both 37%) and Eastern Europe and Central Asia (31%). As Figure 3.78 shows, each region's performance was fairly consistent in the two inquiries (beverage and software), except for South Asia's, where IPIs may have been more prepared for the agribusiness manufacturing inquiry based on their historically strong agricultural industries.

Figure 3.78: Regional performance in inquiry handling, by inquiry (all scores computed over 100%)



APEC’s average scores of 37% for the two inquiries demonstrate that there is a pressing need for improvement in the handling of investor inquiries. In several cases there was a big disparity in the quality of the service provided for each inquiry. This may reflect an IPI’s experience and priorities in one sector or the other, or else it could be a reflection of weak internal systems.

APEC IPIs fall short in the quality of their responses and in customer service

GIPB found that, outside the high-income OECD economies, IPIs often fail to provide an adequate response – or any response at all - to investor inquiries. They also deal very poorly with the more complex customer care aspect of following up with the potential investor. Indeed, worldwide only 53 of 181 IPIs submitted a response to both inquiries within the deadline, and only 10 IPIs offered any kind of customer service such as checking to ensure that the responses had been received.

Figure 3.79: The performance gap between OECD, APEC and non-OECD IPIs in inquiry handling

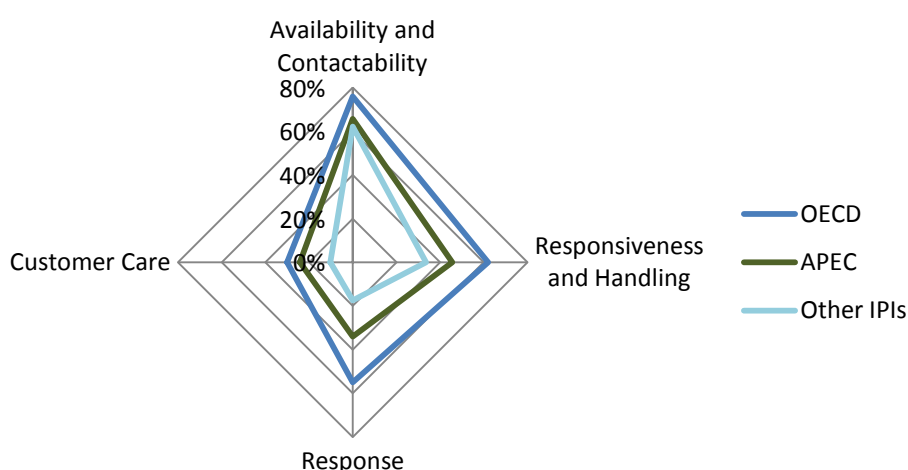
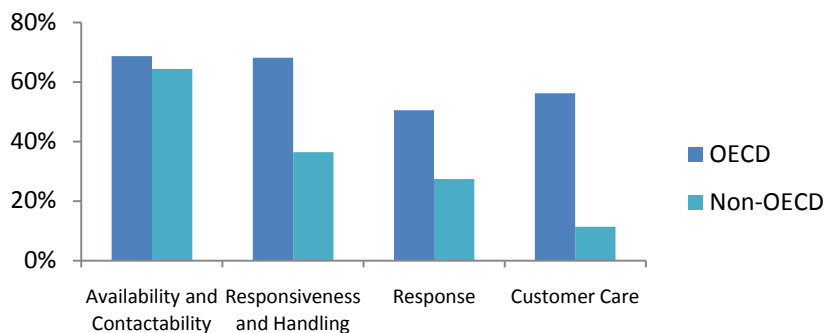


Figure 3.79 illustrates regional results for the four inquiry-handling components. With an average score of 66% for *availability and contactability*, APEC IPIs are reasonably easy to contact as almost all of them have easy to find websites with complete contact details.

In *responsiveness and handling*, APEC IPIs achieved an average score of 48%, showing that their staff's interaction with the investor by email and telephone could be improved through effective training of both reception staff and project managers. Furthermore, in the most important dimension, *response*, the average score was considerably lower, 34%, meaning that APEC IPIs were unable to adequately answer the specific questions of the prospective investor. Finally, given an average score of 24% for *customer service*, APEC IPIs generally made very little effort to follow up on the investor or offer any additional help.

Splitting APEC IPIs into two groups, those belonging to the OECD and non-OECD IPIs, two very different pictures emerge. While OECD IPIs performed quite well, with an average of 56%, non-OECD IPIs scored poorly, at 29%. The performance gap is smallest for availability and contactability, and largest for customer service, followed by responsiveness and handling (Figure 3.80). This suggests that OECD and non-OECD IPIs do not differ much in the technical knowledge required to be easily contactable, but they do differ in the most important aspect of investment promotion: directly interacting with investors.

Figure 3.80: APEC IPIs belonging to the OECD outperform non-OECD APEC IPIs



Implications for foreign investors exploring APEC member economies

Looking at GIPB 2009 results for APEC IPIs from the perspective of our two “companies” reveals the following:

As the GIPB English-speaking beverage manufacturing company began searching for an investment location in an APEC member economy, it found that 20 of the 21 locations could be researched online, that is, their respective IPI had an English website. Nineteen of those websites provided an e-mail address or telephone number. When our company sent an inquiry by e-mail and later attempted to telephone each IPI to further discuss the project, 16 out of those 19 IPIs (76% of APEC IPIs) were reachable. Our company was surprised to find that two IPIs had posted incorrect contact information on their websites, and that a third IPI had refused to help them, despite claiming on their site that they were responsible for promoting FDI into their location.

After interacting over the phone with 16 IPIs, our beverage company received a response from 13 IPIs (62% of APEC IPIs). This means that despite having interacted with them over the phone, three IPIs failed to send a response within the 10 working-day deadline. Moreover, two of the responses were so poor (with most of the investor's questions not being answered) that our company would probably discard them due to insufficient information. Therefore, only 11 IPIs (or 52% of total APEC IPIs) would remain in the investor's list at this stage. Finally, only six of these 11 IPIs offered some kind of customer service by following up to ensure that the response had been received, to offer additional information, or to inquire about the status of the project. This means that only 29% of APEC IPIs provided the level of professional service that would maximize their chances of remaining in the investor's list of prospective investment destinations.

The picture for the software company is not very different: The company was able to research 20 IPI websites and find contact information on 19 of them. The company was then able to reach a

project manager by telephone in 17 IPIs (81% of APEC IPIs). After discussing the project over the phone, our software company received a written response within the deadline from 14 IPIs (67%). Finally, only six IPIs provided some form of customer service by checking whether further information was needed. This means that only 28% of IPIs offered the kind of professional service that investors expect, despite the fact that Information and Communications Technologies (ICT) is a priority sector for FDI attraction in most APEC member economies.

Quick wins for effective investor inquiry handling

Based on the findings discussed above, APEC IPIs could follow some of the following steps to improve their inquiry handling services:

- Post correct and complete contact information on the IPI website. Ensure that an investor can contact an appropriate project manager as the key liaison throughout a project.
- Establish inquiry-handling protocols so that all inquiries are logged into a central system and ensure that a staff member is assigned to monitor the progress of inquiries. Acknowledge receipt of all e-mails with investor inquiries and let investors know when the IPI will respond in full.
- Have available materials on key features and advantages about the location, such as labor costs of key positions, employment regulations or costs for key sectors and subsectors, and names of existing investors, for quick response to investors.
- Respond to investor inquiries in a way that is informative and promotes the location:
 - Organize responses according to the company's specific questions. Provide responses in a single report or presentation with a table of contents.
 - Include germane, accurate, and comparative data, visuals, case studies about current investment in the location, and testimonials from well-known companies doing business there, to demonstrate the viability of the location.
 - Anticipate and answer questions that the company has not yet asked. This demonstrates the IPI's expertise and understanding of the company's needs.
- Develop a template for responses so that documents look professional, are branded, and follow a standard format including a table of contents, executive summary, and business case.
- Don't forget to follow up. E-mail or call the investor to confirm receipt of the sent information. Follow up in 1-2 weeks to ascertain what more the IPI can do to support the project and offer to meet or arrange a site visit for the investor (budget permitting).

Conclusions

IPIs from APEC member economies performed relatively well in GIPB 2009. APEC IPIs ranked second in the world in the inquiry handling assessment - behind the OECD group of economies- and third in the website assessment – behind the OECD and Eastern Europe and Central Asia. More precisely, investors can expect a high level of support from 43% of APEC IPIs. Encouragingly, investors will be able to source some of the economy and sector information they need from effective websites for most of the APEC IPIs (76%).

Nevertheless, to be in a better position to attract productive FDI, APEC IPIs are encouraged to continue to improve the breadth, depth and quality of the information they offer both on their websites and in their responses to specific investor inquiries. Foreign companies researching new locations need to understand the viability of their investment project in a specific destination and to do this, they require specific data relating to their sector and proposed operation. If IPIs are in a position to provide this information in a fast and effective way, they will make the search less costly and time consuming for the investor, thereby making their locations more competitive.

To better service investors, APEC IPIs need to think strategically about their activities. Engaging aggressively in proactive promotion may yield limited results if there is no robust facilitation service to meet potential investors' interest with detailed information on costs, regulation, and qualitative factors for the investment project. IPIs should give facilitation adequate priority among promotion activities. GIPB has shown that good facilitation does not depend on resources but on a good understanding and prioritization of IPI resources.

APEC IPI managers need to focus more on building in-house capacity to gather and consolidate relevant information - on market players, sector composition, and key selling points, and on the economy, economy, and targeted sectors. Internal systems are key to ensure every single potential investor receives the best possible service. They need to constantly anticipate foreign companies' needs and ensure that they post the most relevant information on their websites, and that they have additional detailed information at hand to quickly respond to inquiries. In addition, IPIs should develop networks with other in-economy organizations that could provide additional information that investors may ask for in their specific inquiries. APEC IPIs also need to get to know their competition and understand how their locations compare with competing ones, and with investor norms. They should benchmark location factors and include this information on their websites and in their responses to inquiries as well.

Finally, follow-up is key to securing investments. GIPB revealed that less than 10% of APEC IPIs consistently followed up on the investor after submitting a written response to an inquiry. Following up can often determine whether a lead will remain only a lead or if it will become an actual investment, because it offers IPIs additional opportunities to influence the investment decision in their favor. After submitting a well researched response to an inquiry, following up is the natural - and necessary - next step toward winning new investment.

Table 3.81 : GIPB 2009 APEC results

Economy Name	IPI Name	Performance
Canada	Invest in Canada	BEST PRACTICE
Australia	Austrade	GOOD
Hong Kong, China	Invest Hong Kong	
New Zealand	Investment New Zealand	
Singapore	Singapore Economic Development Board	
Brunei Darussalam	The Brunei Economic Development Board	
Republic of Korea	Invest Korea	
Malaysia	Malaysian Industrial Development Authority	
United States	Invest in America	
Japan	Japan External Trade Organization	AVERAGE
Peru	ProInversión	
Thailand	Thailand Board of Investment	
The Philippines	Philippine Board of Investments	
Mexico	ProMexico	
Chile	Foreign Investment Committee	WEAK
Papua New Guinea	Investment Promotion Authority	
Indonesia	Indonesia Investment Coordinating Board	
People's Republic of China	Invest in China	
Chinese Taipei	Department of Investment Services	
Viet Nam	Ministry of Planning and Investment - Foreign Investment Agency	VERY WEAK
Russian Federation	Ministry of Economic Development and Trade/Department of Investment Policy	

Reference:

BEST PRACTICE	81-100%
GOOD	61-80%
AVERAGE	41-60%
WEAK	21-40%
VERY WEAK	0-20%

4.

Methodology

The indicators presented in the *Investing Across Borders - APEC* report provide measures of the laws that affect foreign direct investment (FDI) and the efficiency of administrative processes in 92 economies including all 21 APEC members. The methodology chapter is divided into two parts—the first part presents data notes for the 4 core IAB indicators; the second part presents the methodology for the Global Investment Promotion Benchmarking (GIPB) indicators.

4.1 Investing Across Borders methodology

The project's methodology is based on that of the *Investing Across Borders* project of the World Bank Group.¹⁰¹ The indicators highlight the differences among economies in their regulatory treatment of FDI in order to identify good practices, facilitate peer learning opportunities, stimulate reforms, and provide annual cross-economy data for research and analysis. IAB strives to provide data that are, as much as possible, objective and publicly verifiable.

The indicators are based on a survey of law firms, other professional service providers (primarily accounting and consulting firms), investment promotion institutions, chambers of commerce, and other expert respondents in each of the measured economies. For the *Investing Across Borders - APEC* report, over 2,400 survey respondents were engaged in 92 economies between April 2009 and December 2010. Other key characteristics of IAB's methodology are presented in Box 4.1:

Box 4.1: Key characteristics of IAB's methodology:

- Comparable indicators across 4 thematic areas and 92 economies
- Assessment of laws and regulations, and their implementation in practice
- Evaluation of the strength of laws and efficiency of administrative processes for FDI
- Data based on responses from over 2,400 FDI legal experts in each measured economy, and on extensive legal research
- Comparability of data ensured through application of a case study of a representative investment project
- Ability to leverage indicators to identify good practices and areas for reform

IAB's thematic focus, respondents, and economies

Selection of thematic focus

¹⁰¹ The methodology of the Investing Across Borders project is primarily based on that of the Doing Business report. It can be viewed online at <http://www.doingbusiness.org>.

IAB indicators focus on 4 discrete topics of FDI regulation. These were selected from a much wider range of investment climate factors over a two-year process. During this time, the project consulted academic literature on FDI determinants, investor surveys on barriers to doing business, FDI specialists comprising IAB's expert consultative groups, conducted pilot tests in 22 economies, and considering a host of practical issues and constraints. The feasibility and desirability of including any of the topics were evaluated against the following criteria:

- Is the topic already sufficiently covered by *Doing Business* or other annual benchmarking exercises? There are abundant other resources that measure the quality and competitiveness of business environments worldwide. The IAB indicators are designed not to compete with, but to complement these existing resources by focusing on policy areas that are particularly pertinent to FDI.
- Is the topic affected by public policy or by regulatory and administrative frameworks for FDI or does it mostly depend on other factors, such as natural resource endowment or market size?
- Can public authorities take any short-term actions in the topic area that the indicators could track and capture on an annual basis or does the topic lend itself more to longer-term reforms?
- Is an annual survey of investment lawyers and other business intermediaries the appropriate data collection method for this topic or would the topic require a different type of respondent, such as a foreign investor?
- Can one, to the extent possible, collect objective and verifiable data or is the nature of the topic such that it should be evaluated through subjective data based on survey respondents' perceptions and sentiments?
- Can the questionnaires capture standard, everyday treatment of a typical foreign investor or is the nature of the topic such that it mostly depends on ad hoc, discretionary decisions and actions by public authorities?
- Can one expect a sufficient heterogeneity of performance across economies to warrant development of a global indicator set or is there a relatively small set of economies whose policies and regulations treat the topic differently from most other economies?
- Does IAB have sufficient human and financial resources to undertake the measurement of each topic?

In its initial phases, IAB tested the following topics: foreign equity ownership restrictions, investment promotion (investor information access, investor facilitation, investor aftercare, and policy advocacy), approval procedures, performance requirements, access to land, employment of expatriate personnel, restrictions on board members, currency convertibility and repatriation, protection against expropriation, protection of intellectual property, provision of national treatment, investment incentives, and access to international commercial and investment arbitration. Application of the aforementioned selection criteria gradually narrowed down the list of possible topics to the present set of 4 IAB indicator areas. Over time, IAB will consider including additional topics in its thematic coverage.

Selection of questionnaire respondents

Law firms, other professional services providers (primarily accounting and consulting firms), investment promotion institutions, chambers of commerce, law professors and other local experts in each of the measured economies were the principal respondents to the IAB questionnaires. They had both the knowledge of their economies' legal and regulatory frameworks for FDI, and the practical experience of advising foreign investors on market entry and operation. Respondents who participated in IAB were self-selected based on their interest, availability, and willingness to contribute to IAB on a pro-bono basis. They constitute about 20–30% of the experts who received IAB's invitation to participate in the project. IAB selected its potential pool of respondents based on the following sources of information:

- International guides identifying leading professional services providers, including their specialization, in each of the economies (for example, Chambers and Partners, Martindale, IFLR1000, Helpline Law, HG Law, International Correspondence Lawyers and Financial Experts, The Internet's Lawyer Directory, and Terra Lex);

- Large international law and accountancy firms with an extensive worldwide network of offices, or local partner groups;
- Members of the International Bar Association, economy bar associations, chambers of commerce and other membership organizations;
- Professional services providers identified on websites of embassies, investment promotion institutions, business chambers, and other local organizations; and
- Professional services providers recommended by the World Bank and IFC offices.

Foreign investors did not fill out the questionnaires. The IAB team interviewed investors in several economies during the initial pilot tests, and determined that investors themselves were not familiar with the specifics of the economies' legal and regulatory frameworks, and their survey responses were limited to one sector-specific experience at one point in time. In contrast, commercial lawyers, many of whom serve as local counsel to foreign investors, and other professional service providers were ideally positioned to fill out the IAB questionnaires. They were able to provide more up-to-date responses based on multiple experiences of advising clients from various sectors. In fact, IAB survey data reveal that every respondent firm advises, on average, over 40 foreign clients per year. This significantly increases the number of transactional experiences as basis for IAB data.

Selection of economies

The *Investing Across Borders - APEC* report covers 92 economies in 8 regions (Table 4.2). The report includes all 21 member economies of APEC by extending the number of economies covered in the IAB 2010 global report by 5 additional economies – these are Australia, Brunei Darussalam, Hong Kong, China; Chinese Taipei and New Zealand.

The economies outside of APEC were selected by applying the following criteria:

- Population size, to create a balance between highly populated and less-populated economies.
- Economies in the current and expected future project portfolio of the Investment Climate department of the World Bank Group.
- Economies that have requested *Doing Business* reform assistance, and have thus showed interest in using indicators to motivate reforms.
- Economies that have demonstrated an ongoing commitment to business environment improvements, and have been recognized by *Doing Business* as leading reformers.
- Post-conflict economies, which are one of the corporate priorities of the IFC; and
- Key high- and middle-income economies that have done particularly well or particularly poorly in attracting FDI.

Table 4.2: Economies covered in the *Investing Across Borders - APEC* report

APEC: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, China; Indonesia, Japan, Korea Rep., Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, The Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, United States, Viet Nam.

Sub-Saharan Africa (21 economies): Angola; Burkina Faso; Cameroon; Côte d'Ivoire; Ethiopia; Ghana; Kenya; Liberia; Madagascar; Mali; Mauritius; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; South Africa; Sudan; Tanzania; Uganda; Zambia

East Asia and the Pacific (13 economies): Brunei Darussalam; Cambodia; China; Hong Kong, China; Indonesia; Malaysia; Papua New Guinea; the Philippines; Singapore; Solomon Islands; Chinese Taipei; Thailand; Viet Nam.

Eastern Europe and Central Asia (20 economies): Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Georgia; Kazakhstan; Kosovo; Kyrgyz Republic; Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Turkey; Ukraine.

Latin America and the Caribbean (14 economies): Argentina; Bolivia, Plurinational State of; Brazil; Chile; Colombia; Costa Rica; Ecuador; Guatemala; Haiti; Honduras; Mexico; Nicaragua; Peru; República Bolivariana de Venezuela.

Middle East and North Africa (5 economies): Egypt, Arab Rep.; Morocco; Saudi Arabia; Tunisia; Republic of Yemen.

South Asia (5 economies): Afghanistan; Bangladesh; India; Pakistan; Sri Lanka.

high-income OECD (14 economies): Australia; Austria; Canada; Czech Republic; France; Greece; Ireland; Japan; Korea, Rep.; New Zealand; Slovak Republic; Spain; United Kingdom; United States.

In the future years, IAB plans to gradually expand its coverage of economies. This increase will be driven primarily by demand and the availability of resources.

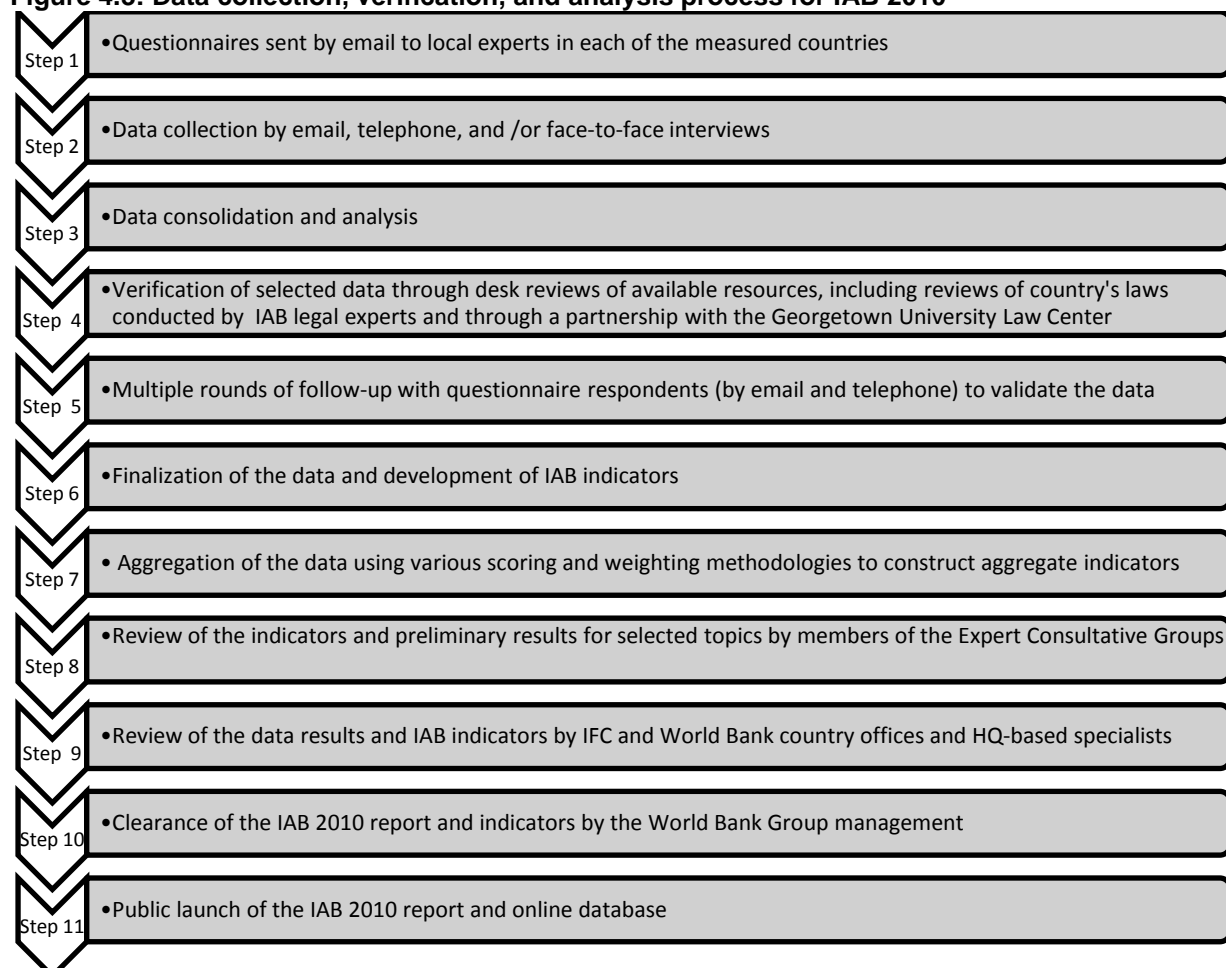
Construction and characteristics of the IAB indicators

This section presents IAB's methodology for data collection, analysis, and construction of the indicators.

Data collection and analysis process

The IAB indicators are based on primary data collected principally by email (and in some cases by telephone or in-person interview) through a set of standardized questionnaires completed in each economy by expert respondents. Figure 4.3 lays out the step-by-step process of data collection, verification, and analysis for the IAB 2010 report that served as a basis for this IAB-APEC report.

Figure 4.3: Data collection, verification, and analysis process for IAB 2010



To ensure data accuracy, the IAB team engaged in several rounds of interactions by email and telephone with many survey respondents in the process of verifying data and exploring the reasons behind inconsistent responses. The IAB team also reviewed economies' laws and regulations when respondents' answers to the survey questions were not consistent. In addition, the IAB team travelled to 22 of the 92 economies for face-to-face interviews with the survey respondents, including 3 of the APEC economies.

Respondents were asked both to fill out written questionnaires and provide references to the relevant laws and regulations to facilitate data verification for quality assurance. The surveys captured over 1,200 individual data points for each economy. The raw data contained in the questionnaires were electronically extracted and compared to the original surveys to minimize transcription errors. Every step was documented to ensure traceability of data and derivation of the final data set presented in this report.

Structure and characteristics of the IAB indicators

The IAB indicators comprise both measures of the characteristics of laws and regulations (de jure indicators), and their application and implementation in practice (de facto indicators), as shown in Table 4.4.

Table 4.4: De jure and de facto indicators of *Investing Across Borders*

IAB indicators	Indicator type
Investing Across Sectors indicators	
Foreign equity ownership indexes	De jure indicators
Starting a Foreign Business indicators	
Time (days)	De facto indicators
Procedures (number)	De facto indicators
Ease of establishment index (0-100)	De jure and de facto indicators
Accessing Industrial Land indicators	
Strength of lease rights index (0-100)	De jure indicators
Strength of ownership rights index (0-100)	De jure indicators
Access to land information index (0-100)	De jure and de facto indicators
Availability of land information index (0-100)	De jure and de facto indicators
Time to lease private land (days)	De facto indicators
Time to lease public land (days)	De facto indicators
Arbitrating Commercial Disputes indicators	
Strength of arbitration laws index (0-100)	De jure indicators
Ease of arbitration process index (0-100)	De jure and de facto indicators
Extent of judicial assistance index (0-100)	De jure and de facto indicators

IAB's de jure indicators are based on an economy's legal framework. The data for these indicators are collected through close-ended survey questions that assess whether or not certain provisions and clauses are present in the economy's legal and regulatory frameworks. All de jure indicators are objective and publicly verifiable. Examples of IAB's legal indicators include Foreign equity ownership indicators or Strength of arbitration laws index.

The de jure indicators establish an objective foundation of the legal and regulatory framework for FDI in the topics covered by IAB. In some cases, IAB complements these de jure indicators with de facto measures of how the laws are actually applied in practice. For example, a regulation might stipulate that there is a legal time limit within which a public agency must complete a certain administrative requirement, such as registration of a foreign company. If this time limit is, however, rarely respected in practice, the IAB indicators would pick this up through the de facto indicators. As a result, the combination of the de jure and de facto data provide a more comprehensive and realistic measure of investment climates for FDI.

The Starting a Foreign Business and Accessing Industrial Land indicators also use a specific type of de facto indicators to quantify the time and number of procedural steps a foreign company must

undergo to establish a subsidiary in the local market. These indicators are collected following the standard time and motion studies adopted by Hernando de Soto¹⁰² and *Doing Business*.¹⁰³ Each administrative process is broken down into separate steps to ensure a more precise estimate. Practitioners with significant and routine experience in the transaction area give these time estimates. For example, the indicators on the time it takes to start a foreign-owned business are based on responses by investment lawyers and accountants with experience in establishing foreign-owned businesses. IAB uses the following definitions for measuring time and procedures:

- Procedure: Any interaction between a foreign company (the owners, managers, and/or their legal representatives) and other parties (government agencies or departments, public entities or public authorities, local banks).
- Time: The time involved in completing each procedure is calculated in calendar days (rather than business days), and based on the average (that is, median) time needed in practice to complete each procedure in the experience of each respondent.

All legal indicators are aggregates of multiple survey questions. The topic-specific data notes on the following pages identify the exact questions that feed into each indicator. All questions are equally weighted. Alternative weighting methods were also explored (including factor and principal component analysis, expert judgment, and others).¹⁰⁴ Due to the high correlation of results among the various methods, the equal weights approach was selected because it is most commonly used by other indicator sets, is easily replicable (and therefore facilitates verification of results), and is most easily understood and communicated to a variety of audiences. The IAB indicators are not aggregated at a topic level, nor are ordered to produce a ranking of economies' performances.

IAB maintains anonymity of its contributors by not attributing any data points to specific respondents. Although all data are based on the respondents' answers and information provided through the questionnaires, all original data are treated with confidentiality and the indicators cannot be traced back to the responses of the individual survey contributors.

