Senate Rural and Regional Affairs and Transport References Committee

Questions on Notice – Friday, 17 February 2012 CANBERRA

Inquiry into the Foreign Investment Review Board National Interest Test

Question Number	Page No's.	Witness	Question asked by	Answered
1	10	NSW Farmers Association	Senator Sterle	Unanswered as at 24/6/13
2	10	NSW Farmers Association	Senator Back	Unanswered as at 24/6/13
1	20	WA Farmers Federation	Senator Back	10/9/12
1	27	Cargill	Senator Back	8/3/12
2	27-28	Cargill	Senator Back	8/3/12
3	28	Cargill	Chair	8/3/12
4	29	Cargill	Senator Nash	8/3/12
1	34	Treasury	Senator Back	9/3/12
2	37-38	Treasury	Senator Edwards	9/3/12
3	39	Treasury	Chair	9/3/12
4	39	Treasury	Senator Edwards	18/4/12
1	48	ACCC	Chair	15/3/12
2	51	ACCC	Senator Colbeck	15/3/12

1	55	ATO	Senator Nash	4/5/12
2	55	ATO	Senator Nash	4/5/12
3	56	ATO	Senator Nash	4/5/12

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

Public Hearing Friday, 17 February 2012

Questions Taken on Notice – NSW Farmers Association

1. HANSARD, PG 10

Mr McDonnell: From my perspective, if there is a local community and a larger company or foreign investment company comes in, they generally are not buying in the local community. They will go out to the bigger companies, put tenders out and source it all out. Then the small business owner in that small community does not receive the benefit of that business but, if you break it up into little sectors, the product that they put out to tender would not be big enough, so it would be just a waste of time and expenditure and they would go to the local community.

Senator STERLE: That is a very interesting statement. We should explore that. There is nothing more heartbreaking than travelling through some of those massive regional centres, where Senator Back and I come from, where you see windows boarded up and businesses closed. Can you give us some examples of where this has happened recently because foreign investment is not purchasing locally? Can you give us some towns?

Mr McDonnell: I would have to come back to you.

2. HANSARD, PG 10

Senator BACK: The view has been put to me that we could apply to any person or group wanting to purchase land in Australia the same restrictions that would be placed upon an Australian entity wishing to acquire land in their country. Is that an unnecessarily restrictive approach to take or do you think that is a reasonable approach to take? In other words, if a Qatari entity wanted to buy in Australia—and we know the Qatari government actually own more land in Australia than there is land in Qatar—one criterion for the Foreign Investment Review Board would be to ask: if an Australian wished to purchase land in Qatar or the Emirates or wherever, what would be the access to land in that country and should that be a criterion for that country or a citizen of that country who wished to acquire land in Australia? It would be the same for an agribusiness, for that matter.

CHAIR: You might choose to take it on notice.

Mr McDonnell: Yes, we will take it on notice.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

Public Hearing Friday, 17 February 2012

Questions Taken on Notice – WA Farmers Federation

1. HANSARD, PG 20

Senator BACK: I know we do. But, anyhow, you may need to take my question on notice. Clearly, the evidence has come out and everyone is aware that there is not transparency on this whole issue. I am interested in knowing whether or not WA farmers have, if you like, a list of criteria that you believe could be put before this committee and should used by the Foreign Investment Review Board—a transparent list that is available for all the Australian community to look at and is there for would-be foreign investors so that they are aware. Obviously it goes to issues like the limit and whether that $244 million goes, perhaps, to a national interest test. Maybe there are different criteria for sovereign based investors versus overseas corporate investors. The reference seems to be to agricultural properties—I have an equal concern about agribusinesses. To assist this committee in working towards a report and recommendations, do you have with you or can you supply to us on notice the criteria that your organisation believes should find their way into the practices and policies of government and the Foreign Investment Review Board.

Mr A Hill: The short answer is: at this stage we have some thoughts about a list, but we would be happy if we were given an appropriate timeframe to send that over to the committee.

September 7, 2012

Chris Curran
Principal Research Officer
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
Canberra ACT 2600

Dear Chris,

The Western Australian Farmers Federation (Inc.) (WAFarmers) thanks you for making contact regarding the 'question on notice' put to our members during their appearance at the Committee's hearing in February 2012. At that time, WAFarmers was asked to provide criteria which we believe should be included in the practices and policies of government and the Foreign Investment Review Board.

In response, WAFarmers comments that our members would consider that the 'local or regional' interest needs as much consideration as does that of the 'national' interest. Whilst there are any number of minor points that could be included in this submission on this, we recognise the need for a system which is workable and actually delivers a useable outcome.

WAFarmers believes that in the initial phase, much of the current lack of transparency in this issue, can be addressed by the establishment of a searchable database, via which the purchase or ownership utilising some form of foreign investment is listed within a specified, compulsory reporting process and timeline. This would include a clear statement on the source and structure of the overseas-based purchaser or originator of funds which are being managed by an Australian based business.

WAFarmers believes that this approach would address the current uncertainty with 'sovereign' and/or 'private' investment, and also the question of a 'trigger value' of the purchase. It therefore provides for a far greater level of much needed transparency in the future levels of ownership of Australian farmland by foreign interests than currently exists.

WAFarmers thanks you for the opportunity to make additional comments to this Inquiry. To further discuss the issues raised in this submission, please do not hesitate to contact myself or WAFarmers Director of Policy, Alan Hill on 9486 2100.

Yours sincerely

Dale Park
President

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SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

Public Hearing Friday, 17 February 2012

Questions Taken on Notice – Cargill

1. HANSARD, PG 27

Senator BACK: Mr McBride, do you have experience of Cargill's acquiring and operating agricultural enterprises in other countries—that could be of some assistance to this committee in terms of an understanding of what requirements they may have, for example, in the US, in the UK, in Argentina, in Brazil? I am just anxious to know what opportunities, constraints or conditions are applied to foreign agricultural investors in other countries?

Mr McBride: I do not have a wealth of experience in that regard, but my understanding is that a number of countries operate what they call a foreign investment register around farmland and around businesses, and you are obliged by law to register if you make a purchase, and that register is publicly available and therefore you have a wealth of knowledge around transparency and who owns what: I can take that question on notice and try to gather some information, if you like.

2. HANSARD, PG 27-28

Senator BACK: I have not spoken to Mr Costello personally but I have read a lot about it and one of the reasons was the fear that Shell might say, 'We're going to shelve that asset and will continue developing our assets in the gulf.' There is obviously an equivalent there. Without making foreign investment unattractive how do we protect the agribusiness market against the opportunism of foreign entities coming in and raiding, in a sense, and putting the Australian product to one side so that it then does not actually compete in our export markets with produce from that same company produced out of other markets? Is there a mechanism there?

Mr McBride: Not that I am aware of, but I am not too sure that it would be a very good investment for an international public or private company to come in here and close down an investment. My understanding with Cargill is that we came here—we have been here for a long time, since 1968 or 1967—and subsequently grew the business to the stage where we bought AWB, which was a big capital investment. Last year, we spent an extra $10 million on storage and handling. And we have the balance sheet and the long-term view to grow that business. And we have the expertise, too, to assist in growing that business. We have people in all markets throughout the world. Over a period of time, we think that we can bring in solutions and, at the end of the day, get a better price for our farmer customers.

I am not really sure about the reason behind your question. I can understand the example that you gave, but I cannot understand its application to agriculture. We export over 60 per cent of what we produce. Regarding wheat, as the chair would know, we take six or seven in domestic, depending on the size of the crop, and the rest gets exported over an 18-month period of time. At the end of the day, Cargill goes in to invest in and grow a business. We do not go in to close businesses down to benefit another part of our business. We would be better off just sitting out of it.

Senator BACK: I would appreciate it if you were able to provide this committee with some advice on what might be equivalence in other countries. In line with your submission, we need to get to this level of transparency for all parties—the would-be investor and the Australian community.

3. HANSARD, PG 28

CHAIR: Regarding the BFB-Cargill Black River arrangement, do you have other arrangements like that in Australia that would be flying under the foreign investment—

Mr McBride: Not that I am aware of. I am fairly sure that we do not.

CHAIR: Could you take that on notice.

Mr McBride: Yes; for sure.

4. HANSARD, PG 29

Senator NASH: Backtracking for a second, Cargill purchased from Agrium the commodity management business. The FIRB arrangements had been made when Agrium took over the business. Did you inherit any undertakings that might have been required of Agrium by FIRB with the original approval? Did FIRB require Cargill to do anything regarding that purchase?

Mr McBride: My understanding is no, but Cargill did give some undertakings to the Treasurer around the purchase of AWB.

Senator NASH: What were they?

Mr McBride: There were a number of them. The main ones included us continuing to operate wheat and barley pools as long as they were in commercial demand, which they are. We have been very successful with that. There is a different situation in the US, but Cargill confirmed that we would provide open access to all our storage and handling sites. That does not occur in North America. We said that we would promote price transparency by offering prices for delivery at all sites and publishing those prices. We also said that we would publish them through the internet. We gave assurances around the AWB brand operating in Australia and in some overseas markets. We also gave support—and this was a big issue—to the Australian wheat classification standards through our ongoing membership of the GTA. We have given those undertakings to the Treasurer directly.

Senator NASH: Okay. Would you mind providing to the committee the whole list in detail on notice. When you gave undertakings to the Treasurer, what discussions was had around any oversight or any penalties if you did not uphold those undertakings?

Mr McBride: I would have to take that on notice. I was not involved in those discussions.

Senator NASH: If you could provide that to the committee, that would be quite useful. One of the things that we are grappling with, obviously, are what processes are in place to make sure that there is the requirement to uphold any undertakings down the track after approval has been given.

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ANSWER:

Below is a broad answer and I attached the following documents regarding the US.

- Department of the Treasury - Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons; Final Rule
- FOREIGN INVESTMENT AND NATIONAL SECURITY ACT OF 2007
- National Security Reviews of Foreign Investments

Additional documents attached:

- Foreign direct investment restrictions in OECD countries (OECD)
- Investing Across Borders – Indicators of foreign direct investment regulation in 87 economics (World Bank group)

A detailed answer would take considerable resources and expertise which Cargill estimate would cost in excess of $100,000 to engage an independent consultant to look at a number of international jurisdictions regarding this question.

Guidelines for investing in New Zealand (source NZ Government)

International investment has contributed significantly to the development of New Zealand's economy.

New Zealand welcomes investors and offers an attractive, open business environment. Our transparent regulations make investing a straightforward process while the broad-based, low-rate tax regime supports long-term investors.

New Zealand has a consistent political environment where overseas investors are treated on the same basis as domestic investors. There are no restrictions on the movement of funds in or out of New Zealand, or on repatriation of profits.

The Overseas Investment Office is the organisation responsible for foreign investment in New Zealand. An application must be made to the OIC by non-residents planning to invest more than NZ$50 million establishing a business, or to purchase an equity share of greater than 25% in a New Zealand company worth more than $50 million. OIC approval is also required to invest in land over five hectares, islands, the foreshore or reserves.

Investment New Zealand is a division of New Zealand Trade & Enterprise. It is the Government agency responsible for attracting and facilitating foreign direct investment (FDI). FDI may be in the form of joint ventures of partnerships with New Zealand companies, new investments, or corporate relocation.

Investment New Zealand’s case management services for major investments include:

- providing information on potential investment opportunities in New Zealand, and assisting companies during the investigation and due diligence phase;
- facilitating location visits by investment decision-makers;
- making referrals to sources of independent professional advice;
- providing links to relevant private organisations and agencies of central and local government to ensure projects attract support where available.

Recent announcement of New Zealand's Overseas Investment Office findings has implications for those considering foreign direct investment in New Zealand.

The review recommendations provide for some balanced changes to investment requirements, screening procedures and criteria for investment approval in New Zealand. The recommendations attempt to balance the need to protect New Zealand's unique cultural and natural heritage, with the need to maintain and encourage foreign direct investment and minimise the compliance costs around this investment.

Please note that the changes announced apply only to those overseas investors seeking to purchase sensitive New Zealand assets. Such assets are defined as, land of historic or natural significance, land adjacent to the seabed or foreshore, land subject to heritage order or historic places trust registration or adjoining parks and reserves, land on the costal islands of New Zealand, quotas for fishery resources, larger holdings of land (greater than 5 hectares) or local business assets greater than $100 million in value.

The new operation of the overseas investment screening system will change from the existing system in four ways:

Coverage - the definition of the strategic assets for which screening is required has been amended slightly, to increase the business asset threshold, but also to expand strategic assets to include special properties such as all foreshore and seabed land and sites subject to a heritage order.

Criteria for screening - when considering an application for foreign investment, investors will now be required to submit and investment case that includes a land management plan. (A land management plan will need to cover active management of the land to meet natural and historic heritage objectives and public access obligations, where relevant.) Also foreign investor's investment intentions, residency intentions and the proposed economic development benefits of their investments will be subject to greater scrutiny prior to consent being given. Finally, the New Zealand Government will have a right of first refusal for any foreshore and seabed land that a third party intends to sell to a foreign investor.

Monitoring - investors will be required to confirm their compliance with the conditions of consent, periodically, after the consent is given.

Enforcement - New Zealand regulators will have the power to impose administrative penalties if foreign investors fail to report regularly on how they are complying with the terms of their consent. New Zealand courts will also be given the power to fine foreign investors that do not comply with conditions of consent.

The New Zealand authorities will implement these changes in the coming months through regulatory and statutory reform, and the establishment of a new dedicated regulatory unit within Land Information New Zealand (LINZ). LINZ is a New Zealand government agency.

We will keep the investor community updated as the new investment screening criteria are implemented, and as the new regulatory functions and relevant bodies are established.

Key web addresses for further investment information are: www.linz.govt.nz, www.nzte.govt.nz, http://www.oic.linz.govt.nz.

New Zealand welcomes the positive contribution of foreign investment to the economic and social well-being of New Zealanders. New Zealand's regulations governing foreign investment are liberal by international standards as New Zealand maintains targeted foreign investment restrictions in only a few areas of critical interest.

Overseas investments in New Zealand assets are screened only if they are defined as sensitive within the Overseas Investment Act 2005 (the Act). Three broad classes of asset are currently defined as sensitive within the Act: acquisition of a 25% or greater ownership interest in business assets valued at over $100 million, all fishing quota investments, and investment in sensitive land as defined in Schedule 1 of the Act. Examples of sensitive land include rural land over five hectares or land bordering or containing foreshore, seabed, river, or the bed of a lake. Most urban land is not screened unless defined as sensitive for other reasons. A full list of sensitive assets is defined in the Act.

Investors must pass an investor test that considers character, business acumen and level of financial commitment. Overseas investors wishing to purchase sensitive land must either intend to reside permanently in New Zealand or demonstrate that the investment will benefit New Zealand. The criteria for assessing this benefit are set out in the Act and the Overseas Investment Regulations 2005.

There are no restrictions on the movement of funds into or out of New Zealand, or on repatriation of profits. No additional performance measures are imposed on foreign-owned enterprises.

The Overseas Investment Act 2005 is administered by the Overseas Investment Office - a dedicated unit located within Land Information New Zealand. More information on New Zealand's foreign investment screening regime is available on the Overseas Investment Office's website: www.linz.govt.nz/overseasinvestment.

Foreign Investment Inflows(1)(2)

	(dollar amounts in millions) Year Ended 31 March				
	2005	2006	2007	2008	2009
Foreign Direct Investment	3,878	2,459	8,843	4,037	6,149
Foreign Portfolio Investment	4,264	2,905	4,622	14,443	(14,673)

(1) Financial account completed according to principles set out by IMF in 5th edition of the Balance of Payments Manual.

(2) Prior years' data revised.

Foreign investment flows vary from year to year as they reflect changes in a small number of relatively large individual investments.

The stock of foreign direct investment in New Zealand stood at $92.8 billion as of 31 March 2009. Australia and the United States are the largest contributors to total foreign direct investment in New Zealand, with investments worth $46.1 billion and $11.5 billion respectively. The Netherlands is the next largest investor at $4.6 billion, while the United Kingdom and Japan follow closely behind at $3.2 billion each.

In contrast, the stock of direct investment abroad by New Zealand was $23.9 billion as at June 2009.

2. HANSARD, PG 27-28

Senator BACK: I have not spoken to Mr Costello personally but I have read a lot about it and one of the reasons was the fear that Shell might say, 'We're going to shelve that asset and will continue developing our assets in the gulf.' There is obviously an equivalent there. Without making foreign investment unattractive how do we protect the agribusiness market against the opportunism of foreign entities coming in and raiding, in a sense, and putting the Australian product to one side so that it then does not actually compete in our export markets with produce from that same company produced out of other markets? Is there a mechanism there?

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Senator BACK: I would appreciate it if you were able to provide this committee with some advice on what might be equivalence in other countries. In line with your submission, we need to get to this level of transparency for all parties—the would-be investor and the Australian community.

ANSWER: see previous answer

3. HANSARD, PG 28

CHAIR: Regarding the BFB-Cargill Black River arrangement, do you have other arrangements like that in Australia that would be flying under the foreign investment—

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CHAIR: Could you take that on notice.

Mr McBride: Yes; for sure.

ANSWER: No

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Senator NASH: Backtracking for a second, Cargill purchased from Agrium the commodity management business. The FIRB arrangements had been made when Agrium took over the business. Did you inherit any undertakings that might have been required of Agrium by FIRB with the original approval? Did FIRB require Cargill to do anything regarding that purchase?

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wheat classification standards through our ongoing membership of the GTA. We have given those undertakings to the Treasurer directly.

Senator NASH: Okay. Would you mind providing to the committee the whole list in detail on notice. When you gave undertakings to the Treasurer, what discussions was had around any oversight or any penalties if you did not uphold those undertakings?

Mr McBride: I would have to take that on notice. I was not involved in those discussions.

Senator NASH: If you could provide that to the committee, that would be quite useful. One of the things that we are grappling with, obviously, are what processes are in place to make sure that there is the requirement to uphold any undertakings down the track after approval has been given.

ANSWER: Cargill wrote to the Treasury on April 27 2011 and stated the following undertakings and confirmations in support of the application:

(Pools) Subject to securing all necessary regulatory approvals and waivers, Cargill confirms that it intends to operate wheat and barley 'pools' for as long as there is commercial demand for pool products from Australian growers, and undertakes to do so for the 2011/12, 2012/13 and 2013/14 harvest seasons.

(Open access – receival sites) Cargill confirms that it intends to provide open access to other grain buyers at all its receival sites subject to normal commercial and operational requirements and reciprocity by its competitors.

(Open access – port) Cargill confirms that the interest in Melbourne Port Terminal that it proposes to acquire from AWB does not include rights of operational control. Cargill notes the open access undertaking for Melbourne Port Terminal that Australian Bulk Alliance Pty Ltd (ABA) submitted to the ACCC on 23 December 2010. Subject to its right as a port user, Cargill undertakes that it will not seek to interfere with ABA giving and complying with these undertakings. **NOTE:** Sumitomo Corporation's Australian exercised its pre-emptive rights and now owns the Melbourne Port Terminal;

(Pricing transparency) Cargill confirms that it intends to promote pricing transparency by offering prices for delivery at all its receival sites and publishing these prices, including on the Internet.

(AWB brand) Cargill confirms that it intends to maintain the AWB brand where appropriate, including in its Australian grain buying activities and general interface with growers and, where it believes use of the AWB brand can secure premium pricing for the benefit of Australian growers, in selected international markets.

(Australian wheat classification) Cargill confirms that it intends to support, through its ongoing membership of Grain Trade Australia, the wheat classification work of Wheat Quality Australia Limited and to continue to use and promote Australian wheat classifications as a means of distinguishing the high quality of Australian wheat.

When you gave undertakings to the Treasurer, what discussions was had around any oversight or any penalties if you did not uphold those undertakings?

These discussions were handled by external lawyers and I have been advised that there were no discussions regarding any penalties.

Federal Register

Friday,
November 21, 2008

Part II

Department of the Treasury

Office of Investment Security

31 CFR Part 800

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons; Final Rule

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

RIN 1505–AB88

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This Final Rule amends regulations in part 800 of 31 CFR that implement section 721 of the Defense Production Act of 1950 (''section 721''), as amended by the Foreign Investment and National Security Act of 2007, codified at 50 U.S.C. App. 2170. While the revised regulations retain many features of the prior regulations, a number of changes have been made to implement section 721, increase clarity, reflect developments in business practices over the past several years, and make additional improvements based on experiences with the prior regulations.

DATES: *Effective date:* This rule is effective December 22, 2008.

Applicability date: See § 800.103.

FOR FURTHER INFORMATION CONTACT: For questions about this Final Rule, contact: Nova Daly, Deputy Assistant Secretary, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, telephone: (202) 622–2752, e-mail: *Nova.Daly@do.treas.gov*; Welby Leaman, Senior Advisor, telephone: (202) 622–0099, e-mail: *Welby.Leaman@do.treas.gov*; Aimen Mir, Senior Policy Analyst, telephone: (202) 622–0184, e-mail: *Aimen.Mir@do.treas.gov*; or Mark Jaskowiak, Office Director, telephone: (202) 622–5052, e-mail: *Mark.Jaskowiak@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Foreign Investment and National Security Act of 2007 (''FINSA''), Public Law 110–49, 121 Stat. 246, which amends section 721 of the Defense Production Act of 1950 (''DPA'') (50 U.S.C. App. 2170), requires the issuance of regulations implementing its provisions following public notice and comment.

FINSA was passed by Congress as H.R. 556, which adopted the language of S. 1610. Senate Report 110–80, accompanying S. 1610, provides a useful history of the various bills leading to the enactment of FINSA. President Bush signed FINSA into law on July 26, 2007, and it became effective on October 24, 2007.

Section 721 authorizes the President to review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States. FINSA codifies aspects of the structure, role, process, and responsibilities of the Committee on Foreign Investment in the United States (''CFIUS'' or ''the Committee'') and the role of executive branch departments, agencies, and offices in CFIUS's review of transactions for national security concerns. A brief summary of major aspects of the statute follows.

FINSA formally establishes CFIUS in statute. (Previously, the sole basis for the existence of CFIUS had been Executive Order 11858 of May 7, 1975, 40 FR 20263, 3 CFR, 1971–1975 Compilation, p. 990.) FINSA specifies the following as members of CFIUS: The Secretary of the Treasury (who serves as chairperson), the Attorney General, and the Secretaries of Homeland Security, Commerce, Defense, State, and Energy. FINSA also provides that CFIUS may include, generally or on a case-by-case basis as the President deems appropriate, the heads of any other executive department, agency, or office. The President designated the U.S. Trade Representative and the Director of the Office of Science and Technology Policy as additional members of CFIUS in Executive Order 11858, as amended most recently by Executive Order 13456, 73 FR 4677 (Jan. 23, 2008). In the same Executive Order, the President directed that ''[t]he following officials (or their designees) shall observe and, as appropriate, participate in and report to the President on [CFIUS's] activities'': (i) The Director of the Office of Management and Budget, (ii) the Chairman of the Council of Economic Advisors, (iii) the Assistant to the President for National Security Affairs, (iv) the Assistant to the President for Economic Policy, and (v) the Assistant to the President for Homeland Security and Counterterrorism. FINSA also establishes the Director of National Intelligence (''DNI'') and the Secretary of Labor as *ex officio* members of CFIUS. FINSA specifies that the DNI is to provide independent analyses of any national security threats posed by transactions and is to have no other policy role. FINSA further provides that, for each transaction before CFIUS, the Department of the Treasury shall designate, as appropriate, one or more lead agencies. The lead agency, on behalf of CFIUS, may negotiate, enter into or impose, monitor, and enforce mitigation agreements or conditions with parties to a transaction to address any threats to national security posed by the transaction. FINSA requires regulations to provide for an appropriate role for the Secretary of Labor with respect to mitigation agreements.

FINSA also formalizes the process by which CFIUS conducts national security reviews of any transaction that could result in foreign control of a person engaged in interstate commerce in the United States, which FINSA refers to as a ''covered transaction.'' Specifically, FINSA provides for CFIUS review of covered transactions, which must be completed within 30 days, to determine the effect of the transaction on national security and to address any national security concerns. Subject to certain exceptions discussed below, FINSA requires an additional investigation, which must be completed within 45 days, in the following types of cases: (1) Where the transaction threatens to impair U.S. national security and that threat has not been mitigated prior to or during the 30-day review; (2) where the transaction is a foreign government-controlled transaction; (3) where the transaction results in foreign control over critical infrastructure that, in the determination of CFIUS, could impair national security, if that impairment has not been mitigated; or (4) where the lead agency recommends, and CFIUS concurs, that an investigation be undertaken. Executive Order 11858 also provides that CFIUS shall undertake an investigation if a member of CFIUS advises the chairperson that it believes that the transaction threatens to impair the national security and that the threat has not been mitigated.

To ensure accountability for CFIUS decisions, FINSA requires that a senior-level official of the Department of the Treasury and of the lead agency certify to Congress, for any covered transaction on which CFIUS has concluded action under section 721, that CFIUS has determined that there are no unresolved national security concerns. The certification must be made at a level no lower than an employee appointed by the President by and with the advice and consent of the Senate, for transactions on which CFIUS concludes action under section 721 after a review, and at the Deputy Secretary level or above for transactions on which CFIUS concludes action under section 721 after an investigation. If the President makes a decision on a transaction under section 721, then he must announce his

decision publicly within 15 days of the completion of the investigation.

In addition, in order for CFIUS to conclude action under section 721 for a foreign government-controlled transaction without proceeding beyond a review to an investigation, the Department of the Treasury and the lead agency must determine, at the Deputy Secretary level or above, that the transaction ''will not impair the national security.'' Similarly, in cases where the transaction would result in foreign control over critical infrastructure, the transaction could impair national security, but such impairment has been mitigated during the review period, CFIUS may conclude action under section 721 without proceeding beyond a review if the Department of the Treasury and the lead agency determine, at the Deputy Secretary level or above, that the transaction will not impair national security.

Where a covered transaction presents national security risks, FINSA provides statutory authority for CFIUS, or a lead agency acting on behalf of CFIUS, to enter into mitigation agreements with parties to the transaction or to impose conditions on the transaction to address such risks. This authority enables CFIUS to mitigate any national security risk posed by a transaction rather than recommending to the President that the transaction be prohibited because it could impair U.S. national security. FINSA also provides CFIUS with authority to impose civil penalties for violations of section 721, including violations of any mitigation agreement.

Finally, FINSA increases CFIUS's reporting to Congress concerning the work it has undertaken pursuant to section 721. In addition to the certifications described previously, which CFIUS must provide to Congress after concluding action on a transaction under section 721, CFIUS also must provide annual reports on its work, including a list of the transactions it has reviewed or investigated in the preceding 12 months, analysis related to foreign direct investment and critical technologies, and a report on foreign direct investment from certain countries.

II. Comments on the Proposed Rule

The Final Rule contained in this document is based on the Notice of Proposed Rulemaking published on April 23, 2008 (''Proposed Rule'') (73 FR 21868), which proposed amendments to the regulations in part 800 of 31 CFR. The comment period for the Proposed Rule ended on June 9, 2008. The Department of the Treasury received a total of 25 written submissions and some oral comments that were principally provided at a public meeting held at the Department of the Treasury on May 2, 2008. The written and oral submissions comprised approximately 200 distinct comments. The comments represented a wide range of interests, including foreign governments, U.S. business groups, law firms, and a member of Congress. All comments received by the end of the comment period were posted for public viewing at *http://www.regulations.gov.*

Among the comments submitted were a number that welcomed the Proposed Rule as helping the Committee to safeguard U.S. national security in a manner consistent with the U.S. commitment to open investment. Although one commenter believed the Proposed Rule would result in the ''great majority'' of mergers and acquisitions being subject to reviews, the Committee does not expect the changes to the regulations to materially affect the number of transactions that it reviews. From 2005 through 2007, the Committee reviewed less than ten percent of foreign acquisitions in the United States.

We respond to the comments submitted in the detailed section-by-section analysis, below.

III. Discussion of Final Rule

Overview of Significant Issues

The Final Rule retains many of the basic features of the existing regulations, which were adopted in 1991 after the 1988 enactment of section 721 of the DPA. The system continues to be based on voluntary notices to CFIUS by parties to transactions, although FINSA provides CFIUS with the authority to review a transaction that has not been voluntarily notified. The principal new development with regard to the procedures for filing notices with CFIUS is that the Final Rule makes explicit CFIUS's current practice of encouraging parties to contact and engage with CFIUS before making a formal filing. By consulting with CFIUS in advance of filing and, where appropriate, providing CFIUS with a draft notice or some portion of the information that later may be included in the notice, parties can help ensure that their notice, once submitted, will contain the information CFIUS needs to do its work. Such pre-notice consultations can help ensure that reviews of covered transactions are concluded as efficiently as possible. Consistent with the requirement set forth in section 721(b)(2)(E), the Department of the Treasury, as Chairperson of CFIUS, will also be publishing in the **Federal Register** guidance on the types of transactions that CFIUS has reviewed and that have presented national security considerations. The guidance, among other things, will include a discussion of certain types of information the Committee, based on past experience, considers useful for parties filing a notice to provide.

The provisions of Subpart D pertaining to the contents of a voluntary notice have been expanded to reflect information that CFIUS now routinely seeks from notifying parties. By having the relevant information included in each notification, CFIUS will be better prepared to conduct an efficient and in-depth analysis as soon as a notice is accepted. As noted in the proposed regulations, personal identifier information, which is needed to examine the backgrounds of members of the boards of directors and senior company officials of entities in the ownership chain of the foreign acquirer, should be submitted in conjunction with each notification, and should be marked clearly and provided as a separate document to facilitate limited distribution of this information. In addition to the new information requirements, the Final Rule, consistent with FINSA, also requires each of the parties to a notified transaction to provide certifications regarding the accuracy and completeness of their notices, as to information about the party making the certification (including certain affiliated entities), the transaction, and all follow-up information. A notice will not be deemed complete if it lacks certifications that comply with these requirements, and CFIUS may reject a notice that has previously been accepted if the final certification required under § 800.701(d) has not been received. Furthermore, material misstatements or omissions made by a party in connection with a review or investigation may result in the rejection of the notice or the reopening of a completed review or investigation.

Consistent with the new authority provided by FINSA, the Final Rule provides for penalties for material misstatements or omissions made to CFIUS, for false certifications, or for breach of mitigation agreements or conditions entered into or imposed under section 721. The Final Rule also provides that a mitigation agreement may include provisions establishing liquidated damages for violations of the agreement. *See* § 800.801. Parties that receive a notice of the imposition of penalties will have the opportunity to submit to CFIUS a petition for

reconsideration of the imposition of the penalties.

Additional changes to the regulations have been made, including revisions to or deletions of existing examples or provisions, to take into account FINSA, and to otherwise add clarity to the regulations. The following discussion addresses changes to several of the key concepts of the regulations.

Covered Transaction

FINSA introduced the term ''covered transaction'' to identify the types of transactions that are subject to review and investigation by CFIUS. The statutory definition of covered transaction maintains the scope of section 721 as pertaining to any merger, acquisition, or takeover by or with a foreign person that is proposed or pending after August 23, 1988, which could result in foreign control of any person engaged in interstate commerce in the United States (the latter type of person is defined in these regulations as a ''U.S. business'').

The Final Rule further clarifies the meaning of the term ''covered transaction,'' *see* § 800.207, by specifying the scope of important elements of the term, including ''transaction,'' ''control,'' ''U.S. business,'' and ''foreign person.'' The definitions and clarification of these terms appear in Subpart B (Definitions) and in Subpart C (Coverage).

Transaction

The term ''transaction'' is defined in § 800.224, and implements the statutory requirement that a covered transaction be one that involves a ''merger, acquisition, or takeover'' that is proposed or pending after August 23, 1988, by encompassing both proposed and completed transactions. This definition continues to exclude start-up or ''greenfield'' investments and includes only a very limited type of long-term lease.

Control

FINSA does not define ''control,'' but rather requires that CFIUS prescribe a definition by regulation. *See* FINSA, Public Law 110–49, section 2, adding section 721(a)(2). ''Control'' is and always has been a key threshold concept in section 721, as the authority provided under that section, from the authority to review or investigate a notified transaction to the authority of the President to take action to suspend or prohibit a transaction, is predicated on foreign *control* of a person engaged in interstate commerce in the United States. This focus on control suggests a fundamental congressional judgment that national security risks are potentially highest in transactions that involve the acquisition by a foreign person of control of an entity operating in the United States. Indeed, Congress made clear in the 1988 Conference Report that accompanied the originally enacted version of section 721 that ''[t]he Conferees in no way intend to impose barriers to foreign investment. * * * [section 721] is not intended to authorize investigations on investments that could not result in foreign control of persons engaged in interstate commerce * * *.'' *See* H.R. Conf. Rep. No. 100–576, at 926 (1988). Nothing in FINSA or its legislative history suggests any departure from this focus on control. Indeed, FINSA incorporates the concept of control in its definition of the new term ''covered transaction,'' as discussed above.

The Final Rule maintains the long-standing approach of defining ''control'' in functional terms as the ability to exercise certain powers over important matters affecting an entity. Specifically, ''control'' is defined as the ''power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the [matters listed in § 800.204(a)], or any other similarly important matters affecting an entity.'' *See* § 800.204(a). Two points should be emphasized concerning this definition. First, it eschews bright lines. Consistent with the existing regulations, control is not defined in terms of a specified percentage of shares or number of board seats. Although share holding and board seats are relevant to a control analysis, neither factor on its own is necessarily determinative. Instead, all relevant factors are considered together in light of their potential impact on a foreign person's ability to determine, direct, or decide important matters affecting an entity. Second, echoing the congressional views expressed in the conference report accompanying the original legislation in 1988, the focus of the statute and therefore of these regulations is *control.* Even acknowledging the considerable flexibility necessarily inherent in a national security regulation, the statutory standard is not satisfied by anything less than control. Acquisition of influence falling short of the definition of control over a U.S. business is not sufficient to bring a transaction under section 721. *See* § 800.302.

Demonstrating its significance to this regulatory framework, the concept of control appears in several different places throughout the regulations, both in those sections that define the nature of the acquirer and those that define the transaction itself. For example, control is a key concept in the definitions of ''foreign person'' and ''foreign government-controlled transaction.'' A foreign person is any foreign national (*i.e.*, an individual who is not a U.S. national), foreign government, or foreign entity, or any ''entity over which *control* is exercised or exercisable by a foreign national, foreign government, or foreign entity.'' *See* § 800.216 (emphasis added). A foreign government-controlled transaction is a covered transaction that ''could result in the *control* of a U.S. business by a foreign government or a person *controlled by* or acting on behalf of a foreign government.'' *See* § 800.214 (emphases added). Similarly, ''covered transaction'' is defined in this Final Rule as ''any transaction that is proposed or pending after August 23, 1988, by or with any foreign person, which could result in *control* of a U.S. business by a foreign person.'' *See* § 800.207 (emphasis added).

Conversely, transactions that could not result in foreign control of a U.S. business are not subject to section 721. Thus, a start-up or ''greenfield'' investment is not subject to section 721. *See* § 800.301(c), Example 3. Moreover, as noted below, a foreign person does not control an entity if it holds ten percent or less of the voting interest in the entity and it holds that interest ''solely for the purpose of passive investment,'' as that term is defined in § 800.223. *See* § 800.302(b). However, the regulations do not provide, and never have provided, an exemption based solely on whether an investment is ten percent or less in a U.S. business. If a foreign person holds ten percent or less of the voting interest in a U.S. business but does not hold that interest solely for the purpose of passive investment, then the transaction still may be a covered transaction. For example, a transaction involving a foreign person's acquisition of nine percent of the voting shares of a U.S. business in which the foreign person has negotiated rights to determine, direct, decide, take, reach, or cause decisions regarding important matters affecting that business would be a covered transaction.

Section 800.204 lays out the basic definition of ''control,'' provides an illustrative list of matters that are deemed to be important, states that CFIUS will consider certain relationships between persons in evaluating whether an entity is considered to be controlled by a foreign person, and identifies certain minority shareholder protections that are not considered in themselves to confer control over an entity. The regulations add a number of examples to provide greater clarity as to the application of this definition.

U.S. Business

Section 800.226 defines ''U.S. business,'' a term contained in the regulatory definition of ''covered transaction,'' to mean any entity engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce in the United States. In determining whether a person is a U.S. business, CFIUS first will consider whether the subject of the transaction is an ''entity'' (which is defined to include any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization; assets, whether or not organized as a separate legal entity, operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government). If the subject of the transaction is an entity, CFIUS will consider whether the entity is engaged in interstate commerce.

Foreign Person

The term ''foreign person'' is defined in § 800.216. The Final Rule introduces the new concept of a ''foreign entity,'' further discussed below in the section-by-section analysis of § 800.212, and specifies that an entity that falls within the definition of a ''foreign entity'' will be deemed a foreign person.

Transactions That Are and Are Not Covered Transactions

Sections 800.301 and 800.302 illustrate the types of transactions that are and are not covered transactions, respectively. Section 800.301(a) further develops the reference in § 800.204 to ''power, whether or not exercised,'' by making clear that, if a foreign person has the ability to exercise control over a U.S. business at the time a transaction is consummated, whether at will or after a particular period of time, then the person cannot avoid a determination that ''control'' exists for purposes of section 721 by voluntarily forgoing, or delaying, the exercise of control.

Section 800.302(b) provides a very limited qualification to the application of the general control principle. Pursuant to § 800.302(b), a foreign person does not control an entity if it satisfies a two-pronged test: (1) It holds ten percent or less of the voting interest in the entity; and (2) its interest is held solely for the purpose of passive investment. Section 800.223 lays out the test for whether an interest is held solely for the purpose of passive investment. Under that test, an interest would be held solely for the purpose of passive investment if the foreign person has no plan or intent to control the entity, neither possesses nor develops any purpose other than passive investment, nor takes any action that is inconsistent with an intent to hold the interest solely for the purpose of passive investment. This special rule applies to all types of investors equally, rather than assuming that certain types of institutions are passive investors.

Sections 800.301(c) and 800.302(c) further illustrate the extent to which particular types of transactions, such as greenfield investments; the acquisition of branch offices, assets from multiple sources, and defunct businesses; and the entry into commodity purchase contracts, service contracts, and technology license agreements, are or are not covered transactions. Section 800.301(d) addresses joint ventures, which may be covered transactions only if they involve the contribution of a U.S. business.

Sections 800.302(d) and (e) and § 800.303 establish special rules with regard to securities underwriting, insurance, and lending, to clarify certain circumstances in which a foreign person may obtain, in the ordinary course of its business, an interest in an entity that may not be considered control of that entity because of those circumstances.

Section-by-Section Analysis

Section 800.101—Scope

Section 800.101 of the Proposed Rule states that the regulations implement section 721, which authorizes the President and the Committee to take certain actions with respect to covered transactions that threaten to impair U.S. national security. Several commenters noted that the regulations do not define ''national security'' and other related terms. A commenter suggested that there is a perception that the scope of CFIUS's reviews is broader than national security. Another suggested that ''national security'' be specifically defined to encompass economic security. A commenter also suggested that the Committee identify certain excepted industries or businesses, investments in which would not be subject to review.

The Committee will continue its practice of focusing narrowly on genuine national security concerns alone, not broader economic or other national interests. The longstanding policy of the U.S. Government, which was reaffirmed in the President's Statement on Open Economies on May 10, 2007, is to welcome foreign investment. Section 1 of Executive Order 11858, as amended, applies that policy to the Committee's work: ''It is the policy of the United States to support unequivocally [international] investment, consistent with the protection of the national security.'' The Committee reviews transactions for national security concerns on a case-by-case basis. This approach allows the Committee to fully address the national security concerns that a particular transaction may raise, rather than identifying certain sectors in which foreign investment is prohibited, restricted, or discouraged. As directed by FINSA, the Department of the Treasury is also publishing guidance regarding the types of transactions that the Committee has reviewed and that have presented national security considerations.

Section 800.103—Applicability rule/ Section 800.210—Effective Date

Several commenters expressed concern that new provisions in the regulations will cause uncertainty for transactions completed prior to the effective date of FINSA or this Final Rule and that parties should be given sufficient time to adjust to any new standards.

As provided in section 721 as amended by FINSA and further elaborated in § 800.207 and § 800.601(b) of the Final Rule, the Committee has the authority to review any covered transaction. However, to allow parties time to adjust to this Final Rule, the amendments to part 800 made by this Final Rule will become effective thirty days after their publication in the **Federal Register**.

With respect to actions already taken by parties to transactions, the Committee does not intend for this Final Rule to disrupt certain expectations created by the provisions of the regulations, prior to their amendment by this Final Rule. *See* 31 CFR Part 800 (July 1, 2008) (''the prior regulations''), *available at http://www.access.gpo.gov/nara/cfr/waisidx_08/31cfr800_08.html*. Therefore, consistent with § 800.103, the provisions of the prior regulations will

continue to govern certain questions pertaining to past transactions and acts.

As provided in § 800.103(a), the provisions of this Final Rule apply as of the effective date of this Final Rule, with certain exceptions. These exceptions are spelled out in § 800.103(b), and consist of the various provisions that relate to whether a particular transaction is a covered transaction. Provisions that pertain to procedural matters are thus not listed in paragraph (b) but, rather, apply to all CFIUS reviews and investigations as of the effective date. Accordingly, for example, all notices filed with the Committee on or after the effective date of this Final Rule must contain the information specified in § 800.402 of this Final Rule, regardless of when the transaction occurred or will occur. Notices filed with the Committee prior to the effective date of this Final Rule are required to contain at least the information specified in § 800.402 of the prior regulations.

As provided in § 800.103(b), particular sections of subparts B and C of this Final Rule apply to any transaction for which the execution of the agreement, or other comparable action underlying the transaction, occurs on or after the effective date of this Final Rule. As noted above, these provisions concern the assessment of whether a transaction is a ''covered transaction.'' Paragraphs (b)(1) through (b)(4) of § 800.103 specify the particular event that needs to occur on or after the effective date in order for the relevant provision of the Final Rule to apply to the transaction. For example, if a letter of intent establishing the material terms of a transaction is signed on or after the effective date of this Final Rule, then the provisions of the Final Rule will govern the analysis of whether the transaction is a ''covered transaction.'' Conversely, if the letter of intent was signed before the effective date of this Final Rule, then the Committee will look at the provisions of the prior regulations in analyzing whether the transaction is a ''covered transaction,'' even if the transaction was notified to the Committee after the effective date of this Final Rule.

Note that if parties sign a letter of intent prior to the effective date of this Final Rule, but the material terms differ in the final definitive agreement signed by the parties, then the Committee would look to the date on which that final definitive agreement was signed to determine the rules under which the assessment of whether the transaction is a ''covered transaction'' will be made.

When reviewing any transaction notified to the Committee on or after the effective date that falls within the scope of § 800.103(b) and that includes minority shareholder protections listed in § 800.204(c), the Committee will take into account § 800.204(c) of the Final Rule to the extent that doing so would support a conclusion that the transaction is not a covered transaction.

As provided in subpart H, the provisions concerning penalties will apply to any action after the effective date of this Final Rule that constitutes a violation under subpart H, regardless of when the related transaction occurred or when the mitigation agreement was signed. If, for example, after the effective date of this Final Rule, a party intentionally violates a mitigation agreement signed in 2000, the party may be subject to civil penalties under § 800.801(b) of the Final Rule. Damages provisions written into mitigation agreements entered into prior to the effective date of this Final Rule are independent of, and not affected by, this Final Rule.

Section 800.204—Control

The Proposed Rule made a number of changes to clarify the definition of ''control,'' which is now at § 800.204. These include, among other revisions, clarification that control depends on powers over ''important matters'' affecting an entity, expansion of the illustrative list of ''important matters,'' and the addition or revision of examples to demonstrate what constitutes control. The Overview of Significant Issues, above, like the preamble to the Proposed Rule, also explains that the acquisition of influence falling short of the definition of control over a U.S. business is not sufficient to bring a transaction under section 721. The Proposed Rule also introduced a new paragraph concerning minority shareholder protections, which is addressed below in the discussion of § 800.204(c) of the Final Rule.

Several commenters suggested that the Proposed Rule provided too expansive a definition of control, or, by not providing a more objective standard, risked inappropriate expansion of the definition. A commenter suggested that the definition of control would cause foreign investors to disclaim *pro rata* rights they obtain simply by right of their shareholdings and suggested that this would be detrimental to good governance. Several commenters asked for additional clarification regarding the difference between ''control'' and ''influence falling short of the definition of control.''

The Final Rule makes numerous modifications to the language of § 800.204(a) to provide greater clarification of what constitutes ''control,'' including by clarifying circumstances where influence does not rise to the level of control. Examples in this section show that, although an investor might have influence within a business—for example, through a board seat, exercising *pro rata* voting rights attendant with share ownership, or otherwise—it does not have control unless it is able to determine, direct, take, reach, or cause decisions regarding the types of important matters listed in § 800.204(a).

Commenters suggested further clarification of several specific important matters listed in § 800.204(a). Several commenters suggested that the power to determine, direct, or decide a single important matter affecting an entity should not constitute control and that, at the least, the Committee should clarify that it will consider the totality of the circumstances in making its assessment. Another commenter asked whether there is an ownership threshold at which control will always be found.

The Final Rule makes no changes to the list of important matters at § 800.204(a) in response to the commenters' requests for specific clarifications. The Committee approaches its analysis of whether a transaction could result in foreign control on a case-by-case basis, considering the level of ownership interest, the rights that emanate from such ownership, other rights held, restrictions on the exercise of such rights, and all other relevant facts and circumstances. The examples in § 800.204 demonstrate this approach of considering together all relevant facts and circumstances in light of their potential impact on a person's ability to determine, direct, or decide important matters affecting an entity. As a result of this approach, the regulations provide no ownership threshold or other bright lines above which CFIUS would find control in all circumstances.

Several commenters suggested that the Proposed Rule did not adequately illustrate that ownership and control can be separated through certain transaction structures—for example, in private equity funds structured as limited partnerships. One commenter suggested that the Committee clarify that it will review transactions involving private equity funds. The Final Rule adds Examples 8 and 9 in § 800.204, which provide greater clarification of the relationship between ownership and control and make clear that the Committee will focus on ''control,'' as defined, within any transaction structure rather than

formalistically distinguishing among structures.

A commenter asked for clarification of the meaning of ''indirect'' power in § 800.204(a). The Final Rule, like the Proposed Rule, defines ''control'' in functional terms. Therefore, for example, a person that has the power to determine important matters of an entity does not avoid having control of that entity by voting the shares of a wholly-owned subsidiary that, in turn, votes the shares of the entity, or by acting through another intermediary or agent.

Section 800.204(b)—Arrangements to Act in Concert

The Proposed Rule provided that, in examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given, pursuant to what is now § 800.204(b), to whether the foreign persons are related or have formal or ''informal'' arrangements to act in concert. A commenter asked for clarification of what constitutes an ''informal'' arrangement and whether this would include a voting trust.

The Final Rule makes no change to the proposed language, which is now at § 800.204(b), in response to this comment. If a trustee has the legal authority to vote the shares of different parties, even if unrelated, then those shares would be considered as being voted in concert if the trustee can vote the shares according to its discretion or is required to vote all shares in the same way. Example 1 in § 800.204 illustrates an informal arrangement to act in concert, where no formal agreement is disclosed but it is clear from other evidence that the foreign persons have agreed to act as a group in the exercise of their powers over important matters affecting the U.S. business.

Section 800.204(c)—Minority Shareholder Protections

The Proposed Rule identified several minority shareholder protections at what is now § 800.204(c) and provided that the Committee will not deem those negative rights (*i.e.*, rights to prevent certain events from occurring) to confer control in themselves. Many commenters suggested negative rights that they believe should be added to the list of minority shareholder protections.

This Final Rule expands the list of minority shareholder protections, now at § 800.204(c), to include two additional negative rights: The power to prevent an entity from voluntarily filing for bankruptcy or liquidation, and the power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors as provided in the relevant corporate documents governing such shares.

The list in § 800.204(c), however, expressly is not intended to be exhaustive of the rights that shall not in themselves be deemed to confer control over an entity. Section 800.204(c) includes a list of negative rights that the Committee recognizes as minority shareholder protections because they protect the investment-backed expectations of minority shareholders and do not affect strategic decisions on business policy or day-to-day management of an entity or other important matters affecting an entity.

The Committee recognizes, however, that other negative rights proposed by commenters for inclusion in § 800.204(c) are often provided to minority shareholders. Section 800.204(d) explicitly provides that the Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in § 800.204(c) do not confer control over an entity. Non-inclusion in § 800.204(c) of any particular right does not mean that the Committee has determined that such a right necessarily results in control and does not prejudge whether the Committee would determine under § 800.204(d) that such a right does not confer control in a particular transaction.

The Committee will consider favorably in the context of specific transactions notified to the Committee the parties' opinion that the following minority shareholder protections do not in themselves confer control: The power to prevent changes in the capital structure of the entity, including through mergers, consolidations, or reorganizations, that would dilute or otherwise impair existing shareholder rights; the power to prevent the acquisition or disposition of assets material to the business outside the ordinary course of business; the power to prevent fundamental changes in the business or operational strategy of the entity; the power to prevent incursion of substantial indebtedness outside the ordinary course of business; the power to prevent fundamental changes to the entity's regulatory, tax, or liability status; and the power to prevent any amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity. The Committee's favorable consideration of these rights does not preclude it from finding that the existence of one or a combination of these rights confers control under the facts and circumstances of a particular transaction.

Section 800.204(e)—Incremental Acquisitions

A commenter asked that the regulations clarify whether CFIUS will review voluntary notices when a foreign person acquires an additional interest in a U.S. business after the Committee has concluded its review of a prior covered transaction involving the same parties and the President did not prohibit or suspend the transaction. The Proposed Rule did not address this point explicitly. The commenter suggested that clarifying this point would help to ensure that the Committee is not overburdened and can focus its resources appropriately on transactions that raise national security concerns.

This Final Rule adds § 800.204(e) and accompanying Example 7 to clarify the Committee's approach to incremental acquisitions. Pursuant to § 800.204(e), a transaction in which a foreign person acquires an additional interest in a U.S. business that was previously the subject of a covered transaction for which the Committee concluded all action under section 721 will not be considered a covered transaction.

If a prior investment by a foreign person in a U.S. business was not notified to CFIUS, or if CFIUS determined that the prior investment was not a covered transaction, then the subsequent investment may be a covered transaction, depending on whether the subsequent investment could result in the foreign person's control of the U.S. business.

With respect to any covered transaction, any mitigation agreement or conditions may include, subject to the requirements of section 721 and Executive Order 11858, measures to address any national security risk posed by the covered transaction, including any increased risk if the foreign acquirer were to have a greater ownership interest in the U.S. business.

Section 800.207—Covered Transaction

The Proposed Rule defined ''covered transaction'' consistent with the definition of that term in section 721. The Proposed Rule provided additional clarity about what transactions are covered by section 721 in numerous other provisions, including §§ 800.301 and 800.302 and the definitions of ''control,'' ''foreign person,'' and a ''U.S. business.'' A commenter suggested that the Committee regularly release redacted descriptions of transactions that have been filed with the Committee, along with descriptions of

the Committee's assessment of whether they were covered transactions.

The Final Rule does not adopt this suggestion. Public release of any assessment by the Committee of whether a transaction is a covered transaction would implicate significant potential national security and confidentiality concerns. The Final Rule, at §§ 800.207, 800.301 and 800.302, provides greater clarity regarding what transactions are covered by section 721. Parties to a transaction, at their own discretion, may make available to the public information about transactions that they have voluntarily notified to the Committee.

Section 800.208—Critical Infrastructure

The Proposed Rule defined ''critical infrastructure'' consistent with the definition of that term in section 721 and clarified that, in determining whether a covered transaction involves critical infrastructure, the Committee would consider the ''particular'' systems or assets involved, rather than defining certain classes of systems or assets as critical infrastructure. Several commenters expressed support for this approach. Others suggested that the scope of ''critical infrastructure'' be further illustrated by identifying infrastructure that would or would not be considered critical.

The Final Rule, at § 800.208, continues the case-by-case approach of section 721 and the Proposed Rule towards identifying critical infrastructure. Under this approach, the Committee determines whether (1) a particular transaction notified to it is a ''covered transaction,'' (2) that particular covered transaction would result in foreign control of critical infrastructure of or within the United States, and (3) that particular covered transaction has potential national security effects. Accordingly, the definition of critical infrastructure turns on the national security effects of any incapacity or destruction of the particular system or asset over which a foreign person would have control as a result of a covered transaction. Consistent with this approach, the Committee will not deem classes of systems or assets to be, or not to be, critical infrastructure.

Section 800.211—Entity

The Proposed Rule made clear that an entity need not have a distinct legal personality in order to fall within the definition of ''entity'' under these regulations. A commenter asked for clarification of the circumstances in which assets with no distinct legal personality would be considered an ''entity.''

The Final Rule amends the proposed text of § 800.211 to add a cross-reference to §§ 800.301(c) and 800.302(c), which provide additional clarity regarding when assets with no distinct legal personality can constitute an ''entity'' and, in turn, a ''U.S. business.'' This additional clarification is provided, in particular, by Examples 6 and 7 in § 800.301(c) and Examples 1, 2, 4, and 5 in § 800.302(c).

Section 800.212—Foreign Entity

The Proposed Rule introduced a new term, ''foreign entity,'' to refer to entities the Committee considers to be foreign persons based on either their place of organization and foreign exchange listing or the extent of their foreign ownership, even if no single foreign person controls the entity. Commenters expressed concern that the definition of ''foreign entity'' in the Proposed Rule would have captured entities that were incorporated outside of the United States if they were primarily traded on foreign exchanges, even if the entities were in fact majority-owned by U.S. nationals.

The Final Rule revises the proposed text of § 800.212 to cover entities organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges. The Final Rule excludes from the definition of ''foreign entity,'' however, any entity that is able to demonstrate to the Committee that a majority of the equity interest in the entity is ultimately owned by U.S. nationals. Note that, under the definition of ''foreign person'' at § 800.216(b), any entity over which control is exercised or exercisable by a foreign person would still itself be deemed a foreign person, even if that entity does not constitute a ''foreign entity.'' Accordingly, an entity controlled by a foreign person is itself a foreign person, even if it is majority owned by U.S. nationals.

Commenters also asked whether a foreign person's ownership of shares of an entity could result in that entity being considered a ''foreign entity'' if the right to vote that person's shares were transferred to U.S. nationals through a voting trust. Example 3 in § 800.301(a) of the Final Rule illustrates that an agreement to delay the exercise of voting rights for a limited period of time does not preclude a finding of control. Similarly, if a voting trust is revocable or time-limited, the Committee would consider the foreign person that placed its shares in such a voting trust as still holding the shares.

Finally, a commenter asked whether the definition of ''foreign entity'' was intended to be a standard for determining foreign government control. The definition of ''foreign entity'' is not intended to be a standard for determining foreign government control. If an entity could be controlled by a foreign government, the question of whether it is a ''foreign entity'' would never arise, as ''foreign entity'' is a term that is intended to cover situations where there is significant foreign ownership but ownership is dispersed.

Section 800. 213—Foreign Government

The Proposed Rule defined the term ''foreign government'' to include non-elected heads of state with governmental responsibilities. A commenter said that the term ''head of state'' in § 800.213 was unclear.

The Final Rule amends § 800.213 to delete the clause referring to certain heads of state, since it imprecisely defined the circumstances under which the Committee may treat an investment by a government official as being an investment by a foreign government. Consistent with the reference in § 800.214 to a person ''acting on behalf of a foreign government,'' the Final Rule permits the Committee to treat investments by foreign government officials as investments by foreign governments where the circumstances so warrant, such as in certain cases where an official invests to advance governmental objectives.

Section 800. 214—Foreign Government-Controlled Transaction

The Proposed Rule defined ''foreign government-controlled transaction'' to mean any covered transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government. Commenters suggested that, in considering whether a transaction is foreign government-controlled, the regulations should treat certain types of entities owned by foreign governments or that have a ''government background'' as not foreign government-controlled—for example, if they operate on a purely commercial and market-driven basis.

The Final Rule makes no changes to the proposed text of § 800.214. ''Foreign government-controlled transaction'' is defined by statute at section 721(a)(4) and may not be modified by regulation in a manner that is inconsistent with the statute. The statute makes clear that transactions are ''foreign government-controlled transactions'' if they could

result in the control of any person engaged in interstate commerce in the United States by a foreign government or an entity controlled by or acting on behalf of a foreign government, regardless of whether the transaction has a purely commercial and market-driven basis. Accordingly, the regulations do not exclude transactions involving entities controlled by a foreign government, even if the entities operate on a commercial basis, nor entities that are controlled only indirectly by a foreign government through a person controlled by or acting on behalf of a foreign government. Consistent with section 721(b)(2)(E), however, the Department of the Treasury, as Chairperson of the Committee, is publishing guidance regarding the types of transactions that the Committee has reviewed and that have presented national security considerations. That guidance clarifies that whether a foreign government-controlled entity operates on a purely commercial and market-driven basis is among the important factors that the Committee takes into consideration when assessing whether foreign government control in a particular transaction poses concerns about possible impairment of U.S. national security.

Section 800.216—Foreign Person

The Proposed Rule expanded the definition of ''foreign person'' to include the term ''foreign entity'' and added a number of examples. A commenter suggested that the examples in § 800.216 and § 800.226, which respectively define ''foreign person'' and ''U.S. business,'' be expanded to make clear that the two concepts are distinct. A commenter also expressed concern that an acquisition by an investment fund controlled by a foreign bank may be treated differently under the regulations than would an acquisition by an investment fund controlled by U.S. nationals.

The Final Rule makes no changes to the proposed text of § 800.216 and § 800.226. The terms ''foreign person'' and ''U.S. business'' are independent of one another and serve distinct purposes in the Final Rule. Accordingly, it is possible that a particular entity may be just a foreign person, just a U.S. business, both a foreign person and a U.S. business simultaneously, or neither a U.S. business nor a foreign person.

Section 721 and this Final Rule, which implements section 721, cover transactions after a certain date that could result in control of a U.S. business by a foreign person. Accordingly, whether a party that controls an investment fund is, or is not, a foreign person is central to the statutory and regulatory framework.

Section 800.220—Party or Parties to a Transaction

The Proposed Rule provided, at § 800.220(f), that any party in a role comparable to a party listed in paragraphs (a) through (e) of § 800.220 would also be deemed a ''party to a transaction.'' A commenter suggested that § 800.220(f) provides the Committee with excessive discretion.

The Final Rule makes no change to the proposed text of § 800.220. Paragraph (f) of that section does not expand the scope of what constitutes a covered transaction. Rather, it identifies what persons, in circumstances other than those covered by paragraphs (a) through (e), are considered to be a ''party to a transaction'' and, therefore, may file a voluntary notice with the Committee consistent with the requirements of § 800.402.

Section 800.224—Transaction

The Proposed Rule replaced the term ''acquisition'' with the term ''transaction,'' at § 800.224, in order to harmonize the terminology of the regulations with that of FINSA, and provided that a transaction is a ''proposed or consummated merger, acquisition, or takeover.'' One commenter suggested that the Committee should not have the authority to review transactions after they have been completed. However, if a transaction is proposed after August 23, 1988 and could result in foreign control of a U.S. business, then it would be a ''covered transaction,'' as defined in section 721, even if the transaction has been consummated by the time of review.

In addition to other clarifications of the definition, the Proposed Rule also clarified that certain joint ventures and long-term leases are ''transactions.'' In particular, the Proposed Rule provided that long-term leases are transactions when, because of the terms of the lease and the extent of the lessee's authority over the U.S. business, the lessee operates the business as if it were the owner. A commenter asked whether a long-term lease in which a lessor retained only minimal oversight responsibilities and the ability to impose penalties in the event of a contractual breach would not constitute a ''transaction'' under § 800.224(f) and the example in § 800.224.

The Final Rule makes no change to § 800.224(f) or the example in § 800.224 in response to the comment. As a general matter, and as reflected in the example in § 800.224, the more significant the substantive responsibilities retained by the lessor over the leased property, the likelier that the lease would not be viewed as a transaction.

Section 800.301(d)—Joint Ventures

The Proposed Rule, in § 800.301(d), harmonized the application of the term ''covered transaction'' to joint ventures with its application to all other transactions. Thus, the Proposed Rule provided that the creation of a joint venture is a covered transaction if a U.S. business is contributed to the joint venture and a foreign person could gain control of that U.S. business through the creation of the joint venture. Example 1 in § 800.301(d) of the Proposed Rule stated that the creation of a 50/50 joint venture by a foreign person and a party that contributes a U.S. business is a covered transaction, with respect to the U.S. business. A commenter suggested that such a transaction should not be a covered transaction because the power that the foreign person has over the U.S. business is no greater than the other party's.

The Final Rule makes no change in response to the comment described above. To the extent that a joint venture involves the contribution of a U.S. business, a foreign 50/50 joint venture partner would obtain the same degree of power over the important matters affecting that joint venture—and therefore the U.S. business—as if the foreign person had made a direct investment in that U.S. business to obtain a 50 percent interest. The acquisition of a 50 percent interest in an existing U.S. business is not viewed differently with regard to foreign control based on whether it is structured as a direct investment or a joint venture. When all ownership interests in a U.S. business are held by two equal partners, each partner is able to veto all important matters affecting the U.S. business, so each partner controls the U.S. business.

Section 800.302(b) of the Regulations Issued in 1991—Corporate Reorganizations

The Proposed Rule omitted a provision that had been included in the 1991 regulations, at § 800.302(b). The omitted provision stated that an acquisition is not subject to review under section 721 if the parent of the entity making the acquisition is the same as the parent of the entity being acquired. A commenter suggested reintroducing the omitted provision or confirming that the principle continues to apply.

The Final Rule does not reintroduce the omitted provision. Section 721, as amended by FINSA, requires the Committee to review any transaction notified to it that could result in control of a U.S. business by a foreign person. A corporate reorganization that results in a new foreign person acquiring control of a U.S. business would be a covered transaction, even though the ultimate parent of the U.S. business may not have changed. Thus, the Committee must treat such a reorganization as a covered transaction. Such a reorganization, however, will present national security considerations only in exceptional cases, as is explained in greater detail in guidance that the Department of the Treasury, as Chairperson of the Committee, is publishing on the types of transactions that the Committee has reviewed and that have presented national security considerations.

Section 800.302(b)—Solely for the Purpose of Passive Investment

The Proposed Rule provided in § 800.302(c) that a transaction that results in a foreign person holding ten percent or less of the outstanding voting interests in a U.S. business is not a covered transaction if the transaction is ''solely for the purpose of investment.'' In § 800.223, ''solely for the purpose of investment'' was defined to refer to ownership interests in which the person holding or acquiring such interests has no plan or intent to exercise control, and takes no actions that indicate otherwise. Some commenters suggested that the term ''solely for the purpose of investment'' was too vague and created additional uncertainty for portfolio investors. A commenter also suggested clarifying that investors holding less than ten percent of the interests of a business can wield significant influence.

The Final Rule addresses these comments by clarifying that the rule for holdings of ten percent or less of the outstanding voting interests in a U.S. business—which is now at § 800.302(b) of the Final Rule—applies only to interests that are held or acquired ''solely for the purpose of passive investment.'' The addition of the word ''passive'' emphasizes that this rule does not pertain to a transaction if the foreign person plans or intends to gain control over the U.S. business. The example in § 800.223 of the Final Rule also makes clear that the Committee will consider whether the foreign person's negotiation of rights constitutes evidence that the foreign person possesses a purpose other than passive investment. Under the Final Rule, a transaction would not be a ''covered transaction'' if the foreign person holds ten percent or less of the voting shares in a U.S. business and the investment is passive such as where, for example, the foreign investor has no affirmative rights other than the ability to vote its shares *pro rata* and no negative rights other than any minority shareholder protection listed in § 800.204(c) or as considered by the Committee on a case-by-case basis under § 800.204(d).

A commenter also suggested that the Proposed Rule be revised to identify a mechanism for tracking whether, after the Committee determines that this rule applies to a transaction, the foreign person develops plans or an intent to control the U.S. business or takes action inconsistent with passive intent. The Final Rule makes no change to the proposed language in response to this comment. The Committee will inform the parties if it determines a notified transaction is not a covered transaction because the investment is held or acquired solely for the purpose of passive investment. Should material facts change in the future relating to whether the foreign person has control of the U.S. business, the transaction may become a covered transaction subject to section 721.

A commenter also suggested that the rule regarding transactions solely for the purpose of passive investment should be expressed in terms of whether the foreign person has ten percent or less of the outstanding ''ownership interest'' in the U.S. business, rather than the ''voting interest.''

The Final Rule does not adopt this suggestion because it would not cover an investor whose voting power in a U.S. business is disproportionately large compared to its ownership interest. Such an investor could have the ability to exercise control, even though its ownership interest is under the ten percent threshold. For example, where a company has issued a class of non-voting stock, it is possible that a foreign person may have ten percent or less of the outstanding stock of a company, but still have greater than ten percent of the voting stock, possibly giving it powers that are disproportionate to its share of all outstanding stock.

Section 800.303—Lending Transactions

The Proposed Rule, at § 800.303, established a special rule that described the circumstances in which a foreign lender may obtain ownership of collateral but not be deemed to control that collateral. The Proposed Rule also intended to clarify that a lending transaction, even where accompanied by a security interest in property, ordinarily does not convey control. Several commenters expressed concern that § 800.303 could be read to suggest that loans could be considered covered transactions based on the presence of standard negative covenants in the loan documents and requested that the Committee clarify that this is not the case.

This Final Rule revises § 800.303 to provide more clearly that loans themselves are not ''transactions'' (defined in § 800.224), except where the foreign person acquires economic or governance rights in the U.S. business characteristic of an equity investment, but not of a loan. Loan covenants that give the lender a negative right over certain decisions of the borrower, therefore, would not result in the loan itself being subject to these regulations, so long as the foreign person does not acquire economic or governance rights in the U.S. business characteristic of an equity investment but not of a loan. Consistent with that rule, and as provided in Example 3 in § 800.303 of the Final Rule, if the loan agreement were to extend to the lender the right to be on the board of the borrower and the right to receive dividends from the borrower, the loan would be considered a ''transaction'' and would be a covered transaction if these or other powers that the lender receives as a result of the loan would constitute ''control,'' as defined in § 800.204. Note that the acquisition of control of a U.S. business by a foreign lender as a result of a borrower's default on a loan would still be considered a covered transaction, except in the circumstances described in § 800.303(c) or where the Committee determines that there is no control as a result of its assessment of the factors identified in § 800.303(a)(2).

Several commenters suggested that, in assessing whether a loan could give the lender control over the borrower, the Committee should take into account the fact that lending transactions and banks are subject to other regulatory regimes, both in the United States and abroad. Section 721, however, creates a separate statutory process from that created under banking and other laws, with different purposes and standards. The Committee's determinations regarding control are independent of such other laws.

The Proposed Rule, at § 800.303(a)(1), provides that the Committee will accept a notice when default becomes imminent or some ''other condition'' arises that would result in a ''significant possibility'' that the foreign lender may obtain control of the U.S. business. One commenter asked for further clarification of what ''other conditions''

are and what constitutes a ''significant possibility.'' As a general matter, the Committee declines to accept notices of covered transactions where the occurrence of the transaction is speculative or remote. Accordingly, the Final Rule continues to provide that the Committee will accept notices of loans that do not, by themselves, constitute covered transactions, only when, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of the U.S. business. Such a ''significant possibility'' may exist, for example, where several persons other than the foreign lender also have security interests in the same collateral and it is very possible, but not certain, that the foreign lender will obtain control.

Several commenters expressed concern about the possible effect of § 800.303 on the validity of lenders' security interests. For example, a security interest, upon default, may result in ''control'' of the collateral by the lender, and section 721 authorizes the President to suspend or prohibit covered transactions in certain circumstances. To the extent that a security interest may be suspended or prohibited by the President under section 721 upon default, a commenter objected to the limitation on notifying the transaction until default becomes imminent or some other condition arises that would result in a significant possibility that the foreign lender may obtain control of the U.S. business in which it has a security interest. The commenters also requested that the Committee allow a reasonable period of time for a lender to transfer management decisions or day-to-day control over the U.S. business to U.S. nationals.

The Final Rule recognizes in § 800.303 that foreign persons that make loans in the ordinary course, such as commercial banks, do not do so in hopes of acquiring control over collateral in the event of default and retaining possession of the collateral indefinitely. Section 800.303(a)(2) allows the Committee to provide the foreign person with the time needed to dispose of collateral of which it has taken possession, so long as the foreign person has made arrangements to transfer management decisions or day-to-day control over the U.S. business to U.S. nationals during the interim period.

Section 800.304—Timing Rule for Convertible Voting Instruments

Several commenters expressed concern over the treatment of convertible voting instruments in § 800.302(b) of the Proposed Rule. One commenter suggested that the Proposed Rule might inadvertently eliminate the Committee's flexibility to determine on a case-by-case basis whether the acquisition of convertible voting instruments should be deemed to confer control even without the conversion of such instruments. Another commenter suggested that the Proposed Rule's treatment of convertible voting instruments inappropriately would cover transactions that result in foreign influence falling short of control, because it is only upon conversion that the holder receives rights relevant to control.

The Final Rule revises the provision, which now appears at § 800.304, to further clarify that the Committee will consider the circumstances of conversion in order to determine whether the Committee will include the rights that the holder will obtain upon conversion in its assessment of whether a notified transaction that includes such instruments could result in control. This rule allows the Committee to consider the rights that would result from the conversion of the instruments at an appropriate time. In some cases, such as where the results of conversion are reasonably ascertainable and the conversion is in the near future, the Committee will consider such rights when the acquisition of the convertible instruments is notified to the Committee. In other cases, such as where conversion is speculative or remote, the Committee may choose not to consider the rights that would result from conversion at the time of the notified transaction. In such cases, however, the Committee consistent with § 800.304(b), may, still consider whether the acquisition of the convertible voting instruments is a covered transaction because of any immediate rights that they convey to the holder with respect to the governance of the entity that issued the instruments. Furthermore, once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from conversion and whether the conversion is a covered transaction.

Section 800.401—Procedures for Notice

The Proposed Rule, at § 800.401, explicitly encouraged parties to a transaction to consult with the Committee prior to filing a notice. The preamble to the Proposed Rule made clear that pre-notice consultations give the Committee an opportunity to understand the transaction and to suggest information that the parties may wish to include in their notice to assist the Committee in addressing any national security considerations as efficiently as possible. Commenters asked for additional information regarding the purpose of such prefiling communications and when such communications would be appropriate.

The Final Rule leaves § 800.401(f) unchanged. Prefiling consultations may be particularly helpful where a party to the transaction has not previously prepared a notice for submission to the Committee or where a transaction is unusually complex. Included within the broad spectrum of prefiling consultations that may be helpful are: (1) Informing the Staff Chairperson orally or in writing of a transaction that may be filed and the date it may be filed; (2) requesting in writing that the Staff Chairperson modify a requirement in § 800.402, as further described below; (3) asking the Staff Chairperson procedural questions orally or in writing; (4) requesting a meeting with the Staff Chairperson, other Treasury official, or other Committee staff, to provide information on a transaction and to allow the Staff Chairperson and others to pose questions that may help the party identify information it may wish to include in a voluntary notice; and (5) providing a draft of the voluntary notice.

Several commenters suggested that the Committee provide a binding decision on whether a transaction is a covered transaction before a full voluntary notice is submitted to the Committee under § 800.401. One commenter expressed opposition to this proposal, suggesting that, prior to receipt of a full voluntary notice, the Committee might err on the side of caution in finding that transactions are covered transactions.

The Committee has not made any changes in the Final Rule in response to these comments. The Committee recognizes the potential utility of a preliminary determination on whether a transaction is a covered transaction. The proposal for a timely, yet binding, decision through a new and separate prefiling process, however, would create a substantial new burden on the CFIUS process, thus undermining the Committee's ability to meet its statutory deadlines. As a determination that might fall outside the statutorily defined review and investigation process, it also raises potential concerns regarding consistency with section 721 that would require further examination.

A commenter requested that the Department of the Treasury accept voluntary notices without requiring that they be broken into multiple electronic files. The Final Rule makes no changes

to the proposed language of § 800.401, which makes no reference to this requirement. The Staff Chairperson does currently request, however, that large submissions be broken into smaller electronic files because information technology capabilities vary widely across the government departments and offices to which the Staff Chairperson forwards each notice. The Department of the Treasury is exploring options to improve the process for receipt and distribution of notices.

Section 800.402—Contents of Voluntary Notice

The Proposed Rule, at § 800.402, expanded the information that must be included in a voluntary notice submitted to the Committee to require certain additional information that the Committee routinely has requested of parties. Several commenters argued that the information requirements of § 800.402 are onerous and suggested that the significant time and expense that they predicted would be required to prepare a notice may discourage voluntary filings. Commenters stated that some of the information requirements may not be relevant in particular cases and suggested asking only for a narrower set of information in each case, supplemented by additional data based on the type of industry, transaction, or the parties. A commenter also suggested a short-form notice that would provide the parties something less than the safe harbor provided in § 800.601 upon the Committee's completion of its review.

The Final Rule makes several significant changes to the proposed language of § 800.402(c) to narrow the scope of some of the information required, as discussed further below. In those cases where the information sought under § 800.402(c) is not applicable to the notified transaction, the voluntary notice should state so. Except where the Staff Chairperson modifies a particular information requirement for a particular filer as described below or where a party states, and the Staff Chairperson agrees, that a request is not applicable, a voluntary notice will not comply with § 800.402 if any information required in § 800.402 is missing.

In extraordinary cases, parties may request that the Staff Chairperson modify an information requirement in these Final Rules for a particular transaction. All such requests must be submitted in writing to the Staff Chairperson before filing a notice. The Staff Chairperson will consider accommodating such a request only in the exceptional case where a requirement would place an extraordinary burden on the parties and where modification would not impair the full and efficient consideration of the transaction. For example, the Staff Chairperson may consider a request by a small company to modify the requirement at § 800.701(b), to allow the company to submit a certified translation of only portions of its annual report. The Staff Chairperson, however, will not consider waiving the requirement at § 800.402(c)(6)(vi) for personal identifier information regarding certain key personnel. If the Staff Chairperson grants the request for modification, the justification that was provided in the written request must be included in the party's voluntary notice. Even after a request has been granted, the Committee may request the information after the notice has been submitted, in which case § 800.403(a)(3) will apply, and completion of the review or investigation, within the constraints of section 721, may take longer than if the information had been provided at the outset.

A commenter requested confirmation that submission of a voluntary notice is not an admission that a transaction is a covered transaction. The Committee will not treat a voluntary filing as an admission that the transaction is a covered transaction. Furthermore, the Final Rule makes a minor change to the proposed language of § 800.402(j), clarifying that parties filing a voluntary notice are required to state their ''opinion'' (rather than ''full statement of [their] view,'' as provided in the Proposed Rule) as to whether the transaction is a covered transaction.

Commenters suggested changes to two proposed information requirements regarding the value of the transaction. The Final Rule modifies the proposed language of § 800.402(c)(1)(viii) to request a ''good faith approximation of the net value of the interest acquired'' rather than a statement of the full value of the transaction and a description of how it was derived. The Final Rule modifies the proposed language of § 800.402(c)(3)(i) to require identification of the methodology used to determine market share, rather than how the estimate was derived, although the Committee may request such an explanation on a case-by-case basis after a review is initiated.

The Proposed Rule, at § 800.402(c)(3)(iv), required filers to identify each contract that was in effect within the past three years with any U.S. Government agency. In response to comments suggesting that the Proposed Rule was unnecessarily broad, the Final Rule significantly narrows the proposed language, requiring identification of any contract in effect within the past three years with any U.S. Government agency or component with national defense, homeland security, or other national security responsibilities, including law enforcement as it relates to defense, homeland security, or national security.

The Proposed Rule, at § 800.402(c)(3)(vi), required information regarding rebranding or incorporation of the U.S. business's products or services by another company or in another company's products. Several commenters suggested this requirement may prove highly burdensome in some cases. The Final Rule makes no change to the proposed language. In those exceptional cases where the requirement is extraordinarily burdensome, however, the filer may request that the Staff Chairperson modify this requirement, subject to the conditions stated above regarding such requests. Such a request may be considered, for example, where the U.S. business produces and sells a raw material to thousands of manufacturers.

The Proposed Rule, at § 800.402(c)(3)(vii), required identification of priority rated contracts or orders for the past three years. A commenter noted that the Proposed Rule requested information on the target company's plans to ensure that it or any new entity formed at the completion of the transaction would remain in compliance with the Defense Priorities and Allocations System (DPAS) regulations. The commenter suggested that the language be amended to request a statement of the plans of the acquiring party (rather than the U.S. business itself) to ensure compliance of the U.S. business or newly formed U.S. business with the DPAS regulations. The Final Rule makes the suggested changes. Another commenter suggested that the requirement that parties identify all priority rated contracts and orders for the past three years could require a voluminous production. The Final Rule makes no change in this regard. Parties that comply with the three-year record-keeping requirement of the DPAS regulations should not face a significant burden in complying with this subsection.

The Proposed Rule, at § 800.402(c)(3)(viii), required a description and copy of cyber security plans. A commenter suggested this may be irrelevant in some cases and could be misinterpreted to suggest that a cyber security plan is expected in conjunction with foreign acquisitions. The Final Rule makes no change to this proposed requirement. The subsection refers to plans that any company may have to

protect its information technology systems, regardless of whether the company is in the information technology industry. The subsection requires submission of any such cyber security plan but does not state a view as to the appropriateness of a plan in any particular case.

A commenter interpreted § 800.402(c)(4)(i) of the Proposed Rule as requiring filers to identify and classify under the Export Administration Regulations (''EAR'') almost every item that the U.S. business produces or trades in, since all items subject to the EAR bear at least the designation EAR99. As noted by other commenters, however, this subsection, which has not been modified by the Final Rule, allows filers to provide commodity classifications for items by general product categories, which does not require the identification or classification of every individual item produced or traded.

The Proposed Rule, at § 800.402(c)(4)(ii)(B), required filers to identify articles and services that have not been, but may be, designated or determined to be covered by the U.S. Munitions List pursuant to 22 CFR 120.3. Commenters suggested that the scope of this requirement was ambiguous. The Final Rule revises this provision to make clear that the requirement includes articles and services ''under development'' that may be designated or determined in the future to be defense articles or defense services pursuant to 22 CFR 120.3.

The Proposed Rule, at § 800.402(c)(5)(i), required filers to identify certain licenses, permits, and authorizations that have been granted by an agency of the U.S. Government. A commenter questioned whether this would extend to sewer permits, motor vehicle licenses, business licenses, and other similar state or local permits, licenses or authorizations. The Final Rule makes no change to the proposed subsection. The requirement applies only to licenses, permits, and authorizations that have been granted by an agency of the ''United States Government,'' a term which refers only to federal—not state or local—government.

The Proposed Rule, at § 800.402(c)(6)(ii), required filers to identify the foreign person's plans with respect to the U.S. business's operations. A commenter suggested that this requirement has no relation to national security. The Final Rule makes no change in response to the comment because a foreign person's intentions with respect to the operations of the U.S. business may be central to the national security analysis, depending on the relevance of the business to U.S. national security interests.

The Proposed Rule, at § 800.402(c)(6)(iv)(D), required filers to state whether a foreign government has any affirmative or negative rights not already identified in the filing that could be relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction. A commenter suggested that the requirement be limited to ''material'' rights. The Final Rule makes no change to the proposed language because the requirement is already limited to rights ''that could be relevant'' to the determination of whether the transaction is a foreign government-controlled transaction.

The Proposed Rule, at § 800.402(c)(6)(vi) and (vii), required filers to provide certain biographical and personal identifier information for certain key personnel affiliated with the foreign acquirer and its parents. Commenters asked for clarification regarding how the two sections differ. Commenters also suggested that the information be required: Only for individuals affiliated with the immediate acquirer, the ultimate parent, and other entities that have control or have a role in the transaction; only if the information has not been provided in connection with another transaction in the preceding six months; or, with regard to shareholders, only at a threshold higher than five percent. Commenters also suggested that the scope of the requirement for information on government and military service be clarified and narrowed.

The Final Rule combines the two proposed subsections into § 800.402(c)(6)(vi) and identifies a single group of individuals for whom filers must provide a curriculum vitae or similar professional synopsis as part of the main notice, as well as certain other personal identifier information in a separate document to facilitate special handling. Such information must be provided for each member of the board of directors and each officer of the foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents (see § 800.219 for the definition of ''parent''), and for any individual having an ownership interest of five percent or more in the foreign person engaged in the transaction and in its ultimate parent. The Final Rule does not remove this requirement with respect to foreign acquirers that were involved in a transaction within the preceding six months because the storage and retrieval of such information would create substantial new burdens on the Committee. The Final Rule, at § 800.402(c)(6)(vi), also narrows the foreign military service information requirement. Filers are not required to provide details of foreign military service where the service was at a rank below the top two non-commissioned ranks of the foreign country. Filers must continue to provide the dates and nature of all other military and government service.

Section 800.403—Deferral, Rejection, or Disposition of Certain Voluntary Notices

The Proposed Rule provided in § 800.403(a)(3) that the Staff Chairperson of the Committee may reject a voluntary filing if a party fails to provide any follow-up information requested by CFIUS within two business days. Many commenters suggested that this requirement was too onerous and suggested expansion of the response time to three or five business days. One commenter also asked the Committee to clarify that holidays in both the United States and in the responding foreign party's home country would not be counted as business days.

The Final Rule revises § 800.403(a)(3) to extend the time allowed to a party to respond to a request for follow-up information to three business days, which appropriately balances the burden to parties to a transaction notified to CFIUS and the needs of the Committee to complete a review or investigation on a timely basis. The Final Rule also adds a definition of ''business day'' at § 800.201 to exclude legal public holidays in the United States. This definition does not exclude other countries' holidays, so as to encourage a uniformly efficient review process.

Section 800.503—Determination of Whether To Undertake an Investigation

The Proposed Rule reiterated in § 800.503(a) the standards provided by statute and Executive Order for initiating an investigation. Two commenters suggested that the standards were not clear or objective. They asked that the regulations identify the factors that agencies must consider in assessing whether there is a threat to national security and require disclosure of the rationale for the Committee's determination. Two commenters suggested that one of the standards in particular—at § 800.503(a)(1)—would make investigations inevitable in most cases, since it can be triggered by any one member of the Committee other than an *ex officio* member.

The Final Rule makes no changes to the proposed text of § 800.503. The

standards for initiation of investigations are drawn directly from section 721(b)(2)(B) and section 6(b) of Executive Order 11858. Even after FINSA became effective on October 24, 2007, the vast majority of cases have been completed within the initial 30-day review period, demonstrating that the standards for initiation of investigations do not make investigations inevitable.

Section 721(f) identifies factors for the Committee to consider, as appropriate, in assessing effects of a covered transaction on national security. Guidance on the types of transactions that have raised national security considerations that the Department of the Treasury, as Chairperson of the Committee, will publish separately in the **Federal Register** consistent with with section 721(b)(2)(E) provides additional context for those factors. The Committee's assessment of the national security effects of covered transactions is based on, among other things, sensitive business information submitted by the parties and classified U.S. Government information. Thus, the rationale for the Committee's determination in any particular case cannot be made public. Safeguards in section 721 and Executive Order 11858, however, ensure that actions taken by the President or the Committee are taken only to address legitimate national security concerns. For example, any risk mitigation must be based on a written analysis of the national security risk posed by the covered transaction and of the risk mitigation measures believed to be reasonably necessary to address the risk. In addition, the President cannot exercise his authority to suspend or prohibit a covered transaction under section 721 unless he finds: (1) That there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security; and (2) that provisions of law, other than section 721 and the International Emergency Economic Powers Act, do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security.