Regional and global averages of indicator scores contained in this report are all based on *Investing Across Borders*' own data set currently covering 92 economies. If another source was used, it is clearly identified. The classification of economies by region and income group is based on the World Bank Group's Economy Classification criteria, and conforms to the system used by *Doing Business*.¹⁰⁵

Main methodological limitations of the IAB indicators

This section presents the principal methodological limitations of the IAB indicators, stemming either from methodological issues associated with any original data set based on primary data, or from specificities unique to the IAB project. IAB's limitations should be kept in mind when considering the project's results and their implications.

Substantive limitations

- The focus of IAB is on regulation of FDI, and not on portfolio investment. IAB's Investing Across Sectors indicators consider both greenfield FDI and mergers and acquisitions when assessing sector-specific restrictions on foreign equity ownership. The Starting a Foreign Business and Accessing Industrial Land indicators focus even more specifically on greenfield FDI by evaluating the process of establishing a local subsidiary and its options for and ease of accessing industrial land. The IAB indicators do not delve into any of the factors particularly

¹⁰² De Soto, Hernando, *The Other Path: The Economic Answer to Terrorism* (New York, NY: Harper Collins, 1989).

¹⁰³ Ibid.

¹⁰⁴ For example, the correlation coefficient of the end results utilizing various scoring, weighting, and aggregation methodologies for the Investing Across Sectors data was 0.98. Given the high correlation coefficient, simple weights were adopted for the reasons explained in the text.

¹⁰⁵ See: <http://www.worldbank.org/data/countryclass>. *Investing Across Borders 2010* reports 2008 gross national income per capita as published in the World Bank's *World Development Indicators 2009*. Income is calculated using the Atlas method (current \$). For population data, *Investing Across Borders 2010* uses mid-year 2008 population statistics as published in *World Development Indicators 2009*.

critical to portfolio investment, such as economies' capital markets, sovereign credit ratings, or currency stability.

- The thematic coverage is limited to 4 discrete areas of FDI regulation. As discussed earlier, the IAB indicators do not provide a comprehensive measure of economies' legal and regulatory frameworks for FDI. The 4 thematic areas have been selected from a wider set of possible variables because of their policy relevance, relative ease and precision in measurement, reform potential, and other practical considerations.
- IAB focuses on national laws, and, in some cases, on economies' ratifications of various international conventions that govern the general FDI regime. The indicators do not consider international investment agreements, such as bilateral and regional investment treaties and free trade agreements. The topic-specific chapters of this report list the relevant and applicable laws that serve as basis for each of the indicators.
- While IAB recognizes that many developing economies attract significant FDI into their special economic zones (SEZs) and that these are becoming increasingly important to FDI competitiveness, the legal regimes for SEZs, export processing zones (EPZs), or any other specifically designated areas governed by a special legal framework are excluded from the scope of the project. SEZ development has grown rapidly but is concentrated in a few economies and a few product areas with, in many cases, mixed results. The majority of FDI ends up outside of SEZs. The objective of IAB is to measure the treatment of FDI governed by economies' national legislation, which is most relevant to a large sample of economies and a large share of global FDI. This methodology allows IAB to provide comparable data on the regulation and efficiency of administrative processes for FDI across all economies covered by the project.
- Some IAB indicators can apply to FDI as well as to domestic investment. While IAB's objective is to provide measures of FDI regulation, the laws of many economies afford equal treatment to foreign and domestic businesses in several of the areas covered by IAB. For example, the extent of land rights is often the same for all domestically incorporated companies irrespective of their ownership. Access to land can often present a greater administrative and bureaucratic hurdle for foreign companies unfamiliar with local regulations, however. IAB indicators therefore focus on the practical issues that are commonly identified as obstacles by foreign investors, rather than measuring exclusively those areas of regulation that differentiate between domestic and foreign investment.

Methodological limitations

- IAB is not an investor or company perception survey. IAB indicators are based on legal facts and expert responses collected through a standardized set of questionnaires completed by a small number of FDI specialists in each measured economy.
- IAB data are not based on a statistically significant sample of respondents in each economy. To counterbalance this limitation, an intensive consultation process with respondents has been used for data verification purposes. Despite a relatively small number of respondents, their expertise is ample, averaging around 40 transactions per firm, thus, in many economies, capturing a significant share of FDI activity. As in all global studies, however, the quality of the final results is based primarily on the quality of the underlying data. As one would expect, IAB's data for large high- or middle-income economies are on average more robust and are based on responses from more respondents than those for small, low-income economies. Despite these limitations, the IAB indicators use a well-tested and proven methodology of data collection, verification, and analysis. This methodology allows IAB to provide comparable indicators on the strength of regulation and efficiency of administrative processes for FDI.
- IAB indicators are not necessarily representative of all investment projects. They aim to measure the typical experience of a foreign company looking to enter and operate in a new market. Uniformity and comparability of data are achieved through detailed assumptions of a case study tailored for each IAB topic. Actual experience of each foreign company is likely to vary, depending on the nature of its commercial activities, the size of its investment, its

relationships with the government and business community, its negotiating power, the specific location of its investment, and other factors. As stated earlier, IAB's objective is to benchmark regulations across economies, rather than provide detailed investment process maps appropriate for any investment plan.

- The data on the efficiency of administrative processes are specific to the economy's largest business city. The case study that underlies IAB's data supposes that a foreign-owned company will seek to incorporate and operate in the economy's center of commercial activity, thereby interacting with public authorities in that city. The IAB data are therefore not necessarily representative of common practices in other cities in each economy. This is particularly the case in large or federal economies.
- The measures of time, captured in particular through some of the de facto indicators, involve an element of judgment by expert respondents. When respondents give different estimates, the reported time represents the median values of several responses given under the assumptions of the standardized case.¹⁰⁶
- For the de facto indicators that quantify the duration of administration processes, the methodology assumes that an investor and its legal counsel have full information on what is required and do not waste time when completing procedures. In practice, completing a procedure may take longer if the investor and its legal counsel lack information or are unable to follow up promptly. Alternatively, they may choose to disregard some burdensome procedures. For both reasons, the times to complete administrative processes reported in IAB 2010 could differ from the perceptions of entrepreneurs reported in the World Bank Enterprise Surveys or other investor surveys.
- IAB does not measure all forms of FDI. The IAB case study specifies FDI in the form of a wholly foreign-owned, locally incorporated subsidiary. The economy's laws and administrative frameworks are then analyzed from the perspective of this company. In most economies, other types of foreign investment projects (for example joint ventures, licensing agreements, or establishment of branch offices) would be treated differently, both by law and in practice, than a foreign-owned subsidiary.
- The indicators are not set up to indicate whether the treatment of FDI is more favorable or less favorable than that of domestic enterprises. The IAB indicators across the 4 topics and 92 economies provide a mixed picture. For some indicators (for example, Arbitrating Commercial Disputes), the legal rules afforded to foreign companies are typically more favorable than those for local businesses. For others (for example, Starting a Foreign Business), there tend to be additional requirements for FDI, but not for domestic enterprises. And lastly, the law often provides the same rules for foreign and domestic companies, which is a principle advocated by IAB. For example, if a particular economic sector is closed to both domestic and foreign private sector participation because it is dominated by a state-owned monopoly, the Investing Across Sectors indicators reflect this scenario as a restriction on FDI, even though the restriction also applies to domestic investors. As a result, the indicators are not structured to clearly measure derogations from the national treatment principle. As such, the indicators do not present exact measures of areas where laws and regulations discriminate against foreign or domestic investors. They evaluate legal and regulatory frameworks from the perspective of foreign investors and include all restrictions that affect foreign investors, even if those also affect domestic businesses.

Main limitations of interpreting IAB data

- The IAB indicators do not specifically look at the issue of more versus less regulation. They are structured to reward both good regulation and efficient processes. The IAB project

¹⁰⁶ The de facto indicators may still not capture the degree of variation an investor may experience when completing the procedures. The project thus investigates whether or not a measure of the degree of variation of the individual responses should be included so as to compare consistency of treatment across economies. For example, if in one country it takes a median of 90 days to establish a foreign-owned company with a standard deviation of 5, while another takes only 60 days with a standard deviation of 45, an investor is likely to want to ensure that the burden of the regulation takes 2 months rather than somewhere between 2 weeks and 4 months.

recognizes that what is required is not less regulation or none, but a better understanding of how public institutions and economies' regulatory frameworks attain their goals. This is particularly important both for the response of international financial institutions to the global financial crisis and for the global climate change and food security agendas. Transparent, predictable, and effective laws and regulations are critical for ensuring that FDI operations result in a win-win situation for investors, host economies, and their citizens. A solid legal framework gives investors confidence in the security of their properties, investments, and rights. This same legal framework allows the government to ensure that investors' actions do not transgress the law, and that their activities in the host economy are leveraged for enhancing the economy's socioeconomic development.

- The IAB data should not be used as a proxy for government reforms in general; governments should not assume that improvement in the indicators will necessarily lead to FDI. The main purpose of the IAB indicators is to benchmark FDI regulations around the world, facilitate policy dialogue by identifying good practices, track reforms, facilitate sharing of reform experiences, and enable research and analysis on the links between reforms in measured areas and desired outcomes. Any reforms that economies wish to undertake will need to be considered in a broader context of priorities.

Due to these and other limitations, the IAB indicators are only partial measures of the topic areas they cover. They are limited in scope and explanatory power in relation to actual policies and business realities. The specific contexts of each economy must be considered when interpreting the indicators and their implications for that economy's policies and investment climate.

The following section presents all 4 IAB topics and their specific data methodology, assumptions, and indicator designs. It provides an overview of how the topic-specific data are analyzed, structured, and presented.

Investing Across Sectors

Investing Across Sectors indicators measure overt statutory restrictions on foreign ownership of equity in new investment projects (greenfield FDI) and on the acquisition of shares in existing companies (mergers and acquisitions, M&As). The indicators are based on the text of investment codes, commercial laws, merger and acquisition laws, and other related statutes.

The indicators focus on 33 sectors, aggregated into 11 broader sector groups that conform with economic classifications and aggregation, in order to facilitate data presentation and analysis (Table 4.5).

Table 4.5: Investing Across Sectors indicators cover 33 sectors, aggregated into 11 sector groups

	Sector group	Sector	Details
Primary sectors	Mining, oil and gas	Mining	A foreign company seeking to develop and exploit a medium-sized deposit of metal ore (for example iron, copper, nickel, gold, and silver). Note: The following types of mining activities are excluded from the definition: (1) oil and gas extraction, (2) diamond mining, (3) coal / lignite mining, and (4) exploration of a deposit.
		Oil and gas	A foreign company seeking to develop and exploit a medium-sized gas or oilfield.
	Agriculture and forestry	Agriculture	A foreign company seeking to own a commercial farm. Note: It is assumed that the foreign company is able to acquire a long-term lease on the land, and that the raising and hunting of animals is excluded from the definition.
		Forestry	A foreign company seeking to own a commercial forestry or logging operation.
Manufacturing sectors	Light manufacturing	Light manufacturing	A foreign company seeking to own a factory for manufacturing a variety of consumer products (for example, electric household appliances).
		Manufacturing of food products	A foreign company seeking to own a manufacturing plant for processing the primary products of agriculture, forestry, and fishing into food (for example, meat, fish, fruits and vegetables, oils, milk products, grain mill products).
		Pharmaceutical products	A foreign company seeking to own a manufacturing plant to produce finished medicines. Note: Excluded from the definition are (1) medicinal chemicals, (2) active pharmaceutical ingredients, and (3) research and development (R&D) activities.
		Publishing	A foreign company seeking to own a publishing business for books, brochures, dictionaries, maps, periodicals. Note: Excluded from the definition are (1) software publishing, (2) publishing of films and music, and (3) printing services. The content of the literature is not political in nature.
Services sectors	Telecom- munications	Fixed-line infrastructure	A foreign company seeking to own and operate a wired telecommunications infrastructure for the transmission of voice, data, text, sound, and video (switching and transmission facilities to provide point-to-point communications via landlines or cable distributions systems).
		Fixed-line telephony services	A foreign company seeking to provide fixed-line telecommunication services using available infrastructure, which the foreign company does not own or operate.
		Wireless/mobile infrastructure	A foreign company seeking to own and operate a wireless telecommunications infrastructure for the transmission of voice, data, text, sound, and video (cellular or other wireless telecommunication networks). Note: Provision of satellite telecommunications services is excluded from the definition.
		Wireless/mobile services	A foreign company seeking to provide wireless/mobile telecommunication services using available infrastructure, which it does not own or operate.
	Electricity	Electric power generation – coal	A foreign company seeking to own a coal-fired power plant.
		Electric power generation – hydro	A foreign company seeking to own a hydroelectric power plant (for example dams on rivers).
		Electric power generation – biomass	A foreign company seeking to own a biomass-fueled power plant (for example using plants, trees, but not coal or petroleum).
		Electric power generation – solar	A foreign company seeking to own a solar power plant.
		Electric power generation – wind	A foreign company seeking to own a wind power plant.
		Electric power transmission	A foreign company seeking to own transmission systems that transmit electricity from the generating facility to the distribution centers/substations.
		Electric power distribution	A foreign company seeking to own distribution systems that convey electricity from the distribution centers/substations to the final consumer.

	Banking	Banking	A foreign company seeking to provide retail banking services to public and commercial clients through establishing a subsidiary or investing in a local bank. Note: Excluded from the definition are (1) equity restrictions on opening foreign bank branches (as opposed to subsidiaries), (2) investment banking, and (3) other specific types of financial services.
	Insurance	Insurance	A foreign company seeking to own a provider of health and/or life insurance services. Note: Excluded from the definition are (1) reinsurance, (2) property insurance, (3) social security/pension insurance, and (4) other forms of insurance.
	Transportation	Railway freight	A foreign company seeking to provide railway freight transport using its own rolling stock (wagons and locomotives). Excluded from the definition are (1) passenger transport, (2) ownership and/or operation of railroad infrastructure, and (3) ownership and/or operation of terminals.
		Domestic air	A foreign company seeking to own an airline providing passenger transportation on scheduled domestic flights. Note: Excluded from the definition are cargo transport and charter flights.
		International air	A foreign company seeking to own an airline providing international passenger transportation. Excluded from the definition is cargo transport.
		Airport operation	A foreign company seeking to own and operate a commercial airport facility.
		Port operation	A foreign company seeking to own and operate container terminals at the country's main commercial port(s). Note: Excluded from the definition are maritime auxiliary services (for example cargo handling services, storage and warehousing, customs clearance services, freight forwarding services).
	Media	Television broadcasting	A foreign company seeking to program and broadcast a complete television channel on a countrywide scale. Note: Excluded from the definition are production of mere television program elements and radio broadcasting.
		Newspaper	A foreign company seeking to own a daily or weekly newspaper. Note: Excluded from the definition is publication of issue-specific magazines, monthlies.
	Sector group 1 Construction, tourism, and retail	Construction	A foreign company seeking to provide construction and development of residential real estate. Note: Excluded from the definition is the construction of (1) commercial and industrial real estate, and (2) public works/civil engineering projects.
		Tourism	A foreign company seeking to own large high-end resorts or business hotels to provide short-term accommodation. Note: Excluded from the definition is ownership of restaurants, bars, and travel agencies.
		Retail distribution services	A foreign company seeking to own medium or large- retail outlet stores (for example department stores, supermarkets, hypermarkets) in order to sell a variety of consumer goods. Note: Excluded from the definition is wholesale distribution.
	Sector group 2 Health care and waste management	Health care	A foreign company seeking to own and operate hospitals or clinics. Note: Excluded from the definition are ownership of pharmacies and drug distribution. It is assumed that health care facilities will only employ properly licensed local medical staff.
		Waste management and recycling	A foreign company seeking to own a provider of solid waste collection, disposal, and recycling services. Note: Toxic waste is excluded from the definition.

Foreign equity ownership indexes are constructed for each of the 33 sectors, aggregated into 11 sector groups. The indexes take values from 0 to 100, where 100 denotes the absence of statutory ownership restrictions to FDI, and 0 means that foreign companies are not allowed to own equity in a sector or sector group.

At the most disaggregated level, restrictions on foreign ownership are measured separately for greenfield and M&A investments in each of the 33 sectors covered. The equity restrictions expressed in percentages are converted to index scores linearly. For example, a score of 49 denotes that a foreign company can own up to 49% of shares in a business in a particular sector in a particular economy, meaning that it can only be a minority shareholder. The Foreign equity ownership indexes for each of the sectors are calculated as the simple average of the greenfield and M&A scores, because in most economies and sectors the restrictions for those 2 investment types are identical.

The 33 sector scores are aggregated to 11 sector group scores using equal weights. Each sector group (with the exception of banking and insurance) comprises several sectors (see Table 4.5 above). Alternative systems of weights were also considered and tested: Different weights were assigned to the individual sectors and extracted on the basis of their economic importance (in GDP and FDI, tested separately). Factor Analysis was used to exploit variations in the data to account for cross-country performance. The results obtained by using each of the methodologies were highly correlated with each other. In the interest of simplicity, consistency with the other IAB topics, and ease of replicability, equal weighting was selected as the preferred methodology.

Table 4.6 below illustrates the scoring and aggregation methodology of the foreign equity ownership indexes utilizing sample data for Indonesia.

Table 4.6: Scoring and aggregation methodology of the foreign equity ownership indexes

		Example: India		
Sector group	Sector	Max. foreign ownership allowed by law or policy (%)...		Foreign equity ownership indexes
		...in greenfield FDI	...in mergers and acquisitions	
Mining, oil and gas	Mining	100	100	100.0
	Oil and gas	100	100	
Agriculture and forestry	Agriculture	100	100	50.0
	Forestry	0	0	
Light manufacturing	Light manufacturing	100	100	81.5
	Manufacturing of food products	100	100	
	Pharmaceutical products	75	75	
	Publishing	0	0	
Telecommunications	Fixed-line infrastructure	100	100	74.0
	Fixed-line telephony services	74	74	
	Wireless/mobile infrastructure	74	74	
	Wireless/mobile services	74	74	
Electricity	Electric power generation – coal	100	100	100.0
	Electric power generation – hydro	100	100	
	Electric power generation – biomass	100	100	
	Electric power generation – solar	100	100	
	Electric power generation – wind	100	100	
	Electric power transmission	100	100	
Banking	Banking	74	74	87.0
	Electric power distribution	100	100	
Insurance	Insurance	26	26	26.0
	Railway freight	0	0	
Transportation	Domestic air	49	49	59.6
	International air	49	49	
	Airport operation	100	100	
	Port operation	100	100	
Media	Television broadcasting	100	100	63.0
	Newspaper	26	26	
Sector group 1: Construction, tourism, and retail	Construction	100	100	83.7
	Tourism	100	100	
Sector group 2: Health care and waste management	Retail distribution services	51	51	100.0
	Health care	100	100	
	Waste management and recycling	100	100	

Foreign equity ownership indexes are based strictly on statutory (that is, de jure) restrictions. As explored in the Investing Across Sectors chapter of this report, any additional actual restrictions that might exist in practice—that is, de facto restrictions—are excluded from the analysis.

To ensure consistency and comparability of data across all economies, the Foreign equity ownership indexes are based on a specific set of assumptions about the foreign investor and its home economy:

- The foreign investor's home economy does not enjoy any special economic, trade, or investment relationship with the host economy nor is part of the same economic union or cooperation block, such as the EU, GCC, SADC, or ASEAN. IAB recognizes that in many economies the bulk of FDI flows come from economies that enjoy a preferential trade and investment regime with the recipient economy. For methodological reasons, comparisons of preferential investment rules within various economic blocks would not have been an appropriate measure for benchmarking equity restrictions across economies. IAB's website notes cases where equity limits differ for economies inside a customs union or free trade area, where survey respondents provided this information.
- The host economy enjoys normal political relations with the home economy of the investor.
- The foreign investor is a private multinational company with no equity interest or management control by the government of its home economy (that is, the investor is not a state-owned enterprise, sovereign wealth fund, an individual, or an institutional investor such as a pension fund). IAB recognizes that in many economies sovereign wealth funds have been a significant source of investment flows, and that institutional and private investors have played an increasingly important role in the economies' capital markets. However, as stated above, to ensure consistency and comparability of data, these types of investments are not included in the IAB indicators. It is also assumed that the foreign company will not be investing in an export processing zone (EPZ), special economic zone (SEZ), or any other zone governed by a

special FDI regime in the host economy. While IAB recognizes that many developing economies attract significant FDI into their SEZs and that they are growing in importance to FDI competitiveness, the legal regimes for SEZs, EPZs, or any other specifically designated areas governed by a special legal framework are excluded from the scope of the report. The survey examines the host economy's general FDI regime, because IAB's objective is to measure the treatment of FDI governed by economies' national legislation, which is most relevant to a large sample of economies and a large share of global FDI.

- The foreign company is not yet incorporated or otherwise established in the host economy, and it is interested in undertaking a medium- to large-scale investment project in each of the sectors defined.
- The respective investment project in the host economy has no political affiliations.

Limitations of the Investing Across Sectors indicators

The Investing Across Sectors indicators on foreign ownership restrictions are subject to several inherent limitations linked to the project's data collection and analysis methodology, as well as its substantive treatment of the subject matter.

Limitations of a focused approach

- The absence of foreign ownership restrictions as measured by the Investing Across Sectors indicators is an important, but not sufficient condition for attracting FDI. Several determinants are at play simultaneously, including market size, quality of infrastructure, political stability, and economic growth potential, with openness to foreign ownership being only one among those factors. Restrictions on foreign ownership limit, and in some cases completely prohibit, inflow of FDI to certain sectors. On the other hand, having a completely open economy by abolishing ownership restrictions does not by itself guarantee success in attracting greater FDI flows into the economy.
- The indicators cover a large share of the economic sectors, but are certainly not all-encompassing. The coverage of the primary and manufacturing sectors is relatively limited, given that past studies have shown, and this report confirms, that a large majority of economies do not impose any foreign ownership restrictions on manufacturing. The coverage of the service sectors, while more extensive than in any past studies, is also not exhaustive. The indicators do not include certain public utilities (for example, water or gas distribution), professional services (for example, legal, accounting, or consulting services), certain social services (such as education), and other sectors. These sectors have been left off the questionnaire for any of the following reasons: (1) the relatively small role of FDI in the sector, (2) FDI restrictions, if present, often do not take the form of equity limits, (3) divergent views in the development literature on the appropriate role of foreign capital in the sector, and (4) methodological constraints on the length of the questionnaire and associated quality of responses. Lastly, sectors where economies may have legitimate security, cultural, or religious reasons for prohibiting FDI are omitted from the indicators' coverage. These include armaments, nuclear power generation, and manufacturing tobacco products and alcoholic beverages.

Methodological limitations

- The Investing Across Sectors indicators focus exclusively on overt statutory restrictions on equity ownership by foreign direct investors, as defined by laws (de jure measure), in contrast with other IAB indicators, which also measure application of the laws in practice (de facto measure). As a result, economies may score higher on the Investing Across Sectors indicators than they would if their actual openness to foreign presence in various sectors was measured by the de facto constraints investors experience or by actual FDI flows. Despite the project's efforts, capturing actual "practice" in all of the measured sectors proved to be infeasible with the existing survey instrument, given the relatively small sample of respondents in each economy and the wide variety of possible reasons which could prevent FDI entry into a particular market. These reasons include the underlying market structure of a sector and the

discretionary decision-making authority of the regulatory bodies granting sector-specific licenses (especially in the service sectors). Because one of the underlying principles of IAB is to collect objective, verifiable, and quantifiable information, the Investing Across Sectors indicators are for now limited to the analysis of de jure restrictions to FDI entry.

- Even within the realm of de jure restrictions, limits on foreign equity are just one among many possible legal and regulatory impediments to FDI entry. The principal binding constraints to market access might also be in the form of limits on the number of allowed operators, the type of legal entity allowed, the minimum value of transactions or assets, and other legal restrictions. Some of this information has been collected through the Investing Across Sectors questionnaires and is available on IAB's website. Given the incomplete nature of this information, however, it was not included in the construction of the actual indicators. The indicators also do not measure the ability of foreign companies to bid on concession contracts.
- The indicators focus on restrictions captured in the economies' statutes, and not on commitments to liberalize and open up specific sectors to FDI captured by the economies' international investment agreements (such as Bilateral Investment Treaties, Free Trade Agreements, and others) or WTO commitments. While IAB recognizes that international agreements play an important role in sending a positive signal to foreign investors, these agreements were excluded from the scope of the project's coverage due to a combination of conceptual, methodological and practical reasons, some of which are explored in the Investing Across Sectors chapter of this report.
- Some of the restrictions that the indicators capture are not specific to FDI, but do apply to domestic private companies as well. For example, if a particular sector is organized as a state-owned monopoly and private capital participation is limited in general, this regulation creates a restriction on entry for all privately owned companies, regardless of whether they are domestic or foreign-owned. Because foreign companies are also affected, the Investing Across Sectors indicators capture this restriction.

Limitations of interpreting and using the Investing Across Sectors data

At this time, the Investing Across Sectors indicators measure only equity restrictions. They do not advocate indiscriminate openness of all economic sectors to FDI. There are certain sectors—like light manufacturing—where 30 years of evidence have shown that FDI can generally be beneficial. In other industries, in particular in the service sector, the desirability of FDI is less consensual. In banking and finance, for example, there is a gradual move toward opening up, but only with good prudential regulations in place. In general, there are legitimate constraints to openness, including national security, social stability, and public trust. Ideally, those constraints would be built into the indicators, but practically, this is not possible. Those constraints express themselves differently and in varying intensity in different economies. The primary purpose of the Investing Across Sectors indicators is thus to assist policy makers in benchmarking their policies against peers, and to use these comparisons for informing their policy decisions.

Starting a Foreign Business

The Starting a Foreign Business indicators quantify the procedural burden that foreign companies face when entering a new market. They build on the data gathered by the *Doing Business* starting a business indicator and highlight areas that are of specific interest to foreign investors. Consideration is given to both the regulatory framework and its implementation in practice, thus ensuring a more comprehensive measure of the business environment faced by investors. The Starting a Foreign Business indicators comprise 3 components measuring the time, procedural steps, and regulatory regime for establishing a foreign-owned subsidiary (Box 4.7).

Box 4.7: What the Starting a Foreign Business indicators measure

1. Procedures (number): This indicator covers the number of procedural steps involved in establishing a wholly foreign-owned subsidiary. Both pre- and post-incorporation procedures that are officially required for a foreign investor to formally operate a business are recorded.

2. Time (days): This indicator measures the number of days needed for each of the procedural steps required to establish a subsidiary of a foreign company.

3. Ease of establishment index: This index evaluates the characteristics of the regulatory regimes for business start-up. It focuses on the following areas:

- Restrictions on the composition of the board of directors or appointment of managers.
- Requirements forcing the use of a local third party (counsel, notary, investment promotion agency) during the establishment process.
- Possibility of expediting establishment procedures through an official channel (availability of fast-track procedures).
- Requirement of an investment approval (nature of investment approval requirement, possibility of appeal, minimum required amount of investment, period of validity).
- Business registration process.
- Restrictions on holding a foreign currency bank account.
- Minimum capital requirements.
- Availability of electronic services (online laws, regulations, documents, and registration).

Procedures

The Starting a Foreign Business indicators record all the procedures required to establish a wholly foreign-owned, domestically incorporated company. IAB uses information from the *Doing Business* project on the procedures required to start a locally owned SME as a basis for its data.¹⁰⁷ Based on the experience of the expert survey respondents, the additional procedures required of foreign companies with IAB case study's characteristics is then added to the *Doing Business* list of procedures. In some economies, there is no difference between the requirements for domestic and foreign companies, and in that case IAB's list of procedures is identical to that of *Doing Business*. In most economies, however, foreign companies are required to complete additional administrative steps, such as submitting authenticated legal documentation of the parent company, obtaining a trade license, or acquiring an investment approval.

A procedure is defined as any interaction of the parent company or its legal representatives with external parties (for example, government agencies or notaries). Interactions between company founders or company officers and employees are not counted as procedures. Procedures that must be completed in the same building, but in different offices, are counted as separate procedures. If the same office has to be visited several times for different sequential procedures, each is counted separately. Each electronic procedure is counted separately. If 2 procedures can

¹⁰⁷ The list of Doing Business procedures for starting a business in each economy can be found at <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/>.

be completed through the same website but require separate filings, they are counted as 2 procedures.

Both pre- and post-incorporation procedures that are officially required for a foreign company to formally operate a business are recorded. Only procedures required of all businesses are covered; industry-specific procedures are excluded. For example, procedures to comply with environmental regulations are included only when they apply to all businesses conducting general commercial or industrial activities. Procedures that the company undergoes to connect to electricity, water, gas, and waste disposal services are not included.

Procedures required for official correspondence or transactions with public agencies are also included. For example, if a company seal or stamp is required on official documents, such as tax declarations, obtaining the seal or stamp is counted. Similarly, if a company must open a bank account before registering for sales tax or value added tax, this transaction is included as a procedure. Shortcuts are counted only if they fulfill 4 criteria: they are legal, they are available to the general public, the majority of companies use them, and avoiding them causes substantial delays.

Time

Time is recorded in calendar days. The measure captures the median duration that incorporation lawyers and other expert respondents indicate is necessary to complete each procedure, with minimum follow-up with government agencies and no extra payments. It is assumed that the minimum time required for each procedure is 1 day. Although procedures may take place simultaneously, they cannot start on the same day (that is, simultaneous procedures start on consecutive days). A procedure is considered completed once the company has received the final document, such as the company registration certificate or tax number. If a procedure can be fast-tracked for an additional fee, the fastest procedure is chosen. It is assumed that the foreign company does not waste time and commits to completing each remaining procedure without delay. The time that the foreign company spends on gathering information is discounted.

Ease of establishment index

The Ease of establishment index evaluates the characteristics of the regulatory regimes for business start-up. The index takes values from 0 to 100, where higher values denote a start-up regime with fewer to no legal and administrative restrictions on the establishment process. Table 4.8 presents a complete list of survey questions about the start-up regime characteristics that constitute the Ease of establishment index. The last column illustrates how each question is scored. Higher scores indicate best practice.

Table 4.8: Ease of establishment index survey questions and scores

Survey questions comprising the Ease of establishment index	How the question was scored	Example: Pakistan
Are your laws and regulations available online through a public institution's website (for example parliament, official gazette)?	"Yes" = 1 or "No" = 0	Yes = 1
Does your country have any restrictions on the composition of the board of directors of foreign-owned but locally incorporated companies (such as nationality, ethnicity, race, gender)?	"Yes" = 0 or "No" = 1	No = 1
Is the parent company required by law to establish its subsidiary through a local private third party?	"Yes" = 0 or "No" = 1	No = 1
Is the parent company required by law to establish its subsidiary through a public entity?	"Yes" = 0 or "No" = 1	No = 1
Is the investment approval/authorization a mere formality, only requiring submitting a notification to an appropriate authority?	"N/A" = 1, "Yes" = 0.5, or "No" = 0	N/A = 1
Does your country give the investor the right to appeal the decision on the investment approval/authorization?	"N/A" = 1, "Yes" = 0.5, or "No" = 0	N/A = 1

Is a minimum of projected annual sales required for an investment approval/authorization?	"N/A" = 1, "Yes" = 0.5, or "No" = 0	N/A = 1
Is there a limit on the period of validity of a foreign investment approval (apart from any operational licenses/permits that need to be renewed)?	"N/A" = 1, "Yes" = 0.5, or "No" = 0	N/A = 1
Do laws and regulations specify a time limit within which authorities must notify the foreign company of the result of its registration?	"Yes" = 1 or "No" = 0	No = 0
If Yes, is this limit usually respected?	"Yes" = 1, "No" or "N/A" = 0	N/A = 0
Is the company registration documentation downloadable online?	"Yes" = 1 or "No" = 0	Yes = 1
If Yes, can the investment registration documentation be submitted online?	"Yes" = 1, "No" or "N/A" = 0	Yes = 1
Can the registration process be monitored online? (checking the status of registration)	"Yes" or "N/A" = 1, "No" = 0	No = 0
Can the foreign company hold a commercial bank account in a foreign currency in your country?	"Yes" = 1 or "No" = 0	Yes = 1
If Yes, must the foreign company seek approval/authorization before opening such an account?	"Yes" or "N/A" = 0, "No" = 1	Yes = 0
If Yes, how long does it take, on average, to receive such an approval/ authorization?	"N/A" = 1 1–10 days = 0.6 11–40 days = 0.3 Over 41 days = 0	27 = 0.3
Does your country have a paid-in capital requirement for a foreign-owned limited liability company?	"Yes" = 0 or "No" = 1	No = 1
If Yes, is this requirement a different amount than that for domestic companies?	"Yes" = 0 except in economies where this requirement is more favorable for foreign than domestic companies; "N/A" or "No" = 1	N/A = 1
Is your country a party to the Hague Apostille Convention?	"Yes" = 1 or "No" = 0	No = 0
Points	Total possible = 20	Pakistan = 12.3
Pakistan's score on the Ease of establishment index, normalized on a 0–100 scale		64.7
Bonus Question		
Can the parent company expedite any of the establishment procedures through an official channel (fast-track procedure)?	"Yes" = + 1, "No" or "N/A" = Not scored	No = Not scored
Pakistan total points + bonus:		12.3 (out of 20)
Pakistan's index score:		64.7 (out of 100)

All questions receive equal weight in the construction of the index. Alternative sets of weights, based on expert judgment and principal component analysis, were also tested. The bonus question is only scored if the economy includes the practice, and like all other questions is equally weighted. The results obtained by using each of the methodologies were highly correlated with each other. In the interest of simplicity, consistency with the other IAB topics, and ease of replicability, equal weighting was selected as the preferred methodology. As can be seen in the example above, Pakistan scored 12.3 points out of a maximum total of 20 points. Because the Ease of establishment index is measured on a scale of 0–100, Pakistan scores 64.7 on this index.

The case study assumptions

To ensure consistency and comparability of data across all 92 economies, the Starting a Foreign Business indicators are based on a case study setting out assumptions about a foreign company that is establishing a local subsidiary. The intent of IAB is to define by means of the case study a foreign company's standard, representative investment project, one that does not receive any extraordinary treatment from the public authorities.

The foreign company:

- Will be locally incorporated in the host economy's largest business city as a limited liability company (LLC) or equivalent of this legal form applicable to the economy.
- Will be wholly foreign-owned and controlled by its parent company.
- Is being established by a parent company, which is a multinational private company with no equity interest or management control by the government of its home economy (that is, the investor is not a state-owned enterprise or a sovereign wealth fund).
- Will be the parent company's first investment project in the host economy.
- Plans an initial capital investment of \$10,000,000.
- Plans to manufacture electric household appliances (such as electric or microwave ovens). Its manufacturing facility will be located on the outskirts of the host economy's largest business city.
- Plans to initially employ 50 people.
- Is not applying to receive any special benefits and privileges from the host economy (for example, extraordinary tax holidays, breaks, or exemptions; customs duty exemptions), apart from the investment incentives available automatically on a legal basis.
- Will not be investing in an EPZ, SEZ, or any other zone governed by a special FDI regime in the host economy.
- Plans to sell its manufactured product locally as well as to export it. However, it does not want to pre-commit to any specific export requirements.
- Will import about 60–70% of the value of its production inputs other than its capital equipment.

Limitations of the Starting a Foreign Business indicators

Like all indicator data sets, the *Investing Across Borders* project has certain limitations. Below are the major limitations that should be considered when interpreting the Starting a Foreign Business data.

Limitations of a focused approach

- Naturally, efficient start-up procedures do not by themselves play a significant role in attracting FDI. Other economic factors such as competitive advantage, resource endowment, market potential, and security are the main drivers of FDI flows. However, as stated earlier, the lack of transparent and efficient start-up regulations can be an obstacle to the actual realization of new FDI projects.
- The investment experience of each foreign company is likely to vary depending on its sector, the size of its investment, its relationship with the government and business community as well as other variables. IAB attempts to describe the experience of a typical foreign investor, as specified in the case study.

What the Starting a Foreign Business indicators do not cover

- The indicators do not cover sector-specific licenses (for example exploration or mining permits).
- Permits for all relevant international and domestic (including municipal) health, food safety, product and labor standards, and regulations are also excluded.
- Work and residency permits for foreign employees are not included in the procedures, even though they are an important part of the establishment process of a foreign-owned company.
- Government reviews of foreign acquisitions in sensitive and strategic sectors are not part of the Starting a Foreign Business indicators. Such reviews are often undertaken for reasons of national security, market economic security, and protection of trademarks.

Methodological limitations

- The process of establishing a foreign-owned company might differ from one city, region, or state to another within the same economy. This is the case especially in large and/or federal economies. The Starting a Foreign Business indicators assume that the establishment process

is being undertaken in the economy's largest business city, and they therefore do not explore the possible variations of this process in other parts of the economy.

- Because the case study stipulates that the subsidiary would be established as a limited liability company (LLC), the indicators do not measure procedures required to establish other types of businesses (corporations, partnerships). Also, the indicators do not look at other types of foreign investment projects (for example joint ventures, licensing agreements, establishment of branch offices), which are often treated differently, both by law and in practice, than a foreign-owned subsidiary.
- The case study assumptions also stipulate that the subsidiary plans on operating a manufacturing facility. It also plans on engaging in international trade (import some of its production input as well as export some of its manufactured product). Therefore, the indicators consider obtaining a trade or import/export license as a required procedural step for the establishment process.
- Since the foreign company is not applying to receive any special benefits and privileges from the host economy (for example, extraordinary tax holidays, breaks, or exemptions; customs duty exemptions), apart from the investment incentives available automatically on a legal basis, procedures that are only required to obtain these special benefits (if an investment approval is required to benefit from tax exemptions and incentives for example) are not considered as a required procedural step for the establishment process.
- The indicators do not cover legal and regulatory frameworks specific to special economic zones, export processing zones, or any other specifically designated areas governed by a special legal framework.

Accessing Industrial Land

The Accessing Industrial Land indicators quantify several aspects of land administration regimes important to foreign companies seeking to acquire land for their industrial investment projects: the strength of land rights, the scope of available land information, and the process of leasing land in or near an economy's largest business city. The indicators focus both on the economies' land administration legal framework for investors and its implementation in practice. They advocate for predictable, transparent, and well-regulated land administration systems, which both do not overburden investors and provide sufficient protections for environments and citizens. The Accessing Industrial Land indicators comprise:

- Strength of lease rights index (0-100)
- Strength of ownership rights index (0-100)
- Access to land information index (0-100)
- Availability of land information index (0-100)
- Time to lease private land (days)
- Time to lease public land (days)

Strength of lease rights index

The Strength of lease rights index compares economies on the security of legal rights they offer to investors interested in leasing industrial land—whether or not foreign and domestic companies are treated differently and whether the land can be subleased, subdivided, mortgaged, or used as collateral. Another factor measured is how easy it is to transfer the land to another entity.

The index takes values from 0 to 100, where 100 denotes a regime offering the most options and security to investors. Table 4.9 presents the complete list of survey questions that comprise the Strength of lease rights index. The middle column indicates how each question is scored, using a simple binary system where a good practice answer is scored with a “1” and a poor practice answer is scored “0.” The index also includes a list of bonus questions used to reward economies that offer companies additional options and enhance the protection of investments. The bonus questions do not penalize economies that do not offer these options and protections.

Table 4.9: Composition of the Strength of lease rights index

Survey Question	How the question was scored	Example: Bolivia
Can a locally incorporated wholly foreign-owned company lease land from the government (e.g. public land)?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored ¹⁰⁸	Yes = 1
Does a locally incorporated wholly foreign-owned company need an approval from minister level government official or parliament to lease public land?	“Yes” = 0 or “No” = 1, N/A = Not applicable / Not scored	No = 1
Are procedures for leasing industrial land the same for foreign- and domestically-owned companies?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Would a foreign-owned company be required to pay any transaction costs above those paid by domestic companies?	“Yes” = 0 or “No” = 1, N/A = Not applicable / Not scored	No = 1
What is the statutory maximum duration of a lease (in years) that a locally incorporated, wholly foreign-owned company would be able to obtain?	Maximum number of years divided by 100. If it's 100 years or more or there was no statutory maximum, the country receives a score of 1.	10 years = .1
Are locally incorporated, wholly foreign-owned companies allowed to renew their leases?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1

¹⁰⁸ N/A means that the question is not applicable because the question is not possible to answer given the country's legal system. For example, it may not allow full ownership rights of land and thus the question of whether or not purchase land can be mortgaged cannot be answered.

Are locally incorporated, wholly foreign-owned companies allowed to transfer their leases?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
If Yes, can a locally incorporated, wholly foreign-owned company transfer land to another foreign-owned, domestically incorporated company?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Can a locally incorporated, wholly foreign-owned company sublease land from an existing leaseholder?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Can a locally incorporated, wholly foreign-owned company subdivide its lease?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Can a locally incorporated, wholly foreign-owned company sublease its acquired land?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Can a locally incorporated, wholly foreign-owned company use the leased land as collateral for the purchase of production equipment?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Can a locally incorporated, wholly foreign-owned company mortgage the leased land?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Can a locally incorporated, wholly foreign-owned company to lease an unlimited amount of land?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Bolivia total points:		9.1 (out of 14)
Bonus Questions		
Is there a fast-track option for lease registration that allows foreign-owned companies to pay a higher fee to have their lease application processed faster?	"Yes" = + 1, No or N/A = Not scored	No = Not scored
Is a locally incorporated, wholly foreign-owned company legally required to do an environmental impact assessment during the process of leasing industrial land?	"Yes" = + 1, No or N/A = Not scored	No = Not scored
Is a locally incorporated, wholly foreign-owned company legally required to do a social impact assessment and community consultation during the process of leasing industrial land?	"Yes" = + 1, No or N/A = Not scored	No = Not scored
Bolivia total points + bonus:		9.1 (out of 14)
Bolivia index score:		65 (out of 100)

As can be seen in the country-specific example presented in the last column, Bolivia has a maximum statutory limit of 10 years on lease contracts for industrial land (a score of .1), does not allow the industrial land to be used as collateral or for mortgages (both scores of 0), and does not allow foreign-owned companies to sublease or subdivide their leased land (both scores of 0). All other questions receive full credit and Bolivia does not get any bonus question points, giving it a total of 9.1 out of a total possible 14 points. This is equivalent to an index score of 65 on the 0-100 index scale.

The Strength of lease rights index is constructed by using the simple (equal) weighted average of the scored answers to the 14 questions for each economy, in line with the *Doing Business* methodology. The 3 bonus questions are only scored if the economy includes the practice. They are also equally weighted. All scores are then normalized on a scale of 0-100. Preliminary sensitivity analysis of the data using alternative sets of weights has yielded similar results.

Strength of ownership rights index

The Strength of ownership rights index compares economies on the security of legal rights they offer to investors interested in purchasing industrial land in those economies that allow it. 18 of the 92 economies surveyed do not allow private ownership of land, as all land is owned by the state. These 18 economies offer only leasehold land rights and are therefore not included in this index.

The Strength of ownership rights index measures options and security of land held in private ownership. IAB does not intend to advocate for governments to make implementing land

ownership a policy priority. Rather, the Strength of ownership rights index encourages choice and proper protection and security for companies and citizens alike.

The index takes values from 0 to 100, where 100 denotes a regime offering the most options and security to interested investors. Table 4.10 presents the complete list of survey questions that comprise the Strength of ownership rights index. The middle column indicates how each question is scored, using a simple binary system where a good practice answer is scored with a “1” and a poor practice answer is scored “0.” The index also includes a bonus question to assess whether the economy offers a fast-track option. The bonus question does not penalize economies that do not offer this option.

Table 4.10: Composition of the Strength of ownership rights index

Survey Question	How the question was scored	Example: Kazakhstan
Can a locally incorporated, wholly foreign-owned company buy industrial land without entering into a partnership with a national?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Can a locally incorporated, wholly foreign-owned company buy an unlimited amount of industrial land?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Can a locally incorporated, wholly foreign-owned company sell the industrial land once purchased?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Does a locally incorporated, wholly foreign-owned company need permission to sell the land?	“Yes” = 0 or “No” = 1, N/A = Not applicable / Not scored	Yes = 0
Can a locally incorporated, wholly foreign-owned company sell the industrial land to another foreign-owned, domestically incorporated company?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Can a locally incorporated, wholly foreign-owned company subdivide and sell part of the industrial land?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Can a locally incorporated, wholly foreign-owned company use the purchased industrial land as collateral for the purchase of production equipment?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Can a locally incorporated, wholly foreign-owned company mortgage the industrial land?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Kazakhstan total points		5 (out of 8)
Bonus Question		
Is there a fast-track option for purchase registration that allows foreign-owned companies to pay a higher fee to have their registration processed faster?	“Yes” = + 1, No or N/A = Not scored	Yes = +1
Kazakhstan total points + bonus:		6 (out of 9)
Kazakhstan index score:		67 (out of 100)

As can be seen in the economy-specific example presented in the last column, Kazakhstan requires government permission to buy industrial land (score of 0); places a limit on the amount of the land that may be purchased, depending on the economic activity (score of 0); and does not allow foreign-owned companies to subdivide their purchased industrial land (score of 0). All other questions are scored with full credit and Kazakhstan receives 1 bonus point, because it offers a fast-track procedure for a higher fee to interested foreign-owned companies seeking to register their industrial land purchase quickly. This gives Kazakhstan a total of 6 out of a total possible 9 points (including bonus point). This is equivalent to an index score of 67 on the 0-100 index scale.

The Strength of ownership rights index is constructed by using the simple (equal) weighted average of the scored answers to the 8 questions for each economy, in line with the *Doing Business* methodology. The bonus question is scored only if the economy includes the practice, and like all other questions is equally weighted. Preliminary sensitivity analysis of the data to alternative sets of weights has yielded similar results.

Access to land information index

The Access to land information index compares economies on the ease of access to land-related information through land administration systems — land registries, cadastres and land information systems. The index also evaluates the modernity of those systems. The index does not measure the quality of information provided through these institutions. The index takes values from 0 to 100, where 100 denotes a regime that offers easiest access to information, using the most modern and well-coordinated land administration and information management institutions.

Table 4.11 presents the complete list of survey questions that comprise the Access to land information index. The middle column indicates how each question is scored, using a simple binary system where a good practice answer is scored with a “1” and a poor practice answer is scored “0.”

Table 4.11: Composition of the Access to land information index

Survey Question	How the question was scored	Example: Angola
Is there an investment promotion agency (IPA) that provides information about land plots available for interested foreign-owned companies?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Is this agency linked with other publicly provided land information (such as a land registry or cadastre) to share data and coordinate and maintain accurate land information?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	N/A
Is there a land registry with public information about registered land plots?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Does the registry have an inventory of public lands?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the registry have an inventory of private lands?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the registry provide information about available lands accessible remotely?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the registry provide information online for everyone?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the registry provide information on both the land plots and buildings/physical structures on the land?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Does the law require all transactions to be registered at the registry?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Is there a cadastre with descriptions of land parcels?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Does the cadastre make information about land parcels available to everyone?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the cadastre provide information about land parcels online for specific interest parties?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the cadastre make information accessible online?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Does the cadastre provide information about both land plots and buildings?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Are the land registry and cadastre located together within same public agency?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Are the land registry and cadastre linked to share data?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Is there a single searchable electronic database for all land-related information, also known as a land information system (LIS)?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0
Is there a single searchable electronic database for all land-related	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	No = 0

spatial/geographic information, also known as a geographic information system (GIS)?		
Would you typically consult the land registry to look for land information if you were hired by a foreign-owned company?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Would you typically consult the land cadastre to look for land information if you were hired by a foreign-owned company?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Angola total points:		7 (out of 19)
Angola index score:		37 (out of 100)

As can be seen in the economy-specific example presented in the last column, Angola does not have its land laws available online (scores of 0) nor does it have an investment promotion body with land information (score of 0). Despite the fact that Angola has both a land registry and a cadastre, they do not have inventories of public or private lands (scores of 0) and the agencies are not linked to share data (scores of 0). The information is not available remotely or online (scores of 0), and Angola also does not have an LIS or GIS (scores of 0). Note that since Angola does not have an IPI, the question on whether the IPI is linked with other public records is not scored, and Angola is thus evaluated on a total of 19 points and not 20 points. With a total of 13 “no” answers to the 19 possible questions. This is equivalent to an index score of 37 on the 0-100 index scale.

The Access to land information index is constructed by using the simple (equal) weighted average of the scored answers to the 20 questions for each economy, for a total of 20 possible points, in line with the *Doing Business* methodology. Preliminary sensitivity analysis of the data using alternative sets of weights has yielded similar results.

Availability of land information index

The Availability of land information index compares economies on the availability of key land-related information to interested private parties through the economies’ public land administration institutions. Again, the index does not measure an often even more critical factor related to land information - the quality of land information provided by public institutions.

The index takes values from 0 to 100, where 100 denotes a regime that offers the most information to interested private parties. Table 4.12 presents the complete list of survey questions that comprise the Availability of land information index. The middle column indicates how each question is scored, using a simple binary system where availability of information is scored with a “1” and its absence is scored “0.”

Table 4.12: Composition of the Availability of land information index

Survey Question	How the question was scored	Example: South Africa
Is there publically available information about annual lease payments?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Are land laws or regulations available online?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Is the following information about land plots available to foreign-owned companies?		
Information about the land contract (lease versus ownership, number of years on the lease)?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Land plot size?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Appraisal of land value?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Street address?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Mailing address, if different from the street address?	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1
Immovable property on the land (a description of the buildings and physical	“Yes” = 1 or “No” = 0, N/A = Not applicable / Not scored	Yes = 1

structures on the land)?		
Spatial information/land boundaries?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Geotechnical report/geographic location description?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Documentation about any environmental impact assessments completed?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Zone classification?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Tax classification?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Information on surroundings (whether the land is near residential, commercial, or industrial lands)?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Carrying capacity of the land (maximum # of units allowed per plot)?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Local population density?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	No = 0
Whether the land has utility connections?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Encumbrances (liens or mortgages held against the land)?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Existing land claims (disputes held against the land)?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
Legal jurisdiction to which the land belongs (which municipality, neighborhood, or locality)?	"Yes" = 1 or "No" = 0, N/A = Not applicable / Not scored	Yes = 1
South Africa total points:		17 (out of 20)
South Africa index score:		85 (out of 100)

As can be seen in the economy-specific example presented in the last column, South Africa does not have public information about documentation on environmental impact assessments, tax classification and local population density (all scores of 0). With a total of 3 "no" answers to the 20 possible questions, South Africa receives 17 points. This is equivalent to an index score of 85 on the 0-100 index scale.

The Availability of land information index is constructed by using the simple (equal) weighted average of the scored answers to the 20 questions for each economy, for a total of 20 possible points, in line with the *Doing Business* methodology. The 20 questions focus on whether key land information is available to interested private parties. If the information is available the economy receives a score of "1", if not it receives a score of "0".

Ease of leasing land indicators: Time to lease private and public land

The Ease of leasing land indicators are 2 separate quantitative measures that compare economies on the time (number of calendar days) it takes to lease land from both a private holder and the government. To ensure consistency and comparability of data across all 92 economies, the Ease of leasing land indicators are based on a hypothetical case study of a manufacturing company seeking to acquire industrial land. Survey respondents are asked to use the case study to indicate the step-by-step procedures that a foreign-owned company and/or its legal representatives would go through in order to formally lease land both from a private individual and from the government. This allows the focus of the indicators to be on objective and verifiable data, rather than opinion- and perception-based information. The details of the case study assumptions are provided below:

Assumptions about the foreign company:

- Has recently been locally/domestically incorporated in the economy's largest business city as a limited liability company (LLC), or an equivalent of this legal form. This LLC is the parent company's first investment in the host economy.
- Is a wholly foreign-owned and controlled subsidiary of its parent company, which is a multinational private company with no equity interest or management control by the

government of its home economy (that is, the investor is not a state-owned enterprise or a sovereign wealth fund).

- Is looking to lease an appropriate site on the outskirts of the economy's largest business city to set up a manufacturing plant. The indicators thus measure access to land for a foreign-owned, domestically incorporated company, and not for a foreign investor as a natural person. This distinction is important, as many economies have specific residency requirements related to the acquisition of land by foreign individuals, whereby it is often more difficult for a foreign national to acquire land than for a foreign company.
- Is not applying to receive any special benefits and privileges from the economy (for example, extraordinary tax holidays, breaks, or exemptions; customs duty exemptions), apart from the investment incentives available automatically on a legal basis.

Assumptions about the land:

- Is designated for industrial use (no rezoning will be required).
- Is not part of an export processing zone (EPZ), special economic zone (SEZ), or any other industrial zone that is governed by a special investment legal or regulatory regime.
- Is currently unoccupied by any buildings or other immovable property, and the foreign company intends to construct a production facility that meets all zoning regulations on the site.
- Is not close to a national border, coastline, or any other area where land may not be privately held for national security reasons.
- Covers 3 acres (1.21 hectares), providing sufficient space for the construction of a main building, warehouse, and loading and unloading dock as well as space for future expansion and storage.
- Has no natural reserves, natural water sources, historical monuments, or occupants (legal or illegal) of any kind.
- Should be free of all encumbrances, such as mortgages, liens, restrictive covenants, easements.
- Will only be used for its designated purpose of manufacturing the foreign company's product. As a result, there are no requirements for special permits such as permits for residential use, waste management, or specialized agricultural activities.

In order to calculate the amount of time it takes foreign companies to lease private and public land, IAB uses the methodology pioneered by *Doing Business*. The Ease of leasing land indicators record all procedures required for a foreign-owned company to lease land based on the experience of the expert survey respondents using the case study assumptions (above). The list of procedures for leasing land from a private holder and from the government are different, although both lists assume that the foreign-owned company intends to acquire the land in the form of a lease, which must be registered with the appropriate public institution.

For the indicator on the time to lease private land, it is assumed that a private owner owns the land. This could include communal or customarily held freehold land, if applicable, depending on the economy. The starting point (that is, the first procedural step) is when the foreign-owned company contacts the private owner with an expressed interest in leasing a piece of land for its manufacturing facility. The ending point (that is, the last procedural step) is when the land is fully registered under a long-term lease in the name of the foreign-owned company. In those economies where there is no private ownership of land (for example, Tanzania, where all land is owned by the state) the case study assumes that the foreign company will sublease the land from an existing private long-term leaseholder (who already holds the land in lease contract from the government).

For the indicator on the time to lease public land, it is assumed that the land is currently held by the national, subnational, or municipal government, or any other administrative subdivision, as applicable. If several of these options are possible in the economy, the most common leasing arrangement is analyzed. The starting point is when the foreign-owned company's representatives contact the appropriate public authority with an expressed interest in leasing a piece of land for the company's manufacturing facility. The ending point is when the land is fully registered under a long-term lease in the name of the foreign-owned company.

Only the time for procedures required of all foreign-owned companies leasing land is covered. Time for industry-specific procedures are excluded. For example, procedures to comply with environmental regulations are included only when they apply to all investors leasing land for their

general commercial or industrial activities. Procedures that the company undergoes to connect to electricity, water, gas, and waste disposal services, and those procedures required for construction on the piece of land once it is registered are not included.

Once the list of procedures is drawn up and agreed upon by expert survey respondents, the total time in calendar days is recorded. It measures the median duration that expert respondents indicate is necessary to complete each procedure with minimum follow-up with government agencies and no extra payments. It is assumed that the minimum time required for each procedure is 1 day. Although procedures may take place simultaneously, they cannot start on the same day (that is, simultaneous procedures start on consecutive days). A procedure is considered completed once the company has received the final documentation, such as a lease registration certificate, confirming that the lease is registered with the relevant public authority (in most cases the land or real property registry). If a procedure can be accelerated for an additional cost, the fastest procedure is chosen. It is assumed that the foreign-owned company does not waste time and commits to completing each remaining procedure without delay. The time that the foreign company spends on gathering information is ignored.

Limitations of Accessing Industrial Land indicators

- Efficient, predictable, and transparent land administration systems do not by themselves play a significant role in attracting FDI. Factors such as market size, human and natural resource endowments, market potential, and security are among the main drivers of FDI flows.¹⁰⁹ However, the lack of business-friendly land administration regimes can be an obstacle to the realization of the investment opportunities.
- The use of a case study, while allowing comparability across economies, narrows the focus of the applicable land regulations—the investment experience of each investor is likely to vary depending on the sector and specific land-use requirements.
- The focus of the indicators is on objective and verifiable data, such as whether laws contain certain provisions, or whether land administration systems offer certain type of land information. The indicators thus reflect mainly what is in the laws and regulations, that is de jure results, and not the extent to which they are implemented in practice, or de facto results. The exception is the Ease of leasing land indicators, which focus specifically on implementation in practice.
- In many cases the indicators are not FDI-specific as the legal regime is the same for foreign and domestic companies seeking to access land.