A commenter also noted that the standard for initiating an investigation set forth in § 800.503(b)(2) of the Proposed Rule omits a phrase included in section 721(b)(2)(B)(i)(III). The commenter asked that the phrase ''by assurances provided or renewed with the approval of the Committee'' be added to the proposed text of § 800.503(b)(2), to remind parties that national security concerns may be mitigated by prior mitigation agreements. The Final Rule does not make the requested addition. The point that the commenter wished to emphasize through the addition is correct. Entering into mitigation agreements, however, is not the only means of resolving any national security concerns. The Committee may also determine that any such concerns can be resolved through other applicable laws besides section 721 that adequately address national security risks raised by a covered transaction.

A commenter suggested that foreign government-controlled transactions should not be subject to an automatic investigation trigger. Section 721(b)(2)(B), however, requires that the Committee conduct an investigation of foreign government-controlled transactions. The Committee is allowed, pursuant to section 721(b)(2)(D) to conclude review of such a transaction without initiating an investigation if the Department of the Treasury and the lead agency determine at the Deputy Secretary level or higher that the transaction will not impair the national security of the United States.

A commenter also suggested that the review and investigation schedule be condensed to a shorter period than the statutory maximum 30-day review and 45-day investigation to minimize the impact on covered transactions reviewed by the Committee. Two commenters also asked that the regulations guarantee that the parties to a reviewed transaction will be informed several days before the end of the 30-day review period if risk mitigation will be required. The commenters noted that if the need for risk mitigation is not determined until near the end of the 30-day review, there may be insufficient time to reach resolution of concerns before the end of that period, resulting in an otherwise unnecessary 45-day investigation.

The Final Rule makes no changes to the proposed text of § 800.503 or other sections in response to these comments. The Committee seeks to conclude each case, as well as to engage parties regarding the need for risk mitigation, as soon as practicable. The maximum timeframes for reviews and investigations are established by section 721. They have proven in practice to be appropriate for numerous reasons: many officials from the various U.S. Government agencies that comprise the Committee, including senior officials, are involved in the Committee's determinations; the important national security responsibility entrusted to the Committee requires robust, often time-consuming analysis of each case; many of the transactions reviewed by the Committee are complex; and the Committee's caseload is significant.

The Final Rule does implement changes to the CFIUS process that are intended to maximize efficiency and ensure timely consideration of transactions notified to the Committee. These changes include, among others, encouragement of prefiling consultations, expansion of the required contents of voluntary notices to include information that the Committee, in practice, has been requesting during the course of reviews, and requirements that the Staff Chairperson take certain administrative actions promptly or within defined periods of time.

Section 800.508—Role of the Secretary of Labor

The Proposed Rule, at § 800.508, provided a role for the Secretary of Labor with respect to mitigation agreements, as required by section 721(h)(3)(C). A commenter suggested that the role defined for the Secretary of Labor was too narrow and that the regulations should make clear that the Chairperson can seek the Secretary of Labor's input on other occasions, as appropriate. Another commenter suggested that the meaning of § 800.508 was ambiguous. A commenter also asked that the regulations make clear that mitigation agreements should not violate any U.S. laws, rather than only labor laws.

The Final Rule revises the proposed text of § 800.508 to expand the Secretary of Labor's role and to focus it on employment laws, rather than labor laws. The Final Rule also adds language to emphasize that the Secretary of Labor will have no other policy role. This reinforces the Committee's focus, consistent with section 721, on national security alone, rather than broader economic or other national interests, for example, the effect of foreign investment on domestic employment levels.

The Final Rule retains the provision addressing consistency of mitigation agreements with employment laws, rather than all U.S. laws, not because the Committee believes that mitigation agreements may be inconsistent with other applicable U.S. laws, but because § 800.508 addresses solely the advice that will be sought from the Secretary of Labor.

Section 800.601—Finality of Actions Under Section 721

The Proposed Rule revised § 800.601(a) to clarify the circumstances under which the authority under section 721(d) will not be exercised. Paragraph (1) of § 800.601(a) pertains to the

situation in which the Committee finds that a transaction notified to it is not a covered transaction. Paragraphs (2) and (3) pertain to the situation in which a transaction notified to the Committee is found to be a covered transaction, and either the Committee has advised the parties in writing that it has concluded all action under section 721, or the President has announced his decision not to exercise his authority under section 721 with respect to the covered transaction. These provisions do not preclude exercise of authority under section 721(d) with respect to any other covered transaction.

The following example illustrates a situation in which § 800.601(a)(2) would apply and a situation in which it would not apply: Corporation A, a foreign person, owns a non-controlling interest in Corporation B, another foreign person. Corporation B notifies the Committee of a proposed purchase of a controlling interest in Corporation X, a U.S. business. The Committee determines that Corporation B's purchase is a covered transaction, and the parties are advised in writing that the Committee has concluded all action under section 721 with respect to that transaction. Section 800.601(a)(2) would apply to that transaction. Corporation A subsequently engages in another transaction to increase its interest in Corporation B to 51 percent and obtain control of Corporation B. Section 800.601(a)(2) would not apply to this later transaction. This later transaction would be a covered transaction because it results in Corporation A's control of Corporation X, a U.S. business.

The Proposed Rule excluded provisions in the 1991 regulations pertaining to the President's authority that are not necessary to include in regulation because they are already addressed in FINSA. The Proposed Rule also described circumstances under which the Committee may reopen a review of a covered transaction as to which the Committee previously had concluded all action under section 721. A commenter stated that the regulations should incorporate section 721(b)(1)(D)(iii), which permits reopening of a review as a result of certain intentional material breaches of mitigation agreements. Commenters also asked for clarification regarding the process the Committee would follow upon reopening a review.

The Final Rule amends the proposed text of § 800.601 to delete the description of circumstances under which the Committee may reopen a review of a covered transaction as to which the Committee previously had concluded all action. As provided under Executive Order 11858, the Committee may reopen a review of a covered transaction for which the Committee has concluded action only in those extraordinary circumstances authorized under section 721, including section 721(b)(1)(D)(iii). In determining whether to reopen a review for material misstatement or omission, the Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security, as provided in the new § 800.509.

Where section 721 authorizes the Committee to reopen a review of a covered transaction as to which the Committee previously had concluded all action, the new review will be subject to the same procedural rules and requirements prescribed by section 721 and the regulations for notices of a covered transaction filed with the Committee by an agency under § 800.401(c).

Section 800.702—Confidentiality

The Proposed Rule, at § 800.702, clarified that confidentiality protections apply to information provided to CFIUS during the course of a withdrawal or with regard to a notice that is rejected under § 800.403. The preamble to the Proposed Rule noted that, under § 800.401(f), information provided during the course of pre-notice consultations is also protected by the confidentiality provisions of section 721(c) and § 800.702. In addition, § 800.702(c) made clear that public statements of the Chairperson or his designee may reflect information that the parties to the transaction have already themselves publicly disclosed.

Several commenters suggested that the confidentiality provisions of § 800.702 were inadequate because they may not extend to information provided during the course of pre-notice consultations if no notice is ultimately filed with the Committee and because they do not provide clear civil remedies to parties for violations of confidentiality. Two commenters also expressed concern over the potential involvement of Congress during the course of the Committee's review of a covered transaction.

The Final Rule amends the proposed text of § 800.702 to explicitly extend the confidentiality provisions under the section to information or documentary material provided during the course of pre-notice consultations pursuant to § 800.401(f), regardless of whether a notice is ultimately filed with the Committee. Further, the Final Rule makes clear that the confidentiality provisions will continue to apply even when the transaction is no longer before the Committee.

The Final Rule makes no changes in response to the comments regarding civil remedies for violations of confidentiality. The confidentiality requirements under section 721(c) and § 800.702 bind the entire Executive Branch. Further, section 721(g)(2)(A) applies section 721(c) to briefings provided to the U.S. Congress under section 721(g)(1), and section 721(g)(2)(B) provides additional confidentiality assurances regarding proprietary information provided to Congress. Nothing in the regulations prevents parties from seeking any remedies available under existing law to prevent or redress violation of these confidentiality provisions. The Committee may also refer violations of these provisions to the Department of Justice for investigation and prosecution under 50 U.S.C. App. 2155(d), which provides for fines and imprisonment. It is also important to note that FINSA provides for reporting to Congress on each covered transaction only after all deliberative action is complete.

Section 800.801—Penalties

The Proposed Rule, at § 800.801, provided for the imposition of civil penalties for any violation of section 721, including a violation of any mitigation agreement entered into or conditions imposed pursuant to section 721(l). The preamble to the Proposed Rule made clear that civil monetary penalties could be imposed with regard to transactions entered into on or after the effective date of FINSA, October 24, 2007. In addition, § 800.801(c) authorized CFIUS to include in any mitigation agreement described in section 721(l) a liquidated damages provision tied to the harm to the national security that could result from a breach.

A commenter expressed concern that the civil penalties provided for in § 800.801 of the Proposed Rule were so high as to potentially discourage parties from filing voluntary notices with the Committee. Another commenter, noting that penalties for certain breaches of mitigation agreements may be up to the value of the transaction, suggested that the Committee set an upper bound to such penalties for particularly large transactions. A commenter also asked whether penalties for violations of mitigation agreements under section 721 will be separate from penalties assessed by the Department of Defense under agreements to mitigate foreign ownership, control, and influence under

the National Industrial Security Program Operating Manual (NISPOM).

The Final Rule amends the proposed text of § 800.801 to specify that civil penalties may be imposed under the section only if the action that could give rise to civil penalties occurs on or after the effective date of the Final Rule. The Final Rule also adds a requirement that the determination to impose civil penalties under § 800.801 must be made by the members of the Committee named in FINSA and Executive Order 11858, except to the extent delegated by such official.

The Final Rule makes no other changes to the proposed text of § 800.801 in response to public comments received. CFIUS retains the discretion to impose less than the maximum penalty identified in § 800.801, depending on the nature of the violation. The Final Rule also affords parties the opportunity to submit a petition for reconsideration of any decision to impose a penalty. Furthermore, the maximum penalty amounts provided for in § 800.801 are consistent with the statutory penalty scheme under the International Emergency Economic Powers Act, a statute that provides the authority for a number of regulations related to national security.

Mitigation agreements or conditions entered into or agreed to pursuant to section 721(l) are separate from agreements reached under the NISPOM pursuant to separate legal authority of the Department of Defense. In general, the remedy and penalty provisions of the former type of mitigation agreements or conditions have no bearing on the applicability or enforceability of remedy and penalty provisions in the latter type of agreement.

Executive Order 12866

These regulations are not subject to the requirements of Executive Order 12866 because they relate to a foreign affairs function of the United States.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control number 1505–0121.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies when an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), or any other law. As set forth below, because regulations issued pursuant to the Defense Production Act of 1950 (50 U.S.C. App. 2170) are not subject to the Administrative Procedure Act, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This regulation implements section 721 of the DPA. Section 709 of the DPA (50 U.S.C. App. 2159, as amended by section 136 of the Defense Production Act Amendments of 1992 (Pub. L. 102–558)) provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act. Section 709 of the DPA instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. (Similarly, FINSA requires the President to direct the issuance of implementing regulations subject to notice and comment.) Section 709 of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Legislative history demonstrates that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the Administrative Procedure Act and instead provided that the agency include a statement that interested parties were consulted in the formulation of the regulation. *See* H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with the authority to suspend or prohibit the acquisition, merger, or takeover of a domestic firm by a foreign firm if such action would threaten to impair the national security, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

Notwithstanding the inapplicability of the RFA, we certify that this rule would not have a significant economic impact on a substantial number of small entities. These regulations provide for a voluntary system of notification, and historically fewer than 10 percent of all foreign acquisitions of U.S. businesses are notified to CFIUS. Typically, some of the notices filed with CFIUS concern U.S. companies that would qualify as small entities. It is estimated that an average filing requires about 100 hours of preparation time. It is estimated that between 100 and 200 notices will be filed with CFIUS annually over the next few years. Few cases end with mitigation agreements. There were 16 mitigation agreements in 2006, 14 in 2007, and fewer than 5 to date in 2008. As such, a substantial number of entities are not impacted by these rules regardless of their size. We also note that these regulations, to a substantial degree, merely provide a detailed explanation of the current burdens of complying with CFIUS procedures and do not impose significant new burdens on entities subject to CFIUS.

List of Subjects in 31 CFR Part 800

Foreign investments in the United States, Investigations, National defense, Reporting and recordkeeping requirements.

■ Accordingly, under the authority at 50 U.S.C. App. 2170(h), for the reasons stated in the preamble, the Department of the Treasury amends 31 CFR chapter VIII as follows:

CHAPTER VIII—OFFICE OF INVESTMENT SECURITY, DEPARTMENT OF THE TREASURY

■ 1. The heading for chapter VIII is revised to read as set forth above.

■ 2. Part 800 is revised to read as follows:

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

Subpart A—General

Sec.

Authority: 50 U.S.C. App. 2170; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General

§ 800.101 Scope.

The regulations in this part implement section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. App. 2170), as amended, hereinafter referred to as ''section 721.'' The definitions in this part are applicable to section 721 and these regulations. The principal purpose of section 721 is to authorize the President to suspend or prohibit any covered transaction when, in the President's judgment, there is credible evidence to believe that the foreign person exercising control over a U.S. business might take action that threatens to impair the national security, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. It is also a purpose of section 721 to authorize the Committee to mitigate any threat to the national security of the United States that arises as a result of a covered transaction.

§ 800.102 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 800.103 Applicability rule; prospective application of certain provisions.

(a) Except as provided in paragraph (b) of this section and otherwise in this part, the regulations in this part apply from the effective date (as defined in Section 800.210).

(b) Sections 800.204 (Control), 800.205 (Conversion), 800.206 (Convertible voting instrument), 800.211 (Entity), 800.212 (Foreign entity), 800.216 (Foreign person), 800.220 (Party or parties to a transaction), 800.223 (Solely for the purpose of passive investment), 800.224 (Transaction), 800.226 (U.S. business), and 800.228 (Voting interest), and the regulations in subpart C (Coverage) do not apply to any transaction for which the following has occurred before the effective date, in which case corresponding provisions of the regulations in this part that were in effect the day before the effective date will apply:

(1) The parties to the transaction have executed a written agreement or other document establishing the material terms of the transaction;

(2) A party has made a public offer to shareholders to buy shares of a U.S. business;

(3) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities; or

(4) The parties have, in the Committee's view, otherwise made a commitment to engage in a transaction.

Note to § 800.103: See subpart H of this part for specific applicability rules pertaining to that subpart.

§ 800.104 Transactions or devices for avoidance.

Any transaction or other device entered into or employed for the purpose of avoiding section 721 shall be disregarded, and section 721 and the regulations in this part shall be applied to the substance of the transaction.

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. That transaction is subject to section 721.

Subpart B—Definitions

§ 800.201 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103 or any other day declared to be a holiday by federal statute or executive order.

§ 800.202 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party to a transaction filing a notice or information, certifying that the notice or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction, and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking officers, directors, or partners, any individual within the organization exercising executive functions similar to those of an officer or director of a corporation or a general partner of a partnership; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (b)(4) of this section, such designee must possess actual authority to make the certification on behalf of the party to the transaction filing a notice or information.

Note to § 800.202: A sample certification may be found at the Committee's section of the Department of the Treasury Web site at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml.*

§ 800.203 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 800.204 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers;

(9) The appointment or dismissal of employees with access to sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in an entity to prevent the dilution of an investor's *pro rata* interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

(e) Any transaction in which a foreign person acquires an additional interest in a U.S. business that was previously the subject of a covered transaction for which the Committee concluded all action under section 721 shall not be deemed to be a transaction that could result in foreign control over that U.S. business (*i.e.*, it is not a covered transaction). However, if a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

Example 1. Corporation A is a U.S. business. A U.S. investor owns 50 percent of the voting interest in Corporation A, and the remaining voting interest is owned in equal shares by five unrelated foreign investors. The foreign investors jointly financed their investment in Corporation A and vote as a single block on matters affecting Corporation A. The foreign investors have an informal arrangement to act in concert with regard to Corporation A, and, as a result, the foreign investors control Corporation A.

Example 2. Same facts as in Example 1 with regard to the composition of Corporation A's shareholders. The foreign investors in Corporation A have no contractual or other commitments to act in concert, and have no informal arrangements to do so. Assuming no other relevant facts, the foreign investors do not control Corporation A.

Example 3. Corporation A, a foreign person, is a private equity fund that routinely acquires substantial interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

Example 4. Corporation A, a foreign person, acquires a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A also acquires certain veto rights that determine important matters affecting Corporation B,

including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

Example 5. Corporation A, a foreign person, acquires a thirteen percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member Board of Directors. Corporation A receives minority shareholder protections listed in § 800.204(c), but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

Example 6. Corporation A, a foreign person, acquires a twenty percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

Example 7. Corporation A, a foreign person, acquires a 40 percent interest and important rights in Corporation B, a U.S. business. The documentation pertaining to the transaction gives no indication that Corporation A's interest in Corporation B may increase at a later date. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered transaction, and concludes action under section 721. Three years later, Corporation A acquires the remainder of the voting interest in Corporation B. Assuming no other relevant facts, because the Committee concluded all action with respect to Corporation A's earlier investment in the same U.S. business, and because no other foreign person is a party to this subsequent transaction, this subsequent transaction is not a covered transaction.

Example 8. Limited Partnership A comprises two limited partners, each of which holds 49 percent of the interest in the partnership, and a general partner, which holds two percent of the interest. The general partner has sole authority to determine, direct, and decide important matters affecting the partnership and a fund operated by the partnership. The general partner alone controls Limited Partnership A and the fund.

Example 9. Same facts as in Example 8, except that each of the limited partners has the authority to veto major investments proposed by the general partner and to choose the fund's representatives on the boards of the fund's portfolio companies. The general partner and the limited partners each have control over Limited Partnership A and the fund.

Note to § 800.204: See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires ten percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment.

§ 800.205 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of particular financial instruments to exchange any such instruments for voting instruments.

§ 800.206 Convertible voting instrument.

The term *convertible voting instrument* means a financial instrument that currently does not entitle its owner or holder to voting rights but is convertible into a voting instrument.

§ 800.207 Covered transaction.

The term *covered transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person, which could result in control of a U.S. business by a foreign person.

§ 800.208 Critical infrastructure.

The term *critical infrastructure* means, in the context of a particular covered transaction, a system or asset, whether physical or virtual, so vital to the United States that the incapacity or destruction of the particular system or asset of the entity over which control is acquired pursuant to that covered transaction would have a debilitating impact on national security.

§ 800.209 Critical technologies.

The term *critical technologies* means:

(a) Defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130);

(b) Those items specified on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774) that are controlled pursuant to multilateral regimes (*i.e.*, for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as those that are controlled for reasons of regional stability or surreptitious listening;

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology specified in the Assistance to Foreign Atomic Energy Activities regulations (10 CFR part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Material regulations (10 CFR part 110); and

(d) Select agents and toxins specified in the Select Agents and Toxins regulations (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73).

§ 800.210 Effective date.

The term *effective date* means December 22, 2008.

§ 800.211 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the United States Government, a subnational government within the United States, and any of their respective departments, agencies, or instrumentalities). (See examples following §§ 800.301(c) and 800.302(c).)

§ 800.212 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

§ 800.213 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the United States Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

§ 800.214 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

§ 800.215 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

§ 800.216 Foreign person.

The term *foreign person* means:

(a) Any foreign national, foreign government, or foreign entity; or

(b) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

Example 1. Corporation A is organized under the laws of a foreign state and is only engaged in business outside the United States. All of its shares are held by Corporation X, which controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

Example 2. Same facts as in the first sentence of Example 1. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A through government interveners. Corporation A is a foreign person.

Example 3. Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

Example 4. Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

Example 5. Corporation A is a corporation organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the voting interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement to act in concert with regard to Corporation A with any other holder of voting interest in Corporation A. Corporation A demonstrates that the remainder of the voting interest in Corporation A is held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign person.

Example 6. Same facts as Example 5, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity pursuant to § 800.212(b), but it is a foreign person because it is controlled by a foreign person.

§ 800.217 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

§ 800.218 Lead agency.

The term *lead agency* means an agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including all or a portion of a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 800.219 Parent.

(a) The term *parent* means a person who or which directly or indirectly:

(1) Holds or will hold at least 50 percent of the outstanding voting interest in an entity; or

(2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraphs (a)(1) or (2) of this section with respect to another entity (*i.e.*, the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

Example 1. Corporation P holds 50 percent of the voting interest in Corporations R and S. Corporation R holds 40 percent of the voting interest in Corporation X; Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

Example 2. Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

§ 800.220 Party or parties to a transaction.

The terms *party to a transaction* and *parties to a transaction* mean:

(a) In the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, and the person from which such ownership interest is acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(b) In the case of a merger, the surviving entity, and the entity or entities that are merged into that entity as a result of the transaction;

(c) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;

(d) In the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest;

(e) In the case of the acquisition or conversion of convertible voting instruments, the issuer and the person holding the convertible voting instruments; and

(f) In the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a) through (e) of this section.

§ 800.221 Person.

The term *person* means any individual or entity.

§ 800.222 Section 721.

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950, 50 U.S.C. App. 2170.

§ 800.223 Solely for the purpose of passive investment.

Ownership interests are held or acquired *solely for the purpose of passive investment* if the person holding or acquiring such interests does not plan or intend to exercise control, does not possess or develop any purpose other than passive investment, and does not take any action inconsistent with holding or acquiring such interests solely for the purpose of passive investment. (See § 800.302(b).)

Example. Corporation A, a foreign person, acquires a voting interest in Corporation B, a U.S. business. In addition to the voting interest, Corporation A negotiates the right to appoint a member of Corporation B's Board of Directors. The acquisition by Corporation A of a voting interest in Corporation B is not solely for the purpose of passive investment.

§ 800.224 Transaction.

The term *transaction* means a proposed or completed merger, acquisition, or takeover. It includes:

(a) The acquisition of an ownership interest in an entity.

(b) The acquisition or conversion of convertible voting instruments of an entity.

(c) The acquisition of proxies from holders of a voting interest in an entity.

(d) A merger or consolidation.

(e) The formation of a joint venture.

(f) A long-term lease under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner.

Note to § 800.224(b): See § 800.304 regarding factors the Committee will consider in determining whether to include the rights to be acquired by a foreign person upon the

conversion of convertible voting instruments as part of the Committee's assessment of whether a transaction that involves such instruments is a covered transaction.

Example. Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

§ 800.225 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized ''in the United States.''

§ 800.226 U.S. business.

The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States, but only to the extent of its activities in interstate commerce.

Example 1. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Corporation A and its branch or subsidiary is each also a foreign person should any of them engage in a transaction involving a U.S. business.

Example 2. Same facts as in the first sentence of Example 1. Corporation A, however, does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

Example 3. Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

§ 800.227 U.S. national.

The term *U.S. national* means a citizen of the United States or an individual who, although not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.228 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

Subpart C—Coverage

§ 800.301 Transactions that are covered transactions.

Transactions that are covered transactions include, without limitation:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person.

Example 1. Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation X, and those directors will have the right to make decisions about the closing and relocation of particular production facilities and the termination of significant contracts. The directors also will have the right to propose to Corporation A, the sole shareholder, the dissolution of Corporation X and the sale of its principal assets. The proposed transaction is a covered transaction.

Example 2. Same facts as in Example 1, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals. Although Corporation A may choose not to exercise its power to elect new directors for Corporation X, Corporation A nevertheless will have that exercisable power. The proposed transaction is a covered transaction.

Example 3. Corporation A, a foreign person, proposes to purchase 50 percent of the shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for ten years. The proposed transaction is a covered transaction.

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person.

Example. Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is a covered transaction because it could result in control of Corporation X, a U.S. business, by another foreign person, Corporation Z.

(c) A transaction that results or could result in control by a foreign person of any part of an entity or of assets, if such part of an entity or assets constitutes a U.S. business. (See § 800.302(c).)

Example 1. Corporation X, a foreign person, has a branch office located in the United States. Corporation A, a foreign person, proposes to buy that branch office. The proposed transaction is a covered transaction.

Example 2. Corporation A, a foreign person, buys a branch office located entirely outside the United States of Corporation Y, which is incorporated in the United States. Assuming no other relevant facts, the branch office of Corporation Y is not a U.S. business, and the transaction is not a covered transaction.

Example 3. Corporation A, a foreign person, makes a start-up, or ''greenfield,'' investment in the United States. That investment involves such activities as separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment may involve the acquisition of shares in a newly incorporated subsidiary. Assuming no other relevant facts, Corporation A will not have acquired a U.S. business, and its greenfield investment is not a covered transaction.

Example 4. Corporation A, a foreign person, purchases substantially all of the assets of Corporation B. Corporation B, which is incorporated in the United States, was in the business of producing industrial equipment, but stopped producing and selling such equipment one week before Corporation A purchased substantially all of its assets. At the time of the transaction, Corporation B continued to have employees on its payroll, maintained know-how in producing the industrial equipment it previously produced, and maintained relationships with its prior customers, all of which were transferred to Corporation A. The acquisition of substantially all of the assets of Corporation B by Corporation A is a covered transaction.

Example 5. Corporation A, a foreign person, owns businesses both outside the United States and in the United States. Corporation B, a foreign person, acquires Corporation A. The acquisition of Corporation A by Corporation B is a covered transaction with respect to Corporation A's businesses in the United States.

Example 6. Corporation X, a foreign person, seeks to acquire from Corporation A, a U.S. business, an empty warehouse facility located in the United States. The acquisition would be limited to the physical facility, and would not include customer lists, intellectual property, or other proprietary information, or other intangible assets or the transfer of

personnel. Assuming no other relevant facts, the facility is not an entity and therefore not a U.S. business, and the proposed acquisition of the facility is not a covered transaction.

Example 7. Same facts as Example 6, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered transaction.

(d) A joint venture in which the parties enter into a contractual or other similar arrangement, including an agreement on the establishment of a new entity, but only if one or more of the parties contributes a U.S. business and a foreign person could control that U.S. business by means of the joint venture.

Example 1. Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over all of the matters affecting JV Corporation identified under § 800.204(a)(1) through (10), giving them both control over JV Corporation. The formation of JV Corporation is a covered transaction.

Example 2. Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain land and equipment that do not in this example constitute a U.S. business. Corporations A and B each have a 50 percent interest in the joint venture. Assuming no other relevant facts, the formation of JV Corporation is not a covered transaction.

§ 800.302 Transactions that are not covered transactions.

Transactions that are not covered transactions include, without limitation:

(a) A stock split or pro rata stock dividend that does not involve a change in control.

Example. Corporation A, a foreign person, holds 10,000 shares of Corporation B, a U.S. business, constituting ten percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting ten percent of the stock of Corporation B. Assuming no other relevant facts, the acquisition of additional shares is not a covered transaction.

(b) A transaction that results in a foreign person holding ten percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment. (See § 800.223.)

Example 1. In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person, acquires seven percent of the voting securities of Corporation X, which is a U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered transaction.

Example 2. Corporation A, a foreign person, acquires nine percent of the voting shares of Corporation X, a U.S. business. Corporation A also negotiates contractual rights that give it the power to control important matters of Corporation X. The acquisition by Corporation A of the voting shares of Corporation X is not solely for the purpose of passive investment and is a covered transaction.

Example 3. Corporation A, a foreign person, acquires five percent of the voting shares in Corporation B, a U.S. business. In addition to the securities, Corporation A obtains the right to appoint one out of eleven seats on Corporation B's Board of Directors. The acquisition by Corporation A of Corporation B's securities is not solely for the purpose of passive investment. Whether the transaction is a covered transaction would depend on whether Corporation A obtains control of Corporation B as a result of the transaction.

(c) An acquisition of any part of an entity or of assets, if such part of an entity or assets do not constitute a U.S. business. (See § 800.301(c).)

Example 1. Corporation A, a foreign person, acquires, from separate U.S. nationals: (a) products held in inventory, (b) land, and (c) machinery for export. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and this acquisition is not a covered transaction.

Example 2. Corporation X, a U.S. business, produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X. under a long-term contract. Assuming no other relevant facts, this transaction is not a covered transaction.

Example 3. Same facts as Example 2, except that Corporation X, a U.S. business, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered transaction.

Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities, customer lists, technology, and staff. This transaction is a covered transaction.

Example 5. Same facts as Example 2, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered transaction.

(d) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(e) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

§ 800.303 Lending transactions.

(a) The extension of a loan or a similar financing arrangement by a foreign person to a U.S. business, regardless of whether accompanied by the creation in the foreign person of a secured interest in securities or other assets of the U.S. business, shall not, by itself, constitute a covered transaction.

(1) The Committee will accept notices concerning a loan or a similar financing arrangement that does not, by itself, constitute a covered transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of a U.S. business as a result of the default or other condition.

(2) Where the Committee accepts a notice concerning a loan or a similar financing arrangement pursuant to paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions and day-to-day control over the U.S. business to U.S. nationals for purposes of determining whether such loan or financing arrangement constitutes a covered transaction.

(b) Notwithstanding paragraph (a) of this section, a loan or a similar financing arrangement through which a foreign person acquires an interest in profits of a U.S. business, the right to appoint members of the board of directors of the U.S. business, or other

comparable financial or governance rights characteristic of an equity investment but not of a typical loan may constitute a covered transaction.

(c) An acquisition of voting interest or assets of a U.S. business by a foreign person upon default or other condition involving a loan or a similar financing arrangement does not constitute a covered transaction, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-à-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to control the debtor such that control for purposes of § 800.204 could not be acquired.

Example 1. Corporation A, which is a U.S. business, borrows funds from Corporation B, a bank organized under the laws of a foreign state and controlled by foreign persons. As a condition of the loan, Corporation A agrees not to sell or pledge its principal assets to any person. Assuming no other relevant facts, this lending arrangement does not alone constitute a covered transaction.

Example 2. Same facts as in Example 1, except that Corporation A defaults on its loan from Corporation B and seeks bankruptcy protection. Corporation A has no funds with which to satisfy Corporation B's claim, which is greater than the value of Corporation A's principal assets. Corporation B's secured claim constitutes the only secured claim against Corporation A's principal assets, creating a high probability that Corporation B will receive title to Corporation A's principal assets, which constitute a U.S. business. Assuming no other relevant facts, the Committee would accept a notice of the impending bankruptcy court adjudication transferring control of Corporation A's principal assets to Corporation B, which would constitute a covered transaction.

Example 3. Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation extends to Corporation A rights in Corporation B that are characteristic of an equity investment but not of a typical loan, including dominant minority representation on the board of directors of Corporation B and the right to be paid dividends by Corporation B. This loan is a covered transaction.

§ 800.304 Timing rule for convertible voting instruments.

(a) For purposes of determining whether to include the rights that a holder of convertible voting instruments will acquire upon conversion of those instruments in the Committee's assessment of whether a notified transaction is a covered transaction, the Committee will consider factors that include:

(1) The imminence of conversion;

(2) Whether conversion depends on factors within the control of the acquiring party; and

(3) Whether the amount of voting interest and the rights that would be acquired upon conversion can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion will not be included in the Committee's assessment of whether a notified transaction is a covered transaction, the Committee will disregard the convertible voting instruments for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the governance of the entity that issued the instruments.

Example 1. Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so inform the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

Example 2. Same facts as Example 1, except that the debentures at issue are convertible at the sole discretion of Corporation A after six months, and if converted, would represent a 50 percent interest in Corporation X. The Committee may consider the rights that would result from the conversion as part of its assessment.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending:

(1) One paper copy of the notice to the Staff Chairperson, Office of Investment Security, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, that includes, in English only, the information set out in § 800.402, including the certification required under paragraph (l) of that section; and

(2) One electronic copy of the same information required in paragraph (a)(1) of this section. See the Committee's section of the Department of the Treasury Web site, at *http://www.treas.gov/offices/international-affairs/cfius/* for electronic submission instructions.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice under paragraph (a) of such covered transaction.

(c) Any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a transaction for which no voluntary notice has been filed under paragraph (a) of this section if that member has reason to believe that the transaction is a covered transaction and may raise national security considerations. Notices filed under this paragraph are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under this paragraph shall be made with respect to a transaction more than three years after the date of the completion of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(d) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(e) Upon receipt of the certification required by § 800.402(l) and an electronic copy of a notice filed under paragraph (a) of this section, the Staff Chairperson shall promptly inspect such notice for completeness.

(f) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the

transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.702.

(g) Information and other documentary material provided by the parties to the Committee after the filing of a voluntary notice under § 800.401 shall be part of the notice, and shall be subject to the certification requirements of § 800.402(l).

§ 800.402 Contents of voluntary notice.

(a) If the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraph (l) of this section and § 800.701(d) regarding certification requirements.)

(b) In the case of a hostile takeover, if fewer than all the parties to a transaction file a voluntary notice, each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(c) A voluntary notice filed pursuant to § 800.401(a) shall describe or provide, as applicable:

(1) The transaction in question, including:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States;

(ii) The nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interest, or otherwise;

(iii) The name, United States address (if any), Web site address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the U.S. business that is the subject of the transaction;

(v) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vi) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the person that will ultimately control the U.S. business being acquired;

(vii) The expected date for completion of the transaction, or the date it was completed; (viii) A good faith approximation of the net value of the interest acquired in the U.S. business in U.S. dollars, as of the date of the notice; and

(ix) The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction;

(2) With respect to a transaction structured as an acquisition of assets of a U.S. business, a detailed description of the assets of the U.S. business being acquired, including the approximate value of those assets in U.S. dollars;

(3) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent (unless that entity is excluded from the scope of the transaction):

(i) Their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including an estimate of U.S. market share for such product or service categories and the methodology used to determine market share, and a list of direct competitors for those primary product or service categories;

(ii) The street address (and mailing address, if different) within the United States and website address (if any) of each facility that is manufacturing classified or unclassified products or producing services described in paragraph (c)(3)(v) of this section, their respective Commercial and Government Entity Code (CAGE Code) assigned by the Department of Defense, their Dun and Bradstreet identification (DUNS) number, and their North American Industry Classification System (NAICS) Code, if any;

(iii) Each contract (identified by agency and number) that is currently in effect or was in effect within the past five years with any agency of the United States Government involving any information, technology, or data that is classified under Executive Order 12958, as amended, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(iv) Any other contract (identified by agency and number) that is currently in effect or was in effect within the past three years with any United States Government agency or component with national defense, homeland security, or other national security responsibilities, including law enforcement responsibility as it relates to defense, homeland security, or national security, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development):

(A) That it supplies, directly or indirectly, to any agency of the United States Government, including as a prime contractor or first tier subcontractor, a supplier to any such prime contractor or subcontractor, or, if known by the parties filing the notice, a subcontractor at any tier; and

(B) If known by the parties filing the notice, for which it is a single qualified source (i.e., other acceptable suppliers are readily available to be so qualified) or a sole source (i.e., no other supplier has needed technology, equipment, and manufacturing process capabilities) for any such agencies and whether there are other suppliers in the market that are available to be so qualified;

(vi) Any products or services (including research and development) that:

(A) It supplies to third parties and it knows are rebranded by the purchaser or incorporated into the products of another entity, and the names or brands under which such rebranded products or services are sold; and

(B) In the case of services, it provides on behalf of, or under the name of, another entity, and the name of any such entities;

(vii) For the prior three years—

(A) The number of priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700) that the U.S. business that is the subject of the transaction has received and the level of priority of such contracts or orders (''DX'' or ''DO''); and

(B) The number of such priority rated contracts or orders that the U.S. business has placed with other entities and the level of priority of such contracts or orders, and the acquiring

party's plan to ensure that any new entity formed at the completion of the notified transaction (or the U.S. business, if no new entity is formed) complies with the DPAS regulations; and

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business's services, networks, systems, data storage, and facilities;

(4) Whether the U.S. business that is being acquired produces or trades in:

(i) Items that are subject to the EAR and, if so, a description (which may group similar items into general product categories) of the items and a list of the relevant commodity classifications set forth on the CCL (i.e., Export Control Classification Numbers (ECCNs) or EAR99 designation);

(ii) Defense articles and defense services, and related technical data covered by the USML in the ITAR, and, if so, the category of the USML; articles and services for which commodity jurisdiction requests (22 CFR 120.4) are pending; and articles and services (including those under development) that may be designated or determined in the future to be defense articles or defense services pursuant to 22 CFR 120.3;

(iii) Products and technology that are subject to export authorization administered by the Department of Energy (10 CFR part 810), or export licensing requirements administered by the Nuclear Regulatory Commission (10 CFR part 110); or

(iv) Select Agents and Toxins (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73);

(5) Whether the U.S. business that is the subject of the transaction:

(i) Possesses any licenses, permits, or other authorizations other than those under the regulatory authorities listed in paragraph (c)(4) of this section that have been granted by an agency of the United States Government (if applicable, identification of the relevant licenses shall be provided); or

(ii) Has technology that has military applications (if so, an identification of such technology and a description of such military applications shall be included); and

(6) With respect to the foreign person engaged in the transaction and its parents:

(i) The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the U.S. business with respect to:

(A) Reducing, eliminating, or selling research and development facilities;

(B) Changing product quality;

(C) Shutting down or moving outside of the United States facilities that are within the United States;

(D) Consolidating or selling product lines or technology;

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section; or

(F) Eliminating domestic supply by selling products solely to non-domestic markets;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls ownership interests, including convertible voting instruments, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such instruments, and with regard to convertible voting instruments, the terms and timing of their conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers that could be relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction, and if there are any such rights or powers, their source (for example, a ''golden share,'' shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in the foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or similar body (including external directors) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following ''personal identifier information,'' which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(1) Full name (last, first, middle name);

(2) All other names and aliases used;

(3) Business address;

(4) Country and city of residence;

(5) Date of birth;

(6) Place of birth;

(7) U.S. Social Security number (where applicable);

(8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(10) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following ''business identifier information'' for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, fax number, and e-mail address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(d) The voluntary notice shall list any filings with, or reports to, agencies of

the United States Government that have been or will be made with respect to the transaction prior to its closing, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

Example. Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, ''Industrial Security Regulation,'' DOD 5220.22–R, and ''Industrial Security Manual for Safeguarding Classified Information,'' DOD 5220.22–M. Corporation X accordingly files a revised Form DD SF–328, and enters into discussions with the Defense Security Service about effectively insulating its facilities from the foreign person. Corporation X may also have made filings with the Securities and Exchange Commission, the Department of Commerce, the Department of State, or other federal departments and agencies. Paragraph (d) of this section requires that certain specific information about these filings be reported to the Committee in a voluntary notice.

(e) In the case of the establishment of a joint venture in which one or more of the parties is contributing a U.S. business, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(f) In the case of the acquisition of some but not all of the assets of an entity, § 800.402(c) requires submission of the specified information only with respect to the assets of the entity that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under § 800.402, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 800.401, and the certification required under § 800.402(l) shall apply to such amendments. (See also § 800.701(d).)

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the agreed terms of the transaction.

(j) Persons filing a voluntary notice shall include:

(1) An organizational chart illustrating all of the entities or individuals above the foreign person that is a party to the transaction up to the person or persons having ultimate control of that person, including the percentage of shares held by each; and

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government; and

(iii) The transaction has resulted or could result in control of a U.S. business by a foreign person, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised.

(k) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the United States Government signatories; and

(2) Any party to the transaction has been a party to a transaction previously notified to the Committee.

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.202. A sample certification may be found on the Committee's section of the Department of the Treasury Web site, available at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml.*

(m) Persons filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

§ 800.403 Deferral, rejection, or disposition of certain voluntary notices.

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 800.402 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 800.701(d).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the thirty-day review period, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or

parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered transaction.

Example 1. The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.402(c)(3)(iii) and (iv) concerning classified materials and products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the thirty-day review period until the parties have supplied the omitted information.

Example 2. Same facts as in the first sentence of Example 1, except that the joint notice indicates that Corporation A does not intend to purchase Corporation X's Division Y, which is engaged in classified work for a U.S. Government agency. Corporations A and X notify the Committee on the 25th day of the 30-day notice period that Division Y will also be acquired by Corporation A. This fact constitutes a material change with respect to the transaction as originally notified, and the Staff Chairperson may reject the notice.

Example 3. The Staff Chairperson receives a joint notice by Corporation A, a foreign person, and Corporation X, a U.S. business, indicating that Corporation A intends to purchase five percent of the voting securities of Corporation X. Under the particular facts and circumstances presented, the Committee concludes that Corporation A's purchase of this interest in Corporation X could not result in foreign control of Corporation X. The Staff Chairperson shall advise the parties in writing that the transaction as presented is not subject to section 721.

Example 4. The Staff Chairperson receives a voluntary notice involving the acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B has the right to appoint two members of Company X's board of directors. This information contradicts the material assertion in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

Subpart E—Committee Procedures: Review and Investigation

§ 800.501 General.

(a) The Committee's review or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is by or with any foreign person and could result in foreign control of a U.S. business;

(2) There is credible evidence to support a belief that any foreign person exercising control of that U.S. business might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During the thirty-day review period or during an investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

§ 800.502 Beginning of thirty-day review period.

(a) The Staff Chairperson of the Committee shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 800.402; and

(2) Disseminated the notice to all members of the Committee.

(b) A thirty-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a review pursuant to § 800.401(b). Such review shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) The Staff Chairperson shall promptly and in writing advise all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to a covered transaction. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

§ 800.503 Determination of whether to undertake an investigation.

(a) After a review of a notified transaction under § 800.502, the Committee shall undertake an investigation of any transaction that it has determined to be a covered transaction if:

(1) A member of the Committee (other than a member designated as *ex officio* under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.502, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered transaction will not impair the national security of the United States.

§ 800.504 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 800.502, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 800.505 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the thirty-day review period described in § 800.502.

(b) An official of the Department of the Treasury shall promptly send written advice to the parties to a covered transaction of the commencement of an investigation.

§ 800.506 Completion or termination of investigation and report to the President.

(a) The Committee shall complete an investigation no later than the 45th day after the date the investigation commences, or, if the 45th day is not a business day, no later than the next business day after the 45th day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The members of the Committee (other than a member designated as ex officio under section 721(k)) are unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

§ 800.507 Withdrawal of notice.

(a) A party (or parties) to a transaction that has filed notice under § 800.401(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before notice is refiled under § 800.401; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.601.

§ 800.508 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 800.509 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

Subpart F—Finality of Action

§ 800.601 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to covered transactions proposed or pending on or after August 23, 1988. Such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which voluntary notice has been filed is not a covered transaction;

(2) The parties to the transaction have been advised in writing pursuant to § 800.504 or § 800.506(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, pursuant to section 721(d), his decision not to exercise his authority under section 721 with respect to the covered transaction.

(b) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to August 23, 1988.

Subpart G—Provision and Handling of Information

§ 800.701 Obligation of parties to provide information.

(a) Parties to a transaction that is notified under subpart D shall provide information to the Staff Chairperson that will enable the Committee to conduct a full review and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 800.402(h). If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, pursuant to 50 U.S.C. App. 2155(a).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as

annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee by a party to a covered transaction in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.202. A sample certification may be found at the Committee's section of the Department of the Treasury Web site at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml.*

(d) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.202.) A sample certification may be found at the Committee's section of the Department of the Treasury Web site at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml.*

§ 800.702 Confidentiality.

(a) Any information or documentary material filed with the Committee pursuant to this part, including information or documentary material filed pursuant to § 800.401(f), shall be exempt from disclosure under 5 U.S.C. 552 and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this part shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress, in accordance with subsections (b)(3) and (g)(2)(A) of section 721.

(b) This section shall continue to apply with respect to information and documentary material filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw notice is granted under § 800.507, or where notice has been rejected under § 800.403;

(3) The Committee determines that a notified transaction is not a covered transaction; or

(4) Such information or documentary material was filed pursuant to § 800.401(f) and the parties do not subsequently file a notice pursuant to § 800.401(a).

(c) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(d) The provisions of 50 U.S.C. App. 2155(d) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart H—Penalties

§ 800.801 Penalties.

(a) Any person who, after the effective date, intentionally or through gross negligence, submits a material misstatement or omission in a notice or makes a false certification under §§ 800.402(l) or 800.701(c) may be liable to the United States for a civil penalty not to exceed $250,000 per violation. The amount of the penalty assessed for a violation shall be based on the nature of the violation.

(b) Any person who, after the effective date, intentionally or through gross negligence, violates a material provision of a mitigation agreement entered into with, or a material condition imposed by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. Any penalty assessed under this paragraph shall be based on the nature of the violation and shall be separate and apart from any damages sought pursuant to a mitigation agreement under section 721(l), or any action taken under section 721(b)(1)(D).

(c) A mitigation agreement entered into or amended under section 721(l) after the effective date may include a provision providing for liquidated or actual damages for breaches of the agreement by parties to the transaction. The Committee shall set the amount of any liquidated damages as a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee will consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the contract.

(d) A determination to impose penalties under paragraph (a) or (b) of this section must be made by the named members of the Committee, except to the extent delegated by such official. Notice of the penalty, including a written explanation of the penalized conduct and the amount of the penalty, shall be sent to the penalized party by U.S. mail.

(e) Upon receiving notice of the imposition of a penalty under paragraph (a) or (b) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the petition and issue a final decision within 15 days of receipt of the petition.

(f) The penalties authorized in paragraphs (a) and (b) of this section may be recovered in a civil action brought by the United States in federal district court.

(g) The penalties available under this section are without prejudice to other penalties, civil or criminal, available under law.

Dated: November 14, 2008.

Clay Lowery,

Assistant Secretary (International Affairs).

[FR Doc. E8–27525 Filed 11–17–08; 11:15 am]

BILLING CODE 4810–25–P

National Security Reviews of Foreign Investments

U.S. investment from foreign sources is also an important issue. As explained in the table below, such investment strongly supports U.S. economic interests.

Since 1988, the United States has had in place a strong framework to review the national-security implications of foreign investment to address concerns that such investment may harm U.S. national security. The longstanding Committee on Foreign Investment in the United States (CFIUS) framework was modified 2007 with Congressional passage and enactment of H.R. 556, the Foreign Investment and National Security Act of 2007. In 2008, final regulations were issued to implement these modifications as discussed below.

FOREIGN INVESTMENT IN THE UNITED STATES SUPPORTS AMERICAN JOBS, VALUES AND THE U.S. ECONOMY

In 2008, the United States was the largest single-country recipient of foreign investment, with investment reaching $316 billion. With the ongoing financial crisis, estimates are that foreign investment into the United States will drop to $152.2 billion in 2009. Foreign investment in the United States, supported by the United States' open investment policy, has many important benefits for America.

- Foreign-invested firms employ over 5.5 million U.S. workers, accounting for nearly five percent of the U.S. workforce. Twenty-nine percent of the U.S. jobs created by foreign companies are in manufacturing.
- Foreign firms generated 18.5 percent of all U.S. exports, totaling $215 billion.
- Foreign firms invested over $39.8 billion on U.S. **research and development** activities and $160.2 billion on **plant construction and new equipment in 2008. Over 90 percent of U.S. assets owned by foreign companies are owned by companies from OECD member countries.**

Sources: World Investment Report, UNCTAD (2009); *FDI and the U.S. Economy: Fact Sheet*, Invest in America, U.S. Department of Commerce; *Insourcing Statistics*, Organization for International Investment (http://www.ofii.org/insourcing-stats.htm).

Original CFIUS Framework

The 1988 Exon-Florio amendment to Section 721 of the Defense Production Act of 1950 provided authority to the President to suspend or prohibit any foreign acquisition, merger or takeover of an American corporation that is determined to threaten the national security of the United States. The President can exercise this authority only if he finds:

- there is credible evidence that the foreign entity exercising control might take action that threatens national security, and
- other provisions of law, other than the International Emergency Economic Powers Act, do not provide adequate and appropriate authority to protect the national security.

The President's investigative authority was delegated to the Committee on Foreign Investment in the United States (CFIUS) — an interagency committee, including 12 agencies, that was first established in 1975. CFIUS was chaired by the Secretary of the Treasury and included government representatives from the Departments of Commerce, Defense, Justice, State, and Homeland Security, as well as representatives from the Office of the President.

Once CFIUS received notification of an acquisition, merger or takeover, it began a 30-day review process to evaluate the potential national-security implications of the transaction. If CFIUS determined there was no potential threat, the transaction was allowed to proceed. If CFIUS determined that there were potential national-security threats by a proposed transaction, it then proceeded with a full 45-day investigation. CFIUS also used its authority in several instances to seek assurances and modifications in the investment structure or other aspects of the investor's operation in the United States or abroad to ensure that U.S. national security is protected as a condition for allowing a transaction to proceed. Section 837(a) of the National Defense Authorization Act for Fiscal Year 1993 (the so-called "Byrd Amendment") amended Section 721 of the Defense Production Act by requiring a 45-day investigation if the party acquiring a U.S. company is controlled by or acting on behalf of a foreign government and the acquisition "could result in control of a person engaged in interstate commerce in the U.S. that could affect the national security of the U.S." If CFIUS concluded after the 45-day investigation that there was a potential national-security threat, the President then had the authority to block or suspend the transaction at issue, with a decision due in 15 days.

Foreign Investment and National Security Act of 2007

In 2006 and 2007, as a result of concerns over a few proposed foreign transactions, both the House and Senate developed competing legislative approaches to address perceived deficiencies in the CFIUS process and Congress' role in oversight of that process. The final version of the Foreign Investment and National Security Act of 2007 (FINSA), H.R. 556, was approved in the Senate by unanimous consent on June 29, 2007, and by a vote of 370-to-45 in the House on July 11, 2007. President Bush signed the legislation into law on July 26, 2007.

The changes made by FINSA will maintain a strong framework for CFIUS to review, make decisions and notify Congress on the national-security implications of foreign investments. By preserving an objective, fact-based and time-limited process, this legislation will continue to support the open investment climate that the United States has long fostered, while also setting a positive example for foreign governments that have or may institute their own investment reviews. Key changes include:

- Statutory establishment of CFIUS, with the Secretary of the Treasury as the Chairperson. Other members shall include Secretaries of Commerce, Defense, Energy, Homeland Security, and State; the Attorney General; and other heads of Executive Branch departments or agencies as designated by the President. Non-voting CFIUS members also include the Secretary of Labor and the Director of National Intelligence.
- Addition of new assistant secretary to the Department of the Treasury to work on CFIUS matters.
- Designation by the Secretary of the Treasury of a lead agency for each transaction, including to negotiate and ensure compliance with mitigation agreements or other conditions.
- Authorization of CFIUS to self-initiate reviews of transactions, including previously reviewed transactions in certain circumstances.

- Requirement for CFIUS approval for requests to withdraw notices that initiate CFIUS reviews.
- Expansion of the threshold for moving into the investigation phase to include either a finding that:
  - the transaction: (1) threatens to impair national security and the threat has not been mitigated; (2) is a foreign-government controlled transaction; or (3) would result in control of any critical infrastructure within the United States if that could impair national security and that impairment to national security has not been mitigated (except that no investigation is required where the lead agency and the Secretary of the Treasury find that transactions involving foreign-government control or critical infrastructure will not impair U.S. national security); or
  - the lead agency recommends an investigation and the Committee concurs.
- Requirement that reviews and investigations be certified and signed by Chairperson and head of the lead agency and sent to key House and Senate leadership. In cases involving critical infrastructure, certifications and reports must be presented to Senators or House Members from the State or district, respectively, where the principal place of business of the acquired U.S. entity is located.
- Requirement that Director of National Intelligence carry out a thorough analysis of any threat to U.S. national security of any covered transaction and provide that analysis to CFIUS.
- Requirement for reviews and monitoring of mitigation and assurance agreements, as well as of transactions for which notice has been withdrawn, and reconsideration of transactions where there has been a breach of the mitigation agreement. Penalties are to be applied for violations of mitigation agreements, which potentially could include a reopening of a completed transaction.
- Incorporation of strong protections for confidential and proprietary information.
- Requirement that CFIUS consider identified factors as mandatory and expansion of the factors to include whether the covered transaction has a security-related impact on critical infrastructure, including major energy assets, or on critical technologies; and is a foreign government-controlled transaction.
- Provision of increased information to Congress on foreign-investment reviews and the operation of CFIUS.

On January 23, 2008, the Administration issued an Executive Order modifying Executive Order 11858 to implement FINSA. The Executive Order designated the United States Trade Representative and the Director of the Office of Science and Technology Policy as members of CFIUS and designated others members of the Office of the President as observers.

Following review of comments on the proposed regulations issued on April 21, 2008, the Treasury Department issued final regulations to implement FINSA on November 13, 2008. Notably, the regulations:

- Clarify CFIUS's encouragement of pre-filing consultations, including general circumstances when pre-filing consultations would be helpful and the type of information that could be shared. Confidential treatment is explicitly extended to the information shared with CFIUS in pre-filing consultations.
- Clarify the information required to be filed with CFIUS. While the final regulations narrow to some extent the information required, ECAT notes that the final regulations represent a significant increase in the amount and specificity of data required from previous practice. CFIUS provides an opportunity for filers to seek a modification or

waiver of certain information requirements. CFIUS also extends the period for response to three days (from two days as proposed in the initial regulations).

- Define and clarify "covered transaction," which includes joint ventures and long-term leases. The regulations clarify that start-ups or greenfield investments are not covered. The regulations also clarify that lending transactions are not covered, unless the foreign person gains rights equivalent to an equity investment. With regard to the 10-percent safe-harbor level of investment that existed prior to FINSA, the regulations clarify that such investment is not covered if it is "solely for the purpose of passive investment."
- Examine control on a case-by-case basis, looking at a number of factors, including the significance of the ownership interest, the rights that can be exercised, and other factors. The final regulations provide additional examples of factual circumstances when investment would not confer control and indicate that CFIUS is focused on control, rather than ownership structure. The regulations provide an initial list of minority shareholder protections that alone would not provide control.
- Examine what is considered "critical infrastructure" on a case-by-case basis.
- Set forth the statutory civil penalty of $250,000 for each violation that is found to be an intentional or grossly negligent submission of material misstatements or omissions. For mitigation agreement violations, the regulations provide for a $250,000 civil penalty or an amount equal to the value of the transaction.

From ECAT's perspective, any U.S. and foreign government's investment review processes should aim to be:

- Objective, fact-based and analytically rigorous.
- Focused on national-security issues.
- Taking into full account existing legislation and regulations that mitigate potential national-security issues.
- Taking full account of information provided by the parties and safeguards built into the transaction, while respecting and ensuring confidentiality.
- Operating on a case-by-case basis and remaining sufficiently flexible to cover new national-security issues as they arise.
- Operating in a predictable and timely manner and resulting in transactional certainty for the parties involved.
- To the maximum extent possible, a one-time portal through which transactions must pass, not a means to impose ad-hoc regulation or continuing encumbrances not directly related to any legitimate national-security matters raised by the transaction.
- Not a substitute for other more targeted and effective tools to protect a country's national security.
- An appropriate example for other countries' investment-review processes.

These principles should continue to guide the implementation of FINSA and other countries' investment review mechanisms.

VII. FOREIGN DIRECT INVESTMENT RESTRICTIONS IN OECD COUNTRIES

Introduction and summary

Inward foreign direct investment has often been restricted

Attitudes and policies towards liberalisation of international capital flows have been subject to considerable controversy.[1] This is because free capital movements raise concerns about loss of national sovereignty and other possible adverse consequences. Foreign direct investment (FDI), even more than other types of capital flows, has historically given rise to such concerns, since it may involve a controlling stake by often large multinational corporations over which domestic authorities, it is feared, have little power. For these reasons, governments have sometimes imposed restrictions on inward FDI. In recent decades, however, an increasing consensus on the benefits of inward FDI has led to reconsideration of these restrictions and this has been reflected in formal agreements on such capital flows (Box VII.1).

Box VII.1. **International investment agreements**

Formal international agreements on foreign direct investment are far less extensive than on international trade, despite the importance of FDI in the world economy. However, the 1990s have seen a substantial rise in the number of bilateral investment protection treaties, and regional and bilateral trade agreements in which investment disciplines figure prominently. These agreements include NAFTA, the recent agreements concluded by Singapore with EFTA, Japan and Australia and the Association Agreement between the European Community and Chile. The European Union had already completely liberalised intra-EU capital movements in the late 1980s.

The OECD has been an important actor in international discussions and agreements on FDI.[1] At present the OECD Code of Liberalisation of Capital Movements forms the only multilateral framework in force on international capital flows, including FDI. Under the Code, countries bind themselves to agreed measures liberalising capital movements. Moreover, under the OECD Declaration on International Investment and Multinational Enterprises, the 30 OECD countries and 7 non-OECD adhering countries are committed to accord national treatment to foreign enterprises operating in their territories and to encourage their multinational enterprises to engage in responsible business conduct in a variety of areas.

1. See OECD (2002*a*) for an overview of policies towards international capital mobility, with a focus on the experience of OECD countries.

There are several investment-related provisions in the agreements related to the World Trade Organisation. The Uruguay Round led to an agreement on Trade Related Investment Measures (TRIMS) that restricts *inter alia* domestic-content requirements. The General Agreement on Trade in Services (GATS) covers all modes of service delivery, including "commercial presence" which is closely related to FDI. The GATS commitments, however, apply only to industries where countries have explicitly agreed to open their markets to foreign providers. In 1996, the WTO also created the Working Group on the Relationship Between Trade and Investment, a forum for discussion among WTO countries. At the Doha Ministerial Conference in November 2001, the WTO members agreed on the principle of undertaking negotiations on a multilateral framework after the 2003 WTO ministerial meeting at Cancun (see OECD, 2002*b*).

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1. Further discussion of OECD experience with investment rules and multilateral initiatives concerning FDI can be found at www.oecd.org/daf/investment and in Graham (2000), Robertson (2002) and Sauvé and Wilkie (2000).

This chapter shows that restrictions on FDI are...

This chapter reviews restrictions on FDI inflows in OECD countries. The barriers covered include limitations on foreign ownership, screening or notification procedures, and management and operational restrictions. The main findings are as follows:

… generally low…

- Overall FDI restrictions are generally low in the OECD area at present but important in the case of a few countries.

… concentrated in the service sectors…

- FDI restrictions are concentrated in service sectors with almost no overt constraints in manufacturing.

… and have fallen since 1980

- Barriers to foreign ownership have significantly fallen in virtually all OECD countries over the past two decades.

The different types of FDI barriers

Formal restrictions on FDI include limits on foreign ownership…

Restrictions on foreign ownership are the most obvious barriers to inward FDI. They typically take the form of limiting the share of companies' equity capital in a target sector that non-residents are allowed to hold, *e.g.* to less than 50 per cent, or even prohibit any foreign ownership. Examples of majority domestic ownership requirements include airlines in the European Union and North American countries, telecommunications in Japan, and coastal and freshwater shipping in the United States. Exclusive domestic ownership is also often applied to natural resource sectors with the aim of giving citizens access to the associated rents. For example, foreign ownership is banned in the fishing and energy sectors in Iceland, and in the oil sector in Mexico. Although not specifically aimed at excluding foreign shareholders, statutory state monopolies are tantamount to a ban on foreign investment.

… screening and approval procedures…

Obligatory screening and approval procedures can also be used to limit FDI though their constraining effects depend on the implementation of such practices. Stipulations that foreign investors must show economic benefits can increase the cost of entry and therefore may discourage the

inflow of foreign capital. Such provisions apply, for instance, for a few industries in Japan and for the acquisition of more than 49 per cent of any existing enterprise in Mexico. Prior approval of FDI, such as mandated for all FDI projects in a few OECD countries, could also limit foreign capital inflow if it is taken as a sign of an ambivalent attitude towards free FDI, even though it may not be vigorously enforced. Simple pre- or post-notification (as required in *e.g.* Japan) is, however, unlikely to have much impact on capital inflows.

… and constraints on foreign personnel and operational freedom

Other formal restrictions that can discourage FDI inflows include constraints on the ability of foreign nationals either to manage or to work in affiliates of foreign companies and other operational controls on these businesses. Stipulations that nationals or residents must form a majority of the board of directors, as in insurance companies in member countries of the European Union, in financial services industries in Canada and in transport industries in Japan, may undermine foreign owners' control over their holdings and hence make them more hesitant to invest under such circumstances. Similarly, if regulations restrict the employment of foreign nationals (as *e.g.* in Turkey), investors may judge that they cannot make use of the necessary expertise to make their investment worthwhile. Also, operational requirements, such as the restrictions *vis-à-vis* non-members on cabotage in most European Union countries for maritime transport may limit profits of foreign-owned corporations and hence the amount of funds foreign investors are willing to commit.

Informal barriers may also be important

Apart from the formal barriers discussed above, FDI flows can be held back by opaque informal public or private measures. Indeed, claims abound that such practices are used systematically to limit foreign ownership of domestic businesses. Thus, the US Trade Representative has frequently stated that the system of corporate control in Japan has hampered investment by US companies and that regulatory practices in telecommunications in the European Union work as *de facto* FDI restraining measure. Similarly, the Japanese Ministry of Trade and Economy claims that FDI in financial services in the United States is restricted by the diverse and complex set of regulations at the state level and that barriers relating to interconnections hamper foreign entry into telecommunications in the European Union. Also, the European Union cites the continuing role of administrative guidance to firms in Japan by government officials as a practice that hampers foreign ownership of Japanese enterprises.

The openness of OECD countries to inward FDI *circa* 1998-2000

Overall FDI restrictions are now low in most OECD countries…

Notwithstanding the numerous barriers in specific activities, an aggregate indicator of FDI restrictions (Box VII.2) suggests that the OECD countries are generally open to foreign direct investment inflows (Figure VII.1).[2] There are, however, significant differences between countries.[3] The most open countries are in the European Union. Since 1992, intra-EU FDI flows are almost completely unrestricted. Furthermore, a number of EU countries have minimal overt restrictions on inflows from non-EU countries. Nonetheless, there are some important differences in restrictions imposed by EU countries on non-EU investors and, therefore, even the European Union is not a completely unified bloc in terms of policies towards inward FDI. The countries with the highest levels of overall restrictions are Iceland, Canada, Turkey, Mexico, Australia, Austria, Korea and Japan. The United States is slightly below the OECD mean.

Box VII.2. **Indicators of FDI restrictions**

Some indicators of overall FDI barriers are based on a count of the number of restrictions.[1] While this has the advantage of simplicity, some restrictions are more important than others. For example, a ban on foreign ownership is much more restrictive than a screening or a reporting requirement. The OECD FDI restrictiveness indicators therefore weigh different restrictions according to their perceived significance, even though such a procedure entails some arbitrary judgements. They are based on a variant of the methodology applied by the Australian Productivity Commission in a similar study for the APEC countries (Hardin and Holmes, 1997). The OECD indicators cover restrictions in nine sectors (subdivided in 11 subsectors), of which seven are services industries, where the bulk of FDI restrictions is generally found. This information is then aggregated into a single measure for the economy as a whole. Details of the methodology and data sources can be found in Golub (2003).

Some limitations of the measures should be noted. The indicators cover mainly statutory barriers, abstracting from most of the other direct or indirect obstacles impinging on FDI, such as those related to corporate governance mechanisms and/or hidden institutional or behavioural obstacles that discriminate against foreign firms.[2] It is also possible that some countries are more forthcoming than others in self-reporting their restrictions. It could then be that more transparent countries receive higher scores, not because they are in fact more restrictive, but because they are more complete in their reporting. The extent of enforcement of statutory restrictions, especially those concerning screening requirements, may also vary. Finally, standardising and putting into context idiosyncratic restrictions in individual countries often involve an element of judgement.

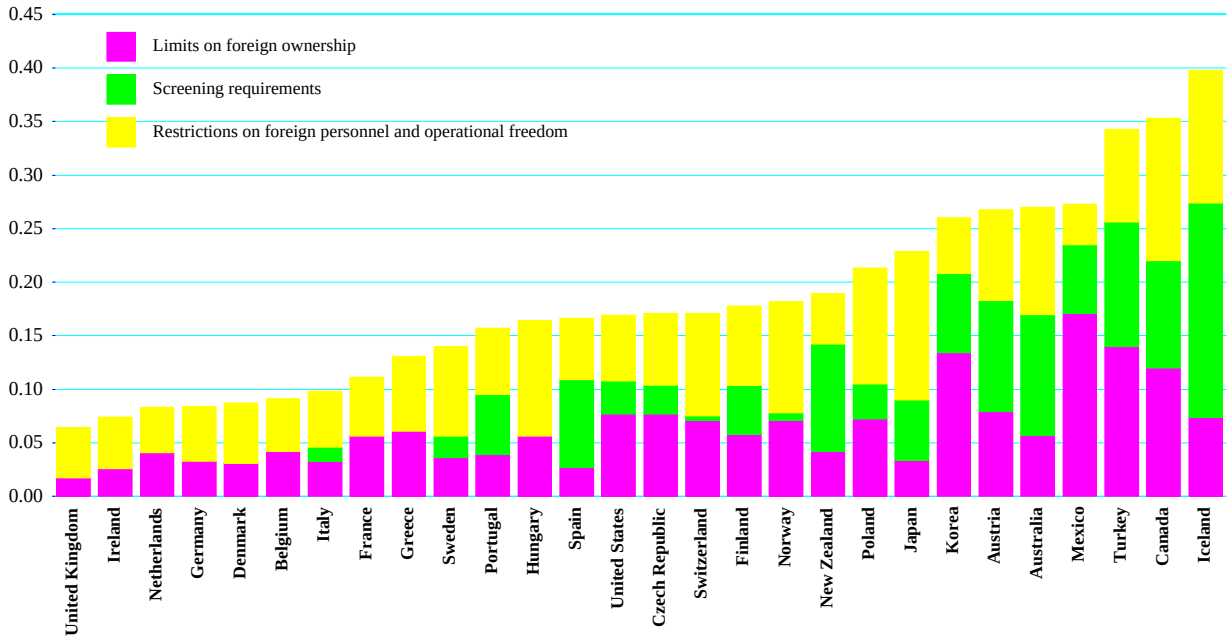
1. See *e.g.* Hoekman (1995) and Sauvé (2003).

2. Non-statutory barriers to FDI are very difficult to ascertain and quantify. However, some of them were included in the indicators, such as the absolute barrier represented by full state ownership of business enterprises and hidden institutional or behavioural barriers documented in official reports.

2. There have been important changes in some countries since 2000 that are not reflected in the results reported here.

3. With an aggregate restrictiveness indicator that excludes screening requirements, the least and most open countries generally remain the same as those in Figure VII.1, the main exceptions being New Zealand (that moves from below to above average openness) and Spain (that moves from average to above average openness). Australia also moves towards a more open stance, though it remains below the OECD average.

Figure VII.1. FDI restrictions in OECD countries, 1998/2000: breakdown by type of restriction[1]



1. The indicator ranges from 0 (least restrictive) to 1 (most restrictive).
Source: OECD.

… and concentrated on ceilings on foreign equity holdings…

Around 2000, equity restrictions were particularly heavy in Mexico, Turkey and Korea, but also remained relatively stringent in Canada and the United States. Management and operational restrictions were notably strong in Japan, Iceland and Canada. In a few countries (Iceland, Australia, New Zealand, Canada and Spain) statutory screening requirements were relatively pervasive.[4]

… in non-manufacturing sectors

The overall level of barriers masks wide differences across sectors.[5] Figure VII.2 suggests that, on average, the bulk of restrictions are found in non-manufacturing industries.[6] FDI inflows into manufacturing are almost completely free, aside from economy-wide restrictions such as notification or screening requirements. Within non-manufacturing, electricity, transport and telecommunications are the most constrained industries, followed by finance, while the other services industries are on average relatively unrestricted. Again, these average patterns mask cross-country differences in the extent of restrictions in non-manufacturing

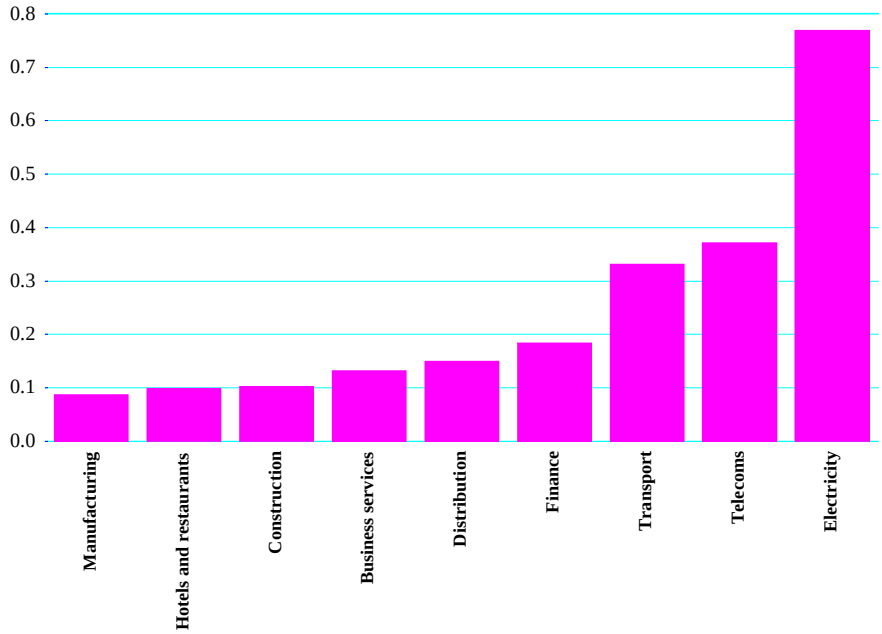
4. The indicators are unable to capture differences in the enforcement of restrictions, which might be particularly important for screening requirements. For example, some countries simply perform basic checks such as whether an investor has a criminal record.

5. For further details about FDI restrictions at the industry level in OECD countries, see Golub (2003).

6. A simple count of restrictions affecting different industries shows that 67 per cent of all restrictions concern the services sector (Sauvé and Steinfatt, 2003).

industries. In 1998-2000, barriers in the European Union were relatively low in all these industries, while in Canada, Korea, Mexico, Turkey and, to a lesser extent, Australia and New Zealand, they where at or above the OECD average in many of them. They were concentrated in the transport industry in the United States and in telecommunications in Japan.

Figure VII.2. Cross-sectoral patterns of FDI restrictions, 1998/2000[1]



1. The indicator ranges from 0 (least restrictive) to 1 (most restrictive).
Source: OECD.

The liberalisation of FDI since 1980[7]

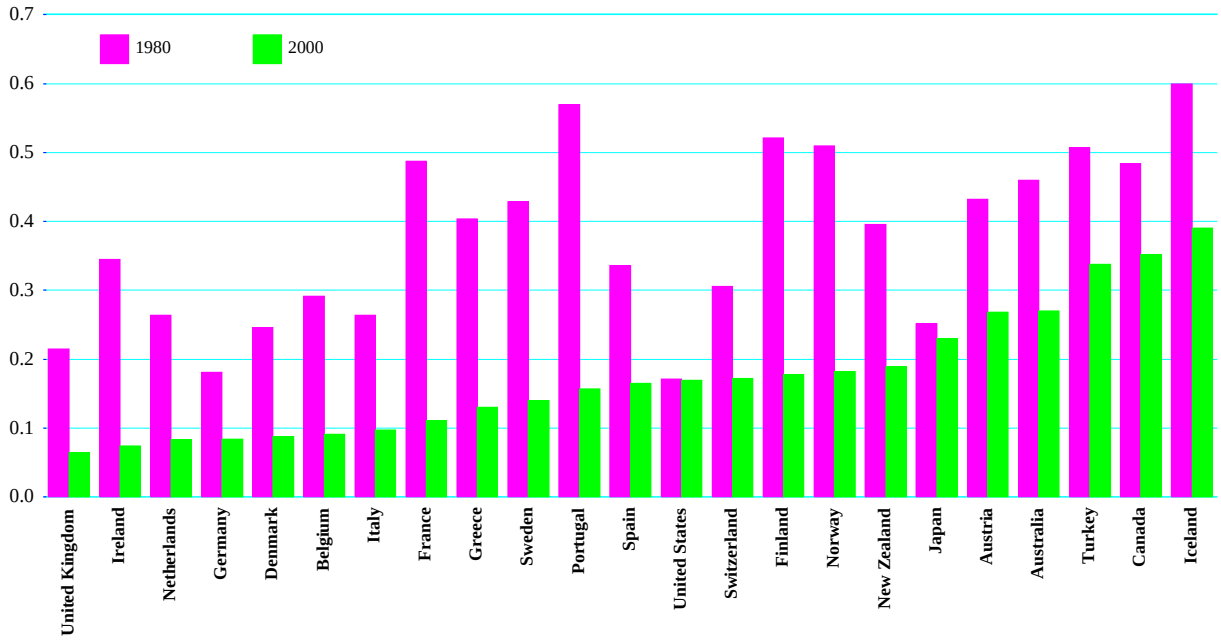
FDI restrictions have declined steeply since 1980

Figure VII.3 shows that the liberalisation of FDI flows has been substantial over the past two decades in all OECD countries except the United States and Japan, both of which had what in 1980 were relatively low statutory restrictions. Particularly dramatic changes have occurred in several EU countries, notably Portugal, France and Finland. To a large extent, the generalised decline in barriers reflects full liberalisation of capital flows within the European Union (completed in the early 1990s) and the concomitant extensive privatisations both in the European Union and elsewhere, which have opened up previously sheltered public firms and monopolies to foreign capital. The fall in FDI barriers throughout the

7. Due to data limitations, results here are limited to a smaller set of OECD countries.

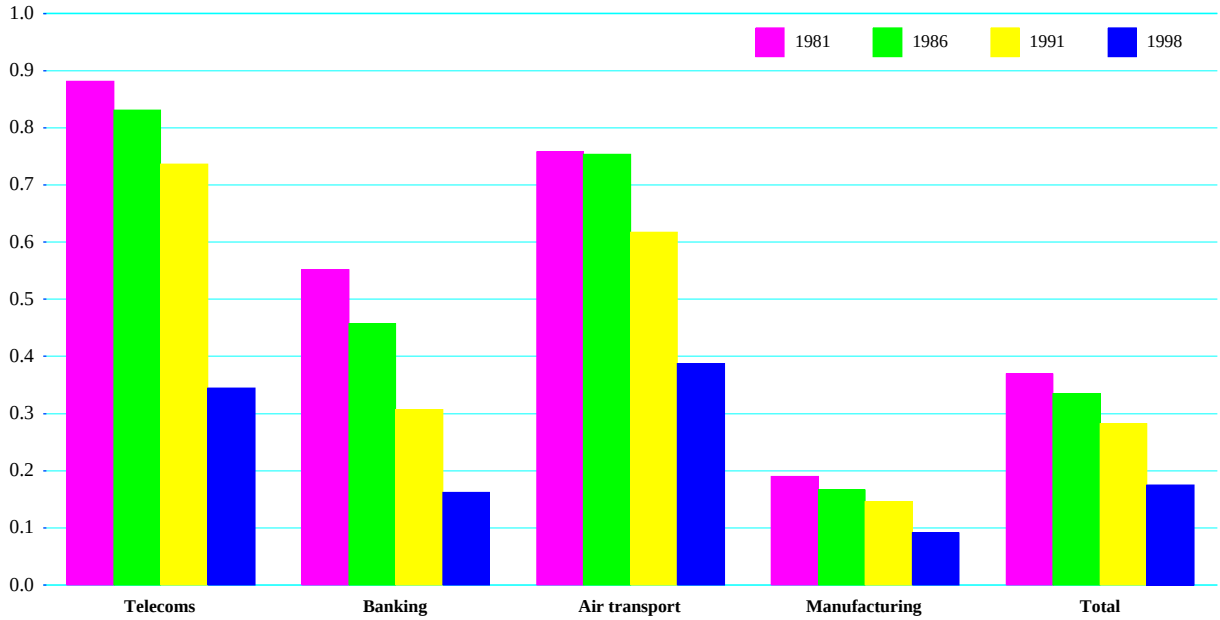
OECD area has been particularly noticeable in the telecommunication and air transport sectors, which were almost completely closed in the early 1980s (Figure VII.4).

Figure VII.3. FDI restrictions in OECD countries, 1980-2000[1]



1. The indicator ranges from 0 (least restrictive) to 1 (most restrictive).
Source: OECD.

Figure VII.4. Evolution of FDI restrictions in selected sectors, 1981-1998[1]
OECD average[2]



1. The indicator ranges from 0 (least restrictive) to 1 (most restrictive).
2. Average for 23 OECD countries.
Source: OECD.

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Investment Climate Advisory Services | World Bank Group

IFC International Finance Corporation World Bank Group

MIGA World Bank Group Multilateral Investment Guarantee Agency

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About the Investment Climate Department of the World Bank Group

Investing Across Borders 2010 is an initiative of the Investment Climate Department of the World Bank Group with funding from the Federal Ministry of Finance of Austria and from FIAS, the multi-donor investment climate platform of the World Bank Group. The Investment Climate Department, working with other units of the International Finance Corporation (IFC) and the World Bank, advises governments on reforms to improve their business environments and encourage and retain investment, thus fostering competitive markets, growth and job creation.

Contents

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Foreword

The global financial crisis and subsequent economic downturn led in 2008-2009 to rapid and significant contraction in international trade and investment. But the first half of 2010 has seen a gradual—though cautious—upswing in global consumer demand, investor confidence, and economic activity. The resurgence of international commerce and investment is creating new opportunities for companies and countries alike.

The factors driving investment decisions by multinational corporations are changing. When seeking business opportunities, companies are now more concerned about financial and political risks, with a focus on stable and predictable business environments. In response, governments everywhere recognize that their chances of attracting more foreign investment depend on making their investment climates more competitive.

The *Investing Across Borders 2010* report and online database (http://www.investingacrossborders.org) offer companies and governments indicators measuring how countries around the world facilitate market access and operations of foreign companies. For each of the 87 countries surveyed, the report identifies sectors with restricted entry for foreign investors, defines roadmaps for companies seeking to create foreign subsidiaries and acquire real estate, assesses the strength of commercial arbitration systems, and presents dozens of other indicators on regulation of foreign direct investment.

For potential investors, the indicators measure the transparency and predictability of countries' legal environments. For governments, the indicators identify good regional and global practices and offer tools for improving the competitiveness of business climates. For academics and researchers, the indicators provide vast amounts of previously unavailable data that enable the pursuit of new insights and knowledge.

This report and its Web site are designed to inform decisions, stimulate discussions, spur policy reforms, and facilitate new research and analysis. And as this is the first of what is planned as a regular report on regulation of foreign direct investment, we especially welcome your feedback.

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Introduction

Like trade, foreign direct investment (FDI) has occurred throughout history.[1] 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 (figure 1.1).[2]

The economic crisis slashed global FDI flows by about 40% in 2009, affecting all economies, sectors, and forms of investment. 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.[3] Developing economies fared marginally better during the crisis. FDI in developing economies fell 35% in 2009, compared with 41% in high-income economies.[4] With the global recession receding somewhat, FDI will likely recover in the near future. Most indicators signal that FDI will be higher in 2010 than in 2009.

The recovery in FDI is good news for economies suffering from the global economic downturn and seeking to stimulate economic growth. The benefits of FDI 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, and contributed to the fiscal standing of many economies.[5] 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.[6] Foreign investment has also helped break up cozy local oligopolies and cartels.

Opponents of FDI point out that its impacts are often limited and in some cases detrimental—the consequences of crowding out local competition, enclave production with limited forward and backward linkages, and "race to the bottom" effects often related to labor and environmental issues.[7] While the main social argument for FDI is that it generates employment, job creation may be limited and work opportunities may even decrease if local firms are driven out of the market by increased competition, or if acquired companies are restructured. Critics also cite cases of severe pollution and environmental destruction caused by companies in the extractive and energy sectors.[8]

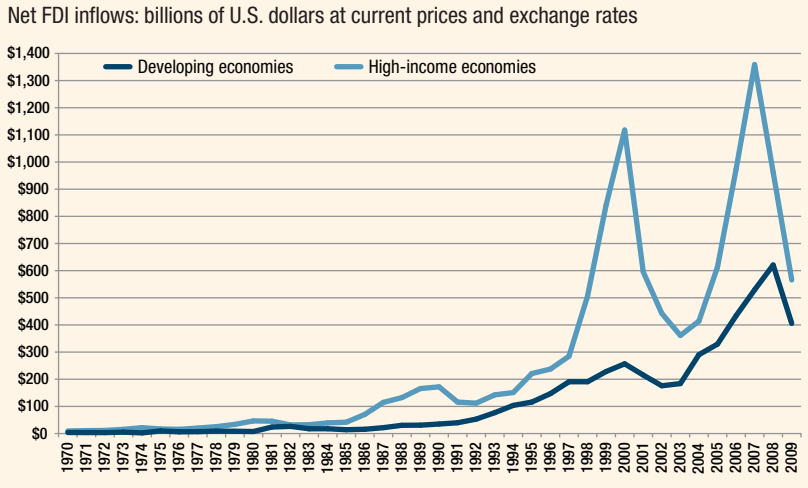
Though some of these criticisms are warranted, evidence for such claims is often based on narrowly-focused studies of certain industries and economies. While the potential drawbacks of individual investment projects should not be underestimated, most research and empirical evidence finds that, on balance, FDI helps foster development in recipient economies.[9] The benefits of FDI are particularly amplified in economies with good governance, well-functioning institutions, and transparent, predicable legal environments.

INTRODUCING THE *INVESTING ACROSS BORDERS* INDICATORS

The *Investing Across Borders* (IAB) indicators measure FDI regulation in 4 specific policy areas. They 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' decisionmaking.

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. Some of the more restrictive

FIGURE 1.1: FDI in high-income and developing economies, 1970–2009



Note: 2009 data are based on preliminary estimates.
Source: UNCTAD, Foreign Direct Investment Online, http://stats.unctad.org/fdi.

economies include large ones such as China, Mexico, the Philippines, and Thailand.

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 often include difficulties associated with securing access to land.[10] 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 disputes, although some do not have special arbitration laws. Party autonomy levels and enforcement mechanisms for arbitration awards vary. For example, some economies have adopted rules to ensure prompt enforcement of arbitration awards. In contrast, in other economies it takes more than 2 years to enforce a final arbitration award.

The IAB indicators comprise measures of the characteristics of laws and regulations (de jure indicators), and their implementation (de facto indicators). IAB's Web site provides open access to these indicators (box 1.1). Below are overviews of the 4 indicator topics:

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 a 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.

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 countries, 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.

BOX 1.1: The *Investing Across Borders* Web site

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

- 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.

GOALS OF THE IAB INDICATORS

The World Bank Group's *Doing Business* project provides the methodological foundation for the IAB indicators.[12] The *Doing Business* indicators compare regulation of domestically owned small and medium enterprises. Those indicators have helped stimulate hundreds of reforms worldwide and 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 1.1).

Foreign investors and governments concerned about the competitiveness of their economy's business environment have a broad range of resources at their disposal. Table 1.2 lists

TABLE 1.1: Audiences and uses for the IAB indicators

Audience	Uses
Governments and investment promotion intermediaries	▪ 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	▪ 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	▪ 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.

TABLE 1.2: 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://www.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://globaledge.msu.edu/resourcedesk/mpi)
Measures of Restrictions on Inward Foreign Direct Investment in Developing Countries paper (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)

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.

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 identify specific impediments to FDI in the legal, regulatory, administrative, and institutional frameworks of each economy covered. The indicators are reform-oriented because the identified problems 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 2,350 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 scope and strength of laws and regulations as well as, where possible, their implementation. Many economies have adopted modern laws and rules, but these are often not applied effectively. The combined measures of de jure and de facto performance 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.