What the Accessing Industrial Land indicators do not cover

The Accessing Industrial Land indicators of *Investing Across Borders* are not comprehensive indicators of all relevant land issues for foreign investors. There are several topics important to foreign investors that are excluded from the scope of the indicators, including:

- The ease of acquiring agricultural land by foreign individuals or companies. In many economies there may be additional restrictions for foreign investment in agricultural land (such as in the EU and United States). Due to the sensitive nature of the topic and its potential negative consequences on communal land holders in rural areas the topic was deliberately excluded.
- The ease of purchasing private or public land, because purchasing land is not possible in some of the economies surveyed.
- The amount of land (public or private) that is actually registered in the land or property registration systems, and quality of this information.
- The proportion of land that is held privately by individuals or companies rather than publicly by the government.
- The ease of acquiring, securing and using land by individuals, domestic or foreign.
- The ease of acquiring land for other specialized purposes such as developing residential real estate, renting office space, or buying or leasing land in special economic zones or industrial parks.

¹⁰⁹ UNCTAD, *World Investment Report* (New York and Geneva: United Nations, 2009).

- The process of leasing land in various parts of the economy. The leasing processes are likely to differ from one city, region, or state to another within the same economy. This is the case especially in large and/or federal economies. The Ease of leasing land indicators assume that the leasing process will take place in the economy's largest business city, and they therefore do not explore the possible variations of this process in other parts of the economy.
- The amount of land that is available for investment in or near the economy's largest city. Many large urban centers around the world have limited industrial land available for investment; however, this is not measured by the indicators.
- The acquisition of land along an economy's border or coastline.
- The ease of developing land: factors such as land privatization, land-use planning, location permits, construction permits, re-zoning applications, utility connections, and sector specific regulations.
- The quality and effectiveness of complementary financial and legal institutions (credit bureaus, courts).
- Various aspects of effective functioning of land registries and/or cadastres.
- Land or property tax regimes for foreign companies or investors.
- The price of land or cost of acquiring land (by lease or purchase).
- Environmental and social protections for the host economy, beyond what is measured by the Ease of leasing land indicators.

The Accessing Industrial Land indicators do not encourage governments to promote efficiency of land-related transactions at the cost of environmental and social protections. Despite an explicit effort to strike the proper balance between the benefits and costs of regulation within the Accessing Industrial Land indicators, major limitations remain. The indicators do not specifically highlight the issues related to environmental and social protections, even though the IAB survey did examine these in the context of leasing land. In most economies, an environmental and/or social impact assessment is not conducted when a foreign-owned company leases or buys land, but when it intends to construct on it, or to begin its business operations in a sector that is sensitive to environmental concerns.

When interpreting and using the IAB indicators, one has to keep in mind that they focus primarily on the laws and regulations governing foreign companies' access to industrial land, and less so on legal protections for the economies' citizens and environments. The IAB indicators (like many other indicator sets) should not be considered in isolation, but rather in conjunction with other indicators and reports that reflect other needs and factors of an economy and its socioeconomic development.

Arbitrating Commercial Disputes indicators

The Arbitrating Commercial Disputes indicators quantify 3 aspects of arbitration regimes that are essential for foreign and domestic companies seeking to resolve commercial disputes outside of domestic courts. These factors are the strength of an economy's arbitration laws (including adherence to international conventions on arbitration); the ease of process for the parties conducting arbitration proceedings in that economy; and the extent to which domestic courts assist the arbitration process, both during the proceedings and regarding the enforcement of arbitral awards. These 3 factors also measure, to a certain extent, the ease of resolving disputes through commercial arbitration between foreign-owned companies and state entities, and other elements of alternative dispute resolution (ADR), such as the use of mediation.¹¹⁰ These elements are considered essential to the operation of an effective arbitration regime that prioritizes predictability, transparency, efficiency, due process and party autonomy.

There are 2 types of questions asked in the Arbitrating Commercial Disputes indicators:

- Legal questions, measuring the strength of laws and regulations applicable to foreign-owned companies in the respective economy. Responses to these survey questions are based on the provisions of the laws, regulations and judicial precedents, if applicable. These questions are therefore *de jure*, meaning that they measure what the law states.
- Procedural questions, measuring the duration and difficulty of arbitration related procedures. Responses to these survey questions are based on the respondents' practical experience. These questions are *de facto*, meaning that they measure what exists in fact, or in other words, practice on the ground.

Each index takes values from 0 to 100, where a score of 100 denotes a regime offering most reassurance and security to foreign companies interested in commercial arbitration in their economy of incorporation.

- Strength of laws index (0-100)
- Ease of process index (0-100)
- Extent of judicial assistance index (0-100)

The 3 tables below, Table 4.13, Table 4.14 and Table 4.15, present the complete list of survey questions which comprise the 3 indexes. For each index, the last column indicates how each question was scored. For all 3 Tables, a simple binary system is used where a good practice answer is scored with a "1" and a poor practice answer is scored with a "0".

For each index, there are also additional "bonus" questions: 1 bonus question for Strength of laws index (1 point); 2 bonus questions for Ease of process index (2 points); and 2 bonus questions for Extent of judicial assistance index (2 points). These bonus questions provide additional points for economies that implement good arbitration practices, even though they are not considered essential for an effective arbitration regime. Economies that do not implement such practices are not penalized. They simply do not receive the bonus points. In other words, the maximum score attainable for an economy is 100, as all economies are judged on a scale of 0-100.

Where there are several parts to the question, they are scored as a decimal of 1. For instance, a question with parts (a), (b), (c) and (d) will be assigned 0.25 as the best score for each part.

Where there are several categories to answer one question, the highest value assigned is 1, and the lowest 0. For instance, if there are 3 possible categories to answer a question, "Almost always", "Usually" and "Rarely", the first category will receive a value of 1, the second category will receive a value of 0.5 and the third category will receive 0.

¹¹⁰ State entities include state constituent parts such as ministries, corporate entities owned by the state. However, these questions are not intended to deal with disputes arising out of international investment treaties.

A handful of economies have no arbitration practice. These economies are not included in the scoring for the indexes where they lack practice, and this is indicated in their economy page for example Afghanistan and Solomon Islands in the Extent of judicial assistance index.

Strength of laws index

The Strength of laws index compares the strength of economies' arbitration regimes by examining the laws and regulations that an economy relies on to regulate its domestic and international arbitrations, as well the economy's adherence to specific international conventions. Specifically, 3 concepts are examined in the Strength of laws index:

- Legislation: what laws on alternative dispute resolution are in place, whether different laws apply to domestic and international arbitrations taking place in that economy, and whether the economy has entered into leading international conventions on arbitration, specifically the 1958 New York Convention and the ICSID Convention;
- Arbitrability: whether the law restricts the subject matter of commercial disputes being submitted to arbitration, including certain disputes arising out of contracts with state entities; and
- Form: whether the law restricts the form that an arbitration agreement can take in order to be legally binding on the parties. For instance, some laws require that an arbitration agreement must be in writing and in the main contract. Other laws state that the arbitration agreement can be in a separate document and incorporated into the contract by reference.

Table 4.13 presents the complete list of survey questions which comprise the Strength of laws index. There are a total of 10 points spread over 10 equally weighted questions, plus an additional bonus question.

Table 4.13: Composition of the Strength of laws index

Survey questions comprising the Strength of laws index	How the question was scored	Example: Bangladesh
Does your national law recognize arbitration as a means of dispute resolution between private parties in commercial transactions?	"Yes" = 1 or "No" = 0	Yes = 1
Has your country enacted a specific statute on commercial arbitration?	"Yes" = 1 or "No" = 0	Yes = 1
Please indicate the website(s) where the statute(s) can be consulted	"website" = 1 or "No website" = 0	No = 0
Are the following types of disputes arbitrable under your country's national law: (a) Disputes over rights over immoveable property located within your country; (b) Any intra-company disputes; (c) Disputes involving shareholder arrangements; (d) Disputes involving patents/trademarks (excluding administrative actions)?	(a) "Yes" = 0.25 or "No" = 0 (b) "Yes" = 0.25 or "No" = 0 (c) "Yes" = 0.25 or "No" = 0 (d) "Yes" = 0.25 or "No" = 0	(a) Yes = 0.25 (b) Yes = 0.25 (c) Yes = 0.25 (d) Yes = 0.25
Under your national law, is an arbitration agreement severable from the main contract?	"Yes" = 1 or "No" = 0	Yes = 1
Can an arbitration agreement be incorporated by reference?	"Yes" = 1 or "No" = 0	Yes = 1
Can the following methods of concluding an agreement constitute a binding arbitration agreement: (a) By electronic communication, including email? (b) By fax? (c) By oral agreement? (d) By conduct, for example performance on the part of one party	(a) "Yes" = 0.25 or "No" = 0 (b) "Yes" = 0.25 or "No" = 0 (c) "Yes" = 0.25 or "No" = 0 (d) "Yes" = 0.25 or "No" = 0	(a) Yes = 0.25 (b) Yes = 0.25 (c) No = 0 (d) No = 0

Has your country ratified the 1958 New York Convention?	“Yes” = 1 or “No” = 0	Yes = 1
Under your national law, are the state and state entities allowed to enter into arbitration with foreign owned companies in connection with the following: (a) Concession agreements; (b) Infrastructure contracts; (c) Contracts dealing with natural resources; and	(a) “Yes” = 0.33 or “No” = 0 (b) “Yes” = 0.33 or “No” = 0 (c) “Yes” = 0.33 or “No” = 0	(a) Yes = 0.33 (b) Yes = 0.33 (c) Yes = 0.33
Has your country ratified the ICSID Convention?	“Yes” = 1 or “No” = 0	Yes = 1
Bangladesh total points		8.49 (out of 10)
Bonus Questions		
Has your country adopted a specific statute on commercial mediation or conciliation of commercial disputes?	Bonus point “Yes” = +1 or No = Not scored	No = Not scored
Bangladesh total points +bonus		8.49 (out of 10)
Bangladesh index score		84.90 (out of 100)

The Strength of laws index is constructed by using the simple (equal) weighted average of the scored answers for each economy for the 10 questions included, in line with the *Doing Business* methodology. The 1 bonus question is only scored if the economy includes the practice and like all other questions, is equally weighted. Preliminary sensitivity analysis of the data to alternative sets of weights has yielded similar results. As can be seen in the example, Bangladesh has a strong legal framework, although it does not adopt a wide definition of an “arbitration agreement” requiring it to be in writing, and there are certain restrictions on contracts with state entities. It does not receive the bonus point regarding having a statute on commercial mediation, giving it, when averaged out, a total score of 8.49 out of a total possible 10 points for a final index score of 84.90.

Ease of process index

The Ease of process index compares the ease of parties to design arbitration proceedings in their chosen manner and conduct fair and predictable arbitrations in the economy that respect due process. Specifically, 4 concepts are examined in the Ease of process index:

- Party autonomy: this is an essential value underpinning arbitration as a dispute resolution tool, and laws may enshrine it by providing parties with the freedom to select integral elements of the arbitration process including any seat of arbitration, any arbitrators and foreign counsel. These restrictions are also measured in relation to arbitrating with state entities;
- Tribunal integrity: measures whether the law expressly enshrines the values of independence and impartiality of arbitrators, and confidentiality of the arbitration proceedings;
- Choice of institutions: whether the law permits parties to choose institutional or ad hoc arbitration proceedings, whether online arbitration is available, and whether there are domestic arbitral institutions administering arbitrations and mediations; and
- Practice: practitioners’ estimates regarding the average period of time to establish an arbitral tribunal in the economy’s most used arbitration institution, the average time to render an award in the economy’s most used arbitration institution, how frequently state entities include arbitration clauses in their contracts with foreign companies and how frequently mediation is used to resolve commercial disputes between businesses.

Table 4.14 presents the complete list of survey questions which comprise the Ease of process index. There are a total of 35 points spread over 35 equally weighted questions, plus additional 2 “bonus” questions.

Table 4.14: Composition of the Ease of process index

Survey questions comprising the Ease of process index	How the question was scored	Example: Romania
In a domestic/international arbitration, may the parties freely choose arbitrators without regard to the arbitrator's nationality?	"Yes" = 1 ¹¹¹ or "No" = 0	No = 0 (domestic) Yes = 1 (international)
In a domestic/international arbitration, may the parties freely choose arbitrators without regard to the arbitrator's gender?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) Yes = 1 (international)
In a domestic/international arbitration, may the parties freely choose arbitrators without regard to the arbitrator's professional qualifications?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) Yes = 1 (international)
In a domestic/international arbitration, may the parties freely choose any language of the proceedings?	"Yes" = 1 or "No" = 0	No = 0 (domestic) Yes = 1 (international)
In a domestic/international arbitration, may the parties freely choose the method of appointing arbitrators to resolve their dispute e.g. by subscribing to arbitration institutional rules?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) Yes = 1 (international)
In a domestic/international arbitration, may the parties freely choose the number of arbitrators to resolve their dispute?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) No = 0 (international)
In a domestic/international arbitration, does your national law expressly provide that all arbitrators must be independent and impartial?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) Yes = 1 (international)
In a domestic/international arbitration, may the parties retain a foreign lawyer not licensed to practice in your country to represent it in arbitration proceedings?	"Yes" = 1 or "No" = 0	No = 0 (domestic) Yes = 1 (international)
In a domestic/international arbitration, under your national law, are arbitrators expressly bound to preserve confidentiality of arbitration proceedings?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) Yes = 1 (international)
In a domestic/international arbitration, is online arbitration (electronic ADR) an available method of dispute resolution in your country?	"Yes" = 1 or "No" = 0	Yes = 1 (domestic) Yes = 1 (international)
In a domestic/international arbitration, are parties free to choose any arbitration institution, even one that is outside of your country to administer their arbitration?	"Yes" = 1 or "No" = 0	No = 0 (domestic) Yes = 1 (international)
Are there any arbitration institutions administering commercial arbitrations in your country?	"Yes" = 1 or "No" = 0	Yes = 1
Do the institutions have official websites available?	"Yes" = 1 or "No" = 0	Yes = 1
In domestic/international arbitrations, how long would you estimate the period to be from the filing of the request for arbitration to the constitution of the arbitral tribunal?	Under 30 days = 1 30-180 days = 0.66 181 – 1 year = 0.33 Over 1 year = 0	30-180 days = 0.66 (domestic) 30-180 days = 0.66 (international)
In domestic/international arbitrations, how long would you estimate the period to be from the first hearing of the arbitration tribunal on the merits to the rendering of the arbitration award?	Under 30 days = 1 31-180 = 0.66 181 – 1 year = 0.33 Over 1 year = 0	30-180 days = 0.66 (domestic) 181 – 1 year = 0.33 (international)
In an arbitration between a foreign owned company and the state/state entity, can the parties freely choose the seat of arbitration?	"Yes" = 1 or "No" = 0	Yes = 1
In an arbitration between a foreign owned company and the state/state entity, can the parties freely choose institutional arbitration or ad hoc arbitration?	"Yes" = 1 or "No" = 0	Yes = 1
In an arbitration between a foreign owned company and the state/state entity, can the parties freely choose the nationality of the	"Yes" = 1 or "No" = 0	No = 0

¹¹¹ As this question is asked twice, the desirable/good practice points should be doubled.

arbitrators?		
In an arbitration between a foreign owned company and the state/state entity, can the parties freely choose foreign counsel?	“Yes” = 1 or “No” = 0	No = 0
In an arbitration between a foreign owned company and the state/state entity, can the parties freely choose the applicable procedural rules?	“Yes” = 1 or “No” = 0	Yes = 1
Is there a public authority designated to handle administrative, logical and other issues related to investors’ disputes with the state or state entity?	“Yes” = 1 or “No” = 0	Yes = 1
Is there an institution in your country that administers mediation or conciliation of commercial disputes?	“Yes” = 1 or “No” = 0	Yes = 1
Romania total points		26.31 (out of 35)
Bonus Questions		
How often does the state include arbitration clauses in their contracts with foreign companies?	Bonus point: Always or nearly always = 1 Usually = 1 Occasionally = Not scored Rarely = Not scored	Occasionally = Not scored
How frequently do private parties in your country agree to attempt to settle their commercial disputes through mediation or conciliation?	Bonus point: Always or nearly always = 1 Usually = 1 Frequently = Not scored Rarely = Not scored	Rarely = Not scored
Romania total points + bonus		26.31 (out of 35)
Romania index score		75.17 (out of 100)

The ease of process index is constructed by using the simple (equal) weighted average of the scored answers for each economy for the 35 questions included, in line with the *Doing Business* methodology. The 2 bonus questions are only scored if the economy includes the practice and like all other questions, is equally weighted. Preliminary sensitivity analysis of the data to alternative sets of weights has yielded similar results. As can be seen in the example, Romania has restrictions in domestic arbitrations regarding the nationality of the arbitrator and the language of the proceedings (score of 0). It also has restrictions in appointing foreign counsel in domestic arbitration proceedings (score of 0) and limitations on what the foreign company can do when arbitrating with state entities. Romania receives no bonus points given that it only occasionally includes arbitration clauses in contracts with its state companies and given that mediation is rarely used as an ADR tool to resolve disputes. This gives Romania a total score of 26.31 for a final index score of 75.17.

Extent of judicial assistance

The Extent of judicial assistance index compares the extent of judicial assistance to the arbitration proceedings through the domestic courts. It examines assistance before, during and after the arbitration proceedings.

The Extent of judicial assistance is divided into 2 categories, each of which receives 50% of the points in this index: (i) assistance and rules for enforcement questions, which include de jure and de facto questions relating to how domestic courts assist the arbitral process and rules relating to enforcement of domestic and foreign arbitration awards; and (ii) time questions which relate to the number of days it takes to enforce an arbitral award in a local court. The 2 time questions that fall within the second category are awarded 50% of the total points in this index, given the high importance of time-efficient and effective enforcement proceedings for investors.

- Assistance and rules for enforcement: whether domestic courts support arbitration and have articulated a “pro-arbitration” policy, as well as upholding the parties’ agreement that the arbitration tribunal can rule on its own jurisdiction, whether the law expressly provides for

courts to assist the arbitration process by ordering interim relief, the production of documents and the appearance of witnesses and the grounds for setting aside or refusing to enforce arbitration awards, both for awards rendered in the economy and foreign arbitration awards.

- Time: the time it takes to enforce an arbitration award in a court of the surveyed economy for awards rendered in both the surveyed economy and a foreign economy. This is calculated by aggregating 3 time periods: (i) the time it takes from the filing of an application for enforcement to the date of a hearing in the first instance court; (ii) from the date of the first hearing to the first instance court decision assuming no objection to enforcement has been filed; and (iii) from the final court decision granting enforcement to a writ of execution being issued attaching the assets. These responses have been quantified by aggregating the 3 time periods described above, and then dividing the 92 economies into quintiles. The quintiles have been divided into the following categories: “fast” = 1; “moderately fast” = 0.75; “average” = 0.5; “slow” = 0.25; and “very slow” = 0.

Table 4.15 presents the complete list of survey questions which comprise the ease of process index. There are a total of 23 points spread over 23 questions. 21 questions relate to assistance and enforcement of awards rendered in the host economy and foreign awards, and carry a weight of 50% of the total points. Two questions relate to time of enforcement of awards rendered in the host economy and foreign awards and carry a weight of 50%. There are 2 additional bonus questions.

Table 4.15: Composition of the Extent of judicial assistance index

Survey questions comprising the Extent of judicial assistance index	How the question was scored	Example: United Kingdom
Have the courts in your country stated a “pro-arbitration policy” that is, a general policy in favor of enforcing arbitration agreements and arbitration awards. Case citation required.	“Yes” = 1 or “No” = 0	Yes = 1 (domestic) Yes = 1 (international)
If the parties have expressly agreed that the arbitration tribunal can rule on its own jurisdiction, will that be upheld by your national courts?	“Yes” = 1 or “No” = 0	Yes = 1
In domestic/international arbitrations, if a party brings an action in a court of your country with respect to a dispute that the parties have agreed should be arbitrated, how frequently would the courts in your country decline to hear the case and refer the parties to arbitration?	In nearly all cases = 1 Usually = 0.5 Rarely = 0	In nearly all cases = 1 (domestic) In nearly all cases = 1 (international)
Does your national law provide for domestic courts to assist the arbitration process by ordering the production of documents or the appearance of witnesses in domestic/international arbitrations?	“Yes” = 1 or “No” = 0	Yes = 1 (domestic) Yes = 1 (international)
Are such requests generally granted in domestic/international arbitrations?	“Yes” = 1 or “No” = 0	Yes = 1 (domestic) Yes = 1 (international)
In domestic/international arbitrations, does your national law provide for your courts to assist the arbitrators or parties by granting interim relief to prevent immediate and irreparable injury while the arbitration is pending/before the arbitration has commenced?	“Yes” = 1 or “No” = 0	Yes = 1 (domestic) Yes = 1 (international)
If an immediate need can be shown, how often do courts grant such requests?	In nearly all cases = 1 Usually = 0.5 Rarely = 0	Usually = 0.5
May a judgment of that court enforcing the award rendered in your country be appealed to a higher court?	“No” = 1 or “Yes” = 0	No = 1
In the case of a domestic award, if Company B ¹¹² brings an action in court to set aside the	“No” = 1 or “Yes” = 0	No = 1

¹¹² For purposes of this question, Company A (a foreign owned company which is organized in, and operates in the surveyed country) has obtained an award in local currency equivalent in value to \$100,000 against Company B, a domestic company organized and operating in the surveyed country. The award is rendered in an arbitration fully conducted in the surveyed country. Company A intends to attach Company B’s assets located in the surveyed country’s largest business city.

award in favor of Company A, is the court authorized to review that award on the merits?		
In the case of an international award, if Company A ¹¹³ brings an action in court to set aside the award in favor of Company C, is the court authorized to review that award on the merits?	"No" = 1 or "Yes" = 0	No = 1
What is the likelihood that your courts would enforce a domestic/international arbitration award such as the one described above, if no objection to enforcement were filed?	In nearly all cases = 1 Usually = 0.5 Rarely = 0	In nearly all cases = 1 (domestic) In nearly all cases = 1 (international)
May a judgment of that court enforcing or denying enforcement of the foreign award be appealed to a higher court?	"No" = 1 or "Yes" = 0	Yes = 0
May a foreign arbitration award be denied recognition or enforcement on: (a) The ground of an error of law? (b) The ground that the award is not supported by substantial evidence; or (c) On any additional grounds other than the ones stated in the survey?	(a) "No" = 0.33 or "Yes" = 0 (b) "No" = 0.33 or "Yes" = 0 (c) "No" = 0.33 or "Yes" = 0	(a) No = 0.33 (b) No = 0.33 (c) No = 0.33
What is the likelihood that your courts would enforce a foreign award, if no objection to agreement were filed?	In nearly all cases = 1 Usually = 0.5 Rarely = 0	In nearly all cases = 1
In arbitrations involving a state or state entity, can your courts review the arbitration awards on its merits in connection with recognition and enforcement proceedings?	"No" = 1 or "Yes" = 0	No = 1
	United Kingdom points for enforcement and assistance	19.49 (out of 21)
Bonus Questions		
Is the court for enforcement of arbitration awards rendered in your country, a higher level court or a specialized court?	"Yes" = +1 or No = Not scored	Yes = 1
Is the court for enforcement of foreign arbitration awards rendered outside your country, a higher level court or a specialized court?	"Yes" = +1 or No = Not scored	Yes = 1
	United Kingdom total points for enforcement and assistance (including bonus)	21.49 (out of 23) – 50% of total score
Time Questions		
How many days on average are necessary to enforce a domestic and international arbitration award in your country from the filing of an application for enforcement to a writ of execution attaching Company B's assets?	Quintile of economies with min and max days for each quintile reported. Quintile 1:Fast = 1 Quintile 2: Moderately fast = 0.75 Quintile 3: Average = 0.5 Quintile 4: Slow = 0.25 Quintile 5: Very slow = 0	Fast = 1
How many days on average are necessary to enforce a foreign arbitration award in your country from the filing of Company C's application for enforcement to Company C obtaining a writ of executing attaching Company A's assets?	Quintile of economies with min and max days for each quintile reported. Quintile 1:Fast = 1 Quintile 2: Moderately fast = 0.75 Quintile 3: Average = 0.5 Quintile 4: Slow = 0.25 Quintile 5: Very slow = 0	Fast = 1
	United Kingdom points for time	2 (out of 2) – 50% of total score
United Kingdom index score		96.7 (out of 100)

¹¹³ For purposes of this question, Company C, a company organized and operating in a foreign country, has obtained an award of \$100,000 against Company A (a foreign owned company which is organized in, and operates in the surveyed country). The award was rendered in the surveyed country and Company C intends to attach Company A's assets located in the surveyed country's largest business city.

Preliminary sensitivity analysis of the data to alternative sets of weights has yielded similar results. As can be seen in the example, the courts of the United Kingdom are supportive of commercial arbitration, and the United Kingdom almost receives a perfect score. Domestic courts do not always grant interim relief, which is where the United Kingdom loses 0.5 of a point. In calculating the days to enforce both a domestic and foreign arbitration award, the United Kingdom falls within the first quintile, and so is awarded 1 point. Arbitration awards, whether domestic or foreign, are enforced in a higher court or specialized court, and so the United Kingdom is awarded the 2 bonus points.

The case study and assumptions

In order to ensure comparability of results, there are 2 different case studies: (i) domestic commercial arbitration and (ii) international commercial arbitration, where the seat of arbitration for both arbitrations is in that economy's largest business city.

- The first case study relates to a domestic arbitration between 2 companies incorporated in the same economy. Company A is 100% foreign-owned by a multinational corporation. Company B is owned by a domestic investor.
- The second case study relates to an international arbitration between our local Company B and a multinational Company C, which is incorporated and operates in a foreign economy.

Accordingly, IAB also assumes 3 different types of arbitral awards:

- A domestic arbitration award given in the respective host economy.
- An international arbitration award given in the respective host economy in favor of a foreign company.
- A foreign arbitration award given in a foreign economy following arbitration proceedings in that economy, which is not the host economy.

For procedural questions regarding the timing of arbitration proceedings,¹¹⁴ IAB asked respondents to answer based on the assumption that arbitration proceedings take place before 3 arbitrators, using the most commonly used arbitral institution, with no court assistance.

For procedural questions regarding the timing of enforcement proceedings¹¹⁵ (for awards rendered in the economy, and in a foreign economy), IAB asked respondents to answer based on the assumption that the award is in the amount of \$100,000 and that proceedings are commenced in the competent court situated in the economy's largest business center. IAB further asked them to assume that legal counsel does not use any strategies to delay proceedings, and that court deadlines are complied with.

It should also be noted that the terms mediation and conciliation have been used interchangeably for the purposes of this data.

Limitations of the Arbitrating Commercial Disputes indicators

- The methodology of Arbitrating Commercial Disputes indicators is primarily limited to analyzing objective and verifiable data, such as the legal framework and most common practices in each economy. The survey uses a specific methodology that consists of mostly "Yes" or "No" questions and has few perception-based questions. Practice is therefore covered in a limited manner, given the survey methodology and the nature of arbitration, which is private and confidential.

¹¹⁴ Questions 19-21 in the Arbitrating Commercial Disputes survey.

¹¹⁵ Questions 32 and 38 in the Arbitrating Commercial Disputes survey.

- It is clear that there is no such thing as a “one size fits all” arbitration regime. However, by asking a standardized set of questions in our survey, the IAB project aims to identify good practices that can assist economies in benchmarking the strength of their arbitration regimes.
- Many economies with a recent arbitration statute have had little practice in international arbitration (such as the Solomon Islands or Afghanistan). This makes it hard to compare them in a consistent manner with other economies in which arbitration is a well-established mechanism for resolution of commercial disputes. IAB has excluded these “no practice” economies from some of the analysis related to court assistance and court enforcement.

The IAB Arbitrating Commercial Disputes indicators represent a rather extensive measurement of economies’ alternative dispute resolution frameworks with a focus on commercial arbitration. However, the indicators do not cover many other issues related to dispute resolution such as:

- Evaluation of arbitration clauses in bilateral investment treaties, investment chapters of free trade agreements, investment treaty arbitrations and enforcement of ICSID arbitration awards;¹¹⁶
- Level of awareness and acceptance of arbitration practices by the economies’ legal and business community;
- Level of training of economies’ arbitration practitioners and judges;
- Effectiveness of arbitral institutions;
- Extent to which arbitration is preferred over other dispute resolution tools in each economy;
- Effectiveness of commercial litigation (already measured by the World Bank Group’s *Doing Business* Enforcing Contracts indicator).¹¹⁷

¹¹⁶ The IAB surveys follow the methodology of the World Bank Group’s *Doing Business* legal indicators and consist mostly of “yes” or “no” questions that ask whether or not a certain law or regulation exists in the countries’ framework. Countries have different numbers of BITs from other countries and even the BITs signed by a single country have differences in the texts of their substantive and dispute resolution clauses. Thus, IAB methodology is not suitable to measure the quality of countries’ Bilateral Investment Treaty frameworks.