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 investment climates and influence investment decisions. These include the host economy's market size and location, availability of natural resources, macroeconomic performance, infrastructure quality, labor and production costs, and quality of governance and institutions.[13]

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) the IAB project 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 assess the treatment of a typical foreign investor and offer enough variation across economies to warrant the development of global indicator set. While legal and regulatory frameworks for FDI are typically not the primary drivers of investment decision, 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 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 3 areas: substantive, focusing on the content and thematic coverage of the indicators; methodological, concerned with the questionnaire design and data collection; and limits to the implications of the indicators, addressing their potential interpretation, uses, and relationships with various economic and social data. These limitations pertain to the project as a whole and are discussed in greater detail in the methodology chapter and on IAB's Web site. 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 limitations

- IAB focuses on regulation of FDI, not portfolio investment.[14]
- Thematic coverage is limited to 4 discrete policy areas.
- IAB focuses on national laws and, in some cases, on countries' 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 limitations

- 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.
- For these data, 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.

Limits to intepretation and use

- The IAB indicators do not examine whether more regulation is preferable to less. They focus on good regulation.
- 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.

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

WHAT'S NEXT?

Investing Across Borders is a new initiative that the IAB team aims to continue to improve in the future. Over time the team hopes to increase the number of economies surveyed, introduce rankings and other direct comparisons for each topic measured, and engage a growing number of questionnaire respondents. Though there are currently no plans to expand the report's thematic coverage to other areas of FDI regulation, this option will be considered if there is specific and sufficient demand from governments or other stakeholders to carry out the additional research.

The IAB team also intends to leverage the report's findings in the research, analysis, and reform advisory work of the World Bank Group and its partners. Any parties interested in collaborating on any of these areas are welcome to contact the IAB team. The team would also be grateful for feedback on the data, methodology, and overall project design that would make IAB a better, more useful resource for its users.

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

ENDNOTES

1 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.

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

3 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.

4 UNCTAD (2010).

5 UNCTAD (2004).

6 de Mello (1997).

7 Centre for Research on Multinational Corporations (2008).

8 Ibid.

9 Nair-Reichert and Weinhold (2001).

10 Muir and Shen (2005).

11 The 87 economies contain 86% of the world's population and account for 77% of global GDP.

12 *Doing Business*, http://www.doingbusiness.org.

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

14 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.

Overview

Investing Across Borders 2010 (IAB) presents cross-country indicators analyzing laws, regulations, and practices affecting foreign direct investment (FDI) in 87 economies. The 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, as well as their implementation. They explore differences across countries 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.[1] 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 countries measured. Between April and December 2009 more than 2,350 experts in 87 economies responded to the survey to provide data for this report.

This chapter presents the report's main findings including examples of FDI competitiveness-enhancing practices for each indicator area. It also provides key results 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 87 economies measured by IAB have FDI-specific restrictions that hinder foreign investment. For example, a fifth of the countries 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 countries up to 6 months.

In addition, almost 90% of countries 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).

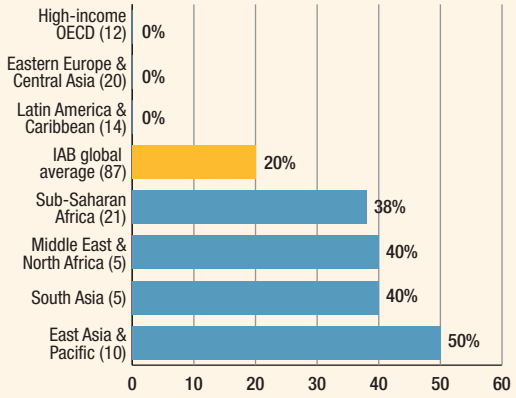
In some sectors—such as banking, insurance, and media—laws often limit the share of foreign equity ownership allowed in enterprises. In others—such as transportation and electricity—state-owned monopolies preclude both foreign and domestic private firms from engaging in the sectors.

When it comes to international commercial arbitration, nearly 10% of IAB countries do not have special statutes for commercial arbitration. Furthermore, 1 in 4 countries has not ratified the New York Convention, the ICSID Convention, or both.[2] 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.

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

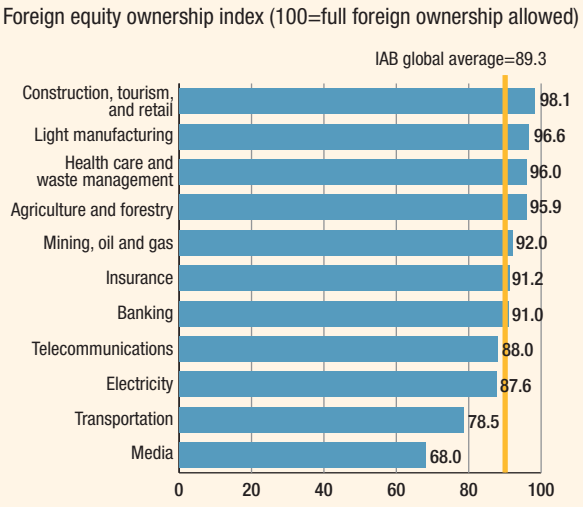
The IAB indicators go beyond analyzing the text of laws and the ratification of international conventions. They also examine the typical experience of investors as they go through administrative processes

FIGURE 2.1: Share of IAB countries requiring foreign investment approval, by region



Note: 0% denotes that none of the countries in that region require an investment approval.
Source: Investing Across Borders database.

FIGURE 2.2: Restrictions on foreign ownership of companies vary by sector



Source: Investing Across Borders database.

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). But there is also large variation across countries. Leasing private industrial land in Nicaragua and Sierra Leone typically requires half a year, as opposed to less than 2 weeks in Armenia, the Republic of Korea, and Sudan.

The amount of time required to enforce an arbitration award in local courts also varies by country. On average, more than a year is needed in the South Asian economies measured by IAB. In contrast, in high-income OECD countries such as France and the United Kingdom, enforcement can be completed in less than 2 months (figure 2.4).

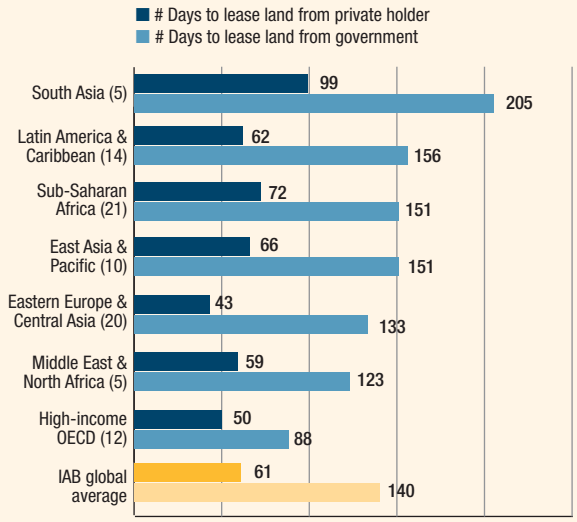
The typical experience of foreign companies trying to start a business also varies greatly across countries. In Angola and Haiti establishing a subsidiary of a foreign company can take more than 6 months (figure 2.5). In Canada, Georgia, and Rwanda it can be done in less than a week. In Sub-Saharan Africa and the Middle East and North Africa the procedures required of foreign companies take twice as long to complete as those for domestic companies. In high-income OECD countries and Eastern Europe and Central Asia these FDI-specific additional procedures add only a couple of days, on average.

Good regulations and efficient processes matter for FDI

Countries 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, countries 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, or level of economic development—are likely to better explain the relationship.

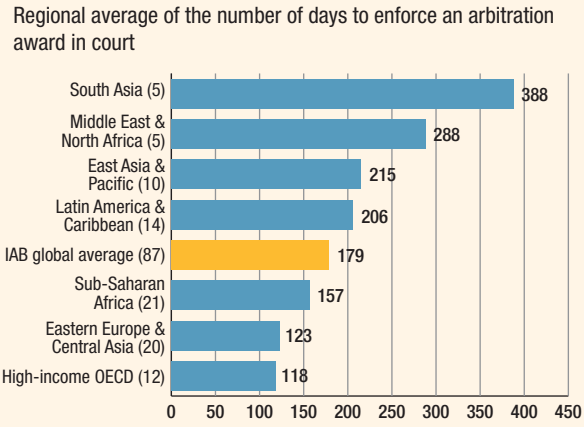
IAB also finds that countries with smaller populations and markets tend to have fewer restrictions on FDI. And countries that have done particularly well in attracting FDI (before the recent economic crisis)—such as Ireland, Singapore, the United Kingdom, and the United States—also score well on the IAB indicators.[3]

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



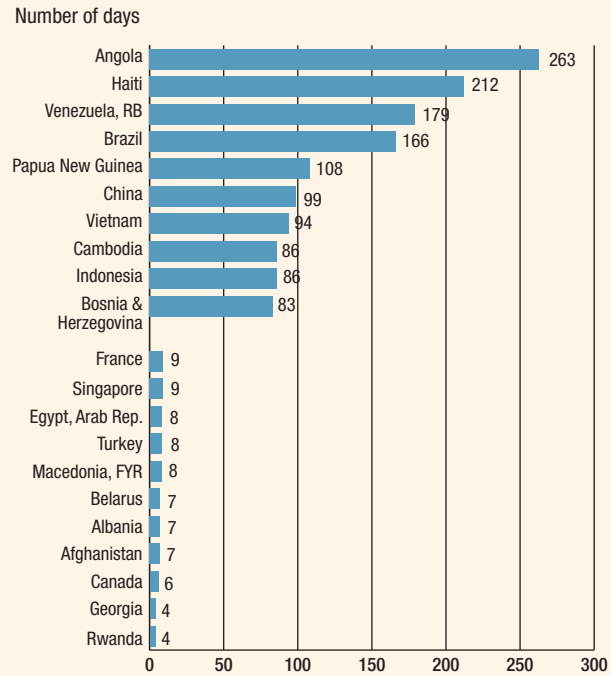
Source: Investing Across Borders database.

FIGURE 2.4: The time required to enforce an arbitration award varies significantly across regions



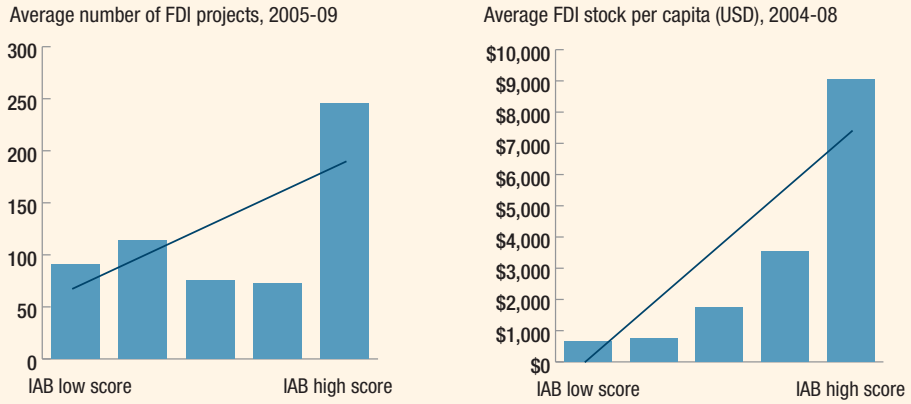
Source: Investing Across Borders database.

FIGURE 2.5: Fastest and slowest countries for starting a foreign business



Source: Investing Across Borders database.

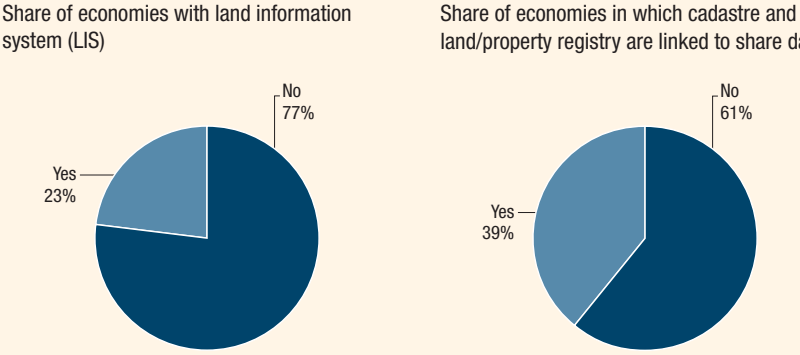
FIGURE 2.6: Good regulations and efficient processes are associated with more FDI



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 of the 4 topics. 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, *Investing Across Borders* database.

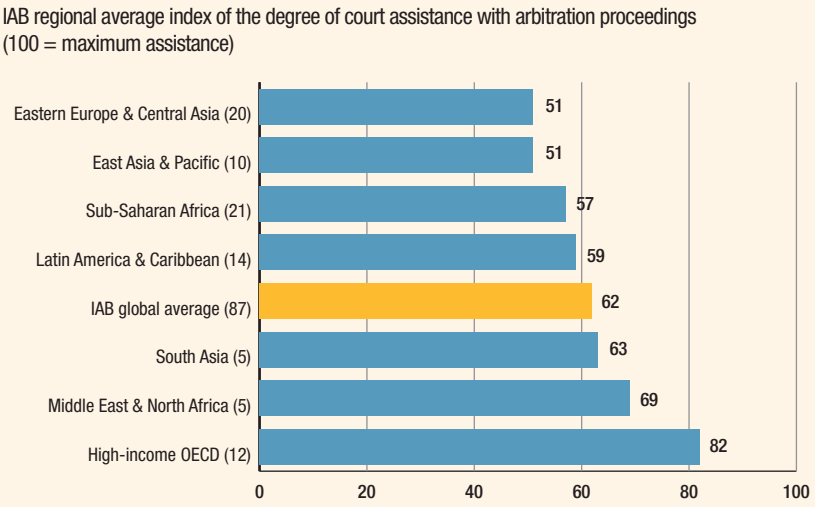
FIGURE 2.7: Countries vary widely on the effectiveness of land management systems



Source: Investing Across Borders database.

* Only includes 41 economies which have cadastre and land registry.

FIGURE 2.8: Court assistance with arbitration varies by region



Source: Investing Across Borders database.

Effective institutions 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 countries miss out on foreign investment due to deficiencies of investment promotion institutions in providing potential investors with accurate and up-to-date information.[4]

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 Web site 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 a country. IAB shows that laws on establishing a foreign business are available online in all IAB countries except Ethiopia, Ghana, and Liberia. In 83% of IAB countries laws on commercial arbitration are available online. But many of these are not Web sites 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 European and Central Asian and high-income OECD countries, public land management institutions are not organized well enough to make information easily accessible. Less than a quarter of the countries surveyed have functioning land information systems, and many lack effective and coordinated land management institutions (figure 2.7).[5] As technology develops, access to information becomes paramount—not only to inform investors, but also to improve the countries' business climates.

The existence of a functioning arbitral institution in a country is an indication of a solid arbitration practice. But more than 10% of the countries surveyed do not have such an institution, including Afghanistan, Angola, Bangladesh, Cambodia, Kosovo, Montenegro, Papua New Guinea, Rwanda, Sierra Leone, and the Solomon Islands. In some countries such institutions are no longer active, as in Ethiopia and Liberia.

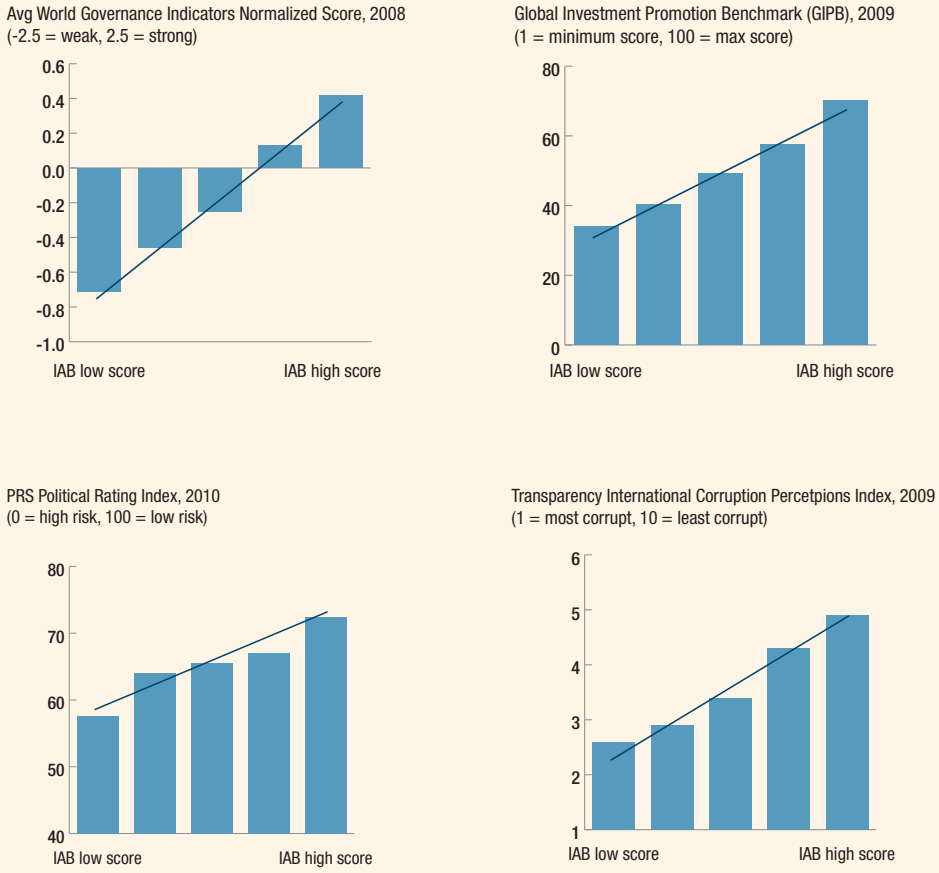
Courts can make arbitration more effective. During arbitration proceedings, courts may be required to support arbitral tribunals. Similarly, if interim measures are required—such as freezing assets, making interim payments, or seizing property—courts must be approached by the party seeking the order. In many countries 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 for production of documents or appearance of witnesses (figure 2.8).

In general, IAB shows that effective institutions that provide easily accessible and reliable information matter for creating an enabling investment climate. Furthermore, countries 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).

Countries 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 4 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 country over another if all other factors are equal. Countries that score well on the IAB indicators share certain features (box 2.1).

FIGURE 2.9: Higher IAB scores are associated with better 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 country's investment promotion agency. This indicator measures the quality of each agency's handling of investor inquiries and its Web site. 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 countries 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: 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, *Investing Across Borders* database.

BOX 2.1: Characteristics of countries 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 countries the benefits of openness to foreign capital participation have trumped reasons for restricting certain sectors from foreign ownership. For every country 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.** Countries 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. Countries should simplify or abolish such requirements unless foreign investment is in a sector that affects national or economic security. In addition, countries 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, countries should not require foreign companies to go through a local third party (lawyer, notary, public entity).

Accessing Industrial Land

- **Clear laws which provide fair and equal 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.** A country 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

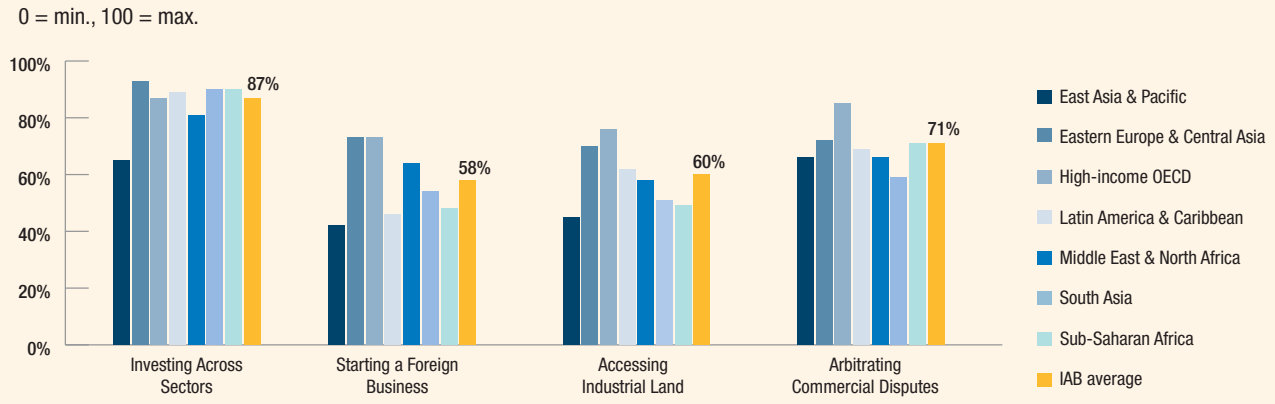
- **Strong arbitration laws in line with arbitration practice.** Many countries have enacted modern arbitration laws. Ideally these are consolidated in one law or a chapter in civil code and are coherent, up-to-date, and easily accessible. A strong legal framework should be associated with effective 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

The IAB indicators show significant variation across regions (figure 2.10).

FIGURE 2.10: Share of possible points per IAB indicator topic by regional average



Note: The IAB average is a simple average of the 87 economies measured by IAB.
Source: Investing Across Borders database.

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 the Solomon Islands have few restrictions, while China and Indonesia impose foreign equity limits in many 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), Vietnam (94), Indonesia (86), and Cambodia (86) are among the 10 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). Half of the region's economies surveyed by IAB require investment approvals—China, Indonesia, Papua New Guinea, the Solomon Islands, and Vietnam. 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, and Singapore, none of the 10 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 Vietnam. 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 countries 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 countries 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 Vietnam are not parties to the ICSID Convention. In addition, Papua New Guinea has not ratified the New York Convention.

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 country 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 countries in the region. Within the region, countries 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 countries offer simple establishment processes for foreign companies. Bulgaria, Croatia, and Romania offer online business registration. Half the world's 10 countries 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 countries 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 country 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 country. 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 countries 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 countries 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.

HIGH-INCOME OECD

Investing Across Sectors

High-income OECD countries have relatively few restrictions on foreign equity ownership, though foreign ownership of companies in transportation is far more restricted than in most other regions. In particular, foreign ownership of airlines is limited to a less than 50% stake in all high-income OECD countries 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 countries—such as Greece and Spain—limit foreign ownership in more sectors, including electricity and media.

Starting a Foreign Business

High-income OECD countries offer easy establishment processes. Canada (6 days) and France (9 days) are among the world's 10 countries with the fastest start-up processes. Though none of the 12 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 countries offer downloadable registration documents.

Accessing Industrial Land

All the surveyed high-income OECD countries allow private ownership of land and provide strong lease and ownership rights. Access to land information is relatively easy throughout these countries, and many have land and geographic information systems. Ireland offers 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 2 weeks in Japan to 3 months in the Czech Republic, and the time required to lease land from the government ranges from 3 weeks in Greece 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 countries. 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 countries, 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.

LATIN AMERICA AND THE CARIBBEAN

Investing Across Sectors

Latin American and Caribbean countries 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 countries 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 countries—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 countries with some of the world's slowest start-up processes, including Haiti (212 days), República Bolivariana de Venezuela (179 days), and Brazil (166 days). Still, 9 of the 14 countries surveyed do not require foreign investment approval or notification. Some form of capital importation notification or certification is required in more than half the countries 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 countries surveyed allow private land ownership. While most countries 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 countries surveyed in the region have specific laws on commercial arbitration. In some countries the legal framework for arbitration is spread across various decrees and codes, resulting in legal controversies and complexities (as in Colombia). Almost half the countries surveyed in the region have also enacted laws on commercial mediation. Every country 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 countries 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.

MIDDLE EAST AND NORTH AFRICA

Investing Across Sectors

Relative to other regions, countries 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 countries 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 country 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. The Arab Republic of Egypt (8 days) has one of the fastest establishment processes of all countries 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 countries 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 countries 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 country. 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 countries 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 countries 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.

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 country 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 countries 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 countries 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 countries 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 countries 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 countries 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.

SUB-SAHARAN AFRICA

Investing Across Sectors

Sub-Saharan countries tend to be more open to foreign equity ownership than those in other regions—particularly in agriculture and forestry, where no countries except Sierra Leone and Sudan have restrictions on foreign equity ownership. On the other hand, countries such as Angola, Tanzania, and Uganda have more restrictions on foreign ownership in banking, insurance, and telecommunications than do most other countries. In Ethiopia these industries are completely closed to foreign capital participation. Indeed, Ethiopia is one of the most restricted countries 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 countries 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 countries 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 countries 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 countries 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 countries 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.

TABLE 2.1: Summary of IAB indicators

	Investing Across Sectors *Foreign equity ownership indexes (100 = full foreign ownership allowed)*											Starting a Foreign Business			Accessing Industrial Land						Arbitrating Commercial Disputes		
INDEX ECONOMY	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)	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)	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	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	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	10.0	50.0	80.0	30.0	100.0	100.0	263	12	39.5	87.9	75.0	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	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	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
Austria	100.0	100.0	100.0	100.0	70.9	100.0	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	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	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	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	100.0	89.8	100.0	100.0	100.0	54	18	63.2	65.0	87.5	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	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	100.0	68.0	30.0	100.0	50.0	166	17	62.5	85.7	100.0	33.3	75.0	66	180	84.9	45.7	57.2
Bulgaria	100.0	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	87.5	100.0	100.0	100.0	100.0	100.0	100.0	100.0	15	5	44.7	74.9	50.0	31.6	50.0	..	120	94.9	67.6	67.9
Cambodia	100.0	100.0	100.0	100.0	85.7	100.0	100.0	69.8	100.0	100.0	100.0	86	10	44.7	92.9	n/a	41.7	52.5	41	119	92.4	48.6	46.0
Cameroon	95.0	100.0	100.0	100.0	71.4	100.0	100.0	49.0	49.0	100.0	100.0	82	14	41.1	73.6	75.0	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	100.0	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	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	85.0	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	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	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	100.0	42	12	52.6	86.6	62.5	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	100.0	69.4	100.0	100.0	100.0	23	9	81.6	85.7	100.0	55.0	75.0	78	107	93.1	71.4	52.7
Czech Republic	100.0	100.0	100.0	100.0	100.0	100.0	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	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	100.0	76.0	50.0	83.0	100.0	8	7	63.2	85.7	75.0	30.0	50.0	45	..	89.9	74.9	54.2
Ethiopia	100.0	100.0	100.0	0.0	50.0	0.0	0.0	10.0	0.0	50.0	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	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	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	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	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	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	100.0	80.0	100.0	100.0	100.0	212	13	63.2	71.4	87.5	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	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
India	100.0	50.0	81.5	74.0	100.0	87.0	26.0	59.6	63.0	83.7	100.0	46	16	76.3	92.9	87.5	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	82.5	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	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	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	100.0	20.0	100.0	100.0	34	9	65.8	86.7	66.7	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	75.0	100.0	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	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	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	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	90.0	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

TABLE 2.1: Summary of IAB indicators *(continued)*

	Investing Across Sectors *Foreign equity ownership indexes (100 = full foreign ownership allowed)*											Starting a Foreign Business			Accessing Industrial Land						Arbitrating Commercial Disputes		
INDEX ECONOMY	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)	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)	EXTENT OF JUDICIAL ASSISTANCE INDEX (0 = MIN, 100 = MAX)
Macedonia, FYR	100.0	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	92.9	100.0	100.0	80.0	100.0	100.0	100.0	12	3	65.0	84.5	75.0	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	65.0	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	100.0	29	8	42.5	80.0	50.0	28.6	5.0	..	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	100.0	11	9	68.4	90.0	87.5	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	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	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	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	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	100.0	34	12	65.8	53.1	n/a	33.3	62.5	148	175	95.4	80.9	22.2
Nicaragua	100.0	100.0	100.0	100.0	100.0	100.0	100.0	89.8	74.5	100.0	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	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	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	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	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	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	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	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	100.0	4	3	60.5	89.2	87.5	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	50.0	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	100.0	10	5	45.0	85.6	87.5	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	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	75.0	100.0	100.0	100.0	100.0	100.0	80.0	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	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	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	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	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	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	60.0	40.0	100.0	100.0	65	6	47.9	85.7	87.5	31.6	75.0	68	91	95.4	71.3	38.0
Sudan	75.0	75.0	87.5	50.0	50.0	50.0	50.0	60.0	0.0	100.0	100.0	55	13	40.0	71.4	n/a	30.8	30.0	12	60	77.4	73.3	67.8
Tanzania	100.0	100.0	100.0	65.0	100.0	100.0	66.0	100.0	24.5	100.0	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	49.0	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	100.0	19	14	71.1	85.7	87.5	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	100.0	8	8	65.8	85.7	87.5	63.2	90.0	15	72	89.9	69.5	68.6
Uganda	100.0	100.0	100.0	100.0	71.4	49.0	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	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	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	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	100.0	179	19	42.5	72.5	100.0	44.4	75.0	87	138	89.1	57.1	52.2
Vietnam	50.0	100.0	75.0	50.0	71.4	65.0	100.0	69.4	0.0	100.0	75.5	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	100.0	29	9	68.4	69.2	62.5	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	100.0	58	9	47.4	71.4	n/a	37.5	75.0	104	122	97.4	65.7	77.3

Source: Investing Across Borders database.

ENDNOTES

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

2 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).

3 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.

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

5 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 decisionmaking and for planning and development.

Topics

Investing Across Sectors

INTERESTING FACTS

- More than a quarter of the 87 countries surveyed by *Investing Across Borders* (IAB) have few or no sector-specific restrictions on foreign ownership of companies.
- Smaller countries have fewer restrictions on foreign ownership of companies, while larger countries—such as China, Mexico, the Philippines, and Thailand—are among those with the most.
- Countries in Eastern Europe and Central Asia and Latin America and the Caribbean tend to be the most open to foreign ownership of companies.
- Though services account for a growing share of global foreign direct investment (FDI), foreign ownership of companies is more restricted in the service sector than in the primary and manufacturing sectors.
- Worldwide, restrictions on foreign ownership are strictest in media, transportation, electricity, and telecommunications industries.
- Most countries allow foreign ownership of equity in alternative energy companies—with some countries in Middle East and North Africa being notable exceptions.

Source: Investing Across Borders 2010.

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).[1] 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.[2]

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

Unlike trade policy, cross-country comparisons of foreign investment regimes, and especially limits on foreign ownership, have not received sufficient analysis.[3] 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.[4] 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).[5] The 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,[6] and later developed further by the OECD and UNCTAD FDI restrictiveness indexes.[7] The indicators follow the recommendations

BOX 3.1: Sector coverage of the Investing Across Sectors indicators

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

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

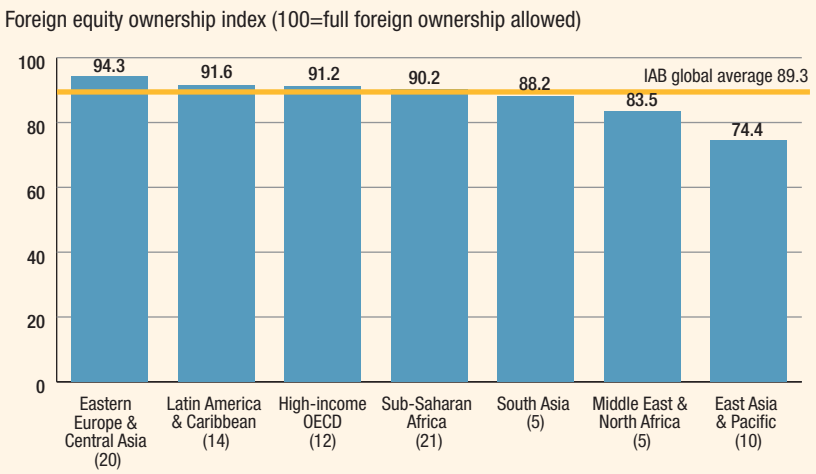
- Investment laws (for example investment codes, investment promotion laws and regulations, foreign investment acts, laws and regulations governing sectors closed to foreign investment).
- Company and business organization laws (for example commercial codes, foreign company laws, company registration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

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."[8]

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).

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 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.

FIGURE 3.1: Eastern Europe and Central Asia has the least restrictions on foreign ownership of companies



Source: Investing Across Borders database.

RESULTS OF THE INVESTING ACROSS SECTORS INDICATORS

Looking at the results through a regional perspective puts in contrast the openness to foreign ownership of companies in the countries in Eastern Europe and Central Asia and Latin America and the Caribbean relative to East Asia and the Pacific (figure 3.1).[15]

Several countries in the most open regions do not impose any restrictions in any of the sectors covered by the indicators; these include Chile, Georgia, Guatemala, and Montenegro. In contrast, economies such as China, Indonesia, Malaysia, the Philippines, Thailand, and Vietnam restrict foreign participation in many economic sectors. The Middle East and North Africa is also a relatively restricted region, with countries such as Morocco and Saudi Arabia limiting foreign capital participation in many industries.

Eastern Europe and Central Asia is more open to foreign capital participation than the IAB global average in every single sector group measured by the indicators. On the other hand, East Asia and the Pacific scores lower than any other region in nearly all sectors (table 3.1).

Despite the relatively high degree of restrictiveness, East Asia has a strong record in attracting FDI over the last several decades. Analysis of this apparent paradox points to the limitations of interpreting the narrow measure of the indicators, and juxtaposes the good performance of the region in FDI attraction in absolute terms versus below-average performance relative to the size of the economy and population (box 3.4)

BOX 3.3: The growing role of services in GDP and FDI

The share of services in the national products of most countries has been rising steadily, reaching 73% of GDP in high-income, 53% of GDP in middle-income, and 45% of GDP in low-income countries in 2006.[9] 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.[10] 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.[11]

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).[12] 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.[13] In South Africa, for instance, FDI in telecommunications and information technology has overtaken that in mining and extraction.[14]

TABLE 3.1: Restrictions on foreign equity ownership across sectors and regions

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

Sector group	East Asia & Pacific (10 countries)	Eastern Europe & Central Asia (20 countries)	High-income OECD (12 countries)	Latin America & Caribbean (14 countries)	Middle East & North Africa (5 countries)	South Asia (5 countries)	Sub-Saharan Africa (21 countries)	IAB sector average (87 countries)
Mining, oil and gas	75.7	96.2	100.0	91.0	78.8	88.0	95.2	**92.0**
Agriculture and forestry	82.9	97.5	100.0	96.4	100.0	90.0	97.6	**95.9**
Light manufacturing	86.8	98.5	93.8	100.0	95.0	96.3	98.6	**96.6**
Telecommunications	64.9	96.2	89.9	94.5	84.0	94.8	84.1	**88.0**
Electricity	75.8	96.4	88.0	82.5	68.5	94.3	90.5	**87.6**
Banking	76.1	100.0	97.1	96.4	82.0	87.2	84.7	**91.0**
Insurance	80.9	94.9	100.0	96.4	92.0	75.4	87.3	**91.2**
Transportation	63.7	84.0	69.2	80.8	63.2	79.8	86.6	**78.5**
Media	36.1	73.1	73.3	73.1	70.0	68.0	69.9	**68.0**
Sector group1: construction, tourism, and retail	91.6	100.0	100.0	100.0	94.9	96.7	97.6	**98.1**
Sector group 2: health care and waste management	84.1	100.0	91.7	96.4	90.0	100.0	100.0	**96.0**
IAB regional average	**74.4**	**94.3**	**91.2**	**91.6**	**83.5**	**88.2**	**90.2**	**89.3**

Source: Investing Across Borders database.

BOX 3.4: 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. Country 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).[16] Country Y can let in 75%, but with no other conditions. Which country 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 countries 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 Vietnam, for example, foreign equity limit in banking is approximately 60%, and in insurance and telecommunications it is under 50%. The limits are even lower in electricity and transportation services. But again, these equity ceilings alone are not a major deterrent to FDI, and countries may feel there are good "market failure" reasons to regulate sectors whose tradability is nascent and evidence on benefits is less robust.
3. 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.[17] 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 Vietnam, among others, perform below average of the 87 countries 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 countries in the region rank below the average of the countries included in the IAB 2010 report.

Source: Investing Across Borders.

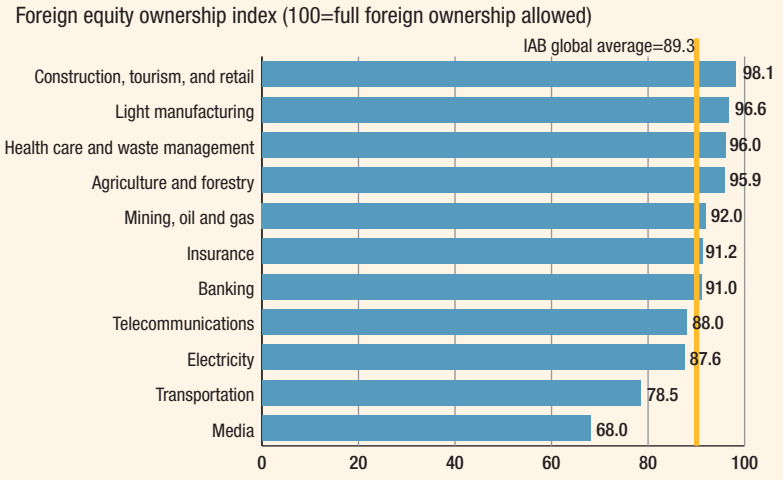
Further disaggregating Investing Across Sectors data to the level of individual countries reveals the gap between the most open and closed economies to foreign ownership. On the one hand, more than 10% of the countries surveyed do not have any restrictions on foreign ownership in any of the sectors measured. These countries receive a full index score of 100 in all sectors. On the other hand, many countries in the world not only limit foreign ownership in some sectors, but altogether prohibit foreign capital participation in specific sectors. Ethiopia, the Philippines, and Thailand are amongst the world's most restricted economies, with an indicator score of 0 for several sectors. The following economies restrict foreign ownership in one third or more of the sectors measured by the indicators: Bolivia, China, Ethiopia, Greece, India, Indonesia, Malaysia, Mexico, Morocco, the Philippines, Saudi Arabia, Sudan, Thailand, and Vietnam.

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 3.2). 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 countries are less certain about the optimal balance between openness and restrictiveness. Many countries view service sectors such as media, transportation, electricity, and telecommunications as strategic assets, or industries related to national economic security. As a result, many countries tend to restrict foreign equity ownership in these sectors.

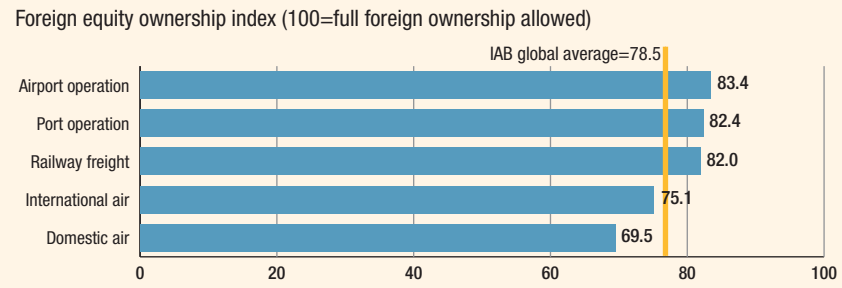
Of all sectors covered by the indicators, foreign ownership of TV broadcasting and newspaper companies is most restricted. In 11% of surveyed economies it is completely prohibited. In contrast, almost two-thirds of countries allow foreign companies to own

FIGURE 3.2: Equity limits on foreign ownership of companies vary across sectors



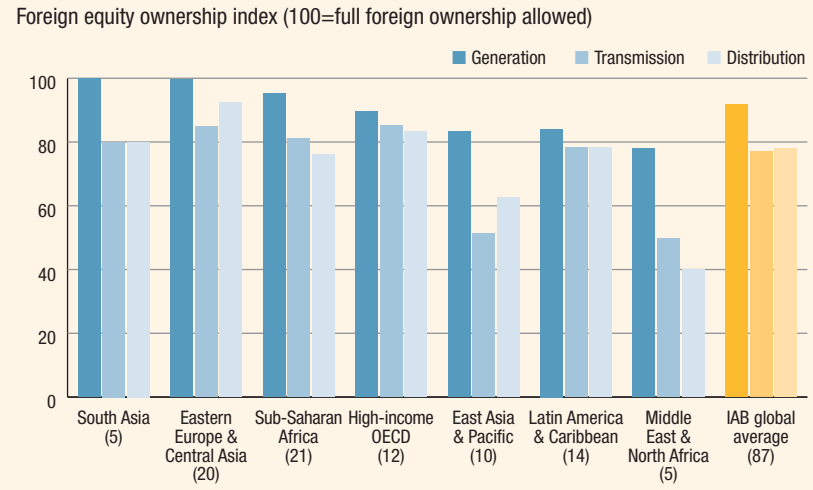
Source: Investing Across Borders database.

FIGURE 3.3: Foreign ownership of airlines is more restricted than other transportation sectors



Source: Investing Across Borders database.

FIGURE 3.4: Foreign ownership in electricity generation is less restricted than in electricity transmission and distribution



Source: Investing Across Borders database.

100% of newspaper businesses. Even in the high-income OECD countries, many of whom have limits on foreign ownership in these sectors, all countries allow foreign capital participation in newspaper publishing, and only Spain completely bans foreign companies from entering TV broadcasting.

The second most restricted sector is transportation, measured by the indicators including railway freight, air transportation (domestic and international), and airport and port ownership (figure 3.3). Of these, foreign ownership is most restricted in air transportation. In particular, foreign capital participation in domestic airlines tends to be limited in many countries across the globe. Foreign equity in the air transportation sector is most severely restricted in the high-income OECD countries. In contrast, these sectors are mostly open in Sub-Saharan Africa.

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 3.4). The most severe restrictions on foreign ownership of electricity transmission and distribution companies can be found in 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.

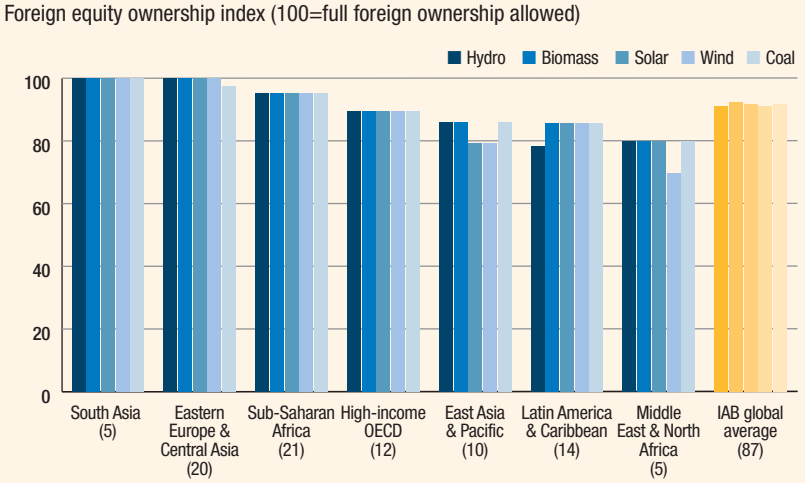
As climate-sensitive sectors rapidly gain importance on a global scale, IAB has placed a particular emphasis on measuring foreign ownership restrictions in alternative energy sectors—that is, generation of electricity from renewable sources, including solar, wind, hydro, and biomass. Results demonstrate that all regions of the world are highly open to foreign capital participation in these sectors (figure 3.5). 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 countries, the laws afford investors the same degree of access to alternative energy generation as they do to coal-based electricity generation.

It should be noted, however, that in some countries 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.

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. The differences between the fixed-line and the wireless/mobile sectors are particularly marked in Sub-Saharan Africa and Middle East and North Africa (figure 3.6).

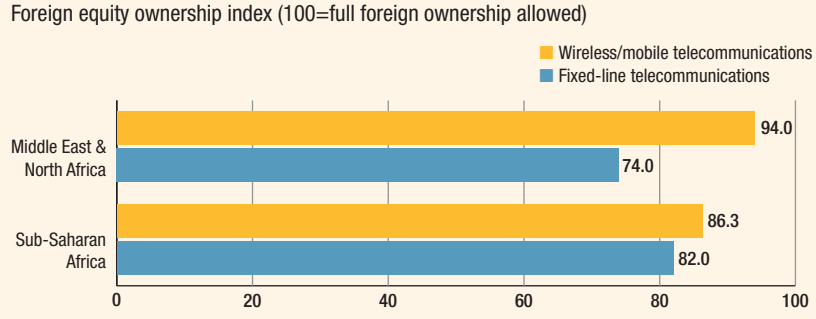
Foreign ownership is largely unrestricted in the primary sectors. Agriculture is the least restricted industry, followed by mining and forestry. In 5 of the 7 regions measured by the indicators, there are no limits on foreign ownership in agriculture. Only Mexico and the following countries in East Asia and the Pacific have ownership restrictions in this sector: Indonesia, Malaysia, the Philippines, and Thailand. Oil and gas sector has relatively more restrictions, particularly in the Middle East and North Africa.

FIGURE 3.5: Most regions welcome FDI in alternative energy



Source: Investing Across Borders database.

FIGURE 3.6: Foreign ownership in the fixed-line telecommunications sector is more restricted than in the wireless/mobile sector in Middle East and North Africa and Sub-Saharan Africa



Source: Investing Across Borders database.

All measured manufacturing sectors are almost universally open to FDI in all countries, including light manufacturing, agribusiness, pharmaceuticals, and publishing. Whereas the first 3 sectors are almost universally open to foreign capital participation, publishing is subject to foreign ownership restrictions in many countries around the globe. In particular, economies in East Asia and the Pacific tend to restrict foreign equity ownership in this industry. Middle East and North Africa, South Asia, as well as the high-income OECD countries also achieve a lower than average score in publishing.

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 countries, 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 the Middle East and North Africa.

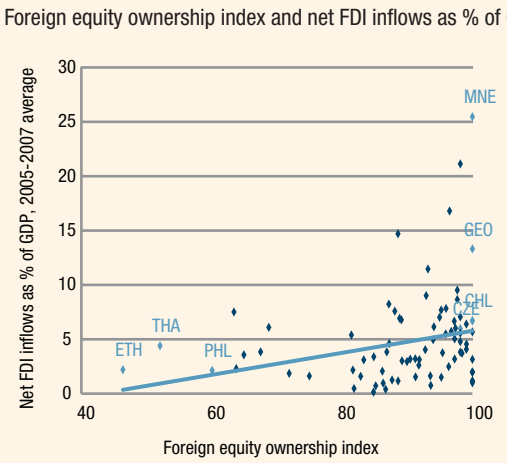
CONCLUSIONS AND IMPLICATIONS

Simple correlation analysis shows a weak but positive and statistically significant association between FDI and openness to foreign equity ownership (figure 3.7).[18] Countries that restrict foreign ownership of companies do not attract much FDI, while many countries—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.

There is also a negative and statistically significant association between openness to foreign equity ownership and country size (figure 3.8). Countries 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.

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 (as in Afghanistan,

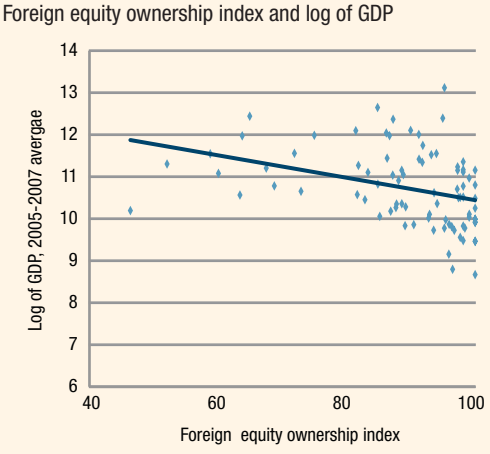
FIGURE 3.7: Statutory restrictions on foreign equity ownership limit FDI



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).

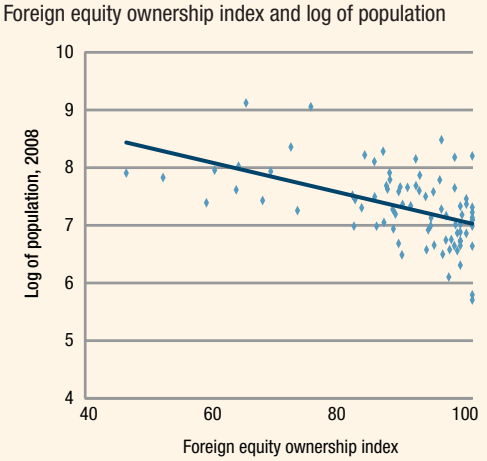
Source: Investing Across Borders database; World Bank Group *World Development Indicators* database.

FIGURE 3.8: Small economies have fewer restrictions on foreign equity



Note: Correlation coefficient is –0.352, significant at the 1% level.

Source: Investing Across Borders database; *World Development Indicators* database.[19]



Note: Correlation coefficient is –0.497, significant at the 1% level.

Source: Investing Across Borders database; *World Development Indicators* database.

Bangladesh, Kosovo, or Senegal) 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 countries 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 countries the benefits of openness to foreign capital participation have trumped reasons for restricting certain sectors from foreign ownership. For every country 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 countries benchmark their policies against those of their peers—and to use these comparisons to inform their policy decisions.

Investing Across Borders 2010 is a new initiative that we hope to continue to improve in the future. IAB plans to leverage the data for research and analysis of relationships between indicators and various socio-economic and political measures of countries' development to better understand drivers and impacts of business environment reforms. IAB will also consider expanding and deepening the scope of its indicators. We welcome your comments and feedback.

ENDNOTES

1 The Methodology section of this report available online 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.

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

3 Christiansen (2004).

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

5 Pacific Economic Cooperation Council (1995).

6 Hardin and Holmes (1997).

7 Golub (2003), UNCTAD (2006b).

8 Ibid.

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

10 UNCTAD (2004), UNCTAD (2009).

11 Ibid.

12 Ibid.

13 Ibid.

14 Ibid.

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

16 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/sl92.doc).

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

18 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.

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

Starting a Foreign Business

INTERESTING FACTS

- In most countries measured by *Investing Across Borders*, starting a foreign company takes longer and requires more steps than starting a domestic company.
- The most common additional procedure required of foreign companies is the foreign investment approval or declaration, required in 48% of the 87 surveyed countries.
- In Eastern Europe and Central Asia, the additional procedures required of foreign businesses add only 4 days on average to the total start-up time.
- Georgia and Rwanda have the fastest process for starting a foreign business of all measured countries.
- Only 3 of the 87 surveyed countries do not have their commercial laws and regulations publicly available online.
- Companies are able to download business registration forms in 59% of all measured countries, but only 18% of them offer electronic registration services.
- Four out of the 87 surveyed countries do not allow foreign companies to hold foreign currency bank accounts.
- Haiti is the only IAB country where the minimum capital requirements are more favorable for foreign than domestic companies.

Source: Investing Across Borders 2010.

HOW THE PROCESS OF SETTING UP A FOREIGN-OWNED SUBSIDIARY MATTERS FOR FOREIGN DIRECT INVESTMENT

A foreign company setting up a subsidiary in Angola might assume that, like a local enterprise, it will be able to start operating in about 68 days.[1] The reality, however, is that it can take as long as 263 days to establish a wholly foreign-owned subsidiary in Angola's capital, Luanda.

In addition to the 8 procedures required of a local company (which include depositing the initial capital in a bank, paying the registration fee, and obtaining the commercial operations permit, among others), it takes another 4 procedures for a foreign company to get started. After authentication of the parent company's documents, the planned investment project is submitted for approval to the National Agency for Private Investment (ANIP) as well as, for larger investments, to the Council of Ministers. This approval process can take up to 180 days. After the investment is approved, the foreign company applies for a certificate of capital importation with the National Bank of Angola. This process takes about 15 days. Finally, a foreign company wanting to import and export goods must request a trade license from the Ministry of Commerce, which adds a final 14 days to the process.

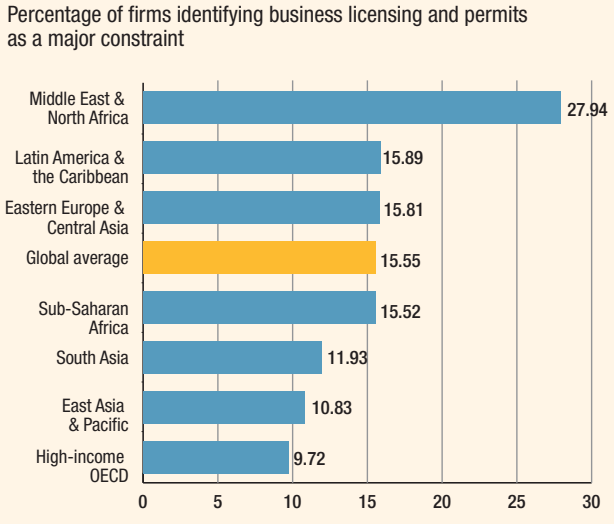
In contrast, setting up a foreign-owned subsidiary in Canada requires only 6 days and 2 procedures (adding 1 procedure and 1 day to the process required of a domestic company). The company first files for federal incorporation and provincial registration via Industry Canada's online Electronic Filing Centre (5 days). It then notifies Investment Canada of the investment. The notification can be filed up to 30 days after the investment is made.

Anywhere in the world, a company deciding on where to establish its next subsidiary may be attracted by large markets, natural resources, or low input prices. Beyond these factors, however, as highlighted by the previous examples, a country's regulatory framework can also greatly affect the investment process. There is little a government can do about its country's size or natural resource endowment. It can, however, create a legal and regulatory environment that makes the country more attractive to foreign direct investment (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 countries. In a survey of companies worldwide, 16% of firms polled identified business licensing and permits as a major constraint (figure 4.1).[2] 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.[3]

The starting a business indicator of the *Doing Business* project has shown that establishment procedures for domestic enterprises vary widely from country to country. 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 countries…stricter regulation of entry

FIGURE 4.1: Business licensing can be perceived as a major constraint



Source: Enterprise Surveys database, World Bank Group.

is associated with sharply higher levels of corruption, and a greater relative size of the unofficial economy."[4] 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.[5] 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 countries have centralized their approvals in a single agency, many countries require multiple-agency approvals or worse yet, approvals by a minister or prime minister. Navigating through the approval process in certain countries can take months or even years, and the uncertainty of the outcome, or even the process, dissuades potential investors from applying.[6]

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, 134 economies have facilitated the start-up process through 254 reforms. Some of the advantages of easier start-up procedures include, among others, greater entrepreneurship, higher productivity, increased growth and investment rates, 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.[7] The *Investing Across Borders* (IAB) data confirm that fast and efficient start-up systems are often found in investor-friendly countries 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 countries 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, thus ensuring a more comprehensive measure of the business environment faced by investors.

BOX 4.1: 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).

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 4.1).

The Starting a Foreign Business indicators do not cover all aspects of countries' 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 87 countries, 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 available online provides additional general case study assumptions.

The foreign company:

- Plans to manufacture electric household appliances (such as refrigerators, electric or microwave ovens).
- Is 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 (box 4.2). Some countries have enacted specific investment-related laws, while others have included relevant stipulations in various business and civil laws. A vast majority of the countries in the IAB sample have made these laws publicly available online.

RESULTS OF THE STARTING A FOREIGN BUSINESS INDICATORS

Starting a foreign-owned business

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 14 more days and 2 more procedures than a domestic enterprise in that same country (figure 4.2). 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 countries and in Eastern Europe and Central Asia.

For domestically-owned small and medium enterprises, some of the most common procedures include (but are not limited to):[8]

- 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.

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:

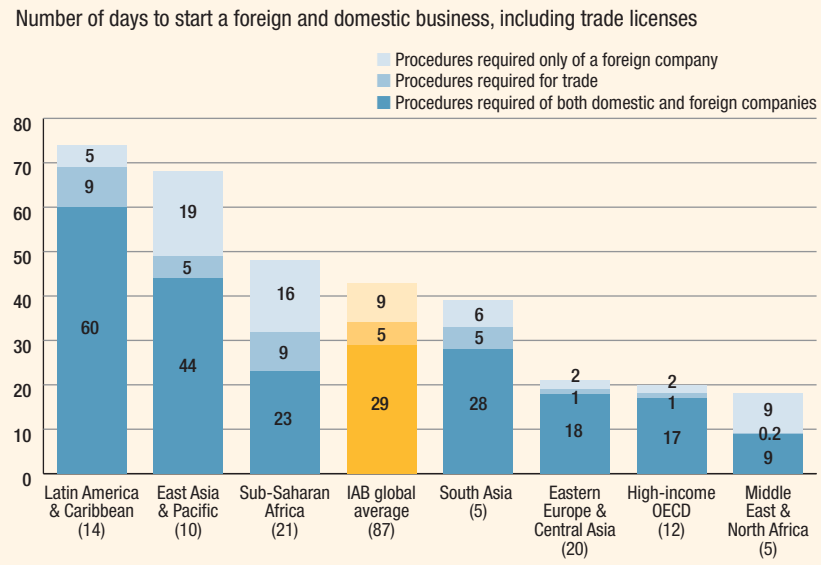
- Authentication of the parent company's legal documents abroad.
- Investment approval or notification.
- Certificate of capital importation or registration with the central bank.
- Trade (import/export) license or customs registration certificate (the assumption is that the foreign company will want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

In China, for instance, it takes 99 days to start a foreign business that wants to engage in international trade, 62 days longer than a domestic business. In addition to the regular procedures required of a domestic company (such as registration certification, company seal, statistics, and tax registration),

BOX 4.2: Key laws relating to Starting a Foreign Business indicators

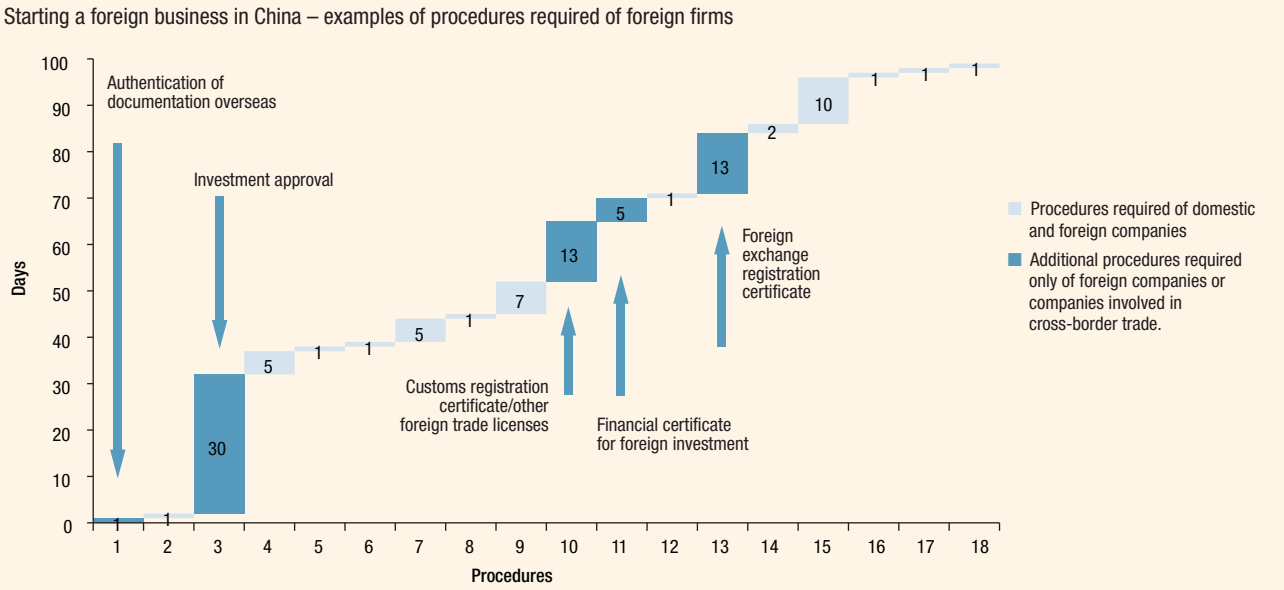
- Investment-related laws: Investment codes, investment promotion laws and regulations, foreign investment acts.
- Company and business organization laws: Commercial codes, foreign company laws, company and legal entities registration laws, business laws and company laws. (corporations), laws for business 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.

FIGURE 4.2: It takes longer to start a foreign business



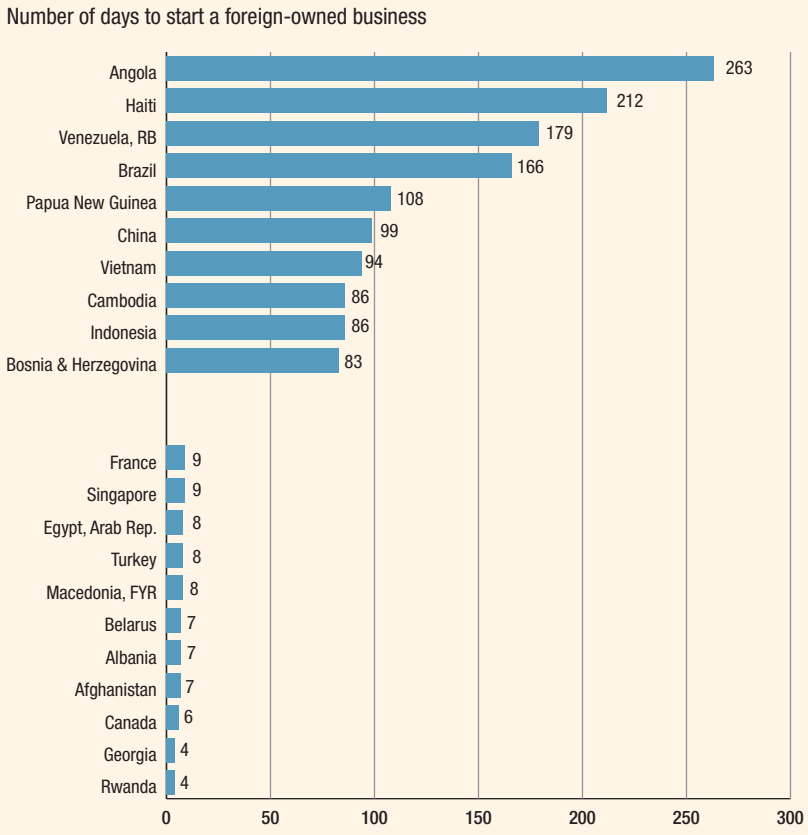
Source: Doing Business 2010 and *Investing Across Borders* database.

FIGURE 4.3: Starting a foreign business in Shanghai, China, takes almost 3 times as long as starting a domestic one



Source: Doing Business 2010 and *Investing Across Borders* database.

FIGURE 4.4: Start-up times vary greatly



Source: Investing Across Borders database.

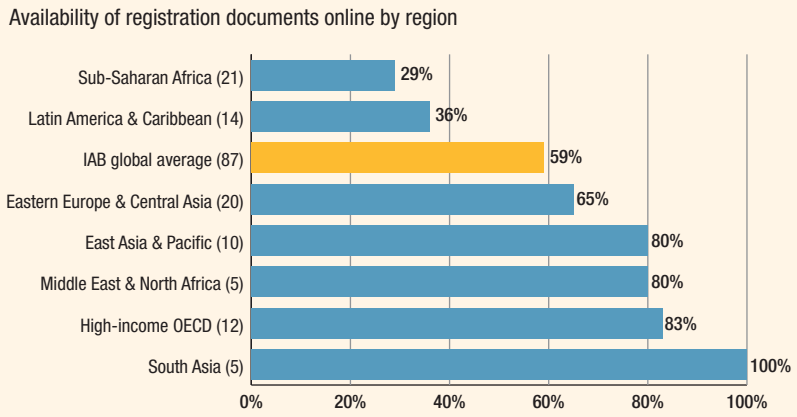
BOX 4.3: Availability of electronic services

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 country. 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.

Only 3 countries (Ethiopia, Ghana, and Liberia) of the 87 surveyed do not have their laws available online. In all other IAB countries, some or all of the laws relevant to establishing a foreign business (such as investment codes, commercial codes, civil codes, civil procedure codes) are available online.

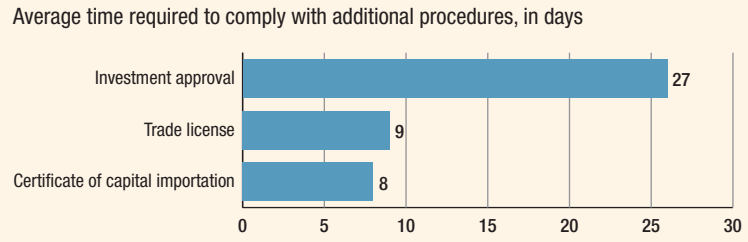
Companies are able to download registration forms in 59% of IAB countries, but only 18% of them offer electronic registration services. With the exception of Greece and Spain, all surveyed high-income OECD economies offer downloadable registration documents. In Sub-Saharan Africa, less than 30% of the countries have documents available for download and only Mauritius allows online company registration.

FIGURE 4.5: All surveyed countries in South Asia offer downloadable registration documents



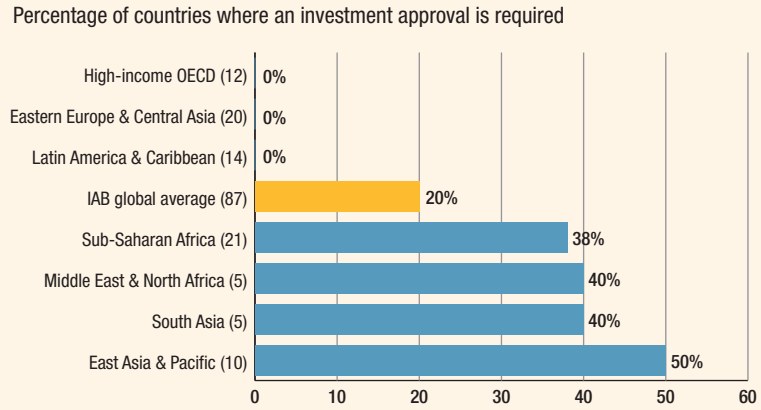
Source: Investing Across Borders database.

FIGURE 4.6: Investment approval is the most time consuming additional procedure for foreign investors



Source: Investing Across Borders database.

FIGURE 4.7: 20% of all IAB countries require an investment approval



Note: 0% denotes that none of the countries in that region require an investment approval.
Source: Investing Across Borders database.

a foreign company must also authenticate its documentation overseas, obtain an investment approval, a customs registration certificate (this would also be required of a domestic company involved in international trade), a financial certificate for foreign investment, and a foreign exchange registration certificate (figure 4.3).

Despite the additional requirements for foreign companies, some countries manage to keep their start-up process short. Figure 4.4 shows the number of days required to start a foreign company in the fastest and slowest countries measured by IAB.

Providing electronic services is one of the tools that countries 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 Web site can start by posting the key information online, and, over time, enabling the provision of some of its services electronically. Box 4.3 assesses how common it is for countries to make their laws and other information available on the Internet, and to allow online registration.

IAB finds that investment approvals, foreign exchange certificates, and trade licenses are among the most common procedures required of foreign companies in addition to the registration requirements for domestic firms. On average, these 3 procedures take 27, 9, and 8 days, respectively, in IAB countries (figure 4.6). Authentication of the documents of the foreign parent company is also a common start-up procedure in many countries. The IAB team has, however, excluded this administrative step from figure 4.6 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 country.

Investment approval and notification requirements

Many countries require foreign investors to go through an approval or authorization process before proceeding with their planned investment. 20% of the 87 IAB countries require such an approval (figure 4.7). In

East Asia and the Pacific, 50% of the countries surveyed require an investment approval, namely China, Indonesia, Papua New Guinea, Solomon Islands, and Vietnam.

Obtaining an approval takes on average 27 days. In some countries this can take as long as 6 months and in others as little as 2 days. In Vietnam, for example, the application for an investment certificate for a foreign-owned LLC must include a specific business project (including a feasibility study and environmental assessment) and can take up to 2 months. On average, the process takes longest in Sub-Saharan Africa and is fastest in the Middle East and North Africa (figure 4.8).

Figure 4.9 illustrates how long it takes on average to get an investment approval in the 8 Sub-Saharan African countries where it is required. For the same procedure, there is a range of possible time frames. In Angola, the investment approval can take up to 180 days, while it can be as short as 1 day in Ethiopia.

BOX 4.4: The Hague Apostille Convention

The Hague Apostille Convention of 1961[9] facilitates the legalization requirements of foreign public documents between states which are party to the Convention. The legalization process is meant to satisfy a foreign court or person that the document is indeed what it declares itself to be. The convention has replaced the cumbersome formalities of this lengthy process with the issuance by a single government entity of an apostille certificate that authenticates the origin of the public document. For companies, this is especially useful as it greatly facilitates the recognition of the parent companies' documents during the registration process in a new country.

Currently, a total of 98 states are party to the Hague Apostille Convention—38 of them are countries surveyed by IAB.

Following is the list of the countries measured by IAB. **Those in bold font are party to the Convention**. Those in regular font are not.

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
Cambodia, **China**, Indonesia, Malaysia, the Philippines, Papua New Guinea, Singapore, Solomon Islands, Thailand, Vietnam.

Eastern Europe and Central Asia
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.**

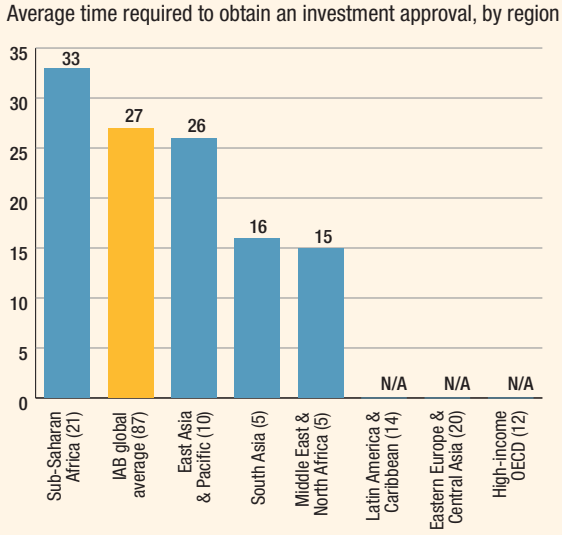
Latin America and the Caribbean
Argentina, Bolivia, Brazil, Chile, **Colombia**, Costa Rica, **Ecuador**, Guatemala, Haiti, Honduras, **Mexico**, Nicaragua, Peru, **Venezuela, RB.**

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

South Asia
Afghanistan, Bangladesh, **India**, Pakistan, Sri Lanka.

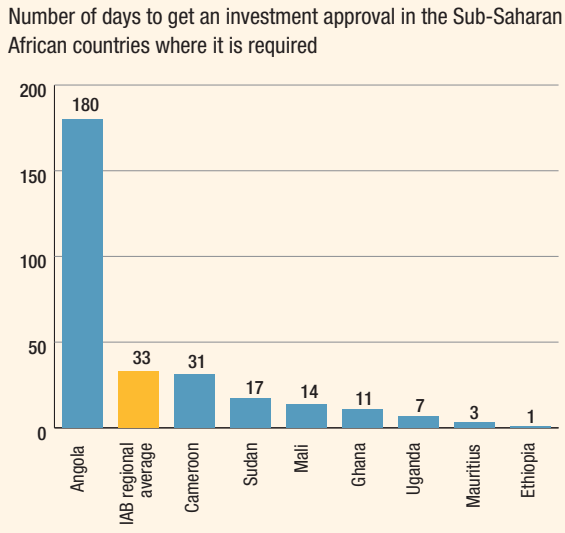
High-income OECD
Austria, Canada, **Czech Republic**, **France**, **Greece**, **Ireland**, **Japan**, **Korea, Rep.**, **Slovak Republic**, **Spain**, **United Kingdom**, **United States.**

FIGURE 4.8: Investment approvals take longest in Sub-Saharan Africa



Note: N/A denotes regions in which investment approvals are not required.
Source: Investing Across Borders database.

FIGURE 4.9: Obtaining an investment approval can take 180 days in Angola



Source: Investing Across Borders database.

Some countries require only a notification or declaration of the investment. Most commonly such a notification is made to a ministry of trade or commerce or the central bank. This does not delay the planned investment project and can typically be done in conjunction with other start-up procedures. In Bosnia and Herzegovina, for example, before a local subsidiary established by a foreign company is registered with the court, it must be registered with the Ministry of Foreign Trade and Economic Relations. The Ministry keeps a registry of all foreign investments and then confirms the notification to the court.

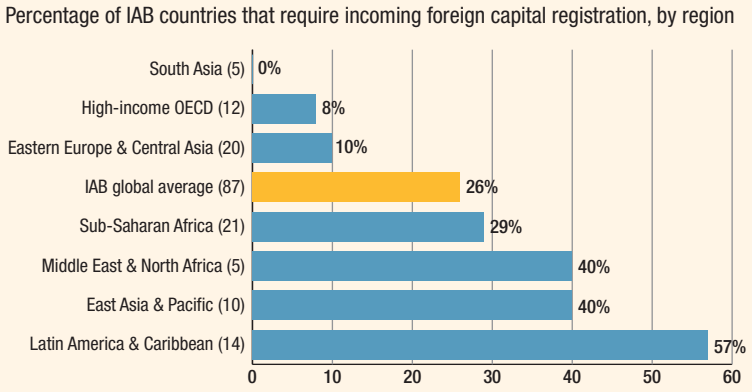
Capital importation requirements

In most countries, companies that bring in foreign capital require some kind of authorization. Usually, foreign investors must have their investment capital or external loans registered with the national bank of the country 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 countries (figure 4.10). While it is not required in any of the South Asian countries surveyed by IAB, 57% of Latin America and the Caribbean countries have some form of notification requirement, usually a registration with the central bank.

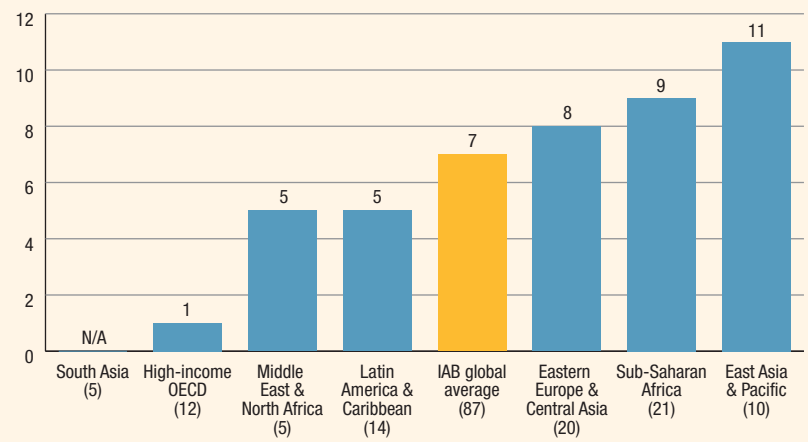
On average, it takes 7 days for this registration to become effective (figure 4.11). In Korea, under the Foreign Investment Promotion Act of Korea, cash contributions in foreign currency must be reported to, and cleared by Korea Trade-Investment Promotion Agency (KOTRA) or a foreign exchange bank. This usually takes only 1 day. In Brazil, registration with the Central Bank can be done online. The Central Bank does not need to issue an approval of the registration but merely acts as a receiver of the appropriate information. A foreign company must be registered prior to making any investments in its subsidiary in Brazil. In República Bolivariana de Venezuela, investment registration is necessary in order to request authorization to purchase foreign currency at the official exchange rate and repatriate dividends, proceeds of capital reductions, or sale of shares covered by such registration. In Ghana, a local authorized dealer bank must confirm the transaction to the Bank of Ghana, which in turn confirms the transaction to Ghana Investment Promotion Centre for registration purposes.

FIGURE 4.10: Incoming foreign capital requires notification in many countries



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

FIGURE 4.11: Importing capital takes only 1 day in high-income OECD IAB countries



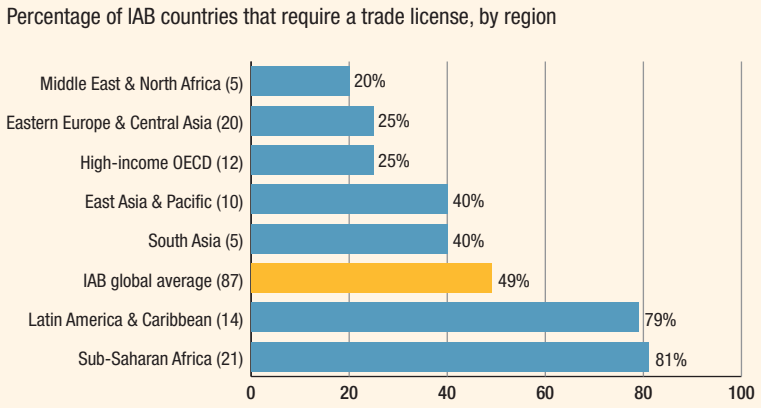
Note: N/A denotes regions in which notifications are not required.
Source: Investing Across Borders database.

Trade licenses and other customs-related procedures

As mentioned earlier, the IAB case study assumes a foreign company interested in importing and exporting goods. Almost half of all IAB countries require companies to get a trade-related license or authorization in order to import and export (figure 4.12). These licenses are most common in Latin America and the Caribbean (required in 79% of IAB countries) and in Sub-Saharan Africa (required in 81% of IAB countries).

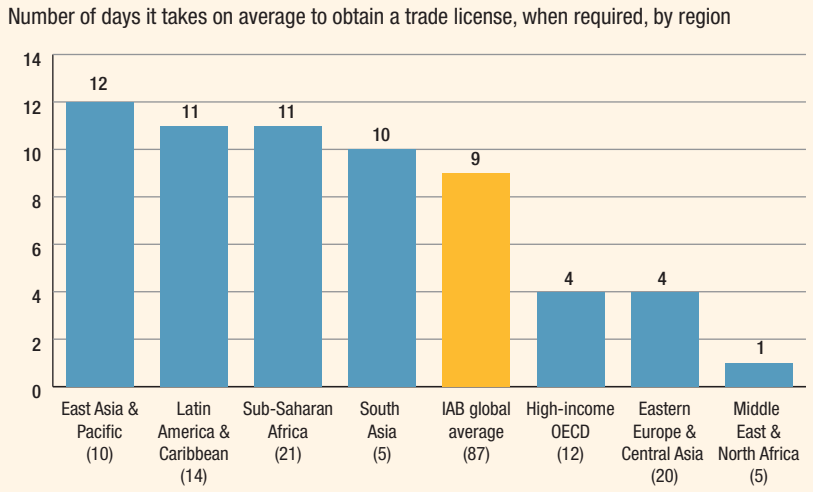
Obtaining a trade license takes on average 9 days (figure 4.13). In many countries, it is a simple online application (in Thailand, for example, registration can be done online and is issued immediately). In others, it can take longer. In Brazil, Honduras, South Africa, and Zambia the process can take up to a month.

FIGURE 4.12: Half of the IAB countries require a trade license for international trading



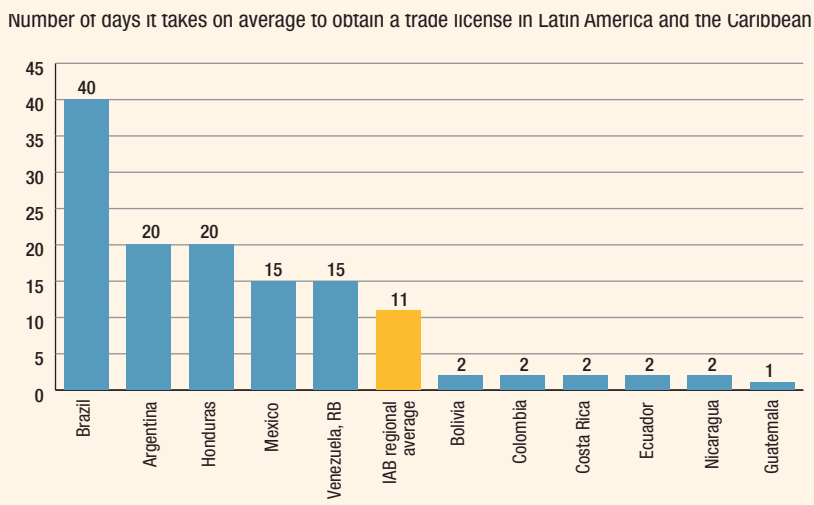
Source: Investing Across Borders database.

FIGURE 4.13: International trade licenses can take as little as 1 day



Source: Investing Across Borders database.

FIGURE 4.14: Obtaining a trade license takes longest in Brazil



Source: Investing Across Borders database.

The Latin America and the Caribbean provides a telling example of the differences among countries in how long it takes to obtain a trade license. In Brazil, the process of registering with the Integrated Foreign Trade System of the Federal Tax Authority (RADAR—Registro e Rastreamento da Atuação dos Intervenientes Aduaneiros) can take as long as 40 days. In Honduras, companies that want to introduce foreign raw material into their factory must submit an application with the Industry and Commerce Secretariat of the Ministry of Finance. This can take a month. On the other hand, the process takes only 2 days in Bolivia, Colombia, Costa Rica, Ecuador, and Nicaragua, and only 1 day in Guatemala.

The discussion thus far has focused on the various administrative steps required to start a foreign company. The laws of each country 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

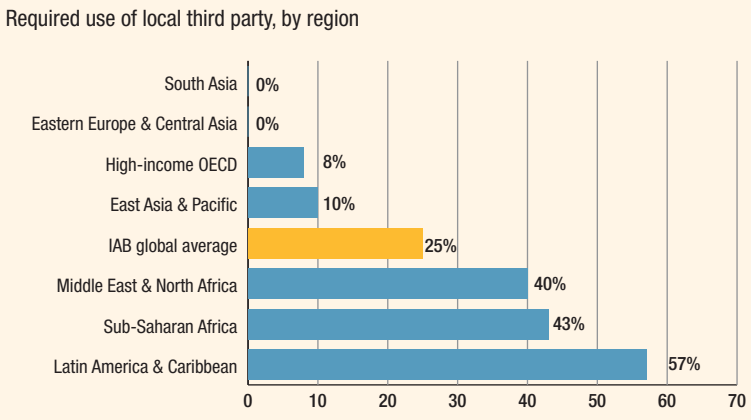
Many countries impose certain conditions on the composition of the board of directors or the appointment of managers of a company (table 4.1). These restrictions, though not targeted at foreign-owned companies, mostly deal with issues of nationality and residence, and are hence particularly relevant for foreign companies. Specifically, some countries require the directors or managers of foreign-owned companies to be nationals or permanent residents of the country 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.

TABLE 4.1: Examples of restrictions on nationality or residency of company board members or managers in IAB countries

Country	Conditions
Brazil	Executive Officers of Brazilian companies must be either Brazilian citizens or foreigners who hold a permanent resident visa.
Canada	Under the Canadian Business Corporation Act, at least 25% of the directors must be resident Canadians.
Colombia	Only 20% of the managerial workforce can be foreigners—this restriction will extend to directors and executive officers if they are employees.
Egypt, Arab Rep.	At least one manager must be an Egyptian national (unless the company is established under the Law of Investment Guarantees and Incentives of 1997).
Greece, Madagascar, and Mauritius	At least one of the directors must be a resident.
Honduras	The tax authority requires the legal representative of the company to have a residence permit in order to issue a Tax Identification Card. This process is burdensome and can take months. As a result, many companies name a Honduran representative then change the bylaws in order to elect the desired representative.
Indonesia	The director of human resources must be an Indonesian national. In practice, the Minister of Law and Human Rights only approves the foreign-owned legal entity if its board of directors contains at least one or more Indonesian nationals.
Ireland	An Irish company is required to have at least one director who is a resident of the European Economic Area.
Slovak Republic	A foreign member of the board of directors or executive officer who is not a citizen of the member states of the European Union or the OECD requires a residency permit.
South Africa	The Broad-Based Black Economic Empowerment Act urges companies to have meaningful representation of previously disadvantaged groups.
Philippines	The number of directors can be no fewer than 5 and no more than 15, the majority of whom should be residents.
Zambia	At least 50% of the directors must be residents.

Source: Investing Across Borders database.

FIGURE 4.15: Foreign investors can establish a subsidiary on their own in South Asia and Eastern Europe & Central Asia



Note: 0% denotes that none of the countries in that region requires foreign companies to go through a local third party to establish themselves.
Source: Investing Across Borders database.

Required use of a local third party

It is unlikely that a large company establishing a subsidiary in a foreign country 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 countries 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. This is the case mainly in the Middle East and North Africa and Latin America and the Caribbean. In contrast, it is not a requirement in any of the countries in South Asia or Eastern Europe and Central Asia surveyed by IAB.

In Latin America and the Caribbean, local professionals must conduct the registration process in 8 of the 14 IAB countries. In Argentina, a notary public is involved in the incorporation process, either by certifying signatures or granting a deed of incorporation. In Brazil, all articles of incorporation must be signed by an attorney duly enrolled with the Brazilian Bar Association. In Chile, Peru, and Nicaragua, a local lawyer must draft the organizational documents as a requirement for notarization.

In 8 of the 21 Sub-Saharan African IAB countries, foreign companies are required to go through local representatives in order to establish a company. In Cameroon, the company must go through a local notary. In Angola, the law requires foreign companies to contract local accountants, audit companies, and legal counsel. In Kenya, the Advocates Act requires that an advocate of the High Court of Kenya prepare and submit the incorporation documentation. In Nigeria, only a local counsel accredited by the Corporate Affairs Commission can incorporate companies.

In some cases, investors are required to go through the local investment promotion authority. In Saudi Arabia, for example, the Saudi Arabian General Investment Authority (SAGIA) is the first stop for investors requiring an investment license. SAGIA requires all investors to have a local representative throughout the establishment process.

Minimum capital requirements

Minimum capital requirements are usually a larger obstacle for small and medium enterprises than they are for large 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 87 countries surveyed by IAB (57%) have some form of minimum capital requirement for LLCs. In 10 IAB countries, 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. Table 4.2 shows some examples of IAB countries in which the minimum capital requirement differs for domestic and foreign companies.

TABLE 4.2: Examples of minimum capital requirements in IAB countries

Country	Minimum capital requirements
Belarus	While there is no minimum capital requirement for domestic companies, if a company is established in the form of a foreign LLC the amount is $20,000. Charter capital must be paid in full prior to establishment of domestic companies while the Investment Code states that only 50% of the charter capital of foreign companies needs to be paid during the first year of establishment and in full within 2 years.
Ethiopia	The minimum capital requirement for a foreign investor is $100,000 unless it invests with a domestic partner, in which case the minimum capital requirement is $60,000.
Ghana	The Ghana Investment Promotion Centre Act (GIPC) sets out specific amounts that must be invested by foreigners. In a wholly foreign-owned enterprise, the minimum capital requirement is $50,000. It drops to $10,000 for joint ventures with a Ghanaian partner. In the case of trading enterprises, the minimum capital requirement is $300,000.
Haiti	Haiti is the only IAB country where the minimum capital requirements are more favorable to foreign companies. If a wholly foreign-owned company is being registered, there is no specific minimum capital requirement. In the case of joint ventures with one or more Haitian shareholders, the minimum capital is HTG 100,000 (~$2,500) for industrial companies or HTG 25,000 (~$630) for commercial companies.
Nigeria	At least 25% of the authorized share capital must be fully issued prior to the company's establishment. The minimum share capital for a domestic company is N10,000 (~$65), while the minimum for a foreign company is N10,000,000 (~$65,000).
Philippines	Domestic companies are required to have not less than PHP 5,000 (~$112) paid-in capital. However, a company with more than 40% foreign equity must have a minimum paid-in capital of PHP 9,000,000 (~$200,000) if it produces goods for sale or engages in business in the Philippines. If it exports at least 60% of its output, the minimum paid-in capital required is PHP 5,000.
Saudi Arabia	Although the amended Companies Law abolished capital requirements, in practice foreign companies must comply with the following minimum capital requirements in order to obtain a business license: ▪ SR 100,000 (~$27,000) for individual establishments ▪ SR 500,000 (~$135,000) for companies ▪ SR 1,000,000 (~$270,000) for industrial projects ▪ SR 25,000,000 (~$6,750,000) for agricultural projects.
Zambia	A foreign company establishing a subsidiary in Zambia must be issued a certificate of compliance for the following minimum capital requirements: ▪ K5,000,000 (~$1,000) for private companies ▪ K50,000,000 (~$10,000) for public companies ▪ K250,000,000 (~$50,000) for foreign exchange offices ▪ K500,000,000 (~$100,000) for financial institutions or insurance companies ▪ K1,000,000,000 (~$200,000) for banks.

Source: Investing Across Borders database.

Foreign currency bank accounts requirements

Foreign investors often need foreign currency in order to trade and conduct business with overseas partners. In the following 4 IAB countries, there is an outright prohibition on holding a bank account in foreign currency: Brazil, Colombia, Morocco, and República Bolivariana de Venezuela.

In other countries, foreign investors can hold such an account only after obtaining approval from public authorities. This approval can be difficult to obtain. In Burkina Faso, Côte d'Ivoire, Mali, and Senegal, the Regulation of the Monetary Union of West Africa (UEMOA) requires a foreign company to receive authorization from the Minister of Finance and ultimately the Central Bank of the West African States (BCEAO) in order to hold a foreign currency bank account. The situation is similar in Cameroon, where resident companies are not allowed to hold a bank account in a foreign currency unless they receive approval from the Bank of Central African States (BEAC).

Receiving an approval from these central banks can take weeks, and, on occasion, several months. In the other IAB countries where an approval is requested, this process is easier and takes a matter of days or weeks. These countries are Pakistan (27 days), Papua New Guinea (11 days), Solomon Islands (7 days), Sri Lanka (5 days), China (4 days), and Azerbaijan (3 days).

CONCLUSIONS

Establishment procedures alone are not a strong determinant of FDI inflows. However, burdensome processes are an irritant and at times a deal breaker, particularly for small and medium multinational corporations. As the first interactions the foreign investor has with a country's administration, start-up procedures can quickly seal a country'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.[10]

Motivated by the growing competitiveness of international commerce, countries have good reasons to modernize and streamline their regulatory frameworks. Countries that have done well in the *Doing Business* starting a business indicator (Canada, Singapore, and Georgia) also do well in the Starting a Foreign Business indicators of the *Investing Across Borders* project.

The Starting a Foreign Business data for the 87 countries 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 countries, this process can take more than several months in others. Countries 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, countries 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). Countries 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, countries 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 country. This report has presented examples of a number of countries at various levels of income and institutional development that have well-organized systems for business start-up.

Investing Across Borders 2010 is a new initiative that we hope to continue to improve in the future. IAB will also consider expanding and deepening the scope of its indicators. We welcome your comments and feedback.

ENDNOTES

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

2 World Bank Enterprise Surveys (http://www.enterprisesurveys.org).

3 Golub (2006).

4 Djankov (2002).

5 UNCTAD (2006b).

6 International Finance Corporation (1997).

7 Doing Business (2010).

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

9 Full text of the Hague "Convention Abolishing the Requirement of Legalisation for Foreign Public Documents," of October 5, 1961, as well as additional details, can be found at http://www.hcch.net/index_en.php?act=conventions.pdf&cid=41.

10 Djankov (2002).

Accessing Industrial Land

INTERESTING FACTS

- In 1 in 4 of the countries surveyed by *Investing Across Borders* (IAB), foreign companies cannot own private land.
- All the countries surveyed allow foreign-owned companies to lease land.
- More than half the countries surveyed do not allow foreign companies to use land leases as collateral.
- It takes as little as10 days to lease private land in Armenia—and as many as149 days in Nicaragua.
- Across the 87 IAB countries the average time it takes to lease land from the government is more than twice that required to lease land from a private holder.
- Nearly two-thirds of countries require an additional approval to authorize the lease of government-held land to foreign companies.
- In only one-third of countries with both a land registry and cadastre are the two public agencies linked to share data, facilitating information access.
- Less than half the countries do not provide accessible public documentation on previous environmental impact assessments conducted on industrial lands.

Source: Investing Across Borders 2010.

WHY LAND ACCESS MATTERS TO FOREIGN INVESTORS

A South African manufacturing company is interested in expanding its market presence in East Africa and is short-listing potential investment destinations in the region. It hopes to establish a locally incorporated food processing plant that will export packaged goods back to South Africa and other markets. While seeking to identify a land plot for the plant, the company learns that the only way to access industrial land in Addis Ababa, Ethiopia's capital, is by leasing public land, since private ownership of land is prohibited. Land is leased through a government auction, and the process can take 6 months. Acquiring information on land is time-consuming and requires visits to several agencies. In some cases it is unclear where to find needed information. These circumstances may lead the South African company to look for opportunities elsewhere.

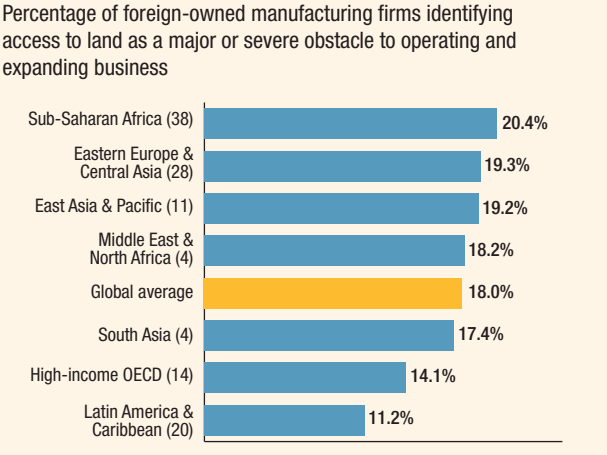
In contrast, a German manufacturing company is looking to open a locally incorporated subsidiary in Istanbul, Turkey's commercial center. The subsidiary plans to manufacture light electronics and distribute them to its retailers in Europe and Asia. Thanks to the easily accessible information on land plots at Istanbul's Directorate of Land Registry and Cadastre, the company has already identified a suitable location for the factory. Leasing private land in Istanbul is efficient and streamlined, taking just over 2 weeks. The lease can be valid for 50 years, and helpful regulations should enable the company to renew the lease for up to 100 years if it so desires. The company is optimistic about its business prospects and is looking forward to investing in Turkey.

These examples show that the ease of accessing industrial land can affect a company's decision to invest—and that difficult access to land can significantly impede foreign direct investment (FDI).[1] The World Bank's Enterprise Surveys have found that many firms consider access to land a major or severe obstacle to operating and expanding their businesses around the world (figure 5.1).

Accessing land can impede foreign investment and doing business more generally for many reasons, including:

- Mistrust and discrimination. Foreign investors seeking to acquire land—particularly in Eastern Europe, Sub-Saharan Africa, and Southeast Asia—often face sensitive land issues rooted in historical, indigenous, and colonial traditions.[2] Mistrust of private ownership, particularly foreign ownership, still exists in many economies, leading to policies that discriminate against foreign companies or individuals.[3] Such policies may include restrictions on ownership, types of land that can be acquired, and approvals for foreign investors.[4]
- 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.[5]
- Burdensome acquisition procedures. It may be difficult to obtain

FIGURE 5.1: In many regions access to land is a significant obstacle to investment



Note: The sample includes all economies surveyed in the Enterprise Surveys Database from two surveys: one from 2002 to 2005 and one from 2006 to the present. The numbers in parentheses are the number of economies in each region that had 30 or more majority foreign-owned firms respond to the survey. Many economies are included multiple times because they were surveyed in multiple years. For example, Belarus is included 3 times because it was surveyed in 2002, 2005, and 2008.

Source: World Bank Group Enterprise Surveys Database.

clear land titles,[6] and acquiring industrial land is often inefficient, nontransparent, and a source of corruption.[7]

- 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.[8]

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 a country's economic potential,[9] with benefits for domestic and foreign investors alike. In addition, improving land security can encourage private investment,[10] diversify labor force allocation,[11] increase the market value of land,[12] boost productivity,[13] raise income and consumption,[14] and reduce poverty.[15]

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.[16] They also argue that improving access to land can increase speculation and encourage governments to allow affluent foreigners to buy or lease prime real estate at prices well below its market value, leaving communities without land to live on.[17]

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 countries, 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 countries enhance socioeconomic development.

Making land a tool for economic development requires more than providing easy access to industrial land for companies. 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.[18] In addition, it requires balancing the needs of investors, governments, and citizens, with proper safeguards to protect the environment and the people living on the land.[19]

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 countries 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 the 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 countries' 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)[20]—that reflect a country's other needs and socioeconomic development concerns. 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 doing so they provide detailed information for countries 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:

1. **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.
2. **Access to and availability of land information:** These indicators benchmark economies regarding the access to and availability of key pieces of land information.
3. **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

TABLE 5.1: Accessing Industrial Land indicators

Thematic area	Indicator	Measures
Land rights	Strength of lease rights index (0-100)	▪ 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 and 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 (0-100)	▪ Ability of foreign-owned companies to purchase land without entering into partnership with a domestic company ▪ Whether purchase procedures are the same for foreign and 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 (0-100)	▪ Whether the land registry and/or cadastre have a publicly accessible inventory of private and/or public lands ▪ Whether the land registry and/or cadastre have an online inventory of private and/or public lands ▪ Whether the land registry and/or cadastre share data about land ▪ Whether there is a publicly accessible land information system (LIS) and/or geographic information system (GIS).
	Availability of land information index (0-100)	▪ Availability of the following 18 pieces of information about land plots: – 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	▪ Total number of days to lease land from a private owner
	Time to lease public land	▪ Total number of days to lease land from the government

presented in table 5.1. The methodology chapter available online provides a detailed list of specific issues evaluated in each of the components.

Key laws evaluated by the Accessing Industrial Land survey

Box 5.1 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 5.1: Key laws measured by the Accessing Industrial Land indicators

- Land or property laws, which may take the following forms depending on the country: Land title act, land title registration act, land registry act, state lands act, government lands act, municipal property act, property registration act, mortgage act, 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

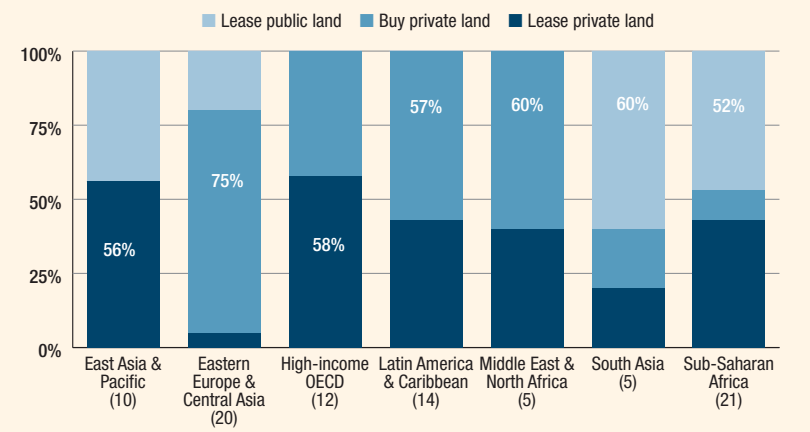
Context for understanding Accessing Industrial Land indicators

Understanding the context of how a wholly foreign-owned, locally incorporated subsidiary (for the rest of this chapter this legal form will referred to as a 'foreign company') accesses industrial land is important for comparing the characteristics of countries' land administration regimes. These contextual aspects are not included in the construction of the indicators, rather 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 5.2).

FIGURE 5.2: Most common type of land acquisition varies by 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.

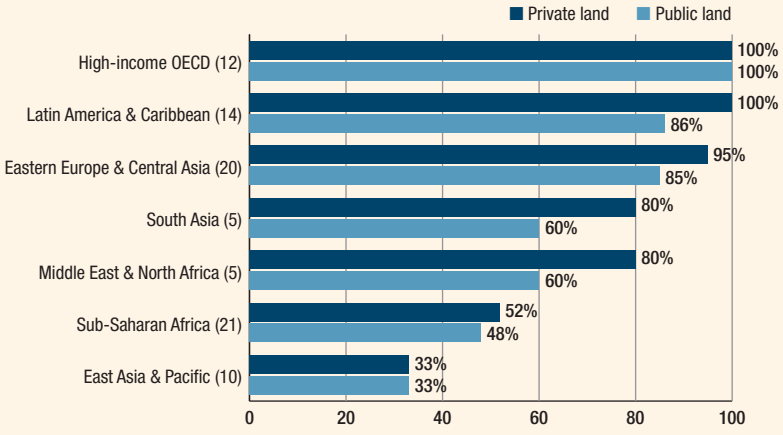
Source: Investing Across Borders database.

TABLE 5.2: Common means of land acquisition by foreign firms in South Asia

	Type of land rights available			
Country	Lease private land	Buy private land	Lease public land	Buy public land
Afghanistan	Most Common	Not Possible	Common	Not Possible
Bangladesh	Common	Most Common	Common	Not Possible
India	Common	Common	Most Common	Not Common
Pakistan	Common	Common	Most Common	Not Common
Sri Lanka	Not Common	Common	Most Common	Not Common

Source: Investing Across Borders database.

FIGURE 5.3: Regions vary on whether or not foreign companies can own land



Source: Investing Across Borders database.

Typically, this preference depends mostly on the availability of local legal options. Given that investors commonly prefer the maximum security over land, in countries 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 countries 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 the 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 companies are more likely to lease land from the government, as private ownership is prohibited in many economies in these regions.

South Asia illustrates an example of a considerable variation of practices among countries even within a region (table 5.2). In India, Pakistan, and Sri Lanka it is most common for foreign companies to lease land from the government, although it is highly unusual to buy land from the government.

Restrictions on ownership

In some economies it may not be possible for foreign companies to buy land under certain contract arrangements. Eighteen of the 87 countries surveyed do not allow any form of private ownership of land, often due to the legal and political history of a country. In other countries, despite allowing private ownership of land, the overwhelming majority of land remains state owned.[21] Most economies in East Asia and the Pacific and Sub-Saharan Africa do not allow foreign companies to own private or public land (figure 5.3).

Nine of the 21 Sub-Saharan economies surveyed—Ethiopia, Ghana, Liberia, Mozambique, Nigeria, Sierra Leone, Sudan, Tanzania, and Uganda—do not allow any form of freehold (full ownership)[22] land title (table 5.3). According to the Federal Constitution of Ethiopia, for example, the right to own land is exclusively vested in the state and peoples of Ethiopia.[23] Land rights in Sub-Saharan Africa have evolved in response to changing political, social, and economic conditions, and to this day many indigenous communal- or clan-based land systems prevail.[24] Thus, many Sub-Saharan African economies only offer long-term lease rights.[25]

TABLE 5.3: Many Sub-Saharan African economies do not allow freehold land title of any form

Country	Can a foreign-owned company…	
	…purchase government/ public land?	…purchase private land?
Angola	Yes	Yes
Burkina Faso	Yes	Yes
Cameroon	Yes	Yes
Côte d'Ivoire	Yes	Yes
Ethiopia	No	No
Ghana	No	No
Kenya	Yes	Yes
Liberia	No	No
Madagascar	Yes	Yes
Mali	Yes	Yes
Mauritius	No	Yes
Mozambique	No	No
Nigeria	No	No
Rwanda	Yes	Yes
Senegal	Yes	Yes
Sierra Leone	No	No
South Africa	Yes	Yes
Sudan	No	No
Tanzania	No	No
Uganda	No	No
Zambia	No	Yes

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 also applicable to domestic companies. Nevertheless, many countries around the world still have specific legal restrictions on rights to occupy and use land by foreign companies and individuals. For example, Bosnia and Herzegovina and the Philippines do not allow foreign companies to lease public land. There may also be restrictions on the type of land foreign entities can acquire. In Angola, Armenia, Azerbaijan, Bangladesh, Belarus, Bosnia and Herzegovina, Bulgaria, Madagascar, Saudi Arabia, Romania, and Thailand foreign individuals can not own residential land even though land ownership is allowed for nationals. In 8 of the 87 countries surveyed, foreign individuals cannot own commercial land and in 16 countries foreign companies cannot own agricultural land despite the fact that nationals can.[26] This phenomenon is not restricted to developing and transition economies. Many high-income OECD economies also have restrictions against foreigners. Denmark, Finland, Greece, and Ireland for instance, restrict foreign ownership of specific areas of land or impose resident requirements on foreigners wishing to acquire land.[27]

Another form of discrimination concerns legal treatment of wholly foreign-owned, locally incorporated companies seeking to acquire and use land. Seventy six percent of the countries 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 21 of the 87 countries would still consider the company a foreign company. These countries 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 5.4).

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 87 countries 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 68 countries surveyed which allow private ownership of land.

TABLE 5.4: Comparison between legal treatments of foreign companies seeking to acquire land

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	76%	24%
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%

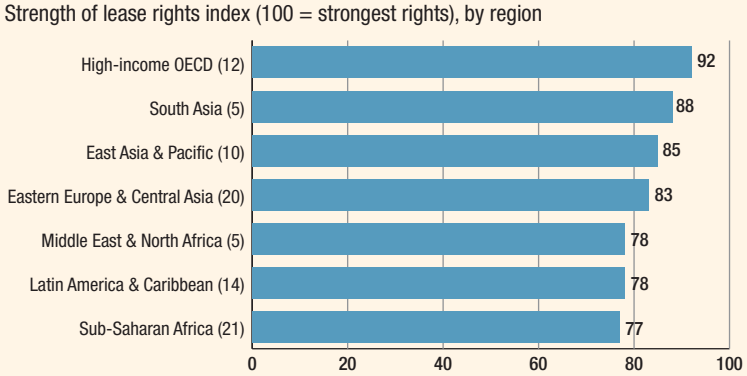
Source: Investing Across Borders database.

Strength of 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 5.4). In Latin America and the Caribbean land leases are less common and using leased land for collateral and other purposes is thus not typical. Rather, most economies in the region provide stronger ownership rights. In contrast, in the Sub-Saharan economies where land is typically held in long-term leases, the lower index scores illustrate the fact that many countries do not allow foreign companies to subdivide leased land or use land as collateral.

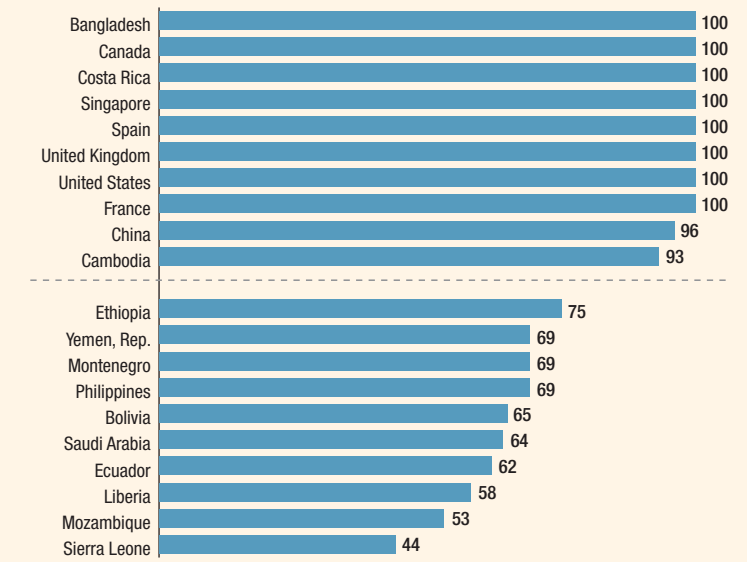
Eight of the 87countries score the maximum of 100 out of 100 because they offer the most options to foreign companies on how they can use leased land (figure 5.5). Five of the top 10 performers come from high-income OECD economies—Canada, Spain, the United Kingdom, the United States, and France. All these economies provide a complete set of land-holding options, do not treat foreign companies differently from domestic ones, and allow foreign companies to freely use the land for various business transactions. Many of the economies that offer the fewest options for land acquisition and have the weakest lease rights are from Sub-Saharan Africa (4 economies). Many economies in the low performing regions do not allow foreign companies to use leased land as collateral.

FIGURE 5.4: Strongest lease rights are available in high-income OECD countries



Note: Please refer to the methodology section online for identification of all components of the Strength of land rights index.
Source: Investing Across Borders database.

FIGURE 5.5: Strength of lease rights vary greatly across countries



Source: Investing Across Borders database.

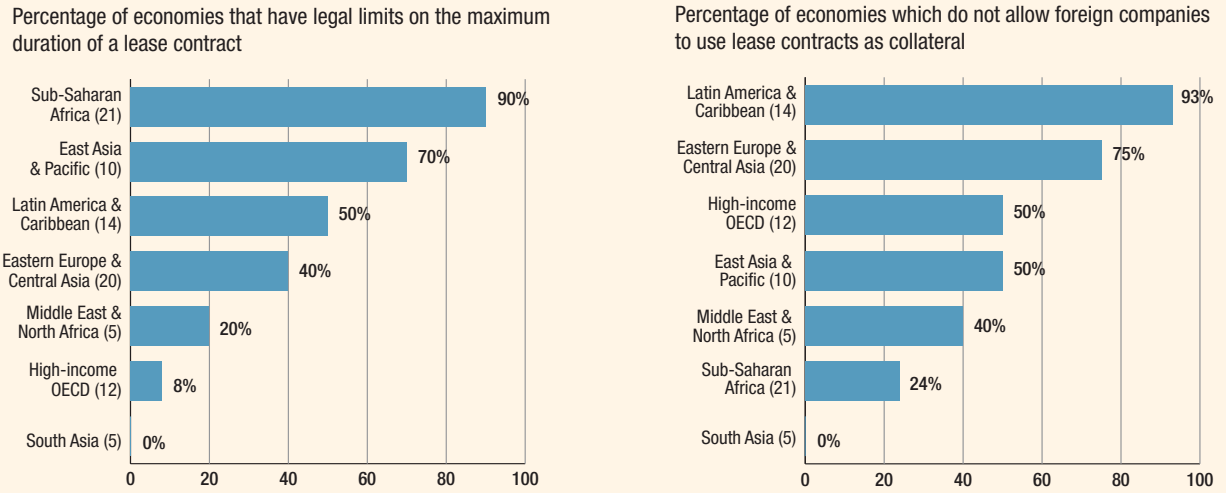
Limits on use of lease contracts

All 87 economies surveyed allow foreign companies to lease land. However, there are distinctions across economies 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 5.6). If the terms are too short foreign companies may be limited in their capacity to plan long-term. For example in Thailand there is maximum lease duration of 30 years for any foreign company seeking to lease land.

The indicators also reveal that more than half of the 87 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 13 of the 14 economies surveyed do not allow leased land to be used as collateral, although all of them allow purchased land to be used for collateral. In Colombia a lease is considered a contractual right (that is, a right to use the land) and not a property right (that is, a right to dispose of the land). Consequently, since the lessee does not have the right to dispose of the land, it cannot be used as collateral.

Allowing lease contracts to be used as collateral is not common in the Middle East and North Africa. Of the 5 economies surveyed, Egypt and Saudi Arabia do not allow leases to be used as collateral (table 5.5). In Saudi Arabia even purchased land cannot be used as collateral by foreign companies.

FIGURE 5.6: Nearly all economies in Sub-Saharan Africa have legal limits on the duration of lease contracts



Note: None of the 5 economies surveyed in 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.

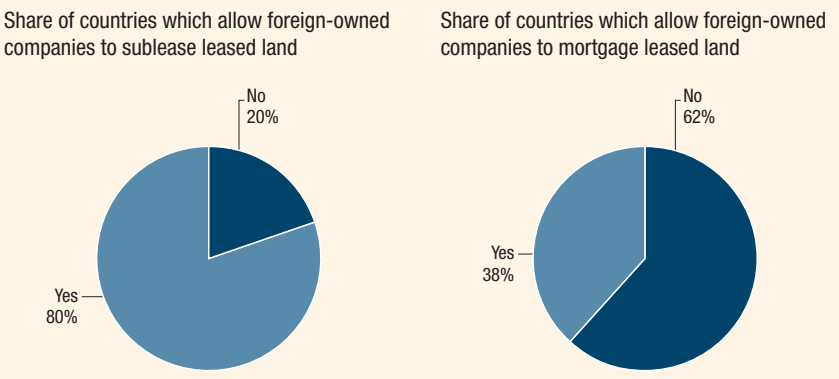
TABLE 5.5: Ability to use land contracts for collateral in the Middle East and North Africa

Country	Can foreign companies use…	
	…leased land for collateral?	…purchased land for collateral?
Egypt, Arab Rep.	No	Yes
Morocco	Yes	N/A
Saudi Arabia	No	No
Tunisia	Yes	Yes
Yemen, Rep.	Yes	Yes

Note: Morocco does not allow foreign companies to buy land and thus the question of whether or not purchased land can be used as collateral does not apply.

Source: Investing Across Borders database.

FIGURE 5.7: Many economies have limitations on long term lease contracts for foreign companies



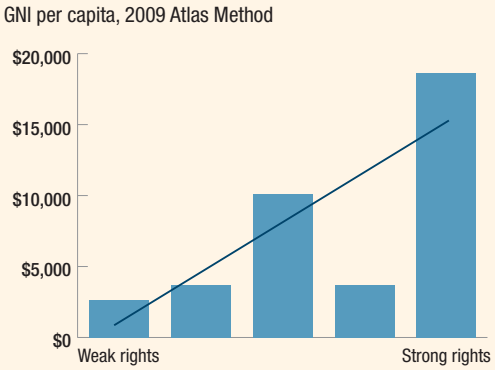
Source: Investing Across Borders database.

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 percent of countries surveyed allow leased land to be subleased to another company, but only 38% allow leased land to be mortgaged (figure 5.7).

Strength of ownership rights index—overall results

Only 68 of the 87 economies surveyed allow private ownership of land, and it is only these that are measured by the Strength of ownership rights index. The remaining 19 economies which do not allow private ownership are not evaluated. The global average for the Strength of ownership rights index is 92, which is rather high. It indicates that most economies provide foreign companies with a strong set of land ownership rights and options regarding land use. The region with the most restrictions on the use of ownership contracts by foreign investors is the Middle East and North Africa, where countries like Saudi Arabia have restrictions on the size of land which can be purchased, and whether the purchased land can be subdivided and used as collateral by foreign companies (figure 5.8).

BOX 5.2: Stronger lease rights security is associated with greater prosperity

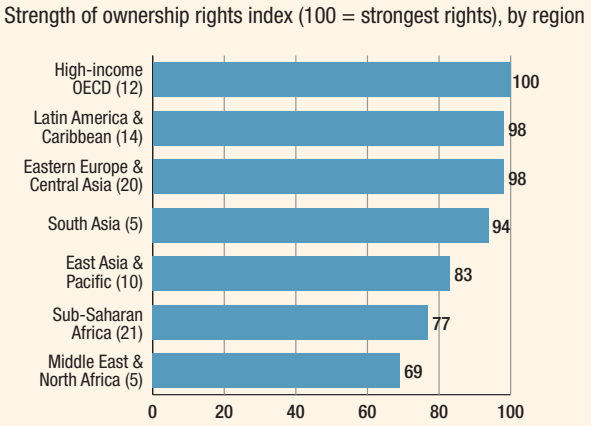


- Initial findings suggest that the strength of lease rights index is highly correlated with higher levels of prosperity (income per capita) for the 87 IAB economies.
- High-income OECD economies tend to offer investors the widest range of options for accessing industrial land and the most freedom over the use of the land once they have acquired it. In contrast, low income economies, often due to the legacy of their past, tend to significantly limit the legal choices for securing land.
- However, the correlation does not imply the existence or the direction of a causal relationship. Stronger land rights may be the result of economic development and increased prosperity. Conversely, improving the strength of land rights may create a platform for development and greater prosperity. Land rights may also be important in different ways depending on a country's stage of economic development.

Note: The relationship is significant at the 1% level. The Strength of lease rights index has been broken into 5 quintiles expressed as groups of economies below the 20th, 40th, 60th, 80th, and 100th-percentile rank from weakest to strongest land rights. The economies ranked in the 80th percentile rank are an anomaly as they both have strong lease rights and less prosperity, these countries include; Angola, Côte d'Ivoire, Georgia, Kazakhstan, Morocco, Romania, Rwanda, and Ukraine.

Source: Investing Across Borders database, World Bank Group *World Development Indicators* database.

FIGURE 5.8: Most economies in the world offer strong ownership rights



Note: Please refer to the methodology section of this report and IAB's Web site for identification of all components of the Strength of land rights index.

Source: Investing Across Borders database.

Some countries offer fast-track procedures for land purchase registration, including Argentina, Georgia, Kazakhstan, Moldova, Romania, and the Slovak Republic. In Kazakhstan the fast-track option for land registration was approved March 30, 2009; it remains to be seen if implementation is effective.

Access to and availability of land information indicators

Once a foreign company has decided to invest in a country, 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 provision of land information. First, the access to information about land through the countries' land administration systems—land registries, cadastres and land information systems, among others. Second, 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 country-specific reports, to find this complementary information.

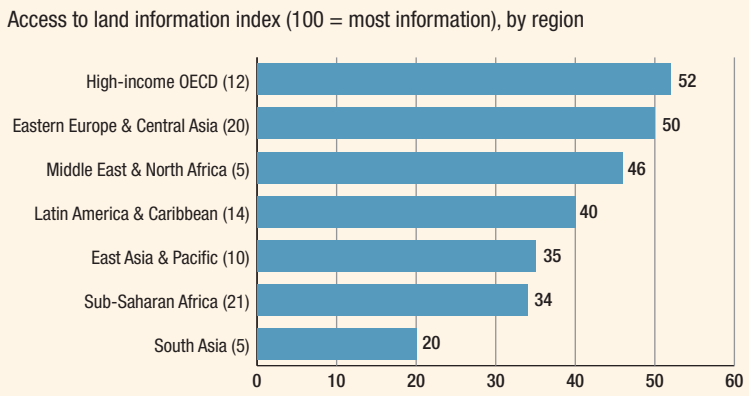
Access to land information index—overall results

There is significant variation across economies in the ease of access by private parties to public land information through public institutions and in the effectiveness 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 countries not very effective. Notable exceptions are some high-income OECD and Eastern Europe and Central Asian economies (figure 5.9).

Effective 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, a country has some form of land or property registry[28] or cadastre,[29] regardless of whether

FIGURE 5.9: Access to land information is difficult for investors



Source: Investing Across Borders database.

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 5.10).

However, many economies around the world do not have functioning land information systems (LIS).[30] 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.

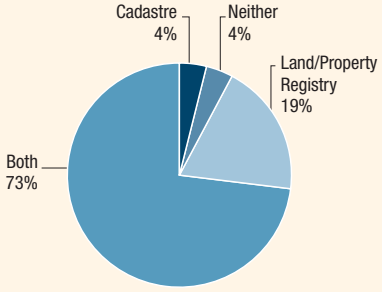
Only 22% of the economies surveyed have a functioning LIS and only 39% of the 41 economies with both a land registry and cadastre have information technology systems set up that allow the 2 institutions to share information (figure 5.11). An example of a poorly functioning system is found in Cambodia, where the registry and cadastre are neither located in the same agency nor set up to share data. On the other hand, Georgia has a modern and well-functioning land management system. The land registry and cadastre are both located in the National Agency of Public Registry within the Ministry of Justice and interested parties can go online to search an interactive LIS system to help narrow down possible investment locations.

Many economies in Eastern Europe and Central Asia provide modern and integrated land management systems (table 5.6). Most economies in the region have both land registries and cadastres, and most either house them in the same public authority or have them set up to share data. The only exceptions are Bosnia and Herzegovina and Poland, which do neither. Nearly three-quarters of the economies in the region, however, do not use either a land information system (LIS) or geographic information system (GIS). Such systems can provide a better means to acquire, manage, retrieve, analyze, and display land records.[31]

Availability of land information index—overall results

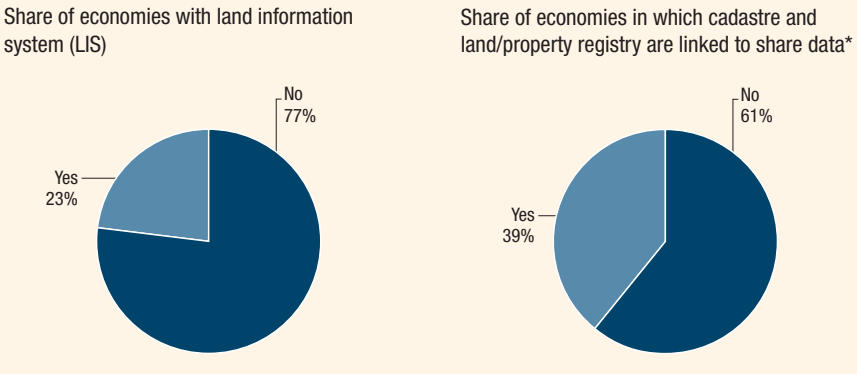
The overall results of the Availability of land information index for the top and bottom 10 IAB economies surveyed show that 4 of the top 10 economies that make the most information available are in Eastern Europe and Central Asia and 4 more are high-income OECD economies, including the overall top performer Ireland (figure 5.12). Economies that provide a lot of information about land, often through a land information system (LIS), typically make it accessible online. On the other hand key information about land plots is most difficult to come by in Sub-Saharan Africa, with 7 of the bottom 10 economies coming from that region. Many other economies also provide relatively little information—the Solomon Islands, for example, lacks public information on such matters as land value, encumbrances,

FIGURE 5.10: Share of economies with land registry and cadastre



Source: Investing Across Borders database.

FIGURE 5.11: Large variations across economies on the effectiveness of land-management systems



Source: Investing Across Borders database.

* Only includes 41 economies which have cadastre and land registry.

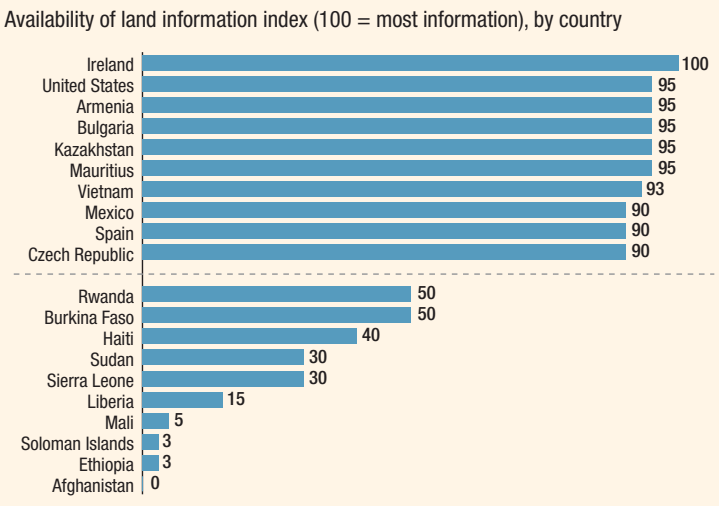
TABLE 5.6: Characteristics of land administration systems in Eastern Europe and Central Asia

Characteristics of land administration system						
Country	Land or property registry	Cadastre	Same public agency	Share data	Land Information System	Geographic Information System
Albania	Yes	Yes	Yes	N/A	No	No
Armenia	Yes	Yes	Yes	N/A	No	No
Azerbaijan	Yes	Yes	No	Yes	No	No
Belarus	Yes	Yes	Yes	N/A	No	No
Bosnia and Herzegovina	Yes	Yes	No	No	No	No
Bulgaria	Yes	Yes	No	Yes	No	No
Croatia	Yes	Yes	No	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	N/A	Yes	Yes
Kazakhstan	Yes	Yes	No	Yes	No	No
Kosovo	Yes	Yes	Yes	N/A	No	No
Kyrgyz Republic	Yes	Yes	Yes	N/A	Yes	Yes
Macedonia, FYR	Yes	Yes	Yes	N/A	Yes	Yes
Moldova	Yes	Yes	No	Yes	Yes	No
Montenegro	Yes	Yes	Yes	N/A	Yes	Yes
Poland	Yes	Yes	No	No	No	No
Romania	Yes	Yes	Yes	N/A	No	No
Russian Federation	Yes	Yes	Yes	N/A	Yes	No
Serbia	Yes	Yes	No	Yes	No	No
Turkey	Yes	Yes	Yes	N/A	No	No
Ukraine	Yes	Yes	Yes	N/A	No	No

Note: N/A in the Share data column refers to those economies that either lack both a land registry and cadastre or locate them in the same public agency.

Source: Investing Across Borders database.

FIGURE 5.12: Economies that provide the most and least amount of land-related information



Source: Investing Across Borders database.

geotechnical descriptions of property, and zone and tax classifications.

High-income OECD economies such as the Czech Republic provide easily accessible information on plot size, land value, spatial information, zone and tax classification, utility connections, and encumbrances. In fact, Czech Invest, the Czech Republic's investment promotion and business development agency, provides a modern database of available business properties. This makes it easy for a foreign company to go online and begin due diligence on possible investment locations even before arriving in the country. Many economies in Sub-Saharan Africa, on the other hand, are still struggling to piece together functioning and credible land information systems. In many economies on the continent, land information is often found in maps and systems dated from colonial times. In Sierra Leone, for example, it is nearly impossible to get credible land information from a public agency without visiting and surveying the land in person. This is because much of the land has yet to be surveyed and maps from the colonial era are out of date. The Directorate of Surveys in the Ministry of Lands, Country Planning, and the Environment does not at present have the capacity to provide up-to-date geotechnical descriptions of land parcels without starting from scratch and conducting new surveys.

Publicly available land information

In many economies in East Asia and the Pacific the government retains tight control over land and land-related information, which is not always publicly available to interested third parties (table 5.7). Cambodia, China, and the Solomon Islands make it particularly difficult to find land-related information such as documentation on land plot value, mailing addresses, environmental impact assessments, tax classifications, and utility connections.

Ease of leasing land indicators

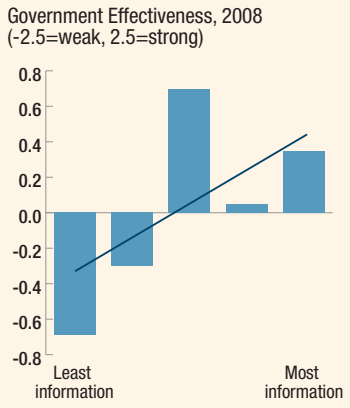
After a foreign company has located a suitable piece of land for its investment it will need to buy or lease the land from its holder. The process of leasing both private and public land differs from country to country. It

TABLE 5.7: Key land-related information available to investors in East Asia and the Pacific

Public availability of land information									
Type of information	Cambodia	China	Indonesia	Malaysia	Philippines	Singapore	Solomon Islands	Thailand	Vietnam
Land contract	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Plot size	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Land value	No	No	No	No	Yes	No	No	Yes	Yes
Street address	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Mailing address	No	No	No	No	Yes	Yes	No	No	No
Immovable property	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Spatial info	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Geotechnical description	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Documentation on Environmental Impact Assessment	No	No	Yes	Yes	Yes	No	No	No	Yes
Zone classification	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Tax classification	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Information on surroundings	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Carrying capacity of the land	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Local population density	No	No	Yes	Yes	Yes	Yes	No	No	Yes
Utility connections	No	No	Yes	Yes	No	No	No	Yes	Yes
Encumbrances	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Existing land claims	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Legal jurisdiction of the land	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

Source: Investing Across Borders database.

BOX 5.3: Providing more land related information is associated with better quality of public services



Note: The relationship is significant at the 1% level. The availability of land information index has been broken into 5 quintiles expressed as groups of economies below the 20th, 40th, 60th, 80th, and 100th-percentile rank from least to most information. The Government Effectiveness indicator measures the quality of public services, the capacity of the civil service and its independence from political pressures, and the quality of policy formulation. The economies ranked in the 80th percentile rank are an anomaly as they both have abundant land information but less government effectiveness; these countries include: Albania, Argentina, Azerbaijan, Ghana, India, Indonesia, Kenya, Malaysia, Republic of Yemen, Romania and South Africa.

Source: Investing Across Borders database, *World Bank Governance Indicators* (2008).

- Initial findings suggest that the availability of land information index is highly correlated with greater government effectiveness and better quality of public services for the 87 IAB economies.
- Economies that have higher-quality public institutions tend to have more modern and coordinated land-management systems as a result. These systems tend to provide more information to interested parties.
- However, the correlation does not imply the existence or the direction of a causal relationship. It is equally likely that generating more land-related information encourages the creation of more effective government institutions to manage that information.

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, almost 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 private 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 5.13). Foreign companies seeking to lease private land in the 5 economies surveyed in South Asia might need as long as 3 months to complete the process. On the other hand, it takes an average of 43 days to lease private land in the 20 economies surveyed in Eastern Europe and Central Asia. In Sub-Saharan Africa, the process takes significantly longer than in the high-income OECD economies.

Leasing land from a private holder

In many IAB economies, the process of leasing private land is efficient and takes less than 2 weeks (figure 5.14). One example of a country where leasing private land is short and transparent is Georgia, a top *Doing Business* reformer. In its capital city—Tbilisi—the process takes 8 days, including the optional lease registration before a court. This procedure is not legally required, but is advisable if the company would like to use the lease in financial transactions. On the opposite end of the spectrum, the typical process for leasing private land in Kabul, Afghanistan, takes 218 days, largely due to the lengthy due diligence process, which can take 3 months and includes formal visits to the Provincial Court, the Municipality, and the Afghan Geodesy and Cartography Office.

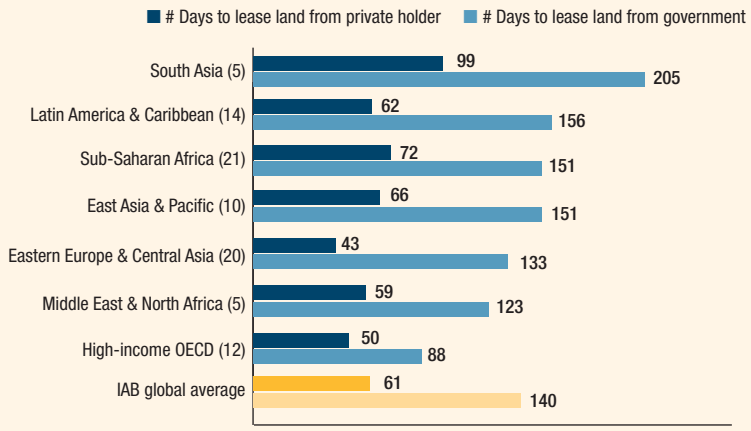
The ease of leasing land indicators also reveal considerable variation within regions. Consider Latin America and the Caribbean (figure 5.15). In Chile, Costa Rica, and Peru the process is fast and takes roughly 3 weeks. In contrast, the process can take 3 months or more in Ecuador, Haiti, and Nicaragua. In Nicaragua, the lease agreement must be registered in the Public Registry, and it can take several months to receive certification of the registration.

Leasing land from the government

The process to lease land from the government is significantly more burdensome than that to lease private land and takes, on average, twice as long across all 87 IAB economies. This is because in addition to the procedures required to lease land from a private holder, one must often obtain a government approval or go through formal process such as an auction, concession, or tender. The fastest IAB economies can lease government land to foreign companies in little more than 1-2 months, while the slowest take up to a year (figure 5.16).

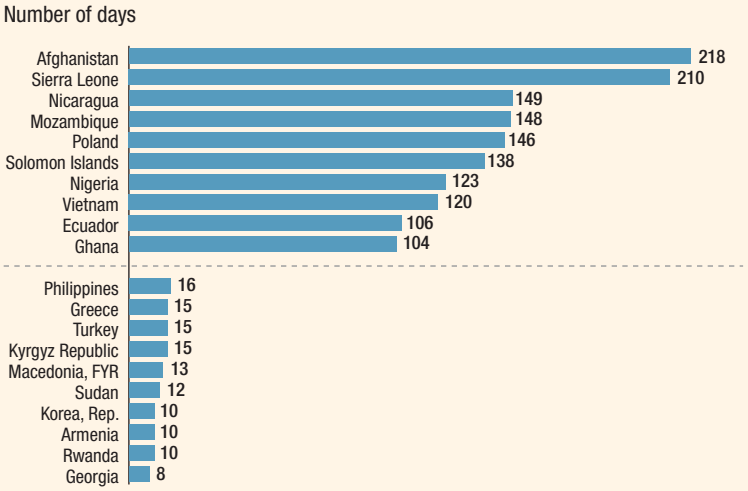
Of the economies surveyed, 65% require an additional approval to authorize the lease of government-held land to foreign companies (figure 5.17). This additional approval takes 2 months, on average, significantly extending

FIGURE 5.13: Time needed to lease public and private land



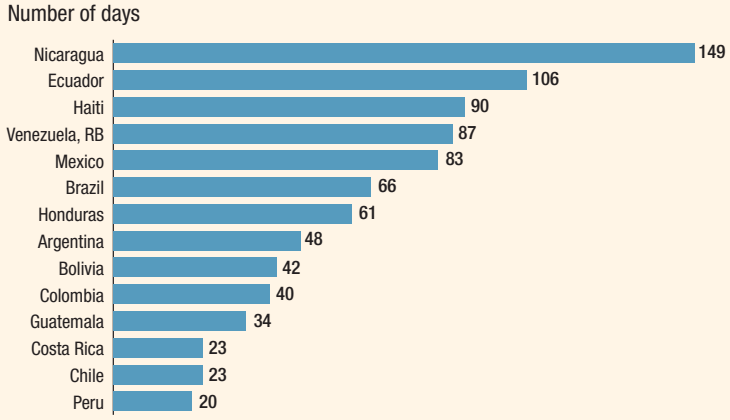
Source: Investing Across Borders database.

FIGURE 5.14: Fastest and slowest economies for leasing land from a private holder



Source: Investing Across Borders database.

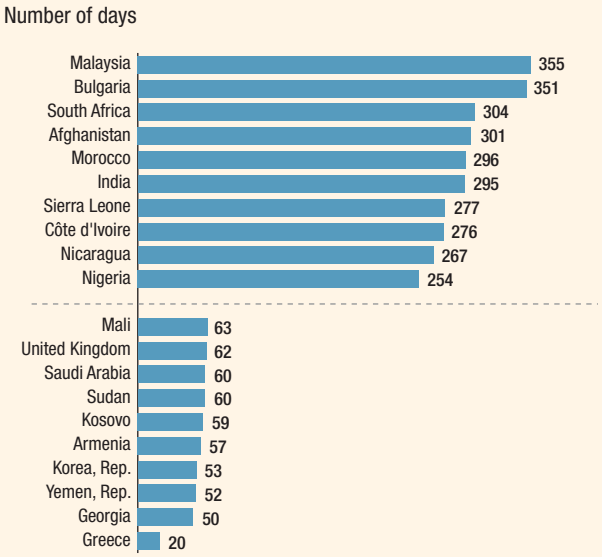
FIGURE 5.15: Time needed to lease land from private holders in Latin America and the Caribbean



Source: Investing Across Borders database.

the overall process of acquiring land. Leasing public land is fastest in Greece and involves a transparent and quick government auction through the Municipal Government Office in Athens. The entire process including the auction, due diligence, and signing the contract takes an average of 20 days. The steps involved in leasing public land are most burdensome in Kuala Lumpur, Malaysia. Here, foreign companies interested in leasing land from the government must first obtain approval from the District Land Office and the National Economic Planning Unit. Obtaining the 2 approvals can take anywhere from 1 to 2 years.

FIGURE 5.16: Fastest and slowest economies for leasing land from the government



Source: Investing Across Borders database.

CONCLUSIONS

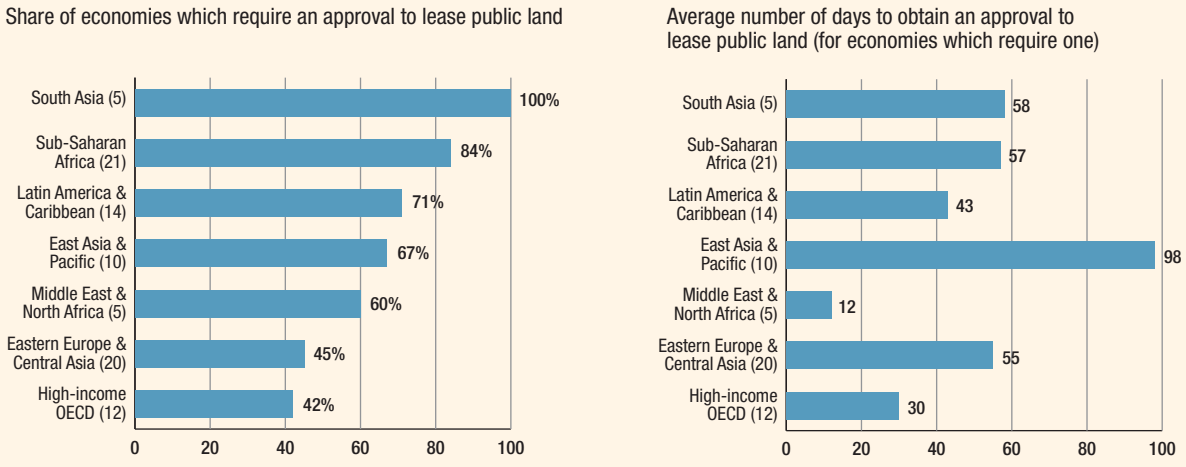
This chapter has shown the wide range of practices across countries on the strength of land rights, the amount of available land information, and the ease of leasing land. Some countries allow foreign companies to buy industrial land. Others—mostly in East Asia and the Pacific and Sub-Saharan Africa—do not. Some countries, mainly high-income OECD members, provide easily accessible information about land plots that is shared across multiple government agencies. Finally, while some countries have quick and transparent procedures for leasing land, others—such as many in South Asia and Sub-Saharan Africa—make the process administratively burdensome and time-consuming.

Improving access to land does not guarantee that a country 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 a country's investment climate and overall competitiveness.

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

- **Efficient land acquisition procedures.** A country 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 procedure for a higher fee.
- **Clear laws which provide fair and equal 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

FIGURE 5.17: Obtaining government approvals adds significant time to leasing procedures



Source: Investing Across Borders database.

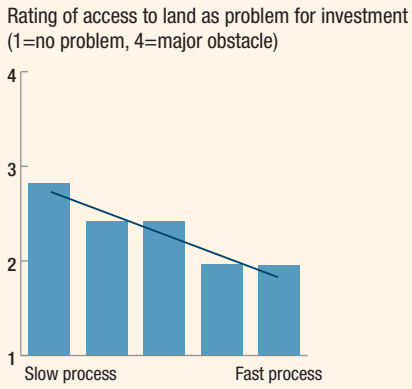
their ability to develop, renew, transfer, mortgage, or sublease land. Laws and regulations should also take into account the interests of all stakeholders related to land use—including investors, governments, and communities. Attention must also be paid to environmental protection.

- **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.

Investing Across Borders 2010 is a new initiative that we hope to continue to improve in the future. IAB plans to leverage the data for research and analysis of relationships between indicators and various socio-economic and political measures of countries' development to better understand drivers and impacts of business environment reforms. IAB will also consider expanding and deepening the scope of its indicators. We welcome your comments and feedback.

BOX 5.4: Efficient process of leasing land is associated with better perceptions about the quality of land administration



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 database.

- 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.
- 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.

ENDNOTES

1 Muir and Shen (2005).
2 Seidman (2003).
3 FIAS (2006).
4 McAuslan (2010).
5 FIAS (2005).
6 Adams, Turner and White (2004).
7 FIAS (2001).
8 FIAS (2004).
9 de Soto (2000).
10 Besley (1995), di Tella, Galiani,and Schargrodsky (2007).
11 Field (2007).
12 Feder, Onchan, Chalamwong, and Hongladarom (1988), and Jimenez (1984).
13 Hornberger (2007), and Iyer and Do (2008).
14 Deininger, Jin, and Nagarajan (2008).
15 Deininger and Mpuga (2009).
16 Kingwell, Cousins, Cousins, Hornby, Royston, and Smit (2006).
17 Mitchell (2004).
18 de Janvry and Sadoulet (2005).
19 Ibid.
20 Burns and Deininger (2009).
21 Undeland (2010).
22 Freehold is full ownership of land in common law, providing the owner with the largest bundle of rights of ownership.
23 Article 40(8) of the Federal Constitution of Ethiopia.
24 Adams and Turner (2006).
25 Ibid.
26 These types of restrictions are not measured by the Accessing Industrial Land indicators which focus strictly on access to industrial land by foreign companies.
27 Ibid.
28 The definitive record of all registered properties, it comprises the registered details for each property.
29 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.
30 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.
31 UNECE (2005).

Arbitrating Commercial Disputes

INTERESTING FACTS

- All *Investing Across Borders* (IAB) countries recognize arbitration as a tool for resolving commercial disputes, and only 8 of the 87 countries do not have a specific arbitration law: Albania, Argentina, Bosnia and Herzegovina, Ethiopia, Liberia, Mali, Montenegro, and Poland.[1]
- About half of IAB countries have laws that distinguish between domestic and international arbitration.
- The Czech Republic and Mexico are among 17 IAB countries where businesses can conduct arbitration proceedings online.
- In most countries in Latin America and the Caribbean, foreign lawyers without local bar membership are not permitted to represent parties in arbitration proceedings.
- There are no functional arbitration institutions in Cambodia and Sierra Leone, while Colombia and Malaysia have many active institutions.
- In most countries in East Asia and the Pacific, laws do not require courts to assist during arbitration proceedings with orders for production of evidence or appearance of witnesses. In contrast, 4 of the 5 IAB countries in South Asia legally require domestic courts to assist in arbitrations.
- Many countries in Eastern Europe and Central Asia have adopted special rules to ensure fast enforcement proceedings of arbitration awards, such as establishing special authorities outside the judiciary to issue writs of execution.

Source: Investing Across Borders 2010.

WHY AN EFFECTIVE COMMERCIAL ARBITRATION REGIME MATTERS FOR FOREIGN INVESTORS

Consider the following situation. A multinational corporation establishes a subsidiary in a foreign country to manufacture, sell, and export household appliances. This company enters into contracts with domestic and foreign companies as well as public utilities. The contracts state how the companies will resolve commercial disputes should they arise. The subsidiary prefers to avoid court litigation, which can be slow and highly formal. The company must also ensure that contract disputes can be resolved through an efficient system that can be tailored to the dispute.

The company wants to be able to rely on its in-house legal counsel and to appoint decision-makers with qualifications related to the subject of the dispute. The company therefore decides to resolve its commercial disputes through arbitration and includes arbitration agreements in all its contracts. Arbitration is a method of resolving disputes out of court. It is one tool out of several that are jointly called "alternative dispute resolution".[2] The parties can design the arbitration process to fit their needs and the arbitration hearing is held in private with a binding decision given by arbitrators, who play a similar role to judges. This company wants to be able to arbitrate certain disputes in the host country because of the proximity of the evidence and the time and cost savings.

Assume that the foreign subsidiary is established in Prague, Czech Republic. The company and its commercial partners can choose between ad hoc, institutional, and online arbitration services for both domestic and international disputes.[3] A single coherent arbitration act provides default rules for arbitration proceedings and regulates enforcement of arbitral awards. The company can submit all types of commercial disputes for arbitration and can appoint any foreign arbitrators with any professional qualifications selected by the company. Arbitration of commercial disputes with public entities is also allowed without restrictions. The company can appoint foreign counsel to represent it and can choose the language of the proceedings. The law guarantees the confidentiality of the proceedings. At the request of arbitrators, local courts provide orders for provisional measures and the production of evidence.

Compare the experience of a similar company incorporated in Bogota, Colombia. The company and its local partners can choose between ad hoc arbitration and the 3 well-established arbitration institutions in Bogota. But it is a challenge to navigate the legal framework. Four main decrees regulate arbitration in Colombia, along with other laws regulating issues such as fees for arbitration centers, recognition and enforcement of foreign arbitration awards, and investment arbitration. In addition, the foreign company can only appoint arbitrators who are Colombian nationals and licensed to practice law in Colombia. Arbitration proceedings must be conducted in Spanish. The company and its local partners do not have enough autonomy to customize arbitration as they would prefer.

For governments interested in attracting foreign direct investment (FDI), improving the rule of law, including the country'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.[4] The characteristics of arbitration—confidentiality, flexible procedures, party autonomy, and easy enforcement—cater to businesses' concerns in dispute resolution.[5]
- Companies often prefer to have alternatives to court litigation. Formal dispute 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.[6] 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).[7]

From a country'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 and more flexible procedural rules than litigation. Straightforward commercial disputes, without public policy concerns, might not need to be litigated in domestic courts.

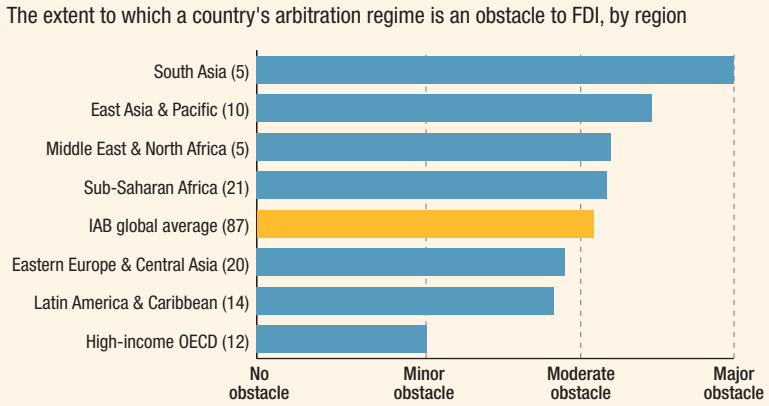
Foreign companies prefer to use international arbitration rather than domestic litigation to resolve disputes, whether with a private party or the state.[8] Past studies have found that more than two-thirds of multinational corporations prefer international arbitration, either alone or combined with other alternative dispute resolution mechanisms, to resolve cross-border disputes.[9]

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 *Investing Across Borders* (IAB) project quantify the legal and practical challenges that foreign companies face when choosing to use arbitration in the host country 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 6.1). Only in high-income OECD countries 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 country, 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.[10]

Corporations want simple arbitration proceedings with limited court intervention, and arbitration awards that are easily enforced.[11] 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.[12] 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.

FIGURE 6.1: Many arbitration regimes are undeveloped and do not encourage FDI



Note: These results are based on the following question posed to local counsel of foreign investors in 87 countries: "Please rate the extent to which the quality of the legal framework for arbitration and mediation, including implementation, is an obstacle in your country."
Source: Investing Across Borders database.

INTRODUCING THE ARBITRATING COMMERCIAL DISPUTES INDICATORS

The Arbitrating Commercial Disputes indicators of the IAB project aim to measure the legal, institutional, and administrative regimes for commercial arbitration in 87 countries across the globe. The indicators focus on domestic and international commercial arbitration between two companies, or contractual disputes between a company and a state entity. The indicators also explore, to a limited extent, 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.[13] 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 countries 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 of this report and online.

Structure of the Arbitrating Commercial Disputes indicators

The Arbitrating Commercial Disputes indicators comprise 3 principal components:

1. Strength of laws index (0–100): analyzes the strength of countries' legal frameworks for alternative dispute resolution, as well as the countries' adherence to the main international conventions related to international arbitration;
2. 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;
3. Extent of judicial assistance index (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 countries' arbitration regimes. The methodology chapter of this report and the online database provide 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 87 countries, the Arbitrating Commercial Disputes indicators are based on simple standard case studies (box 6.1). The methodology section of this report includes additional general case-study assumptions.

The types of laws evaluated by the Arbitrating Commercial Disputes indicators are set out in box 6.2.

BOX 6.1: 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 country. 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 country. Both arbitrations take place in the same country.

Accordingly, IAB assumes 3 different types of arbitral awards:

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

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

BOX 6.2: Key laws measured by the Arbitrating Commercial Disputes indicators

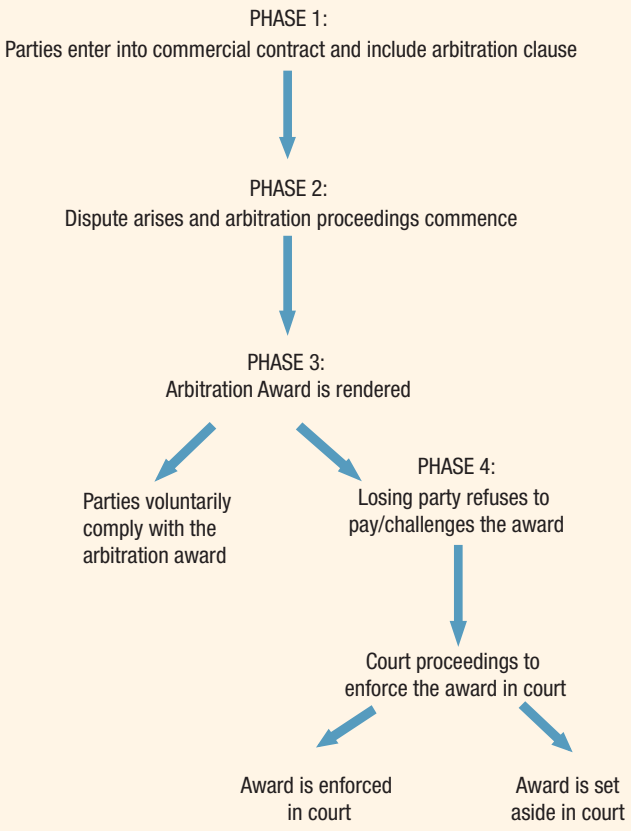
The Arbitrating Commercial Disputes indicators evaluate the following types of laws insofar as they relate to alternative dispute resolution (arbitration and mediation):

- 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 6.2). The rest of this section describes the indicators' results for each of the key steps and phases in the arbitration process.

FIGURE 6.2: 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 country'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.

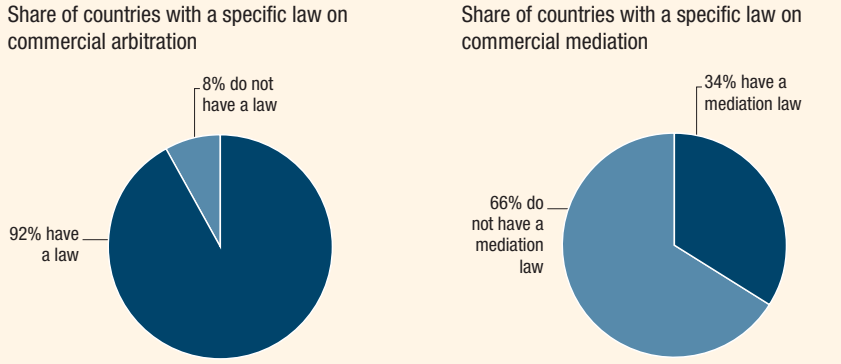
Does the host state recognize arbitration, and if so, how?

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 country. Our survey results show that arbitration is recognized as a dispute resolution tool in all 87 countries in our sample. Of those countries, 92% have a specific commercial arbitration statute or a chapter in a civil code setting out provisions governing commercial arbitrations in their country. The other 8% have some provisions scattered throughout civil codes or other laws which do not provide sufficient regulation of arbitration. These countries are Albania, Argentina, Bosnia and Herzegovina, Ethiopia, Montenegro, Liberia and Poland. In comparison, only 34% of the 87 countries have a formal law regulating commercial mediation (figure 6.3). Having such laws gives parties the security of predictability and enhances the country's appeal as a legal forum for domestic as well as international disputes.

Is the law easily accessible?

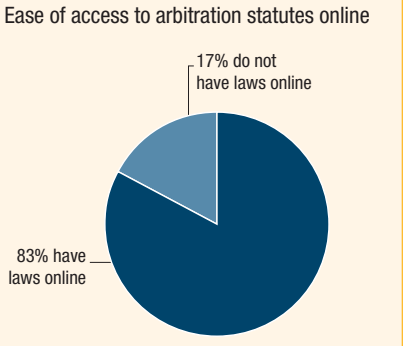
To facilitate access to information, arbitration laws should be available online. Eighty-three percent of countries in our sample were able to provide Web sites where these laws could be found (figure 6.4). However, many of these sites were not official government sources but rather Web sites of private law firms, which provide laws for their clients' purposes. In contrast, 96% of countries provide official government Web sites relating to the establishment of companies.[14] 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 a country's business climate. Improvements in access to information will also encourage economic change.[15]

FIGURE 6.3: Only 34% of countries have mediation laws, but 92% have arbitration laws



Source: Investing Across Borders database.

FIGURE 6.4: Countries need to exploit technology to improve investors' access to laws



Source: Investing Across Borders database.

Does the law differentiate between domestic and international arbitrations?

The companies should also consider whether their respective arbitration is characterized in the national law as an international or domestic arbitration, as the 2 regimes could be regulated in a different manner. The definitions for domestic and international arbitrations used by the Arbitrating Commercial Disputes indicators are set out above (box 6.1). In our sample, 54% of the countries have distinct regimes for domestic and international arbitrations.

The disparity in treatment between the 2 regimes ranges from minor differences to entirely separate procedures. In Mauritius, the law governing domestic arbitrations specifies that there must be one arbitrator (or an odd number). However, the law governing international arbitrations specifies that there must be 3 arbitrators (or an odd number). In France, domestic awards can be appealed but international awards cannot be. In Morocco, the law governing domestic arbitrations is more detailed than that governing international arbitrations, and in Saudi Arabia, 2 domestic entities are obliged to hold their arbitration in Saudi Arabia.

Although governments might have legitimate policy reasons for having separate regimes, there are fundamental concepts in arbitration that should be the same for both domestic and international regimes, including party autonomy and arbitrators' impartiality, discussed below.

Is the foreign-owned company considered a domestic or foreign entity?

It should be noted that in countries that treat domestic and international arbitrations differently, foreign-owned but locally incorporated companies will want to know whether they can use the less restrictive regime (usually international arbitration). In the case of Bulgaria, the arbitration law considers a foreign-owned company as foreign, even if it is locally incorporated. As a result, this

company would fall under the international commercial arbitration regime in Bulgaria. Chile and Turkey follow this example.

Most countries in our sample that differentiate between domestic and international arbitrations, however, consider a foreign-owned but locally incorporated company as domestic. For example, in Azerbaijan, Brazil, China, Colombia, Croatia, Ecuador, Georgia, Honduras, India, Ireland, Kazakhstan, Madagascar, Mauritius, Mexico, Korea, Romania, and Spain a locally incorporated entity is considered a domestic entity regardless of its foreign ownership or control.

Parties should accordingly understand how their company is characterized under domestic law, in order to know which arbitration regime applies. There might be legitimate policy reasons for having restrictions in the domestic regime, for example, in relation to the language of the arbitration process. Nonetheless, governments should consider that if they have different regimes, local companies with predominantly foreign ownership will want to fall under the less restrictive regime, given the international element in their corporate structures. Governments should therefore consider whether international arbitration should be liberally defined in their laws.

What are the formal requirements for an arbitration agreement?

Some countries 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 a country'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 (86%) of the countries 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. 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.[16] Countries that recognize oral agreements as binding arbitration agreements include Canada, Cameroon, Chile, France, Mozambique, Sri Lanka and the United Kingdom.

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),[17] 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 Arbitrating Commercial Disputes indicators assess the parties' freedom of choice by aggregating certain elements of choice into a party autonomy index (box 6.3).

Results show that high-income OECD countries are the most liberal in promoting party autonomy (figure 6.5). Sub-Saharan Africa also scores highly. Many of these countries have recently adopted modern legislation that recognizes fundamental principles of arbitration.[18] 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.

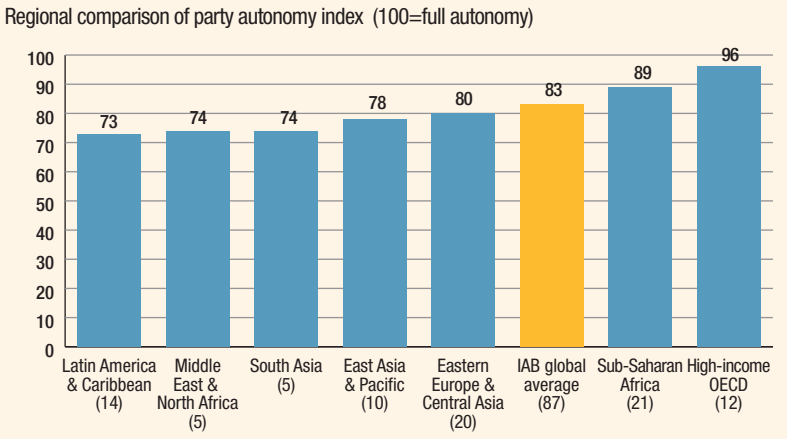
The Middle East and North Africa region, in contrast, has several restrictions on party autonomy, including the choice of language of the proceedings. In the Latin America and the Caribbean region, many countries have protectionist legal regimes that affect party autonomy. For example, foreign counsel is not permitted to represent parties in arbitration proceedings, even if counsel does not appear before the domestic courts. This is the case in Argentina, Bolivia, Brazil, Costa Rica, Ecuador, Guatemala, and the República Bolivariana de Venezuela for both domestic and international arbitrations. Countries

BOX 6.3: 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:

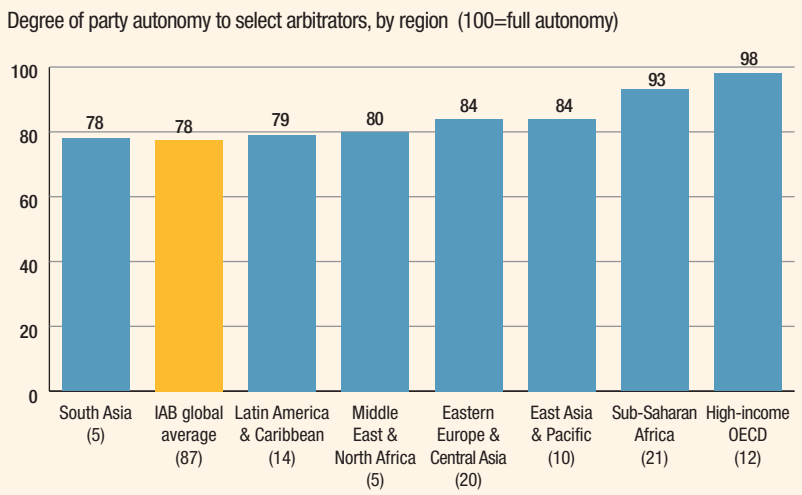
- Arbitrators of their choice
- Foreign counsel to represent them in the arbitration proceedings
- Language of the proceedings
- Any arbitral institution

FIGURE 6.5: Which countries provide parties with most flexibility?



Source: Investing Across Borders database.

FIGURE 6.6: Parties are most restricted in selecting arbitrators in South Asia



Source: Investing Across Borders database.

such as Bolivia, Brazil, Chile, Costa Rica, and Ecuador also require that arbitration proceedings be conducted in Spanish, particularly in domestic arbitrations.

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 6.6).

Spain is the only high-income OECD country that restricts parties' abilities to select the arbitrators' nationality and professional qualifications in domestic arbitrations.

Many middle-income countries have restrictions regarding parties' choice of an arbitrator. In Eastern Europe and Central Asia, many countries' laws specify that arbitrators be locally barred lawyers in domestic arbitrations, for example, in Azerbaijan, Bosnia and Herzegovina, the Kyrgyz Republic, Kazakhstan, and the Russian Federation. In some countries in the Middle East and North Africa region women are rarely appointed as arbitrators, for example, in Saudi Arabia and the Republic of Yemen. In general, regulation is stricter for domestic arbitrations than for international ones. In Azerbaijan, Colombia, Ecuador, and Vietnam, 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. The principal reason why the South Asia region scores poorly is the lack of regulation on this matter in Afghanistan.

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

Phase 2 looks 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 a country 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 countries have at least one active arbitral institution but there are still some which do not (box 6.4).

Certain criteria reveal an active arbitration culture in several Sub-Saharan African countries. Such criteria include whether the institution administers arbitrations and mediations, the number of domestic arbitrations that were completed in 2008, the number of qualified arbitrators, and of those, how many are women (table 6.1).

BOX 6.4: IAB countries without an active arbitral institution

Ten countries have no arbitral 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 Ethiopia and Liberia.

Some countries have several arbitral institutions, which is a strong indication of a thriving arbitration practice. The East Asia and the Pacific region includes countries with numerous operational and active arbitral institutions, including China, Indonesia, Malaysia, Singapore, and Thailand. In some countries, external arbitral institutions, such as the ICC in China and Malaysia, have also started to administer arbitrations due to growing demand.[19] Latin America and the Caribbean also has active arbitral institutions, with Argentina, Brazil, Chile, Colombia, and Mexico having several arbitral institutions in the capital, as well as in other major cities in the country.

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 10% of the IAB countries have developed the technology to offer online arbitration as a method of administering commercial disputes (figure 6.7). However, as technology

TABLE 6.1: Arbitral institutions in a sample of Sub-Saharan African countries

Country	Institution	Does the institution administer arbitration and mediation?	Number of domestic arbitrations completed in 2008	Number of qualified arbitrators on roster	Percentage of women arbitrators on roster
Burkina Faso	Centre d'arbitrage, médiation et conciliation d'Ouagadougou	Yes	0	32	15%
Ghana	Ghana Arbitration Centre	Yes	7	12	4%
Kenya	Dispute Resolution Centre (Nairobi)	Yes	2	11	10%
Mali	Chambre de Commerce et d'Industrie du Mali—Chambre de conciliation et d'arbitrage	Yes	0	40	3–4%
Mozambique	CACM Centre for Arbitration Conciliation and Mediation	Yes	13	187	30%
Nigeria	Regional Centre for International Commercial Arbitration	Yes	4	55	5%
Senegal	Centre d'arbitrage, conciliation et de médiation - Chambre de Commerce et d'Industrie et de l'agriculture de la région de Dakar	Yes	0	120	40%
South Africa	The Arbitration Foundation of Southern Africa (AFSA)	Only arbitration	70	625	7%
Zambia	Zambia Centre for Dispute Resolution Ltd.	Yes	8	261	22%

Source: Investing Across Borders database.

develops, it is expected that online arbitration will continue to offer cost and time savings to disputing parties.

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 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 or by the arbitrators.

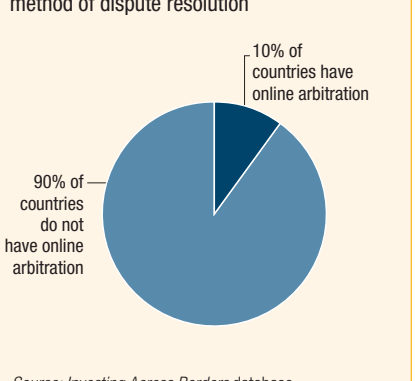
It is important that domestic laws contain explicit provisions for domestic courts assistance with the production of evidence and with provisional measures. The court assistance index (box 6.5) feeds into the overall extent of judicial assistance index, and examines the extent to which domestic courts support the use of arbitration as a tool to resolve disputes.

Results show that East Asia and Pacific countries 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, as is the case in China, Indonesia, Papua New Guinea, and Vietnam (figure 6.8).

There are fewer legal provisions requiring domestic courts to assist with the arbitration process in Eastern Europe & Central Asia and the East Asia & Pacific region than in other regions. Moreover, having such legal provisions for court assistance, does not necessarily translate into practice (table 6.2).

In contrast, 4 of the 5 IAB countries in the South Asia region (Bangladesh, India,

FIGURE 6.7: Which countries offer online arbitration?



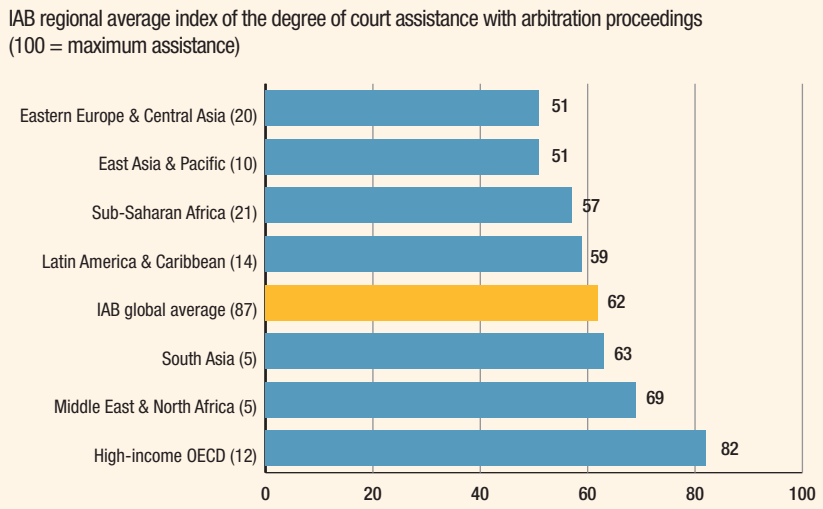
Source: Investing Across Borders database.

BOX 6.5: 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

FIGURE 6.8: Court assistance is weak in Eastern Europe & Central Asia and East Asia & the Pacific



Source: Investing Across Borders database.

TABLE 6.2: Domestic courts' willingness to provide interim relief in international arbitration proceedings: sample of Eastern European and Central Asian countries

Country	Does the law expressly provide for courts to assist arbitrators by providing interim relief in international arbitrations?	In practice, how often do courts agree to assist by providing interim relief in international arbitrations?
Albania	No	Rarely
Armenia	Yes	Usually
Belarus	Yes	Rarely
Bosnia and Herzegovina	No	Rarely
Bulgaria	Yes	Usually
Georgia	No	Rarely
Kosovo	Yes	Rarely
Kyrgyz Republic	No	Usually
Montenegro	Yes	Rarely
Russian Federation	Yes	Rarely
Ukraine	No	Rarely

Source: Investing Across Borders database.

Pakistan, and Sri Lanka) have legal provisions requiring courts to assist with interim relief, and the lawyers have responded in all countries that, in practice, the courts usually provide the assistance requested.

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

When countries 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 a country, that can be explored through a comparison of the Rule of Law index of the Worldwide Governance Indicators (WGI)[20] with the Arbitrating Commercial Disputes extent of judicial assistance index (figure 6.9). Results show that there is a strong positive correlation between these 2 measures. This correlation implies that countries that have a strong rule of law[21] 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.

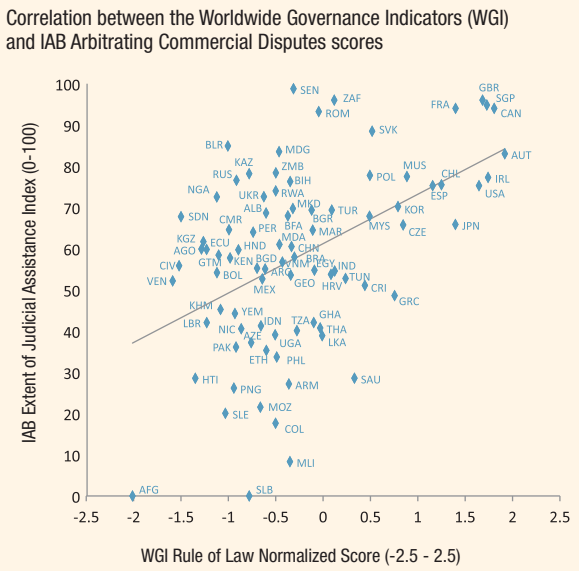
Once the parties in a dispute have submitted their arguments and evidence, there is an arbitration hearing in the chosen country. The arbitral tribunal renders a binding arbitration award,[22] specifying which party has won, and the compensation the company is entitled to receive. The issues which might 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 6.6).