¹¹⁷ World Bank, *Doing Business, Enforcing Contracts* (Washington, D.C.: World Bank Group (<http://www.doingbusiness.org>)).

4.2 Global Investment Promotion Benchmarking methodology

Why Measure IPIs?

Information provision is a cost-effective way for an economy to address information failures and barriers to FDI

IPIs' timely provision of information to potential investors is important—especially so for economies where information from other sources is scarce, where there is not a long track record of FDI, or where economy is viewed negatively. Unless positive information is readily available, foreign companies may not consider a location in the first place, or they may reject it prematurely. Addressing information failures is likely to be the most cost-effective way for an IPI to stimulate market interest and attract investment.

Virtually all economies now have a national government-mandated IPI—a government ministry, investment promotion agency, board of investment—that is responsible for promoting FDI and facilitating the investment process. According to a recent study by Development Counsellors International (DCI), a U.S.-based consulting firm, potential investors are likely to look to the IPI for assistance in their site-selection process.¹¹⁸ The DCI study, based on the aggregate responses of 281 executives with direct site-selection responsibilities in U.S. companies with annual revenues of more than \$25 million, found that 65 percent of companies have worked closely with IPIs during past location decisions, and 64 percent of executives indicate a strong likelihood that they would use an IPI website in their next location search. Only 8 percent of companies would not contact an IPI during the site selection process. GIPB helps IPIs to increase their relevance during companies' location decisions: by assessing their information services. GIPB helps to measure economies' competitiveness in the complex world of investment promotion and create a framework for improving performance.

IPIs vary substantially across regions. Differences in historic background, mandate and competencies, staffing, and oversight seem to have an impact on ability to perform investment promotion functions, and as GIPB 2009 evidences, in responding to investors' information needs. However, all IPIs by definition have the mandate to facilitate investment. Facilitation is the most basic activity in investment promotion. It underpins all other IPI activities such as policy advocacy, proactive promotion, aftercare, and other functions. Unless professional facilitation is in place it may not be credible for an IPI to engage in other investment promotion activities. Most importantly, although IPI mandates, functions and structures may vary across the world, the needs for site location information by companies and their consultants do not vary. International investors expect at least basic international standards of service to be met. IPIs failing to meet those standards will be most likely those that will lose out in the race to win investment projects.

Information is key to site selection

Companies seeking to expand their production or service capacity abroad typically undertake a careful site-assessment process that requires enormous amounts of information ranging from the more general at the initial stages of their desk research, to the more specific at the site visit stage. This process may be performed in-house but often is outsourced to site-selection consultants. The desk research is called location “long listing” and usually involves collecting online information about a relatively large number of economies and locations (typically 8 to 20). Then, the company contacts the economy's IPI to fill in information gaps.

¹¹⁸ Development Counsellors International (DCI), July 28, 2008. “A View from Corporate America: Winning Strategies in Economic Development Marketing”

Once they have collected this detailed information, investors employ “benchmarking” techniques to compare and evaluate the relative advantages of investing in each location. In the context of investment promotion, benchmarking is the use of investment-related criteria to compare and contrast potential investment performance in competing locations.

If there is not enough information on a given location, the location will probably not make it to the next level of the selection process: “short list.” Thus, it is critical for economies to ensure that relevant, up-to-date, and good-quality information is available to potential investors at the desk research stage if the new investment is to be secured.

GIPB’s approach and the foreign company’s site-selection process

GIPB 2009 measures economy and sector information provision and foreign company relationship management, particularly at the early information-gathering stages of the location-screening process. Its focus is on information provision at this “long-listing” stage because if an IPI “loses” the investor at this stage, its location usually will not be reconsidered at later stages of the site-selection process. This makes these early interactions with potential investors critical to capturing investment projects.

GIPB mirrors the actions of a foreign company as it assesses its investment-location options at the long-listing stage: An international site-selection consultant uses the “mystery shopper” approach. In a carefully selected simulated investment project, the survey first assesses the quality and usefulness of the information provided in the IPI’s website. Then, the consultant contacts the IPI to request details to further inform the location decision-making, such as costs of land, availability and cost of labor, overall operating costs, infrastructure, quality of life, and legal framework.

A focus group with leading site-selection consultants, among them OCO Global, Jones Lang Lasalle, and DTZ, helped validate and improve the GIPB approach and the questionnaires used to evaluate IPI performance.

What does GIPB tell us about an IPI?

In simulating the site selection, GIPB constructs a comparative measure of the organizational effectiveness of each IPI, its management efficiency, and its understanding of the FDI marketplace, along with its knowledge of its local economy, and its key selling points and weaknesses.

GIPB assesses an IPI’s ability to provide information to prospective investors. However, the value of GIPB is enhanced by the fact that information provision depends on many other activities being undertaken and competencies being mastered. Therefore, GIPB provides an indirect assessment of the overall effectiveness of an IPI to perform its core mission of attracting productive FDI.

For example, the IPI website assessment gives an insight into:

- The IPI’s investment strategy. A strong website is evidence that the IPI has an investment strategy based on an understanding of the location’s comparative or competitive advantages, its core sectors for promotion and, via the selection of those sectors, whether the probability of demand for investment in those sectors has been assessed.
- How well an IPI has considered the attributes of its location, which is the “product” the IPI is selling. It is immediately obvious to a website user whether the IPI possesses a clear knowledge of its economy.
- The IPI’s perception of the market in which it operates. Its choice of target sectors indicates whether or not the IPI has researched the investment potential of given sectors.

- Finally, a website clearly shows whether an IPI understands its customer: Best-practice sites reveal that the IPI knows what will motivate the foreign company to invest in the location.

Similarly, an IPI's ability to successfully service an investment inquiry reveals:

- Whether the IPI has undertaken extensive research into target sectors. Effective IPIs already have prepared materials that answer questions frequently asked by investors, according to their sector of interest and the type of business activity they propose to undertake. The extent to which IPIs have prepared these materials is revealed by how quickly they respond to information requests and the quality of the information they provide.
- Whether the IPI has a robust investment strategy. An inability to provide detailed material about the sector that the IPI is promoting suggests that the IPI has not developed a robust investment strategy.
- To what extent the IPI understands customer needs. As with the website assessment, IPIs that cannot answer basic questions most likely have not researched their own market and sectors of interest. Conversely, an IPI that understands customers presents answers in a way that responds to the investor's key location drivers and provides evidence that the location meets or exceeds the investor's requirements.
- Whether the IPI has the capacity to facilitate or implement a project. Investors want reassurance that they will be able to successfully implement a project in the IPI's economy. An experienced IPI will be able to demonstrate that projects are viable through the use of case studies and testimonials but companies will also look for clues that the IPI itself has the connections in the marketplace that will ensure that their project will succeed.

Who is GIPB designed for?

- Governments. GIPB allows policymakers to assess the competitiveness of their promotional effort in attracting investment.
- Investment promotion practitioners. GIPB allows IPIs to monitor their performance over time against their strategic objectives and against best-practice standards of competitors. It highlights areas for improvement of an IPI's information services.
- Technical assistance providers. GIPB constitutes the standard reference for best practice in investor facilitation.
- The World Bank Group and other development partners. GIPB allows for a quick and effective diagnostic of IPIs' capacity, and is a key tool to build a baseline to measure the impact of investment promotion projects over time.

GIPB constitutes a number of reports:

- The Global Investment Promotion Benchmarking 2009 Summary Report. An analysis of the global results, regional trends, and best-practice examples from top performers.
- The Customized Report. Each participating IPI receives a customized diagnostic of its performance with useful insights and specific recommendations for improvement. IPIs can request additional individual reports by sending an mail to fias@ifc.org.

How GIPB conducted the assessments

A total of 213 IPIs were assessed; 181 national IPIs (two of which are sub national IPIs from an economy's most populous city and, in the absence of a national IPI, are treated as national proxies) and 32 sub national IPIs.

Each IPI was assessed in two ways:

- First, IPI websites were evaluated across four themes to assess the extent to which they offer economy and sector information, and are a business-support gateway for prospective foreign company investors;
- Second, IPI capacity to interact with and manage investment inquiries was evaluated. Because service consistency offers important insights into IPI capabilities, each IPI's inquiry-handling abilities were assessed twice using a "mystery shopper" methodology. To ensure that we offered IPIs a balanced opportunity to demonstrate their capabilities, the first assessment related to a beverage project with a research and development component, and the second was a software development center inquiry.

These scenarios are based on real project inquiries, one by a leading soft drink manufacturer and the other by a leading Internet and software development company. They represent two different sectors and types of activity that require different combinations of labor, property, and other information relevant to potential investors.

Both scenarios require the IPIs to perform in a similar manner, since the initial project briefs were delivered via e-mail and then followed up by telephone interaction. Each IPI was provided with an outline of the simulated companies, information on company strategy, and details of the proposed investment project. This was followed by a detailed outline of the information required, such as the background of the sector in the location, labor skills and availability, employment regulations, and potential sites.

The methodology favored IPIs which responded to the initial e-mail, without prompting, within 48 hours. Where there was no follow-up to the initial e-mail, GIPB's approach was to call the IPI at three different times on three different days to allow for any temporary staff shortages or system failures. This probably showed more determination than a regular potential inward investor would have. The calls were conducted in English.

Dealing with languages other than English

GIPB assessment of websites and inquiry-handling abilities was conducted in English. Many IPIs may have good reasons for not hosting an English-language version of their website. Some economies and regions may have taken an informed management decision not to provide English versions because they realize that for historical, cultural, or developmental reasons, they are unlikely to attract investors from English-speaking economies. Some IPIs might be able to attract English-speaking investors but their financial resources preclude creating an English version of their website.

English is a dominant international business language and much FDI is currently from English-speaking nations. At the very least, contact information should be prominently located on the home page so that any company, regardless of language, can locate a telephone number or e-mail address.

Because some aspects of the website review are not language sensitive, sites were scored in those areas, regardless of the language of the website. Areas in which non-English-language websites were evaluated are the following:

- Web optimization and Internet accessibility
- Website architecture
- Website look and feel
- Contact information

In the case of the inquiry-handling assessment, non-English speaking IPIs that did not submit a response scored zero for that particular assessment.

Methodological variations on 2006 survey

- The sample size increased from 125 IPIs in 2006 (96 nationals and 29 sub nationals) to 213 in 2008 (181 nationals and 32 sub nationals). Not all of those surveyed in 2006 were included in the GIPB 2009 report.
- Regional averages in the 2009 report are calculated only on the basis of the national IPIs. Sub national IPIs were not included in regional averages.
- In 2006, the top-five IPI were used as the benchmark. In GIPB 2009, because of the extended global sample, this group has been removed. Where quoted in this report the 2006 scores have been standardized by applying the GIPB 2009 weightings at both the theme and subtheme levels, and removing any indexing that had been used in 2006. In addition, regional averages have been updated to use the 2009 regional classifications, and by removing sub national IPIs from those calculations.

For more information on GIPB 2009 please visit the projects homepage:

<http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

5.

Profiles of APEC member economies

For data on all IAB economies
please go to the IAB website:

www.investingacrossborders.org

Australia

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	100.0	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	63.2	71.6	87.7
Electricity	100.0	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	94.9	71.1	78.8
Media	100.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Of the 33 sectors covered by the Investing Across Sectors indicators, 28 are fully open to foreign direct investment (FDI) in Australia. Foreign investment in the banking sector needs to be consistent with Australian banking policy. In transportation, foreign companies can own only up to 49.9% in the national airlines flying international routes. The media sectors require approval by the government, both in television broadcasting and newspaper publishing for investments of 5% or more. Individual foreign investors are only allowed to own up to 5% of former telecommunications monopolist Telstra Corporation Ltd. All investments into Australian businesses above AUS \$ 231 million and more than 15% of total shareholding have to be approved by the Foreign Investment Review Board. For investors from the United States, a higher threshold of AUS \$ 1,004 million applies to investments outside of "sensitive sectors", as set out in the Australia-U.S. Free Trade Agreement. Any acquisition of shares by a foreign government or an entity owned by a foreign government requires approval.

Starting a Foreign Business

Time (days)	3	42	42
Procedures (number)	3	10	10
Ease of establishment index (0 = min, 100 = max)	84.2	69.0	65.0

With only 3 days and 3 procedures, Australia (Sydney) has one of the fastest and simplest processes for establishing a foreign-owned company. No foreign investment approval is required in order to set up a subsidiary of a foreign company. There is also no paid-in capital requirement. At least one director must be resident in Australia and if the company has a secretary, this individual must also be an Australian resident. The company registration takes only 1 day and documents can be submitted online. Foreign companies are free to open bank accounts in foreign currency in Australia.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	84.6	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	87.5	95.0	92.3
Access to land information index (0 = min, 100 = max)	30.0	43.1	41.8
Availability of land information index (0 = min, 100 = max)	80.0	80.1	71.0
Time to lease private land (days)	64	57	62
Time to lease public land (days)	132	126	138

Purchases of developed commercial land up to AUS \$50 million do not require approval from the Foreign Investment Review Board. U.S. investors only need to apply for approval to acquire developed commercial real estate valued at AUS \$1,004 million or more. Purchase of all vacant commercial land requires approval. Only leases of commercial land of 5 years or more require approval where the total value of the lease is more than AUS \$50 million or in the case of US investors, more than AUS \$1,004 million. Purchases and leases over publicly owned lands do not require approval. Applications for approval to the Foreign Investment Review Board are resolved within 30 days of being lodged. Land information can be obtained from state and territory land registers.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	95.4	89.4	85.6
Ease of process index (0 = min, 100 = max)	82.8	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	67.0	63.4	58.4

Arbitration in Australia is governed by the International Arbitration Act of 1974 (for international arbitration only) and the Commercial Arbitration Act of 1984 (for domestic arbitration). The international regime follows the UNCITRAL Model Law while the domestic does not. For example, under the domestic commercial arbitration regime, parties are entitled to appeal an award if there is an "error of law". This right does not exist under the international arbitration regime. In both regimes parties are free to appoint arbitrators of any nationality or professional qualifications, and may choose foreign lawyers to represent them in proceedings in Australia. Australia is party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards. There are more than four leading arbitration institutions in Australia. All commercial disputes are arbitrable except unfair contracts under the industrial relations legislation and disputes in connection with an insurance contract to which the Insurance Contracts Act applies, and the proper law of which is the law of a State or Territory of Australia.

Global Investment Promotion Benchmarking 2009

Austrade's performance on website quality is rated as good (second quintile) and on inquiry handling as good (second quintile), relative to other economies in the world. The overall result is good (second quintile).

For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Brunei Darussalam

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Indicator	Economy score	APEC average	IAB global average	Highlights
Mining, oil and gas	60.0	83.3	91.7	Respondents were unable to provide us with accurate information on sectoral FDI restrictions. However, it was reported that in many sectors there were minimum quotas for Malay equity ownership. It was also reported that in agriculture, there was a 30% minimum threshold for local Bruneian shareholdings; that in the forestry sector, no lumbering was permitted; and that there were restrictions for foreigners holding shares in the domestic air transport sector, television broadcasting and local newspapers.
Agriculture and forestry	60.1	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	..	71.6	87.7	
Electricity	..	82.9	88.1	
Banking	100.0	87.5	91.5	
Insurance	100.0	86.3	91.7	
Transportation	..	71.1	78.8	
Media	..	53.1	68.9	
Sector group 1 (constr., tourism, retail)	..	96.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2	

Starting a Foreign Business

Indicator	Economy score	APEC average	IAB global average
Time (days)	108	42	42
Procedures (number)	17	10	10
Ease of establishment index (0 = min, 100 = max)	76.3	69.0	65.0

The Companies Act 1939 governs the establishment process of foreign-owned but domestically incorporated companies in Brunei, and is available electronically. Respondents have reported that many foreign companies prefer to open a foreign branch in Brunei rather than locally incorporating subsidiaries. The whole process of establishment roughly takes 108 days. Brunei requires that 50% of companies' board of directors comprise Bruneian citizens. No foreign investment approval is required to establish a foreign owned but locally incorporated company, and such companies can also hold bank accounts in foreign currency. There are no paid-in capital requirements in the establishment process.

Accessing Industrial Land

Indicator	Economy score	APEC average	IAB global average
Strength of lease rights index (0 = min, 100 = max)	78.6	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3
Access to land information index (0 = min, 100 = max)	7.1	43.1	41.8
Availability of land information index (0 = min, 100 = max)	55.0	80.1	71.0
Time to lease private land (days)	180	57	62
Time to lease public land (days)	180	126	138

Most land in Brunei is owned by the state, with only a small percentage being privately owned. Although there are no legal restrictions on foreign companies buying land, the majority of respondents have stated that this is very difficult in practice as permission from the State is required and is rarely given. Land law is primarily governed by the Land Code dating from 1909, which codified land ownership and was based upon the British Residency System, the Land Acquisition Act and the new Land Code (Strata) Act. No land title is considered valid unless registered with the Lands Office. It roughly takes 180 days to lease private or public land. Leasing public land needs to be approved by the Sultan in Council (the highest administrative authority in Brunei). A lot of public land is also designated for specific uses, e.g. commercial uses. There is no statutory minimum lease term, although most leases tend to be for 30 or 50 year terms.

Arbitrating Commercial Disputes

Indicator	Economy score	APEC average	IAB global average
Strength of laws index (0 = min, 100 = max)	..	89.4	85.6
Ease of process index (0 = min, 100 = max)	..	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	..	63.4	58.4

Data not available.

Global Investment Promotion Benchmarking 2009

The Brunei Economic Development Board's performance on website quality is rated as good (second quintile) and on inquiry handling as good (second quintile), relative to other economies in the world. The overall result is good (second quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Canada

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	100.0	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	81.1	93.1	96.7
Telecommunications	46.7	71.6	87.7
Electricity	100.0	82.9	88.1
Banking	65.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	79.6	71.1	78.8
Media	73.4	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	50.0	87.9	96.2

Among the 12 high-income OECD economies covered by the Investing Across Sectors indicators, Canada presents above average restrictions on foreign equity ownership. It imposes overt statutory ownership restrictions on a number of service sectors. Foreign capital participation in the domestic and international air transportation sectors, for example, is limited to a maximum share of 49%. Furthermore, under the Canadian telecommunications and broadcasting regime, foreign investors may own only up to 20% of the shares of a Canadian operating company directly, plus an additional 33% of the shares of a holding company. In aggregate, total direct and indirect foreign ownership in the telecommunications sector (fixed-line and mobile/wireless infrastructure and services) and in the television broadcasting sectors is limited to 46%. The health care sector is de facto closed to FDI because private hospitals and clinics may not receive payments from provincial health insurance funds, which are critical for the financial viability of operators in the sector.

Starting a Foreign Business

Time (days)	6	42	42
Procedures (number)	2	10	10
Ease of establishment index (0 = min, 100 = max)	81.6	69.0	65.0

With only 6 days and 2 procedures, Canada (Toronto) enjoys one of the fastest and simplest processes of establishing a foreign-owned limited liability company (LLC). A foreign company requires no additional procedure other than the post-incorporation notification of the Investment Canada Agency. This notification must be made within 30 days of incorporation. Under the Investment Canada Act, unless the investment is made in "cultural industries", affects the country's national security, or is made in restricted sectors, it is not subject to review. Foreign investors have the option of filing either for federal incorporation or provincial registration. Federal incorporation entails one procedural step that can be done online, using "Industry Canada's" electronic filing center. Filing can also be done by regular mail, fax, courier, or in person. A federally incorporated subsidiary has the right to operate anywhere in Canada. Foreign companies are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement for foreign or domestic companies.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	100.0	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3
Access to land information index (0 = min, 100 = max)	46.2	43.1	41.8
Availability of land information index (0 = min, 100 = max)	85.0	80.1	71.0
Time to lease private land (days)	68	57	62
Time to lease public land (days)	131	126	138

Although it is possible to lease or purchase both privately and publicly held land in Canada, the lease or purchase of private land is more common. The purchase of public land may be subject to requirements to build to certain specifications within a defined timetable, failing which the public body will have reserved the right to re-purchase the land from the buyer. Due to such contractual constraints, foreign companies rarely purchase public land. Leases with a term of 50 years or more are subject to a land transfer tax. There is no statutory maximum for the duration of leases. Leases can offer the lessee the right to sublease, mortgage the leased land, or use it as collateral, if provided by the contract. With respect to subdivision, leases for 21 years or more may require consent from public authorities. The province of Ontario, in which Toronto is located, is in the final stages of converting to a Register of Titles system from a Register of Deeds system.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	89.9	89.4	85.6
Ease of process index (0 = min, 100 = max)	84.7	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	94.0	63.4	58.4

Canada's arbitration legislation reflects its federal nature. All Canadian provinces and territories have enacted legislation that governs domestic commercial arbitrations and international commercial arbitrations taking place in their provinces. The Province of Ontario has enacted the Arbitration Act (1991), which governs domestic arbitration and is based on the UNCITRAL Model Law, and the International Commercial Arbitration Act (1990), which governs international arbitration and expressly adopts the UNCITRAL Model Law. The legislation of the Province of Ontario is strongly governed by the principle of "party autonomy." Commercial disputes are arbitrable, unless legislation stipulates that certain matters are expressly within the courts' jurisdiction. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. Foreign lawyers representing parties in an arbitration must be licensed by the Law Society in order to provide legal services in Ontario. The parties are free to choose any arbitral institution of their choice, the most common being the ADR Institute of Canada. Canada is also one of the few jurisdictions in the world to provide online arbitration. The courts are generally very supportive of commercial arbitration. On average, it takes around 11 weeks to enforce an arbitration award, whether rendered in Canada or in a foreign country, from filing an application to a writ of execution attaching assets (assuming there is no appeal). Appeals can be made to the Ontario Court of Appeal. Canada has not ratified the ICSID Convention.

Global Investment Promotion Benchmarking 2009

Invest in Canada's performance on website quality is rated as best practice (first quintile) and on inquiry handling as good (second quintile), relative to other economies in the world. The overall result is best practice (first quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Chile

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	100.0	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	100.0	71.6	87.7
Electricity	100.0	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	100.0	71.1	78.8
Media	100.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Chile is one of the most open economies to foreign equity ownership, as measured by the Investing Across Sectors indicators. All 33 sectors covered by the indicators are fully open to foreign capital participation. With the exception of the oil and gas industry, there are no sectors with monopolistic or oligopolistic market structures, nor are there any perceived difficulties in obtaining any required operating licenses.

Starting a Foreign Business

Time (days)	29	42	42
Procedures (number)	11	10	10
Ease of establishment index (0 = min, 100 = max)	63.2	69.0	65.0

It takes 11 procedures and 29 days to establish a foreign-owned limited liability company (LLC) in Chile (Santiago). This is one of the shortest processes among the IAB Latin America and the Caribbean economies. Full foreign ownership is allowed in Chile. LLCs need a minimum of 2 shareholders. In addition to the steps required of a domestic company, a foreign company establishing a subsidiary in Chile must authenticate the parent company's documents abroad and register the incoming capital with the Central Bank. This procedure, established under Chapter XIV of the Foreign Exchange Regulations, requires a notice of conversion of foreign currency into Chilean pesos when the investment exceeds \$10,000. The registration process at the Registry of Commerce of Santiago is available online. Companies in Chile are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement for foreign or domestic companies.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	85.7	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3
Access to land information index (0 = min, 100 = max)	33.3	43.1	41.8
Availability of land information index (0 = min, 100 = max)	80.0	80.1	71.0
Time to lease private land (days)	23	57	62
Time to lease public land (days)	93	126	138

In Chile, public land is bought or leased by public auction. There are some exceptions that allow a direct sale of public land after approval from the public authority holding the land. Foreign companies may also lease or purchase private land. Leases of private land do not need to be executed before any authority such as a notary public. They also do not need to be registered at any public or private institution. Nevertheless, it is advisable to execute such agreements by means of a public deed before a notary public to make the document eligible for registration and to provide easier enforcement of the lease. A lessee may be able to sublease, subdivide, mortgage, or transfer the lease, subject to the terms of the contract. There are restrictions on the amount of public land that may be leased, but not on private land. The process of leasing private and public land is efficient. Land-related information may be found in the land registry. There is no cadastre, land information system (LIS), or geographic information system (GIS) in Santiago.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	94.9	89.4	85.6
Ease of process index (0 = min, 100 = max)	62.8	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	74.8	63.4	58.4

Chile has a dual arbitration system. Domestic arbitration is governed by the Chilean Code of the Judiciary (1943) and the Chilean Code of Civil Procedure (1893). International commercial arbitration is governed by the Chilean Law on International Commercial Arbitration (2004), which strictly follows the 1985 UNCITRAL Model Law. Regulation of domestic arbitration, although not based on the UNCITRAL Model Law, is in line with the general principles of party autonomy, including "kompetenz-kompetenz" and the impartiality of arbitrators. Domestic arbitration awards may be subject to challenges relating to the facts and/or merits of the dispute before the Chilean courts of justice as opposed to international arbitration awards rendered in Chile. All commercial disputes are arbitrable except those involving patents and trademarks. In domestic arbitrations, parties may only choose an arbitral institution located in Chile. In addition, arbitrators must be Spanish speaking and be Chilean citizens. Chilean law differentiates between arbitration at law and arbitration at equity. In domestic arbitrations at law, arbitrators must be Chilean lawyers. Freedom to choose a non-Chilean lawyer exists only in ex aequo et bono (equity) arbitrations. In domestic arbitrations at law, parties may only be represented by Chilean lawyers, as arbitral tribunals are regarded as courts of justice. None of these restrictions apply to international arbitration in Chile. On average, it takes around 33 weeks to enforce an arbitration award rendered in Chile, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and only 12 weeks for a foreign award.

Global Investment Promotion Benchmarking 2009

Foreign Investment Committee's performance on website quality is rated as good (second quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is average (third quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

People's Republic of China

Please note that the data on China are based on the IAB 2010 global report. Some of the individual data points are pending validation based on the upcoming consultations with the Chinese authorities.