Many laws in South Asian, East Asian and the Pacific, and the high-income OECD countries do not expressly bind the arbitrators to confidentiality of arbitration proceedings, whereas in Morocco and the Republic of Yemen in the Middle East and North Africa region they do (figure 6.10). The Sub-Saharan Africa countries governed by the OHADA Uniform Act on Arbitration, namely, Burkina Faso, Cameroon, Côte d'Ivoire, Mali, and Senegal also specifically provide for confidentiality of the proceedings. All Eastern Europe and Central Asia countries in our sample have legal provisions asserting the independence and impartiality of the arbitrators in international arbitrations, with the exception of Albania[23] and Montenegro.

FIGURE 6.9: Countries with a strong rule of law tend to have efficient arbitration regimes



Source: Investing Across Borders database and *Worldwide Governance Indicators* (WGI), World Bank Group.

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.[24] If the losing party refuses to pay, the winning party may bring enforcement proceedings in the local courts.[25] Alternatively, the losing party may dispute the arbitration award and ask the domestic court to set it aside or annul it.[26]

BOX 6.6: 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.

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, are more appropriate for dealing capably and consistently with commercial arbitration awards.[27] Of the 87 countries sampled, less than half designate a higher-level or specialized court to handle foreign arbitration awards, for both domestic and international arbitration awards (figure 6.11).

Eastern Europe and Central Asia has the highest share of countries (60% of the countries in the region) that designate a high level court with the supervision power to conduct both procedural and substantive examination over domestic and foreign arbitral awards. In Sub-Saharan Africa, 57% of the countries sampled designate a high-level court. The share in East Asia and the Pacific is 50%. Of the high-income OECD countries surveyed by IAB, the United Kingdom and Ireland grant such supervision power to a high level or a specially designated court/judge.[28]

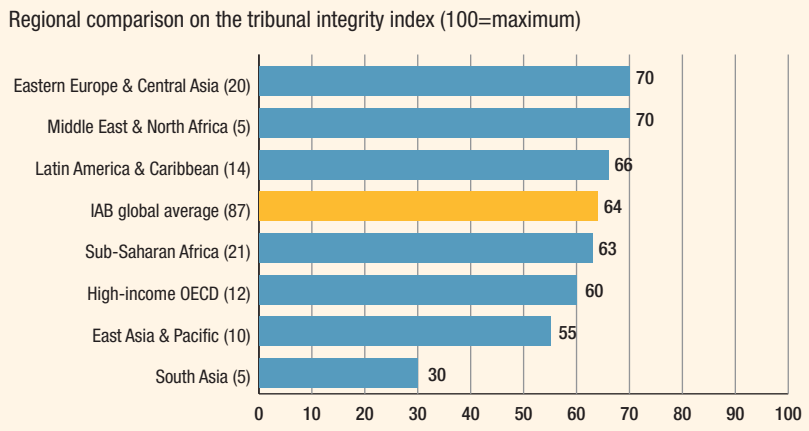
Designating a special court to handle enforcement proceedings may not be necessary or even practical in large countries or in countries with a high volume of enforcement proceedings where judges are knowledgeable about the process and issue consistent decisions. In smaller countries with little arbitration practice, however, lower-level courts can have difficulty applying newly enacted arbitration laws and self-executing international conventions. In such countries, 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 179 days to enforce an arbitration award in court. This is measured 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 country) to attaching the losing party's assets (figure 6.12). 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, and the winning party can collect easily.

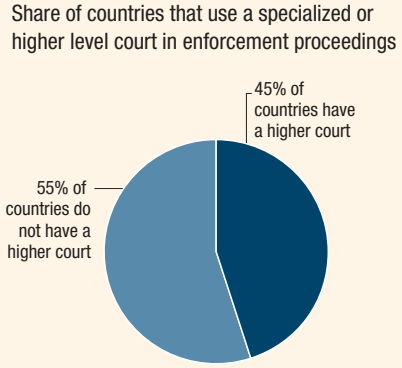
The South Asia region is the slowest to enforce domestic arbitration awards. Within the region it takes longest to enforce a domestic or international arbitration award in Pakistan (table 6.3). As respondents note, however, this might be because domestic courts are slow and there are no specific enforcement periods in the law. Accordingly, periods of enforcement vary from case to case, and in general, it is a lengthy process.

FIGURE 6.10: All but 2 Eastern Europe and Central Asia countries have legal provisions asserting the independence and impartiality of arbitrators in international arbitrations



Source: Investing Across Borders database.

FIGURE 6.11: Fifty-five percent (55%) of countries enforce foreign arbitration awards in general first instance courts



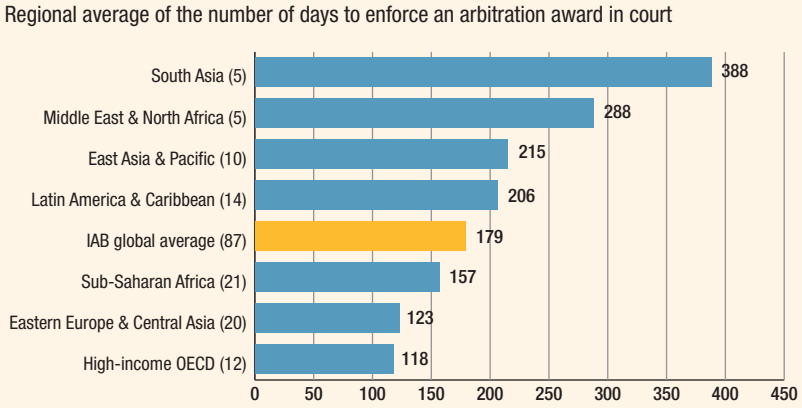
Source: Investing Across Borders, database

Many countries 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 (for example Romania) and establishing a special authority outside of the judiciary, which issues a writ of execution for 7 days (for example Georgia). 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 a country 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.

FIGURE 6.12: It takes roughly 4 months to enforce an award in the high-income OECD countries



Source: Investing Across Borders database.

TABLE 6.3: The longest period for enforcement in South Asia is the attachment of assets

Average number of weeks for enforcement proceedings for an arbitration award in South Asia.

Country	Average time from filing an application of enforcement to the hearing (weeks)	Average time from the date of the first hearing to the first instance court decision (weeks)	Average time from the final court decision to the writ of execution attaching assets (weeks)	Total average time from filing to attachment (weeks)
Afghanistan	No practice	No practice	No practice	N/A
Bangladesh	9	13	4	26
India	4	9	20	33
Pakistan	14	9	92	115
Sri Lanka	26	51	26	103

Source: Investing Across Borders database.

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 countries. Nonetheless, there are still 7 of the sampled countries that have not yet ratified the New York Convention: Angola, Ethiopia, Kosovo, Papua New Guinea, Solomon Islands, Sudan and the Republic of Yemen.

How long does it take to enforce a foreign award?

In most countries, enforcement of foreign awards takes more time than domestic awards due to long recognition proceedings and the additional documentation required. For example, the Latin America and the Caribbean region experiences lengthy proceedings in executing the award because recognition proceedings are still required in many countries in the region (for example Brazil, Colombia and Mexico), they are separate from the enforcement proceedings, and different courts are involved in both. In addition, there are multiple possibilities for appeal of the first instance court decision on enforcement of foreign awards. Countries such as Mexico and Brazil even allow a special appeal of the first instance enforcement decision before the Constitutional Court. Such "constitutional" appeal is not observed in any other region. None of the countries in Latin America and the Caribbean designate a high-level court to vacate domestic awards. However, 50% of the IAB countries in the Latin America and the Caribbean region designate a high court to rule on the recognition of foreign arbitration awards: Bolivia, Brazil, Chile, Colombia, Costa Rica, Honduras, and Nicaragua.

Commercial arbitration with the state and state entities

Consider briefly another element of commercial arbitration—arbitrating with the state and its 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.[29] As discussed above, Arbitrating Commercial Disputes indicators do not examine investment treaty arbitration in any detail. However, looking at which countries have signed the ICSID Convention provides further evidence of the strength of a country's general arbitration climate. Of the 87 countries, 17 have not yet ratified the ICSID Convention: Angola, Bolivia, Brazil, Canada, Ethiopia, Ecuador, India, Kyrgyz Republic, Mexico, Moldova, Montenegro, Papua New Guinea, Poland, Russian Federation, South Africa, Thailand, and Vietnam.

The Arbitrating Commercial Disputes indicators do investigate the ability of a party to arbitrate with a state or state entity disputes arising out of contracts with foreign-owned companies. For 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 matters, such as natural resources or concession agreements? Of the 87 countries in our sample, 17 countries restrict foreign companies' abilities to arbitrate disputes arising from specific types of contracts with the state or state entities (table 6.4).

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

Certain countries have designated special agencies or units in the government to deal with claims against the state. These countries tend to have more streamlined methods of handling claims than countries 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 high-income OECD countries sampled have designated a special public authority

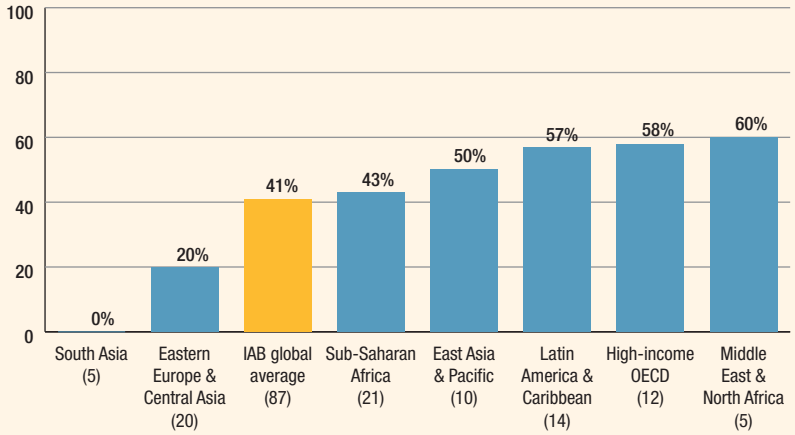
TABLE 6.4: Restrictions on arbitrating with the state or state companies

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

Source: Investing Across Borders database.

to handle administrative, logistical, and other issues related to investors' disputes with the state or a state entity (figure 6.13). Examples include the Department of International Law in the Ministry of Finance of the Czech Republic, the Legal Council of State in Greece, or the Office of the Assistant Legal Advisor for International Claims and Investment Disputes within the Department of State's Office of the Legal Advisor in the United States. In contrast, none of the countries in the South Asia region have a designated authority to deal with claims against the state.

FIGURE 6.13: Relatively few countries designate a public authority



Source: Investing Across Borders database.

CONCLUSIONS

The Arbitrating Commercial Disputes indicators illustrate that most countries 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, countries have made substantial progress in improving their arbitration frameworks. Countries with good scores on the Arbitrating Commercial Disputes indicators have focused on modernizing their legal frameworks and ensuring their consistent implementation. Countries 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 87 countries surveyed show that countries 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 ad hoc or administered by a specific 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 country.
- **Strong arbitration laws (de jure) in line with arbitration practice (de facto).** Many countries 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 countries 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 countries 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. Countries with good arbitration regimes are 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 countries 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 countries can learn from, and enhance knowledge of arbitration.

Investing Across Borders 2010 is a new initiative that we hope to continue to improve in the future. IAB will also consider expanding and deepening the scope of its indicators. We welcome your comments and feedback.

ENDNOTES

1 Some of these countries have some arbitration provisions as part of other laws but they do not contemplate sufficient minimum regulation of arbitration in the country (for example, the Law on Chamber of Commerce of Montenegro contains provisions enabling the establishment of an arbitration court within the Chamber of Commerce).

2 See glossary for definitions.

3 See glossary for definitions.

4 UNCTAD (2005).

5 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).

6 PwC and Queen Mary University (2006); UNCTAD (2005).

7 Moran and West (2005).

8 USAID (2005); USAID (1998).

9 PwC and Queen Mary University (2006).

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

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

12 Ball (2006), p. 73.

13 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).

14 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.

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

16 Malecki (1997).

17 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.

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

19 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).

20 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.

21 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, as well as the likelihood of crime and violence" (WGI), available at http://info.worldbank.org/governance/wgi/pdf/rl.pdf.

22 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.

23 However, article 408 of the Code of Civil Procedure of the Republic of Albania provides for the impartiality and independence of arbitrators in domestic arbitrations.

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

25 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.

26 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.

27 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."

28 The UK and Ireland designate the High Court, Canada designates the Superior Court of Justice, in France it is President of the Tribunal of First Instance. Other "good practice" countries which are not included in the 2010 IAB country sample follow the same practice: the supervision and examination power over domestic and foreign arbitral awards is authorized to the Supreme Court in Australia (Article 38, New South Wales 1984 Commercial Arbitration Act). Swiss law provides that such supervision power shall be exercised in principle by the Federal Supreme Court, with the exception that both parties may agree that this power shall be exercised by the specific state court where the arbitration tribunal is located, instead of the Federal Supreme Court (Article 191, Private International Law Act of Switzerland).

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

Methodology

The indicators presented in *Investing Across Borders 2010* (IAB) assess laws that affect foreign direct investment (FDI) and the efficiency of administrative processes in 87 economies. The project's methodology is based on that of the World Bank Group's *Doing Business* project.[1] The indicators highlight differences among countries in their regulatory treatment of FDI to identify good practices, facilitate learning opportunities, stimulate reforms, and provide cross-country data for research and analysis.

The indicators are based on a survey of lawyers, other professional service providers (mainly accounting and consulting firms), investment promotion institutions, chambers of commerce, law professors, and other expert respondents in the countries covered. Between April and December 2009 more than 2,350 respondents were surveyed in 87 countries (that is, 27 per country, on average).[2] The average number of respondents across countries varied. It was higher in countries with higher levels of income, institutional capacity, and greater degree of professional specialization of the expert respondents.

IAB's thematic focus areas, respondents, and economies

Selection of thematic focus areas

IAB indicators focus on 4 thematic areas (referred to in this report also as topics) of FDI regulation selected over a 2-year process from a much wider range of investment climate factors, including foreign equity ownership restrictions, investment promotion, 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 principles, investment incentives, and access to international commercial and investment arbitration. During this 2-year process the IAB team consulted academic literature on FDI determinants, investor surveys on barriers to doing business, and FDI specialists comprising IAB's expert consultative groups. The team also conducted pilot tests in 23 economies.[3] The feasibility and desirability of including topics were evaluated using the following criteria:

- Is the topic already sufficiently covered by *Doing Business* or other annual benchmarking exercises? Many resources measure the quality and competitiveness of business environments worldwide. The IAB indicators are designed to complement these resources by focusing on areas of regulation particularly pertinent to FDI.
- Is the topic affected by public policy, regulatory and administrative frameworks, or does it mostly depend on other factors—such as natural resource endowments or market size?
- Can public authorities take short-term actions in the topic area that the IAB indicators could track and capture on a regular basis, or does the topic lend itself more to long-term reforms?
- Is a regular 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?
- Is it possible to collect objective and verifiable data on the topic, or is its nature such that it should be evaluated through subjective data based on survey respondents' perceptions and sentiments?
- Can survey questions 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?
- Is there sufficient heterogeneity of performance across economies to warrant developing 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 measure each topic?

Applying the above selection criteria narrowed the list of possible topics to the current set of 4 IAB indicator areas. Over time, IAB will consider adding topics to its thematic coverage.

Selection of survey respondents

As noted, law firms, other professional services providers (mainly accounting and consulting firms), investment promotion institutions, chambers of commerce, law professors, and other local experts in the measured economies were the principal respondents to the IAB survey. These individual and organizations had both knowledge of their economies' legal and regulatory frameworks for FDI and experience advising foreign investors on market entry and operations.

Respondents were self-selected based on their interest, availability, and willingness to contribute to IAB on a pro bono basis. About 25% of those invited to complete the surveys elected to participate in the project, on average. IAB identified its potential pool of respondents based primarily on the following sources of information:

- International guides identifying leading providers of legal services, including their specialization, in each country. The guides include 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 accounting firms with extensive global networks of offices or local partner groups.
- Members of the International Bar Association, country bar associations, chambers of commerce, and other membership organizations.
- Professional services providers identified on Web sites of embassies, investment promotion institutions, business chambers, and other local organizations.
- Professional services providers recommended by country offices of the World Bank and International Finance Corporation (IFC).

Foreign investors were not invited to fill out the surveys. The IAB team had interviewed investors in several countries during the initial pilot tests, and found that they were often not familiar with the specifics of the countries' legal and regulatory frameworks and that their survey responses were limited to unique sector-specific experiences 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 complete the IAB survey. They were able to provide more up-to-date responses based on their experiences advising numerous clients in various sectors. Indeed, the group of respondents providing IAB data in each country had, on average, roughly 180 foreign clients during a 12-month period before data collection. This significantly increases the number of transactional experiences as a basis for IAB data.

Selection of economies

IAB covers 87 economies in 7 regions (box 7.1), selected based on the following criteria:

- All economies where the IAB indicators were piloted in 2007–08.
- Population size, to capture the larger countries.
- Economies in the current and expected future project portfolio of the World Bank Group's Investment Climate Advisory Services.
- Economies that have requested *Doing Business* reform assistance, and have thus shown interest in using indicators to motivate reforms.
- Economies that have demonstrated commitment to business environment improvements and been recognized by *Doing Business* as leading reformers.
- Post-conflict economies, which are one of IFC's corporate priorities.
- Middle- and high-income economies that have done particularly well in attracting FDI, and could thus be interesting comparators and case studies for identifying good practices.

Given the report's pilot nature and the project's resource constraints, not all economies were included in IAB 2010. In future years, IAB plans to expand its coverage of economies. This increase will be driven primarily by demand and resource availability.

Construction and characteristics of the IAB indicators

Data collection and analysis

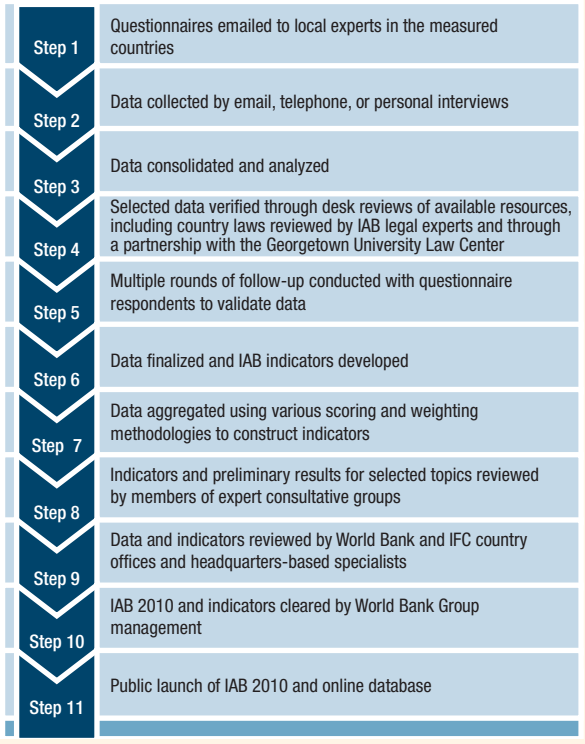
The IAB indicators are based on primary data collected mostly by email (and in some cases by telephone or personal interviews) using standardized questionnaires completed in each economy by expert respondents. (Questionaire templates are available on the project's Web site http://www.investingacrossborders.org.) Figure 7.1 shows the steps involved in data collection, verification, and analysis.

To ensure accuracy of collected data, the IAB team engaged in several rounds of interactions by email and telephone with many survey respondents to verify data and explore the reasons for inconsistent responses. This approach was followed until the conflicting responses were reconciled. The IAB team, along with law students from the Georgetown University Law Center, also reviewed countries' laws and regulations when respondents' answers to the survey questions

BOX 7.1: Economies covered by this report

- **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 (10 economies):** Cambodia, China, Indonesia, Malaysia, Papua New Guinea, Philippines, Singapore, Solomon Islands, Thailand, Vietnam.
- **Eastern Europe and Central Asia (20 economies):** Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyz Republic, FYR Macedonia, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Turkey, Ukraine.
- **Latin America and the Caribbean (14 economies):** Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, República Bolivariana de Venezuela.
- **Middle East and North Africa (5 economies):** Arab Republic of Egypt, Morocco, Saudi Arabia, Tunisia, Republic of Yemen.
- **South Asia (5 economies):** Afghanistan, Bangladesh, India, Pakistan, Sri Lanka.
- **High-income OECD (12 economies):** Austria, Canada, Czech Republic, France, Greece, Ireland, Japan, Republic of Korea, Slovak Republic, Spain, United Kingdom, United States.

FIGURE 7.1: IAB's data collection, verification, and analysis process



were inconsistent. In addition, the IAB team traveled to 18 of the 87 economies for personal interviews with survey respondents.[4]

Respondents were asked both to fill out questionnaires and provide references to relevant laws and regulations to facilitate data verification for quality assurance. The surveys captured more than 1,200 data points for each economy. Raw data from the questionnaires were electronically extracted and compared with the original surveys to minimize transcription errors. Every step was documented to ensure traceability of data and derivation of the final data set.

Structure and characteristics of the IAB indicators

The IAB indicators comprise measures of the characteristics of laws and regulations (de jure indicators) and their implementation (de facto indicators; table 7.1).

De jure indicators are based on a country's legal framework. Data for these indicators were collected through close-ended survey questions that assessed whether certain provisions and clauses are present in a country's legal and regulatory frameworks. All de jure indicators are objective and publicly verifiable. Examples of IAB's legal indicators include the foreign equity ownership indexes and strength of arbitration laws index.

In some cases IAB complemented these de jure indicators with de facto measures of how laws are actually applied in practice. For example, a regulation might stipulate a time limit within which a public agency must complete an administrative requirement, such as registration of a foreign-company. But if this time limit is rarely respected in practice, the IAB indicators recognize this through the de facto indicators. Thus 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 specific de facto indicators to measure the amount of time a foreign company needs to establish a subsidiary and access industrial land in the local economy. These indicators were collected following the standard time and motion studies used by Hernando de Soto[5] and *Doing Business*.[6] Each administrative process was broken down into separate steps to ensure more precise estimates. Survey respondents with significant and routine experience in the relevant transactions provided the time estimates. IAB uses the following definitions to measure procedures and time:

- **Procedure:** any interaction between a foreign company (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 median time needed in practice to complete each procedure in the experience of each respondent.

All indexes (such as extent of judicial assistance index) are aggregates of individual survey questions. The topic- and index-specific methodology sections on IAB's Web site identify the exact questions that fed into each index. All questions were equally weighted. Alternative weighting methods were also explored (including factor and principal component analysis, expert judgment, and others).[7] 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 so facilitates verification of results), and is most easily understood and communicated to a variety of audiences.

TABLE 7.1: Types of indicators used in *Investing Across Borders*

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

The IAB indicators are not aggregated at a topic level and are not ordered to produce a ranking of economies' performance. IAB will consider introducing rankings of economies in the future years after the project's methodology has been stabilized.

IAB maintains respondents' anonymity. Although all data are based on respondents' answers and information provided through the questionnaires, all original data are treated confidentially and the indicators cannot be traced to the responses of individual survey contributors.

Regional and global averages of indicator scores in this report are all based on IAB's current data set for 87 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 country classification criteria and conforms to the system used by *Doing Business*.[8]

Limitations of the IAB indicators

This section presents the main limitations of the IAB project and the topic-specific IAB indicators in 3 areas: substantive, focusing on the content and thematic coverage of the indicators; methodological, concerned with the questionnaire design and data collection; and limits to the implications of the indicators, addressing their potential interpretation, uses, and relationships with various economic and social data. Readers and users of the IAB indicators are urged to keep these limitations in mind when interpreting the data.

Substantive limitations

IAB focuses on regulation of FDI, not portfolio investment.[9] For example, the 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 more 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 critical to portfolio investment, such as countries' capital markets, sovereign credit ratings, or currency stability.

IAB focuses on national laws and, in some cases, on countries' ratifications of international conventions governing selected aspects of FDI. The indicators do not measure international investment agreements such as bilateral and regional investment treaties and free trade agreements (box 7.2). The topic-specific chapters of this report list the laws that serve as the basis for the indicators.

While IAB recognizes that many developing countries attract significant FDI in special economic zones (SEZs) and that these are in many countries important to FDI competitiveness, legal regimes for SEZs, export processing zones (EPZs), and other areas governed by special legal frameworks are excluded from the scope of the project. SEZ development has grown rapidly but is concentrated in relatively few countries and few product areas—sometimes with mixed results. Most FDI ends up outside SEZs. IAB's goal is to measure the treatment of FDI by national legislation, which is most relevant to a large sample of countries 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, laws in many countries afford equal treatment to foreign and domestic businesses in several areas covered by IAB. For example, the land rights are often the same for all locally incorporated companies regardless of whtehr they are domestically- or foreign-owned. However, access to land often presents a greater administrative and bureaucratic hurdle for foreign companies unfamiliar with local regulations. Thus IAB indicators focus on practical issues commonly identified as obstacles by foreign investors, rather than exclusively measuring areas of regulation that differentiate between domestic and foreign investment.

BOX 7.2: *Investing Across Borders* and international investment agreements

International investment agreements have various purposes, including promoting and protecting investments, and liberalizing investment regimes. Many of these agreements cover the same issues, such as scope and definition of foreign investment, admission of investment or pre-establishment, treatment of investment (both national treatment and most favored nation treatment), guarantees and compensation related to expropriation, transfer of funds and repatriation of capital and profits, and dispute settlement—both between states and between investors and states.

But individual international investment agreements treat these issues very differently, making it challenging to use a standardized survey to assess how laws and regulations are administered across countries. Bilateral investment treaties and free trade agreements are increasingly complex, raising concerns about implementation challenges. In addition, many of these treaties and agreements have exemption clauses that allow the country which has taken the exemption the freedom to regulate some issues in a different way from the one committed to in the agreement. For example, the United States took such a reservation in the North American Free Trade Agreement (NAFTA) for the national treatment of foreign investors in telecommunications and broadcasting services.

IAB does not measure country commitments to international investment agreements for the following reasons:

- Nearly 3,000 bilateral investment treaties are in place. The United Nations Conference on Trade and Development (UNCTAD) tracks them and, to an extent, analyzes their content. Doing anything beyond what UNCTAD has done—and doing it consistently on a global scale—would be a very demanding undertaking.
- The contents of international investment agreements of any one country vary depending on the agreements' bilateral or regional partners and on when they were negotiated and signed. Methodologically, the appropriate step would be to analyze all of them—which, again, would require significant resources.
- IAB aims to give governments tools to affect change unilaterally and in relatively short periods. While governments can change domestic legislation, they have much less ability to alter bilateral investment treaties and free trade agreements, which would require renegotiation. This is particularly the case for developing countries trying to negotiate or renegotiate agreements with high-income countries.

While recognizing that international agreements play an important role in sending a positive signal to foreign investors, the IAB indicators provide a more up-to-date and accurate picture of a country's FDI policies because they measure the current state of national laws, regulations, and policies, rather than countries' commitment to liberalizing and promoting investment. The indicators reflect de jure policies on FDI equally applicable to investors from all countries.

Methodological limitations

IAB is not a survey of perceptions of investors or companies. The 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 was used to verify data. But as in all global studies, the quality of the final results is based primarily on the quality of the underlying data. As one would expect, IAB data for large middle- and high-income economies tend to be more robust and are based on responses from more respondents than those for small low-income economies.

The 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 experiences of foreign companies are however likely to vary depending on the nature of their commercial activities, the size of their investments, their relationships with the government and business community, their negotiating power, the location of their investment, and other factors.

IAB data on the efficiency of administrative processes are specific to the country's largest business city (examples are indicators on the number of days to start a foreign business or to lease industrial land). The case study underlying IAB data assumes that a foreign company will seek to incorporate and operate in a country's center of commercial activity, thereby interacting with public authorities in that city. Thus IAB data are not necessarily representative of common practices in other cities in each economy, particularly in large or federal economies.

IAB measures of time, captured in particular through some of the de facto indicators, involve an element of judgment by expert respondents. The reported time represents the median value of several responses given under the assumptions of the standardized case.[10] Furthermore, 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 could differ from the perceptions of entrepreneurs reported in the World Bank Group's Enterprise Surveys or other investor surveys.

The IAB indicators are not designed to indicate whether treatment of FDI is more or less favorable than treatment of domestic investment. The IAB indicators across the 4 topics and 87 economies provide a mixed picture. For some indicators (such as Arbitrating Commercial Disputes) the legal rules afforded to foreign companies are typically more favorable than those for domestic businesses. For others (such as Starting a Foreign Business) there tend to be additional requirements for FDI. Finally, laws often provide the same rules for foreign and domestic companies. 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. Accordingly, 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 companies. They evaluate legal and regulatory frameworks from the perspective of foreign investors and include all restrictions that affect foreign investors, even if those restrictions also affect domestic businesses.

Main limitations of interpreting IAB data

IAB's thematic coverage is limited to 4 areas of FDI regulation. As discussed, the IAB indicators do not provide comprehensive measures of countries' legal and regulatory frameworks for FDI. The 4 thematic areas were 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. Given the importance of other factors to attracting FDI, it should not be assumed that improvement in the indicator scores will necessarily lead to increased FDI.

IAB data should not be used as a proxy for government reforms in general. The main purpose of the IAB indicators is to benchmark FDI regulations around the world—and in so doing, 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 countries wish to undertake should be considered in a broader context of priorities.

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 and effective regulatory frameworks.

The following section presents limitations of each of the 4 specific topics covered by IAB. These limitations are additional to the general project-wide limitations presented above.

Limitations specific to the indicator topic area

Investing Across Sectors

The absence of foreign ownership restrictions as measured by the Investing Across Sectors indicators is an important but insufficient condition for attracting FDI. Aside from openness to foreign ownership, other determinants of FDI include market size, infrastructure quality, political stability, and economic growth potential. Restrictions on foreign ownership limit and in some cases prohibit FDI in certain sectors. But abolishing foreign ownership restrictions and having a completely open economy do not guarantee success in attracting more FDI.

The indicators cover a large share of economic sectors but are not all-encompassing. Coverage of the primary and manufacturing sectors is relatively limited given that past studies have shown—and this report confirms—that most countries do not restrict foreign ownership in these sectors. The coverage of the service sectors, though more extensive than in past studies, is also not exhaustive. For example, the indicators do not include certain public utilities (such as water or natural gas distribution), professional services (such as legal, accounting, and consulting services), and social services (such as education). These and other service sectors were not included in the survey questionnaire for one or more of the following reasons: FDI plays a small role in the sector, FDI restrictions (if present) often do not take the form of equity limits, views in the development literature diverge on the appropriate role of foreign capital in the sector, and methodological constraints limited the length of the questionnaire and potential quality of responses. Finally, sectors where countries may have legitimate security, cultural, or religious reasons for prohibiting FDI are omitted from the indicators' coverage. These include weapons, nuclear power, toxic waste, and manufacturing of tobacco products and alcoholic beverages.

Because one of the underlying principles of IAB is to collect objective, verifiable, quantifiable information, the Investing Across Sectors indicators are currently limited to analyzing legal restrictions on FDI (de jure measures). This is in contrast to other IAB indicators, which also measure how laws are applied in practice (de facto measures). As a result, countries may score higher on the Investing Across Sectors indicators than they would if their actual openness to foreign presence in various sectors were measured by the de facto constraints or by actual FDI. Despite the project's efforts, capturing actual practices in all the measured sectors proved infeasible with the existing survey instrument given the relatively small sample of respondents in each country and the wide variety of reasons that could prevent FDI in a particular market. These reasons include a sector's underlying market structure and the discretionary authority of regulatory bodies granting sector-specific licenses (especially in service sectors).

Even in the realm of de jure restrictions, limits on foreign equity are just one among many possible legal and regulatory impediments to FDI. Binding constraints on market access might also include limits on the number of operators allowed, types of legal entities, and minimum values of transactions or assets. Some of this information was collected through the Investing Across Sectors questionnaires and is available on IAB Web site (http://investingacrossborders.org). But given that

BOX 7.3: *Investing Across Borders* and commitments under the General Agreement on Trade in Services

Unlike trade policy, cross-country comparisons of foreign investment regimes have received insufficient analysis.[11] Early attempts to quantify national FDI restrictions have been limited to simply counting the number of policies that undermine FDI, without weighing the relative importance of the individual policies.[12] Recognizing that service sectors are more restricted than primary and manufacturing sectors, other attempts at a numeric presentation of FDI restrictions have mainly relied on the General Agreement on Trade in Services.[13]

Most of the IAB Investing Across Sectors indicators deal with FDI in services. There is no international agreement on standardized reporting of policies for FDI in services, with the partial exception of schedules for the General Agreement on Trade in Services (GATS) governed by the World Trade Organization (WTO). But GATS schedules are a weak guide to FDI policies in most countries because they generally underestimate how much countries have opened up services to FDI.

GATS commitments are made in the form of "positive" lists representing official commitments to open markets, in contrast to "negative" lists of exceptions to liberalization. Under GATS, the absence of a positive commitment does not necessarily imply a restriction. To retain policy flexibility, a country may simply have chosen not to list the sector in its schedule. Alternatively, if the sector is restricted, GATS may be silent on the nature of the restriction—creating ambiguity about the country's actual policies.

Furthermore, current GATS schedules date from about 2000 and may not capture more recent country-level changes. Thus country policies and practices are typically more open than what countries commit to in international agreements like GATS. For example, India has committed to allowing 51% foreign equity ownership in software, construction, and tourism under its GATS commitments. But in national law and practice, it permits 100%. In telecommunications India's GATS commitment is 25%, but in national law and practice it is 74% or more. Most tellingly, while India has not even listed commitments in transport, the sector is not closed. Indeed, India allows 100% foreign ownership in road and maritime transport.

The Investing Across Sectors indicators provide an up-to-date and accurate picture of a country's equity restrictions because they measure the present state of the laws and policies, rather than the country's commitment to liberalize, now or at some point in the future. The indicators reflect de jure policies on FDI applicable to all countries in a non-discriminatory manner.

this information is incomplete, it was not used in the construction of the indicators. The indicators also do not measure the ability of foreign companies to bid on concession contracts.

The indicators focus on restrictions captured in countries' statutes, and not on commitments to open sectors to FDI captured in international investment agreements (such as bilateral investment treaties or free trade agreements) or WTO commitments (box 7.3).

Starting a Foreign Business

The process for establishing a foreign-owned subsidiary may differ by city, province, or region within countries—especially large or federal countries. The Starting a Foreign Business indicators assume that the establishment process occurs in the country's largest business city and do not explore possible variations in other parts of the country.

Because the case study stipulates that a subsidiary will be established as a limited liability companies (LLC), the Starting a Foreign Business indicators do not measure the number of procedures required to establish other type of a business (such as corporation or partnership). The indicators also do not consider other types of foreign investment projects (such as joint ventures, licensing agreements, or establishment of branch offices), which are often treated differently—both by law and in practice—than foreign subsidiaries.

The case study also stipulates that the foreign subsidiary will be operating a manufacturing facility and engage in international trade (importing some production inputs and exporting some manufactured goods). Thus the indicators consider obtaining a trade license a required procedure for the start-up process.

Because the foreign company is assumed not to be applying for special benefits or privileges from host countries (such as extraordinary tax holidays, breaks, or exemptions; or customs duty exemptions) apart from automatic investment incentives, procedures that are only required to obtain special benefits are not considered essential to the start-up process.

The indicators also do not cover the following types of licenses:

- Sector-specific licenses (such as exploration or mining permits).
- Permits for international and domestic (including municipal) health, food safety, and product and labor standards and regulations.
- Work and residency permits for foreign employees, though these play an important role in the start-up a foreign-owned subsidiary.
- Government reviews of foreign acquisitions in sensitive and strategic sectors. Such reviews are often conducted for reasons of national, economic, and trademark security and protection.

Accessing Industrial Land

The process for accessing industrial land may differ by city, province, or region within countries—especially large or federal countries. The indicators assume that the process of leasing land occurs in the country's largest business city and they do not explore possible variations in other parts of the country.

The Accessing Industrial Land indicators do not cover:

- The ease of acquiring agricultural land by foreign individuals and companies. Many countries there may have additional restrictions for foreign investment in agricultural land (as in the European Union and the United States). Due to the sensitive nature of the topic and its potential negative consequences for communal land holders in rural areas, it was deliberately excluded.
- The time and procedural steps involved in purchasing private or public land, because purchasing land is not possible in some of the economies surveyed.
- The amount of land (public or private) registered in land or property registration systems, and the quality of this information.
- Aspects of the functionality of land registries and cadastres.
- The proportion of land held privately rather than publicly.
- The ease of acquiring, securing, and using land by individuals—domestic or foreign.
- The ease of acquiring land for specialized purposes such as developing residential real estate, renting office space, and buying or leasing land in special economic zones or industrial parks.
- The amount of land available for investment in or near the country's largest business city. Many large urban centers have limited industrial land available for investment, but this is not measured by the indicators.
- Acquisition of land along a country's borders or coastlines.
- The ease of developing land, including factors such as land privatization, land use planning, location permits, construction permits, rezoning applications, utility connections, and sector-specific regulations.
- The quality and effectiveness of complementary financial and legal institutions (such as credit bureaus and courts).
- Land and property tax regimes for foreign companies and investors.
- The cost of acquiring land (through lease or purchase).
- Environmental and social protections for host countries, beyond what is measured by the Ease of leasing land indicators.

The Accessing Industrial Land indicators do not encourage governments to promote efficient land 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 in the indicators, major limitations remain. As noted, the indicators do not highlight issues related to environmental and social protections for host countries, though the IAB survey did examine these in the context of leasing land. In most countries environmental and social impact assessments are not conducted when a foreign company leases or buys land, but instead when it intends to construct on it or to begin operations in a sector sensitive to environmental and social concerns.

When interpreting and using the Accessing Industrial Land 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 host countries' citizens and environments. The indicators (like many other data sets) should not be considered in isolation, but in conjunction with other indicators and reports—such as the Land Governance Assessment Framework (LGAF)[14]—that reflect a country's other needs, circumstances, and socioeconomic development.

Arbitrating Commercial Disputes

The methodology for the Arbitrating Commercial Disputes indicators is primarily limited to analyzing objective and verifiable data, such as the legal framework and most common practices in each country. The survey used a methodology consisting mainly of yes or no questions about whether certain laws or regulations exist in the country. It contained few perception-based questions. Thus coverage of actual practice is limited, given the survey methodology and the nature of arbitration, which is private and confidential.

There is no such thing as a "one size fits all" arbitration regime. But by asking standardized questions in the survey, the IAB project aims to identify good practices that can help countries benchmark the strength of their arbitration regimes.

Many countries that have recently adopted arbitration statutes (such as Afghanistan and the Solomon Islands) have little or no experience with international arbitration. This makes it hard to compare them with countries where arbitration is a well-established mechanism for resolving commercial disputes. Countries with little or no experience are excluded from some of the analysis on court assistance and enforcement.

The indicators do not cover:

- Evaluation of arbitration clauses in bilateral investment treaties, investment chapters of free trade agreements, investment treaty arbitrations, and enforcement of arbitration awards by the International Centre for Settlement of Investment Disputes (ICSID).[15]
- Levels of awareness and acceptance of arbitration practices by countries' legal and business communities.
- Levels of training of countries' arbitration practitioners and judges.
- Effectiveness of arbitral institutions.
- Extent to which arbitration is preferred over other dispute resolution tools in each country.
- Effectiveness of commercial litigation (which is already measured by the World Bank Group's *Doing Business* enforcing contracts indicator).[16]

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 relative to actual policies and business realities. The specific contexts of each economy must be considered when interpreting the indicators and their implications for that country's policies and investment climate.

Detailed information about the methodology, case study assumptions, and construction for the individual indicators associated with the 4 topics is available online at http://www.investingacrossborders.org.

ENDNOTES

1 The methodology of the Doing Business project can be viewed online at http://www.doingbusiness.org.

2 More detailed statistics on the number of respondents are available on IAB's Web site.

3 The group of pilot countries comprised Argentina, Austria, Bangladesh, Cameroon, Canada, Chile, China, Colombia, Egypt, Ethiopia, Ghana, Madagascar, Mozambique, Nicaragua, Nigeria, Peru, Russian Federation, Serbia, Singapore, the United States, República Bolivariana de Venezuela, Vietnam, and the Republic of Yemen.

4 The group of countries were data was collected through face-to-face interviews comprised Afghanistan, Angola, Azerbaijan, Bangladesh, Burkina Faso, Cambodia, Côte d'Ivoire, Haiti, Kenya, Liberia, Mali, Montenegro, Papua New Guinea, Rwanda, Senegal, the Solomon Islands, South Africa, and Sudan.

5 de Soto (1989).

6 Ibid.

7 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.

8 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*.

9 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.

10 The de facto indicators do 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.

11 Christiansen (2004).

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

13 Pacific Economic Cooperation Council (1995).

14 Burns and Deininger (2009).

15 Countries have different numbers of bilateral investment treaties, and even the same treaty can have differences across countries in their substantive and dispute resolution clauses. Thus the IAB methodology is not suitable to measure the quality of countries' frameworks for bilateral investment treaties.

16 World Bank, Doing Business, Enforcing Contracts (Washington, D.C.

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Profiles of Economies

Afghanistan

South Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Afghanistan is among the countries with least overt statutory restrictions on foreign ownership as measured by the Investing Across Sectors indicators. Among the 33 industry sectors covered by the indicators no such restrictions were identified. The country is an interesting example of the fact that the absence of foreign equity ownership restrictions across sectors is a necessary, but not sufficient condition for attracting FDI. Several determinants are at play simultaneously, including market size, quality of infrastructure, political stability, economic growth potential, with openness to foreign equity ownership being only one among those factors.
Mining, oil and gas	100.0	88.0	92.0	
Agriculture and forestry	100.0	90.0	95.9	
Light manufacturing	100.0	96.3	96.6	
Telecommunications	100.0	94.8	88.0	
Electricity	100.0	94.3	87.6	
Banking	100.0	87.2	91.0	
Insurance	100.0	75.4	91.2	
Transportation	100.0	79.8	78.5	
Media	100.0	68.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	96.7	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	7	39	42	It takes 4 procedures and 7 days to start a foreign-owned limited liability company (LLC) in Afghanistan (Kabul). This is among the shortest processes in South Asia and the IAB countries globally. A foreign company establishing a subsidiary in Afghanistan will need to authenticate the parent company's documents abroad. Investments of more than $3,000,000 must go through the Afghanistan Investment Support Agency (AISA). AISA issues the business license and the tax identification number. Companies in Afghanistan are free to open and maintain a bank account in foreign currency. There is no minimum capital requirement for foreign or domestic companies.
Procedures (number)	4	9	10	
Ease of establishment index (0 = min, 100 = max)	68.4	62.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	73.3	87.5	82.1	The process of acquiring land in Afghanistan is unpredictable. Foreign companies seeking to access land have the option to lease privately or publicly held land. It is difficult to determine from which authority one must seek approval to lease public land. Depending on the interests involved, one might need to seek approval from the president, minister, or head of a department. All land transactions must be registered with the courts, but only a fraction of transactions are in fact registered. This creates insecurity regarding the status of land. There are, however, no legal restrictions on the lessee's right to subdivide, sublease, and mortgage the leased land. This is determined by the lease contract between the relevant parties. In Kabul, there are no formal institutions that provide coherent land-related information. The information, if it exists, is scattered among various municipal offices, ministries, and courts.
Strength of ownership rights index (0 = min, 100 = max)	N/A	93.8	92.2	
Access to land information index (0 = min, 100 = max)	9.1	20.1	41.3	
Availability of land information index (0 = min, 100 = max)	0.0	59.7	70.6	
Time to lease private land (days)	218	99	61	
Time to lease public land (days)	301	205	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	68.1	86.4	85.2	Alternative dispute resolution (ADR) in Afghanistan is governed by the Afghan Commercial Arbitration Law (2007) and the Commercial Mediation Law (2007), which invalidate the Commercial Mediation Law of 1995. According to both laws, the Ministry of Commerce and Industry (MOCI) may propose regulations and enact and approve rules and procedures for better implementation of the laws. It is unclear, however, if any such rules and procedures have been enacted. Currently there is no active ADR institution in Afghanistan and ADR is not a common method of dispute resolution. Legal counsel in Afghanistan were therefore unable to provide detailed answers to survey questions on the commercial arbitration regime. The country has ratified the New York Convention and the ICSID Convention.
Ease of process index (0 = min, 100 = max)	0.0	55.0	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	0.0	36.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Albania

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The Albanian legal system grants foreign and domestic investors equal rights of ownership of local companies, following the principle of "national treatment." Of the 33 sectors covered by the Investing Across Sectors indicators, 30 are fully open to foreign equity ownership. The only exceptions are the domestic and international air transportation and the television broadcasting sectors. Foreign ownership of airline companies is limited to a maximum share of 49% for both domestic and international air transportation. These equity restrictions, however, apply only to investors from countries outside of the Common European Aviation Zone. The Law on Public and Private Radio and Television in the Republic of Albania (No. 8410/1998) stipulates that no natural person or legal entity, foreign or Albanian, may own more than 40% of the share capital of a television company.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	70.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	7	22	42	It takes 7 procedures and 7 days to establish a foreign-owned limited liability company (LLC) in Albania (Tirana). This is faster than both the IAB regional average for Eastern Europe and Central Asia and the IAB global average. A foreign company is not required to seek investment approval, although, if it wants to engage in international trade, it must register with the customs system in order to import goods. Registration with the National Registration Center (NRC) takes only a day and the required documents are available online. Entrepreneurs can complete company, tax, social insurance, health insurance, and labor directorate registrations using a single application procedure with the NRC. Any company in Albania may freely open and maintain bank accounts in foreign currency. Usually, Albanian banks allow accounts in ALL, Euros, and $. Specific banks may also permit other currencies (based on market request). The minimum capital requirement for domestic and foreign LLCs has been significantly reduced, by Law No. 9901, to ALL 100 (~$1).
Procedures (number)	7	8	10	
Ease of establishment index (0 = min, 100 = max)	84.2	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	80.7	82.9	82.1	In Albania, it is possible to lease or own both privately and publicly held land. The process of leasing public land, though legally possible, is difficult in practice. Public land can only be leased through a competitive bid and requires several administrative procedures. Lease contracts are limited to 99 years for agricultural land and 30 years for other land. Only lease agreements for a period of more than 9 years require registration with the relevant office. The lease contract can offer the lessee the right to sublease and/or subdivide the land as well as the right to mortgage the land or use it as collateral. There are no restrictions on the amount of land that may be leased. Key land-related challenges that investors are likely to face are the result of unresolved conflicting claims rendering title documents insecure. One should exercise due diligence when seeking to acquire land in Tirana.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	47.4	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	78.9	70.6	
Time to lease private land (days)	36	43	61	
Time to lease public land (days)	129	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.0	82.5	85.2	In 2003, Albania enacted legislation on mediation based on the UNCITRAL Model. The Albanian Civil Procedure Code (1996) has a short section on domestic arbitration and notes that international arbitration will be regulated by a special law that has not yet been adopted. The section on domestic arbitration applies only to arbitration proceedings conducted in Albania, in which all the parties are Albanian residents. The law allows for all property claims or other rights related to property to be resolved through arbitration. The arbitration agreement must be concluded in writing. An agreement reached through email communications between the parties is not considered valid. Based on the definition of domestic arbitration in the Code of Civil Procedure, it is unclear whether 2 Albanian entities residing in Albania may agree to arbitrate disputes outside of Albania. Local courts might refuse to enforce an award resulting from such arbitration. It is also unclear whether the provisions for domestic arbitration apply in cases of international arbitration taking place in Albania. The law does not specify which court has jurisdiction to oversee arbitration proceedings in cases of enforcing an arbitration agreement, assisting the arbitrators with orders for provisional measures, and taking evidence. Arbitration proceedings in Albania must be conducted in Albanian. Only lawyers licensed to practice in Albania may represent parties in domestic arbitration. The district court of first instance has jurisdiction to enforce awards made in Albania, which can take 14 weeks on average for domestic awards and 15 weeks for foreign awards from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	40.7	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	68.5	64.4	57.9	

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Angola

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				With statutory ownership restrictions on 9 of the 33 sectors covered by the Investing Across Sectors indicators, Angola limits foreign equity participation in its economy more so than most countries in Sub-Saharan Africa included in the report. Aside from the oil and gas sectors, where foreign ownership is limited to 49%, restrictions in Angola are found primarily in the service sectors. In particular, private capital participation (domestic or foreign) in the fixed-line telecommunications infrastructure sector is prohibited. In the financial services sectors, foreign investment in insurance companies is limited to 50% and in banks to 10%. Foreign capital participation in excess of these limits is possible with the approval of the Council of Ministers or the central bank. In the publishing, TV broadcasting, and newspaper media sectors, foreign ownership is limited to a 30% share.
Mining, oil and gas	74.5	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	82.5	98.6	96.6	
Telecommunications	75.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	10.0	84.7	91.0	
Insurance	50.0	87.3	91.2	
Transportation	80.0	86.6	78.5	
Media	30.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	263	48	42	It takes 12 procedures and 263 days to establish a foreign-owned limited liability company (LLC) in Luanda, Angola. This is longer than the IAB regional and global averages. LLCs (Sociedades por Quota) must have at least 2 shareholders. The 4 additional procedures required exclusively of foreign companies add 195 days to the establishment process. A foreign company must translate the parent company's documents into Portuguese and certify them in the country of origin. In addition, a foreign company must obtain an investment project approval from the National Agency for Private Investment (ANIP) and the Council of Ministers (Conselho de Ministros), which takes on average 180 days. If the project has an initial capital investment of less than $5,000,000, it is submitted to ANIP for simplified approval proceedings. Foreign investments under $100,000 do not require ANIP approval. The foreign company, if it wants to engage in international trade, must also obtain a trade license from the Ministry of Commerce, which takes on average 14 days. A certificate of capital importation is also required and is issued after the investment project is approved by the Angolan National Bank (Banco Nacional de Angola—BNA). Foreign companies are legally required to contract local accountants and auditors as well as legal counsel. Foreign companies must open a foreign currency bank account in a local bank domiciled in Angola. The minimum capital requirement for establishing an LLC in Angola is AOA 85,719 (~$1,000).
Procedures (number)	12	10	10	
Ease of establishment index (0 = min, 100 = max)	39.5	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	87.9	76.6	82.1	According to Article 12 of the Constitutional Law of Angola, all lands are originally property of the Angolan state. Private land is not common, although it does exist. The state grants lease rights to investors, but the state usually retains ownership of the land. Only domestic companies can purchase publicly owned land. While it is legally possible for a company to own or lease private land, the more common option to lease public land. The transfer of land to another party is possible, but depends on authorization from the relevant official. There are time limits and certain conditions that limit the possibility of transfer. For example, the holder must use leased land for a minimum of 5 years. The intention is to thwart land speculation. There are certain limits on the amount of land that may be leased. For land greater than 2 hectares in urban areas and 5 hectares in rural ones, a ministerial grant may be required.
Strength of ownership rights index (0 = min, 100 = max)	75.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	36.8	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	60.0	58.5	70.6	
Time to lease private land (days)	40	72	61	
Time to lease public land (days)	129	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	74.9	82.4	85.2	Arbitration Law No. 16/03 (2003) governs domestic and international arbitrations in Angola. It is based on the UNCITRAL Model Law. Domestic arbitrations are extremely rare, however, and it is therefore difficult to assess how effectively the law is implemented. Under the law, private commercial disputes can be arbitrated. Administrative contracts involving the state acting in its public capacity, however, are subject to greater restrictions. Parties can appoint arbitrators of any nationality or professional qualifications, although only lawyers registered in Angola may represent parties in arbitration proceedings taking place in Luanda. Parties may choose the language of international arbitration proceedings, but domestic arbitrations must be conducted in Portuguese. There are no arbitral institutions in Luanda. This means that parties may appoint a foreign arbitral institution. The law provides for courts to assist arbitral tribunals, but it is difficult to assess the effectiveness of such assistance, given the lack of practice. Similarly, it is difficult to estimate the time needed to enforce arbitration awards, due to the lack of practice for the enforcement of arbitration awards rendered in Luanda or in a foreign country. Based on the time limits set out in the law, it should take 10 weeks to enforce an award rendered in Angola from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	57.3	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	59.9	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Argentina

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 29 are fully open to foreign equity ownership in Argentina. The only exceptions are the air transportation and media industries. According to the Aeronautic Code (Law No. 17.285), foreign capital participation in companies providing commercial passengers transportation, on both domestic and international routes, is limited to 49%. In addition, the company must be incorporated according to Argentine laws and must be domiciled in Buenos Aires. For the media sectors, Law No. 25.750 establishes a limit on foreign ownership of newspapers, journals, magazines, and publishing companies, as well as on television and radio companies. According to Article 2 of the law, foreign companies are allowed to hold up to a 30% stake in the capital and voting rights of such companies.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	79.6	80.8	78.5	
Media	30.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	50	74	42	It takes 18 procedures and 50 days to establish a foreign-owned limited liability company (LLC) that wants to engage in international trade, in Argentina (Buenos Aires). This is longer than the IAB global average, but shorter than the IAB regional average for Latin America and the Caribbean. Full foreign equity ownership is not restricted. However, Argentine law requires at least 2 equity holders, with the minority equity holder maintaining at least a 5% interest. The Argentine Constitution and Foreign Investment Act stipulate that foreigners may invest in Argentina without prior approval and under the same conditions as local investors. In addition to the procedures required of a domestic company, a foreign company establishing itself in Argentina must legalize the parent company's documents, register the incoming foreign capital with the Central Bank, and obtain a trading license. Compliance with Central Bank regulations facilitates the repatriation of funds, according to Argentina's Foreign Exchange Market regulation. Companies in Argentina may open only a savings account in foreign currency. There is a minimum capital requirement of ARS 12,000 (~$3,100), 25% of which must be paid in at incorporation.
Procedures (number)	18	14	10	
Ease of establishment index (0 = min, 100 = max)	65.0	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	79.3	78.2	82.1	Foreign companies seeking to access land in Argentina have the option to lease or buy land from private or public owners. Publicly owned land is always sold through public auction. Registration of leases is not mandatory for either privately or publicly owned land. There are, however, certain exceptions for the lease of agricultural land. There is no statutory maximum duration for the lease of land. The steps involved in leasing public land are similar to those for leasing land from a private owner, but the lease of public land requires governmental approval by provincial decree. The time that it takes to obtain such a decree varies. Although an environmental impact assessment is not legally required to lease land, such an assessment is required to obtain a license to operate an industrial plant. Hence, it is usually advisable to perform an environmental due diligence prior to the lease or purchase of land destined to hold industrial facilities.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	44.4	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	73.0	70.6	
Time to lease private land (days)	48	62	61	
Time to lease public land (days)	112	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	63.5	87.5	85.2	Argentina does not have a specific law governing arbitration, but it has adopted a mediation law (Law No. 24.573/1995), which makes mediation mandatory prior to litigation. Some arbitration provisions are scattered throughout the Civil Code, the National Code of Civil and Commercial Procedure, the Commercial Code, and 3 other laws. None of these laws contains definitions of domestic or international arbitration; nor do they regulate the severability of the arbitration agreement from the main contract nor require the confidentiality of arbitration or the impartiality of arbitrators. The Code of Civil and Commercial Procedure states that when parties have not agreed on the applicable procedural rules, the arbitration must be conducted under the same procedural rules as those that govern cases litigated in court. The following methods of concluding an arbitration agreement are not binding under Argentine law: electronic communication, fax, oral agreement, and conduct on the part of one party. Generally, all commercial matters are arbitrable. There are no legal restrictions on the identity and professional qualifications of arbitrators. Parties must be represented in arbitration proceedings in Argentina by attorneys who are licensed to practice locally. The grounds for annulment of arbitration awards are limited to substantial procedural violations, an ultra petita award (award outside the scope of the arbitration agreement), an award rendered after the agreed-upon time limit, and a public order violation that is not yet settled by jurisprudence when related to the merits of the award. On average, it takes around 21 weeks to enforce an arbitration award rendered in Argentina, 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.
Ease of process index (0 = min, 100 = max)	72.2	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	55.1	51.7	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Armenia

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				In Armenia, overt statutory ownership restrictions on foreign capital, as measured by the Investing Across Sectors indicators, exist in a number of key sectors of the economy. Foreign ownership of air transportation companies (domestic and international), for example, is limited to a maximum of 49%. In addition to these restrictions, which can be found in many countries in Eastern Europe and Central Asia, Armenian laws also limit foreign ownership in the airport operation and railway transportation sectors to 40%. These industries, as well as the electricity transmission sector, are, furthermore, characterized by monopolistic market structures, further impeding foreign investment. Restrictions also exist in selected primary sectors such as the forestry industry, which is closed to foreign investment, and in the oil and gas sector, where foreign capital participation is limited to a maximum of 49%.
Mining, oil and gas	74.5	96.2	92.0	
Agriculture and forestry	50.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	55.6	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	18	22	42	It takes 8 procedures and 18 days to establish a foreign-owned limited liability company (LLC) in Armenia (Yerevan), a process in line with the regional average for IAB countries in Eastern Europe and Central Asia. A foreign company is not required to seek an investment approval, although, if it wants to engage in international trade, it must register with the customs authority in order to import goods; this can take 2 days. Registration with the State Registrar must be either approved or denied within 5 working days. According to the Law on State Registry of Enterprises, a registration may be refused only if the legal entity's founding documents are either incomplete or inaccurate. There are no electronic services for company registration. Companies in Armenia are free to open and maintain bank accounts in foreign currency and there is no minimum capital requirement for foreign or domestic companies.
Procedures (number)	8	8	10	
Ease of establishment index (0 = min, 100 = max)	78.9	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	92.8	82.9	82.1	Foreign companies seeking to access land in Armenia have the option to lease or buy land from both private and public owners. The process of leasing private land is streamlined and extremely fast compared to the regional or global average. Leasing of publicly held land takes place through a public tender process, after which the successful party enters into direct negotiations with the relevant public body. Land can be leased for up to 99 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. Yerevan, Armenia's capital, has both a land registry and a cadastre located in the same agency, and they are linked and coordinated to share data. There is, however, no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	73.7	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	95.0	78.9	70.6	
Time to lease private land (days)	10	43	61	
Time to lease public land (days)	57	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	89.9	82.5	85.2	Armenia recently adopted a Law on Commercial Arbitration (2006), which is based on the UNCITRAL Model Law but applies to both domestic and international arbitration. The Armenian law stipulates that local courts must enforce arbitration awards that are made in Armenia and in the states that are signatories to the 1958 New York Convention, on the basis of reciprocity (Art. 35). All commercial disputes are arbitrable, including banking, investment, financing and insurance disputes, exploitation, and concession agreements. The law, however, does not cover intra-company and patent or trademark disputes. Parties are free to appoint arbitrators of any nationality or professional qualifications, and may choose foreign lawyers to represent them in proceedings in Armenia. The law sets a default rule of confidentiality of the proceedings. It takes less than 30 days to obtain an arbitration award in the Arbitration Court of the Armenian Chamber of Commerce. The arbitration award must be confirmed by an Armenian court, which issues a writ of execution (Art. 35). The confirmation hearings are conducted according to the regular rules of civil procedure and scheduled like any other court case, depending on the caseload of the particular court. On average, it takes around 58 weeks to enforce an arbitration award rendered in Armenia, from filing an application to a writ of execution attaching assets (assuming there is no appeal). Arbitration is still new in Armenia and practice is scarce.
Ease of process index (0 = min, 100 = max)	82.3	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	27.3	64.4	57.9	

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Austria

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The Austrian legal system does not have any general restrictions on foreign ownership of local companies. Overall, the country offers a welcoming environment to foreign investors, with foreign equity ownership restrictions in only a limited number of the sectors covered by the Investing Across Sectors indicators. As in all other European Union member countries, foreign ownership in the air transportation sector is limited to 49% for investors from outside of the European Economic Area (EEA). The Act on Ownership in Austrian Electricity Industry stipulates that a minimum of 50% (in some cases 51%) of the shares (and, in particular, of the voting rights) in former government-owned companies in the Austrian electricity industry (generation, transmission, and distribution) must be held by the Austrian republic, states, communities, or publicly owned enterprises. Foreign equity ownership in newly established companies is not limited. Foreign capital participation in Austrian television broadcasting companies is limited to a maximum of 49% by the Austrian Private Television Act.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	70.9	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	74.5	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	30	21	42	The process of establishing a foreign-owned subsidiary in Austria (Vienna) is slower than the IAB average for high-income OECD countries, but faster than the IAB global average. The 2 additional procedures required exclusively of foreign companies add 2 days to the process. A foreign enterprise must notarize the documents of the parent company abroad. In addition, foreign direct investments (FDI) must be reported to the Austrian National Bank for statistical purposes. This notification takes only 1 day. No investment approval is required. Companies can download business registration documents and submit their applications online. They are also free to open and maintain bank accounts in foreign currency. Share capital, though, can only be denominated in euros (€). The minimum nominal share capital of a limited liability company in Austria amounts to € 35,000, half of which (€ 17,500) must be paid in cash upon formation of the company. In cases where less than half of the minimum statutory capital is paid in cash, an auditor is required to certify that the contribution in kind equals the value of half of the minimum capital.
Procedures (number)	10	9	10	
Ease of establishment index (0 = min, 100 = max)	73.7	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	92.2	82.1	In general, it is quite easy for a foreign company to acquire land in Austria. Such companies have the option to lease or buy land from both private and public owners. Leasing publicly owned land is not substantially different from leasing privately owned land, although public authorities appear to be slower in their process. The process of leasing private land is extremely efficient compared to the regional and global average. Registration of leases is uncommon in Vienna, as it is not required by law. If the lease agreement is filed with the land registry, it is publicly available in the register of deeds. Lease contracts can be of unlimited duration and can offer the lessee the right to subdivide, sublease, mortgage the leased land, or use it as collateral. There are no restrictions on the amount of land that may be leased. Austria is one of the few countries that have a functioning land information system (LIS) and geographic information system (GIS).
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	42.1	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	84.2	70.6	
Time to lease private land (days)	33	50	61	
Time to lease public land (days)	79	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	94.2	85.2	The original rules regulating arbitration in Austria are found in sections 577 to 618 of the Austrian Code of Civil Procedure. These do not distinguish between domestic and international arbitrations, and contain specific provisions on consumer and labor disputes. The Arbitration Act (2006) amends these provisions, and is based closely on the UNCITRAL Model Law. All pecuniary disputes are arbitrable, although there may be restrictions on intra-company disputes depending on the facts of the case. Specialized legislation may also exempt other matters from arbitration. Arbitration agreements cannot be concluded orally. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. Arbitration is not available online in Austria, although the parties are free to use any arbitral institution of their choice. The International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (VIAC) administers international arbitrations. Austrian courts are supportive of arbitration. The courts are able to provide interim injunctions during arbitration proceedings. Because this has only been permitted since 2006, there has been little practice illustrating their effectiveness. Applications for enforcement of arbitration awards are made in the district court. On average, it takes around 9 weeks to enforce an arbitration award rendered in Austria, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 14 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	83.7	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	83.0	77.6	57.9	

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Azerbaijan

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Azerbaijan presents above average restrictions on foreign equity ownership compared to the countries in the Eastern Europe and Central Asia region included in the report. According to its laws, the state must retain a controlling stake in companies operating in the mining or oil and gas sectors. Thus, foreign (as well as domestic) capital participation is limited to a maximum of 49%. Foreign ownership in the media sectors is strictly limited as well. Unless any relevant international agreement with Azerbaijan should provide otherwise, foreign shareholding in media companies is limited to 33% for newspaper publishers and is prohibited for TV broadcasting companies. Currently, there are no such international agreements in place. While restrictions on foreign equity ownership in the financial services sectors (banking and insurance) have already been abolished, there are still sector-wide limits for total foreign capital participation.
Mining, oil and gas	49.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	16.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	11	22	42	It takes 7 procedures and 11 days to establish a foreign-owned limited liability company (LLC) in Azerbaijan. This is faster than the regional IAB average for Eastern Europe and Central Asia and much faster than the IAB global average. There are no additional procedures required of a foreign-owned company establishing a subsidiary in Baku, Azerbaijan's capital, other than the requirement to provide an apostille or notarized and translated copy of the incorporation documents and charter of the parent company abroad. A foreign-owned company does not need to get an investment approval to establish itself in Azerbaijan. The company registration is done at a one-stop shop that also serves for registration for VAT. The Ministry of Taxes issues the business registration within 3 business days and the VAT number within 5 days of application. In order to open a bank account (in local or foreign currency), the company submits a Ministry of Taxes registration form to the appropriate bank. The whole process can be done online and usually takes only 2–3 days. There is no minimal capital requirement for LLCs, although the capital must be fully paid in prior to the state registration.
Procedures (number)	7	8	10	
Ease of establishment index (0 = min, 100 = max)	71.6	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.5	82.9	82.1	In Azerbaijan, most foreign companies prefer to lease public land. The lease of public land is subject to the approval of the relevant governing authority. Other available options include leasing private land and purchasing privately or publicly held land. The purchase of public land is complex and time-consuming. It is legally possible to purchase private land, but not common in practice. Lease contracts can be held for a maximum of 99 years. Lease contracts are commonly for 30 years and offer the lessee the right to subdivide, sublease, or mortgage the leased land. There are no restrictions on the amount of land that may be leased. Baku has both a land registry and a cadastre, located in different agencies. They are, however, linked and coordinated to share data. There is no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	42.1	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	78.9	70.6	
Time to lease private land (days)	58	43	61	
Time to lease public land (days)	105	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	82.4	82.5	85.2	The Azerbaijani Law on International Arbitration (1999) applies only to arbitrations with an international element (the place of business of one of the parties must be abroad or the subject matter of the dispute must be related to another country). The Civil Procedure Code (2000) stipulates that domestic arbitration be regulated by law. No such law was ever issued, however. The following disputes are not arbitrable: those involving immovable property, patents or trademarks, claims against carriers in shipping agreements, and intra-company and shareholder disputes. Arbitration agreements must be concluded in writing. An agreement reached through email communication between the parties is not considered valid. The law does not provide for confidentiality of the arbitration proceedings. The Azerbaijan International Commercial Arbitration Court was established pursuant to the arbitration law, but its caseload is low. Under the law, the Supreme Court of the Republic of Azerbaijan is the only body that rules on the recognition and enforcement of arbitration awards and its decision is final. However, under the Civil Procedure Code, Supreme Court decisions can be further appealed to the Plenum of the Supreme Court. So, theoretically, the Supreme Court decision on recognition can be further appealed, making the enforcement process longer. On average, it takes around 51 weeks to enforce an arbitration award rendered in Azerbaijan, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 45 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	53.6	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	37.0	64.4	57.9	

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Bangladesh

South Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Bangladesh is one of the most open countries to foreign equity ownership, as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to foreign capital participation. In practice certain strategic sectors, including port and airport operation, railway freight transportation, and electricity transmission and distribution are dominated by publicly owned enterprises operating under monopolistic market structures, representing obstacles for foreign investors. Furthermore, registration of a foreign investment project with the Board of Investment (BOI) is currently only possible for investors in the manufacturing sectors. Investments in the service sectors do not enjoy the benefits associated with this registration (for example free repatriation of profits).
Mining, oil and gas	100.0	88.0	92.0	
Agriculture and forestry	100.0	90.0	95.9	
Light manufacturing	100.0	96.3	96.6	
Telecommunications	100.0	94.8	88.0	
Electricity	100.0	94.3	87.6	
Banking	100.0	87.2	91.0	
Insurance	100.0	75.4	91.2	
Transportation	100.0	79.8	78.5	
Media	100.0	68.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	96.7	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	55	39	42	Two shareholders are required to form a limited liability company (or private limited company) in Dhaka. It takes approximately 55 days to set up a foreign-owned subsidiary engaging in international trade in Bangladesh, longer than the IAB regional and global averages. Only 1 procedure is specific to foreign-owned businesses—the authentication of the parent company's documentation abroad. This authentication is required to file as a shareholder with the Registrar of Joint Stock Companies and Firms (RJSC) prior to incorporation. Investment approval is not a mandatory prerequisite, although it is helpful to register with BOI in order to have access to the different facilities and institutional support provided by the government to registered investors. Permission to open a foreign-exchange bank account may be granted by Bangladesh Bank (Central Bank) on a case-by-case basis subject to adequate justification and compliance with the Bank's foreign-exchange transaction guidelines. There is no minimum paid-in capital requirement for setting up a foreign LLC. However, the BOI will not issue a work permit for companies investing less than $50,000.
Procedures (number)	9	9	10	
Ease of establishment index (0 = min, 100 = max)	55.3	62.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	87.5	82.1	Foreign-owned companies seeking to access land in Bangladesh have the option to lease from both private and public owners. It is not possible, however, for a foreign company to buy publicly held land, unlike private land. Before leasing land in Dhaka, foreign companies may require approval from BOI and RJSC. A foreign-owned company may not buy agricultural land. Leases of publicly owned land may be granted for up to 99 years. Leases for privately owned land can be of unlimited duration. Lease contracts can offer the lessee the right to subdivide, sublease, or mortgage the leased land, or use it as collateral. There are no restrictions on the amount of land that may be leased. Land-related information may be found in the registry and cadastre, which are located in the same agency, but are not linked or coordinated to share data. Currently there is no land information system (LIS) or geographic information system (GIS) in Bangladesh.
Strength of ownership rights index (0 = min, 100 = max)	100.0	93.8	92.2	
Access to land information index (0 = min, 100 = max)	26.3	20.1	41.3	
Availability of land information index (0 = min, 100 = max)	73.7	59.7	70.6	
Time to lease private land (days)	58	99	61	
Time to lease public land (days)	240	205	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.9	86.4	85.2	The Arbitration Act (2001) governs both domestic and international arbitrations in Bangladesh, although there is no statutory definition of domestic arbitration. The statute is based on the UNCITRAL Model Law, although there are a few differences. The Arbitration Act, for example, grants the high court division of the Supreme Court of Bangladesh the power to determine the jurisdiction of the arbitral tribunal in certain circumstances. Commercial matters can generally be submitted to arbitration. Arbitration agreements must be in writing. The parties are free to select arbitrators of any gender, nationality, or professional qualifications in both domestic and international arbitrations. However, foreign counsel cannot represent parties in arbitral proceedings unless they are locally licensed. There is no institution in Bangladesh that specifically administers arbitrations. Although the arbitration law is modern, in practice, the courts in Bangladesh are not yet fully supportive of the arbitration process. Furthermore, the domestic courts are overburdened, which lengthens the enforcement process. On average, it takes around 26 weeks to enforce an arbitration award in local courts, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	67.5	55.0	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	55.3	36.4	57.9	

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Belarus

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				With restrictions on foreign equity ownership in many sectors, in particular the service industries, in Belarus limits on foreign equity participation are above the average for the 20 countries covered by the Investing Across Sectors indicators in the Eastern Europe and Central Asia region. Sectors such as fixed-line telecommunications services, electricity transmission and distribution, and railway freight transportation are closed to foreign equity ownership. In several other sectors, including media and insurance, foreign ownership is limited to a less-than-50% stake. In addition, a comparatively large number of sectors are dominated by government monopolies, including, but not limited to, those mentioned above. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it difficult for foreign companies to invest. The government of Belarus has, however, announced its intent to privatize additional state-owned companies and relax some of the restrictions on the aforementioned sectors in the near future.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	75.0	96.2	88.0	
Electricity	64.3	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	49.0	94.9	91.2	
Transportation	80.0	84.0	78.5	
Media	30.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	7	22	42	It takes 7 days and 6 procedures to establish a foreign-owned limited liability company (LLC) in Belarus (Minsk), making it one of the fastest countries in the IAB sample. The certificate of state registration, for example, is typically issued within 1 working day after the necessary documents are submitted. An LLC in Belarus needs at least 2 shareholders. Unlike a domestic enterprise, a foreign LLC needs a minimum authorized capital of $20,000 (50% of which must be paid within the first year and the remainder within the following year).
Procedures (number)	6	8	10	
Ease of establishment index (0 = min, 100 = max)	78.9	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	71.4	82.9	82.1	In Minsk, Belarus, the most common option for foreign companies wishing to access land is leasing public land. Other options include leasing privately held land or buying land from private and public owners. While foreign companies are not legally prohibited from buying publicly or privately held land, in practice, this option is exercised rarely. Procedures involved in leasing land do not differ significantly for foreign-owned and domestic companies. Lease contracts are limited to 99 years. The lease contract can offer the lessee the right to sublease and/or mortgage the leased land. The right to subdivide requires a long and complex procedure and therefore is not easily available. There are no restrictions on the amount of land that may be leased. Most land-related information can be acquired from the local (territorial) agency on state registration, but this information is located in several different registries within the agency, and separate applications must be submitted, and separate fees paid, in order to obtain it.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	50.0	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	60.0	78.9	70.6	
Time to lease private land (days)	34	43	61	
Time to lease public land (days)	97	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	78.3	82.5	85.2	The Belarusian Law on the International Arbitration Court (1999) is largely based on the UNCITRAL Model Law. It regulates arbitrations taking place under the auspices of the International Arbitration Court of the Belarusian Chamber of Commerce and Industry as well as ad hoc arbitrations in Belarus. The following commercial disputes are not arbitrable: those involving immoveable property, intra-company disputes, disputes over shareholder arrangements, and disputes involving patents and trademarks. Belarus does not recognize oral arbitration agreements or those inferred through conduct. Parties are free to choose either local or foreign counsel in both domestic and international arbitrations in the country. If both companies are incorporated in Belarus they must choose Belarus as their seat of arbitration. The Supreme Commercial Court has refused to recognize awards made abroad when the parties were Belarusian, as contrary to public order. Belarus is one of the IAB countries that enforce foreign arbitration awards the fastest (6 weeks on average), with one streamlined recognition and enforcement proceeding. Arbitration between the state and foreign companies is not allowed in the following cases: concession agreements, disputes involving natural resources, and disputes involving state-owned property, including privatization and nationalization of property.
Ease of process index (0 = min, 100 = max)	79.0	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	84.9	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Bolivia

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Bolivia's restrictions on foreign equity ownership are above average among the 14 countries in the Latin America and the Caribbean region covered by the Investing Across Sectors indicators. The new Bolivian Constitution, adopted in 2009, stipulates restrictions on foreign equity ownership in a number of strategic sectors. For example, the exclusive right to develop and exploit oil and gas reserves is granted to a state-owned company, Yacimientos Petroliferos Fiscales Bolivianos (YPFB). Foreign investors can enter into joint venture agreements with YPFB, but they can only have a maximum share of 49%. Similarly, foreign capital participation in the mining industry is limited to a less-than-50% stake. Overt statutory ownership restrictions exist in the telecommunications sector as well—where foreign ownership is limited to 49% for fixed-line and wireless/mobile infrastructure and services—and in the electricity sector, which has a limit of 49% in electricity generation, transmission, and distribution. With the adoption of the new Constitution, additional legislation imposing restrictions on FDI is expected.
Mining, oil and gas	49.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	49.0	94.5	88.0	
Electricity	49.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	89.8	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	54	74	42	It takes 18 procedures and 54 days to establish a foreign-owned limited liability company (LLC) in Bolivia (La Paz). This is longer than the IAB global average, but shorter than the IAB regional average for Latin America and the Caribbean. Full foreign ownership is allowed in Bolivia. However, LLCs must have a minimum of 2 shareholders. Foreign investors do not need an investment approval in Bolivia. In addition to the procedures required of a domestic company, a foreign company establishing a subsidiary in Bolivia must legalize the parent company's documents abroad, register the incoming foreign capital with the Central Bank, and if it wants to engage in international trade, register with the customs office as a frequent importer. A duly registered company in Bolivia is free to open and maintain a bank account in foreign currency. There is no minimum capital requirement for LLCs in Bolivia, although all the authorized capital must be paid in full before incorporation. In the case of a corporation (sociedad anónima), at least 50% of shares must be subscribed and at least 25% of all subscribed shares must be effectively paid in at incorporation.
Procedures (number)	18	14	10	
Ease of establishment index (0 = min, 100 = max)	63.2	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	65.0	78.2	82.1	Most foreign companies seeking to start an industrial development project in La Paz, Bolivia buy land from an existing private land owner. Leasing private land is less common. Further, the lease or purchase of public land is not possible, unless the Bolivian Congress passes specific legislation. The purchase and use of public land, therefore, is usually granted in the form of concessions, mainly for companies exploiting natural resources. Foreign investors may not acquire land within 50 kilometers of Bolivia's borders. Private leases may be entered into if the duration is less than 5 years. For greater durations, the lease is entered into as a public deed. The Civil Code stipulates that lease agreements may not exceed 10 years. A lease contract offers the lessee the right to sublease or subdivide the land, subject to the terms of the contract, but not to mortgage the lease or use it as collateral. Land-related information can be found in the land registry and cadastre, which are located in different agencies and are not linked or coordinated to share information.
Strength of ownership rights index (0 = min, 100 = max)	87.5	98.2	92.2	
Access to land information index (0 = min, 100 = max)	33.3	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	65.0	73.0	70.6	
Time to lease private land (days)	42	62	61	
Time to lease public land (days)	170	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	80.3	87.5	85.2	The Bolivian Arbitration and Conciliation Law No. 1770 (1997) is based on the UNCITRAL Model Law. Unlike the Model Law, however, it requires a judicial review of the kompetenz-kompetenz principle, among other judicial interventions, in the case of an arbitrator challenge. All commercial matters are arbitrable and the doctrine of severability of the arbitration agreement is recognized. Arbitration agreements are only valid if concluded in writing. In domestic arbitration, proceedings must be conducted in Spanish, according to the rules in the Code of Civil Procedure, which are applicable by default. This is not required for international arbitration proceedings conducted in Bolivia. There are no legal restrictions on the choice of arbitrators in domestic or international arbitrations, but they must be an odd number. The law expressly states that arbitrators must be independent and impartial and must preserve the confidentiality of the proceedings. Parties can only choose lawyers who are licensed to practice in Bolivia to represent them in arbitrations in Bolivia. The civil commercial court enforces domestic arbitration awards. Bolivian law states that decisions granting enforcement of an arbitration award are not subject to subsequent appeal. Foreign arbitral awards must undergo recognition before the Bolivian Supreme Court of Justice, after which a competent civil commercial court can issue a writ of execution. On average, it takes around 13 weeks to enforce an arbitration award rendered in Bolivia, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 45 weeks to enforce a foreign award. In 2007, Bolivia denounced the ICSID Convention. Since then, if arbitration between foreign companies and public entities is agreed upon, references to local law and submission to local arbitration institutions are included. Currently, the Bolivian executive branch only enters into domestic arbitrations.
Ease of process index (0 = min, 100 = max)	65.7	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	54.2	51.7	57.9	

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Bosnia and Herzegovina

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				According to the Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina, foreign investors are entitled to invest in any sector of the economy in the same form and under the same conditions as those defined for local residents. Thus, in practice, most business sectors in Bosnia and Herzegovina are fully open to foreign equity ownership. Notable exceptions to this general rule are select strategic sectors, such as publishing and media, where foreign ownership is restricted to 49%, and electric power transmission, which is closed to foreign investment. In practice, additional sectors are dominated by government monopolies (such as air transportation and airport operation) or characterized by oligopolistic market structures (such as telecommunications and electricity generation), making it difficult for foreign investors to engage.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	87.3	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	85.7	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	49.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	83	22	42	It takes 83 days and 14 procedures to establish a foreign-owned subsidiary that wants to engage in international trade, in Bosnia and Herzegovina (Sarajevo). A foreign investment approval from the Ministry of Foreign Trade and Economic Relations (MoFTER) is required of foreign companies and can take up to 10 days to obtain. This mandatory approval was abolished by the Law on Amendment of Law on FDI Policy at MoFTER, which was passed in 2010. While this law is still not in force, it is expected to come into force in mid-2010. Registration is not possible online and the documents required are not available for download. Bank accounts in foreign currency are allowed after submitting a customs registration number certificate. There is a minimum capital requirement of BAM 2,000 (~$1,300) for limited liability companies (LLCs). The statutory minimum amount of share capital for an LLC must be paid in before registering the company. Gradual payment of the share capital in an LLC is possible, but only for the amount exceeding the statutory minimum, provided that at least half of the share capital is paid in before submission of the application for registration.
Procedures (number)	14	8	10	
Ease of establishment index (0 = min, 100 = max)	65.8	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	75.0	82.9	82.1	Foreign companies seeking to access land in Bosnia and Herzegovina have the option to purchase either privately or publicly held land. Lease contracts can be of unlimited duration, and can offer the lessee the right to subdivide, sublease, or mortgage the leased land. The laws and regulations that govern the acquisition of land in Sarajevo are available online. There are no restrictions on the amount of land that may be leased. While most of the relevant land-related data for investors is available, in principle, it typically requires in-depth research involving different authorities and information providers. Sarajevo has a land registry and cadastre, but they are not located in the same agency nor are they linked to coordinate and share data. There is no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information at a single point of access. However, reforms are underway to provide such services.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	45.0	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	78.9	70.6	
Time to lease private land (days)	31	43	61	
Time to lease public land (days)	n/a	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	72.6	82.5	85.2	Bosnia and Herzegovina has not enacted a law on commercial arbitration. The Law on Civil Procedure (2003) contains some provisions on arbitration that are not based on the UNCITRAL Model Law. With assistance from the IFC and other international institutions, the central government enacted legislation on mediation in 2004. The mediation law is based on the UNCITRAL Model Law on International Commercial Conciliation. The Law on Civil Procedure does not contain definitions and hence does not differentiate between domestic and international arbitration. Arbitrators are required to have a legal degree and parties can choose only an odd number of arbitrators. Foreign-owned but locally incorporated companies can only select nationals of Bosnia and Herzegovina as counsel in arbitration proceedings. The Cantonal Court in Sarajevo has jurisdiction to decide on the recognition of foreign arbitration awards. Only after this court has reached a decision, may a party apply for enforcement before a Sarajevo Municipality Court. On average, it takes around 13 weeks to enforce a foreign arbitration award from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	57.1	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	76.3	64.4	57.9	

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Brazil

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Brazil's restrictions on foreign equity ownership are above average among the countries in the Latin America and the Caribbean covered by the Investing Across Sectors indicators. Compared with other BRIC (Brazil, Russian Federation, India, and China) countries only Russia has fewer restrictions on foreign equity ownership than Brazil. Brazil restricts foreign equity ownership in the air transportation sector to a maximum of 20% and in media industries (both TV broadcasting and newspaper publishing) to a maximum of 30%. The health care sector is closed to foreign capital participation. In general terms, though, Brazilian legislation grants equal treatment to foreign and domestic companies.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	68.0	80.8	78.5	
Media	30.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	50.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	166	74	42	Foreign companies establishing subsidiaries in Brazil (São Paulo) must have at least 2 shareholders. Executive officers of Brazilian companies (companies incorporated in Brazil, regardless of the origin of its capital stock) must be either Brazilian citizens or foreigners who hold a Brazilian permanent visa. The permanent visa may be issued to the statutory manager of a Brazilian company. In this case, however, the company must have at least: (a) $200,000 of its capital stock directly invested by the foreign company; or (b) $50,000 (in cash or assets) of its capital stock directly invested by the foreign company as long as the company commits itself to create 10 new positions for Brazilians in the following 2 years. To file with the Commercial Registry, the company may pay an additional fee and register through SIMPI (Sindicato da Micro e Pequena Indústria do Estado de São Paulo), which offers an expedited registration process. Forms for registration with the National Corporate Taxpayers' Registry of the Ministry of Finance may be downloaded and registration may be monitored online. While government approval is not required, foreign investments must be registered with the Brazilian Central Bank. According to the Rules for the Exchange Market and Foreign Capital (Regulamento do Mercado de Câmbio e Capitais Internacionais) issued by the Central Bank of Brazil, only a few entities are entitled to hold a foreign currency bank account in Brazil.
Procedures (number)	17	14	10	
Ease of establishment index (0 = min, 100 = max)	62.5	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	78.2	82.1	In São Paulo, the lease of publicly held land by foreign companies is not common, as it involves a time-consuming process. Publicly held land may be leased if such land is not designated for public use or services. Other options for foreign companies seeking to access land include leasing privately held land and buying privately or publicly held land. Certain restrictions for companies controlled by foreign capital apply on ownership of land located in certain areas, such as in rural areas, along the coastline or borders, or in the Amazon region. Lease contracts can be of unlimited duration and offer the lessee the right to subdivide and sublease the land as per municipality legislation. The leased land cannot be mortgaged or used as collateral. There are no restrictions on the amount of land that may be leased. Land-related information can be found in the land registry and cadastre, which are located in different agencies and are not linked or coordinated to share information.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	33.3	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	73.0	70.6	
Time to lease private land (days)	66	62	61	
Time to lease public land (days)	180	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.9	87.5	85.2	Brazil's Arbitration Law (1996) is largely based on the UNCITRAL Model Law, except that all arbitral awards made in Brazil are considered domestic. All types of commercial disputes are arbitrable. Brazil has a large number of arbitral institutions and arbitration is becoming increasingly popular. The use of arbitration to resolve shareholder disputes has also become common. There are no restrictions on the selection of arbitrators. However, arbitration in Brazil must be conducted in Portuguese, and parties in both domestic and international arbitrations can only be represented by lawyers licensed to practice in Brazil. Arbitrators are not legally required to preserve the confidentiality of the proceedings. The law provides for court assistance with orders for interim measures and evidence taking. Brazil is one of the slowest IAB countries in enforcing foreign arbitration awards. It takes on average 1 year to recognize and enforce a foreign award assuming there is no appeal, because proceedings are two-pronged, involving recognition before the Superior Court of Justice and enforcement at the Federal Court of São Paulo. A three-stage appeals process, including a constitutional appeal before the Supreme Federal Court, is also possible. Brazil has not ratified the ICSID Convention.
Ease of process index (0 = min, 100 = max)	45.7	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	57.2	51.7	57.9	

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Bulgaria

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Compared with other economies in Eastern Europe and Central Asia, Bulgaria has fewer restrictions on foreign equity ownership. Over the past few years, Bulgarian legislation has undergone harmonization with European Union legislation. During this process, many sectors of the economy have been opened to foreign capital participation. Today, Bulgaria does not apply any restrictions on foreign equity ownership in 31 of the 33 sectors measured by the Investing Across Sectors indicators. As in the other EU countries, Bulgarian Civil Aviation Act imposes restrictions on the air transportation sector, in which foreign ownership is limited to 49%. These equity restrictions, however, do not apply to investors from countries of the European Economic Area (EEA).
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	20	22	42	It takes 5 procedures and 20 days to establish a foreign-owned limited liability company (LLC) in Bulgaria (Sofia). This is in line with the IAB regional average for Eastern Europe and Central Asia and faster than the IAB global average. There are no additional procedures required of a foreign-owned company establishing a subsidiary in Sofia other than the requirement to provide an apostille or notarized and translated copy of the incorporation documents and charter of the parent company abroad. A foreign-owned company does not need to get an investment approval. The company registration is entirely electronic and companies can monitor the whole process on the official Web page of the registry agency. Companies in Bulgaria are free to open and maintain bank accounts in foreign currency. Bulgaria has a minimum capital requirement of BGL 5,000 (~$3,460) for domestic and foreign companies, 35% of which must be paid in at the time of registration.
Procedures (number)	5	8	10	
Ease of establishment index (0 = min, 100 = max)	78.9	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	82.9	82.1	Leasing public land in Sofia is slow compared to the regional and global average. It requires several procedures and takes place after approval by the respective governing bodies, and after undergoing a tender procedure. Purchase of public land is not common, as the process is time-consuming. The most common means of acquiring land is by the purchase or lease of private land. Registration of a lease agreement is not mandatory, and registered lease agreements constitute a minor percentage of existing lease agreements. In the last few years, however, registration of lease agreements has gained in popularity and most commercial lease agreements are now registered. Registration of a lease agreement is not a complicated procedure. It usually takes 2–3 days to complete. Generally, the duration of commercial leases can be unlimited, unless the land is publicly held, in which case the statutory maximum duration is 10 years. A major land-related challenge in Sofia is the lack of a unified land registry and the fact that the cadastre does not cover all regions.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	36.8	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	95.0	78.9	70.6	
Time to lease private land (days)	60	43	61	
Time to lease public land (days)	351	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	93.1	82.5	85.2	The Bulgarian International Commercial Arbitration Act (ICAA, 1988, last updated 2007) regulates international commercial arbitration, but also includes references to domestic commercial arbitration. Other national laws do not impose any restrictions that could hinder the application of ICAA provisions. Bulgaria has also enacted a Mediation Act (2004). All commercial disputes are arbitrable except those involving rights over immovable property and intra-company disputes. There are 2 main arbitral institutions in Bulgaria and these have a significant caseload. If both parties are nationals or have registered offices in Bulgaria, they must choose Bulgaria as the seat of arbitration, unless one party has dominant foreign capital participation. Parties to a domestic arbitration may not choose a foreign arbitrator unless a party to the dispute has dominant foreign capital participation. Domestic arbitration proceedings must be conducted in Bulgarian. The law does not give powers to the arbitrators to decide ex aequo et bono. The law requires the impartiality and independence of arbitrators. Lawyers acting in arbitration proceedings in Bulgaria must be licensed to practice in Bulgaria. Courts may suspend the execution of an arbitral award as an interim measure upon the appellant's request and provision of a guarantee in the amount of the awarded interest. Sofia City Court has exclusive jurisdiction to oversee arbitration proceedings and enforce domestic and international arbitration awards. On average, it takes around 17 weeks to enforce an arbitration award rendered in Bulgaria, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 27 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	64.7	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	68.6	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Burkina Faso

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 21 countries covered by the Investing Across Sectors indicators in the Sub-Saharan Africa region, Burkina Faso is one of the more open economies to foreign equity ownership. Most of its sectors are fully open to foreign capital participation, although the law requires companies providing mobile or wireless communication services to have at least 1 domestic shareholder. Furthermore, the state automatically owns 10% of the shares of all companies active in the mining sector. The government is entitled to nominate 1 member of the board of directors for such companies. Select additional strategic sectors are characterized by monopolistic market structures. In particular, the oil and gas sector, the electricity transmission and distribution sectors, and the fixed-line telephony sector are dominated by publicly owned enterprises, making it difficult for foreign investors to engage.
Mining, oil and gas	95.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	87.5	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	15	48	42	It takes 5 procedures and 15 days to establish a foreign-owned limited liability company (LLC) in Burkina Faso (Ouagadougou). This is faster than the average for IAB countries both in Sub-Saharan Africa and globally. In addition to the procedures required of a domestic company, if a foreign company is managed by foreigners, it must get an investment approval (autorisation d'exercer le commerce) from the Ministry of Commerce. The authorization is never refused and usually does not take long. The law allows companies to show proof of request in order to start operating. Companies register with the Center for Business Formalities (Centre des Formalités des Entreprises—CEFORE) and are assigned a unique company ID number for company registration, fiscal identification, and social security. This usually takes about 9 business days. According to a directive of the Economic Community of West African States (ECOWAS), companies in Burkina Faso are not allowed to open bank accounts in foreign currency unless they get approval from the Burkina Faso Ministry of Finance and the Central Bank of West Africa. This approval must be renewed yearly. The minimum capital requirement of XOF 1,000,000 (~$2,000) is applicable across all OHADA (Organization for the Harmonization of Business Law in Africa) member states. It must be paid in full for the incorporation of an LLC.
Procedures (number)	5	10	10	
Ease of establishment index (0 = min, 100 = max)	44.7	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	74.9	76.6	82.1	Foreign companies seeking to access land in Burkina Faso have the option to buy either privately or publicly held land. Leasing or buying public land is not recommended, because the process is unpredictable. There are cases where it has taken years to lease or buy public land. Lease contracts can be held for a maximum of 99 years. If provided for in the terms of the lease contract, a lessee can subdivide, sublease, or mortgage the leased land or use it as collateral. There are no restrictions on the amount of land that may be leased. While most of the relevant land-related data for investors is available, in principle, acquiring it is burdensome, as it requires in-depth research involving different authorities and information providers. Ouagadougou has a land registry and cadastre, but they are not located in the same agency nor are they linked to coordinate and share data.
Strength of ownership rights index (0 = min, 100 = max)	50.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	31.6	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	50.0	58.5	70.6	
Time to lease private land (days)	..	72	61	
Time to lease public land (days)	120	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	82.4	85.2	The OHADA Uniform Act on Arbitration, which was adopted in 1999, governs both domestic and international arbitrations in Burkina Faso. It is easily accessible online. There are certain mandatory provisions in the act. In a domestic arbitration, for example, parties are not free to choose the nationality of the arbitrator. Parties to an international arbitration are not free to choose the professional qualifications of the arbitrator. Although the law stipulates that arbitrators must be independent and impartial in both domestic and international arbitrations, it does not require that arbitrators preserve the confidentiality of arbitration proceedings. Arbitration agreements must be in writing. It is not possible to conduct arbitrations online in Burkina Faso. The Centre d'arbitrage, de médiation et de conciliation d'Ouagadougou (CAMCO) administers arbitrations. The law does not require domestic courts to assist the arbitration process by ordering the production of documents or the appearance of witnesses. It takes approximately 10 weeks from the application for a hearing to the granting of a writ of execution attaching the assets in a domestic arbitration assuming there is no appeal, and several weeks longer for an international arbitration award. The enforcement of a foreign award takes about 13 weeks if no appeal is filed. Arbitration is not common in Burkina Faso.
Ease of process index (0 = min, 100 = max)	67.6	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	67.9	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Cambodia

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Cambodia is one of the more open countries to foreign equity ownership in the East Asia and the Pacific region. Most of the sectors covered by the Investing Across Sectors indicators are fully open to foreign capital participation. Overt legal ownership restrictions do exist on port and airport operation and on the electricity transmission industries. Pursuant to the Law on Electricity, the only national transmission license is granted to the publicly owned electricity company EDC. This sector is thus closed to private investment (domestic or foreign). Port operation is closed to foreign capital participation as well. All port facilities in Cambodia are currently owned and operated directly by the public port authorities. Furthermore, Cambodian laws stipulate that the government of Cambodia must retain a majority ownership and control of basic airport infrastructure and aeronautical navigation services infrastructure. Foreign capital participation in the airport operation sector is thus limited to a less-than-50% stake.
Mining, oil and gas	100.0	75.7	92.0	
Agriculture and forestry	100.0	82.9	95.9	
Light manufacturing	100.0	86.8	96.6	
Telecommunications	100.0	64.9	88.0	
Electricity	85.7	75.8	87.6	
Banking	100.0	76.1	91.0	
Insurance	100.0	80.9	91.2	
Transportation	69.8	63.7	78.5	
Media	100.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	86	68	42	It takes 10 procedures and 86 days to establish a foreign-owned limited liability company (LLC) in Cambodia. This is slower than both the IAB regional average for East Asia and the Pacific and the IAB global average. An LLC must have a minimum of 2 shareholders, up to a maximum of 30 shareholders. A foreign company requires no additional procedure other than the authentication and notarization of the parent company's documents abroad, which must be submitted to incorporate the subsidiary. Investment approval is not required unless the foreign company applies to the Council for the Development of Cambodia (CDC) for investment incentives and a tax exemption. The business registration process is not yet available online. Foreign companies are free to open and maintain bank accounts in foreign currency. KHR 4,000,000 (~$1,000) is the minimum paid-in capital requirement for establishing an LLC in Cambodia.
Procedures (number)	10	11	10	
Ease of establishment index (0 = min, 100 = max)	44.7	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	92.9	84.9	82.1	In Cambodia, it is possible to lease privately or publicly held land. Due to the difficulty of enforcing legal rights against the state, and the additional legal formalities and procedures that must be followed to lease publicly held land, it is easier to lease private land. Companies in which foreign nationals own more than 49% of the shares are prohibited from buying land. Under Cambodian law, leases of less than 15 years are considered contractual rights and are legally classified as short-term leases. Leases of 15 years or more are legally classified as long-term leases and constitute real property rights. These rights may be transferred to another party. Lease contracts can be of unlimited duration and the amount of land that may be leased is unlimited. They can offer the lessee the right to subdivide, sublease, or mortgage the leased land. Although there is a land registry in Phnom Penh, the process of lease registration is relatively new. The issuance of long-term lease registration certificates became possible in May 2008.
Strength of ownership rights index (0 = min, 100 = max)	n/a	83.3	92.2	
Access to land information index (0 = min, 100 = max)	41.7	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	52.5	67.5	70.6	
Time to lease private land (days)	41	66	61	
Time to lease public land (days)	119	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	92.4	83.8	85.2	Cambodia's Law on Commercial Arbitration was passed in 2005 and can be found online. It contains differing definitions for domestic and international arbitrations, and, like many laws in the East Asia and Pacific region, is based on the UNCITRAL Model Law. Arbitration agreements can be concluded via email or fax, but not orally without written agreement. The majority of commercial disputes can be referred to arbitration. Disputes involving rights over immoveable property that is located in Cambodia, however, are referred to the Cadastral Commission. Parties may select an arbitrator of any nationality or gender. However, under the current law, the arbitrator must be a member of the National Arbitration Center. Furthermore, the parties can only appoint legal counsel that is licensed to practice in Cambodia. Arbitration is still being developed in Cambodia, and although the legal framework is being worked on, practice must still be encouraged. The Arbitration Center is in the process of being developed, for example, and practitioners are unaware of any institutional arbitration, domestic or international, that has taken place in the past 12 months. It is also difficult to assess whether courts support arbitration or the enforcement of arbitration awards, as court decisions are not published. On average, it takes around 26 weeks to enforce an arbitration award rendered in Cambodia, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	48.6	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	46.0	46.6	57.9	

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Cameroon

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The Investment Charter (Law No. 2002/004 of April 19, 2002) of Cameroon abolished several limitations to foreign equity ownership that had existed under previous regulations (that is, the small and medium enterprises [SME] regime). Thus, most of the primary sectors and all of the manufacturing sectors covered by the Investing Across Sectors indicators are now fully open to foreign capital participation. Like a number of other countries in the Sub-Saharan Africa region, Cameroon limits foreign investment in the mining sector, in which 10% of the capital of such companies must belong to the state. Further ownership restrictions exist predominantly in the service industries, where, for example, the electricity transmission and distribution sectors are closed to foreign investment. Foreign capital participation is limited to 49% in the media industries (TV broadcasting and newspaper publishing) and in the transportation sectors (port and airport operation, domestic and international air transportation, and railway freight transportation).
Mining, oil and gas	95.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	71.4	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	49.0	86.6	78.5	
Media	49.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	82	48	42	It takes 14 procedures and 82 days to establish a foreign-owned limited liability company (LLC) in Douala, Cameroon. This process is lengthier and more complex than the IAB regional and global averages. While only 2 additional steps are required of foreign companies compared to domestic ones, these steps add an additional 48 days to the overall establishment process. A declaration of foreign investment to the Ministry of Finance is mandatory 30 days prior to the beginning of the establishment process. In addition, if the company wants to engage in international trade, registration in the importers' file is required to obtain a "sydonia" number (a custom computer identification). This number facilitates the entry and exit of goods produced by the company. The authentication of the parent company's documentation abroad is required only to establish a subsidiary. Foreign-owned resident companies that wish to maintain foreign currency bank accounts in Douala must obtain prior approval. The Minister of Finance issues such authorization, which is subject to approval from the Bank of Central African States (BEAC—Banque des Etats de l'Afrique Centrale) as per Section 24 of the exchange control regulations. This approval takes on average 38 days to obtain. There is a minimum paid-in capital requirement of CFA 1,000,000 (~$2,060) for setting up foreign as well as local LLCs.
Procedures (number)	14	10	10	
Ease of establishment index (0 = min, 100 = max)	41.1	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	73.6	76.6	82.1	Foreign companies seeking to access land in Cameroon have the option to lease or buy privately or publicly held land. The process of leasing public land is unpredictable, depending on the interests of the public authority that owns the land. In some instances, it takes a very short time and in others, may take a number of months. Most foreign companies acquire land from the state as part of an investment package. In Douala, the role of the notary public is crucial in the process of land acquisition and determines how fast it takes. The lease contract can be of an unlimited duration and can offer the lessee the right to sublease, subdivide, or mortgage the leased land. There are no restrictions on the amount of land that may be leased. Most land-related information can be acquired from the registry or cadastre. There is no land information system (LIS) or geographic information system (GIS) that centralizes relevant land information.
Strength of ownership rights index (0 = min, 100 = max)	75.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	52.6	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	55.0	58.5	70.6	
Time to lease private land (days)	75	72	61	
Time to lease public land (days)	108	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	87.4	82.4	85.2	The OHADA Uniform Act on Arbitration (1999) which is based on the UNCITRAL Model Law governs both domestic and international arbitrations in Cameroon. The Uniform Act supersedes the existing national laws on arbitration. The principal arbitral institution under OHADA is the Common Court for Justice and Arbitration (CCJA) in Abidjan, Côte d'Ivoire. The Groupement Interpatronal du Cameroon (GICAM), created in 2005, also administers arbitration and mediation proceedings, although the CCJA remains the primary institution for settling arbitration disputes. Cameroon has ratified the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and the Washington Convention for the Settlement of Investment Disputes (ICSID). Cameroon recognizes more grounds for refusal of recognition or enforcement of foreign arbitration awards than those listed under the New York Convention. On average, it takes around 15 weeks to enforce an arbitration award rendered in Cameroon, 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)	79.6	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	64.6	55.9	57.9	

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Canada

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 12 high-income OECD countries covered by the Investing Across Sectors indicators, Canada presents more stringent 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.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	81.1	93.8	96.6	
Telecommunications	46.7	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	65.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	73.4	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	50.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	6	21	42	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). Compared to domestic companies, 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.
Procedures (number)	2	9	10	
Ease of establishment index (0 = min, 100 = max)	81.6	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	92.2	82.1	Although it is possible to lease or purchase both privately and publicly held land, 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 repurchase 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.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	46.2	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	84.2	70.6	
Time to lease private land (days)	68	50	61	
Time to lease public land (days)	131	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	89.9	94.2	85.2	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.
Ease of process index (0 = min, 100 = max)	84.7	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	94.0	77.6	57.9	

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Chile

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Chile is one of the most open countries 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. There are no sectors with monopolistic or oligopolistic market structures, with the exception of the oil and gas industry, nor are there any perceived difficulties in obtaining any required operating licenses.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	100.0	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	29	74	42	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 countries. 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.
Procedures (number)	11	14	10	
Ease of establishment index (0 = min, 100 = max)	63.2	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	78.2	82.1	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.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	33.3	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	73.0	70.6	
Time to lease private land (days)	23	62	61	
Time to lease public land (days)	93	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	87.5	85.2	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.
Ease of process index (0 = min, 100 = max)	62.8	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	74.8	51.7	57.9	

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China

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				China's limits on foreign equity ownership are stricter compared to the countries 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), health care, and the tourism industry. 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.
Mining, oil and gas	75.0	75.7	92.0	
Agriculture and forestry	100.0	82.9	95.9	
Light manufacturing	75.0	86.8	96.6	
Telecommunications	49.0	64.9	88.0	
Electricity	85.4	75.8	87.6	
Banking	62.5	76.1	91.0	
Insurance	50.0	80.9	91.2	
Transportation	49.0	63.7	78.5	
Media	0.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	83.3	91.6	98.1	
Sector group 2 (health care, waste mgt.)	85.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	99	68	42	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.
Procedures (number)	18	11	10	
Ease of establishment index (0 = min, 100 = max)	63.7	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	96.4	84.9	82.1	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 not be pledged, mortgaged, leased, or transferred. They may also 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 ownership rights index (0 = min, 100 = max)	n/a	83.3	92.2	
Access to land information index (0 = min, 100 = max)	50.0	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	52.5	67.5	70.6	
Time to lease private land (days)	59	66	61	
Time to lease public land (days)	129	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	83.8	85.2	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.
Ease of process index (0 = min, 100 = max)	76.1	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	60.2	46.6	57.9	

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Colombia

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 14 countries in Latin America and the Caribbean covered by the Investing Across Sectors indicators, Colombia is one of the most open economies to foreign equity ownership. With the exception of TV broadcasting, all other sectors covered by the indicators are fully open to foreign capital participation. Foreign ownership in TV broadcasting companies is limited to 40%. Companies publishing newspapers can have up to 100% foreign capital investment; there is a requirement, however, for the director or general manager to be a Colombian national.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	100.0	80.8	78.5	
Media	70.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	27	74	42	With a total of 13 procedures taking 27 days, the process of establishing a foreign-owned subsidiary that wants to engage in international trade, in Colombia (Bogotá) is faster than both the IAB regional and global averages. In addition to the procedures required of a domestic company, the foreign subsidiary must apply for a Proportionality Certificate for foreign workers. In a company employing more than 20 workers, only 20% of the workforce can be foreigners; this includes the board of directors, if they are also employees. Limited liability companies (LLC) in Colombia must have a minimum of 2 shareholders. There is no need to obtain prior investment approval. Foreign investment must be registered at the Central Bank upon depositing the capital contributions. This registration can be submitted online. Registration with the Chamber of Commerce cannot be submitted online although investors may monitor the process online. Colombian banks cannot offer foreign currency accounts. However, Colombian residents are allowed to hold foreign currency accounts abroad. If the account is used to handle funds for certain transactions (such as offshore loans, foreign investments, imports, and exports) the account must be registered with the Central Bank within 30 days and it must be managed in compliance with the foreign exchange rules.
Procedures (number)	13	14	10	
Ease of establishment index (0 = min, 100 = max)	68.4	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	78.2	82.1	Foreign companies seeking to access land in Colombia have the option to lease or buy land from private or public owners. The process of leasing publicly owned land may require participation in a public bidding procedure. Lease contracts can be of unlimited duration and can offer the lessee the right to subdivide and sublease land. It is not mandatory that the lease be registered. A lease is considered a contractual right, not a property right, and thus cannot be used as collateral or be mortgaged. There are no restrictions on the amount of the land that may be leased. Land-related information is available in the land registry and cadastre. Most relevant data for investors can be found at these 2 agencies, but this information relates only to land that is registered. Even though the cadastre and registry are not located in the same agency, they are linked to share data and coordinated to maintain accurate land-related information. Currently there are efforts to make information at these agencies available online. The process of leasing private and public land is relatively efficient.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	52.6	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	73.0	70.6	
Time to lease private land (days)	40	62	61	
Time to lease public land (days)	111	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	93.1	87.5	85.2	There are 4 main decrees that regulate arbitration in Colombia, as well as several other laws and decrees regulating separate issues such as fees for arbitration centers, recognition and enforcement of foreign arbitration awards, and investment arbitration. There are 3 kinds of arbitration in Colombia: (i) arbitration subject to law, where the arbitrators decide according to Colombian law; (ii) arbitration subject to equity, where the arbitrators decide according to common sense and equity; and (iii) technical arbitration, where the arbitrators decide according to the specific knowledge of a determined science, art, or trade. Certain intra-company disputes and those related to administrative acts are not arbitrable. Disputes involving immovable property can only be resolved through domestic arbitration. In domestic arbitration "at law," arbitrators must be Colombian nationals and lawyers admitted to practice in Colombia, the proceedings must be conducted in Spanish, and parties may only choose Colombian lawyers as counsel. Arbitrators are not legally bound to preserve confidentiality in international arbitrations taking place in Colombia. There are 3 main arbitral institutions in Bogotá, as well as many institutions throughout the country. The law does not provide for court assistance with orders for interim measures and taking of evidence. Recognition and enforcement of foreign awards is a two-stage process: recognition before the Supreme Court of Justice is followed by enforcement before the Civil Circuit Court of Bogotá. On average, it takes around 60 weeks to enforce an arbitration award rendered in Colombia, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 96 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	52.3	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	18.2	51.7	57.9	

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Costa Rica

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Costa Rican legislation provides for equal treatment of domestic and foreign investors with respect to ownership of local companies. Thus, most of the industry sectors covered by the Investing Across Sectors indicators are fully open to foreign equity ownership. As a notable exception, foreign capital participation in the electricity sector is restricted. The electricity transmission and distribution sectors are closed to foreign investment. The transmission infrastructure and distribution system are currently owned and operated by a publicly owned company. In the electricity generation sector, foreign capital participation is allowed up to 49%. The generated electricity, however, must be sold through the state-owned transmission and distribution companies. Furthermore, the fixed-line telecommunications infrastructure is owned and operated by a publicly owned enterprise under monopolistic market conditions, potentially representing an obstacle for foreign investors to engage in these sectors.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	35.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	100.0	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	63	74	42	It takes 14 procedures and 63 days to establish a foreign-owned limited liability company (LLC) in Costa Rica (San José). This is shorter than the regional average for Latin America and the Caribbean, but longer than the IAB global average. Full foreign ownership is allowed in Costa Rica. However, LLCs need a minimum of 2 shareholders. In addition to the steps required of a domestic company, a foreign company establishing a subsidiary in Costa Rica must provide an authenticated copy of the parent company's documents. If it wishes to engage in international trade, it will also need to register with the Ministry of Foreign Relations and Foreign Trade in order to receive an import and export identification number (this can be submitted online). Foreign companies do not need an investment approval and are free to open and maintain a bank account in foreign currency. There is no minimum capital requirement for foreign or domestic LLCs in Costa Rica. However, 20% of the capital stock of the company must be paid in full prior to establishment.
Procedures (number)	14	14	10	
Ease of establishment index (0 = min, 100 = max)	73.7	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	78.2	82.1	In Costa Rica it is not possible to buy public land. Furthermore, the leasing of public land is restricted to concession agreements, which may only be granted by a municipality and only on coastal shorelines. In order to lease public land, the company must be owned by at least 51% Costa Rican shareholders. It is possible to lease or buy private land. The lease contract may be of unlimited duration, but the common lease duration is about 10 years. The lease contract can offer the lessee the right to sublease and/or mortgage the leased land or use the lease as collateral. The right to subdivide is possible, subject to applicable zoning laws. If land is granted as a concession of public land, it cannot be subleased or subdivided. Land-related information may be found in the centralized National Registry that holds the property registry and the cadastre registry. It is possible to get most land-related information from the National Registry.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	73.7	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	60.0	73.0	70.6	
Time to lease private land (days)	23	62	61	
Time to lease public land (days)	136	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	92.4	87.5	85.2	Alternative dispute resolution (ADR) in Costa Rica is regulated by the Law on Alternate Conflict Resolution and the Promotion of Social Peace (Law No. 7727/1997). All commercial disputes are arbitrable. Due to public policy considerations, disputes between foreign companies and the state over natural resources cannot be resolved by arbitration. The law does not differentiate between domestic and international arbitration, but it does between arbitration at law and arbitration at equity. In the case of arbitration at law, the arbitrators must be attorneys licensed to practice in Costa Rica. The law does not allow the arbitration tribunal to order preventive measures. The tribunal must abide by the civil procedural legislation in what is applicable and the number of arbitrators must be at least 3, but always an odd number. Arbitration proceedings in Costa Rica must be conducted in Spanish. Parties must be represented by lawyers who are licensed to practice in Costa Rica. Parties can choose any arbitral institution, even one outside of Costa Rica, except when the dispute concerns immovable property. Under Article 47 of the Code of Civil Procedure, Costa Rican judges have exclusive jurisdiction over immovable or movable assets located in Costa Rica. There are several active ADR centers in Costa Rica that administer arbitrations, conciliations, and mediations. There are no legal provisions mandating courts to assist arbitral tribunals with the taking of evidence, but there are provisions for assistance with orders for interim measures. It can take around 39 weeks to enforce an arbitration award in a San José civil court (with no appeal). Foreign awards must first undergo recognition before the First Chamber of the Supreme Court, which takes roughly 32 weeks.
Ease of process index (0 = min, 100 = max)	59.0	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	50.9	51.7	57.9	

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Côte d'Ivoire

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Côte d'Ivoire is one of the most open countries to foreign equity ownership, as measured by the Investing Across Sectors indicators. All of its business sectors covered by the indicators are fully open to foreign investment. With the exception of electricity transmission, there are no other sectors with monopolistic or oligopolistic market structures nor are there any perceived difficulties in obtaining any required operating licenses.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	42	48	42	It takes 12 procedures and 42 days to establish a foreign-owned limited liability company (LLC) in Côte d'Ivoire (Abidjan). This is slightly faster than the IAB average for Sub-Saharan Africa and in line with the IAB global average. In addition to the procedures required of a domestic company, a foreign company engaged in international trade will need to obtain a trading license from the Ministry of Foreign Trade as well as an exchange authorization transfer of capital (importation, payments abroad, and repatriation of profits) from the Central Bank. Companies must register separately with the commercial registry, the tax department of the Ministry of Economy and Finance, and the National Social Security Fund. According to a directive of the Economic Community of West African States (ECOWAS), companies in Côte d'Ivoire are not allowed to open bank accounts in foreign currency unless they get approval from the Côte d'Ivoire Ministry of Finance and the Central Bank of West Africa. This approval must be renewed yearly. The minimum capital requirement of XOF 1,000,000 (~$2,000) is applicable across all OHADA (Organization for the Harmonization of Business Law in Africa) member states. It must be paid in full for the incorporation of an LLC.
Procedures (number)	12	10	10	
Ease of establishment index (0 = min, 100 = max)	52.6	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	86.6	76.6	82.1	Foreign companies seeking to access land in Côte d'Ivoire have the option to lease or buy both privately and publicly held land. There is no outright prohibition of foreign ownership of land. However, the process involved in leasing or buying public land is complicated and time-consuming. The process involved in leasing public land is significantly slower than the global or regional average. Lease contracts can be held for a maximum duration of 99 years, but the usual duration is 30 years. The lease contract can offer the lessee the right to subdivide, sublease, or mortgage the leased land or use it as collateral. There are no restrictions on the amount of land that may be leased. Land-related information may be found in the registry or cadastre. Most of the laws relating to the land are old, and need to be updated. There is no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant land information.
Strength of ownership rights index (0 = min, 100 = max)	62.5	77.3	92.2	
Access to land information index (0 = min, 100 = max)	47.4	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	58.5	70.6	
Time to lease private land (days)	62	72	61	
Time to lease public land (days)	276	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	82.4	85.2	Côte d'Ivoire is a party to the OHADA Treaty (Organisation pour l'Harmonisation en Afrique du Droit des Affaires). Arbitration is therefore governed by the Uniform Act on Arbitration, which is based on the UNCITRAL Model Law. The act was signed on March 11, 1999 and entered into force 90 days later. The Uniform Act supersedes the existing national laws on arbitration. The principal arbitral institution under OHADA is the Common Court for Justice and Arbitration (CCJA) in Abidjan, Côte d'Ivoire. The Cour d'Arbitrage de Côte d'Ivoire (CACI), created in 1997, is widely used for domestic arbitration. Even though CACI's mandate confers jurisdiction for both domestic and international arbitration, the CCJA is generally preferred for international disputes. The courts in Côte d'Ivoire enforce arbitral tribunal decisions in line with the New York Convention and arbitration is now a prominent form of dispute resolution in Côte d'Ivoire. Côte d'Ivoire has ratified the New York Convention and the ICSID Convention. On average, it takes around 21 weeks to enforce an arbitration award rendered in Côte d'Ivoire, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 21 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	82.9	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	55.8	55.9	57.9	

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Croatia

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Compared to other economies in the Eastern Europe and Central Asia region covered by the Investing Across Sectors indicators, Croatia is one of the more open countries to foreign equity ownership. Overt legal ownership restrictions are in place only in the transportation sector, where foreign ownership of air transportation companies (domestic and international) and airport operators is limited by the Act on Air Traffic (Official Gazette No. 132/98, 100/04, 178/04, 46/07) to a maximum of 49%. Thus, foreign ownership in the transportation sector group is more restricted than the regional average in Eastern Europe and Central Asia. On the other hand, with no restrictions in place in the media, electricity, and telecommunication sectors, Croatia is more open in those sector groups than its peer countries in the region.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	69.4	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	23	22	42	It takes 9 procedures and 23 days to establish a foreign-owned limited liability company (LLC) in Croatia (Zagreb). This is in line with the IAB regional average for Eastern Europe and Central Asia and faster than the IAB global average. Foreign investors do not need to seek an investment approval. They must, however, authenticate the documents of the parent company abroad. According to the Foreign Exchange Act, foreign investments must also be declared to the Croatian National Bank within 30 days for statistical purposes. There is a statutory limit of 15 days to process the company registration with the commercial court. According to the new Regulation on Ways of Performing Registrations in the Court Registry, applications to the court registries could be submitted in electronic form by a notary public. Companies in Croatia are free to open and maintain bank accounts in foreign currency. The minimum capital requirement for domestic and foreign companies is HRK 20,000 (~$3,720). At incorporation, investors must pay in a minimum of 25% of their declared capital and no less than HRK 10,000 (~$1,860).
Procedures (number)	9	8	10	
Ease of establishment index (0 = min, 100 = max)	81.6	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	82.9	82.1	In Croatia, foreign companies most commonly buy private land. The purchase of public land is a long and complicated procedure requiring a public auction. It is possible to lease both private and public land, but a lease of land under Croatian law represents only a contractual relationship between the parties of the lease agreement. The lessee can acquire only the right to use the land, but not to build on it. In order to obtain the right for future construction, the lessee must enter into a building rights agreement. The maximum duration of a lease of publicly held land is stipulated in advance in the public bidding criteria. A lessee may sublease, subdivide, or mortgage the leased land, or use the lease as collateral, subject to the lease contract. Most land-related information can be found in the land registry and cadastre as well as online. There are currently efforts underway to harmonize the information in the land registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	55.0	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	78.9	70.6	
Time to lease private land (days)	78	43	61	
Time to lease public land (days)	107	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	93.1	82.5	85.2	The Croatian Law on Arbitration (2001) regulates both national and international arbitration proceedings in Croatia. All commercial disputes are arbitrable except those involving shareholder arrangements. Parties are free to appoint arbitrators of any nationality or professional qualifications. Acting judges of the Republic of Croatia can also act as arbitrators, but only as chairs of the arbitral tribunal or as sole arbitrators. Article 12 of the Arbitration Law requires the independence and impartiality of arbitrators. Parties cannot be represented by foreign lawyers in domestic arbitration proceedings, but this restriction does not apply to international arbitrations taking place in Croatia. Arbitral awards have the power of final court judgments, unless the parties explicitly agree that the award may be challenged before a higher arbitration court. Parties to domestic or international arbitration are free to choose any seat of arbitration, even outside of Croatia. A commercial court has jurisdiction to enforce domestic and foreign awards. On average, it takes around 26 weeks to enforce an arbitration award rendered in Croatia, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 48 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	71.4	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	52.7	64.4	57.9	

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Czech Republic

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				All relevant regulation on foreign ownership of local companies in the Czech Republic is nondiscriminatory to foreign investors. With the exception of the domestic and international air transportation sectors, all industries covered by the Investing Across Sectors indicators are fully open to foreign equity ownership. As in the other EU member countries, foreign ownership in the air transportation sector is limited to 49% for investors from outside of the European Economic Area (EEA). Foreign capital participation is not restricted in the electricity transmission sector, but the sector is dominated by a publicly owned enterprise and a monopolistic market structure. This fact, together with a high perceived difficulty of obtaining the required operating license, makes it difficult for foreign companies to engage.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	100.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	18	21	42	The process of establishing a foreign-owned subsidiary in the Czech Republic (Prague) is in line with the IAB regional average for high-income OECD countries and faster than the IAB global average. The 2 additional procedures required exclusively of foreign companies add only 3 days to the establishment process. A foreign enterprise is required to provide an apostille and a copy of the parent company documents that has been notarized abroad (if applicable). In addition, foreign direct investments must be reported to the Czech National Bank for statistical purposes. This notification usually takes 2 days. No investment approval is required. All documents required for company registration must be submitted in Czech. Business registration forms are downloadable online on the Ministry of Justice's Web site. To register a newly founded company in the Commercial Register, an application must be submitted to the relevant court administering the registry. Some documents must be submitted to the registry in original hard copies. However, the documents to be filed with the Collection of Deeds are submitted electronically. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum capital requirement for domestic and foreign limited liability companies (LLCs) in Prague is CZK 200,000 (~$10,688), half of which must be paid in upon registration. In the case of a sole-shareholder LLC, the registered capital must be paid in full prior to registration.
Procedures (number)	11	9	10	
Ease of establishment index (0 = min, 100 = max)	81.6	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	92.2	82.1	In the Czech Republic a foreign company may acquire both publicly and privately held land. The acquisition of public land, however, takes significantly longer. When acquiring public land, a company may be required to obtain approvals from the public authority in charge of administering the land. In most cases, a public tender process will be carried out before completing the lease or purchase of land. The law does not stipulate the maximum duration of a lease, although a lease concluded for 99 years is considered a lease for an undefined period. No lease registration is required in the Czech Republic. Renewal or transfer of a lease is allowed if included in the lease contract. Similarly, the leased land may be subleased or subdivided in accordance with the lease contract. Land-related information may be found mostly in the land registry or cadastre. Currently, there are efforts to draft a new civil code that would improve the process of land administration in the cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	75.0	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	84.2	70.6	
Time to lease private land (days)	96	50	61	
Time to lease public land (days)	131	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.4	94.2	85.2	Act No. 216/1994 governs both domestic and international arbitrations in the Czech Republic, unlike the UNCITRAL Model Law. However, there is no specific definition of either domestic or international arbitration included in the legislation. Other provisions relating to arbitration are found in the Commercial Code and the Civil Procedure Code. In order for disputes to be arbitrable, they must be capable of settlement, and be considered a property dispute, according to the act. Certain disputes cannot be submitted to arbitration, including insolvency or bankruptcy matters. Arbitration agreements cannot be made orally. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. They can also elect foreign lawyers to represent them in arbitration proceedings. The parties are free to choose any arbitral institution of their choice, the most common being the arbitration court attached to the Economic Chamber and the Agricultural Chamber of the Czech Republic. Unlike other arbitral institutions, the arbitration court provides for fast-track arbitration in certain cases. The Czech Republic is also one of the few jurisdictions that provide online arbitration. Assuming that there is no objection to the enforcement, the law stipulates that decisions on enforcement be rendered within 15 days. In practice, this takes roughly 18 weeks for a domestic award and 20 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	88.5	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	65.8	77.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Ecuador

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 28 are fully open to foreign equity ownership in Ecuador. While the manufacturing and primary industries are fully open to foreign investors, the country imposes ownership restrictions on a number of service sectors. The railway freight transportation sector, for example, is closed to foreign capital participation. Railway transport services in Ecuador are rendered exclusively by a state-owned railway company. Furthermore, the Law on Radio and Television Broadcasting limits foreign ownership of local television channels to a maximum share of 49%. Overt statutory ownership restrictions also exist in the electricity sector, where private ownership (foreign or domestic) of companies engaged in the transmission and distribution of electricity is limited to a less-than-50% stake. In the electricity generation sector foreign capital participation in publicly owned companies is limited to 49%. There are no restrictions on foreign ownership in privately owned companies. However, prior consent must be obtained from the Electricity Authority.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	85.4	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	69.8	80.8	78.5	
Media	74.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	68	74	42	It takes 16 procedures and 68 days to start a foreign-owned limited liability company (LLC) in Ecuador (Quito). The process is slightly shorter than the regional average for Latin America and the Caribbean and longer than the IAB global average. The law allows 100% foreign ownership, but mandates that at least 80% of the employees must be Ecuadorian. In addition to the steps required of a domestic company, a foreign company establishing a subsidiary in Ecuador must provide notarized and translated documents pertaining to the parent company, such as a certificate of good standing and a list of shareholders. It must also declare its capital with the Central Bank and, if it wants to engage in international trade, register as an importer with the customs office. There is no investment approval required for foreign companies in Ecuador. Companies are free to open and maintain a bank account in foreign currency—most typically U.S. dollars and euros. The minimum capital requirement for LLCs is $400, 50% of which must be paid in at the time of incorporation.
Procedures (number)	16	14	10	
Ease of establishment index (0 = min, 100 = max)	55.3	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	61.5	78.2	82.1	Foreign companies seeking to access land in Ecuador have the option to lease or buy privately or publicly held land. Before public land is available for lease or purchase, it must first be reclassified as private land. The more common option for companies with long-term plans is to purchase private land. Lease rent rates in Quito are subject to a maximum fixed by the law. It is common, however, for such maximum rates not to be applied to lease agreements, as they tend to be considerably lower than the real commercial value of the lease. There is no limit on the duration of lease contracts in Quito. The lease contract can offer the lessee the right to sublease and/or mortgage the leased land. There are no restrictions on the amount of land that may be leased. Information regarding land can be obtained from the land registry and cadastre, which are located in the same agency, but are not linked or coordinated to share data.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	27.8	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	77.5	73.0	70.6	
Time to lease private land (days)	106	62	61	
Time to lease public land (days)	151	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	86.3	87.5	85.2	The Ecuadorian Law on Arbitration and Mediation (1997) differentiates between arbitration at equity and arbitration at law. The rules for arbitration at equity are much more liberal. The law also differentiates between international and domestic arbitration. In domestic arbitration at law arbitrators must be lawyers licensed to practice in Ecuador, and arbitral proceedings must be conducted in Spanish. This is not required in international arbitrations. Parties may choose between arbitration at law and at equity, unless one of them is a public institution, in which case the arbitration must be at law. In both domestic and international arbitrations in Ecuador, parties must be represented by lawyers licensed to practice in Ecuador. The law does not require confidentiality of arbitration proceedings. There are several active alternative dispute resolution (ADR) institutions in Ecuador that administer arbitrations and mediations. There are no legal provisions mandating courts to assist arbitral tribunals with the taking of evidence, but there are provisions for assistance with orders for interim measures. On average, it takes around 12 weeks to enforce an arbitration award rendered in Ecuador, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 31 weeks for a foreign award. A pro-arbitration interpretation of Article 42 of the Arbitration and Mediation Law suggests that foreign awards do not need to go through a recognition stage and should be enforced the same as domestic awards. In practice, however, this issue is not fully resolved and foreign awards may be required to undergo recognition before a chamber of the Provincial Court of Justice.
Ease of process index (0 = min, 100 = max)	58.3	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	59.8	51.7	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Egypt, Arab Rep.

Middle East and North Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 5 countries covered by the Investing Across Sectors indicators in Middle East and North Africa, the Arab Republic of Egypt is one of the more open economies to foreign equity ownership. The country has opened up the majority of the sectors of its economy to foreign investors. Overt statutory ownership restrictions are imposed on 5 of the 33 sectors measured by the indicators. Publishing daily newspapers, for example, is reserved for domestic companies. In other sectors, such as construction and air transportation, foreign ownership is limited to a minority stake. In addition to these overt statutory ownership restrictions, a comparatively large number of sectors are dominated by government monopolies, including, but not limited to, those mentioned above.
Mining, oil and gas	100.0	78.8	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	95.0	96.6	
Telecommunications	100.0	84.0	88.0	
Electricity	100.0	68.5	87.6	
Banking	50.0	82.0	91.0	
Insurance	100.0	92.0	91.2	
Transportation	76.0	63.2	78.5	
Media	50.0	70.0	68.0	
Sector group 1 (constr., tourism, retail)	83.0	94.9	98.1	
Sector group 2 (health care, waste mgt.)	100.0	90.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	8	19	42	With 7 procedures and 8 days, the process of establishing a foreign-owned subsidiary in Egypt is the fastest among the countries surveyed by IAB in the Middle East and North Africa region, and is also faster than the IAB global average. Limited liability companies (LLCs) require at least 2 shareholders and a maximum of 50. The only additional procedure required of foreign companies is the requirement for the parent company to provide its documentation (articles of association, resolution of the board approving establishment of the subsidiary) duly authenticated, notarized, and legalized at the Egyptian consulate abroad and the Ministry of Foreign Affairs in Egypt. No investment approval is needed. Approval from the General Authority for Investment (GAFI) is granted in the form of a notification of incorporation issued upon the company's establishment. Foreign companies are allowed to hold foreign currency bank accounts. An amendment to the Companies' Law Executive Regulations in 2009 abolished the minimum capital requirements for LLCs.
Procedures (number)	7	9	10	
Ease of establishment index (0 = min, 100 = max)	63.2	58.6	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	78.3	82.1	Foreign companies seeking to access land in Egypt have the option to lease or buy privately or publicly held land. The law requires that all leases exceeding 9 years be registered. Leasing publicly owned land may require participation in a public bidding process. Lease contracts can be of unlimited duration; the usual duration for most long-term leases, however, is 59 years. The land that may be leased is usually limited to 4,000 square meters. The lease can offer the lessee the right to subdivide or sublease land, subject to the terms of the lease contract. However, the lease cannot be mortgaged or used as collateral. A foreign company cannot sell the land unless it has held it for at least 5 years. In exceptional circumstances, approval to sell the land before the end of the 5-year period can be sought from the relevant minister. Most relevant data for investors in land can be found in the land registry and cadastre, but they are not linked to share data. The process of leasing private land is more efficient than in most other countries. The IAB team was unable to determine how long it takes, on average, to lease public land. This information is therefore currently missing.
Strength of ownership rights index (0 = min, 100 = max)	75.0	68.8	92.2	
Access to land information index (0 = min, 100 = max)	30.0	46.4	41.3	
Availability of land information index (0 = min, 100 = max)	50.0	66.0	70.6	
Time to lease private land (days)	45	59	61	
Time to lease public land (days)	..	123	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	89.9	82.0	85.2	Arbitration in Egypt is regulated by Law No. 27/1994, which is largely based on the UNCITRAL Model Law, with some deviations. It includes fixed time limits for rendering an arbitration award (12 months, with a possible 6-month extension). Either party may request an extension from the competent court or ask that the proceedings be terminated. All commercial disputes are arbitrable, except intra-company disputes and those involving immovable property. Labor disputes are also not subject to alternative dispute resolution (ADR). If a public entity is a party to the arbitration agreement, the agreement must be signed by the competent minister, who cannot delegate this duty. Parties may choose arbitrators of any nationality or professional qualifications. Arbitration proceedings in Egypt can be conducted in a foreign language. Only lawyers who are licensed to practice in Egypt can represent parties in arbitrations. The courts in Egypt have stated a pro-arbitration policy in several leading decisions. The president of the Cairo Court of Appeal is competent to issue orders for interim measures or to assist the arbitral tribunal with the taking of evidence at the tribunal's request. A specialized circuit at the Cairo Court of Appeal is the only competent court to rule on applications for enforcement of international arbitration awards made in Egypt or foreign arbitration awards. Domestic awards are enforced by a commercial court of first instance. Enforcement takes around 48 weeks for a domestic award and 51 weeks for a foreign award. Egyptian arbitration law follows the UNCITRAL grounds to set aside an arbitration award and adds an additional ground by which each party can request setting aside an award if the arbitral tribunal did not apply the law as agreed upon in the arbitration agreement.
Ease of process index (0 = min, 100 = max)	74.9	65.5	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	54.2	48.7	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Ethiopia

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 21 countries covered by the Investing Across Sectors indicators in the Sub-Saharan Africa region, Ethiopia presents foreign equity ownership restrictions above average for the region. It imposes restrictions on foreign equity ownership in many sectors, in particular the service industries. Of the 33 sectors covered by the indicators, 13 are closed to foreign capital participation. The list of sectors in which FDI is prohibited includes the telecommunications industry (including fixed-line and mobile/wireless services and infrastructure), the financial services industry (insurance and banking), the media sectors (TV broadcasting and newspaper publishing), the transportation industry, and the retail sector. In addition, a comparatively large number of sectors are dominated by government monopolies, including most of the industries mentioned above. Notable additional sectors dominated by publicly owned enterprises include the electricity and waste management industry. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it difficult for foreign companies to invest. The government of Ethiopia has announced its intent to privatize additional state-owned companies and relax some of the restrictions on the aforementioned sectors in the near future.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	0.0	84.1	88.0	
Electricity	50.0	90.5	87.6	
Banking	0.0	84.7	91.0	
Insurance	0.0	87.3	91.2	
Transportation	10.0	86.6	78.5	
Media	0.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	50.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	28	48	42	It takes 10 procedures and 28 days to establish a foreign-owned limited liability company (LLC) in Addis Ababa, Ethiopia. This process is faster than the IAB regional average for Sub-Saharan Africa and the IAB global average. In addition to the procedures required of domestic companies, the parent company must authenticate its documents abroad. It must also submit an investment project proposal to the Ethiopian Investment Authority to obtain investment approval. Said authority screens the documents on behalf of the Ministry of Trade and clears them for signature at the Documents Authentication Office. This investment permit is valid for 1 year and may be renewed annually until the project is completed. The foreign company, if it wants to engage in international trade, must also obtain a trade license. In addition, foreign investors must have their investment capital inflow (either in cash or in kind), external loans, and suppliers' or foreign partners' credits registered with the National Bank of Ethiopia (NBE). Ethiopia is one of the few countries surveyed by IAB that does not have its commercial laws and regulations available online. Companies wishing to open a foreign currency bank account must obtain approval from the National Bank of Ethiopia (Central Bank), which can take weeks to process. The minimum capital requirement for a wholly foreign-owned LLC is $100,000, whereas the requirement is $60,000 if the investment is made jointly with a local partner.
Procedures (number)	10	10	10	
Ease of establishment index (0 = min, 100 = max)	21.1	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	74.9	76.6	82.1	The Ethiopian Constitution states that all land is owned by the state. The most common option for foreign companies seeking to acquire land is to lease public land, since private ownership is prohibited. Land may be leased from the regional authorities where the land is located. The most common means of leasing land is through a public auction. It is also possible to lease land through private negotiations with the lessor. This process is usually bureaucratic, time-consuming, and opaque. Lease contracts are limited to 99 years. The lease contract can offer the lessee the right to sublease and/or mortgage the leased land. All these transactions are subject to the terms of the contract and are limited to the amount of time left on the lease. There are no formal land information agencies such as a national land registry or cadastre. Most land-related information can be acquired from the local office of land leasing in the relevant regional authority.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	0.0	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	2.5	58.5	70.6	
Time to lease private land (days)	75	72	61	
Time to lease public land (days)	142	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	49.9	82.4	85.2	The Ethiopian Civil Code of Procedure governs arbitrations in Ethiopia. There is no specific arbitration act. The legal provisions governing arbitration are not available online. Arbitration agreements may be concluded orally or in writing or they may be inferred by conduct. Foreign nationals are not allowed to act as arbitrators in Ethiopia, while local arbitrators must be able speak English, have a business license, and pass a specific examination at the Ministry of Justice. The Federal High Court in Ethiopia is the competent court for enforcement of arbitration awards. Appeals may be made to the Federal Supreme Court and ultimately to the Federal Court of Cassation. On average, it takes around 54 weeks to enforce an arbitration award rendered in Ethiopia, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 55 weeks for a foreign award. Investors can enter into arbitration agreements with the state or a state entity concerning concession agreements, infrastructure contracts, and contracts dealing with natural resources. As a general rule, investors are granted broad party autonomy, including the right to choose international arbitration institution rules. Ethiopia has not signed the New York Convention and has signed, but not ratified, the ICSID Convention. There is very little arbitration practice in Ethiopia.
Ease of process index (0 = min, 100 = max)	74.0	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	34.8	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

France

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				France does not apply any restrictions on foreign equity ownership in 27 of the 33 sectors measured by the Investing Across Sectors indicators. Yet, its limits on foreign equity ownership are higher than the average for the high-income OECD countries covered by the indicators. Like the other European Union countries, France imposes restrictions on the air transportation sector, in which foreign equity is limited to 49%. This equity restriction, however, only applies to investors from countries outside of the European Economic Area (EEA). Foreign ownership in the TV broadcasting, newspaper, and publishing sectors is limited to 20% for investors from non–EU countries. Port operation is closed to foreign capital participation. All port facilities in France are currently owned and operated by a publicly owned company.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	80.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	59.6	69.2	78.5	
Media	20.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	9	21	42	France offers a simple and fast process for starting a foreign business. It takes 9 days and 7 procedures to establish a foreign-owned subsidiary in Paris. Two of the 7 procedural steps required are specific to foreign-owned businesses. Foreign investors must only declare their investment for statistical purposes. Unless subject to a specific exemption, all companies in France under direct or indirect foreign control must also submit an administrative declaration of their investment. As is the case in other high-income OECD countries surveyed by IAB, foreign companies are allowed to hold commercial foreign currency bank accounts without approval. The minimum authorized paid-in capital for a limited liability company is € 1. There are no restrictions on the composition of the board of directors or the appointment of foreigners as managers.
Procedures (number)	7	9	10	
Ease of establishment index (0 = min, 100 = max)	77.5	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	99.9	92.2	82.1	Foreign companies seeking to access land in France have the option to lease or buy land from both private and public owners. Public land must be reclassified before it is available for leasing. Leasing of publicly held land takes place through direct negotiations with the relevant public body and the lessee. No public bidding process is required. Lease contracts can be of unlimited duration and can offer the lessee the right to subdivide, sublease, mortgage the leased land, or use it as collateral. Registration of leases is uncommon, as it is not required by law. There are no restrictions on the amount of land that may be leased. Land-related information can be found in the land registry and cadastre, which are located in different agencies and are not linked or coordinated to share data. There is no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	47.4	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	84.2	70.6	
Time to lease private land (days)	91	50	61	
Time to lease public land (days)	142	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	90.0	94.2	85.2	Articles 1442 to 1507 of the Code of Civil Procedure and Articles 2059 to 2061 of the Civil Code govern domestic and international arbitrations in France. Articles 131-1 et. seq. of the Code of Civil Procedure govern mediation. The arbitration provisions are not based on the UNCITRAL Model Law. International arbitration is defined as involving the interests of international trade. Domestic arbitration is governed by stricter rules than international arbitration. In domestic arbitrations, for example, the arbitration agreement must be in writing. There are no specific requirements as to the form and content of an international arbitration agreement, and it does not need to be in writing. There are many institutions in France that administer arbitrations, and the country is one of the leading forums for international arbitration. French courts have adopted a liberal attitude toward arbitration and strongly support it, upholding an arbitrator's jurisdiction wherever possible. On average, it takes around 5 weeks to enforce an arbitration award rendered in France or in a foreign country, from filing an application to a writ of execution attaching assets (assuming there is no appeal). Appeals may be made to the *Cour d'appel de Paris*. Generally, the state and public entities do not enter into arbitration.
Ease of process index (0 = min, 100 = max)	86.6	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	94.0	77.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Georgia

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Georgia is one of the most open countries to foreign equity ownership as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to foreign investment. There are neither sectors with monopolistic or oligopolistic market structures nor any perceived difficulties in obtaining any required operating licenses.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	4	22	42	With only 4 procedures and 4 days, Georgia (Tbilisi) is among the fastest countries in the world in terms of establishing a foreign-owned limited liability company (LLC). A foreign company requires no additional procedure other than the authentication of the parent company's documents abroad. According to the new order on the Approval of Instruction on State and/or Tax Registration Procedure of Taxpayers and Branches, a company must be registered on the same day of filing or the following day. The application is available online. Registering with the Entrepreneurial Register and obtaining an identification number and a certificate of state and tax registration are required in order to commence the company's activities. Companies in Georgia are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement for foreign or domestic companies. Since 2008, evidence of contribution to the company's capital is no longer required.
Procedures (number)	4	8	10	
Ease of establishment index (0 = min, 100 = max)	84.2	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	86.7	82.9	82.1	In Tbilisi, Georgia's capital, registration of land-related rights has become a simpler and quicker process due to a law that was adopted in 2008. Both privately and publicly held land may be leased or bought. Publicly held land may be leased through direct negotiations with the public authority that owns the land. If there are several persons or companies seeking to lease the land, then the relevant public body is obliged to hold a competitive bidding process. Different approvals may be required from different state agencies depending on where the land is located. For example, more approvals may be required to lease land located near cultural monuments. Fast-track registration of land is available in Tbilisi, for a higher fee. Lease contracts can be of unlimited duration and can offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the lease contract. There are no restrictions on the amount of land that may be leased. Tbilisi has both a land registry and a cadastre, which are linked and coordinated to share data.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	52.6	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	78.9	70.6	
Time to lease private land (days)	8	43	61	
Time to lease public land (days)	50	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	85.8	82.5	85.2	When *Investing Across Borders* (IAB) data was collected in 2009, arbitration in Georgia was governed by the Law on Private Arbitration of 1997. The law requires the existence of a prior written agreement between the parties to an arbitration. It does not specify, however, whether exchange of documents via email or fax could constitute such written agreement. Parties can demand replacement of an arbitrator in case of reasonable doubts about the arbitrator's impartiality or independence, or if the arbitrator does not know the language of the proceedings. Parties are free to appoint arbitrators of any nationality or professional qualifications. Parties can choose foreign counsel to represent them in arbitration proceedings. Georgian Civil Procedural Code contains a chapter on the participation of courts in arbitration proceedings and on the execution of arbitration awards. The Code grants the courts of Georgia the right to deem an arbitration invalid if a criminal case arises in connection with the dispute being considered and if the court deems that resolution of the case by an arbitral tribunal may have adverse consequences. The National Enforcement Bureau, a public entity under the Ministry of Justice, enforces domestic arbitration awards, which takes around 13 weeks. The Supreme Court of Georgia has jurisdiction to enforce foreign arbitration awards, which takes around 37 weeks. A new arbitration law should have been passed in early 2010. Its content will be reflected in the next IAB report.
Ease of process index (0 = min, 100 = max)	75.2	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	53.6	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Ghana

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Ghana is one of the more open economies to foreign equity ownership in the Sub-Saharan Africa region. All of its major sectors covered by the Investing Across Sectors indicators, with the exception of the primary sectors, are fully open to foreign capital participation. The equity restrictions in the primary sectors (mining and oil and gas) are stipulated in the Minerals and Mining Act (2006, Act 703), and the Petroleum (Exploration and Production) Law (1994, Act 84). Both acts mandate a compulsory local participation in investment projects; the government automatically acquires a minimum equity share of 10% in ventures at no cost. In addition to these overt legal restrictions on foreign equity ownership, the electricity transmission and distribution sectors are dominated by publicly owned companies, representing a further potential obstacle to foreign investors. Furthermore, Ghanaian laws specify a minimum investment amount for foreign companies, which is currently set at $50,000 or the equivalent in goods. Portfolio investments and businesses set up solely for export are exempted from this regulation.
Mining, oil and gas	90.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	72	48	42	It takes 10 procedures and 72 days to establish a foreign-owned limited liability company (LLC) that wants to engage in international trade, in Accra, Ghana. This is longer than the IAB regional average for Sub-Saharan Africa. Foreign investors must obtain a certificate of capital importation, which can take 14 days. The local authorized dealer must confirm the import of capital with the Bank of Ghana, which will then confirm the transaction to the Ghana Investment Promotion Centre (GIPC) for investment registration purposes. According to the Ghana Investment Promotion Centre Act (1994), all foreign investors must register their investment with GIPC. This registration is only required of foreign companies and takes 11 days to complete. E-copies of Ghana's commercial laws and regulations can be obtained for a fee from a private firm that has computerized all the laws. At least 1 member of the board of directors must be a Ghanaian resident. Foreign companies can hold foreign currency bank accounts. The minimum capital requirement for a wholly foreign-owned LLC is GHs 74,500 (~$52,000). This requirement does not apply to local companies.
Procedures (number)	10	10	10	
Ease of establishment index (0 = min, 100 = max)	34.2	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	90.0	76.6	82.1	The process of leasing land in Accra can be lengthy and unpredictable. A foreign company cannot buy publicly or privately held land. It is, however, possible to lease publicly or privately held land. Industrial or commercial leases are restricted to a maximum duration of 50 years. Not all privately held land is registered in the land registry, making it difficult to ascertain who the landowner is. In many cases, the process of leasing private land may be more cumbersome than that for public land. Any disposal of publicly held land requires consent of the Lands Commission. Lease contracts can offer the lessee the right to subdivide, sublease, or mortgage the leased land. In the case of public land, consent is required from the Lands Commission. There are no restrictions on the amount of land that may be leased. Though land-related information is not easy to obtain, there is a Land Administration Project currently underway. This project seeks to create a database of decisions from land disputes as well as to centralize all relevant land-related information.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	30.0	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	58.5	70.6	
Time to lease private land (days)	104	72	61	
Time to lease public land (days)	247	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	74.9	82.4	85.2	The Arbitration Act (1961) governs arbitrations in Ghana, but the legislation is not readily available online. The law distinguishes between domestic and international arbitrations. An international arbitration is defined as an award made in Ghana pursuant to an arbitration agreement that is not governed by Ghanaian law. A domestic arbitration is defined as an arbitration agreement governed by the laws of Ghana with an arbitration award made in Ghana. Commercial disputes are generally arbitrable in Ghana, although disputes relating to property interests are not. Arbitration agreements must be in writing, and the law does not allow for severability from the underlying contract. Parties may choose an arbitrator of any nationality, gender, or professional qualifications. They may also choose foreign lawyers to represent them in arbitrations. The Ghana Arbitration Centre administers arbitrations in Ghana; arbitrations cannot be conducted online. On average, it takes around 62 weeks to enforce an arbitration award rendered in Ghana 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 Court of Appeal, which will significantly increase the length of time to enforce an award (an estimated 4 years).
Ease of process index (0 = min, 100 = max)	88.5	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	40.9	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Greece

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Greece presents restrictions on foreign equity ownership greater than the average for the 11 member states of the European Union covered by the Investing Across Sectors indicators. It imposes restrictions on foreign equity ownership in select utility sectors, in particular in the electricity industry. Pursuant to Article 22 of Law 2773/1999 and to Presidential Decree 328/2000, the Hellenic Transmission System Operator S.A. (ΔΕΣΜΗΕ Α.Ε.) is granted exclusive rights to the transmission and distribution of electricity in Greece. Private capital participation, domestic or foreign, in those sectors is, therefore, not possible. The electricity generation sector is also closed to foreign capital from countries outside of the European Union. Presidential Decree 41/2005 imposes the same restriction on the railway freight transportation sector. Like the other EU countries covered by the indicators, Greece imposes restrictions on the air transportation sector, in which foreign ownership is limited to 49%. This equity restriction, however, only applies to investors from countries outside of the European Economic Area (EEA). Furthermore, foreign capital participation in the airport operation sector is limited to a less-than-50% share. Currently, all Greek airports are owned and operated by public entities.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	0.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	49.4	69.2	78.5	
Media	100.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	22	21	42	The process of establishing a foreign-owned limited liability company (LLC) in Athens, Greece is in line with the IAB regional average for high-income OECD countries, but faster than the IAB global average. In addition to the procedures required of domestic companies, foreign companies must provide an apostille and a notarized copy of the parent company documents. In addition, the company must register with the Greek Tax Authority for Foreigners and obtain a Greek Tax Registration Number. This step takes only 1 day. No investment approval is required. Any company established in Greece that is involved in international trade must be registered either with the Exporters Registry or the Commercial Agents (imports-exports) Registry. A recent legislative amendment (Art. 16 of Law 3661/2008) states that an LLC can begin its operations solely by furnishing a certificate from the Printing Office as proof of the commencement of its operations. The articles of association must be signed before a notary public and in the presence of a local counsel. The Chamber of Commerce and Industry has recently initiated a one-stop shop for LLC incorporation. Foreign companies are free to open and maintain bank accounts in foreign currency. Business registration is not yet possible online. The minimum paid-in capital requirement for domestic and foreign LLCs in Greece is € 4,500.
Procedures (number)	18	9	10	
Ease of establishment index (0 = min, 100 = max)	68.4	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	92.2	82.1	Foreign companies seeking to access land in Greece have the option to lease or buy land from both private and public owners. The procedures involved in leasing private land require a simple contract, usually written, so as to keep a record of it, since a lease is typically valid even if orally agreed upon. There is no legal obligation to register leases. The process of leasing or buying publicly held land is governed by very specific regulations. Such land is usually leased through a public tender competition. Lease contracts can be of unlimited duration. Leases can offer the lessee the right to transfer, sublease, or mortgage the leased land or use it as collateral. Subdivision of land is subject to applicable zoning laws. There are no restrictions on the amount of land that may be leased. Land-related information can be found in the land registry and cadastre, which are not linked or coordinated to share data. There is currently legislation in place that seeks to improve the operation of the cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	47.4	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	84.2	70.6	
Time to lease private land (days)	15	50	61	
Time to lease public land (days)	20	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.4	94.2	85.2	There are 2 separate regimes governing arbitration in Greece. Law 2735/1999 regulates international commercial arbitration, and the Code of Civil Procedure (Presidential Decree 503/1985) governs domestic arbitration. There is no statutory definition of domestic arbitration. It is considered, by default, to be an arbitration taking place in Greece that does not fall within the definition of international arbitration. Private law disputes are generally arbitrable, providing that the parties have the power to dispose of the object in dispute. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. The laws require arbitrators to be independent and impartial. The parties may also retain foreign lawyers to represent them in arbitration proceedings. They may select any arbitral institution of their choice. Online arbitration is not an available option. There are several arbitral institutions in Greece; the 2 most commonly used are the Athens Chamber of Commerce and Industry and the Chamber of Engineers. Arbitral tribunals are not generally thought to have the power to rule on their own jurisdiction, although the court will often refer parties who have so agreed to arbitration. On average, it takes around 45 weeks to enforce an arbitration award rendered in Greece, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 43 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	86.1	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	48.6	77.6	57.9	

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Guatemala

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Guatemala is one of the most open countries to foreign equity ownership, as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to foreign capital participation. With the exception of port and airport operation, there are no sectors with monopolistic or oligopolistic market structures or any perceived difficulties in obtaining any required operating licenses.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	100.0	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	30	74	42	It takes 12 procedures and 30 days to establish a foreign-owned limited liability company (LLC) in Guatemala (Guatemala City). This process is one of the shortest among the IAB countries in Latin America and the Caribbean and is shorter than the IAB global average. While foreign ownership is allowed, the law requires at least 2 shareholders for LLCs. The only additional requirements are the legalization of the parent company's documentation in its country of origin and the registration of a power of attorney for the person responsible for creating the company in Guatemala. There is no requirement for an investment approval. Companies in Guatemala are free to open and maintain a bank account in foreign currency. The minimum capital requirement for domestic and foreign companies is GTQ 5,000 (~$625), although LLCs are required to pay in their entire capital before the deed of constitution is executed.
Procedures (number)	12	14	10	
Ease of establishment index (0 = min, 100 = max)	57.9	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.6	78.2	82.1	The most common way for foreign companies to acquire land is to lease or buy private land. Publicly held land may be leased or bought through a public auction. Only leases held for greater than 3 years require registration. The maximum duration of private leases may be unlimited. The usual duration is 15 years, however. There are no restrictions on the amount of private land that may be leased. The lease contract can offer the lessee the right to transfer, sublease, or subdivide the leased land as well as to mortgage it or use it as collateral. On the other hand, there are restrictions on the amount of publicly held land that may be leased as well as on the right to transfer, renew, sublease, or subdivide the lease. Land-related information can be found in the land registry and cadastre. There are currently efforts underway to improve the availability and accessibility of land-related information through a newly formed public agency, the Cadastre Information Registry (RIC).
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	27.8	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	70.0	73.0	70.6	
Time to lease private land (days)	34	62	61	
Time to lease public land (days)	168	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	91.6	87.5	85.2	The Guatemalan Arbitration Law (Decree 67-95) adopted in 1995 is largely based on the UNCITRAL Model Law. Commercial disputes are generally arbitrable, except matters for which the law established a special procedure extensively limiting the scope of arbitrable disputes. Due to public policy considerations, disputes between foreign companies and the state over natural resources cannot be resolved by arbitration. There are no legal restrictions on the parties' choice of arbitrators, seat of arbitration, or language of proceedings for either domestic or international arbitration. However, only lawyers who are licensed to practice locally may represent parties in arbitrations in Guatemala. The law requires the impartiality of arbitrators but does not provide for confidentiality of the proceedings. There are 3 active arbitration centers in Guatemala: Centro de Arbitraje y Conciliación de la Cámara de Comercio de Guatemala (CENAC), Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala (CRECIG), and Centro Privado de Dictamen, Conciliación y Arbitraje (CDCA). Courts are required to assist arbitrators in the taking of evidence and enforcement of orders for provisional measures. On average, it takes around 30 weeks to enforce an arbitration award rendered in Guatemala or in a foreign country, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	72.3	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	58.4	51.7	57.9	

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Haiti

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Foreign investment in Haiti is subject to a general ownership restriction across all business sectors as stipulated in the country's Commercial Code. Any locally incorporated company, regardless of the business sector in which it is active, must have at least 3 shareholders, one of whom must be a Haitian national. Haitian law further stipulates that any foreign investment with a "potential impact on the country's economy" is subject to presidential approval, regardless of the business activity concerned. In addition to these general restrictions, the country imposes sector-specific limits on foreign equity ownership in 2 of the 33 sectors covered by the Investing Across Sectors indicators. Foreign capital participation in the banking industry is limited to a maximum of 49% and the domestic air transportation sector is closed to foreign equity ownership. In addition, several industries, such as port and airport operation and the fixed-line telecommunications sector are dominated by government monopolies. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it difficult for foreign companies to invest.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	49.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	80.0	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	212	74	42	It takes on average 212 days to establish a foreign-owned subsidiary in Port-au-Prince, longer than the IAB regional and global averages. In addition to the steps required of domestic companies, foreign investors must authenticate the parent's company documentation abroad, legalize said documents, and obtain the consul's signature at the Ministry of Foreign Affairs. No investment approval or trade license are required. Once the investor pays the "patente," it is used for import and export. Haiti is the only IAB country where the minimum capital requirement is more favorable for foreign than domestic companies. If a wholly foreign-owned company is registered, there is no specific minimum capital requirement. In the case of joint ventures with one or more Haitian shareholders, the minimum capital requirement is HTG 100,000 (~$2,500) for industrial companies or HTG 25,000 (~$630) for commercial companies. If the subsidiary is wholly foreign-owned, there is no requirement to have a Haitian shareholder on the board of directors.
Procedures (number)	13	14	10	
Ease of establishment index (0 = min, 100 = max)	63.2	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	71.4	78.2	82.1	The process of leasing publicly held land in Port au Prince is unpredictable. All public land is owned by the municipality. Legally, nothing prevents the municipality from leasing land, but it is uncommon. The process of leasing public land is not transparent and the amount of time it takes depends on the government interests involved. Foreign companies seeking to access land also have the option to lease or buy land from private owners or to buy publicly held land. A foreign company can only buy land subject to approval from the Justice Minister. There are limitations as to the amount of land that can be purchased. Lease contracts can offer the lessee the right to sublease, mortgage, or subdivide the land. Subdivision is subject to applicable zoning laws. Land-related information can be found in the land registry. There is no cadastre or land information system (LIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	87.5	98.2	92.2	
Access to land information index (0 = min, 100 = max)	30.0	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	40.0	73.0	70.6	
Time to lease private land (days)	90	62	61	
Time to lease public land (days)	219	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	79.9	87.5	85.2	Arbitration in Haiti is governed by the 2006 addition to the Civil Procedures Code of 1963. All commercial matters are arbitrable, except for disputes involving the state, government entities, minors, and incompetent adults. The Haitian Arbitration Center was established in 2008 under the leadership of the Haitian Commercial Chamber, but is not yet fully operational and practice is lacking. Arbitration agreements must be concluded in writing; agreements concluded by email, fax, or other electronic methods are not legally binding due to security considerations (Haiti does not have encryption of emails and parties may change their content in bad faith). There are no restrictions on the identity of arbitrators, but arbitration proceedings must be conducted in French. Parties can only choose an odd number of arbitrators, and no more than 3. There have not been any cases of enforcement of arbitration awards in Haiti to date. Haiti has signed, but not officially ratified, the ICSID Convention.
Ease of process index (0 = min, 100 = max)	74.9	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	28.5	51.7	57.9	

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Honduras

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Honduras has opened up the majority of the sectors of its economy to foreign equity ownership. As a notable exception, overt legal ownership restrictions still exist on the domestic air transportation industry. Foreign capital participation in a company providing such transportation services is limited to a maximum share of 49%. Furthermore, the Constitution of the Republic of Honduras requires that the editorial and management staff of local media companies, such as newspaper publishing and radio and television broadcasting enterprises, be Honduran citizens. This restriction does not, however, affect the ownership structure of such companies, which may be 100% foreign-owned. Primarily publicly owned enterprises with monopolistic market structures represent a further potential obstacle to foreign investors in the railway freight transportation, port operation, and electricity transmission and distribution sectors.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	89.8	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	35	74	42	It takes 15 procedures and 35 days to establish a foreign-owned limited liability company (LLC) in Honduras (Tegucigalpa). This process is one of the shortest among the IAB countries in Latin America and the Caribbean and is shorter than the IAB global average. In addition to the procedures required of domestic companies, a foreign company must legalize and authenticate the documents of the parent company in the country of origin. If it wants to engage in international trade and import raw material from abroad, the company must also file an application with the Ministry of Finance. This can take up to a month. There is no investment authorization requirement in Honduras. The tax authority now requires a company's legal representative to have a residence card in order to issue the tax ID. This process can take up to a year and many companies get around it by naming a Honduran representative and later changing their bylaws to elect the desired representative. Companies in Honduras are free to open and maintain a bank account in foreign currency. The minimum capital requirement for domestic and foreign LLCs is HNL 5,000 (~$265). Only 25% of this, however, must be paid in at incorporation.
Procedures (number)	15	14	10	
Ease of establishment index (0 = min, 100 = max)	68.4	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.6	78.2	82.1	Foreign companies seeking to access land in Honduras have the option to lease or buy land from both private and public owners. There are certain restrictions on the purchase or lease of land along the border or coastline. There are exceptions to these restrictions for certain tourism projects. About 80% of land is unregistered and a thorough due diligence process is thus necessary to determine whether land is available for lease or purchase. Registration is not required for lease contracts of less than 3 years. Approval from the National Agrarian Institute is required for the acquisition of all land parcels greater than 200 hectares. Lease contracts can be of unlimited duration and can offer the lessee the right to subdivide or sublease the leased land as well as to mortgage it or use it as collateral. Land-related information may be found in the land registry or cadastre, which are not linked or coordinated to share data.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	55.6	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	73.0	70.6	
Time to lease private land (days)	61	62	61	
Time to lease public land (days)	182	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.6	87.5	85.2	The Honduran Conciliation and Arbitration Law (2000) distinguishes between domestic and international arbitration, as well as between arbitration at law and arbitration at equity. In domestic arbitrations at law, arbitrators must be lawyers licensed to practice in Honduras. Arbitration proceedings must be conducted in Spanish. Representation by foreign lawyers is not permitted in domestic arbitration. The seat of arbitration must be in Honduras if the dispute is domestic and between local parties. There are 3 main arbitration and conciliation centers: the Center for Conciliation and Arbitration of the Chamber of Commerce of Tegucigalpa, the Center for Conciliation and Arbitration of the Chamber of Commerce of Cortés, and the Center for Conciliation and Arbitration of the Honduran Bar Association. There are no legal provisions mandating courts to assist arbitral tribunals with the taking of evidence, but there are provisions for assistance with orders for interim measures. On average, it takes around 21 weeks to enforce an arbitration award rendered in Honduras, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 36 weeks for a foreign award. Foreign awards must first undergo a recognition proceeding before the Supreme Court of Justice. The decision cannot be appealed. The Supreme Court of Justice has jurisdiction to enforce international awards against the state.
Ease of process index (0 = min, 100 = max)	73.3	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	59.5	51.7	57.9	

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India

South Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				India's restrictions on foreign equity ownership are greater than the average of the countries covered by the Investing Across Sectors indicators in the South Asia region and of the BRIC (Brazil, Russian Federation, India, and China) countries. India imposes restrictions on foreign equity ownership in many sectors, and in particular in the service industries. Sectors such as railway freight transportation and forestry are dominated by public monopolies and are closed to foreign equity participation. With the exception of certain activities specified by law, foreign ownership in the agriculture sector is also not allowed. Foreign ownership of publishing companies and newspapers is limited to a maximum of 26%. In the financial services sector, foreign capital participation in local banks is limited to 87% and in insurance companies to 26%. Furthermore, foreign ownership in the telecommunications sector (including fixed-line and wireless/mobile infrastructure and services) is limited to a less-than-75% stake.
Mining, oil and gas	100.0	88.0	92.0	
Agriculture and forestry	50.0	90.0	95.9	
Light manufacturing	81.5	96.3	96.6	
Telecommunications	74.0	94.8	88.0	
Electricity	100.0	94.3	87.6	
Banking	87.0	87.2	91.0	
Insurance	26.0	75.4	91.2	
Transportation	59.6	79.8	78.5	
Media	63.0	68.0	68.0	
Sector group 1 (constr., tourism, retail)	83.7	96.7	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	46	39	42	It takes 16 procedures and 46 days to establish a foreign-owned limited liability company (LLC) in India (Mumbai). This is slightly slower than the average for countries in South Asia and the IAB global average. In addition to the procedures required of a domestic firm, a foreign company must authenticate the documents of the parent company in its country of origin. A company engaged in international trade must also obtain an Importer/Exporter Code issued by the Director General of Foreign Trade. Investment approvals are required for investments in certain sectors. For manufacturing, however, FDI is permissible under the automatic route without prior approval from the government. Foreign companies must comply with reporting requirements mandated by the Foreign Exchange Management Act, notify the regional office of the Reserve Bank of India within 30 days of receipt of inward remittances, and file the required documents with that office within 30 days of issuing shares to foreign investors. Companies in India are allowed to open and maintain a foreign currency account (Exchange Earners Foreign Currency Account) with an authorized dealer. The minimum capital requirement for foreign and domestic companies is INR 100,000 (~$2,230), which must be paid in upon incorporation.
Procedures (number)	16	9	10	
Ease of establishment index (0 = min, 100 = max)	76.3	62.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	92.9	87.5	82.1	In Mumbai, leasing private or public land is the most common means for foreign companies to acquire land. Leasing public land is a lengthy process that may require several negotiations with the relevant public authorities. Since ownership is easy to ascertain for publicly held land, the process of due diligence is easier. Most publicly held land is leased or bought through a public auction. Such land may have restrictions on its use and transfer. Foreign companies must have permission from the Reserve Bank of India to lease land for more than 5 years. Lease contracts can be for a maximum duration of 99 years, and can offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the lease contract. Investors face a major challenge in acquiring land-related information. There are currently efforts underway, however, to implement a National Land Records Modernization Program (NLRMP) that includes computerization and digitalization of land records and maps.
Strength of ownership rights index (0 = min, 100 = max)	87.5	93.8	92.2	
Access to land information index (0 = min, 100 = max)	15.8	20.1	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	59.7	70.6	
Time to lease private land (days)	90	99	61	
Time to lease public land (days)	295	205	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	88.5	86.4	85.2	The Arbitration and Conciliation Act (1996) governs domestic and international arbitrations in India. Moreover, certain federal acts and acts enacted by different Indian states have mandatory statutory arbitration provisions. The 1996 Act is based on the UNCITRAL Model Law. Although it does not include a definition of domestic arbitration, it states that any award made when the place of arbitration is in India will be considered a domestic award. There are no notable differences between domestic and international arbitration. Arbitration agreements must be in writing. Most commercial disputes can be submitted to arbitration, but there are certain exceptions, such as the nonpayment of admitted debt or income tax, and industrial disputes. Parties are free to select arbitrators of any gender, nationality, or professional qualifications in both domestic and international arbitrations. However, only licensed practitioners may represent parties as advocates in arbitration proceedings. There are several arbitral institutions in India, including the Indian Council of Arbitration in New Delhi. Institutional arbitrations are slowly gaining momentum, although parties still tend to prefer ad hoc proceedings. Indian courts are able to assist arbitration proceedings with interim relief. Decisions enforcing or denying enforcement of arbitration awards may be appealed to the Mumbai High Court and the Supreme Court of India. On average, it takes around 33 weeks to enforce an arbitration award rendered in India, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 43 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	67.6	55.0	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	53.4	36.4	57.9	

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Indonesia

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	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 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.
Mining, oil and gas	97.5	75.7	92.0	
Agriculture and forestry	72.0	82.9	95.9	
Light manufacturing	68.8	86.8	96.6	
Telecommunications	57.0	64.9	88.0	
Electricity	95.0	75.8	87.6	
Banking	99.0	76.1	91.0	
Insurance	80.0	80.9	91.2	
Transportation	49.0	63.7	78.5	
Media	5.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	85.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	82.5	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	86	68	42	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.
Procedures (number)	12	11	10	
Ease of establishment index (0 = min, 100 = max)	52.6	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.6	84.9	82.1	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.
Strength of ownership rights index (0 = min, 100 = max)	n/a	83.3	92.2	
Access to land information index (0 = min, 100 = max)	21.4	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	67.5	70.6	
Time to lease private land (days)	35	66	61	
Time to lease public land (days)	81	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	83.8	85.2	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. 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).
Ease of process index (0 = min, 100 = max)	81.8	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	41.3	46.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Ireland

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the high-income OECD countries covered by the Investing Across Sectors indicators, Ireland is among the most open to foreign equity ownership. All major sectors of its economy, with the exception of domestic and international air transportation, are fully open to foreign capital participation. Like the other member states of the European Union, Ireland limits foreign ownership in the air transportation sector to 49% for investors from outside of the European Economic Area (EEA). Foreign capital participation is not restricted in the electricity transmission and distribution sectors, but these are primarily publicly owned enterprises with a monopolistic market structure. This fact, together with a high perceived difficulty of obtaining the required operating license, makes it difficult for foreign companies to engage in these sectors.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	100.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	14	21	42	It takes 5 procedures and 14 days to establish a foreign-owned limited liability company (LLC) in Dublin, Ireland. This is one of the simplest and shortest processes among the IAB high-income OECD countries. A foreign company that wants to engage in international trade must obtain a trade license from the Department of Enterprise, Trade and Employment once the subsidiary has been incorporated. Registering the subsidiary with the Companies Registration Office using their CRO Disk system, an electronic company incorporation scheme, will reduce this procedure time from 10 days to 5. To access the CRO Disk system, the company founder must apply to the CRO for an access number and have the memorandum and articles of association approved in advance. No investment approval is required. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement in Ireland is a symbolic € 1.
Procedures (number)	5	9	10	
Ease of establishment index (0 = min, 100 = max)	70.0	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	92.9	92.2	82.1	Leasing privately held land is the most common way that foreign companies acquire land in Ireland. Publicly held land may be leased through the Industrial Development Authority of Ireland. It is also possible to buy privately or publicly held land. The process of acquiring land does not differ much for foreign and domestic companies. The registration of leases is not compulsory. Lease contracts can be of unlimited duration, but the usual duration is about 25 years. The lease contract can offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the contract. Statutory provisions govern the renewal of leases. In Dublin, the land registry and registry of deeds have been combined to form the Property Registration Authority. Most land-related information for land that has been registered can be found here. Currently, there are several reforms underway to simplify the process of transferring land and making land-related information available to the public.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	50.0	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	100.0	84.2	70.6	
Time to lease private land (days)	70	50	61	
Time to lease public land (days)	77	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	94.2	85.2	The Arbitration Acts (1954 and 1988) govern domestic arbitrations in Ireland, and are based on the English Arbitration Act (1950). The International Commercial Arbitration Act (1998) governs international arbitrations in Ireland. The 1998 act adopts the UNCITRAL Model Law in its entirety and without modification, although the Irish High Court retains supervisory powers to order security for costs, preservation of property, and the examination of witnesses outside the jurisdiction. Accordingly, the rules for domestic and international arbitration currently diverge greatly. The Arbitration Bill (2008) was not yet law at the time of data collection, but it will adopt the UNCITRAL Model Law and apply it uniformly to all arbitrations taking place in Ireland. Parties are free to appoint arbitrators of any nationality, gender, or professional qualifications. Moreover, they are able to use any arbitral institution of their choice. There are several institutions in Ireland, including international institutions such as the ICC. The law provides for courts to assist the arbitration process by granting interim relief, although such assistance, in practice, is rarely sought. On average, it takes around 19 weeks to enforce an arbitration award rendered in Ireland, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 18 weeks for a foreign award. Appeals can be made to the High Court or Supreme Court. If the award is over € 1,000,000, the parties can apply for the case to be heard by the commercial division of the High Court, which would shorten the process.
Ease of process index (0 = min, 100 = max)	79.6	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	75.8	77.6	57.9	

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Japan

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	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. 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	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	83.3	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	39.8	69.2	78.5	
Media	60.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	50.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	25	21	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 countries 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	9	10	
Ease of establishment index (0 = min, 100 = max)	81.6	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	92.2	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 public 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	100.0	92.2	
Access to land information index (0 = min, 100 = max)	30.8	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	84.2	70.6	
Time to lease private land (days)	17	50	61	
Time to lease public land (days)	96	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	94.2	85.2	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	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	65.9	77.6	57.9	

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Kazakhstan

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Kazakhstan's limits on foreign equity ownership are higher than in most other countries in Eastern Europe and Central Asia region covered by the Investing Across Sectors indicators. The Mass Media Law limits foreign ownership of companies in newspaper publishing and television broadcasting to a maximum share of 20%. Foreign capital participation in the telecommunications sector (including fixed-line and wireless/mobile infrastructure and services) is limited to a less-than-50% stake. In addition to these overt ownership restrictions, the law requires prior approval from the Kazakh government of any transaction involving assets in industries deemed as "strategic objects". The Civil Code specifies that such strategic objects include trunk oil pipelines, railway networks, international airports, and entities that directly or indirectly own such assets. An exhaustive list is provided in the List of Strategic Objects (June 30, 2008), approved by the government of the Republic of Kazakhstan. This approval is required for both foreign and domestic investors.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	49.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	20.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	34	22	42	It takes 9 procedures and 34 days to establish a foreign-owned limited liability company (LLC) in Kazakhstan (Almaty). This is a little longer than the IAB regional average for Eastern Europe and Central Asia, but still faster than the IAB global average. In addition to the procedures required of a domestic enterprise, a foreign company establishing a subsidiary in Almaty must authenticate the documents of the parent company abroad and register the capital contribution to the charter capital of the new company with the National Bank of Kazakhstan within 10 business days of registration. A foreign-owned company registered in Kazakhstan is considered a domestic company for Kazakhstan currency regulation purposes. Under the Law on Currency Regulation and Currency Control, residents may open bank accounts in foreign currency in Kazakh banks without any restrictions. However, companies wishing to open a bank account in a foreign bank outside of Kazakhstan must notify the National Bank of Kazakhstan within 30 calendar days of the agreement with the foreign bank. Investors must pay at least 25% of the charter capital prior to state registration with the local branch offices of the Ministry of Justice. The contribution must not be less than the minimal amount of charter capital (100 times the monthly assessment index: KZT 127,300 or ~$850).
Procedures (number)	9	8	10	
Ease of establishment index (0 = min, 100 = max)	65.8	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	86.7	82.9	82.1	It is not possible for foreign companies to buy land in Kazakhstan. They can, however, lease both publicly and privately held land. It is possible to lease land under a long-term lease, with a duration between 5 and 49 years. The process of leasing publicly held land may be time-consuming and unpredictable. The registration process is also lengthy, although a fast-track registration procedure was introduced in 2009, which seeks to reduce the registration period to 2 or 3 days. The maximum duration set by the law for leases of publicly held land is 49 years; for privately held land there is no limit. Lease contracts can offer the lessee the right to subdivide, sublease, mortgage the leased land, or use it as collateral. This, however, does not apply to most publicly held land. Land-related information can be obtained from the land registry and cadastre. These agencies are not located in the same agency nor are they linked or coordinated to share data.
Strength of ownership rights index (0 = min, 100 = max)	66.7	97.6	92.2	
Access to land information index (0 = min, 100 = max)	36.8	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	95.0	78.9	70.6	
Time to lease private land (days)	37	43	61	
Time to lease public land (days)	159	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	77.5	82.5	85.2	Arbitration in Kazakhstan is governed by the 2004 Law on Arbitration Tribunals for domestic arbitration, and the Law on International Commercial Arbitration (2004). Under the latter law, arbitration is considered international only if at least 1 of the parties is a nonresident of Kazakhstan. The 2 laws are very similar. Commercial disputes can generally be resolved through arbitration, except for those related to real estate in Kazakhstan, disputes involving interests of the state or state enterprises, disputes arising from contracts with monopolistic entities or those dominating the market, intra-company and shareholder disputes, and those related to transportation agreements or bankruptcy. The law requires arbitrators to be at least 25 years old, and to have higher legal education and 2 years of legal work experience. There are no restrictions on the nationality of the arbitrators. Parties may appoint foreign lawyers to represent them in arbitration proceedings. Awards issued by foreign arbitral institutions in relation to a dispute between 2 Kazakh companies are not enforceable in Kazakhstan. The Almaty Specialized Interdistrict Economic Court has jurisdiction to enforce arbitration awards. On average, it takes around 5 weeks to enforce an arbitration award rendered in Kazakhstan, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 5 weeks for a foreign award. Foreign arbitration awards are recognized on the basis of reciprocity and courts have authority to review them.
Ease of process index (0 = min, 100 = max)	70.4	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	78.2	64.4	57.9	

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Kenya

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the countries in Sub-Saharan Africa covered by the Investing Across Sectors indicators, Kenya restricts foreign ownership in more sectors than most other economies. Foreign capital participation in telecommunications is limited to a maximum of 70%. However, the law provides foreign investors with a grace period of 3 years to build up the required domestic capital contribution of 30%. In the transportation sector, there are ownership restrictions in railway freight, port and airport operation, in which foreign investment is allowed only up to 50%. On the other hand, unlike in most other countries covered by the Investing Across Sectors indicators, domestic as well as international passenger air transportation is fully open to foreign capital participation. The tourism sector, one of the country's most prosperous industries, is fully open to foreign companies as well, as are other manufacturing and primary sectors.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	70.0	84.1	88.0	
Electricity	92.9	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	66.7	87.3	91.2	
Transportation	70.0	86.6	78.5	
Media	75.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	34	48	42	With no additional procedures specifically required of foreigners, it takes as long to establish a domestic enterprise as a foreign-owned limited liability company (LLC) in Kenya (Nairobi). This process (34 days and 12 procedures) is faster than both the regional average for the IAB countries in Sub-Saharan Africa and the global IAB average. In addition, obtaining an Investment Certificate from the Kenya Investment Authority (for investments of $100,000 and more) helps speed up the administrative start-up procedures, including the provision of various work permits. The Investment Certificate is valid for a 12-month period and consolidates the requisite health, safety, and environment licenses into one. During this period, the foreign investor is permitted to begin operations and apply for all the general and sector-specific licenses. The Advocates Act requires that an advocate of the High Court of Kenya prepare and submit the incorporation documentation. There is no minimum capital requirement and investors are allowed to hold foreign currency bank accounts.
Procedures (number)	12	10	10	
Ease of establishment index (0 = min, 100 = max)	57.9	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.6	76.6	82.1	In Nairobi, the process of leasing land is governed by several laws that deal with the registration and disposition of interests in land. Only companies that are 100% domestically owned can acquire land controlled under the Land Control Act, such as agricultural land. Nonetheless, foreign companies seeking to access land in Kenya have the option to lease or buy land from private and public landholders. Commercial leases cannot be issued for a period of less than 5 years and lease contracts can be as long as 999 years. Lease contracts can offer the lessee the right to subdivide, sublease, and mortgage the leased land. Land-related information can be found in the land registry and cadastre, which are located in different agencies and are not linked or coordinated to share data. Most of the relevant data related to land is available, in principle, but it may be a time-consuming process to obtain the information, as it requires dealing with several different authorities.
Strength of ownership rights index (0 = min, 100 = max)	100.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	22.2	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	58.5	70.6	
Time to lease private land (days)	72	72	61	
Time to lease public land (days)	113	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	82.4	85.2	Kenya's Arbitration Act (1996) is closely based on the UNCITRAL Model Law. The Act applies to domestic and international arbitration, and there is no difference in treatment between the 2 arbitration regimes. Additional provisions regulating arbitration are found in Chapter 21 of Kenya's Civil Procedure Act (2009) and in its Civil Procedure Rules. Kenya has 2 principal arbitral institutions: the Chartered Institute of Arbitrators and the Dispute Resolution Centre (Nairobi). There are no legal restrictions on the disputing parties' ability to organize the arbitration proceedings as they see fit. Despite Kenya's strong legal framework, there are problems with the length of arbitration proceedings and the enforcement of arbitration awards. Arbitration takes one year and 7 months on average, from the filing of an application of enforcement to the final writ of execution attaching assets. The domestic court process is slow, which can further impede the efficacy of judicial assistance in arbitrations. On average, it takes around 35 weeks to enforce an arbitration award rendered in Kenya, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 43 weeks for a foreign award. Practitioners state that arbitrations are not common in Kenya. Mediation is starting to be used as a dispute resolution technique, and on average, mediation cases are settled within 30 days.
Ease of process index (0 = min, 100 = max)	77.1	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	56.3	55.9	57.9	

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Korea, Rep.