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				China's limits on foreign equity ownership are stricter compared to the economies covered by the Investing Across Sectors indicators in East Asia and the Pacific, and globally. The principal rules governing FDI are found in the Catalogue of Industries for Guiding Foreign Investment (amended in 2007), which lists specific sectors in which foreign investment is encouraged, restricted, or prohibited. It imposes restrictions on foreign equity ownership in the majority of the sectors covered by the Investing Across Sectors indicators, in particular the service industries. Sectors such as publishing, television broadcasting, and newspaper publishing are closed to foreign ownership. In several other sectors, including telecommunications (fixed-line and mobile/wireless), electricity transmission and distribution, railway freight transportation, air transportation (domestic and international), and airport and port operation, foreign ownership is limited to a less-than-50% stake. Further restrictions are imposed on foreign capital participation in the oil and gas industry, the financial services sectors (banking and insurance) and health care. The majority of manufacturing sectors, though, which in the past have been the main sources of FDI into the country, are fully open to foreign equity ownership.
Foreign equity ownership indexes (100 = full foreign ownership allowed)				
Mining, oil and gas	75.0	83.3	91.7	
Agriculture and forestry	100.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	75.0	93.1	96.7	
Telecommunications	49.0	71.6	87.7	
Electricity	85.4	82.9	88.1	
Banking	62.5	87.5	91.5	
Insurance	50.0	86.3	91.7	
Transportation	49.0	71.1	78.8	
Media	0.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	83.3	96.0	98.1	
Sector group 2 (health care, waste mgt.)	85.0	87.9	96.2	
Starting a Foreign Business				It takes 18 procedures and 99 days to establish a foreign-owned limited liability company (LLC) in Shanghai, China. This is slower than both the IAB regional average for East Asia and the Pacific and the IAB global average. Five procedures are required exclusively of foreign companies. The incorporation documents of the parent company must be notarized by a local notary and authenticated by a Chinese consulate in the country of origin. Foreign investors must submit their applications, along with feasibility studies and charters of association, to the Foreign Investment Commission (under the district government for foreign investment approval) after obtaining a company name pre-registration. This step usually takes 30 days. Foreign companies that wish to engage in international trade must also get customs registration certificates and foreign trade licenses, which can take on average 13 days. In addition, foreign companies must obtain a financial certificate for enterprises with foreign investment as well as a foreign exchange registration certificate, which take about 2 weeks each. Company registration documents are available online, although submissions may not yet be made online. Foreign companies wishing to maintain bank accounts in foreign currency need the approval of the State Administration of Foreign Exchange, which takes on average 4 days. The minimum paid-in capital requirement for an LLC is CNY 30,000 (~\$4,390). Chinese law allows for deposit of the capital contribution in installments, provided that the first payment is no less than 15% of the registered capital. The balance of the registered capital must be paid within 2 years of the issuance of the business license.
Time (days)	99	42	42	
Procedures (number)	18	10	10	
Ease of establishment index (0 = min, 100 = max)	63.7	69.0	65.0	
Accessing Industrial Land				In China, land is either owned by the state and local governments, or collectively by farmers. Private land ownership is not allowed. A foreign company can obtain land-use rights directly from the government by grant or by the lease, or purchase of previously granted land-use rights. Buying the right to use certain land from the state is considered the most efficient way for foreign companies to access land. The purchase of the land-use right of industrial land, however, is subject to a mandatory public bidding process. Land rights may be pledged, mortgaged, leased, or transferred. However, they may only be obtained by grant for a maximum term of 50 years, renewable upon expiration by paying a grant fee to the government. If a lessee intends to transfer the land-use right to another company, the land must be developed to a certain level before the transfer. Land-related information may be found in the land registry and cadastre.
Strength of lease rights index (0 = min, 100 = max)	96.4	83.8	82.1	
Strength of ownership rights index (0 = min, 100 = max)	n/a	95.0	92.3	
Access to land information index (0 = min, 100 = max)	50.0	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	52.5	80.1	71.0	
Time to lease private land (days)	59	57	62	
Time to lease public land (days)	129	126	138	
Arbitrating Commercial Disputes				The People's Republic of China's Arbitration Law of 1995 is largely based on the UNCITRAL Model Law. The law regulates arbitrations taking place under the auspices of the Chinese International Economic and Trade Arbitration Commission (CIETAC) or any of the other 200 arbitral institutions. While an arbitration agreement may be concluded by email or fax, it must be in writing. The Chinese Arbitration Law limits court intervention in arbitral proceedings, both international and domestic. Parties may select arbitrators of any gender, nationality, or professional qualifications. The arbitrator must, however, be on the CIETAC arbitrators' list. One of the most significant departures from the UNCITRAL Model Law is that under Article 16 of the Chinese Arbitration Law, the arbitration agreement must name an arbitral institution. Therefore, ad hoc arbitration is not permitted in China and any arbitration must be conducted under the auspices of CIETAC or another institution. On average, it takes around 26 weeks to enforce an arbitration award rendered in China, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 31 weeks for a foreign award. The difference between the recognition or enforcement of domestic and international arbitration decisions is that any refusal to enforce a foreign arbitral decision must be approved by the Supreme People's Court, reflecting the pro-arbitration stance of Chinese law.
Strength of laws index (0 = min, 100 = max)	94.9	89.4	85.6	
Ease of process index (0 = min, 100 = max)	76.1	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	60.2	63.4	58.4	
Global Investment Promotion Benchmarking 2009				Invest in China's performance on website quality is rated as average (third quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is weak (fourth quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009

Hong Kong, China

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	n/a	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	100.0	71.6	87.7
Electricity	100.0	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	100.0	71.1	78.8
Media	100.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Hong Kong, China, is one of the most open economies to foreign direct investment (FDI) as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to foreign investment. However in the banking, insurance and free-to-air television sectors, companies need prior consent from the authorities for investments above a specific amount. In radio broadcasting services, a transfer of more than 15% of the voting shares in a licensee within three years after granting of a license has to be approved by the Broadcasting Authority. Rail passenger transport is currently provided by a single publicly-listed company with the government as a major shareholder. There is currently no rail freight operation in Hong Kong, China. Due to its small size and resulting absence of certain natural resources, Hong Kong, China has no or limited legislation regulating entry of FDI in some sectors, for example mining, oil and gas.

Starting a Foreign Business

Time (days)	6	42	42
Procedures (number)	3	10	10
Ease of establishment index (0 = min, 100 = max)	73.7	69.0	65.0

Starting a foreign business in Hong Kong, China, is among the fastest in the group of the APEC member economies. It takes 6 days and 3 procedures, including the authentication of parent company's documents to establish a foreign-owned limited liability company. Such a company is required to have a company secretary who is a local resident. Recently introduced electronic registration should make the process even faster. No investment approval is necessary. Companies can open a bank account and transfer foreign currency without the need for a certificate of capital importation. No trade license is required for cross-border trade.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	86.7	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	n/a	95.0	92.3
Access to land information index (0 = min, 100 = max)	45.0	43.1	41.8
Availability of land information index (0 = min, 100 = max)	90.0	80.1	71.0
Time to lease private land (days)	135	57	62
Time to lease public land (days)	162	126	138

Virtually all land in Hong Kong, China is leased or otherwise held from the Government of the Hong Kong Special Administrative Region (HKSAR). In the early days, leases were for terms of 75, 99 or 999 years, subsequently standardized in the urban areas of Hong Kong Island and Kowloon to a term of 75 years, renewable at a re-assessed annual rent under the provisions of the Government Leases Ordinance. On 15 July 1997, Executive Council (ExCo) endorsed various provisions covering land leases and related matters under the HKSAR Government. One of the general land grant policies as endorsed by ExCo is that new leases of land shall be granted for a term of 50 years from the date of grant (except for new special purpose leases and short term tenancies). Unless there is a provision in the lease / land grant that prohibits against assignment or sub-letting, the leases of land are freely transferable. The sale of new leases of land by the HKSARG is largely by way of public auction or tender. Under the annual Land Sale Programme, the Lands Department of HKSARG publishes lists of sites available for sale upon application or by tender. More information is available at www.landso.gov.hk/en/landsale/. The process of leasing industrial land from a private holder of a government lease takes more than twice as long as the average time of APEC member economies.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	97.4	89.4	85.6
Ease of process index (0 = min, 100 = max)	86.1	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	86.2	63.4	58.4

A new Arbitration Ordinance (Cap. 609), which unifies the arbitration regimes for domestic and international arbitration, was enacted on 11 November 2010 and will come into effect on 1 June 2011 to replace the old Arbitration Ordinance. For following description refers to the arbitration regime effective at the time of the IAB data collection in 2010.

Arbitration in Hong Kong, China, is governed by Arbitration Ordinance (CAP.341), first enacted in 1963 and subject to subsequent amendments. Hong Kong, China currently has different regulation of the domestic and international arbitration. The international regime follows closely the UNCITRAL Model Law and applies some of the Model Law's provisions by references (e.g., Article 1(3) on the definition of international). The new legislation will unify the two regimes based upon the UNCITRAL Model Law. All commercial disputes are arbitrable unless contrary to public policy. Parties are free to appoint arbitrators of any nationality or professional qualifications, and may choose foreign lawyers to represent them in proceedings in Hong Kong, China. Confidentiality of the arbitration proceedings is recognized as a matter of common law and is reflected in Sections 2D & 2E Arbitration Ordinance (Cap 341). Domestic arbitrations are typically submitted to the Hong Kong International Arbitration Centre. International Chamber of Commerce presence was also established in Hong Kong, China in 2009 and serves mainly international arbitrations. The High Court has jurisdiction to rule on the enforcement of domestic and international arbitration awards and its decision is not subject to further appeal. On average, it takes around 3 weeks to enforce an arbitration award rendered in Hong Kong, China, from filing an application to a writ of execution attaching assets.

Global Investment Promotion Benchmarking 2009

Invest in Hong Kong's performance on website quality is rated as best practice (first quintile) and on inquiry handling as good (second quintile), relative to other economies in the world. The overall result is good (second quintile).

For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Indonesia

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	97.5	83.3	91.7
Agriculture and forestry	72.0	82.8	94.6
Light manufacturing (4 sub-sectors)	68.8	93.1	96.7
Telecommunications	57.0	71.6	87.7
Electricity	95.0	82.9	88.1
Banking	99.0	87.5	91.5
Insurance	80.0	86.3	91.7
Transportation	49.0	71.1	78.8
Media	5.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	85.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	82.5	87.9	96.2

The majority of the 33 industry sectors covered by the Investing Across Sectors indicators are subject to overt statutory ownership restrictions in Indonesia. Presidential Regulations No. 77 and No. 111 of 2007 contain a list of sectors that are closed to foreign equity and impose further limitations on foreign capital participation in additional industries. Sectors such as publishing and newspaper businesses are closed to foreign equity ownership. In several other sectors, including forestry, fixed-line telecommunications, and transportation, foreign ownership is limited to a less-than-50% stake. Further sectors, such as the pharmaceutical industry, financial services, construction, and health care, are subject to foreign equity limits, but foreign investors are allowed to obtain a majority stake.

Starting a Foreign Business

Time (days)	86	42	42
Procedures (number)	12	10	10
Ease of establishment index (0 = min, 100 = max)	52.6	69.0	65.0

It takes 12 procedures and 86 days to establish a foreign-owned limited liability company (LLC) in Jakarta, Indonesia. This is slower than both the IAB regional average for East Asia and the Pacific and the IAB global average. In addition to the procedures required of domestic companies, foreign companies must translate and notarize the documents of the parent company in its country of origin. Foreign investors must then file for a foreign investment license from the Investment Coordination Board (BKPM). This license must be obtained before the company deed is executed, and takes on average 14 days. If declined, the foreign investor can submit an appeal to the State Administrative Court (Pengadilan Tata Usaha Negara or PTUN). In addition, foreign companies must obtain a Limited Importer Registration Number (Angka Pengenal Importir Terbatas or APIT) to engage in international trade. The deed of establishment must be made before a notary public. The company registration process is not yet available online. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement for a domestic LLC is IDR 12,500,000 (~\$1,380), whereas for a wholly foreign-owned LLC, it depends on the business sector and the projected sales target.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	78.6	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	n/a	95.0	92.3
Access to land information index (0 = min, 100 = max)	21.4	43.1	41.8
Availability of land information index (0 = min, 100 = max)	85.0	80.1	71.0
Time to lease private land (days)	35	57	62
Time to lease public land (days)	81	126	138

In Indonesia, land ownership is prohibited for non-Indonesian citizens. Foreign companies may lease land under certain use titles. These include land under the right to use with a 25-year period; land under the right to build with a 30-year period; and land under the right to cultivate with a 35-year period. These lease periods may be extended for a similar amount of time in most instances. Not all land in Indonesia is registered with the Land Office and thus a thorough due diligence process is necessary to ascertain the landowner. It is not mandatory to register leases. Leases can offer the lessee the right to subdivide or sublease the leased land as well as to mortgage it or use it as collateral, subject to the terms of the lease contract. There are generally no restrictions on the amount of land that may be leased, though in some cases, especially for industrial activity, location permits may limit the land available for lease to 50 hectares. Land-related information may be found in the land registry and cadastre. They are not linked or coordinated to share data.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	95.4	89.4	85.6
Ease of process index (0 = min, 100 = max)	81.8	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	41.3	63.4	58.4

Law No. 30 (1999) covers arbitration and alternative dispute proceedings, although it does not specifically refer to commercial arbitration. The law stipulates that trade disputes can be settled through arbitration as can concerning rights, which, according to the laws in force, are fully controlled by the parties in dispute. Commercial matters are therefore generally arbitrable. The law makes no distinction between domestic and international arbitration. Indonesian Civil Procedural Law, which was adopted under Dutch colonial rule, is also still in force and contains measures related to arbitration. An arbitration agreement cannot be concluded orally and a record of receipt must accompany it. If the arbitration agreement is concluded after a dispute has arisen, there are requirements set out in the law that the agreement must comply with. If the parties do not specify the language of the arbitration proceedings, the default language is Indonesian. Arbitrators must fulfill certain requirements, including being at least 35, and having at least 15 years of experience in the field. The parties can designate any arbitral institution or rules, provided that they do not conflict with the mandatory provisions of the arbitration law. Failing this, the law sets out procedural rules that can be used. There is no appeal to a decision enforcing an arbitration award, although a decision denying enforcement may be appealed. The court may only execute a domestic award if it meets the requirements set out in the arbitration law. On average, it takes around 22 weeks to enforce an arbitration award rendered in Indonesia or in a foreign country, from filing an application to a writ of execution attaching assets (assuming there is no appeal).

Global Investment Promotion Benchmarking 2009

Indonesia Investment Coordinating Board's performance on website quality is rated as average (third quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is weak (fourth quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Japan

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors measured by the Investing Across Sectors indicators, 26 are fully open to foreign capital participation in Japan. The country's restrictions on foreign equity ownership are above average for the group of high-income OECD economies covered by the indicators. While the manufacturing and primary industries are fully open to foreign equity ownership, Japan imposes ownership restrictions on a number of service sectors. For example, the Japanese Radio Law limits foreign capital participation in companies providing wireless/mobile telecommunications infrastructure to a less-than-33% stake. Similarly, foreign ownership in the domestic railway freight transportation sector is restricted to a maximum of 33%, pursuant to the Cargo Forwarder Service Act. Foreign ownership of nationwide television channels is limited to a maximum of 20%. The port operation and health care sectors are closed to private investment, either foreign or domestic. All port facilities in Japan are owned and operated by publicly owned enterprises. Only individuals or nonprofit organizations may operate hospitals and clinics.
Mining, oil and gas	100.0	83.3	91.7	
Agriculture and forestry	100.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	83.3	71.6	87.7	
Electricity	100.0	82.9	88.1	
Banking	100.0	87.5	91.5	
Insurance	100.0	86.3	91.7	
Transportation	39.8	71.1	78.8	
Media	60.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	50.0	87.9	96.2	
Starting a Foreign Business				
Time (days)	25	42	42	It takes 10 procedures and 25 days to establish a foreign-owned limited liability company (LLC) in Tokyo, Japan. This process is in line with the IAB high-income OECD economies average and faster than the IAB global average. The 3 additional procedures required exclusively of foreign companies add only 3 days to the establishment process. A foreign enterprise must notarize the parent company's documents (company register and signature certificate) in its country of origin. In addition, a foreign company must make a post facto investment declaration to the Bank of Japan for statistical purposes. If the nationality of the parent company does not qualify it for an automatic investment, approval is required before the subsidiary can be established. A prior filing requirement applies if the foreign investment is made in certain protected industries that are considered key to the economic and national security of Japan, as stipulated in Article 27 of the Foreign Exchange and Foreign Trade Act (Foreign Exchange Act). Foreign investors are subject to a waiting period while the government conducts its review of the investment (30 days, which can be shortened to 14 days, and in certain cases, 5 days according to a recent amendment of the Foreign Exchange Act). Business registration is possible online and submission forms are available for download. Foreign-owned subsidiaries are free to open and maintain bank accounts in foreign currency in Japan. However, they must report to the Bank of Japan if they have overseas deposits of more than JPY 100,000,000 (~ \$1,000,000). The minimum paid-in capital requirement in Japan is a symbolic JPY 1.
Procedures (number)	10	10	10	
Ease of establishment index (0 = min, 100 = max)	81.6	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	85.7	83.8	82.1	In Japan, foreign companies have the option to lease or buy privately or publicly held land. In order to lease public land, the prospective lessee must meet certain statutory requirements and the relevant governmental authority must agree to lease the land. In most cases, public land is sold through a public auction. There are no restrictions on the amount of land that may be leased. The maximum legal duration of lease contracts is unlimited. The usual duration of most leases is 30 years. The lease contract can offer the lessee the right to sublease and/or mortgage the leased land, subject to the terms of the contract. Registration of leases is not mandatory. Although registration is not required for a lease to be valid, it is enforceable against a third party only if it has been registered. Most land-related information may be obtained from the land registry, geographic information system (GIS), or land information system (LIS).
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3	
Access to land information index (0 = min, 100 = max)	30.8	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	75.0	80.1	71.0	
Time to lease private land (days)	17	57	62	
Time to lease public land (days)	96	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	95.4	89.4	85.6	The Arbitration Law No. 138/2003 governs arbitration in Japan. It is modeled substantially on the UNCITRAL Model Law, although it does not specifically apply to international commercial arbitration. Unlike the Model Law, it allows domestic courts, with the parties' consent, to attempt a settlement. There is no distinction between domestic and international arbitration in the law. Rather, it focuses on whether the seat of arbitration is in Japan or not. Unless provided otherwise by statute, only civil matters that are capable of being settled may be submitted to arbitration. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. Since 1996, a foreign lawyer may represent the parties only if the principal place of business for the disputing party seeking representation is in a foreign country and the lawyer is retained in that country. Arbitration awards in Japan have the same effect as final and conclusive court judgments, and the enforceability of such awards is guaranteed under the Arbitration Law. On average, it takes around 19 weeks to enforce an arbitration award rendered in Japan, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 21 weeks for a foreign award. This estimate may not be accurate, given the insufficient practice of arbitration in Japan. Culturally, Japan is more prone to mediation than arbitration. The Japanese government rarely uses arbitration as a dispute resolution mechanism in its contracts.
Ease of process index (0 = min, 100 = max)	77.7	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	65.9	63.4	58.4	

Global Investment Promotion Benchmarking 2009

Japan External Trade Organization's performance on website quality is rated as good (second quintile) and on inquiry handling as weak (fourth quintile), relative to other economies in the world. The overall result is average (third quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Republic of Korea

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	100.0	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	49.0	71.6	87.7
Electricity	85.4	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	79.6	71.1	78.8
Media	39.5	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Among the 12 high-income OECD economies covered by the Investing Across Sectors indicators, foreign equity ownership restrictions are relatively stringent in Korea. The country imposes restrictions in 10 of the 33 sectors covered by the indicators, all of which are service sectors. In particular, foreign capital participation is limited to a less-than-50% stake in the telecommunications sectors (fixed-line and wireless/mobile). Electricity transmission and distribution are also subject to a foreign ownership restriction of a maximum of 49% and are currently operating under monopolistic market structures with a dominating publicly owned enterprise. In the media sectors, foreign ownership is limited to a maximum of 30% for companies publishing daily newspapers (for weekly papers, the respective threshold is set at 50%) and to a maximum of 49% for terrestrial and cable television companies. For television companies broadcasting satellite channels, foreign capital participation is limited to a maximum of 33%. The Korean Aviation Act restricts foreign ownership in the domestic and international air transportation sectors to a less-than-50% stake.

Starting a Foreign Business

Time (days)	17	42	42
Procedures (number)	11	10	10
Ease of establishment index (0 = min, 100 = max)	71.1	69.0	65.0

The process of establishing a foreign-owned subsidiary in Korea (Seoul) is faster than both the IAB regional average for high-income OECD economies and the IAB global average. In addition to the procedures required of a domestic enterprise, a foreign company establishing a subsidiary in Seoul must provide an apostille or notarized copy of the incorporation documents of the parent company abroad. Foreign investors must also make foreign investment reports prior to their investment in Korea, pursuant to the Foreign Investment Promotion Act of Korea (FIPA). This report is filed with a foreign exchange bank designated by the Ministry of Finance and Economy or the Korea Trade Investment Promotion Agency (KOTRA), and takes only 1 day. In addition, a foreign investor must report to the Ministry of Commerce, Industry, and Energy in advance, if intending to transfer capital goods. The business registration application with the corporate commercial registry is a simple procedure and should be completed within 1.5 business days. Companies can download business registration documents online. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum capital required at the time of incorporation in order to qualify as foreign direct investment under FIPA is KRW 50,000,000 (~\$44,336).

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	85.7	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3
Access to land information index (0 = min, 100 = max)	68.4	43.1	41.8
Availability of land information index (0 = min, 100 = max)	70.0	80.1	71.0
Time to lease private land (days)	10	57	62
Time to lease public land (days)	53	126	138

In Seoul, although not impossible, it is not common for foreign companies to lease public land. This is due to the relative complexity of the procedures and legal restrictions under the relevant laws and regulations. Most foreign companies usually lease or buy private land. Registering leases is not mandatory. However, if the lessee wishes to enforce its rights against a third party, the lease must be registered. Under the Foreigner's Land Acquisition Act of Korea, a foreign company must file a report with the relevant authority when it acquires land in Korea. Publicly held land is usually sold through a public auction. The maximum lease duration for private land is unlimited; for publicly held land the maximum duration is 50 years. Lease contracts of privately held land can offer the lessee the right to subdivide, sublease, or mortgage the leased land or use it as collateral, subject to the terms of the contract. Land-related information can be found in the land registry and cadastre, which are linked and coordinated to share data.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	94.9	89.4	85.6
Ease of process index (0 = min, 100 = max)	81.9	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	70.2	63.4	58.4

The Arbitration Act was enacted in 1966, and was subsequently amended by Act No. 6083/1999. The amended Arbitration Act incorporates the UNCITRAL Model Law and applies to both domestic and international arbitrations. There are no definitions of domestic or international arbitration in the legislation. The Korea Arbitration Board, which administers arbitrations, defines domestic arbitration as arbitrations where the parties' permanent residency or primary place of business is in Korea. Commercial matters are generally arbitrable, although there are restrictions on submitting to arbitration disputes that affect third-party rights, insolvency matters, patents and trademarks, or anti-trust law. Arbitration agreements must be in writing. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. Under the Attorney-at-Law Act, a foreign attorney who is not qualified to practice law in Korea may not represent parties in arbitration proceedings, and may face criminal sanctions if he or she does so. Online arbitration is not available in Korea, although the Korean Commercial Arbitration Board is considering it. Korean courts are empowered to assist and support arbitration proceedings, but, in practice, such assistance is not often sought. On average, it takes around 25 weeks to enforce an arbitration award rendered in Korea, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 23 weeks for a foreign award. Appeals can be made to the Seoul High Court or Supreme Court.

Global Investment Promotion Benchmarking 2009

Invest Korea's performance on website quality is rated as best practice (first quintile) and on inquiry handling as weak (fourth quintile), relative to other economies in the world. The overall result is good (second quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Malaysia

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The majority of the 33 industry sectors covered by the Investing Across Sectors indicators are subject to overt statutory ownership restrictions in Malaysia. While the manufacturing sectors are fully open to foreign equity ownership, foreign capital participation is limited in the primary sectors and in particular in services sectors such as telecommunications and electricity. Foreign ownership in companies owning and operating telecommunications infrastructure (fixed-line and mobile/wireless) is limited to a maximum of 30%. In addition, the government may require infrastructure operators to transfer their assets to the state after their operating license expires. Foreign capital participation in companies providing telecommunications services (fixed-line and mobile/wireless) is limited to a maximum of 61%, with the requirement to reduce the share of foreign equity to 49% over a period of 5 years. In the electricity sector (generation, transmission, and distribution), foreign equity is generally allowed only up to a 30% stake.
Mining, oil and gas	70.0	83.3	91.7	
Agriculture and forestry	85.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	39.5	71.6	87.7	
Electricity	30.0	82.9	88.1	
Banking	49.0	87.5	91.5	
Insurance	49.0	86.3	91.7	
Transportation	100.0	71.1	78.8	
Media	65.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	90.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	65.0	87.9	96.2	
Starting a Foreign Business				
Time (days)	14	42	42	It takes 11 procedures and 14 days to establish a foreign-owned limited liability company (LLC) in Kuala Lumpur, Malaysia. This is faster than both the average for IAB economies in East Asia and the Pacific and the IAB global average. Two additional procedures are required of a foreign-owned company establishing itself in Kuala Lumpur. It must provide a notarized copy of the documents of the parent company abroad. And, if the foreign-owned company is engaged in manufacturing and has an initial capital investment of MYR 2,500,000 (~\$778,930) or more, or plans on hiring 75 full-time employees, it must obtain a manufacturing license from the Malaysian Industrial Development Authority (MIDA). If the above assumptions do not apply, the foreign-owned company must apply for approval from the Foreign Investment Committee (FIC). Company registration documents are available online, but the submission process is not yet possible online. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement for an LLC is MYR 2 (~\$0.62), unless a foreign company seeks to acquire immovable property, in which case the minimum paid-in capital requirement is MYR 250,000 (~\$78,300).
Procedures (number)	11	10	10	
Ease of establishment index (0 = min, 100 = max)	60.5	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	78.5	83.8	82.1	In Malaysia, foreign companies may lease or buy privately or publicly held land, subject to certain restrictions. For example, the guidelines issued by the Foreign Investment Committee (FIC) stipulate that FIC approval is required for the acquisition of land if it affects native interests or involves a sale of more than MYR 20,000,000. Approval is not required in cases where the land will be used for industrial purposes. Publicly held land may be leased through direct negotiations with the relevant public authority. In most cases, additional approvals will be required from other public bodies, making the process relatively long compared with that for acquiring private land. Lease contracts can offer the lessee the right to renew, subdivide, sublease, or mortgage the leased land or use it as collateral, subject to the terms of the contract. In the case of publicly held land, approval is required from the Foreign Investment Committee (FIC). Land-related information may be found in the registry.
Strength of ownership rights index (0 = min, 100 = max)	87.5	95.0	92.3	
Access to land information index (0 = min, 100 = max)	23.1	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	85.0	80.1	71.0	
Time to lease private land (days)	96	57	62	
Time to lease public land (days)	355	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	94.9	89.4	85.6	Malaysia's Arbitration Act was enacted in 2006 and applies to both international and domestic arbitration. Although its provisions largely reflect those of the UNCITRAL Model Law, there are some notable differences, such as the requirement that parties in domestic arbitration must choose Malaysian law as the applicable law, or that the number of arbitrations must be 3 for international arbitrations and 1 for domestic, unless otherwise agreed. While an arbitration agreement may be concluded by email or fax, it must be in writing; Malaysia does not recognize oral agreements or conduct as constituting binding arbitration agreements. The Kuala Lumpur Regional Centre for Arbitration (KLRC) is the main arbitral institution and uses its own arbitration rules, which are based on the UNCITRAL Arbitration Rules (1976). The KLRC, in conjunction with the Malaysian Network Information Centre, provides limited online dispute resolution services for Internet domain name disputes. Malaysia has ratified both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the ICSID Convention. The courts in Malaysia have stated a general policy in favor of enforcing arbitration agreements and arbitration awards for arbitrations conducted in Malaysia. On average, it takes around 24 weeks to enforce an arbitration award rendered in Malaysia, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 24 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	81.8	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	66.7	63.4	58.4	
Global Investment Promotion Benchmarking 2009				
				Malaysian Industrial Development Authority's performance on website quality is rated as best practice (first quintile) and on inquiry handling as average (third quintile), relative to other economies in the world. The overall result is good (second quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009