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 12 high-income OECD countries covered by the Investing Across Sectors indicators, foreign equity ownership restrictions are relatively stringent in the Republic of 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.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	49.0	89.9	88.0	
Electricity	85.4	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	39.5	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	17	21	42	The process of establishing a foreign-owned subsidiary in Korea (Seoul) is faster than both the IAB regional average for high-income OECD countries 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 prepare 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).
Procedures (number)	11	9	10	
Ease of establishment index (0 = min, 100 = max)	71.1	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	92.2	82.1	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.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	68.4	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	70.0	84.2	70.6	
Time to lease private land (days)	10	50	61	
Time to lease public land (days)	53	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	94.2	85.2	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.
Ease of process index (0 = min, 100 = max)	81.9	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	70.2	77.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Kosovo

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Kosovo is one of the most open countries to foreign equity ownership in Eastern Europe and Central Asia. The Law on Foreign Investments grants foreign and domestic investors equal rights to ownership of local companies, following the principle of national treatment. With the exception of railway freight transportation, all other sectors measured by the Investing Across Sectors indicators are fully open to foreign equity ownership. While a number of sectors are still dominated by publicly owned enterprises, such as electricity transmission and distribution, waste management, and airport operations, legal provisions have been made to open up these sectors either to private greenfield investment or privatization.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	90.0	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	54	22	42	It takes 54 days and 11 procedures to establish a foreign-owned limited liability company (LLC) that wants to engage in international trade in Kosovo (Pristina). The Law on Business Organization stipulates that 10 days from the date of application companies are considered registered with the Kosovo Business Organization Register unless they hear otherwise. The principle of silent consent for business registration eases the process for investors, although automation would further improve the system. The requirement for a municipal license (30 days), however, is burdensome. Foreign investors do not need an investment approval. There is a minimum capital requirement of €1,000 and the company's charter capital must be paid in within 14 days of registration. Until the company provides the registry with evidence of payment, it may not engage in business activity in Kosovo. Natural and legal persons are entitled to open bank accounts in a foreign currency.
Procedures (number)	11	8	10	
Ease of establishment index (0 = min, 100 = max)	73.7	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	82.9	82.1	Most foreign companies prefer to lease public land. Other available options include leasing private land and buying privately and publicly held land. The purchase of private land is relatively expensive compared with publicly held land and requires a more extensive due-diligence process. Nonetheless, the process of leasing private land is streamlined and extremely fast compared with the regional or global average. Leases of public municipal land require central government approval only if they are for more than 10 years. Lease contracts can be of unlimited duration and can offer the lessee the right to subdivide, sublease, and mortgage the leased land. There are no restrictions on the amount of land that may be leased. The process of acquiring land-related information is less burdensome than in most countries in the region. Pristina has both a land registry and a cadastre located in the same agency. They are not linked or coordinated to share data, however. Reforms are currently underway to make them electronic, thus making it easier to obtain land-related information.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	47.4	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	65.0	78.9	70.6	
Time to lease private land (days)	25	43	61	
Time to lease public land (days)	59	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	74.9	82.5	85.2	In 2008 Kosovo enacted a Law on Arbitration that does not define terms such as "arbitration," "commercial," "international," and "scope of application of the law." Disputes involving immovable property, privatization-related matters, and creditor's claims against a corporation are not arbitrable. An arbitration agreement is only valid if concluded in writing. The law does not establish any specific requirements regarding the selection of arbitrators, but they must be an odd number. There are no provisions regarding the confidentiality of arbitration proceedings. There is not yet an established arbitral institution in Kosovo, and arbitration practice is therefore currently lacking. The law designates the Economic Court of Pristina (higher-level court) to enforce arbitration awards, but there has not yet been any court practice. The country has not yet ratified the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards or the ICSID Convention. Given the lack of practice on the ground, private practitioners were unable to estimate the length of time to enforce an award, whether rendered in Kosovo, or in a foreign country.
Ease of process index (0 = min, 100 = max)	63.9	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	27.5	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Kyrgyz Republic

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Compared with the other economies in Eastern Europe and Central Asia covered by the Investing Across Sectors indicators, the Kyrgyz Republic is one of the more open countries to foreign capital participation. With the exception of the domestic and international air transportation sectors, in which foreign ownership is limited to a maximum of 49%, all other sectors measured by the indicators are fully open to foreign capital participation. Kyrgyz legislation provides for equal treatment of domestic and foreign investors with respect to ownership of local companies.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	12	22	42	It takes 4 procedures and 12 days to establish a foreign-owned limited liability company (LLC) in the Kyrgyz Republic (Bishkek), making it one of the faster processes in the Eastern Europe and Central Asia countries covered by *Investing Across Borders*. An LLC in the Kyrgyz Republic needs a minimum of 2 shareholders. In addition to the 3 procedures also required of domestic companies, the only additional procedure required of foreign companies is to submit a legalized excerpt from the trade registry of its country of origin certifying that it is duly incorporated and in good standing. The Kyrgyz Republic is not party to the Hague Convention, but since September 2009 the legislative authority is considering a resolution on accession to said convention. Companies are registered at the one-stop shop at the Ministry of Justice. The April 2009 amendments to the Civil Code stipulate that registration must be done in 3 days. The one-stop shop interacts electronically with all agencies. Companies in the Kyrgyz Republic are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement, although the authorized capital stipulated in the constitutive documents must be paid in full within the first year of the company's operation.
Procedures (number)	4	8	10	
Ease of establishment index (0 = min, 100 = max)	73.7	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	91.2	82.9	82.1	Foreign companies seeking to acquire land in the Kyrgyz Republic have the option to lease privately or publicly held land. The land code prohibits the purchase of land by foreign companies, with the exception of foreign companies involved in mortgage financing. Publicly held land may be leased only within the boundaries of settlement centers, provided consent has been granted by the relevant public authority. The land may be leased through an auction or tender process or through direct negotiations with the relevant public authority. The maximum duration of lease contracts is 50 years. The lease contract offers 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 located in different agencies and are not linked or coordinated to share data. There is no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	n/a	97.6	92.2	
Access to land information index (0 = min, 100 = max)	55.6	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	82.5	78.9	70.6	
Time to lease private land (days)	15	43	61	
Time to lease public land (days)	154	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	74.9	82.5	85.2	The Law on Arbitration Courts in the Kyrgyz Republic (2002) does not distinguish between domestic and international arbitration. All commercial disputes are generally arbitrable, unless a special law grants exclusive jurisdiction to the courts. There are no nationality restrictions on arbitrators. The law mandates that arbitrators must have certain qualifications, however. A sole arbitrator must be a qualified lawyer, and in the event of an arbitral tribunal, at least the chairman must be a qualified lawyer. The law requires arbitrators to be independent and impartial and to preserve the confidentiality of the proceedings. Parties may choose foreign counsel to represent them in arbitration proceedings in the Kyrgyz Republic. The only local arbitral institution is the International Court of Arbitration in affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic. There is reportedly no arbitration practice in the court, however. There are no legal provisions that state courts may assist arbitrators with orders of provisional measures or with the taking of evidence, and there is no court practice in that regard. The Interdistrict Court of Bishkek has jurisdiction to enforce arbitration awards. On average, it takes around 15 weeks to enforce an arbitration award rendered in the Kyrgyz Republic, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 16 weeks for a foreign award. Foreign arbitration awards are not enforced if their execution could be detrimental to the sovereignty of the Kyrgyz Republic, or threatens its security.
Ease of process index (0 = min, 100 = max)	72.3	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	61.7	64.4	57.9	

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Liberia

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 30 are fully open to foreign equity ownership in Liberia. The only exceptions are the electricity transmission and distribution industries, which are closed to foreign capital participation, as is the port operation sector. All port and airport facilities in Liberia are currently owned and operated by a publicly owned company. All other sectors, including the primary sectors and media industry, which are restricted in many countries in Sub-Saharan Africa, are fully open to foreign ownership in Liberia.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	71.4	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	90.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	25	48	42	It takes 8 procedures and 25 days to establish a foreign-owned limited liability company (LLC) in Monrovia, Liberia. This is faster than both the IAB regional average for Sub-Saharan Africa and the IAB global average. A foreign company establishing a subsidiary in Monrovia must notarize the documents of the parent company abroad. Foreign companies must only obtain investment approval if they want to benefit from investment incentives. Otherwise, a mere notification to the National Investment Committee suffices. If the subsidiary is engaged in manufacturing and international trade, it must obtain a trade license; this can take 3 days. Liberia is one of the few countries surveyed by IAB that does not have its commercial laws and regulations publicly available online. Foreign investors must use a local counsel when establishing a subsidiary. There is no minimum paid-in capital requirement, except in regulated industries related to financial institutions, such as insurance and banking.
Procedures (number)	8	10	10	
Ease of establishment index (0 = min, 100 = max)	55.3	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	57.7	76.6	82.1	Foreign ownership of land is prohibited in Liberia. Foreign companies seeking to lease land in Liberia have the option to lease privately or publicly held land. Publicly held land is not readily available. The best option for foreign companies seeking to acquire land is thus to lease private land. Publicly held land is usually acquired through direct negotiations with the relevant public authority. Land may be leased for a maximum of 50 years, although the usual duration is about 21 years, with the option to renew. Lease contracts can offer the lessee the right to subdivide or sublease the land. The leased land cannot be mortgaged or used as collateral, unless the land has already been developed. Land-related information can be obtained from the registry. There is no cadastre, land information system (LIS), or geographic information system (GIS) available. The registry does not always have sufficient or current information and in most cases acquiring land-related information is a burdensome process involving different sources.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	28.6	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	15.0	58.5	70.6	
Time to lease private land (days)	28	72	61	
Time to lease public land (days)	193	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	44.9	82.4	85.2	There is no specific statute governing arbitration in Liberia. The Liberian Civil Procedure Law governs both domestic and international arbitrations taking place in Liberia. An arbitration agreement is not severable from the main contract; it can, however, be incorporated by reference. An arbitration agreement cannot be concluded by electronic communication, oral agreement, or conduct by one of the parties. The parties cannot elect to retain a foreign lawyer to represent them in either domestic or international arbitrations. The institution administering commercial arbitration in Liberia is the Liberian Chamber of Commerce. There are no legal provisions providing explicitly for the local courts to assist the arbitration process with the production of documents or the appearance of witnesses. The Liberian courts, especially the Supreme Court, have a clear pro-arbitration policy, favoring the enforcement of arbitration agreements and awards. It takes roughly 1.4 years to enforce both foreign and domestic arbitration awards, from the filing of an application to the court of first instance to obtaining a writ of execution, with provision for an appeal. Enforcement proceedings are undertaken in the Civil Law Court in Liberia, with appeals made directly to the Supreme Court. On average, it takes around 21 weeks to enforce an arbitration award rendered in Liberia, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 21 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	56.4	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	42.0	55.9	57.9	

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Macedonia, FYR

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The former Yugoslav Republic of Macedonia has opened up the majority of the sectors of its economy to foreign investors. As a notable exception, legal ownership restrictions still exist in the domestic and international air transportation industries. As in most other countries in Eastern Europe and Central Asia, legislation in FYR Macedonia limits foreign ownership in these sectors to a maximum of 49%. A number of business sectors, such as electricity transmission, railway freight transportation, airport operation, and waste management, are still dominated by publicly owned enterprises. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it difficult for foreign companies to engage in these sectors.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	8	22	42	The process of establishing a foreign-owned limited liability company (LLC) in FYR Macedonia is faster than both the IAB regional average in the Eastern Europe and Central Asia region and the IAB global average. It takes only 6 procedures and 8 days. A foreign company establishing a subsidiary in Skopje must authenticate the documents of the parent company abroad and must register the investment with the foreign direct investment registry in the Macedonian Central Registry within a year of registration. The company registration is done at a one-stop shop within the Central Registry and takes 1 day. Companies in FYR Macedonia are free to open and maintain bank accounts in foreign currency. There is a minimum capital requirement of MKD 310,000 (~$6,800) for foreign and domestic companies. In accordance with the Trade Company Law the amount must be paid in within a year of registration.
Procedures (number)	6	8	10	
Ease of establishment index (0 = min, 100 = max)	76.3	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.6	82.9	82.1	In FYR Macedonia, foreign companies may buy or lease privately or publicly held land, the latter subject to the consent of the Justice Minister. The most common way that foreign companies acquire land is through the lease of publicly held land. This land can be leased only through a public auction. Land can be leased for a maximum of 99 years. 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. These rights may be restricted in the case of publicly held land. Publicly held land may not be transferred unless approval is sought from the relevant authority. Moreover, the land can only be transferred after it has been developed. Land-related information may be found in the registry and cadastre. However, there is no reliable source of information on land claims, since not all claims are necessarily registered in the cadastre. The registry and cadastre are not linked or coordinated to share data.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	68.4	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	78.9	70.6	
Time to lease private land (days)	13	43	61	
Time to lease public land (days)	79	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	93.1	82.5	85.2	FYR Macedonia's Law on International Commercial Arbitration (2006) applies to both national and international arbitrations taking place in FYR Macedonia. FYR Macedonia has also enacted a Law on Mediation (2006). All commercial disputes are arbitrable, except those involving rights over immovable property, aviation and ships, and bankruptcy. Arbitration is not often used as a method of dispute resolution, however. Parties are free to appoint arbitrators of any nationality or professional qualifications. The law requires the impartiality and independence of arbitrators and the confidentiality of the arbitration proceedings. Parties can choose to be represented by foreign lawyers in arbitration proceedings in FYR Macedonia. Parties to arbitration without an international element may only choose FYR Macedonia as the seat of arbitration. The arbitral tribunal or one of the parties can request legal assistance with the taking of evidence or enforcement of provisional measures from an authorized Macedonian court. Such requests are usually granted. Domestic arbitration awards are directly enforced by an enforcement agency (private executors), which takes around 15 weeks. A court of first instance in Skopje has jurisdiction to recognize and enforce foreign arbitration awards, which takes roughly 34 weeks (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	74.9	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	69.7	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Madagascar

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The majority of the sectors covered by the Investing Across Sectors indicators are fully open to foreign equity ownership in Madagascar. However, the country imposes foreign ownership restrictions in a number of service sectors. Foreign ownership in the telecommunications infrastructure (both fixed-line and mobile/wireless), for example, is limited to a maximum of 66%. Furthermore, foreign capital participation in companies providing fixed-line telecommunication services is also limited to 66%. In addition to these restrictions, foreign equity ownership is limited in the electricity transmission sector as well as in the port and airport operation sectors. These industries are currently dominated by large publicly owned enterprises.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	74.5	84.1	88.0	
Electricity	92.9	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	80.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	12	48	42	It takes 3 procedures and 12 days to establish a foreign-owned limited liability company (LLC) in Madagascar (Antananarivo). This process is among the shortest in Sub-Saharan Africa and much faster than the IAB global average. An LLC can be entirely foreign-owned; investment authorizations are no longer required. However, at least one of its executives must reside in Madagascar. If a newly established company (domestic or foreign) wants to engage in international trade, it must register with the Ministry of Commerce and Trade. Companies can obtain their statistical card, tax registration confirmation, commercial registration number, and professional card at the one-stop shop. They must also register for social security and health insurance, which can be done through the Economic Development Board of Madagascar (EDBM)'s one-stop shop. Companies in Madagascar are free to open and maintain bank accounts in foreign currency. Minimum capital requirements have been abolished.
Procedures (number)	3	10	10	
Ease of establishment index (0 = min, 100 = max)	65.0	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	84.5	76.6	82.1	Foreign companies seeking to access land in Madagascar have the option to lease or buy land from both private and public owners. Foreign companies must have authorization from the Economic Development Board of Madagascar before buying land. Such authorization determines the amount of land that the purchaser is allowed to acquire. If the land exceeds 10,000 ha, further authorization is required from the relevant minister. Lease contracts can be of unlimited duration for privately held land. For publicly held land, lease contracts are limited to a renewable term of 50 years. Foreign companies may transfer the land, but will need authorization to transfer it to another foreign entity. Lease contracts can offer the lessee the right to sublease, subdivide, or mortgage the leased land or use it as collateral. Land-related information can be found in the registry and cadastre. However, these are not linked or coordinated to share data. Currently, there are efforts underway to modernize the land registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	75.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	26.3	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	58.5	70.6	
Time to lease private land (days)	81	72	61	
Time to lease public land (days)	132	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	85.0	82.4	85.2	Act 98-019 of December 15, 1998, and Articles 439 to 464 of the Civil Procedure Code (2003) govern domestic and international arbitrations in Madagascar. The Arbitration Act is based on the UNCITRAL Model Law. Most commercial disputes may be submitted to arbitration. However, domestic disputes involving the state, public authorities, and public establishments cannot be submitted to arbitration. Arbitration agreements must be in writing. The parties are free to select arbitrators of any gender, nationality, or professional qualifications in both domestic and international arbitrations and foreign counsel may represent the parties in arbitration proceedings. Parties are also free to choose any arbitral institution of their choice, including the Arbitration and Mediation Center of Madagascar (CAMM). Arbitration practice is limited in Madagascar, and foreign investors do not appear to have confidence in CAMM. Domestic courts have the power to declare an arbitral tribunal incompetent to settle a dispute. Enforcement proceedings for domestic awards take place in the competent court of first instance, and for international awards, in the Court of Appeal of Antananarivo. On average, it takes around 10 weeks to enforce an arbitration award rendered in Madagascar, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 12 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	74.2	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	83.3	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Malaysia

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	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	75.7	92.0	
Agriculture and forestry	85.0	82.9	95.9	
Light manufacturing	100.0	86.8	96.6	
Telecommunications	39.5	64.9	88.0	
Electricity	30.0	75.8	87.6	
Banking	49.0	76.1	91.0	
Insurance	49.0	80.9	91.2	
Transportation	100.0	63.7	78.5	
Media	65.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	90.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	65.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	14	68	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 countries in East Asia and the Pacific and the IAB global average. Two additional procedures are required of a foreign-owned company establishing a subsidiary 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	11	10	
Ease of establishment index (0 = min, 100 = max)	60.5	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.5	84.9	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	83.3	92.2	
Access to land information index (0 = min, 100 = max)	23.1	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	67.5	70.6	
Time to lease private land (days)	96	66	61	
Time to lease public land (days)	355	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	83.8	85.2	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 (KLRCA) is the main arbitral institution and uses its own arbitration rules, which are based on the UNCITRAL Arbitration Rules (1976). The KLRCA, 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, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	81.8	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	66.7	46.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Mali

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 30 are fully open to foreign equity ownership in Mali. The country imposes ownership restrictions on the mining and media sectors. Foreign capital participation in the mining industry is limited to a maximum of 90% by the Mining Act and foreign ownership of media companies (television broadcasting and newspaper publishing) is limited to a less-than-50% stake. While foreign capital participation in the electricity sector (generation, transmission, and distribution) is a public monopoly, thus presenting a potential obstacle for foreign investors to engage. A further public monopoly exists in the fixed-line telecommunications sector.
Mining, oil and gas	95.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	49.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	29	48	42	It takes 8 procedures and 29 days to establish a foreign-owned limited liability company (LLC) in Mali (Bamako). This is faster than both the IAB average for Sub-Saharan Africa and the IAB global average. In addition to the procedures required of a domestic company, a foreign company must declare its investment with the Ministry of Finance. Company registration is done at the one-stop shop and a government decree guarantees a turnaround time of a maximum of 3 days. According to a directive of the Economic Community of West African States (ECOWAS), companies in Mali are not allowed to open bank accounts in foreign currency unless they get approval from the Mali Ministry of Finance and the Central Bank of West Africa. This approval must be renewed yearly. The minimum capital requirement of XOF 1,000,000 (~$2,000) is applicable across all OHADA (Organization for the Harmonization of Business Law in Africa) member states. It must be paid in full for the incorporation of an LLC.
Procedures (number)	8	10	10	
Ease of establishment index (0 = min, 100 = max)	42.5	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	80.0	76.6	82.1	Foreign companies seeking to access land in Mali have the option to lease or buy land from private or public owners. The process of leasing publicly held land can be lengthy and unpredictable. Publicly held land is leased through a public auction. Since the length of the auction process is not definite, it may take from one month to close to a year to lease publicly held land. The maximum duration of the contract can be unlimited and can offer the lessee the right to sublease, subdivide, and/or mortgage the leased land. There are no restrictions on the amount of land that may be leased. Most land-related information can be acquired from the registry. There is no cadastre, land information system (LIS), or geographic information system (GIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	50.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	28.6	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	5.0	58.5	70.6	
Time to lease private land (days)	..	72	61	
Time to lease public land (days)	63	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	80.0	82.4	85.2	Mali is a party to the OHADA Treaty (Organisation pour l'Harmonisation en Afrique du Droit des Affaires). Arbitration is therefore governed by the Uniform Act on Arbitration, which is based on the UNCITRAL Model Law. The act was signed on March 11, 1999 and entered into force 90 days later. The Uniform Act supersedes the existing national laws on arbitration. The principal arbitral institution under OHADA is the Common Court for Justice and Arbitration (CCJA) in Abidjan, Côte d'Ivoire. Mali has ratified the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and the Washington Convention for the Settlement of Investment Disputes (ICSID). Due to the lack of practice, local legal practitioners were not able to estimate the time periods for enforcing an arbitration award, whether rendered in Mali, or in a foreign country.
Ease of process index (0 = min, 100 = max)	67.5	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	8.3	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Mauritius

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 32 are fully open to foreign capital participation in Mauritius. The only exception is the TV broadcasting industry. According to the Independent Broadcasting Authority Act, foreign capital participation in TV broadcasting companies must be less than 20%. Moreover, the share of foreign members of the board of directors must not exceed 20%. In addition to these overt legal restrictions, sectors such as electricity transmission and distribution, waste management and recycling, and port and airport operation are characterized by monopolistic market structures, with one dominating publicly owned enterprise, making it difficult for foreign companies to invest.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	60.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	11	48	42	It takes 9 procedures and 11 days to establish a foreign-owned limited liability company (LLC) in Port Louis, Mauritius, faster than the IAB regional average for Sub-Saharan Africa and the IAB global average. In addition to the procedures required of domestic companies, the parent company must legalize and apostille its documents in the country of origin. If the capital invested is $10,000,000 or more (the investment is considered a "qualifying investment" under the Investment Promotion Act), the foreign company must apply to the Board of Investment for an investment certificate. This takes 3 days. A minimum projected annual turnover of more than MUR 3,000,000 (~ $99,330) is a prerequisite for the investment certificate. If a company wants to engage in international trade, it must register with customs authorities as an importer/exporter and get a trade license from the municipal council of Port Louis. Forms and information on company registration are downloadable online. The registration application can also be completed online. Companies are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement to establish foreign or domestic LLCs in Mauritius.
Procedures (number)	9	10	10	
Ease of establishment index (0 = min, 100 = max)	68.4	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	90.0	76.6	82.1	Foreign companies seeking to access land in Mauritius may lease or buy privately or publicly held land. If the company seeks to hold the land for more than 20 years, it will require approval from the Board of Investment or the relevant minister. The sale of publicly held land is not common. Publicly held land is leased through a public auction. Land may be leased for a maximum of 99 years. Public leases granted for industrial or commercial purposes have a maximum duration of 60 years. The lease contract can offer the lessee the right to sublease, subdivide, and/or mortgage the leased land. If the lessee seeks to transfer the land to another foreign entity, consent is required from the relevant minister or the Board of Investment. Land-related information may be found at the Conservator of Mortgages' Office. The Board of Investment has created a Property Acquisition and Management System that allows online submission and processing of applications to acquire property for business purposes.
Strength of ownership rights index (0 = min, 100 = max)	87.5	77.3	92.2	
Access to land information index (0 = min, 100 = max)	31.3	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	95.0	58.5	70.6	
Time to lease private land (days)	19	72	61	
Time to lease public land (days)	100	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.9	82.4	85.2	Mauritius's International Arbitration Act (2008) regulates only international arbitrations taking place within the country. Domestic arbitrations are governed by the Code de Procédure Civile. The arbitration law is available online. Most commercial disputes are arbitrable, except those involving bills of exchange. The law does not specifically stipulate that an arbitration agreement may be severable from the main contract. In practice, however, domestic courts have recognized this principle. Arbitration agreements must be in writing. The parties may appoint arbitrators of any nationality, gender, or professional qualifications for both domestic and international arbitrations. Only Mauritian lawyers, however, may represent parties in domestic arbitrations. The law does not require arbitrators to preserve confidentiality of arbitration proceedings in either domestic or international arbitrations. Arbitration awards are enforced in the Supreme Court, and decisions regarding enforcement can be appealed to the Judicial Committee of the Privy Council. On average, it takes around 16 weeks to enforce an arbitration award rendered in Mauritius, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 11 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	71.2	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	77.1	55.9	57.9	

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Mexico

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 14 countries covered by the Investing Across Sectors indicators in the Latin America and the Caribbean region, Mexico's foreign equity ownership restrictions are stricter than the regional average. The Foreign Investment Law sets out a list of strategic sectors that are either closed to foreign capital participation or in which foreign ownership is limited. Unlike most other countries 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 Regulations of the Foreign Investment Law and the 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	91.0	92.0	
Agriculture and forestry	49.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	74.5	94.5	88.0	
Electricity	0.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	49.0	96.4	91.2	
Transportation	54.4	80.8	78.5	
Media	24.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	31	74	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 countries 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	14	10	
Ease of establishment index (0 = min, 100 = max)	65.8	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	81.3	78.2	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	98.2	92.2	
Access to land information index (0 = min, 100 = max)	33.3	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	73.0	70.6	
Time to lease private land (days)	83	62	61	
Time to lease public land (days)	151	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	79.1	87.5	85.2	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	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	52.7	51.7	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Moldova

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Most of the industry sectors covered by the Investing Across Sectors indicators are fully open to foreign equity ownership in Moldova. As a notable exception, the Law on the Press (No. 243/1994) requires foreign natural and legal persons who wish to own newspaper companies to co-found them with a domestic partner. Foreign investors are not allowed to hold more than 49% of the share capital. The Audiovisual Code (Law No. 260-XVI, dated July 27, 2006) stipulates that foreign investors (as well as domestic ones) may not hold the majority (50% plus 1 share) in the equity capital of more than 2 TV broadcasting companies in Moldova. While foreign ownership in the health care sector is not limited per se, the Law on Entrepreneurship and Enterprises (No. 845/1992) prohibits private companies (foreign and domestic) from providing certain services, such as the supervision and treatment of pregnant women, drug addicts, or persons with cancer, dangerous contagious diseases, or aggressive mental diseases. Monopolistic market structures in certain strategic sectors such as electricity transmission, fixed-line telecommunications infrastructure, airport operation, and forestry present further obstacles to potential foreign investors.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	74.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	10	22	42	It takes 9 procedures and 10 days to establish a foreign-owned limited liability company (LLC) in Moldova (Chisinau). This process is faster than the average of IAB countries in the Eastern Europe and Central Asia region and one of the fastest globally. The only additional requirement for a foreign company is to provide a notarized and translated copy of the articles of incorporation and commercial registration of the parent company abroad. A foreign company does not need an investment approval. The term provided by law for registration at the State Registration Chamber is 5 days. This step can be expedited with an additional fee and completed within 24 hours. Companies in Moldova are free to open and maintain bank accounts in foreign currency once authorization is received by the local bank from the Moldovan State Fiscal Service. The minimum capital requirement for domestic and foreign companies is MDL 5,400 (~$434). In the case of a sole shareholder, the share capital must be paid in full before registration. If there are more shareholders, only 40% of the capital must be contributed before registration and the remaining 60% within 6 months of registration.
Procedures (number)	9	8	10	
Ease of establishment index (0 = min, 100 = max)	70.0	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	79.9	82.9	82.1	In Moldova, most foreign companies prefer to buy private land. Other available options include leasing privately or publicly held land or buying publicly held land. Public land may be bought, but requires a lengthy procedure of reclassification and a public auction. Public land is leased subject to the authorization of the relevant government authority. Both privately and publicly held land may be leased for a maximum renewable term of 99 years. Lease contracts can offer the lessee the right to subdivide, sublease, or mortgage the leased land. There may be restrictions on the use of publicly held land. There are no restrictions on the amount of land that may be leased. Registration of land may be completed in 10 days, but it is possible to fast track the procedure and complete registration in 1 day, for a higher fee. Land-related information may be obtained from the land registry and cadastre, which are linked. The land registry is based on a cadastre-title system.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	52.6	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	70.0	78.9	70.6	
Time to lease private land (days)	19	43	61	
Time to lease public land (days)	75	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.0	82.5	85.2	Alternative dispute resolution (ADR) in Moldova is regulated by the Law on Arbitration No. 2 (2008), the Law on International Commercial Arbitration No. 24 (2008), and the Law on Mediation No. 134 (2007). The Law on Arbitration regulates domestic arbitration (disputes without an international element). The following commercial disputes are not arbitrable: those arising from rental contracts of residential premises; disputes over property rights relating to housing; disputes arising from insurance contracts, if the insured asset is situated or the insured risk took place in Moldova; disputes arising from transport contracts, if the carrier or departure, or arrival points are situated in Moldova; disputes involving seagoing ships or aircrafts registered in Moldova; and insolvency disputes. Parties are free to appoint arbitrators of any nationality or professional qualifications. Foreign counsel may represent parties in arbitration proceedings in Moldova. The Law on Arbitration requires that arbitrators preserve the confidentiality of the proceedings. Such provision is omitted from the Law on International Commercial Arbitration. In domestic arbitration, parties may only choose arbitral institutions in Moldova that are registered with the Supreme Court of Justice. A general first instance court has jurisdiction to assist arbitration proceedings and enforce awards in domestic arbitrations. The Economic Court of Appeals has jurisdiction to assist international arbitration proceedings and enforce both international awards rendered in Moldova and foreign awards. On average, it takes around 13 weeks to enforce an arbitration award rendered in Moldova, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 21 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	81.8	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	60.9	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Montenegro

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Without any legal ownership restrictions on the 33 sectors covered by the Investing Across Sectors indicators, Montenegro is one of the most open countries to foreign equity ownership. In practice, though, a comparatively large number of sectors are characterized by monopolistic or oligopolistic market structures. In particular the electricity and transportation sectors as well as the health care, forestry, and mining industries, are operated by monopolies. However, the processes of structural reforms and of privatization are ongoing.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	15	22	42	It takes 14 procedures and 15 days to establish a foreign-owned limited liability company (LLC) in Montenegro (Podgorica). This process is slightly faster than the regional average for Eastern Europe and Central Asia, but much faster than the IAB global average. A foreign company establishing a subsidiary in Montenegro does not need an investment approval. It must, however, authenticate and translate the parent company's documentation abroad. If a company (domestic or foreign) wants to engage in international trade, it must register with the customs authority. The company registry is in Podgorica in the Commercial Court building and applications can be downloaded online. The legal time limit for registration is 4 days, but, in practice, it usually takes only 2 days. Companies in Montenegro are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement is a symbolic € 1.
Procedures (number)	14	8	10	
Ease of establishment index (0 = min, 100 = max)	79.0	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	69.2	82.9	82.1	Although legally possible, leasing land is not common in Montenegro. The most common option for foreign companies seeking to acquire land is to buy private land. It is possible to buy publicly held land, but the procedure takes a relatively longer time. The publicly held land that is available for lease or purchase is typically owned by the municipality. Land may be leased through direct negotiations with that municipality. However, the law stipulates that land be sold by a public tender procedure. The maximum duration of leases can be unlimited; consent from the municipality is required for leases of a period greater than 30 years. For leases longer than 90 years, consent is required from parliament. Lease contracts can offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the lease contract. Land-related information can be found in the land registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	78.9	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	65.0	78.9	70.6	
Time to lease private land (days)	40	43	61	
Time to lease public land (days)	185	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	63.5	82.5	85.2	There is no specific law on commercial arbitration in Montenegro and arbitration of commercial disputes is uncommon. There are some provisions on arbitration in the Law on Civil Procedure (2004) and the Law on the Chamber of Commerce (2009), but they are not very detailed and do not contain definitions of main arbitration concepts. According to that law, disputes over immovable property and intra-company disputes are resolved by the courts and cannot be submitted to arbitration. Acting judges can be appointed only as presiding or sole arbitrators. Since most issues related to arbitration are not regulated by law, and there is no practice, it is unclear if parties to an arbitration have enough autonomy to determine their arbitration procedures and whether courts would assist arbitrators during the proceedings. There is no functioning arbitral institution in Montenegro, although the Chamber of Commerce has adopted rules on arbitration. The country has ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, but not the ICSID Convention. Montenegro has enacted a Mediation Law (2005), which is based on the UNCITRAL Model Law, and the country has an active Centre for Mediation. Under the Mediation Law, courts may refer litigating parties to mediation. On average, it takes around 45 weeks to enforce an arbitration award rendered in Montenegro, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 45 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	60.0	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	46.5	64.4	57.9	

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Morocco

Middle East and North Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				While Morocco has opened up the majority of the sectors of its economy to foreign investors, overt statutory ownership restrictions still exist in a number of sectors, predominantly in services. Airport and port operation as well as the electricity transmission and distribution sectors are closed to foreign capital participation. Foreign ownership in companies providing domestic or international air transportation services is limited to a maximum of 49%. In the oil and gas sector, the National Agency for Hydrocarbons and Mines retains a compulsory share of 25% of any recognition license or exploitation permit. In addition to these restrictions, a number of sectors are dominated by government monopolies, including, but not limited to, those mentioned above. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, represent a potential obstacle for foreign companies to engage.
Mining, oil and gas	93.8	78.8	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	95.0	96.6	
Telecommunications	100.0	84.0	88.0	
Electricity	0.0	68.5	87.6	
Banking	100.0	82.0	91.0	
Insurance	100.0	92.0	91.2	
Transportation	39.8	63.2	78.5	
Media	100.0	70.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	94.9	98.1	
Sector group 2 (health care, waste mgt.)	100.0	90.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	18	19	42	With 8 procedures and 18 days, the process of establishing a foreign-owned subsidiary in Morocco is faster than both the IAB regional average for the Middle East and North Africa and the IAB global average. Only 2 additional procedures are required of foreign companies. Except for French enterprises, which are exempt from this requirement, any foreign company wishing to establish a subsidiary in Morocco must provide an apostille, a translated copy of its articles of association, and an extract of the registry of commerce in its country of origin. There is no investment approval requirement. Instead, foreign companies must report the incorporation of the subsidiary a posteriori to the Foreign Exchange Board (Office National de Change) to facilitate repatriation of funds abroad (such as profits, dividends). This step usually takes 5 days to complete. Registration documents are available online and registration is made at a one-stop shop—Centre Regional d'Investissement (CRI)—that also serves for tax, social security, and VAT registration. Foreign companies in Morocco are not allowed to hold foreign currency bank accounts. Instead, they can hold Convertible Export Promotion Accounts (CCPEX), which allow them to receive and transfer foreign currencies. The foreign currency credited in CCPEX accounts is converted into Moroccan dirham (MAD) and re-converted to foreign currency as needed for repatriation purposes. Morocco has a minimum capital requirement of MAD 10,000 (~$1,200) for domestic and foreign companies, 25% of which must be paid in at registration.
Procedures (number)	8	9	10	
Ease of establishment index (0 = min, 100 = max)	55.3	58.6	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	86.8	78.3	82.1	Foreign companies seeking to access land may lease or buy privately or publicly held land, with the exception of agricultural land, which foreign entities are prohibited from owning. Publicly held land may be leased or bought with approval from the relevant authority. Foreign companies seeking to lease publicly held land must first obtain approval from the Regional Center for Investment. There is no clearly defined procedure for leasing publicly held land and the process can take up to a year. Registration of all land transactions is mandatory. The maximum duration for a lease contract is 15 years. There are no restrictions on the amount of land that may be leased. The lease contract offers the lessee the right to sublease, subdivide, and/or mortgage the leased land, subject to the terms of the contract. Most land-related information can be found in the national registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	n/a	68.8	92.2	
Access to land information index (0 = min, 100 = max)	73.7	46.4	41.3	
Availability of land information index (0 = min, 100 = max)	65.0	66.0	70.6	
Time to lease private land (days)	101	59	61	
Time to lease public land (days)	296	123	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.6	82.0	85.2	Arbitration and mediation in Morocco are regulated by the Code of Civil Procedure (2007). The new law is based on French law and the UNCITRAL Model Law, but lacks provisions regarding interim measures and preliminary orders, the conduct of arbitral proceedings, and the grounds for refusing recognition or enforcement of arbitral awards. All commercial matters are arbitrable. Under the Civil Procedure Code, arbitrators must declare themselves to the general prosecutor of their local Court of Appeal. The prosecutor includes the registered arbitrators on an arbitrators' list of the relevant Court of Appeal. Parties to arbitration proceedings in Morocco may only be represented by lawyers who are registered at the relevant Court of Appeal. The law expressly states that arbitrators must be impartial and independent, and must preserve the confidentiality of the proceedings. Domestic arbitration awards must be enforced within 15 days of rendering, which is not required of foreign arbitration awards. A commercial court of first instance is responsible for enforcement of arbitration awards (domestic and international). On average, it takes around 12 weeks to enforce an arbitration award rendered in Morocco, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 16 weeks for a foreign award. Court decisions enforcing an arbitration award can only be appealed for foreign arbitration awards.
Ease of process index (0 = min, 100 = max)	69.5	65.5	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	64.7	48.7	57.9	

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Mozambique

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Most of the industries covered by the Investing Across Sectors indicators are open to foreign equity ownership in Mozambique. The Media Law (No. 18/91), however, stipulates that only Mozambique citizens may own media enterprises, including television channels and newspapers. Foreign capital participation in such companies is only permitted up to a maximum of 20%. Furthermore, fixed-line telecommunications is one of the sectors reserved for public investment. The right to establish and operate fixed-line telecommunication services is granted exclusively to one Mozambican company, Telecommunications of Mozambique S.A.R.L., which is a joint stock/public limited company. Its current license expires in 2028 and is renewable.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	75.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	20.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	34	48	42	It takes 12 procedures and 34 days to establish a foreign-owned limited liability company (LLC) in Maputo, Mozambique, faster than the IAB regional average for Sub-Saharan Africa and the IAB global average. A foreign company establishing itself in Maputo is not required to seek an investment approval unless it wants to avail itself of investment incentives offered by the Investment Promotion Centre (CPI). It will, however, need to authenticate the parent company's documentation in the Mozambican embassy or consulate in its country of origin. In addition, foreign companies that engage in retail and wholesale trade qualify as foreign-trade operators and must obtain a foreign-trade operator card from the Ministry of Trade and Industry. This card takes 7 days to obtain. Registration with the Legal Entities Registrar Office of Maputo takes 1 to 2 days. The required documents are available online, but cannot be submitted online. Any company in Mozambique may freely open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement of MZM 20,000 (~$740) was abolished by Law No. 2/2009 of April 24, 2009 (DL2/09). Instead, said law stipulates that shareholders may now decide on the proper capital of the company. The minimum investment value necessary to take advantage of any guarantees and fiscal benefits is $50,000 for foreign investments.
Procedures (number)	12	10	10	
Ease of establishment index (0 = min, 100 = max)	65.8	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	53.1	76.6	82.1	In Mozambique, all land is considered property of the state and therefore cannot be sold. The available option for foreign companies seeking to acquire land in Maputo is the lease of publicly held land. Foreign companies may lease land provided they have an authorized investment project as provided by Mozambique's investment law and the company is established or registered in Mozambique. The process of leasing land requires negotiations with the relevant public authority and members of the surrounding community in which the land is located and consequent approval from both the public authority and community members. Land may be leased for a maximum of 99 years. Approval is required from the provincial government to lease land of up to 10,000 ha. For greater amounts of land, approval must be sought from the relevant minister. Lease contracts offer the lessee the right to subdivide or sublease the leased land, subject to approval by the relevant authority. Most land-related information can be found in the cadastre.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	33.3	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	62.5	58.5	70.6	
Time to lease private land (days)	148	72	61	
Time to lease public land (days)	175	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	82.4	85.2	Law No. 11/99 governs mediations and arbitration in Mozambique. The same rules apply to both domestic and international arbitrations. Unless there are specific laws providing otherwise, commercial disputes can generally be submitted to arbitration. There are also restrictions on disputes involving state entities that can be submitted to arbitration. Parties are free to select arbitrators of any nationality, gender, or professional qualifications in both domestic and international arbitrations. The law stipulates that arbitrators must be impartial and independent. Parties are also free to have foreign lawyers represent them in domestic arbitration proceedings. There is no online arbitration in Mozambique, but the Center for Arbitration, Conciliation, and Mediation (CACM) administers domestic and international arbitrations. It takes less than 30 days from filing the request for arbitration to the constitution of the arbitration tribunal. Domestic courts do not have a clear pro-arbitration policy, and the law does not require courts to assist the arbitration process by ordering the production of documents or the appearance of witnesses. Arbitration awards are enforced in the Judicial Court of Maputo, and decisions regarding enforcement can be appealed to the Supreme Court. On average, it takes around 46 weeks to enforce an arbitration award rendered in Mozambique, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 121 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	80.9	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	22.2	55.9	57.9	

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Nicaragua

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				According to the Foreign Investments Promotion Law of Nicaragua, foreign investors have the same rights and obligations as domestic investors with respect to ownership of local companies. The majority of the sectors covered by the Investing Across Sectors indicators are thus open to foreign equity ownership. As a notable exception, overt legal ownership restrictions still exist on the domestic air transportation and television broadcasting sectors. In both industries, foreign capital participation is limited to a less-than-50% stake. In addition to those overt legal restrictions, a number of business sectors, such as electricity transmission and port and airport operation, are still dominated by publicly owned enterprises. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it difficult for foreign companies to engage in these sectors.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	89.8	80.8	78.5	
Media	74.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	42	74	42	It takes 8 procedures and 42 days to establish a foreign-owned limited liability company (LLC) in Nicaragua (Managua), faster than the regional average for Latin America and the Caribbean and in line with the IAB global average. Although foreign ownership is allowed, an LLC needs a minimum of 2 shareholders (one being a natural person). The legal representative of the company must be a resident of Nicaragua—getting a residency permit can take up to 3 months. In addition to the procedures required of a domestic company, a foreign company must legalize and translate the parent company's documents in its country of origin. In addition, a company engaged in international trade must obtain an importer/exporter ID from the customs authority (Dirección General de Servicios Aduaneros) for imports and from CETREX (Centro de Exportaciones) for exports. A company in Nicaragua can hold a commercial bank account in U.S. dollars, euros, or córdoba. There is no minimum capital requirement for foreign or domestic companies in Nicaragua.
Procedures (number)	8	14	10	
Ease of establishment index (0 = min, 100 = max)	57.9	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	72.1	78.2	82.1	The most common means by which foreign companies acquire land in Nicaragua is to lease or buy privately owned land. Although not prohibited, leasing or buying public land is not common. It requires the enacting of specific laws as well as special terms and conditions governing the corresponding public auction. There is no limit on the amount of land that may be leased. Lease contracts offer the lessee the right to subdivide or sublease the leased land or use it as collateral, subject to the terms of the contract. Only the owner of the land is allowed to mortgage it. Lease contracts for durations of 4 or more years must be executed by a notary public as a public deed and registered in the land registry. Land-related information may be found in the land registry and cadastre, which are linked and coordinated to share data. It is possible to find electronic data for most land parcels in Managua.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	31.6	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	73.0	70.6	
Time to lease private land (days)	149	62	61	
Time to lease public land (days)	267	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	87.5	85.2	Alternative dispute resolution (ADR) in Nicaragua is governed by the Mediation and Arbitration Law (2005), which is largely based on the UNCITRAL Model Law. The law recognizes the kompetenz-kompetenz principle and provides for Supreme Court revision of the arbitration tribunal's ruling on its own jurisdiction, if and when the arbitration tribunal decides upon it as a previous matter, and not of the award itself. The law distinguishes between arbitration at equity and arbitration at law. In arbitrations at law, all members of the arbitration tribunal must be lawyers. Parties can choose foreign lawyers to represent them in arbitrations in Nicaragua. Parties domiciled in Nicaragua are free to choose any arbitral institution, even one outside of Nicaragua. There are around 13 arbitral institutions in Nicaragua. The most commonly used for commercial disputes is the Nicaraguan Chamber of Commerce Mediation and Arbitration Center Antonio Leiva Pérez. Nicaraguan arbitration law is relatively new and not many arbitration agreements, requests, or awards have been presented to local courts for assistance with the proceedings or enforcement. There are no legal provisions mandating courts to assist arbitral tribunals with the taking of evidence, but there are provisions for assistance with orders for interim measures. The Civil District Court is responsible for enforcement of arbitration awards. On average, it takes around 31 weeks to enforce an arbitration award rendered in Nigeria, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 104 weeks for a foreign award. It is not clear, under the current Nicaraguan legal framework, whether appeal of this court's decisions is possible, and there is no such precedent yet.
Ease of process index (0 = min, 100 = max)	73.3	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	40.3	51.7	57.9	

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Nigeria

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Compared with other economies in the Sub-Saharan Africa region covered by the Investing Across Sectors indicators, Nigeria is one of the most open countries to foreign equity ownership. All of its major industry sectors are fully open to foreign capital participation. The only exception is the banking industry, in which foreign investors are not allowed to acquire more than 40% of an already existing Nigerian bank. There are no restrictions, however, for investors setting up a new bank in Nigeria.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	70.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	44	48	42	It takes 12 procedures and 44 days to establish a foreign-owned limited liability company (LLC) in Nigeria (Lagos), slightly faster than the regional average for Sub-Saharan Africa and slightly slower than the IAB global average. The law permits wholly foreign-owned subsidiaries, but they must have at least 2 shareholders and the share capital must be denominated in naira. Only a local counsel accredited by the Corporate Affairs Commission can incorporate companies in Nigeria. In addition to the procedures required of a domestic company, a foreign-owned LLC is encouraged to register the investment with the Nigerian Investment Promotion Commission (NIPC) to ease the process of repatriation of funds (dividends, equity upon divestment). According to the Nigerian Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, foreign capital invested in the LLC must be imported through an authorized dealer, which will issue a Certificate of Capital Importation. This certificate entitles the foreign investor to open a bank account in foreign currency. Finally, a company engaging in international trade must get an import-export license from the Nigerian customs service. The minimum capital requirement is higher for companies with foreign equity than for domestic ones (NGN 10,000,000 [~$66,500] and NGN 10,000 [~$66], respectively). The law requires at least 25% of the shares to be issued at incorporation.
Procedures (number)	12	10	10	
Ease of establishment index (0 = min, 100 = max)	47.5	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.5	76.6	82.1	In Lagos, all land is vested in the state governor. It is impossible to obtain an absolute interest in land. When leasing or buying land one obtains a "right of occupancy," which is usually for 99 years or less. Foreign companies may lease land or buy land interests from private landowners who have already been granted rights of occupancy by the state. The interest transferred is the unexpired term of the right of occupancy. Leases may also be obtained from government-owned property development corporations. Leases for more than 3 years require the governor's consent. Lease contracts offer the lessee the right to transfer, subdivide, sublease, or mortgage the leased land, subject to the terms of the contract and approval from the governor. There are no restrictions on the amount of land that may be leased. Land-related information is found primarily in the land registry. There are reforms underway to consolidate the registration of titles, provide for compulsory registration of all properties, and create electronic geographic information systems (GIS).
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	50.0	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	67.5	58.5	70.6	
Time to lease private land (days)	123	72	61	
Time to lease public land (days)	254	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	82.4	85.2	The Arbitration and Conciliation Act (1988), reenacted as the Arbitration and Conciliation Act (2004), governs arbitrations in Nigeria and gives effect to the 1958 New York Convention. The Act governs both domestic and international arbitrations. It is based on UNCITRAL's Model Law, with several differences. For example, it does not permit parties to a domestic arbitration to choose the procedural rules, but stipulates that domestic arbitration proceedings in Nigeria must be conducted in accordance with the arbitration rules contained in the act. The act has no definition of domestic arbitration. Rather, arbitration that does not fall under the definition of international arbitration is considered as domestic. Parties are free to select arbitrators of any nationality, gender, or professional qualifications in both domestic and international arbitrations. Online arbitration is not available in Nigeria. There are, however, several arbitral institutions from which parties can choose. The law provides for domestic courts to assist arbitral tribunals by ordering the production of documents or the appearance of witnesses. In practice, however, the courts are not very supportive of arbitration, and have on several occasions disregarded arbitration agreements. On average, it takes around 20 weeks to enforce an arbitration award rendered in Nigeria, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 21 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	82.3	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	71.5	55.9	57.9	

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Pakistan

South Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 27 are fully open to foreign capital participation in Pakistan. While the manufacturing and primary industries are fully open to foreign equity ownership, the country imposes ownership restrictions on a number of service sectors. In the media industry, for example, the Press, Newspapers, News Agencies, and Books Registration Ordinance (2002), stipulates that only Pakistani citizens may own local newspaper companies. Foreign capital participation in such companies is permitted only up to a maximum of 25% and is further subject to government approval. Foreign ownership in nationwide television channels is limited to a less-than-50% stake. In the financial services sector, the Banking Companies Ordinance allows a maximum of 49% foreign ownership of Pakistani banks, while foreign capital participation in local insurance companies is allowed up to a 51% share. In the agriculture sector, foreign investment is subject to a minimum investment amount of $300,000.
Mining, oil and gas	100.0	88.0	92.0	
Agriculture and forestry	100.0	90.0	95.9	
Light manufacturing	100.0	96.3	96.6	
Telecommunications	100.0	94.8	88.0	
Electricity	100.0	94.3	87.6	
Banking	49.0	87.2	91.0	
Insurance	51.0	75.4	91.2	
Transportation	79.6	79.8	78.5	
Media	37.0	68.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	96.7	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	21	39	42	It takes 11 procedures and 21 days to establish a foreign-owned limited liability company (LLC) in Pakistan (Karachi), faster than both the average for IAB countries in South Asia and the IAB global average. In addition to the procedures required of a domestic firm, a foreign company must authenticate the documents of the parent company in its country of origin. Foreign investors can hold 100% equity of industrial projects without obtaining permission from the government, except for the following sectors: arms and ammunitions, high explosives, radioactive substances, security printing, currency, and mint. Companies may open and maintain foreign currency accounts with approval from the State Bank of Pakistan. Foreign currency accounts are subject to the condition that they are only fed with: (i) investment from abroad; (ii) profits/dividends from such investment; or (iii) profits from reinvestment of profits from such investment. There is no minimum capital requirement for domestic or foreign companies in Pakistan.
Procedures (number)	11	9	10	
Ease of establishment index (0 = min, 100 = max)	64.7	62.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	87.5	82.1	Foreign companies seeking to access land in Karachi have the option to lease or buy privately or publicly held land. Foreign companies require authorization from the government in order to acquire land. The sale of public land for commercial purposes may only be by open auction at a price not less than market value. The process of obtaining land leases from the government is relatively lengthy. Lease contracts offer the lessee the right to transfer, subdivide, sublease, or mortgage the leased land, subject to the terms of the contract as well as to local bylaws and regulations governing the land. In the case of publicly owned land, transfers are restricted to another company engaged in or intending to engage in a similar type of industry. When the government grants land for any industrial purpose it may be mortgaged or used as collateral, subject to the government's prior permission. Most land-related information in Karachi may be found in the registry.
Strength of ownership rights index (0 = min, 100 = max)	100.0	93.8	92.2	
Access to land information index (0 = min, 100 = max)	10.5	20.1	41.3	
Availability of land information index (0 = min, 100 = max)	65.0	59.7	70.6	
Time to lease private land (days)	59	99	61	
Time to lease public land (days)	96	205	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	86.4	85.2	The Arbitration Act (1940) governs domestic arbitration in Pakistan. This legislation was passed before Pakistan's independence, but continues to be in effect. The act applies to 3 types of arbitration: (i) arbitration without court intervention; (ii) arbitration where there is no suit pending with court intervention; and iii) arbitration "in suit" with court intervention. The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance (2007) provides mechanisms for the enforcement of foreign arbitral awards. At the time of data collection, a new Arbitration Act was anticipated, which would repeal the 1940 legislation. Given that the 1940 statute does not regulate international arbitration, it is primarily the courts that have established whether to treat arbitrations as domestic or international. All commercial matters are arbitrable, although the Supreme Court has ruled that matters of "grave public and national importance" cannot be arbitrated. Parties are free to select arbitrators of any gender, nationality, or professional qualifications. An overburdened court system has made the enforcement of arbitral awards difficult. On average, it takes around 115 weeks to enforce an arbitration award, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	68.5	55.0	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	35.5	36.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Papua New Guinea

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Data not available.
Mining, oil and gas	..	75.7	92.0	
Agriculture and forestry	..	82.9	95.9	
Light manufacturing	..	86.8	96.6	
Telecommunications	..	64.9	88.0	
Electricity	..	75.8	87.6	
Banking	..	76.1	91.0	
Insurance	..	80.9	91.2	
Transportation	..	63.7	78.5	
Media	..	36.1	68.0	
Sector group 1 (constr., tourism, retail)	..	91.6	98.1	
Sector group 2 (health care, waste mgt.)	..	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	108	68	42	It takes 10 procedures and 108 days to establish a foreign-owned limited liability company (LLC) in Port Moresby, Papua New Guinea, slower than both the average for IAB countries 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 Web site and filing can be done through the Electronic Filing Facility on the same Web site. 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.
Procedures (number)	10	11	10	
Ease of establishment index (0 = min, 100 = max)	48.9	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	..	84.9	82.1	Data not available.
Strength of ownership rights index (0 = min, 100 = max)	..	83.3	92.2	
Access to land information index (0 = min, 100 = max)	..	35.1	41.0	
Availability of land information index (0 = min, 100 = max)	..	67.5	70.6	
Time to lease private land (days)	..	66	61	
Time to lease public land (days)	..	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	59.9	83.8	85.2	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.
Ease of process index (0 = min, 100 = max)	55.6	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	26.2	46.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Peru

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				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.
Mining, oil and gas	100.0	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	100.0	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	89.8	80.8	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	43	74	42	It takes 11 procedures and 43 days to establish a foreign-owned limited liability company (LLC) in Peru (Lima), 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	14	10	
Ease of establishment index (0 = min, 100 = max)	72.5	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	79.3	78.2	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	98.2	92.2	
Access to land information index (0 = min, 100 = max)	44.4	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	73.0	70.6	
Time to lease private land (days)	20	62	61	
Time to lease public land (days)	112	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.4	87.5	85.2	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	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	62.6	51.7	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Philippines

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 87 countries covered by the Investing Across Sectors indicators, the Philippines imposes foreign equity ownership restrictions on more sectors than most other countries. The country imposes ownership limitations on many industries, in particular on the primary and service sectors. Foreign capital participation in the mining and oil and gas industries, for example, 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, the Constitution limits foreign capital participation in public utilities (telecommunications, electricity, and transportation) to a maximum of 40%. The media industries (newspaper publishing and television broadcasting) and publishing sector are closed to foreign equity ownership.
Mining, oil and gas	40.0	75.7	92.0	
Agriculture and forestry	40.0	82.9	95.9	
Light manufacturing	75.0	86.8	96.6	
Telecommunications	40.0	64.9	88.0	
Electricity	65.7	75.8	87.6	
Banking	60.0	76.1	91.0	
Insurance	100.0	80.9	91.2	
Transportation	40.0	63.7	78.5	
Media	0.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	80	68	42	It takes 17 procedures and 80 days to establish a foreign-owned limited liability company (LLC) in Manila, the Philippines, slower than both the average for IAB countries in East Asia and the Pacific and the IAB global average. Two additional procedures are required exclusively of a foreign-owned company establishing a subsidiary 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) Web site, 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).
Procedures (number)	17	11	10	
Ease of establishment index (0 = min, 100 = max)	57.9	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	68.8	84.9	82.1	The Philippine Constitution prohibits foreign companies from buying land. The best option available 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. Only absolute owners of the land may mortgage it. 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.
Strength of ownership rights index (0 = min, 100 = max)	n/a	83.3	92.2	
Access to land information index (0 = min, 100 = max)	23.5	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	87.5	67.5	70.6	
Time to lease private land (days)	16	66	61	
Time to lease public land (days)	n/a	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	83.8	85.2	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.
Ease of process index (0 = min, 100 = max)	87.0	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	33.7	46.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Poland

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Foreign ownership of companies in Poland is limited in 5 of the 33 industry sectors measured by the indicators. In particular, as in other EU countries, Polish laws impose a maximum share of 49% for foreign capital in air transportation companies. In addition, foreign capital participation is limited to 49% in the airport and port operation sectors. The perceived difficulty of obtaining required operating licenses further inhibits FDI in the port operations sector, which is currently dominated by publicly owned operators. The media sector is also subject to foreign equity ownership restrictions. Pursuant to the Broadcasting Law, the required license to operate a TV broadcasting company may only be granted if the voting share of foreign owners does not exceed 49% and the majority of the members of the management and supervisory boards are of Polish nationality, with permanent residence in Poland.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	59.2	84.0	78.5	
Media	74.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	33	22	42	It takes 7 procedures and 33 days to establish a foreign-owned limited liability company (LLC) in Poland (Warsaw), slower than the other IAB countries in Europe and Central Asia but faster than the IAB global average. Polish regulations, applicable to both domestic and foreign investors, prohibit a sole shareholder LLC to be the sole founder and shareholder of another LLC. In addition to the procedures required of domestic companies, a foreign company must provide apostiled and translated documents from the parent company abroad. Since March 31, 2009, new provisions of the Act on the National Court Register have been in force, which allow applicants to obtain a statistical number (REGON), tax identification number (NIP), and entry in the Social Insurance Office (Zakład Ubezpieczeń Społecznych) when they register with the National Court Registry. This takes about a month. Companies in Poland are free to open and maintain bank accounts in foreign currency. The minimum capital requirement for domestic and foreign companies is PLN 5,000 (~$1,700). Registered share capital for LLCs must be paid in full at registration.
Procedures (number)	7	8	10	
Ease of establishment index (0 = min, 100 = max)	85.0	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.6	82.9	82.1	In Poland, foreign companies have the option to lease or buy privately or publicly held land. Publicly held land in Poland is divided into state property and communal property, which are held by different entities. Polish law provides for an institution called a "perpetual usufruct," which resembles a long-term lease. This form of landholding relates only to lands that belong to the treasury or to units of local self-government. The duration of the lease is between 40 and 99 years and is renewable. A foreign company seeking to acquire this form of lease must require a permit from the relevant ministry. Publicly held land is leased by a public tender procedure. Lease contracts offer the lessee the right to transfer, subdivide, or sublease the land, subject to the terms of the contract and local planning laws. There are no restrictions on the amount of land that may be leased for commercial or industrial use. Land-related information can be found in the land registry and cadastre.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	35.0	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	65.0	78.9	70.6	
Time to lease private land (days)	146	43	61	
Time to lease public land (days)	162	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	74.2	82.5	85.2	Poland does not have a law on arbitration, but there are some provisions in the Polish Code of Civil Procedure of 1964 (amended in 2005). There are also separate regulations on arbitration for consumer disputes, banking disputes, telecom disputes, and disputes relating to hunting law, employment, sports, and electronic payment instruments. There is no statutory definition of domestic arbitration and no distinction in the law between domestic and international arbitration. The law only distinguishes between foreign and domestic arbitral awards for the purpose of their recognition and enforcement. Under the Code of Civil Procedure, the arbitration agreement must be in writing. However, a declaration of intent made electronically and provided with a safe electronic signature verified by a valid qualified certificate is recognized as a written agreement. Parties are free to appoint any arbitrators except for acting state judges. Arbitrators are not expressly bound by law to preserve the confidentiality of arbitration proceedings, but Polish court decisions have recognized that such an obligation exists, based on the arbitrator's function. There are about 40 arbitral institutions in Poland, most of them small and local. A Warsaw District Court has jurisdiction to enforce arbitral awards. On average, it takes around 13 weeks to enforce an arbitration award rendered in Poland, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 15 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	82.8	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	77.3	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Romania

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Romanian law (Government Emergency Order No. 92/1997) provides for national treatment of foreign investors with regard to the establishment rights of companies. Foreign investors are generally allowed to invest in any sector open to private domestic companies. Thus, with the exception of the domestic and international air transportation industries, all sectors covered by the Investing Across Sectors indicators are fully open to foreign equity ownership. Foreign capital participation in the 2 aforementioned sectors is limited to a maximum of 49%, as is the case in other European Union countries. This restriction does not apply to investors from countries of the European Economic Area (EEA).
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	100.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	11	22	42	It takes 7 procedures and 11 days to establish a foreign-owned limited liability company (LLC) in Romania (Bucharest), slightly faster than the regional average for Europe and Central Asia but much faster than the IAB global average. In addition to the procedures required of a domestic company, the parent company establishing a subsidiary in Romania must authenticate and translate its documents abroad. Foreign companies do not need to seek an investment approval. Romanian legislation, applicable to both domestic and foreign investors, prohibits a sole shareholder LLC to be the sole founder and shareholder of another LLC. The Trade Registry judge must hold a public hearing on the company's application for registration within 5 days of submission of the required documentation. The registration documents can be submitted, and the status of the registration request monitored, online. Companies in Romania are free to open and maintain bank accounts in foreign currency, although, in practice, Romanian banks offer services only in certain currencies (including euros, U.S. dollars, and Swiss francs). The minimum capital requirement for domestic and foreign LLCs is RON 200 (~$65).
Procedures (number)	7	8	10	
Ease of establishment index (0 = min, 100 = max)	89.5	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	86.7	82.9	82.1	In Romania, leasing land is not an option for companies seeking to build on the land. Romanian building regulations require any person who files for a building permit to have a real property interest as opposed to a personal right, such as a lease, over the designated land. Foreign companies, therefore, most commonly buy land. Publicly held land may be leased, or it may be sold after reclassification as private land. The lease or sale of public land takes place through a public tender procedure. The Romanian Civil Code does not provide for a maximum duration of a lease. In practice, the duration of leases does not exceed 10 to 15 years. Lease contracts offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the lease contract. Land-related information can be found mostly in the cadastre and the National Agency for Cadastre and Real Estate Publicity.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	33.3	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	78.9	70.6	
Time to lease private land (days)	57	43	61	
Time to lease public land (days)	65	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.8	82.5	85.2	The Romanian Civil Procedure Code (enacted 1865, amended 2000) contains a detailed arbitration chapter (Book IV: About Arbitration). The Civil Procedure Code provides strict time limits for duration of arbitration proceedings: 5 months for domestic arbitrations and between 10 to 12 months for international arbitrations, with a maximum extension of 2 months at the request of the parties. There are also strict time limits on the submission of evidence during arbitration. Under the law, an arbitration award must in all cases stipulate the grounds for the arbitrators' ruling. The following disputes are not arbitrable: those involving immovable property, intracompany and bankruptcy disputes, disputes related to the privatization process, and concession agreements. Only Romanian citizens may act as arbitrators in domestic arbitrations. The arbitrator must speak and understand Romanian. These restrictions do not apply to international arbitrations conducted in Romania. Foreign lawyers can be retained only in international arbitration proceedings, except for lawyers from the European Union member states that benefit from reciprocal recognition, subject to certain authorization procedures. There are around 43 arbitral institutions in Romania. The District Court has jurisdiction to enforce arbitral awards and its decision cannot be appealed unless enforcement is denied. On average, it takes around 10 weeks to enforce an arbitration award rendered in Romania, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 11 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	75.2	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	93.2	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Russian Federation

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	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, the country imposes ownership restrictions on a number of service sectors. For example, foreign ownership in the domestic and international air transportation sectors 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 allowed 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	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	49.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	75.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	31	22	42	It takes 10 procedures and 31 days to establish a foreign-owned limited liability company (LLC) in the Russian Federation (Moscow), slower than the other IAB countries in 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	8	10	
Ease of establishment index (0 = min, 100 = max)	68.4	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	82.9	82.1	Foreign companies seeking to acquire land have the option to lease or buy both privately and publicly held land. Most land in Moscow, however, 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	97.6	92.2	
Access to land information index (0 = min, 100 = max)	44.4	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	78.9	70.6	
Time to lease private land (days)	62	43	61	
Time to lease public land (days)	231	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	71.6	82.5	85.2	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 ex aequo et bono (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 the Russian Federation. 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	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	76.6	64.4	57.9	

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Rwanda

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Without any legal ownership restrictions on the 33 sectors covered by the Investing Across Sectors indicators, Rwanda is one of the most open countries to foreign equity ownership. In practice, though, a number of sectors are characterized by monopolistic or oligopolistic market structures dominated by publicly owned enterprises, making it difficult for foreign investors to enter. The electricity and transportation sector groups, as well as the media industry, in particular, are dominated by monopolies.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	4	48	42	With only 3 procedures and 4 days, the process of establishing a foreign-owned limited liability company (LLC) in Rwanda (Kigali) is among the fastest of the countries surveyed by IAB globally. A foreign company requires no additional procedure other than obtaining a trade license if it wishes to engage in international trade, which takes only 1 day. Applying for an investment approval is optional for foreign investors unless they wish to benefit from the various investment incentives provided by the law. Rwanda offers an efficient "one-stop shop," the Rwanda Development Board, which centralizes start-up procedures and handles company registrations. The business registration process is not yet available online. Of the 21 Sub-Sahara African countries surveyed by IAB only Mauritius allows electronic registration. Foreign investors can open and maintain commercial foreign-currency bank accounts in Rwanda. Rwanda does not impose a minimum capital requirement on investors, nor does it impose any restrictions on the composition of the boards of directors of wholly foreign-owned companies.
Procedures (number)	3	10	10	
Ease of establishment index (0 = min, 100 = max)	60.5	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	89.2	76.6	82.1	All land in Rwanda belongs to the government. It is possible, however, to lease land. If the land is developed in accordance with statutory requirements, the lessee may then have the option to buy the land. Both privately and publicly held land may be leased. The lease of publicly held land requires approval from the relevant public authority. Government bureaucracy may delay this process. The process of leasing public land is faster if a foreign company accesses land through the Rwanda Development Board. Land can be leased for a maximum duration of 49 years. There are no restrictions on the amount of land that may be leased. Lease contracts offer the lessee the right to transfer, subdivide, or sublease the land, subject to the terms of the contract. Most land-related information in Kigali may be found in the Registrar of Lands.
Strength of ownership rights index (0 = min, 100 = max)	87.5	77.3	92.2	
Access to land information index (0 = min, 100 = max)	38.5	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	50.0	58.5	70.6	
Time to lease private land (days)	10	72	61	
Time to lease public land (days)	99	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	93.1	82.4	85.2	Law No. 005/2008 on Arbitration and Conciliation in Commercial Matters regulates both domestic and international arbitrations in Rwanda. It is based on the UNCITRAL Model Law. Commercial matters can generally be submitted to arbitration. Parties are free to select arbitrators of any gender, nationality, or professional qualifications in both domestic and international arbitrations, and foreign counsel may represent the parties in arbitration proceedings. Online arbitration is not available in Rwanda. Moreover, although there is an arbitral institution in Rwanda, the Rwandan Arbitration and Expertise Centre, it does not currently administer arbitrations. A new arbitration center is planned for the Private Sector Federation. Practitioners report that the lack of a domestic arbitral institution is a major impediment to domestic and international arbitration. Rwandan courts generally uphold arbitration agreements and support arbitration. Arbitration awards are enforced in the High Court, and decisions that uphold or deny enforcement can be appealed to the Supreme Court. On average, it takes around 15 weeks to enforce an arbitration award rendered in Rwanda, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 15 weeks for a foreign award. Domestic litigation is the preferred technique for resolving disputes involving the state.
Ease of process index (0 = min, 100 = max)	80.1	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	73.3	55.9	57.9	

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Saudi Arabia

Middle East and North Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Saudi Arabia has opened up many sectors of its economy to foreign investors, with overt statutory ownership restrictions, however, on a number of industries, as specified by a "negative list" published by the Saudi Arabian General Investment Authority (SAGIA). In particular, sectors such as mining, oil and gas, air transportation (domestic and international), railway freight transportation, health care, publishing, and media (television broadcasting and newspaper publishing) are closed to foreign equity ownership. The mining and oil and gas industries operate under a monopolistic market structure dominated by a publicly owned company. In accordance with the country's commitments to the WTO, foreign capital participation in the financial services sectors is allowed up to a maximum share of 60%. Unlike most other countries in the Middle East and North Africa region, Saudi Arabia does not impose any legal ownership restrictions on the electricity sector (including the generation, transmission, and distribution of electric energy).
Mining, oil and gas	0.0	78.8	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	75.0	95.0	96.6	
Telecommunications	70.0	84.0	88.0	
Electricity	100.0	68.5	87.6	
Banking	60.0	82.0	91.0	
Insurance	60.0	92.0	91.2	
Transportation	40.0	63.2	78.5	
Media	0.0	70.0	68.0	
Sector group 1 (constr., tourism, retail)	91.7	94.9	98.1	
Sector group 2 (health care, waste mgt.)	50.0	90.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	21	19	42	With 6 procedures and 21 days, the process of establishing a foreign-owned subsidiary in Riyadh, Saudi Arabia, is in line with the IAB regional average for the Middle East and North Africa region and the IAB global average. Limited liability companies (LLCs) require at least 2 shareholders and a maximum of 50. In addition to the procedures required of domestic companies, foreign companies must authenticate and legalize the parent company's documentation in the Saudi consulate in its country of origin and in the Ministry of Foreign Affairs and Ministry of Justice in Saudi Arabia. In addition, foreign companies must file for a foreign investment license with the Saudi Arabian General Investment Authority (SAGIA). The license usually takes 15 days to obtain. SAGIA requires foreign companies to hire a local counsel or law firm throughout the establishment process. The "golden package," an expedited incorporation process, is offered to companies for an additional fee. This service, offered by SAGIA, reduces incorporation time by 50%. Business registration applications are downloadable online. Foreign companies are allowed to open and maintain foreign currency bank accounts. Minimum capital requirements for LLCs have been abolished.
Procedures (number)	6	9	10	
Ease of establishment index (0 = min, 100 = max)	35.0	58.6	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	64.3	78.3	82.1	Foreign ownership of land is not a general right and must be linked to a particular project. Before buying land, a foreign company must obtain a license from the investment authority. The sale of public land is rare and a private owner seeking to sell land needs approval from the industrial property authority. Foreign companies seeking to acquire land for industrial purposes may find it cheaper to lease publicly held land. Publicly held land may be leased for a renewable period of 25 years. Lease contracts offer the lessee the right to subdivide and sublease the land. It is not possible to mortgage a leasehold interest. There is no central registration system for land rights. A notary public marks the title deeds, which are held by the landowner. There is little land-related information available, apart from what one can get from the seller.
Strength of ownership rights index (0 = min, 100 = max)	50.0	68.8	92.2	
Access to land information index (0 = min, 100 = max)	33.3	46.4	41.3	
Availability of land information index (0 = min, 100 = max)	50.0	66.0	70.6	
Time to lease private land (days)	25	59	61	
Time to lease public land (days)	60	123	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	70.0	82.0	85.2	Arbitration in Saudi Arabia is regulated by Royal Decree No. M/46-12 Rajab 1403/1982. The law is brief (25 articles) and not very comprehensive: it does not provide definitions of basic arbitration terms (such as arbitration award and enforcement) nor does it regulate the legal regime of the arbitration agreement, interim measures, and preliminary orders. The law does not distinguish between domestic and international, or between commercial and other types of arbitration. Generally, all commercial matters are arbitrable. Public entities are not entitled to resort to arbitration unless expressly authorized by the Prime Minister. The arbitration law mandates that the arbitrator must be a Saudi national or a Muslim foreigner (IRLA Art. 3). The law does not explicitly state whether or not a woman can be selected as an arbitrator; the general practice, however, follows the Hanbali school of thought, which believes that arbitrators must be male. Parties may only choose from a list of arbitrators prepared by agreement between the Ministers of Justice and Commerce and the head of the Board of Grievances (Art. 5 of ILRA). Arbitration hearings must be public, unless one of the arbitrators requests otherwise, and be conducted in Arabic. Arbitral proceedings must be conducted in accordance with Islamic law and any applicable regulations (Article 39 of the Implementing Rules). No legal provisions allow for court assistance with interim measures and evidence taking during arbitration proceedings. Both domestic and foreign awards are enforced by the Board of Grievances, Commercial Section, which can take 56 weeks.
Ease of process index (0 = min, 100 = max)	30.4	65.5	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	28.6	48.7	57.9	