Mexico

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 14 economies covered by the Investing Across Sectors indicators in Latin America and the Caribbean, Mexico's foreign ownership regime is among most restrictive. The Foreign Investment Law sets out a list of strategic sectors that are either closed to foreign capital participation, or where foreign ownership is limited. Unlike most other economies in the region, Mexico imposes restrictions on foreign equity ownership not only in the service-, but also in the primary sectors. The oil and gas industry, for example, is closed to foreign ownership, and foreign capital participation in the agriculture and forestry sectors is limited to a maximum share of 49%. In the service industries, foreign investors are not allowed to engage in electricity transmission and distribution. Foreign ownership in electricity generation companies is possible under certain circumstances as defined by the Foreign Investment Law and Electric Energy Public Service Law. Foreign capital participation is also limited to a less-than-50% stake in fixed-line telecommunications, railway freight transportation, port and airport operation, and newspaper publishing. Foreign ownership of nationwide television channels is not allowed.
Mining, oil and gas	50.0	83.3	91.7	
Agriculture and forestry	49.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	74.5	71.6	87.7	
Electricity	0.0	82.9	88.1	
Banking	100.0	87.5	91.5	
Insurance	49.0	86.3	91.7	
Transportation	54.4	71.1	78.8	
Media	24.5	53.1	68.9	
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2	
Starting a Foreign Business				
Time (days)	31	42	42	It takes 11 procedures and 31 days to establish a foreign-owned limited liability company (LLC) in Mexico (Mexico City). This process is among the shortest of the IAB economies in Latin America and the Caribbean and is shorter than the IAB global average. All companies in Mexico require at least 2 partners, regardless of the amount of their participation. In addition to the procedures required of a domestic company, a foreign company must legalize any of the parent company's documents that were issued abroad. A company engaging in international trade must also register with the Importer's Registry (padrón de importadores). There is no required investment approval. However, a foreign company must register with the National Registry of Foreign Investments (Registro Nacional de Inversiones Extranjeras) within 40 business days of incorporation. Regulations of the Public Registry of Commerce mandate that registration of the bylaws and articles of incorporation be completed within 2 business days when the filing is made through the electronic system (SIGER). Companies in Mexico are free to open and maintain a bank account in foreign currency. The minimum capital requirement for LLCs is MXN 3,000 (~\$240), 50% of which must be subscribed and paid in at incorporation.
Procedures (number)	11	10	10	
Ease of establishment index (0 = min, 100 = max)	65.8	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	81.3	83.8	82.1	In Mexico, a foreign company may lease or buy both privately and publicly held land. The purchase of land is subject to certain restrictions. Foreign companies may not purchase land that is located within 100 kilometers of the border and 50 kilometers of the coasts. The lease or purchase of public land requires a reclassification of the land to the private domain. A foreign company must obtain authorization from the relevant minister before acquiring any land. The maximum duration for lease contracts is a renewable term of 20 years. The lease contract can offer the lessee the right to sublease, subdivide, or mortgage the leased land. The transfer of leases of publicly held land is restricted. Registration of leases is not mandatory. If a company decides to register the land, there is a fast-track registration process available for a higher fee. Land-related information may be found in the registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3	
Access to land information index (0 = min, 100 = max)	33.3	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	90.0	80.1	71.0	
Time to lease private land (days)	83	57	62	
Time to lease public land (days)	151	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	79.1	89.4	85.6	Arbitration is governed by a chapter in the Federal Commerce Code, which is largely based on the UNCITRAL Model Law. Mexican courts have exclusive competence to resolve disputes over land and water within Mexican territory. Disputes involving immovable property matters, such as rights in rem, the use and exploitation of concession rights, and lease agreements over such assets, cannot be resolved through arbitration. Parties are free to choose any arbitrators and the language of the proceedings in both domestic and international arbitrations. The law requires arbitrators to disclose any circumstances likely to give rise to justifiable doubts regarding their impartiality or independence. Parties can choose foreign lawyers to represent them in arbitrations in Mexico. There is a pilot program for implementing an online arbitration center at the Federal Consumer's Protection Agency. Mexican courts have stated a pro-arbitration policy in multiple decisions. Arbitration awards are enforced through a summary proceeding that may not be appealed to a higher court. The decision enforcing the award, however, may be challenged by a constitutional trial—"Amparo Indirecto." This is a two-stage constitutional procedure that includes a summary federal proceeding and a federal appeal, which are filed before a federal district court and before a collegiate circuit court, respectively. Such proceedings delay enforcement and can possibly frustrate the arbitration. On average, it takes around 51 weeks to enforce an arbitration award rendered in Mexico, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 46 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	84.7	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	52.7	63.4	58.4	
Global Investment Promotion Benchmarking 2009				
				ProMexico's performance on website quality is rated as best practice (first quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is average (third quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009

New Zealand

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Indicator	Economy score	APEC average	IAB global average (92 economies)	Highlights
Mining, oil and gas	100.0	83.3	91.7	New Zealand is one of the most open economies to foreign direct investment (FDI), as measured by the Investing Across Sectors indicators. All 33 sectors covered by the indicators are fully open to foreign investment. However, all investments that fall within the following criteria of the Overseas Investment Act of 2005 are subject to review by the Overseas Investment Office: the purchase of sensitive land (including indirect purchases through buying of shares of a company that owns sensitive land), purchase of business assets worth more than NZ \$ 100 million, or investments affecting fishing quotas.
Agriculture and forestry	100.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	100.0	71.6	87.7	
Electricity	100.0	82.9	88.1	
Banking	100.0	87.5	91.5	
Insurance	100.0	86.3	91.7	
Transportation	100.0	71.1	78.8	
Media	100.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2	

Starting a Foreign Business

Indicator	Economy score	APEC average	IAB global average (92 economies)	Highlights
Time (days)	2	42	42	New Zealand has the fastest procedures for starting a foreign business of all measured economies. It takes only 2 days and 2 procedures to establish a new foreign-owned limited liability company in Auckland, including authenticating its parent company documents and registering the new company with the New Zealand Companies Office. The incorporation process can be done in a few hours and managed online. An investment approval is only necessary in the case of certain transactions covered by the Overseas Investment Act of 2005: the acquisition of sensitive land, significant business assets (over NZ\$ 100 million) or fishing quotas.
Procedures (number)	2	10	10	
Ease of establishment index (0 = min, 100 = max)	84.2	69.0	65.0	

Accessing Industrial Land

Indicator	Economy score	APEC average	IAB global average (92 economies)	Highlights
Strength of lease rights index (0 = min, 100 = max)	84.6	83.8	82.1	In New Zealand a foreign company may acquire both publicly and, more commonly, privately held land. Leasing industrial land from either a public or private owner in New Zealand is among the fastest processes in the world. There is no legal limit on the maximum duration of a lease contract, but typically leases are signed for 14 years. The lessee is allowed to transfer the lease to any other party (including a foreign company), subdivide and sublease the land, use it as collateral, and mortgage it. Leased land can be of unlimited size. However, there are restrictions on so called sensitive land that require consent from the Overseas Investment Office. Most land information is available online from the Land Information New Zealand (LINZ). LINZ also functions as a land registry and a provider of GIS services. It also houses the Overseas Investment Office.
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3	
Access to land information index (0 = min, 100 = max)	95.0	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	80.0	80.1	71.0	
Time to lease private land (days)	7	57	62	
Time to lease public land (days)	7	126	138	

Arbitrating Commercial Disputes

Indicator	Economy score	APEC average	IAB global average (92 economies)	Highlights
Strength of laws index (0 = min, 100 = max)	97.4	89.4	85.6	Arbitration in New Zealand is governed by the Arbitration Act of 1996 which follows the UNCITRAL Model Law (including the 2006 amendments) without any significant omissions or changes. The Act applies to both domestic and international arbitrations. The only difference lies in some provisions which apply by default to domestic arbitration (and are only optional for international arbitration), including a right of appeal to the High Court on questions of law. These provisions may apply to international arbitrations only if expressly agreed (an 'opt-in' scenario). The Arbitration Act 1996 contains a strict default confidentiality regime. All commercial disputes are arbitrable unless contrary to public policy. The exceptions are small claims (up to a value of NZ\$20,000 by agreement) which are subject to the Disputes Tribunals Act of 1988. Small claims, even consumer claims, are arbitrable but proceedings properly filed in the disputes tribunal will not be stayed on the basis of an arbitration agreement unless arbitral proceedings have previously begun. There is no arbitration center in New Zealand, arbitrations are conducted ad hoc. There is an Arbitrators' and Mediators' Institution of New Zealand Inc (AMINZ), which is a not-for-profit organization dedicated to promoting high quality dispute resolution services by its members. It provides referrals and information to the public, and to organizations in the public and private sectors. On average, it takes around 17 weeks to enforce an arbitration award rendered in New Zealand, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	84.2	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	65.2	63.4	58.4	

Global Investment Promotion Benchmarking 2009

Investment New Zealand's performance on website quality is rated as best practice (first quintile) and on inquiry handling as average (third quintile), relative to other economies in the world. The overall result is good (second quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Papua New Guinea

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	..	83.3	91.7	Data not available.
Agriculture and forestry	..	82.8	94.6	
Light manufacturing (4 sub-sectors)	..	93.1	96.7	
Telecommunications	..	71.6	87.7	
Electricity	..	82.9	88.1	
Banking	..	87.5	91.5	
Insurance	..	86.3	91.7	
Transportation	..	71.1	78.8	
Media	..	53.1	68.9	
Sector group 1 (constr., tourism, retail)	..	96.0	98.1	
Sector group 2 (health care, waste mgt.)	..	87.9	96.2	

Starting a Foreign Business

Time (days)	108	42	42
Procedures (number)	10	10	10
Ease of establishment index (0 = min, 100 = max)	48.9	69.0	65.0

It takes 10 procedures and 108 days to establish a foreign-owned limited liability company (LLC) in Port Moresby, Papua New Guinea. This is slower than both the average for IAB economies in East Asia and the Pacific and the IAB global average. In addition to the procedures required of domestic companies, foreign companies must authenticate the documents of the parent company abroad. They must also apply for a certificate of foreign investment to carry on business in the country. This certificate is granted by the Investment Promotion Authority and usually takes 22 days. A foreign company must also obtain a certificate of capital importation from the Bank of Papua New Guinea (central bank), which takes on average 30 days. Company registration documents are available online on the Investment Promotion Agency's website and filing can be done through the Electronic Filing Facility on the same website. Foreign companies wishing to open and maintain bank accounts in foreign currency must obtain approval from the Bank of Papua New Guinea. This approval is granted within 11 days. There is no minimum capital requirement to establish an LLC.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	..	83.8	82.1	Data not available.
Strength of ownership rights index (0 = min, 100 = max)	..	95.0	92.3	
Access to land information index (0 = min, 100 = max)	..	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	..	80.1	71.0	
Time to lease private land (days)	..	57	62	
Time to lease public land (days)	..	126	138	

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	59.9	89.4	85.6
Ease of process index (0 = min, 100 = max)	55.6	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	26.2	63.4	58.4

Papua New Guinea's Arbitration Act was passed in 1951, well before the UNCITRAL Model Law, and makes no distinction between domestic and international arbitration. The Supreme Court of Papua New Guinea has held that arbitration clauses are not severable from the main contract. There is no arbitral institution in Papua New Guinea and so most arbitrations are conducted on an ad hoc basis. Courts in Papua New Guinea seem to decline jurisdiction when there is an arbitration clause in all or nearly all cases and there are specific provisions in the national law to allow domestic court to order the production of documents or the appearance of witnesses. Judgments enforcing or denying enforcement of an award may be appealed to the Supreme Court. Whilst Papua New Guinea has not ratified the New York Convention, it is a signatory of the ICSID Convention. The IAB team understands from local counsel that there is very little arbitration practice on the ground, and they were unable to estimate the length of time to enforce arbitration awards, whether rendered in Papua New Guinea, or a foreign country.

Global Investment Promotion Benchmarking 2009

Investment Promotion Authority's performance on website quality is rated as good (second quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is weak (fourth quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Peru

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				
Mining, oil and gas	100.0	83.3	91.7	Peru has opened up the majority of the sectors of its economy to foreign investors. Of the 33 sectors covered by the Investing Across Sectors indicators, 32 are fully open to foreign equity ownership. As the only notable exception, foreign capital participation in the domestic air transportation industry is limited to a maximum share of 49%. Foreign companies wishing to provide international passenger air transportation services must have a domicile and a legal representative with broad powers with permanent residence in Peru. This restriction does not affect the ownership structure of such companies, however, which may be 100% foreign-owned.
Agriculture and forestry	100.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	100.0	71.6	87.7	
Electricity	100.0	82.9	88.1	
Banking	100.0	87.5	91.5	
Insurance	100.0	86.3	91.7	
Transportation	89.8	71.1	78.8	
Media	100.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2	
Starting a Foreign Business				
Time (days)	43	42	42	It takes 11 procedures and 43 days to establish a foreign-owned limited liability company (LLC) in Peru (Lima). This is faster than the regional average for Latin America and the Caribbean and in line with the IAB global average. Although foreign ownership is allowed, a company needs a minimum of 2 shareholders and its legal representative must be a resident of Peru. In addition to the procedures required of a domestic company, a foreign company must translate and authenticate the parent company's documents abroad. Foreign companies investing in Peru do not need an investment approval. However, it is mandatory to register a foreign investment with Peru's investment promotion agency, ProInversion, in order to be able to repatriate funds at a later date. Companies in Peru are free to open and maintain a bank account in foreign currency. There is no minimum capital requirement for companies in Peru. However, 25% of the declared capital must be paid in at the time of establishment.
Procedures (number)	11	10	10	
Ease of establishment index (0 = min, 100 = max)	72.5	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	79.3	83.8	82.1	Foreign companies seeking to access land in Peru may lease or buy privately or publicly held land. The Peruvian Constitution states that foreigners cannot own mines, woods, waters, hydrocarbons, or power sources within 50 kilometers of the border, unless allowed by a supreme decree. There are no further restrictions on foreign ownership of land. If the land is publicly owned, it must be sold or leased at public auction. In exceptional circumstances, a party seeking to lease public land may negotiate directly with the relevant public authority. Generally, the duration of lease contracts is a renewable term of 10 years, 6 years for publicly held land. Lease contracts offer the lessee the right to sublease, subdivide, or mortgage the leased land, subject to the terms of the contract. Land registration is not mandatory unless a company seeks to enforce its rights against a third party. Land-related information may be found in the public registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3	
Access to land information index (0 = min, 100 = max)	44.4	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	75.0	80.1	71.0	
Time to lease private land (days)	20	57	62	
Time to lease public land (days)	112	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	97.4	89.4	85.6	The most recent Peruvian Arbitration Law was enacted in 2008 (Decree No. 1071) and is largely based on the UNCITRAL Model Law, with some exceptions. Under Peruvian law, parties can request the exclusion from the award of aspects of fact and law, which the tribunal has decided should not have been part of the decision. The basis for setting aside arbitration awards under Peruvian law is more restrictive than that established by the UNCITRAL Model Law and it must be invoked during the arbitration proceedings. Peruvian law allows foreign parties to renounce their right to set aside an arbitration award. All commercial matters are arbitrable. The law distinguishes between arbitration at law and arbitration at equity. In arbitration at law, the arbitrators must be attorneys, unless the parties agree otherwise. The law establishes that arbitrators can be challenged on grounds concerning their impartiality and/or independence, and requires preserving the confidentiality of arbitration proceedings. Peruvian law establishes strict time frames for conducting arbitration proceedings: the period from the filing of the request to the constitution of the arbitration tribunal is 30 to 40 business days. The law requires courts to assist arbitrators in the taking of evidence and ordering provisional measures. By Official Letter 005-2005-P-CS-PJ of July 4, 2005, the Supreme Court of Peru urges lower courts to respect arbitration as an alternative method of dispute resolution, freely agreed upon by the parties and based on its own principles and rules. On average, it takes around 20 weeks to enforce an arbitration award rendered in Peru, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 41 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	83.3	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	62.6	63.4	58.4	
Global Investment Promotion Benchmarking 2009				
ProInversión's performance on website quality is rated as best practice (first quintile) and on inquiry handling as weak (fourth quintile), relative to other economies in the world. The overall result is average (third quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009				

The Philippines

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	40.0	83.3	91.7
Agriculture and forestry	40.0	82.8	94.6
Light manufacturing (4 sub-sectors)	75.0	93.1	96.7
Telecommunications	40.0	71.6	87.7
Electricity	65.7	82.9	88.1
Banking	60.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	40.0	71.1	78.8
Media	0.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

The Philippines limits foreign equity ownership in certain industries, in particular in the primary and service sectors. For example, foreign capital participation in the mining, oil and gas industries is limited to a maximum share of 40% by the Philippine Constitution. Foreign ownership in those sectors, however, may be allowed up to 100% if the investor enters into a financial or technical assistance agreement (FTAA) with the government. Such agreements are granted for a 25-year term and require a minimum investment of \$50,000,000. In the service sectors, a similar limit of 40% applies to companies providing public utilities (telecommunications, electricity, and transportation). The media industries (newspaper publishing and television broadcasting) and publishing are reserved for domestic companies and no foreign equity participation is allowed.

Starting a Foreign Business

Time (days)	80	42	42
Procedures (number)	17	10	10
Ease of establishment index (0 = min, 100 = max)	57.9	69.0	65.0

It takes 17 procedures and 80 days to establish a foreign-owned limited liability company (LLC) in Manila, the Philippines. This is slower than both the average for IAB economies in East Asia and the Pacific and the IAB global average. Two additional procedures are required exclusively of a foreign-owned company establishing itself in Manila. It must provide an authenticated and legalized copy of the documents of the parent company abroad. Also, if the foreign-owned company plans to engage in international trade, it must register with the Bureau of Customs (BOC) as a regular importer. This registration usually takes 27 days. Investment approval is only required if the company wants to benefit from the investment incentives granted by the Board of Investment. Company registration documents are available online at the Securities and Exchange Commission (SEC) website, although the online submission process is not yet fully operational. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement for a domestic LLC is PHP 5,000 (~\$112), whereas the minimum paid-in capital requirement for an LLC with foreign equity of 40% or more is PHP 9,000,000 (~\$200,000).

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	68.8	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	N/A	95.0	92.3
Access to land information index (0 = min, 100 = max)	23.5	43.1	41.8
Availability of land information index (0 = min, 100 = max)	87.5	80.1	71.0
Time to lease private land (days)	16	57	62
Time to lease public land (days)	N/A	126	138

The Constitution of the Philippines prohibits foreign companies from buying land. Similarly, unless 60% of the company is owned by Philippine nationals, it cannot lease publicly held land. The only option available for foreign companies is to lease private land. Foreign companies must get approval from the Board of Investment for long-term leases. Land may be leased for an initial term of 50 years, renewable for another 25 years. There are restrictions on the amount of land that may be leased. A foreign company's exercise of rights over the land such as subleasing, subdivision, or making improvements is limited by the terms of the lease contract. The transfer of the lease to other foreign entities is restricted. Registration of leases is not mandatory. It is recommended that the lease be registered with the local register of deeds to ensure that lease rights are enforceable against third parties. Most land-related information can be found in the land registry and cadastre.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	95.4	89.4	85.6
Ease of process index (0 = min, 100 = max)	87.0	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	33.7	63.4	58.4

Arbitration in the Philippines is governed by both the Republic Act (RA) 876 (otherwise known as the Arbitration Law [1953]), and RA 9285 (otherwise known as the Alternative Dispute Resolution Act [2004]). The latter is based to a large degree on the UNCITRAL Model Law, with a few exceptions limited to situations in which the parties fail to come to an agreement. These acts apply to both international and domestic arbitrations, which are treated substantially the same under Philippine law. While an arbitration agreement may be concluded by email or fax, it must be in writing: the Philippines does not recognize oral agreements or conduct as constituting binding arbitration agreements. The main arbitral institution is the Philippine Dispute Resolution Center, Inc. (PDRCI), which uses its own rules based on the UNCITRAL Arbitration Rules (1976). The general pro-arbitration stance of the Philippines is reflected both in the 2004 Act and in a string of recent case laws enacted by both the Supreme Court and the lower courts. The Philippines has ratified both the 1958 New York Convention and the ICSID Convention. On average, it takes around 135 weeks to enforce an arbitration award rendered in the Philippines, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 126 weeks for a foreign award.

Global Investment Promotion Benchmarking 2009

Philippine Board of Investments' performance on website quality is rated as good (second quintile) and on inquiry handling as weak (fourth quintile), relative to other economies in the world. The overall result is average (third quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Russian Federation

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The Russian Federation has opened up the majority of the sectors of its economy to foreign investors. While the manufacturing and primary sectors are open to foreign capital participation, Russia imposes ownership restrictions in a number of service sectors. For example, foreign ownership in the domestic and international air transportation is limited to a maximum of 49%. In addition to these capital restrictions, the Air Code of the Russian Federation specifies that the director of an airline company as well as at least two-thirds of the members of the management board must be Russian citizens. Foreign ownership restrictions also exist in the financial services sector, in which foreign capital participation in life insurance companies is limited to a maximum share of 49%. The insurance industry is also subject to a sector-wide limit, whereby the share of assets owned by foreign investors must not exceed 25% of the total assets. Currently this limit has not yet been met, and foreign companies should therefore be able to invest. The federal Law On Banks and Banking Activity proposes the establishment of a similar sector-wide quota for the banking sector, which, however, has not yet been established.
Mining, oil and gas	100.0	83.3	91.7	
Agriculture and forestry	100.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7	
Telecommunications	100.0	71.6	87.7	
Electricity	100.0	82.9	88.1	
Banking	100.0	87.5	91.5	
Insurance	49.0	86.3	91.7	
Transportation	79.6	71.1	78.8	
Media	75.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2	
Starting a Foreign Business				
Time (days)	31	42	42	It takes 10 procedures and 31 days to establish a foreign-owned limited liability company (LLC) in Russia (Moscow). This is slower than the other IAB economies in Eastern Europe and Central Asia, but faster than the IAB global average. All documents needed for registration, and originating abroad (the updated extract from the trade register, for example), must be notarized and legalized in the parent company's country of incorporation and translated into Russian. The state registration is conducted at the unified registry of the Federal Tax Service, where companies also obtain their tax ID number and register with the State Pension Fund, the State Fund of Social Insurance, and the State Fund of Compulsory Medical Insurance. Generally, the state and tax registrations take 5 days. Companies established under Russian laws are considered resident and therefore free to open and maintain accounts in foreign currency in authorized banks. The minimum capital requirement for domestic and foreign LLCs is RUB 10,000 (~\$337), half of which must be paid prior to registration and the rest within 1 year.
Procedures (number)	10	10	10	
Ease of establishment index (0 = min, 100 = max)	68.4	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	85.7	83.8	82.1	Foreign companies seeking to acquire land have the option to lease or buy both privately and publicly held land. Most land in Russia is publicly held. There are restrictions for foreign companies on buying land for agricultural purposes, mining, or forestry, or land that is near the continental shelf. It is difficult to buy public land for construction purposes. Public land may be leased either by a tender process or in compliance with procedures for granting public land for the construction of a manufacturing facility. There are no limits on the lease term for privately owned land. Publicly held land may be leased for up to 49 years. Lease contracts offer the lessee the right to transfer, subdivide, sublease, or mortgage the leased land, subject to the terms of the contract and local planning laws. Registration is mandatory for leases longer than a year. Most land-related information may be found in the Unified State Register of Rights to Immovable Property and Transactions.
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3	
Access to land information index (0 = min, 100 = max)	44.4	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	90.0	80.1	71.0	
Time to lease private land (days)	62	57	62	
Time to lease public land (days)	231	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	71.6	89.4	85.6	The Law on International Commercial Arbitration (1993) regulates international arbitration, in which at least one party must be an entity with foreign investment. The Law on Arbitration Courts in the Russian Federation (2002) regulates domestic arbitration. Under both laws, arbitrators cannot decide <i>ex aequo et bono</i> (at equity), and arbitral awards must always contain the reasons for the decision. The following disputes are not arbitrable: those involving immovable property; shareholders' agreements; bankruptcy disputes; and disputes involving rights over state or municipal property, patents, or trademarks. Disputes about the registration of patents or trademarks cannot be submitted to foreign arbitration. Sole arbitrators must have higher legal education. In arbitral tribunals, only the presiding arbitrator must have higher legal education. The Domestic Arbitration Law, unlike the International Arbitration Law, allows parties to waive their right to appeal the arbitral award in court. Under both laws, parties are free to choose the language of the proceedings and can be represented by foreign lawyers. There are more than 200 arbitral institutions in Russia. The Arbitration Procedural Code of the Russian Federation (2002) regulates the recognition and enforcement of foreign arbitral awards. Russian courts often refuse to recognize or enforce arbitral awards on public policy grounds. The courts have not developed a consistent pro-arbitration policy. State arbitration courts have jurisdiction to enforce arbitration awards, which takes roughly 6 weeks (assuming there is no appeal). Russia has not ratified the ICSID Convention.
Ease of process index (0 = min, 100 = max)	76.1	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	76.6	63.4	58.4	
Global Investment Promotion Benchmarking 2009				
				Ministry of Economic Development and Trade/Department of Investment Policy's performance on website quality is rated as weak (fourth quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is very weak (last quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009

Singapore

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	100.0	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	100.0	71.6	87.7
Electricity	100.0	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	47.4	71.1	78.8
Media	27.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Of the 33 sectors covered by the Investing Across Sectors indicators, 28 are fully open to foreign equity ownership in Singapore, including manufacturing and primary industries. The country imposes ownership restrictions in a number of service sectors. The acquisition of shares in a port and airport operation company, in particular, is limited to a maximum of 5%. The Broadcasting Act of Singapore stipulates that foreign capital participation in television broadcasting is limited to a less-than-50% stake. Private ownership (domestic or foreign) of newspapers is limited to 5%. Furthermore, the Newspaper and Printing Presses Act requires the directors of newspaper companies to be Singaporean citizens. Although the law does not restrict foreign capital participation in the electricity transmission and distribution sectors, their monopolistic market structures dominated by publicly owned enterprises make it difficult for foreign companies to engage.

Starting a Foreign Business

Time (days)	9	42	42
Procedures (number)	4	10	10
Ease of establishment index (0 = min, 100 = max)	78.9	69.0	65.0

With only 4 procedures and 9 days, the process of establishing a foreign-owned limited liability company (LLC) in Singapore is among the fastest of the economies surveyed by IAB and the fastest among IAB economies in the East Asia and the Pacific region. A foreign company that wants to engage in international trade requires no additional procedure other than registering with Singapore customs as a manufacturer to obtain an ordinary or preferential certificate of origin. Investment approval is not required unless the foreign company applies to the Economic Development Board for financial assistance. Application for business registration with the Singapore Accounting and Corporate Regulatory Authority (ACRA) can be filed and monitored online. Foreign companies are free to open and maintain bank accounts in foreign currency. There is no minimum paid-in capital requirement, but at least 1 subscriber share must be issued for valid consideration at incorporation.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	100.0	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3
Access to land information index (0 = min, 100 = max)	55.0	43.1	41.8
Availability of land information index (0 = min, 100 = max)	80.0	80.1	71.0
Time to lease private land (days)	56	57	62
Time to lease public land (days)	98	126	138

Foreign companies may lease or buy privately or publicly held land in Singapore. There are some restrictions on foreign ownership of property. Land is scarce in Singapore. Privately held industrial land is thus uncommon in Singapore. A foreign company wishing to lease land from a private owner may have to apply for a change of use of the land from residential to industrial. Most of the industrial public land in Singapore is held by Jurong Town Corporation, a statutory board of the Singapore government. Leases for durations greater than 7 years must be registered. Lease contracts can be held for a maximum duration of 90 years. Lease contracts offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the contract. In the case of publicly held land, approval may be required from the relevant authority. Generally, industrial land may not be transferred until it has been developed. Most land-related information can be obtained from the Singapore Land Authority.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	94.9	89.4	85.6
Ease of process index (0 = min, 100 = max)	81.8	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	93.5	63.4	58.4

The International Arbitration Act (1994) regulates international arbitration in Singapore. Domestic arbitration law is regulated by the Arbitration Act (2001). Although the international arbitration act is heavily based on the UNCITRAL Model Law, there are a few significant differences between the 2: the act adopts a broader definition of international arbitration, while the Model Law makes it mandatory for the court to stay legal proceedings pending arbitration. The default number of arbitrators mandated by the act is 1; the Model Law requires 3. Finally, the International Arbitration Act allows for an appeal on any question of law arising from an award made in the proceedings, a provision that is absent in the Model Law. Arbitration agreements must be in writing. Oral agreements and arbitration agreements that can be inferred through conduct are not enforceable. The Singapore International Arbitration Centre is the major arbitral institution and its increasing caseload reflects Singapore's policy of encouraging the use of alternative modes of dispute resolution, including arbitration. On average, it takes around 8 weeks to enforce an arbitration award rendered in Singapore, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 7 weeks for a foreign award.

Global Investment Promotion Benchmarking 2009

Singapore Economic Development Board's performance on website quality is rated as good (second quintile) and on inquiry handling as average (third quintile), relative to other economies in the world. The overall result is good (second quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nst/Content/GIPB2009>

Chinese Taipei

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	75.0	83.3	91.7
Agriculture and forestry	0.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	58.8	71.6	87.7
Electricity	92.9	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	44.8	71.1	78.8
Media	50.0	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Chinese Taipei has more restrictions on foreign ownership in various sectors than many other economies. Although manufacturing, construction, tourism, retail, health care and waste management are fully open, sectors like telecommunications, transportation and media have restrictions on foreign equity participation. Agriculture and forestry are completely closed to foreign companies. Furthermore, monopolistic structures in electric power transmission and distribution, railway freight and airport operation, limit the possibility of foreign investment. Chinese Taipei restricts foreign investment in the TV media sector, especially investment from the People's Republic of China -- the investment into terrestrial television broadcasting is completely prohibited, while operation of satellite and cable television is limited to 50% of foreign participation. In contrast, newspaper publishing is fully open to foreign ownership. The restrictions are laid down in the regulations governing investment in Securities by Overseas Chinese and Foreign Nationals.

Starting a Foreign Business

Time (days)	34	42	42
Procedures (number)	10	10	10
Ease of establishment index (0 = min, 100 = max)	65.8	69.0	65.0

It takes 34 days and 10 different procedures to establish a limited liability company in the city of Taipei. A foreign investment approval is necessary and has to be issued by the Investment Commission. This can take up to 7 days and is a prerequisite of incorporation. A certificate of capital importation issued by the Commission is also required but can be handled simultaneously with other establishment procedures. The longest procedure, taking up to 15 days, is the registration of the retirement scheme and work rules with the Council of Labor Affairs. For a foreign company to engage in cross-border trade, an import/export license is necessary and takes up to 2 days to obtain.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	63.1	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	87.5	95.0	92.3
Access to land information index (0 = min, 100 = max)	80.0	43.1	41.8
Availability of land information index (0 = min, 100 = max)	85.0	80.1	71.0
Time to lease private land (days)	14	57	62
Time to lease public land (days)	73	126	138

Foreign companies seeking to access land in Chinese Taipei have the option to lease or buy land from both private and public owners. The process of leasing private land is streamlined and very efficient compared to the regional or global averages. Leasing publicly held land takes place through a public tender process, after which the successful party enters into direct negotiations with the National Property Bureau at the relevant municipal government. Land can be leased for up to 20 years and the lessee has the right to subdivide, sublease, or mortgage the leased land. There are no restrictions on the amount of land that may be leased. Chinese Taipei has both a land registry and a cadastre which house the majority of key pieces of land information a foreign company would be interested in obtaining. As of February 2010, there have been attempts to reform the National Geographic Information System to make it more effective.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	84.9	89.4	85.6
Ease of process index (0 = min, 100 = max)	66.6	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	58.7	63.4	58.4

Arbitration in Chinese Taipei is governed by the Arbitration Law of the R.O.C. enacted in 1998, and amended in 2002. The law is based on the UNCITRAL Model. In addition, there are articles related to the enforcement of arbitration awards in the Civil Code of 1930 (Articles 15.2(4); 129-2(2); 133; and 534(6)). Domestic arbitration should be conducted in Chinese while parties to an international arbitration are free to choose the language of their proceedings. Other than this distinction, the Arbitration Law does not differentiate between international and domestic arbitration. International arbitration is the established method for resolving disputes arising from international commercial matters. All commercial disputes are arbitrable. Arbitration is commonly used in construction disputes and there are two arbitration institutions which exclusively administer such disputes. The law mandates that an arbitrator possess legal or other specified professional knowledge or experience, a reputation for integrity and impartiality, and certain qualifications related to years of professional experience. The Arbitration Law contains default provisions for the impartiality and independence of arbitrators, as well as the confidentiality of arbitration proceedings. On average, it takes around 25 weeks to enforce an arbitration award rendered in Chinese Taipei, from filing an application to a writ of execution attaching assets (assuming there is no appeal).

Global Investment Promotion Benchmarking 2009

Department of Investment Services' performance on website quality is rated as very weak (last quintile) and on inquiry handling as average (third quintile), relative to other economies in the world. The overall result is weak (fourth quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Thailand

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				<p>Among the 87 economies covered by the Investing Across Sectors indicators, Thailand's restrictions on foreign equity ownership are among the most stringent. The majority of the 33 industry sectors measured by the indicators are subject to restrictions on foreign equity participation. The Foreign Business Act B.E.2542/1999 sets out a comprehensive list of sectors and business activities in which foreign capital is limited to a less-than-50% stake. For some of these sectors, the law offers the option to increase the foreign capital share with prior governmental approval. In addition to this general "negative list," certain sector-specific laws impose additional restrictions. For example, foreign ownership in the telecommunications sectors (fixed-line and mobile/wireless infrastructure and services) is restricted to a maximum of 49% by the Telecommunication Act B.E. 2544/2001. Sectors that are fully open to foreign capital participation in Thailand include light manufacturing, pharmaceutical products, and food products.</p>
Mining, oil and gas	49.0	83.3	91.7	
Agriculture and forestry	49.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	87.3	93.1	96.7	
Telecommunications	49.0	71.6	87.7	
Electricity	49.0	82.9	88.1	
Banking	49.0	87.5	91.5	
Insurance	49.0	86.3	91.7	
Transportation	49.0	71.1	78.8	
Media	27.5	53.1	68.9	
Sector group 1 (constr., tourism, retail)	66.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	49.0	87.9	96.2	
Starting a Foreign Business				
Time (days)	34	42	42	<p>It takes 9 procedures and 34 days to establish a foreign-owned limited liability company (LLC) in Bangkok, Thailand. This is faster than both the average for IAB economies in East Asia and the Pacific and the IAB global average. In addition to the procedures required of domestic companies, a foreign company must notarize and legalize the parent company's documents with the Thai consulate in its country of origin. If it wants to engage in international trade, the foreign company must register with the customs department. This takes only 1 day. Foreign-owned companies (per the definition of "foreigner" under the Foreign Business Act B.E. 2542 of 1999 [FBA]) are prohibited from conducting business in certain sectors listed in the aforementioned act. They are required to obtain a foreign investment license (which takes 75 days on average) in other less-restricted sectors. Foreign companies are allowed to invest in the remaining liberalized sectors, but must have a minimum capital of BHT 2,000,000 (~\$61,900). Company registration with the Department of Business Development takes only 2 days and applications can be downloaded and monitored online. Foreign companies are free to open and maintain bank accounts in foreign currency. Foreign companies operating in sectors that are not listed in the FBA are subject to a minimum capital requirement of BHT 2,000,000 (~\$61,900). In order to obtain a foreign business license, when required, the minimum capital depends on the company's estimated investment as presented to the Ministry of Commerce, but must not be less than THB 3,000,000 (~\$92,860).</p>
Procedures (number)	9	10	10	
Ease of establishment index (0 = min, 100 = max)	60.5	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	80.7	83.8	82.1	<p>In Bangkok, foreign-owned companies may buy land subject to approval from the Board of Investment. They may also buy land located on an industrial estate with investment incentives. It is possible to lease both publicly and privately held land, but the lease of publicly held land is not common. A foreign company may be required to provide evidence of its ability to fund a leasehold acquisition before a lease can be registered. Generally, lease agreements are concluded for a maximum period of 30 years, with the option to renew. Lease contracts offer the lessee the right to renew, subdivide, sublease, or mortgage the leased land or use it as collateral, subject to the terms of the contract. Approval from the Board of Investment is required to transfer land to another foreign entity. Most land-related information can be obtained from the land registry, although a power of attorney from the landowner is required before documentation relating to particular land may be inspected.</p>
Strength of ownership rights index (0 = min, 100 = max)	62.5	95.0	92.3	
Access to land information index (0 = min, 100 = max)	27.8	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	70.0	80.1	71.0	
Time to lease private land (days)	30	57	62	
Time to lease public land (days)	128	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	84.9	89.4	85.6	<p>The Thai Arbitration Act (2002) applies to both domestic and international arbitrations taking place in Thailand, and is based on the UNCITRAL Model Law. There are no differences between the regulation of domestic and international arbitrations. There are no restrictions on subject-matter arbitrability. Moreover, there are no restrictions on the parties' ability to appoint an arbitrator of any nationality, gender, or professional qualifications, and arbitration proceedings can take place in any language. There are legal restrictions for foreign lawyers acting as counsel in arbitration proceedings, however. Unlike other economies in the East Asia and Pacific region, Thailand does not offer online arbitration. There are several arbitral institutions in the country that administer both domestic and international arbitrations, such as the Thai Arbitration Institute. Although the law requires courts to assist arbitral tribunals with providing interim orders, counsel has noted that, in practice, parties to an arbitration rarely submit such motions to the courts, and that the discovery process is amicable. Arbitration awards are enforced in the court of first instance, the Bangkok Civil Court, but decisions relating to enforcement can be appealed to the Supreme Court. On average, it takes around 54 weeks to enforce an arbitration award rendered in Thailand, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 54 weeks for a foreign award. Thailand has ratified the 1958 New York Convention.</p>
Ease of process index (0 = min, 100 = max)	81.8	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	40.8	63.4	58.4	
Global Investment Promotion Benchmarking 2009				
				<p>Thailand Board of Investment's performance on website quality is rated as good (second quintile) and on inquiry handling as weak (third quintile), relative to other economies in the world. The overall result is average (third quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009</p>

The United States

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
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Investing Across Sectors

Foreign equity ownership indexes
(100 = full foreign ownership allowed)

Mining, oil and gas	100.0	83.3	91.7
Agriculture and forestry	100.0	82.8	94.6
Light manufacturing (4 sub-sectors)	100.0	93.1	96.7
Telecommunications	100.0	71.6	87.7
Electricity	100.0	82.9	88.1
Banking	100.0	87.5	91.5
Insurance	100.0	86.3	91.7
Transportation	85.0	71.1	78.8
Media	62.5	53.1	68.9
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1
Sector group 2 (health care, waste mgt.)	100.0	87.9	96.2

Of the 33 sectors covered by the Investing Across Sectors indicators, 31 are fully open to foreign equity ownership in the United States. The only exceptions are the domestic air transportation and TV broadcasting industries. According to the Federal Aviation Act of 1958, foreign investors can only hold a maximum of 25% of the shares of a company providing domestic air transportation services in the United States. Furthermore, the president and at least two-thirds of the board of directors and other managing officers of such a company must be U.S. citizens. The aforementioned restrictions do not apply to the provision of international air transportation services, which are fully open to foreign capital participation. The Communications Act of 1934 specifies that foreign ownership in the TV broadcasting sector is limited to a maximum of 25%. However, the FCC has the discretion to allow higher levels of indirect foreign ownership (up to 100%) if consistent with the public interest. Cable television providers are exempted from this restriction.

Starting a Foreign Business

Time (days)	11	42	42
Procedures (number)	8	10	10
Ease of establishment index (0 = min, 100 = max)	80.0	69.0	65.0

The process of establishing a foreign-owned subsidiary in the United States (New York) takes a foreign investor on average 11 days and requires 8 procedures, shorter than the IAB regional and global average. While it is possible to use New York state law governing limited liability companies (LLCs), the majority of foreign investors choose to set up their companies in Delaware due to this state's simple corporate and case law. A foreign company wishing to set up a subsidiary in New York must obtain authorization to do business in that state prior to operations. Although the regular establishment process is already fairly quick, the United States offers expedited processing of formation documents. For an additional, nonrefundable fee, the Division of Corporations will ensure that the documentation is processed within an even shorter time frame. Foreign investments must be reported to the U.S. Department of Commerce, Bureau of Economic Analysis, by filing form BE 605. There is no paid-in capital requirement for setting up a foreign-owned subsidiary under New York LLC law. In addition, there are no applicable statutory provisions that would restrict the composition of the board of directors or appointment of managers based on nationality, ethnicity, race, or gender.

Accessing Industrial Land

Strength of lease rights index (0 = min, 100 = max)	100.0	83.8	82.1
Strength of ownership rights index (0 = min, 100 = max)	100.0	95.0	92.3
Access to land information index (0 = min, 100 = max)	50.0	43.1	41.8
Availability of land information index (0 = min, 100 = max)	95.0	80.1	71.0
Time to lease private land (days)	44	57	62
Time to lease public land (days)	92	126	138

Foreign companies seeking to access land in the United States have the option to lease or buy land from both private and public owners. It is not common for either domestic or foreign entities to buy government property, as the approval process is time-consuming. If several lessees are interested in leasing a particular parcel of publicly held land, a "request for proposal" process is conducted requiring all interested parties to compete for the land. In certain circumstances, it is possible to negotiate the lease or sale of publicly owned land without such a process. A foreign-owned company would typically not be legally required to perform environmental or social impact assessments in order to lease land already zoned for industrial use. However, certain public agencies may impose this obligation in accordance with the Department of Environmental Conservation before concluding a lease. Lease contracts offer the lessee the right to sublease, mortgage, or subdivide the land. Subdivision is subject to applicable zoning laws.

Arbitrating Commercial Disputes

Strength of laws index (0 = min, 100 = max)	85.0	89.4	85.6
Ease of process index (0 = min, 100 = max)	81.8	74.3	70.3
Extent of judicial assistance index (0 = min, 100 = max)	75.3	63.4	58.4

Arbitration of disputes and enforcement of arbitral awards are governed by the 1925 Federal Arbitration Act (FAA) and arbitration statutes enacted by the states. Many states have also adopted the Uniform Arbitration Act (1956). Federal arbitration law preempts state arbitration law where interstate transactions are involved. The FAA does not address several issues expressly considered in the UNICTRAL Model Law, such as separability, challenging arbitrators, provisional relief, and the like. The FAA states that an arbitral award may be vacated where there is "evident partiality" on the part of an arbitrator. Nonetheless, party-appointed arbitrators have historically been presumed (absent contrary agreement) to have a measure of partiality toward the party that appointed them, especially in domestic arbitrations. In addition, there may be more disclosure requirements for domestic, than for international arbitrations. The American Arbitration Association (AAA) and the International Center for Dispute Resolution administer online arbitrations, including disputes between suppliers and manufacturers. Domestic courts are generally supportive of arbitration, and have adopted pro-arbitration policies. On average, it takes around 19 weeks to enforce an arbitration award rendered in the United States, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 18 weeks to enforce a foreign award.

Global Investment Promotion Benchmarking 2009

Invest in America's performance on website quality is rated as good (second quintile) and on inquiry handling as average (third quintile), relative to other economies in the world. The overall result is good (second quintile). For more information, please visit <http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009>

Viet Nam

Indicators	Economy score	APEC average	IAB global average (92 economies)	Highlights
Investing Across Sectors				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 18 are fully open to foreign equity ownership in Viet Nam, including manufacturing industries. Overt statutory ownership restrictions exist primarily in strategic services sectors, such as telecommunications (fixed-line and wireless/mobile), electricity transmission and distribution, and select transportation sectors. In accordance with Viet Nam's WTO commitment, the government decree 121/2008/ND-CP imposes a limit of 49% on foreign capital participation in companies providing telecommunications infrastructure. The respective limit for foreign ownership in the telecommunications service providers is 51%. The electricity transmission and distribution sectors operate under direct government control and are closed to foreign companies. Foreign capital participation in the domestic and international air transportation industries is limited to a maximum share of 49%. Under the Law on Press, private investment (domestic or foreign) in the media sectors, including television broadcasting and newspaper publishing, is prohibited.
Mining, oil and gas	50.0	83.3	91.7	
Agriculture and forestry	100.0	82.8	94.6	
Light manufacturing (4 sub-sectors)	75.0	93.1	96.7	
Telecommunications	50.0	71.6	87.7	
Electricity	71.4	82.9	88.1	
Banking	65.0	87.5	91.5	
Insurance	100.0	86.3	91.7	
Transportation	69.4	71.1	78.8	
Media	0.0	53.1	68.9	
Sector group 1 (constr., tourism, retail)	100.0	96.0	98.1	
Sector group 2 (health care, waste mgt.)	75.5	87.9	96.2	
Starting a Foreign Business				
Time (days)	94	42	42	It takes 12 procedures and 94 days to establish a foreign-owned limited liability company (LLC) in Ho Chi Minh City, Viet Nam. This is slower than both the average for IAB economies in East Asia and the Pacific and the IAB global average. In addition to the procedures required of domestic companies, a foreign company must translate the documents of the parent company into Vietnamese, have a licensing authority or a notary public certify them as a "true copy" in its economy of origin, and legalize said documents with the embassy or consulate of the economy of origin in Viet Nam and with the Vietnamese Department of Foreign Affairs. In addition, the foreign company must apply for foreign investment approval from the Department of Planning and Investment (DPI) in the form of an investment certificate. This certificate is also required of domestic LLCs with planned investment projects of over 15 billion dong. The certificate takes on average 57 days to obtain and is in lieu of the business registration certificate required of domestic LLCs. The application is available online and should include a specific business project, including a feasibility study and an environmental assessment. Foreign companies are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement for foreign or domestic companies in Viet Nam.
Procedures (number)	12	10	10	
Ease of establishment index (0 = min, 100 = max)	57.9	69.0	65.0	
Accessing Industrial Land				
Strength of lease rights index (0 = min, 100 = max)	77.3	83.8	82.1	In Viet Nam, the land is owned by the state and cannot be bought. The most common way to acquire land in Ho Chi Minh city is to lease publicly held land. A foreign company may only lease private land from the developer of an industrial zone. The process of acquiring land from the state involves obtaining clearance from the state and negotiating with the holder of the land to relinquish it to the state. The state can then lease the land to the foreign company. This process can take a few months or several years to complete. Land may be leased for a maximum duration of between 50 and 70 years. Lease contracts offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the contract and approval from the relevant government authority. Land-related information can be found in the registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	N/A	95.0	92.3	
Access to land information index (0 = min, 100 = max)	57.9	43.1	41.8	
Availability of land information index (0 = min, 100 = max)	92.5	80.1	71.0	
Time to lease private land (days)	120	57	62	
Time to lease public land (days)	133	126	138	
Arbitrating Commercial Disputes				
Strength of laws index (0 = min, 100 = max)	84.9	89.4	85.6	Arbitration in Viet Nam is governed by the Ordinance on Commercial Arbitration (2002). Decree No. 25 (2004) and Resolution No. 05 (2003) provide guidelines on implementing certain provisions of the ordinance. These guidelines have contradictory provisions, which make the arbitration regime less efficient. All commercial matters can be resolved by arbitration, providing that the respective parties are registered business entities. There are restrictions on parties' autonomy to select an arbitrator. The law stipulates, for example, that the arbitrator must be a Viet Name citizen and have at least 5 years of experience in his or her field. There are several arbitral institutions in Viet Nam. The number of arbitrations undertaken in Viet Nam, however, is still relatively small. Viet Nam's inefficient arbitration regime makes arbitration a less popular option. For example, awards rendered by Viet Name arbitrators have only been enforceable since 2003. There are also numerous grounds for setting aside an arbitral award. Courts do not enforce arbitration awards, but the provincial enforcement authority, which is administered by the Ministry of Justice, does. Foreign awards are enforced in court, and this is an easier process because Viet Nam is a signatory to the 1958 New York Convention. On average, it takes around 13 weeks to enforce an arbitration award rendered in Viet Nam, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 17 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	61.8	74.3	70.3	
Extent of judicial assistance index (0 = min, 100 = max)	57.2	63.4	58.4	
Global Investment Promotion Benchmarking 2009				
				Ministry of Planning and Investment - Foreign Investment Agency's performance on website quality is rated as average (third quintile) and on inquiry handling as very weak (last quintile), relative to other economies in the world. The overall result is weak (fourth quintile). For more information, please visit http://www.ifc.org/ifcext/fias.nsf/Content/GIPB2009

6.

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7.

ABBREVIATIONS AND GLOSSARY

Abbreviations

AAA	American Arbitration Association
ADR	Alternative Dispute Resolution
AGCHO	Afghan Geodesy and Cartography Office (Afghanistan)
ANIP	National Agency for Private Investment (Angola)
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BEAC	Bank of Central African States
DB	Doing Business
ECOWAS	Economic Community Of West African States
EPZ	export processing zone
EIU	Economist Intelligence Unit
EU	European Union
FDI	foreign direct investment
FIAS	FIAS, The Investment Climate Advisory Service
FYR	Former Yugoslav Republic (Macedonia)
GATS	General Agreement on Trade in Services
GCC	Gulf Cooperation Council
GDP	gross domestic product
GILD	Global Investment Locations Database
GIS	Geographic Information System
GNI	gross national income
IAB	<i>Investing Across Borders</i> project
IAS	Investing Across Sectors indicators
IBA	International Bar Association
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IEG	Independent Evaluation Group
IFC	International Finance Corporation
ILI	International Law Institute
IMD	Institute for Management Development
IMF	International Monetary Fund
IPI	investment promotion institution
IPA	Investment Promotion Agency
IT	information technology
KOTRA	Korea Trade-Investment Promotion Agency (Korea)
LCIA	London Court of International Arbitration
LGAF	Land Governance Assessment Framework
LIS	Land Information System
LLC	Limited Liability Company
M&A	mergers and acquisitions
M&E	monitoring and evaluation

MIGA	Multilateral Investment Guarantee Agency
NGO	Nongovernmental Organization
OCR	Office of Company Registration
OECD	Organisation for Economic Co-operation and Development
OHADA	Organisation for the Harmonization of Business Law in Africa
OPIC	Overseas Private Investment Corporation
PLC	public limited company
PPP	purchasing power parity
RADAR	Registro e Rastreamento da Atuação dos Intervenientes Aduaneiros (Brazil)
R&D	research and development
SAARC	South Asian Association for Regional Cooperation
SAGIA	Saudi Arabian General Investment Authority (Saudi Arabia)
SADC	Southern African Development Community
SEZ	special economic zone
SME	small and medium enterprise
TNC	Transnational Corporation
UEMOA	Monetary Union of West Africa
UNCITRAL	United National Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
USAID	U.S. Agency for International Development
WBG	World Bank Group
WGI	Worldwide Governance Indicators

Glossary of terms:

Ad hoc arbitrations = Arbitrations that are not conducted under the auspices or supervision of an arbitration institution. Instead, parties simply agree to arbitrate, without designating any institution to administer their arbitration. The parties will sometimes select a pre-existing set of procedural rules designed to govern ad hoc arbitrations, for example, the UNCITRAL has published such rules.

Agency = The person, agency, or other type of organization with which the foreign company or its legal representatives are required to interact in order to set up and run the company. It can include government agencies, municipal authorities, professional associations, auditors, notaries, and courts.

Alternative dispute resolution = The procedure for settling disputes by means other than court litigation. These methods include among others mediation, conciliation and arbitration.

Arbitrability = Whether the claim is capable of being resolved by arbitration. Certain categories of claims are considered in different economies as being incapable of resolution by arbitration. Such claims are deemed “non-arbitrable” because of their perceived public importance.

Arbitration = A means by which disputes can be definitively resolved, pursuant to the parties’ agreement, by independent, non-governmental decision-makers.

Arbitration agreement = An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship.

Authority = See definition for Agency.

Cadastre = A cadastre is normally a parcel-based and up-to-date land information system containing a record of interests in land (rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, ownership or control of those interests, and often the value of the parcel and its improvements. (Please note that the cadastre is more common in civil law jurisdictions than in common law jurisdictions.)

Calendar days = As opposed to business days, calendar days include every day of the week (working and nonworking days). For example, 1 week has 7 calendar days but fewer business days (5 or 6, typically).

Commercial = Has the meaning ascribed to it in the 1985 UNCITRAL Model Law on International Commercial Arbitration

Concession agreement = A right granted by the government to a private company. It specifies the rules under which the company can operate locally.

Confirmation of an arbitration award = The parties may apply to court for an order “confirming” the arbitration award. The court will normally confirm the award unless it has grounds for refusal or denial of enforcement.

Conveyance = A method whereby rights in land are transferred from one owner to another. The rights may be full ownership or a mortgage, charge, or lease.

Customary tenure = The holding of land in accordance with customary law. That is, the right to enjoy some use of land that arises through customary, unwritten practice rather than through written or codified law.

Deed = A legal document laying out the conditions under which land is transferred.

Enforcement of an arbitration award = the conversion of the award into a court judgment with all the sanctions that a court judgment entails, such as the right to have the debtor's assets seized.

FDI = According to the International Monetary Fund, FDI is a category of cross-border investment that involves residents of one economy obtaining a lasting interest in an enterprise located in another economy. A lasting interest is commonly understood to involve at least 10% of ordinary shareholding or voting power. In effect, FDI need not entail much transfer of funds and can involve a firm bringing its brand, technology, management, and marketing strengths to bear on its local interest.

Freehold = Ownership of land distinct from leasehold, in which the owner has the maximum rights permissible within the tenure system.

Geographic information system (GIS) = A system for capturing, storing, checking, integrating, analyzing, and displaying data about the Earth that is spatially referenced. It is normally taken to include a spatially referenced database and appropriate applications software.

ICC Amicable Dispute Resolution Rules = These rules permit the parties to settle their disputes or differences amicably with the assistance of a third party, the Neutral, within an institutional framework. The Rules do not include arbitration, but only proceedings which do not result in a decision or award of the Neutral which can be enforced at law.

ICSID Convention = The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force in October 1966 and was established by ICSID.

Institutional arbitrations = Arbitrations undertaken within a particular organization providing institutional arbitration services. Some of the best-known international arbitration institutions are the International Chamber of Commerce (ICC), the American Arbitration Association (AAA), and the London Court of International Arbitration (LCIA).

Land information system (LIS) = A parcel-based GIS, used as a system for acquiring, processing, storing, and distributing information about land. It also can be a tool for legal, administrative, and economic decision making and an aid for planning and development.

Land registry = The definitive record of all registered properties, comprising the registered details for each property.

Land registration = The process of recording rights in land in the form of either registration of deeds or registration of title to land.

Land tenure = Tenure is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated and transferred within societies. Land-tenure systems determine who can use what resources, for how long, and under what conditions.

Land title (or Title) = The evidence of a person's right to property or land or the right itself.

Lease = A lease is a contractual agreement between a landlord and a tenant for the tenancy of land. The period of the lease is known as the "term" of the lease. The lease should be for a definite period, or for a period that is capable of definition. The date of commencement should be fixed, and the date of termination either fixed, or capable of being fixed. The lease should offer the tenant the right to exclusive possession of the land, thus giving the lessee the right to exclude others, including the landlord, from the land.

Leasehold = Land held under a lease, which is a contract by which the right of exclusive possession of land is granted by a landlord (the lessor) to a tenant (the lessee) for an agreed amount of money and an agreed period of time.

Legally required = A procedure is said to be legally required when the laws or regulations of the economy specifically mandate it as a requirement.

Mergers & Acquisitions = The phrase mergers and acquisitions (abbreviated M&A) refers to the aspect of corporate strategy, corporate finance and management dealing with the buying, selling and combining of different companies that can aid, finance, or help a growing company in a given industry grow rapidly without having to create another business entity.

Mortgage = The transfer of a property by a debtor (called the mortgagor) to a creditor (called the mortgagee) as security for a financial loan with the provision that the property be returned when the loan is paid off. In some legal systems there is a provision that the mortgagee has the power to sell the concerned property when the interest is not paid in time and the loan is not paid off by a certain date in accordance with the agreed upon stipulations.

N/A = Not applicable.

National law = This term includes statutes, regulations and rules established by court decisions in an economy, as well as any mandatory regulatory or administrative requirements. If the economy is a federation of states (or similar entities), "national law" also includes the law of the state in which the largest business city is located, to the extent such state law may be applicable.

New York Convention = 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which entered into force in June 1959. The Convention requires national courts to recognize and enforce foreign arbitral awards, subject to specified exceptions; requires national courts to recognize the validity of arbitration agreements, subject to specific exceptions; and requires national courts to refer parties to arbitration when they have entered into a valid agreement to arbitrate that is subject to the Convention.

Portfolio investment = Portfolio investment, in contrast to foreign direct investment, represents passive holdings of securities such as foreign stocks, bonds, or other financial assets and does not convey significant control over the management or operations of the foreign firm.

Real property = Land and any things attached to the land, including buildings, apartments, other constructions, and natural objects, such as trees.

Registration of deeds = A system of proof of property ownership and interests based on the registration of transfer and other deeds. In an official deeds registration system, a copy of the relevant deed, for example, a transfer deed, is deposited in the deed registry. An appropriate entry is then made into the register of the time, date, parties, and transaction, as may be required by the particular jurisdiction.

Registration of title = A system for improving the quality of ownership and proof of title. There are 2 parts in the register. The first is a map on which each parcel is demarcated and identified by a unique parcel identifier. The second is a text that records details about the title, the owner, and any rights or restrictions associated with the parcel's ownership such as restrictive covenants or mortgages. Under a title registration system, a transfer of the property simply results in a change in the name registered.

Seat of arbitration = The location of the arbitration forum. The seat of arbitration has a number of significant effects upon the arbitration, including the potential of national court interference with arbitration proceedings, national court's assistance with arbitration proceedings, the law applicable to the arbitration agreement if the parties have not agreed otherwise, and national court's enforcement of arbitration awards.

Setting aside of an arbitration award = The parties may commence an action to legally nullify the award so that it cannot be enforced locally, and in general will only be enforceable outside the seat of arbitration with great difficulty.

Severable = The severability or separability doctrine provides that an arbitration agreement, even though included in and related closely to an underlying commercial contract, is a separate and autonomous agreement.

Subnational = Subnational laws and regulations refer to laws of the local, municipal, provincial, or state governments. In contrast, national laws and regulations refer to laws of the central government.

Subsidiary = A business that is owned by a parent company and managed under its direction.

Time in practice = Time required to complete a procedure in the experience of the survey respondent, as opposed to the time frame given in the laws and regulations.

UNCITRAL Model Law on International Commercial Arbitration = This was adopted by the UNCITRAL in June 1985, and amended in 2006. This "Model Law" aims at resolving disparities in different national laws dealing with international commercial arbitration. It is not binding, but states may incorporate it into their domestic legislation.

Vacating of an arbitration award = This is similar to an action that the parties commence to set aside an arbitration award.

7.

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