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Senegal

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Senegal is one of the most open countries to foreign equity ownership, as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to capital participation. The electricity transmission and distribution sectors are dominated by monopolistic market structures of publicly owned enterprises, potentially representing an obstacle to foreign investors.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	10	48	42	It takes 5 procedures and 10 days to establish a foreign-owned limited liability company (LLC) in Senegal (Dakar). This process is among the fastest in Sub-Saharan Africa and much faster than the IAB global average. In addition to the procedures required of a domestic company, a foreign company that wants to engage in international trade must obtain an import-export card for trading purposes from the investment promotion agency (APIX) or a business court. Entrepreneurs register their company at the one-stop shop and obtain a tax registration; commercial registration; company identification number; and labor, social security, and pension fund registrations. This takes only 2 days. According to a directive of the Economic Community of West African States (ECOWAS), companies in Senegal are not allowed to open bank accounts in foreign currency unless they get approval from the Senegal Ministry of Finance and the Central Bank of West Africa. This approval must be renewed yearly. The minimum capital requirement of XOF 1,000,000 (~$2,000) is applicable for all OHADA (Organization for the Harmonization of Business Law in Africa) member states. It must be paid in full for the incorporation of an LLC.
Procedures (number)	5	10	10	
Ease of establishment index (0 = min, 100 = max)	45.0	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.6	76.6	82.1	Foreign companies have the option to lease or buy privately or publicly held land. The most common option for foreign companies seeking to acquire land in Dakar is the lease of public land. Most land is publicly held and the sale of public land, though legally possible, is extremely rare in practice. Before public land can be acquired, it must be reclassified as private. Land in the public domain can only be subject to a use permit issued by the relevant administrative authority. The process of leasing public land can be quite lengthy. Land may be leased for a maximum duration of 99 years. Lease contracts offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the lease contract. Government approval may be required for the lease of publicly held land. There are no restrictions on the amount of land that may be leased. Most land-related information in Dakar can be found in the cadastre.
Strength of ownership rights index (0 = min, 100 = max)	87.5	77.3	92.2	
Access to land information index (0 = min, 100 = max)	50.0	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	58.5	70.6	
Time to lease private land (days)	33	72	61	
Time to lease public land (days)	101	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	89.9	82.4	85.2	Senegal is a party to the OHADA Treaty (Organisation pour l'Harmonisation en Afrique du Droit des Affaires) and arbitration is therefore governed by the Uniform Act on Arbitration. The act was signed on March 11, 1999 and entered into force 90 days later. The Uniform Act supersedes the existing national laws on arbitration. The act is supplemented by the New Civil Procedure Code, which also regulates the courts' capacity to provide assistance to arbitral proceedings. The principal arbitral institution under OHADA is the Common Court for Justice and Arbitration (CCJA) in Abidjan, Côte d'Ivoire. Senegal has also adopted various laws and provisions to develop arbitration in line with the OHADA Uniform Act. Senegal's main arbitral institution is the Center for Arbitration, Mediation, and Conciliation (CAMC) at the Chamber of Commerce, Industry, and Agriculture of Dakar (CCIAD), established in 1998. Senegal has ratified the 1958 New York Convention and the ICSID Convention. On average, it takes around 11 weeks to enforce an arbitration award rendered in Senegal, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 11 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	85.1	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	98.8	55.9	57.9	

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Serbia

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 32 are fully open to foreign capital participation in Serbia. The only exception is the TV broadcasting industry. According to the Law on Broadcasting (Zakon o radio difuziji), foreign ownership in private TV broadcasting companies is limited to a maximum of 49% and participation in public media companies is prohibited.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	100.0	84.0	78.5	
Media	74.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	14	22	42	It takes 8 procedures and 14 days to establish a foreign-owned limited liability company (LLC) in Serbia (Belgrade), faster than the IAB average for Europe and Central Asia, and much faster than the IAB global average. In addition to the procedures required of a domestic company, a parent company establishing a subsidiary in Serbia must authenticate and translate its documents abroad. Under the Business Registration Law, company registration is transferred from the commercial courts to the Serbian Business Registers Agency (SBRA). The SBRA now issues the registration number, statistical code, registration certificate, tax identification number, pension fund registration, health fund certificates, and employment registration. The law requires registration to be completed within 5 business days, but it usually takes only 3. Companies in Serbia are free to open and maintain bank accounts in foreign currency, although they must also have an account in RSD. The minimum capital requirement is RSD 50,000 (~$670), although only 50% of that must be paid before registration. The rest is payable within 2 years of incorporation.
Procedures (number)	8	8	10	
Ease of establishment index (0 = min, 100 = max)	84.2	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	78.6	82.9	82.1	Companies seeking to access land have the option to lease or buy private land. Since the recent adoption of a new Constitution, the purchase of public land is no longer legally prohibited. In practice, however, it is extremely rare. Publicly owned land can be leased by auction. It is not possible to obtain a construction permit for leased land—a foreign company must have a real property interest in the land. The maximum duration for leases is 99 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. Leases for publicly held land cannot be transferred. Establishing a mortgage over the lease of publicly held land is not permitted. Most land-related information may be found in the land registry and cadastre. The land registry and cadastre are currently being consolidated electronically.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	45.0	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	78.9	70.6	
Time to lease private land (days)	67	43	61	
Time to lease public land (days)	177	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	82.5	85.2	The Serbian Law on Arbitration (2006) applies to both international and domestic arbitration. The law contains mandatory provisions on arbitration costs. All commercial disputes are arbitrable except those involving immovable property located in Serbia and those involving ownership or other property rights over aircrafts and ships. Under Serbian law, even if the parties have not previously concluded an arbitration agreement, one party could, by written request, initiate an arbitration procedure whereby the other party must approve such action or just engage itself in the process. The law stipulates that until the parties determine the language of the proceedings, statements of claim and defense and other written submissions may be made in the language of the main contract or in Serbian (Article 35). The law expressly states that arbitrators must be independent and impartial. Foreign parties in an arbitration procedure under the Rules of the Foreign Trade Arbitration Court organized within the Serbian Chamber of Commerce may be represented by foreign counsel. The law does not prohibit local parties from retaining foreign counsel. There are 2 arbitral institutions, one for domestic and another for international arbitrations. The Serbian Law on Enforcement Procedure (2004) requires the courts to assist arbitrators with provisional measures and the taking of evidence. On average, it takes around 6 weeks to enforce an arbitration award rendered in Serbia, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 11 weeks for a foreign award.
Ease of process index (0 = min, 100 = max)	71.4	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	90.2	64.4	57.9	

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Sierra Leone

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				In Sierra Leone, the Investment Promotion Act (2004) provides for equal treatment of foreign and domestic investors with respect to ownership of local companies. Most business sectors covered by the Investing Across Sectors indicators are fully open to foreign equity ownership. Overt statutory ownership restrictions are imposed on only a small number of industries. Foreign capital participation is prohibited in the airport and port operation sectors, in particular, as these facilities are owned and operated directly by the government through the Ministry of Transport.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	75.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	80.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	43	48	42	It takes 8 procedures and 43 days to establish a foreign-owned limited liability company (LLC) in Freetown, Sierra Leone, in line with the IAB global average and slightly faster than the IAB regional average for Sub-Saharan Africa. In addition to the procedures required of domestic companies, a foreign company establishing a subsidiary in Freetown must authenticate the documents of the parent company abroad. It must also, if it wants to engage in international trade, obtain a trade license from the Ministry of Trade and Industry, which takes about 30 days if all documents are in place. No investment approval is required. The business registration process is not yet available online. Of the 21 Sub-Sahara African countries surveyed by IAB only Mauritius allows electronic registration. Foreign investors may open and maintain commercial foreign currency bank accounts in Sierra Leone. Sierra Leone does not impose a minimum capital requirement on investors, except for investments made in specific sectors such as banking and telecommunications. Sierra Leone does not have any restrictions on the composition of the boards of directors of wholly foreign-owned companies.
Procedures (number)	8	10	10	
Ease of establishment index (0 = min, 100 = max)	65.0	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	44.4	76.6	82.1	The law in Sierra Leone prohibits the ownership of land by foreign entities. Foreign companies seeking to acquire land may lease privately or publicly held land. The process of leasing private land is lengthy due to a burdensome process of acquiring land-related information for due diligence purposes. Public land is leased subject to approval by the relevant public authority. The approval process may take a number of months to complete. The maximum duration of leases is a renewable term of 21 years. Lease contracts offer the lessee the right to transfer, subdivide, or sublease the leased land, subject to approval from the Ministry of Lands. Mortgaging the leased land and/or using it as collateral requires approval from the relevant ministry. There are no restrictions on the amount of land that may be leased. Land-related information can be obtained from either the Office of the Registra General or from the Ministry of Lands, Country Planning, and Environment Direction of Surveys and Mapping. Much of the information is out of date and in some cases inconsistent.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	26.3	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	30.0	58.5	70.6	
Time to lease private land (days)	210	72	61	
Time to lease public land (days)	277	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	65.0	82.4	85.2	Sierra Leone's Arbitration Act was enacted in 1960 and was based on the English Arbitration Act of 1950 rather than on the UNCITRAL Model Law. It makes no distinction between international and domestic arbitration. Although Sierra Leone has ratified the ICSID Convention, it is not a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As a consequence, foreign arbitration awards are not, as a general rule, entitled to recognition and enforcement by the courts of Sierra Leone. Arbitration in Sierra Leone is conducted on an ad hoc basis, as there is no arbitral institution. The courts have adopted a general policy in favor of enforcing arbitration agreements and awards in Sierra Leone. There is no express limit to the grounds for refusing recognition and enforcement of awards in the act. This suggests that the courts in Sierra Leone could rely on further grounds than those contained in the UNCITRAL Model Law, including, for example, error of law or a lack of substantial evidence. Given the lack of practice, private practitioners found it difficult to estimate the length of time for enforcement proceedings, but suggested it would take a minimum of 6 months for awards rendered in Sierra Leone or in a foreign country.
Ease of process index (0 = min, 100 = max)	70.5	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	20.5	55.9	57.9	

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Singapore

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				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 on 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 channels 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.
Mining, oil and gas	100.0	75.7	92.0	
Agriculture and forestry	100.0	82.9	95.9	
Light manufacturing	100.0	86.8	96.6	
Telecommunications	100.0	64.9	88.0	
Electricity	100.0	75.8	87.6	
Banking	100.0	76.1	91.0	
Insurance	100.0	80.9	91.2	
Transportation	47.4	63.7	78.5	
Media	27.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	9	68	42	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 countries surveyed by IAB and the fastest among IAB countries 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.
Procedures (number)	4	11	10	
Ease of establishment index (0 = min, 100 = max)	79.0	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	84.9	82.1	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.
Strength of ownership rights index (0 = min, 100 = max)	100.0	83.3	92.2	
Access to land information index (0 = min, 100 = max)	55.0	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	67.5	70.6	
Time to lease private land (days)	56	66	61	
Time to lease public land (days)	98	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	94.9	83.8	85.2	The International Arbitration Act (1994) regulates international arbitration in Singapore. Domestic arbitration 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.
Ease of process index (0 = min, 100 = max)	81.8	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	93.5	46.6	57.9	

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Slovak Republic

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The Slovak Republic has opened the majority of the sectors of its economy to foreign ownership. As a notable exception, ownership restrictions still exist on the domestic and international air transportation industries. As in the other European Union member countries, foreign ownership in these sectors is limited to 49% for investors from outside of the European Economic Area (EEA). Foreign capital participation is not restricted by law in the electricity transmission sector, but its monopolistic market structure, predominantly publicly owned, together with a high perceived difficulty of obtaining the required operating license make it difficult for foreign companies to engage.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	100.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	18	21	42	It takes 8 procedures and 18 days to establish a foreign-owned limited liability company (LLC) in Bratislava, Slovak Republic, faster than the regional IAB average for high-income OECD countries and much faster than the IAB global average. In addition to the procedures required of a domestic company, a foreign-owned company establishing a subsidiary must provide a translated and legalized copy of the incorporation documents of the parent company abroad. Legalization is not a requirement if the country of the parent company has entered into a bilateral agreement on legal aid with the Slovak Republic, or if the country is a party to the Hague Apostille Convention. In the latter case, an apostille of the translated documents suffices. In addition, the foreign company must report any foreign direct investment that exceeds € 700,000 to the National Bank of Slovakia. Registration forms for the County Registry Court may be downloaded and submitted online. The legal time limit for registration is 5 business days. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement in the Slovak Republic is € 5,000, of which 50% must be paid in cash upon formation of the company. If the company is established by a sole partner, the registered capital must be paid in full prior to registration in the Commercial Register.
Procedures (number)	8	9	10	
Ease of establishment index (0 = min, 100 = max)	92.0	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	84.6	92.2	82.1	Foreign companies have the option to lease or buy privately or publicly held land. It is not possible to construct buildings on state-owned land that is leased, except in exceptional circumstances. The purchase of public land is typically associated with large investment projects supported by the government. The purchase of state-owned land is subject to various conditions stipulated by the Act on Administration of State-owned Property. The maximum statutory duration of a lease is not regulated by law. However, the cadastre only registers lease contracts of durations greater than 5 years. The registration of the lease has only a declaratory effect and does not affect the validity and effectiveness of the contract. There is a fast-track option for land registration, which takes 15 days and is commonly used. Lease contracts offer the lessee the right to sublease and/or mortgage the leased land, subject to the terms of the contract. Most land-related information can be found in the general cadastre of immovables.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	61.1	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	84.2	70.6	
Time to lease private land (days)	73	50	61	
Time to lease public land (days)	85	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	93.1	94.2	85.2	Act no. 244/2002 governs arbitrations taking place in the Slovak Republic. It adopts many of the provisions in the UNCITRAL Model Law. However, it governs both domestic and international arbitrations, which are treated in the same manner. Furthermore, it covers not only commercial arbitration, but also extends to civil law. Arbitration agreements must be in writing. Many types of commercial disputes are arbitrable except those relating to legal title over real estate, bankruptcy, or the enforcement of judgments. Parties are free to select arbitrators of any gender, nationality, or professional qualifications. The Act grants arbitral tribunals the power to issue interim measures during arbitration proceedings, and states that interim relief can only be sought in court prior to arbitration. Although the Arbitration Act does not impose any restrictions on the appointment of foreign counsel, local advocacy laws generally require lawyers to be admitted to the Slovak Bar or be registered as European Union attorneys in order to represent parties in domestic arbitrations. Several institutions administer arbitration in the Slovak Republic, including the Court of Arbitration of the Slovak Chamber of Commerce and Industry. The only difference between domestic and international arbitrations is in the recognition and enforcement of arbitral awards. If an arbitration award is rendered in a foreign language, it must be translated into Slovak prior to the enforcement proceedings. On average, it takes around 6 weeks to enforce an arbitration award, from filing an application to a writ of execution attaching assets (assuming there is no appeal).
Ease of process index (0 = min, 100 = max)	85.7	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	88.5	77.6	57.9	

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Solomon Islands

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				In terms of overt statutory ownership restrictions on foreign capital as measured by the Investing Across Sectors indicators, Solomon Islands is one of the most open countries to foreign direct investment (FDI). All of the 33 industry sectors covered by the indicators are fully open to foreign capital participation. The country is thus an example of the fact that openness of sectors to foreign equity ownership is a necessary, 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.
Mining, oil and gas	100.0	75.7	92.0	
Agriculture and forestry	100.0	82.9	95.9	
Light manufacturing	100.0	86.8	96.6	
Telecommunications	100.0	64.9	88.0	
Electricity	100.0	75.8	87.6	
Banking	100.0	76.1	91.0	
Insurance	100.0	80.9	91.2	
Transportation	100.0	63.7	78.5	
Media	100.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	66	68	42	It takes 10 procedures and 66 days to establish a foreign-owned limited liability company (LLC) in Honiara, Solomon Islands, about average for IAB countries in East Asia and the Pacific and the IAB global average. A foreign company establishing a subsidiary in Honiara must authenticate the documents of the parent company abroad. In addition, it must obtain a foreign investment registration certificate from the foreign investment department, which takes on average 7 days and can be done online. If said certificate is not granted, the foreign investor can appeal to the Facilitation Committee under the Ministry of Commerce or to the Minister of Commerce directly. There are no electronic services for company registration. Foreign companies are not allowed to open bank accounts in foreign currency without approval from the Central Bank of Solomon Islands, which takes 7 days to obtain, if granted. There is no minimum paid-in capital requirement for establishing an LLC in Honiara.
Procedures (number)	10	11	10	
Ease of establishment index (0 = min, 100 = max)	48.0	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	91.1	84.9	82.1	It is not possible for foreign companies to own land in the Solomon Islands. They can, however, lease both publicly and privately held land. Land is scarce. Foreign companies seeking to acquire land may, therefore, only be able to acquire customarily held land. The process of acquiring customarily held land may be lengthy, as it requires identifying who is responsible for the land and involves extensive community consultations. Land may be leased for a maximum duration of 75 years. There are no restrictions on the amount of land that may be leased. Lease contracts 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. Approval from the Commissioner of Lands is required to lease publicly held land. It is extremely difficult to find land-related information in Honiara. Although a land registry exists, most land-related information is not available to the public and it is unclear where the information may be obtained.
Strength of ownership rights index (0 = min, 100 = max)	n/a	83.3	92.2	
Access to land information index (0 = min, 100 = max)	15.8	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	2.5	67.5	70.6	
Time to lease private land (days)	138	66	61	
Time to lease public land (days)	168	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	40.0	83.8	85.2	The Solomon Islands enacted an Arbitration Act on 1 December 1987, broadly modeled on English arbitration legislation. The Arbitration Act includes detailed provisions regarding the appointment of arbitrators. The role of the courts in supporting the arbitral process is expressly provided for, requiring parties to sue arising out of a writ of subpoena to obtain documents. The Solomon Islands is not party to the New York Convention and so enforcement is left to the discretion of the High Court and, if this is challenged, to the Court of Appeal. It has, however, ratified the ICSID Convention. In practice, the Arbitration Act is rarely used, as there are no arbitrators on the ground. Consequently, parties tend to resort to court litigation or outside-court settlement. Although the Law Commission has been pushing for new legislation which would be favorable to arbitration, this has not yet come to fruition. Due to the lack of practice, local legal practitioners were not able to estimate the time periods for enforcing an arbitration award, whether rendered in the Solomon Islands, or in a foreign country.
Ease of process index (0 = min, 100 = max)	0.0	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	0.0	46.6	57.9	

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South Africa

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Several industry sectors covered by the Investing Across Sectors indicators are subject to statutory foreign equity ownership restrictions in South Africa. Most notably, foreign capital participation in the mining as well as in the oil and gas industry is limited to a maximum of 74% by the Mineral and Petroleum Resources Development Act 28 of 2002. Furthermore, the share of foreign capital in companies owning or operating telecommunications infrastructure or providing telecommunications services must not exceed 30% in order to obtain the required operating licenses. In the media industry, foreign ownership of nationwide TV channels is limited to 20%. In addition to these overt statutory ownership restrictions, monopolistic market structures dominated by publicly owned enterprises further inhibit FDI in the electricity industry and in the port operation and railway freight transportation sectors.
Mining, oil and gas	74.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	70.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	60.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	65	48	42	It takes 8 procedures and 65 days to establish a foreign-owned limited liability company (LLC) in Johannesburg, South Africa, slower than both IAB regional average for Sub-Saharan Africa and the IAB global average. In addition to the procedures required of domestic companies, a foreign company establishing a subsidiary and wishing to engage in international trade must obtain a trade license from the Department of Trade and Industry, which usually takes 38 days. An authorized dealer (one of the 4 biggest commercial banks in South Africa) must endorse as "nonresident" the parent company's share certificate for shares held in the subsidiary. This process takes 5 days. The business registration documents are available online, but the application process is not yet available online. In South Africa, there are no regulatory restrictions on the composition of the boards of the directors or on the appointment of managers. The Broad-Based Black Economic Empowerment (BBBEE) initiative, while not enforceable, affects the type of business a company may be entitled to engage in. BBBEE urges companies to have meaningful representation of previously disadvantaged groups. If a foreign company is involved in import and export transactions as well as services, it is allowed to hold a Customer Foreign Currency (CFC) account. Only authorized dealers may initiate transactions on a CFC account. Foreign currency accruals from exports may be held in the CFC account for a maximum of 180 days, during which the amount can be set off against an import transaction. At the end of the 180-day period, any unutilized balance must be converted to rand. There is no minimum capital requirement for South African companies, only a nominal fee of $1.
Procedures (number)	8	10	10	
Ease of establishment index (0 = min, 100 = max)	79.0	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	84.5	76.6	82.1	Foreign companies seeking to acquire land In Johannesburg have the option to lease or buy privately or publicly held land. Private land can be bought through negotiations with the owner. Buying public land is a more complex process. It requires negotiating with the public body holding the land, obtaining approval from the relevant authority, and complying with a number of statutes limitations on the power of public authorities to lease land. Lease contracts of privately held land 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. There are no restrictions on the amount of land that may be leased. There is no statutory maximum duration for leases. Land-related information can be found in the land registry and cadastre, which are linked and coordinated to share data. Johannesburg has a land information system (LIS) and geographic information system (GIS) in place.
Strength of ownership rights index (0 = min, 100 = max)	100.0	77.3	92.2	
Access to land information index (0 = min, 100 = max)	47.4	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	58.5	70.6	
Time to lease private land (days)	42	72	61	
Time to lease public land (days)	304	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	82.4	82.4	85.2	The Arbitration Act No. 42 of 1965 regulates arbitration in South Africa. The legislation makes no distinction between domestic and international arbitration. The Arbitration Act is not based on the UNCITRAL Model Law, although many of the provisions are similar. The Arbitration Act is less prescriptive than the Model Law. For example, the Arbitration Act provides arbitrators with more powers to rule on issues of procedure, and the grounds and procedures for challenging the appointment of an arbitrator are not specified in the Arbitration Act to the same degree as in the Model Law. All commercial matters may be resolved by way of arbitration. The law does not provide for severability of the arbitration agreement, although the parties may agree to this separately. Arbitration agreements must be in writing. Faxes or other electronic forms of communication do not necessarily constitute a "written agreement." Parties are free to elect arbitrators of any nationality, gender, or professional qualifications, and they may also select foreign counsel to represent them in arbitration proceedings. Online arbitration is not yet an option. There are at least 2 active arbitral institutions in South Africa, including the Arbitration Foundation of Southern Africa. There is an extensive arbitration practice in South Africa. Domestic courts are empowered to assist arbitral tribunals with interim measures or the production of documents. Arbitration awards are enforced in the High Court of South Africa. On average, it takes around 8 weeks to enforce an arbitration award rendered in South Africa, from filing an application to a writ of execution attaching assets (assuming there is no appeal) or 6 weeks in a foreign country.
Ease of process index (0 = min, 100 = max)	79.0	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	94.5	55.9	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Spain

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 28 are fully open to foreign equity ownership in Spain, including manufacturing and primary industries. The country imposes ownership restrictions on a number of service sectors. Like the other European Union countries covered by the indicators, Spain imposes restrictions on the air transportation sector, in which foreign capital participation is limited to 49%. This equity restriction, however, only applies to investors from countries outside of the European Economic Area (EEA). Airport and port operation are closed to foreign capital participation. All commercial airport facilities in Spain are currently owned and operated by the publicly owned company AENA and the major ports are controlled and managed by the Spanish port authorities. Foreign capital participation is not allowed in terrestrial television broadcasting companies. This restriction does not apply to cable and satellite television channels.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	39.6	69.2	78.5	
Media	50.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	61	21	42	It takes 13 procedures and 61 days to establish a foreign-owned limited liability company (LLC) in Madrid, Spain. This process is the longest among IAB countries in the high-income OECD group and longer than the IAB global average. In addition to the procedures required of a domestic company, a foreign-owned company establishing a subsidiary in Spain must provide authenticated and legalized powers of attorney, a certificate of good standing, or a commercial excerpt from the country of the parent company ascertaining its existence. These documents must be reviewed and notarized in Spain. A company engaged in international trade must also obtain a trade license, which usually takes 10 days. All foreign investments subject to the rules of Royal Decree 664/1999 must be reported after incorporation to the Foreign Investment Registry at the Ministry of Economy. Only investments from tax havens must be reported prior to incorporation. Registration forms may be downloaded online, but the registration process itself is not yet available online. The legal time limit for registration is 15 business days. Foreign companies are free to open and maintain bank accounts in foreign currency. The minimum paid-in capital requirement to establish an LLC in Spain is € 3,005, which must be paid in full at incorporation.
Procedures (number)	13	9	10	
Ease of establishment index (0 = min, 100 = max)	71.0	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	92.2	82.1	Foreign companies seeking to acquire land have the option to lease or buy privately or publicly held land. Private land may be bought by preparing a notarized public deed. Public land must be reclassified as private before it can be leased or sold. The procedure must also involve a public competition either through tender or auction. Pursuant to investment rules, a foreign company must declare the acquisition of land if the investment exceeds a certain statutorily prescribed limit. Registration of leases is not mandatory. Information on land is available only if the land is registered. There are no restrictions on the amount of land that may be leased. There is also no maximum duration for lease contracts. Lease contracts offer the lessee the right to subdivide, sublease, 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.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	61.1	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	84.2	70.6	
Time to lease private land (days)	32	50	61	
Time to lease public land (days)	90	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.4	94.2	85.2	The Arbitration Act (2003) governs arbitrations in Spain and applies to both domestic and international arbitrations. It is substantively based on the UNCITRAL Model Law. The act defines international, but not domestic arbitration. Commercial matters may be resolved by arbitration. Arbitration agreements must be in writing. Parties are restricted in electing arbitrators in domestic arbitrations, who must have a law degree and be licensed to practice in Spain. In international arbitrations, these restrictions do not apply. Moreover, parties are free to choose foreign lawyers to represent them in arbitration proceedings. There is currently no online arbitration in Spain, although new initiatives are being discussed. The Spanish Arbitration Act stipulates that, unless the parties have agreed otherwise, the arbitral tribunal should render its award within 6 months of submission of the statement of defense. The arbitrators may extend this period by 2 months. Although the law provides for judicial assistance during arbitration proceedings, in practice this is rarely sought. On average, it takes around 18 weeks to enforce an arbitration award rendered in Spain, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and the same for a foreign award.
Ease of process index (0 = min, 100 = max)	76.1	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	75.3	77.6	57.9	

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Sri Lanka

South Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Within the South Asia region, Sri Lanka imposes more stringent restrictions on foreign equity ownership than most other countries measured by the indicators. Select strategic sectors, such as railway freight transportation and electricity transmission and distribution are closed to foreign capital participation. Foreign ownership in the primary sector (mining, oil and gas) is limited to a maximum of 40%. In the media industry, foreign capital participation in local television channels and newspaper companies must be less than 40%. Foreign equity participation in the retail distribution sector is only allowed if it exceeds $1,000,000.
Mining, oil and gas	40.0	88.0	92.0	
Agriculture and forestry	100.0	90.0	95.9	
Light manufacturing	100.0	96.3	96.6	
Telecommunications	100.0	94.8	88.0	
Electricity	71.4	94.3	87.6	
Banking	100.0	87.2	91.0	
Insurance	100.0	75.4	91.2	
Transportation	60.0	79.8	78.5	
Media	40.0	68.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	96.7	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	65	39	42	It takes 6 procedures and 65 days to establish a foreign-owned limited liability company (LLC) in Sri Lanka (Colombo). This is slower than both the regional IAB average for South Asia and the global average of IAB countries. In addition to the procedures required of a domestic company, a foreign company establishing a subsidiary in Sri Lanka must authenticate the parent company's documents in its country of origin. It must also obtain an investment approval from the Sri Lankan Board of Investment (BOI). Companies incorporated under the Companies Act are treated equally, regardless of whether shareholders are nationals or non-nationals. Registration at the Companies Registry takes, on average, 3 days. Online registration was recently introduced, but, in practice, the system is not widely used. Companies in Sri Lanka may open and maintain foreign currency accounts. There is no minimum capital requirement for domestic or foreign companies.
Procedures (number)	6	9	10	
Ease of establishment index (0 = min, 100 = max)	47.9	62.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	87.5	82.1	Foreign companies seeking to access land in Sri Lanka have the option to lease or buy both privately and publicly held land. However, the purchase of land by foreign companies is subject to a 100% value of the land transfer tax. A foreign company may lease publicly held land with approval from the relevant public authority. There is no clearly defined process for the lease or purchase of publicly held land. The maximum duration for leases is 50 years, although they are commonly held for 30 years. Foreign entities are limited to 50 acres when buying land. Lease contracts offer the lessee the right to transfer, sublease, or mortgage the leased land or use it as collateral, subject to the terms of the contract. Subdivision is subject to the applicable zoning laws. There are no restrictions on the amount of land that may be leased. Most land-related information can be found in the land registry. There are efforts underway to digitize the land registry.
Strength of ownership rights index (0 = min, 100 = max)	87.5	93.8	92.2	
Access to land information index (0 = min, 100 = max)	31.6	20.1	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	59.7	70.6	
Time to lease private land (days)	68	99	61	
Time to lease public land (days)	91	205	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	95.4	86.4	85.2	The Arbitration Act No. 11 of 1995 regulates both domestic and international arbitrations in Sri Lanka, and is based on the UNCITRAL Model Law. Other provisions regulating arbitration can be found in the Civil Procedure Code (1889). The High Court of Provinces (Special Provisions) Act (1996) governs the enforcement of arbitral awards. There is no definition of domestic or international arbitration in the legislation. Most commercial matters may be submitted to arbitration, and parties are free to select arbitrators of any nationality, gender, or professional qualifications. Only attorneys licensed to practice in Sri Lanka may represent parties in arbitration proceedings taking place in Sri Lanka. There are several arbitral institutions, including the Arbitration Centre of the Institute for the Development of Commercial Law and Practice and the Sri Lanka National Arbitration Centre. Online arbitration is not yet an available option. The efficiency of arbitration is hindered by its interaction with overburdened domestic courts, and there are significant delays in enforcing arbitration awards. Enforcement proceedings are commenced in the High Court. On average, it takes around 103 weeks to enforce an arbitration award, from filing an application to a writ of execution attaching assets (assuming there is no appeal). Unlike in many countries, the longest part of the enforcement proceedings is the time it takes from the first hearing in enforcement proceedings to the first instance court decision (1 year).
Ease of process index (0 = min, 100 = max)	71.3	55.0	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	38.0	36.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Sudan

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				While Sudan has gradually opened up many sectors of its economy to foreign investors, its restrictions on foreign equity ownership are still more stringent than in most countries in Sub-Saharan Africa covered by this report. Overt statutory ownership restrictions as measured by the Investing Across Sectors indicators exist primarily in the service industries. Sectors such as railway freight transportation, airport operation, television broadcasting, and newspaper publishing are closed to foreign capital participation. Foreign ownership is also restricted in the telecommunications, electricity, and financial services sectors. In addition to those overt statutory ownership restrictions, a comparatively large number of sectors are dominated by government monopolies, including, but not limited to, those mentioned above. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it more difficult for foreign companies to invest.
Mining, oil and gas	75.0	95.2	92.0	
Agriculture and forestry	75.0	97.6	95.9	
Light manufacturing	87.5	98.6	96.6	
Telecommunications	50.0	84.1	88.0	
Electricity	50.0	90.5	87.6	
Banking	50.0	84.7	91.0	
Insurance	50.0	87.3	91.2	
Transportation	60.0	86.6	78.5	
Media	0.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	55	48	42	It takes 13 procedures and 55 days to establish a foreign-owned limited liability company (LLC) in Sudan (Khartoum). This is slower than both the IAB regional and global averages. In addition to the procedures required of domestic companies, a foreign company establishing a subsidiary must authenticate its documents abroad. It must also obtain an investment approval from the State or Federal Ministry of Investment, as stipulated in the Investment Encouragement Act (1999), which takes, on average, 17 days. Preliminary approval from the Ministry to establish a project must be obtained prior to registering the company with the Commercial Registrar General's office at the Ministry of Investment. Registration must be made within 3 months or the preliminary approval will be cancelled. After the required steps for business registration have been completed, the final license will be issued. A feasibility study must be submitted along with the other documents to obtain final approval. If the license request is declined, an appeal can be made to the federal Council of Ministers. Sudan does not impose a minimum capital requirement on investors. Foreign companies must obtain approval from the Central Bank in order to open and maintain a foreign currency bank account in Sudan, which takes about 4 days.
Procedures (number)	13	10	10	
Ease of establishment index (0 = min, 100 = max)	40.0	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	71.4	76.6	82.1	The purchase of either privately or publicly held land is rare in Sudan, although there are no legal restrictions on it. The law stipulates that foreign companies may buy privately or publicly held land, subject to the consent of the Justice Minister. Foreign companies may lease privately or publicly held land. Publicly held land may be leased with approval from the public body holding the land. There are no restrictions on the amount of land that may be leased. There is no maximum duration for lease contracts. 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. These rights may be restricted for publicly held land. The lease may not be transferred to another legal entity, for example, unless approval is sought from the relevant authority. Land-related information may be found in the registry.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	30.8	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	30.0	58.5	70.6	
Time to lease private land (days)	12	72	61	
Time to lease public land (days)	60	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	77.4	82.4	85.2	The Arbitration Act (2005) governs arbitration in Sudan. This act is not based on the UNCITRAL Model Law. Article 7 of the Act defines arbitration as international if the headquarters of the parties to the arbitration are located in 2 different states or if the subject of arbitration is connected to more than 1 state. All commercial civil matters are considered arbitrable by law. Parties may appoint arbitrators of any nationality or professional qualifications. Sudan faces a challenge in complying with international trends that contravene Islamic Sharia principles. Online arbitration is not available, but the Khartoum Center for Commercial Arbitration administers arbitrations. Most arbitrations in Sudan, up until now, have been ad hoc, or international arbitral institutions have been used. The Arbitration Act stipulates that arbitration awards are binding and automatically enforced. When an award is not automatically enforced, written requests are sent to the District Court, and its decision can be appealed at the Court of Appeal. On average, it takes around 25 weeks to enforce an arbitration award rendered in Sudan, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 19 weeks for a foreign award. Sudan has not signed the 1958 New York Convention, but it has ratified the ICSID Convention.
Ease of process index (0 = min, 100 = max)	73.3	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	67.8	55.9	57.9	

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Tanzania

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 26 are fully open to foreign equity ownership in Tanzania, including manufacturing and primary industries. The country imposes foreign equity ownership restrictions on a number of service sectors. For example, foreign capital participation in the telecommunications sector is limited to a maximum of 65%. Furthermore, Tanzanian laws specify that at least one-third of the share capital of insurance companies must be owned by Tanzanian citizens. The media industry is subject to limits on foreign ownership as well. While the Broadcasting Services Act allows a maximum of 49% foreign ownership of Tanzanian TV stations, foreign capital participation in local nationwide newspapers is prohibited.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	65.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	66.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	24.5	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	38	48	42	It takes 14 procedures and 38 days to establish a foreign-owned limited liability company (LLC) in Dar es Salaam, Tanzania. This is slower than both the IAB regional average for Sub-Saharan Africa and the IAB global average. Domestic as well as foreign-owned LLCs must have at least 2 shareholders. In addition to the procedures required of domestic companies, a foreign-owned LLC must authenticate the parent company's documents abroad. If the company wants to engage in international trade, it must obtain a trade license from the Ministry of Industry and Trade. The Tanzania Investment Centre (TIC) offers fast-track service to establish a business in Tanzania. A foreign company is not required to obtain an investment approval in Tanzania, unless it decides to apply for TIC's incentive certificate to benefit from tax incentives. The business registration documents are available online. Foreign companies are free to open and maintain bank accounts in foreign currency. There is no minimum capital requirement for foreign-owned LLCs unless the project is registered with TIC, in which case the minimum capital is $300,000.
Procedures (number)	14	10	10	
Ease of establishment index (0 = min, 100 = max)	62.5	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	81.2	76.6	82.1	In Tanzania, all land is publicly held, and the president acts as trustee. Foreign entities are prohibited from owning land, except in the following circumstances: as a right of occupancy for purposes of investment approved under the Tanzania Investment Act; as a derivative right for purposes of investment approved under the Investment Act; or as an interest in land under a partial transfer of interest by a citizen for purposes of investment approved under the Investment Act in a joint venture. Land may be leased for a maximum duration of 99 years. Lease contracts offer the lessee the right to sublease, subdivide, 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 may be required from the Commissioner of Lands. There are regulations that govern the amount of land that may be leased. Most land-related information can be found in the registry.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	36.8	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	62.5	58.5	70.6	
Time to lease private land (days)	73	72	61	
Time to lease public land (days)	82	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	82.4	82.4	85.2	Tanzania's Arbitration Act (2002) governs domestic arbitral proceedings and enforcement of foreign arbitral awards. It is available online. The act contains certain mandatory provisions. The courts have the power to extend the time for beginning arbitral proceedings, as well as to impose other time limits. If a dispute is related to ownership of immoveable property, it cannot be arbitrated. The law provides for arbitrators to act fairly and impartially, but not independently, unlike the UNCITRAL Model Law. The law does not recognize severability of the arbitration agreement from the underlying contract, although this is accepted in practice. Arbitration agreements can be concluded in any form, as long as they are in writing. It is not possible to conduct arbitrations online in Tanzania. The National Construction Council (NCC) and the Tanzania Institute of Arbitrators administer arbitrations in Tanzania. The Arbitration Act stipulates that arbitration awards are enforceable. On average, it takes around 61 weeks to enforce an arbitration award, from filing an application to a writ of execution attaching assets (assuming there is no appeal). If an appeal is made during the enforcement process, proceedings are likely to be extremely lengthy.
Ease of process index (0 = min, 100 = max)	74.7	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	39.1	55.9	57.9	

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Thailand

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 87 countries 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.
Mining, oil and gas	49.0	75.7	92.0	
Agriculture and forestry	49.0	82.9	95.9	
Light manufacturing	87.3	86.8	96.6	
Telecommunications	49.0	64.9	88.0	
Electricity	49.0	75.8	87.6	
Banking	49.0	76.1	91.0	
Insurance	49.0	80.9	91.2	
Transportation	49.0	63.7	78.5	
Media	27.5	36.1	68.0	
Sector group 1 (constr., tourism, retail)	66.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	49.0	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	34	68	42	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 countries 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).
Procedures (number)	9	11	10	
Ease of establishment index (0 = min, 100 = max)	60.5	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	80.7	84.9	82.1	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.
Strength of ownership rights index (0 = min, 100 = max)	62.5	83.3	92.2	
Access to land information index (0 = min, 100 = max)	27.8	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	70.0	67.5	70.6	
Time to lease private land (days)	30	66	61	
Time to lease public land (days)	128	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.9	83.8	85.2	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 countries 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 the same for a foreign award. Thailand has ratified the 1958 New York Convention.
Ease of process index (0 = min, 100 = max)	81.8	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	40.8	46.6	57.9	

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Tunisia

Middle East and North Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 5 countries covered by the Investing Across Sectors indicators in Middle East and North Africa, Tunisia has the fewest limits on foreign equity ownership. The country has opened up the majority of the sectors of its economy to foreign capital participation. As a notable exception, the electricity transmission and distribution sectors are closed to foreign ownership. Furthermore, these industries operate under monopolistic market structures with the publicly owned company STEG as the only provider. While foreign capital participation is not restricted by law in electricity generation, the public monopoly of STEG together with a high perceived difficulty of obtaining the required operating license make it difficult for foreign investors to engage.
Mining, oil and gas	100.0	78.8	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	95.0	96.6	
Telecommunications	100.0	84.0	88.0	
Electricity	71.4	68.5	87.6	
Banking	100.0	82.0	91.0	
Insurance	100.0	92.0	91.2	
Transportation	100.0	63.2	78.5	
Media	100.0	70.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	94.9	98.1	
Sector group 2 (health care, waste mgt.)	100.0	90.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	19	19	42	Foreign investors who want to set up a subsidiary in Tunisia (Tunis) will have to allow 19 days and go through 14 different procedural steps, a process that is more complex than the IAB regional and global averages. 4 procedures are specific to foreign-owned businesses. All documents of the parent company must be translated into either Arabic or French. An investment declaration that provides basic information on the prospective project must be filed with the Guichet Unique Agency for Promotion of Investment (API). Investment in manufacturing industries, agriculture, agribusiness, public works, and certain services requires only a simple declaration of intent to invest. In addition a trade license must be obtained from customs if the company wants to engage in international trade. The company must also obtain a certificate of capital importation from the Central Bank of Tunisia. There are certain exchange control and currency regulations limiting foreign currency bank accounts (also called "professional accounts in convertible dinars") to subsidiaries that will be exporting all of their production Professional accounts in convertible dinars may be opened, upon authorization from the Central Bank of Tunisia, by any resident individual or legal entity having foreign currency. There is no minimum paid-in capital requirement for setting up a local or foreign LLC. However, any capital investment agreed upon in the articles of association must be paid in full. There are no restrictions on the composition of the board of directors or appointment of officers in a foreign-owned subsidiary.
Procedures (number)	14	9	10	
Ease of establishment index (0 = min, 100 = max)	71.1	58.6	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	78.3	82.1	Tunisian law states that, in Tunis, foreign companies may lease privately held land for 2 years (renewable) without authorization. If the lease contract is for longer than 2 years, the governor's authorization is required, unless the land is located in an industrial zone that is specifically designated for industrial activities. Foreign companies seeking to access land in Tunisia also have the option to lease publicly held land and buy privately held land. It is not possible to purchase publicly owned land. The process of leasing private land is efficient and streamlined compared with the regional and global average. Lease contracts can be of unlimited duration and offer the lessee the right to subdivide, sublease, and mortgage the leased land. There are no restrictions on the amount of land that may be leased. Land-related information can be found in the land registry and cadastre, which are located in the same agency, but are not linked or coordinated to share data. Currently there is no centralized land information system (LIS) or geographic information system (GIS) in place.
Strength of ownership rights index (0 = min, 100 = max)	87.5	68.8	92.2	
Access to land information index (0 = min, 100 = max)	36.8	46.4	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	66.0	70.6	
Time to lease private land (days)	69	59	61	
Time to lease public land (days)	84	123	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	77.5	82.0	85.2	Tunisia's Arbitration Code (1993) is largely based on the UNCITRAL Model Law. The main difference is the addition of Article 44, which stipulates that when an arbitration award is totally or partially annulled, the court shall, upon request by all parties, decide on the merits of the dispute. This solution allows for both proceedings to take place before the same court (Tunis Court of Appeal) without filing separate claims. All commercial disputes are arbitrable except those concerning the state and public companies. Arbitration agreements inferred by conduct are legally enforceable. Parties can only choose an odd number of arbitrators. Judges and public agents can be appointed as arbitrators after obtaining prior authorization from the competent authority. Foreign lawyers can represent parties in both domestic and international arbitration proceedings taking place in Tunisia. The Supreme Court has issued several decisions that interim measures ordered by arbitrators are not subject to annulment by the court and that recognition and enforcement of arbitral awards may only be denied in very limited circumstances. The law provides for judicial assistance with orders of interim measures and taking of evidence issued by arbitrators. The Court of Appeal of Tunis is designated to enforce foreign arbitral awards. On average, it takes around 47 weeks to enforce an arbitration award rendered in Tunisia, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 51 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	71.4	65.5	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	52.3	48.7	57.9	

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Turkey

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The Turkish Law on Foreign Direct Investment provides equal treatment for foreign and domestic investors, unless otherwise stipulated by special statutory provisions. The principle of equal treatment can be restricted on the grounds of public order, public health, or public security, in which case specific shareholding structures may be required or foreign ownership restricted. In Turkey, foreign capital participation is limited in the air transportation sectors to a maximum of 49%. The Law on Establishment and Broadcasting of Radio and Television Channels (Law No. 3984) stipulates that foreign ownership in a private radio or television channel cannot exceed 25% of the paid-in capital. A foreign investor who is already a shareholder in a private radio or television channel cannot become a shareholder of another radio or television channel. Foreign capital participation in the electricity transmission sector is prohibited. The Electricity Market Law stipulates that only the state-owned Turkish Electricity Transmission Company may carry out electric power transmission. Foreign and domestic investors are not allowed to establish new electricity distribution companies. It is, however, possible to acquire shares in existing distribution companies through privatization, provided that the investor does not acquire a dominant market position in the sector.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	100.0	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	78.6	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	69.4	84.0	78.5	
Media	62.5	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	8	22	42	It takes 8 procedures and 8 days to establish a foreign-owned limited liability company (LLC) in Turkey (Istanbul). This is much faster than both the IAB average for Europe and Central Asia and the IAB global average. In addition to the procedures required of a domestic company, a foreign company establishing a subsidiary in Turkey must authenticate and translate the parent company's documents abroad. Foreign companies do not need to get an investment approval; within 1 month of establishment, however, they must notify the General Directorate of Foreign Direct Investment of the investment and provide information on the shareholding structure of the company. Companies in Turkey are free to open and maintain bank accounts in foreign currency. The minimum capital requirement for domestic and foreign LLCs is TRY 5,000 (~$3,250), but investors do not need to pay it in full at registration. The articles of association must set forth that the capital committed by the shareholders is free from any encumbrances and that either (i) ¼of the capital has been already paid, or (ii) will be paid within 3 months of the date of establishment, with the remaining portion paid within 3 years.
Procedures (number)	8	8	10	
Ease of establishment index (0 = min, 100 = max)	65.8	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	85.7	82.9	82.1	Foreign companies seeking to access land in Turkey may lease or buy privately or publicly held land. Approval is required from the relevant governor to purchase land. Leasing or buying public land is common only if the land is part of an industrial zone. Public land is usually sold through a public tender process. Public land may be bought through direct sale, however, if the investment on the land is at least $10,00,000 and the number of personnel employed at least 50. There are no restrictions on the amount of land that may be leased. The maximum duration of a lease contract is a renewable term of 10 years. Lease contracts offer the lessee the right to sublease, subdivide, and/or mortgage the leased land. There are some restrictions on the transfer of the lease or land to another foreign entity. Most land-related information can be obtained from the Directorate of Land Registry and Cadastre. There are efforts underway to make this information available electronically.
Strength of ownership rights index (0 = min, 100 = max)	87.5	97.6	92.2	
Access to land information index (0 = min, 100 = max)	63.2	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	90.0	78.9	70.6	
Time to lease private land (days)	15	43	61	
Time to lease public land (days)	72	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	89.9	82.5	85.2	Two laws govern arbitration in Turkey. The Law on Civil Procedure (1927) applies to domestic arbitration and the Law on International Arbitration (enacted in 2001 and entered into force in 2009) applies to international arbitration. There are big differences between the 2 types of arbitration, but foreign-owned and locally incorporated companies can arbitrate under the Law on International Arbitration, which is more flexible. In domestic arbitration, the arbitrators are not authorized to rule on their own jurisdiction; the courts must decide on the arbitral tribunal's jurisdiction. Both laws set strict time limits on rendering an arbitral award. If the tribunal fails to render its award within the required time frame, the arbitration is terminated and the disputes referred to the courts. In international arbitration, where the domiciles or habitual residence of both parties are outside Turkey, parties are entitled to waive their right to an annulment completely or partially by either inserting a clause in the arbitration agreement or by later entering into a written agreement to that effect. Disputes involving immovable property and intracompany disputes are under the exclusive jurisdiction of the Turkish courts and cannot be arbitrated. Parties may freely choose their arbitrators. In domestic arbitration, parties must be represented by lawyers who are licensed to practice in Turkey. This does not apply to international arbitrations. In domestic arbitration, disputes are resolved in accordance with Turkish laws or the principle of equity and cannot be submitted to arbitration outside Turkey. There are more than 4 active arbitral institutions in Turkey. The Commercial Court of First Instance has jurisdiction to enforce arbitration awards. On average, it takes around 16 weeks to enforce an arbitration award rendered in Turkey, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 23 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	69.5	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	68.6	64.4	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Uganda

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 30 are fully open to foreign equity ownership in Uganda, including manufacturing and primary industries. The country imposes foreign equity ownership restrictions on a small number of service sectors. The electricity transmission and distribution sectors are closed to foreign capital participation and characterized by monopolies. In the banking sector, Ugandan law specifies that a single shareholder, foreign or domestic, cannot hold more than 49% of the shares of a local bank.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	71.4	90.5	87.6	
Banking	49.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	39	48	42	It takes 21 procedures and 39 days to establish a foreign-owned limited liability company (LLC) in Kampala, Uganda. This is faster than both the IAB regional average for Sub-Saharan Africa and the IAB global average. In addition to the procedures required of domestic companies, a foreign-owned LLC must submit a project proposal through a local counsel to obtain an investment approval from the Uganda Investment Authority (UIA). This approval usually takes 7 days. An appeal can be made to the Minister of State for Finance if said approval is not granted. An appeal is rarely necessary, however, as the foreign investor is usually asked to provide additional information or clarifications if need be. In addition, the company, if it wants to engage in international trade, must obtain a trade license from the Ministry of Tourism, Trade, and Industry. The business registration process is not yet available online. Foreign companies are free to open and maintain foreign currency bank accounts. There is a minimum capital requirement of UGX 200,000,000 (~$100,000) to obtain an investment license from the UIA.
Procedures (number)	21	10	10	
Ease of establishment index (0 = min, 100 = max)	47.4	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	71.4	76.6	82.1	Foreign companies seeking to access land in Uganda may lease privately or publicly held land. The Land Act in Uganda prohibits the ownership of land by foreign companies. Private land available for lease may include customary and communally owned land, which cannot be leased without community consultations. The procedures for leasing both private and public land are similar, but one must negotiate with the relevant public authority for the lease of public land. Land may be leased for a maximum duration of 99 years. There is no restriction on the amount of land that may be leased. Lease contracts offer the lessee the right to sublease, subdivide, and/or mortgage the leased land, subject to the terms of the contract. Not all land rights require registration. A thorough due diligence process is, therefore, required before leasing land. Most land-related information can be found in the land registry.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	25.0	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	77.5	58.5	70.6	
Time to lease private land (days)	60	72	61	
Time to lease public land (days)	80	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	86.3	82.4	85.2	The Arbitration and Conciliation Act (2000) applies to both domestic and international arbitrations and is not based on the UNCITRAL Model Law. Unlike in many countries in Sub-Saharan Africa, arbitration agreements cannot be concluded electronically. Although the law allows parties to use the language of their choice, with the default language being English, in practice, arbitration proceedings always take place in English. Foreign lawyers cannot represent parties in arbitration proceedings, unless they appear jointly with qualified Ugandan lawyers. Arbitration awards are enforced in the Commercial Division of the High Court in Uganda, and appeals can be made to the Court of Appeal. The courts usually enforce domestic and international arbitration awards. On average, it takes around 26 weeks to enforce an arbitration award rendered in Uganda, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 52 weeks to enforce a foreign award. If an appeal is made during this process, enforcement proceedings become extremely lengthy. Mediation is used frequently in Uganda to resolve disputes, and a special section has been added to the Arbitration and Conciliation Act (2000) to provide specifically for conciliation.
Ease of process index (0 = min, 100 = max)	62.9	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	39.3	55.9	57.9	

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Ukraine

Eastern Europe and Central Asia

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (20 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 20 countries covered by the Investing Across Sectors indicators in Eastern Europe and Central Asia, Ukraine imposes restrictions on foreign equity ownership that are more severe than in most other countries. While most of the primary and manufacturing sectors are fully open to foreign capital participation, Ukraine imposes ownership restrictions in a number of service sectors. In particular, the Law of Ukraine on Television and Radio Broadcasting prohibits foreign investors from establishing TV broadcasting companies. Furthermore, private ownership (both domestic and foreign) of nationwide newspaper media is restricted by law. The Law on Publishing Businesses limits foreign ownership of publishing houses to a maximum of 30%. This limit will likely be abolished soon in accordance with the country's commitments with the World Trade Organization (WTO). Foreign capital participation in the domestic and international air transportation sectors is limited to 49%.
Mining, oil and gas	100.0	96.2	92.0	
Agriculture and forestry	100.0	97.5	95.9	
Light manufacturing	82.5	98.5	96.6	
Telecommunications	100.0	96.2	88.0	
Electricity	100.0	96.4	87.6	
Banking	100.0	100.0	91.0	
Insurance	100.0	94.9	91.2	
Transportation	79.6	84.0	78.5	
Media	15.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	28	22	42	It takes 11 procedures and 28 days to establish a foreign-owned limited liability company (LLC) in Ukraine (Kiev). This is slower than the average of IAB countries in Europe and Central Asia, but still faster than the IAB global average. In addition to the procedures required of a domestic company, a foreign company establishing a subsidiary in Ukraine must legalize and translate the parent company's documents abroad. Registration of a foreign investment is optional, although, in practice, foreign investors usually prefer to register their investments. The State Registrar should make all registrations with the State Committee of Statistics of Ukraine, the state social funds (the State Pension Fund, the Employment Insurance Fund, the Social Security Fund, and the Fund for Social Insurance), and the tax authorities for the newly registered company. However, in practice, the State Registrar does not register with the State Committee of Statistics, and that registration is usually made by the company itself. Companies in Ukraine are free to open and maintain bank accounts in foreign currency. The minimum capital requirement is pegged to the minimum monthly salary and is currently UAH 63,000 (~$7,950). Half must be paid in at registration, the other half within a year.
Procedures (number)	11	8	10	
Ease of establishment index (0 = min, 100 = max)	80.0	76.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	88.5	82.9	82.1	The land law in Ukraine allows foreign companies to buy nonagricultural land within city limits for construction purposes or commercial activities. Most foreign companies seeking to access land, therefore, prefer to buy private land. It is possible to buy publicly held land, but this is a generally more complicated procedure requiring the consent of the relevant minister or of parliament. Public land can only be sold through public auction. Land can be leased for a maximum duration of 50 years. Lease contracts offer the lessee the right to transfer, subdivide, or sublease the land, subject to the terms of the contract. There are restrictions on these rights for publicly held land. Land-related information can be found in the land registry. The registry was established in the last 10 years. Not all titles and deeds that existed before the registry was created have been recorded. The information it contains may, therefore, not be reliable. A cadastre has been legislated, but has not yet been established.
Strength of ownership rights index (0 = min, 100 = max)	100.0	97.6	92.2	
Access to land information index (0 = min, 100 = max)	36.8	50.3	41.3	
Availability of land information index (0 = min, 100 = max)	55.0	78.9	70.6	
Time to lease private land (days)	50	43	61	
Time to lease public land (days)	209	133	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	86.6	82.5	85.2	The International Commercial Arbitration Law (ICAL, 1994) applies to international arbitration and the Law on Courts of Arbitration (2004) applies to domestic arbitration. A distinctive feature of ICAL is that it incorporates the regulations of 2 arbitral institutions. The Statutes of the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry are annexed to ICAL. ICAL distributes the functions of arbitration assistance and supervision between the district courts and the President of the Chamber of Commerce and Industry of Ukraine for both ad hoc and institutional arbitrations. The following commercial disputes cannot be resolved by domestic arbitration: disputes based on commercial contracts, those connected with fulfillment of state demands, disputes involving state secrets, bankruptcy disputes, disputes involving a party exercising state power, disputes over immovable property, intracompany disputes, disputes involving a nonresident party, and disputes in which a judgment of the arbitration court would require the execution of state power by an authorized body. ICAL limits the jurisdiction of international arbitration tribunals to civil law disputes arising from international economic operations (provided that the commercial enterprise of at least 1 party exists outside of Ukraine), disputes between international organizations and enterprises with foreign investments in Ukraine, and intracompany disputes of these enterprises. Arbitrators in domestic arbitrations must have a higher legal education, which is not required in international arbitrations. On average, it takes around 7 weeks to enforce an arbitration award rendered in Ukraine, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 13 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	78.1	69.7	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	72.6	64.4	57.9	

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United Kingdom

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				The United Kingdom offers a welcoming environment to foreign investors, with foreign equity ownership restrictions in only a limited number of sectors covered by the Investing Across Sectors indicators. As in all other European Union member countries, foreign equity ownership in the air transportation sector is limited to 49% for investors from outside of the European Economic Area (EEA). Furthermore, the Industry Act (1975) enables the U.K. government to prohibit transfer to foreign owners of 30% or more of important U.K. manufacturing businesses, if such a transfer would be contrary to the interests of the country. While these provisions have never been used in practice, they are still accounted for in the Investing Across Sectors indicators, as these strictly measure ownership restrictions defined in the laws.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	65.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	79.6	69.2	78.5	
Media	100.0	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	14	21	42	The process of establishing a foreign-owned subsidiary in the United Kingdom (London) is faster than the IAB regional average and similar to the one applicable to local companies. The 1 additional step required exclusively of foreign investors is the double taxation treaty clearance in respect of any payments potentially subject to withholding, including payments such as dividends, royalties, and interest. In London, Companies House offers a same-day incorporation service for an additional fee, as opposed to the usual registration service, which takes 8 to 10 days. In addition, Companies House's forms G10 and G12 can be downloaded and submitted online. Alternatively, a ready-formed "shelf" company can be acquired from local law firms and formation agents. The majority of goods can be imported into the United Kingdom without the need to apply for an import license, although an export license may be required, depending on the nature of the goods to be exported, their ultimate end use, and the destination concerned. In the United Kingdom, there are no exchange control or currency regulations affecting inward or outward investment, the holding of foreign currency bank accounts, or the settlement of currency trading transactions. The only exception is in relation to money laundering, which requires banks to undertake certain verifications of new clients.
Procedures (number)	7	9	10	
Ease of establishment index (0 = min, 100 = max)	85.0	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	92.2	82.1	Foreign companies seeking to access land in the United Kingdom have the option to lease or buy land from both private and public owners. Procedures involved in leasing privately and publicly held land are the same except that the public authority seeking to lease land needs to comply with its own internal requirements for entering into land transactions. Lease contracts can be of unlimited duration and offer the lessee the right to subdivide and sublease the leased land as well as to mortgage it or use it as collateral. There are no restrictions on the amount land that may be leased. Not all land in the United Kingdom is registered. Land rights for registered land are recorded in the title deeds registry. However, some rights affecting land may also exist without it being registered or recorded in the registry. Currently there is no centralized land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information at a single point of access.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	50.0	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	80.0	84.2	70.6	
Time to lease private land (days)	53	50	61	
Time to lease public land (days)	62	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	99.9	94.2	85.2	The United Kingdom has a long history of alternative dispute resolution (ADR), although it lacks a statute governing commercial mediations. The primary arbitration legislation is the Arbitration Act (1996), which governs all arbitration agreements made in writing. All types of commercial disputes are arbitrable. Oral arbitration agreements or those inferred by conduct are enforceable. Domestic and international arbitrations are equally liberal. There are no explicit provisions for confidentiality of the proceedings in the Arbitration Act. The United Kingdom has a variety of arbitration institutions administering domestic, international, and online disputes. The domestic courts are generally supportive of arbitration. An arbitration award can only be challenged on 3 grounds: lack of substantive jurisdiction, serious irregularity, and appeal on a point of law. Enforcement is also fairly straightforward: the court will normally enter a judgment or issue an order on the terms of the award. On average, it takes around 8 weeks to enforce an arbitration award rendered in the United Kingdom, from filing an application to a writ of execution attaching assets (assuming there is no appeal), and 6 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	87.5	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	94.5	77.6	57.9	

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United States

High-income OECD

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (12 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				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.
Mining, oil and gas	100.0	100.0	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	93.8	96.6	
Telecommunications	100.0	89.9	88.0	
Electricity	100.0	88.0	87.6	
Banking	100.0	97.1	91.0	
Insurance	100.0	100.0	91.2	
Transportation	85.0	69.2	78.5	
Media	62.5	73.3	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	91.7	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	11	21	42	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.
Procedures (number)	8	9	10	
Ease of establishment index (0 = min, 100 = max)	80.0	77.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	100.0	92.2	82.1	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.
Strength of ownership rights index (0 = min, 100 = max)	100.0	100.0	92.2	
Access to land information index (0 = min, 100 = max)	50.0	52.5	41.3	
Availability of land information index (0 = min, 100 = max)	95.0	84.2	70.6	
Time to lease private land (days)	44	50	61	
Time to lease public land (days)	92	88	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	85.0	94.2	85.2	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 trumps 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.
Ease of process index (0 = min, 100 = max)	81.8	83.3	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	75.3	77.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Venezuela, RB

Latin America and the Caribbean

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (14 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Among the 14 countries in Latin America and the Caribbean covered by the Investing Across Sectors indicators, República Bolivariana de Venezuela's restrictions on foreign equity ownership are relatively stringent. The National Constitution authorizes the government to reserve for itself those industries and services that are in the public interest and of a strategic nature. The most prominent example is the oil and gas sector, in which foreign capital participation is restricted by the Hydrocarbons Organic Law. Several service industry sectors are closed to foreign ownership, including railway freight transportation, domestic air transportation, and airport and port operation. Foreign capital participation in the media sector (television broadcasting and newspaper publishing) is limited to a maximum of 20%. In addition to these overt legal restrictions on foreign investment, a comparatively large number of sectors is dominated by government monopolies, including, but not limited to, those mentioned above. Notable additional sectors dominated by publicly owned enterprises include the electricity and fixed-line telecommunications sectors. Those monopolies, together with a high perceived difficulty of obtaining required operating licenses, make it more difficult for foreign companies to invest. In addition the current government has recently nationalized several foreign companies including hotels, banks and retail chains further suggesting that República Bolivariana de Venezuela is less open to FDI than its laws suggest.
Mining, oil and gas	74.5	91.0	92.0	
Agriculture and forestry	100.0	96.4	95.9	
Light manufacturing	100.0	100.0	96.6	
Telecommunications	100.0	94.5	88.0	
Electricity	85.7	82.5	87.6	
Banking	100.0	96.4	91.0	
Insurance	100.0	96.4	91.2	
Transportation	20.0	80.8	78.5	
Media	20.0	73.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	100.0	98.1	
Sector group 2 (health care, waste mgt.)	100.0	96.4	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	179	74	42	It takes 19 procedures and 179 days to establish a foreign-owned limited liability company (LLC) that wants to engage in international trade in República Bolivariana de Venezuela (Caracas). This process is slower than the averages in both Latin America and the Caribbean and the IAB countries globally. Companies in República Bolivariana de Venezuela must be incorporated with a minimum of 2 shareholders (although, once incorporated, the law does not prohibit the shares being owned by 1 shareholder). República Bolivariana de Venezuela has limitations on hiring foreign personnel: only 10% of a company's staff can be foreign and payments to foreign workers cannot exceed 20% of total payroll, unless the Ministry of Labor authorizes a temporary exception. In addition to the procedures required of a domestic firm, a foreign company establishing itself in República Bolivariana de Venezuela must authenticate the parent company's documents in its country of origin. A foreign company does not need an investment approval. However, the investment must be registered with SIEX (Superintendencia de Inversiones Extranjeras) in order to be authorized to purchase foreign currency at the official exchange rate and repatriate capital and dividends. A company can purchase foreign currency from the central bank at the official exchange rate, if (i) it has registered with RUSAD (Registro de Usuarios del Sistema de Administración de Divisas), and (ii) it has received foreign-exchange approvals from the currency administration CADIVI (Comisión de Administración de Divisas) for each transaction. The issuance of the approvals is subject to the discretion of CADIVI and the availability of foreign currency. Companies in República Bolivariana de Venezuela cannot hold a bank account in foreign currency. There is no minimum capital requirement, although 20% of the subscribed capital must be paid in at registration.
Procedures (number)	19	14	10	
Ease of establishment index (0 = min, 100 = max)	42.5	62.8	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	72.5	78.2	82.1	In República Bolivariana de Venezuela, foreign companies have the option to lease or buy private land. It is legally possible to lease or buy publicly held land, but this is not common, as several restrictions apply. There are no clearly defined procedures for leasing public land. Procedures thus vary from municipality to municipality. The proceedings may be lengthy and cumbersome, especially at the negotiation stage. Land may be leased for a maximum duration of 15 years. Leases for durations of less than 6 years need not be registered or notarized. Lease contracts offer the lessee the right to transfer, subdivide, or sublease the land, subject to the terms of the contract and local planning laws. There are restrictions on the amount of publicly held land that may be leased. Land-related information can be found in the land registry and cadastre. The registry and cadastre are not yet linked or coordinated to share data, but there are currently plans in place to do so.
Strength of ownership rights index (0 = min, 100 = max)	100.0	98.2	92.2	
Access to land information index (0 = min, 100 = max)	44.4	40.4	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	73.0	70.6	
Time to lease private land (days)	87	62	61	
Time to lease public land (days)	138	156	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	89.1	87.5	85.2	The Venezuelan Commercial Arbitration Act of 1998 is based on the UNCITRAL Model Law, but applies to both domestic and international arbitrations in República Bolivariana de Venezuela and distinguishes between arbitration at law and arbitration at equity. There is no specific mediation law, but mediation is largely used for the resolution of labor disputes. All commercial matters are arbitrable, except for disputes involving immovable property in República Bolivariana de Venezuela. In addition, foreign companies cannot enter into arbitration agreements with the state regarding disputes over natural resources. For other disputes involving public companies, previous consent is required from the Attorney General. In arbitrations at law, parties are required to choose lawyers who are licensed to practice locally as arbitrators and counsel. Tribunals must consist of an odd number of arbitrators. When a public entity or company is party to the arbitration, the tribunal must be composed of at least 3 arbitrators. Two recent decisions by the Constitutional Chamber of the Venezuelan Supreme Court have reinforced and expanded the pro-arbitration policy of courts in commercial arbitrations, expressly provided in Article 258 of the Venezuelan Constitution. On average, it takes around 43 weeks to enforce an arbitration award rendered in República Bolivariana de Venezuela, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It also takes roughly 43 weeks to enforce a foreign award.
Ease of process index (0 = min, 100 = max)	57.1	66.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	52.2	51.7	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Vietnam

East Asia and the Pacific

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (10 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	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 Vietnam, 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 Vietnam'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	75.7	92.0	
Agriculture and forestry	100.0	82.9	95.9	
Light manufacturing	75.0	86.8	96.6	
Telecommunications	50.0	64.9	88.0	
Electricity	71.4	75.8	87.6	
Banking	65.0	76.1	91.0	
Insurance	100.0	80.9	91.2	
Transportation	69.4	63.7	78.5	
Media	0.0	36.1	68.0	
Sector group 1 (constr., tourism, retail)	100.0	91.6	98.1	
Sector group 2 (health care, waste mgt.)	75.5	84.1	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	94	68	42	It takes 12 procedures and 94 days to establish a foreign-owned limited liability company (LLC) in Ho Chi Minh City, Vietnam. This is slower than both the average for IAB countries 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 country of origin, and legalize said documents with the embassy or consulate of the country of origin in Vietnam 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. 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 Vietnam.
Procedures (number)	12	11	10	
Ease of establishment index (0 = min, 100 = max)	57.9	57.4	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	77.3	84.9	82.1	In Vietnam, the land is owned by the state and cannot be bought. The most common way to acquire land is to lease publicly held land. A foreign company may only lease private land from the developer of an industrial zone. The process of leasing 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	83.3	92.2	
Access to land information index (0 = min, 100 = max)	57.9	35.1	41.3	
Availability of land information index (0 = min, 100 = max)	92.5	67.5	70.6	
Time to lease private land (days)	120	66	61	
Time to lease public land (days)	133	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	84.9	83.8	85.2	Arbitration in Vietnam 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 Vietnamese citizen and have at least 5 years of experience in his or her field. There are several arbitral institutions in Vietnam. The number of arbitrations undertaken in Vietnam, however, is still relatively small. Vietnam's inefficient arbitration regime makes arbitration a less popular option. For example, awards rendered by Vietnamese 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 Vietnam is a signatory to the 1958 New York Convention. On average, it takes around 13 weeks to enforce an arbitration award rendered in Vietnam, 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	66.1	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	57.2	46.6	57.9	

For more information on this country, please go to http://www.investingacrossborders.org

Yemen, Rep.

Middle East and North Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (5 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Of the 33 sectors covered by the Investing Across Sectors indicators, 26 are fully open to foreign equity ownership in the Republic of Yemen, including manufacturing and primary industries. The country imposes ownership restrictions in a number of service sectors. Foreign ownership in electricity transmission and wind power, for example, is limited to a maximum of 49%. Furthermore, the fixed-line telecommunications (infrastructure and services), electricity distribution, and airport and port operation sectors are closed to foreign capital participation. In addition, a number of sectors are dominated by government monopolies, including, but not limited to, those mentioned above. Those monopolies represent an additional obstacle for foreign companies wishing to enter the market.
Mining, oil and gas	100.0	78.8	92.0	
Agriculture and forestry	100.0	100.0	95.9	
Light manufacturing	100.0	95.0	96.6	
Telecommunications	50.0	84.0	88.0	
Electricity	71.1	68.5	87.6	
Banking	100.0	82.0	91.0	
Insurance	100.0	92.0	91.2	
Transportation	60.0	63.2	78.5	
Media	100.0	70.0	68.0	
Sector group 1 (constr., tourism, retail)	100.0	94.9	98.1	
Sector group 2 (health care, waste mgt.)	100.0	90.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	29	19	42	It takes 9 procedures and 29 days to establish a foreign-owned limited liability company (LLC) in Sana'a, the Republic of Yemen. This is slower than the IAB regional average for the Middle East and North Africa but faster than the IAB global average. An LLC in the Republic of Yemen needs at least 2 shareholders. In addition to the procedures required of a domestic enterprise, a foreign company establishing a subsidiary must authenticate the documents of the parent company abroad. It must also acquire an investment approval from the General Investment Authority (GIA) before starting its establishment process. This approval usually takes 15 days to obtain. If the investment approval is not granted, foreign investors may appeal the decision by applying in writing either to the GIA or its president within 30 days of notification of the decision. The foreign company must also deposit the share of required capital in a recognized local bank, which takes only 1 day. Samples of registration documents are available online. Any company in the Republic of Yemen may freely open and maintain bank accounts in foreign currency. At incorporation, shareholders' subscription to capital must be no less than 20%, according to the Investment Act of the Republic of Yemen (2002).
Procedures (number)	9	9	10	
Ease of establishment index (0 = min, 100 = max)	68.4	58.6	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	69.2	78.3	82.1	Foreign companies seeking to acquire land in the Republic of Yemen have the option to lease or buy privately or publicly held land. The most common option for foreign companies seeking to acquire land is to lease or buy private land. Leasing or buying publicly held land requires approval from the General Investment Authority. There is no maximum duration for the lease of either private or publicly held land. Lease contracts offer the lessee the right to transfer, subdivide, sublease, or mortgage the leased land, subject to the terms of the contract and approval from the relevant authorities. There are no restrictions on the amount of land that may be leased, but land is scarce and therefore it is difficult to acquire large parcels. Most land-related information can be found in the survey and land registration authority. There is no land information system (LIS) or geographic information system (GIS) in place that centralizes relevant information.
Strength of ownership rights index (0 = min, 100 = max)	62.5	68.8	92.2	
Access to land information index (0 = min, 100 = max)	57.9	46.4	41.3	
Availability of land information index (0 = min, 100 = max)	85.0	66.0	70.6	
Time to lease private land (days)	53	59	61	
Time to lease public land (days)	52	123	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	74.9	82.0	85.2	The Yemeni Law of Arbitration No. 22 of 1992 is based largely on the UNCITRAL Model Law, but offers more comprehensive provisions dealing with fixed time limits to appoint arbitrators, conflicts of law and the choice of substantive laws, and the issuance of arbitration awards. All commercial disputes are arbitrable, including those involving public entities. Parties in private arbitrations may appoint foreign counsel to represent them. Parties may select arbitrators of any nationality, gender, or professional qualifications. Active judges can also act as arbitrators, except in cases pending before their court and cases that have been referred to them by another judge. Arbitrators are required by law to be independent and impartial and to preserve the confidentiality of the proceedings. There is 1 main arbitral institution, the Yemen Center for Conciliation and Arbitration (YCCA), which is associated with the Arabic Conciliation and Arbitration Institution in Cairo and the Arab Countries Council. On request of one of the parties, the arbitral tribunal may order the other party to make any provisional or conservatory measure it deems necessary. Articles 43, 24, 22, and 18 of the Arbitration Law require courts to assist arbitral tribunals with the taking of evidence and orders of provisional measures. On average, it takes around 43 weeks to enforce an arbitration award rendered in the Republic of Yemen, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes roughly 41 weeks to enforce a foreign award. The Republic of Yemen has not ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
Ease of process index (0 = min, 100 = max)	81.4	65.5	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	44.0	48.7	57.9	

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Zambia

Sub-Saharan Africa

INDICATORS	COUNTRY SCORE	IAB REGIONAL AVERAGE (21 COUNTRIES)	IAB GLOBAL AVERAGE (87 COUNTRIES)	HIGHLIGHTS
INVESTING ACROSS SECTORS				
Foreign equity ownership indexes (100 = full foreign ownership allowed)				Zambia is one of the most open countries to foreign equity ownership, as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to foreign equity ownership. Monopolistic market structures characterize the electricity transmission and distribution sectors, though, representing a potential obstacle to foreign investors.
Mining, oil and gas	100.0	95.2	92.0	
Agriculture and forestry	100.0	97.6	95.9	
Light manufacturing	100.0	98.6	96.6	
Telecommunications	100.0	84.1	88.0	
Electricity	100.0	90.5	87.6	
Banking	100.0	84.7	91.0	
Insurance	100.0	87.3	91.2	
Transportation	100.0	86.6	78.5	
Media	100.0	69.9	68.0	
Sector group 1 (constr., tourism, retail)	100.0	97.6	98.1	
Sector group 2 (health care, waste mgt.)	100.0	100.0	96.0	
STARTING A FOREIGN BUSINESS				
Time (days)	58	48	42	It takes 9 procedures and 58 days to establish a foreign-owned limited liability company (LLC) in Lusaka, Zambia. The process is less complex than the IAB regional and global averages, but takes longer to complete. In addition to the procedures required of a domestic company, a foreign company establishing a subsidiary in Zambia must authenticate its documents abroad. A foreign company must also obtain a trade license if it plans to engage in international trade. This license takes 38 days to obtain. A foreign company is not required to obtain an investment license from the Zambia Development Agency (ZDA), unless it wants to benefit from associated tax exemptions and incentives and to acquire land. Documentation related to the registration process is available online, but must be submitted in person to the Patents and Companies Registration Office (PACRO). Foreign companies are free to open and maintain foreign currency bank accounts. The minimum paid-in capital requirement is different for foreign and domestic companies: a private foreign-owned company is subject to ZMK 5,000,000 (~$1,000), while a domestic company is subject to ZMK 50,000 (~$10). Note that if the foreign-owned company is a public one, the paid-in capital requirement is ZMK 50,000,000 (~$10,000).
Procedures (number)	9	10	10	
Ease of establishment index (0 = min, 100 = max)	47.4	51.5	64.5	
ACCESSING INDUSTRIAL LAND				
Strength of lease rights index (0 = min, 100 = max)	71.4	76.6	82.1	In Zambia, all land is vested in the state, with the president as trustee. Land is usually acquired from the state on a leasehold basis for up to 99 years, on condition that it is developed. Foreign companies seeking to acquire land may lease publicly held land or land that has already been acquired by private parties from the state. In order for a foreign company that has no local shareholders to acquire land, it must be registered as an investor with the Zambia Development Agency. Leasing publicly held land requires approval from the relevant public authority. It is unclear how long the process of leasing public land takes. Generally, it may take a few weeks to several months. Lease contracts offer the lessee the right to subdivide, sublease, or mortgage the leased land, subject to the terms of the contract. Subdivision of the lease requires approval from the local planning authorities. Land-related information can be found in the land deeds registry.
Strength of ownership rights index (0 = min, 100 = max)	n/a	77.3	92.2	
Access to land information index (0 = min, 100 = max)	37.5	33.9	41.3	
Availability of land information index (0 = min, 100 = max)	75.0	58.5	70.6	
Time to lease private land (days)	104	72	61	
Time to lease public land (days)	122	151	140	
ARBITRATING COMMERCIAL DISPUTES				
Strength of laws index (0 = min, 100 = max)	97.4	82.4	85.2	The Zambia Arbitration Act No. 19 of 2000 applies to both domestic and international arbitrations, and is based on the UNCITRAL Model Law. Arbitration agreements must be in writing. Parties may appoint an arbitrator of any nationality, gender, or professional qualifications. The act does not specify that arbitrators must be independent and impartial, nor are there express provisions for arbitrators to keep arbitration proceedings confidential. Foreign lawyers cannot be used to represent parties in domestic or international arbitrations taking place in Zambia. There are no facilities that provide online arbitration in Zambia, although there is an arbitral institution, the Zambia Institute of Arbitrators. Arbitration awards are enforced in the High Court of Zambia, and judgments of that court enforcing or denying enforcement of an award can be appealed to the Supreme Court. However, arbitration awards cannot be reviewed on the merits of the case. On average, it takes around 14 weeks to enforce an arbitration award rendered in Zambia, from filing an application to a writ of execution attaching assets (assuming there is no appeal). It takes slightly longer to enforce a foreign award, around 18 weeks. Contracts involving state entities commonly rely upon arbitration as a dispute resolution tool.
Ease of process index (0 = min, 100 = max)	65.7	73.8	70.6	
Extent of judicial assistance index (0 = min, 100 = max)	77.3	55.9	57.9	

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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	*Investing Across Borders* project
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 countries 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 country 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 a country, as well as any mandatory regulatory or administrative requirements. If the country 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.

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Investing Across Borders is a new World Bank Group initiative comparing regulation of foreign direct investment around the world. It presents indicators on countries' laws, regulations, and practices affecting how foreign companies invest across sectors, start businesses, access industrial land, and arbitrate commercial disputes.

www.investingacrossborders.org

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

Public Hearing Friday, 17 February 2012

Questions Taken on Notice – Treasury

1. HANSARD, PG 34

Senator BACK: Could you either give me or take on notice to give me some understanding of the pattern of foreign investment in both agricultural land and agribusiness in the last 10 years. Has it been a plateau? What has been the pattern?

Mr Di Giorgio: We can go into a little more detail on notice if you like, but the broad pattern is that the pattern of investment in agriculture and agribusiness was relatively steady for the past 10 years until we hit the end of the drought. With the changing climatic conditions with the end of the drought, we have seen a lot more interest in foreign investment in that area. So the numbers from the ABS will show a kick up for the past couple of years. We have seen an increase in activity in the last couple of years. Having said that, the amount of foreign investment in that sector compared to other sectors has been quite small over that 10-year period. That is the general picture. We can provide more data and information if that would be useful.

Senator BACK: It would be; I would be most interested in that.

2. HANSARD, PG 37-38

Senator EDWARDS: As part of your considerations for the national interest test, do you take into account current market conditions like the declining profitability of the rural sector or farming sector by virtue of the domestic market—this is an issue within Australia: the consolidation of retail, leading to the declining profitability of the farming sector—and then the issue of foreign companies with access to capital which is infinitely more attractive? In some of the Asian countries you can raise debt for half a per cent. Indeed, some countries which have sovereign wealth funds do not even look for a return on their capital employed because they have so much of it. Do you look at the distortion in the marketplace that may occur? From the honest evidence that we have had from Hassad, which is owned by the Qatari government, they are looking for something to do with their money and they see it as a long-term food security benefit as well, so that makes them feel warm and fuzzy about it. Does the national interest test look at our local environment, at why the market pressures are as they are, and look to where the threat of a market distortion comes from—people with a load of money who can look for a completely separate driver for their investment in it?

Mr Di Giorgio: Let me try to answer that in a couple of ways. It is absolutely correct that it is not defined in a hard and fast way, and that has been the case ever since 1976, when the then Treasurer, Phillip Lynch, made a statement to that effect. The reason for that is that circumstances change. As soon as you start nailing down prescriptive measures, not only can you get into bother about when things change; you might get snagged by the courts. There was recently a case in New Zealand, for example. Having a flexible system gives the Treasurer of the day the flexibility to make broad considerations in the national interest. We outlined some of the factors that we consider important but they are just guidelines. We have mentioned defence, competition and other government policies like taxation and so forth, but they are just a guideline.

The short answer to your question is: we look at anything that might be considered in the national interest. But I make this point: the test is a negative one, which means that the underlying presumption is that foreign investment, money coming into the country legitimately and for decent purposes, is a positive thing. It is by definition a good thing. It is only in the negative, where we are looking for problems, that our processes kick in. That is the presumption underneath it. So, in the cases that you are talking about, board members would look at a case and say, 'Well, on balance, is it better for Australia that this go ahead, or is it so dire, are the distortions so dire, that we need to do something, that we might need to ask for some conditions, that we might need to ask the proponents to give us comfort in some areas?' And that then leads to a process of dialogue.

CHAIR: I cannot let this go through.

Senator EDWARDS: That is why I am getting into it, Chair.

CHAIR: I know. You will be into it; don't worry. I know you do not like to deal with specifics, but in the case of Shenhua's purchase of 40-odd farms to shut the farmers up—that is what the purpose was, and they did not come into the ABS survey because they are not an agricultural company, so those purchases did not go onto the statistical base—you would have given consideration to that case, wouldn't you?

Mr Di Giorgio: Yes.

CHAIR: Because it is 68 per cent owned by a Chinese municipality. How is it in the national interest to completely distort the land values in that district? There were 40-odd purchases. The Valuer General goes on recent sales. Some of those sales were at four times the commercial value of the farm, and you have decided that that is not against the national interest. What was the logic?

Mr Di Giorgio: Again, I am not going to go into specific cases.

CHAIR: Could you do that with us in camera?

Mr Di Giorgio: I would have to take advice, sorry.

CHAIR: Not today. Take that on notice.

Mr Di Giorgio: I would have to take that on notice.

3. HANSARD, PG 39

CHAIR: No. The other day you said that if they give a written undertaking there is. There are three levels of undertakings, we were told. It is in the *Hansard*. The first one was a 'Yeah, mate, it'll be right' sort of thing. If they do not do it, there is nothing you can do about it. But could you take us, in camera, through that particular purchase?

Mr Di Giorgio: I would have to take advice on that.

CHAIR: It seems obscene to me that we ticked off in the national interest that it was all right for the mining company, the Chinese sovereign company, to buy 20 per cent or whatever it was in the mine and then, as part of the arrangements further down the track for sending the iron ore over there, the company has to buy back their steel and build their infrastructure at Chinese specifications. It is all in the press. It seems to me that that is something you cannot keep an eye on—and I do not blame you; you have a limited resource.

Ms Reinhardt: It is quite frequently that we put conditions around the commercial onsale of products in the market.

CHAIR: The best way to solve that problem is if we get agreement to go in camera and have a look at it.

Mr Di Giorgio: We will take advice on that, Senator, and get back to you, if we may.

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Senator EDWARDS: I will finish up, because you are probably as troubled with the national interest test as I am—probably not! Does the national interest test cover things like sovereign wealth funds investing here? There are a lot of wealthy ones in Europe and everything that are buying up half of London at the moment and have done so over the last four years. With a sovereign wealth fund, what happens to those assets in the event of those countries proclaiming war on Australia? If we get into conflict with them, what happens to those assets here in Australia and the produce which is grown from them?

Mr Di Giorgio: Can I just clarify the question. If a sovereign wealth fund is—

Senator EDWARDS: A government's wealth fund.

Mr Di Giorgio: from a country which then comes into conflict with Australia, what happens to the sovereign wealth fund?

Senator EDWARDS: What happens to the assets of the sovereign wealth fund?

Mr Di Giorgio: What happens to the assets? I am not qualified to answer that but I am sure that there is a range of emergency legislation which would cover off that situation. I am not equipped to answer that but I can—

Senator EDWARDS: It would be good. The chair is always focused on what happens in 50 years, and there are some people today in Darwin going, 'Why did they bomb us 70 years ago?' We

have to project 50 years. If we do get an aggregation of foreign country sovereign funds owning land in Australia, do we have a policy on how we handle that in the event of conflict? I am just interested. It is nothing else apart from this: if they are looking at it for food security, if we become in conflict with them, what happens to their food security and the reasons they came here?

Ms Reinhardt: Presumably we would apply export conditions on the food. We usually do that in wartime—apart from the land. But we can get back to you with a full answer on that.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

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Senator BACK: It would be; I would be most interested in that.

ANSWER

The Australian Bureau of Statistics foreign direct investment data (Cat. No 5352) provides an overall picture of foreign investment across the economy in recent years by sector.

The data points to a trend decline in the level of foreign direct investment in the agricultural, forestry and fishing sector since 2003, albeit at a slowing rate of decline. At the same time, foreign direct investment for the economy as a whole increased. The Australian Bureau of Statistics data also shows that, in terms of foreign direct investment, the agriculture sector was the economy's smallest sector, with foreign direct investment in this sector averaging less than one half of one per cent of total foreign direct investment for most of the past decade, with this share declining over time.

2. HANSARD, PG 37-38

Senator EDWARDS: As part of your considerations for the national interest test, do you take into account current market conditions like the declining profitability of the rural sector or farming sector by virtue of the domestic market—this is an issue within Australia: the consolidation of retail, leading to the declining profitability of the farming sector—and then the issue of foreign companies with access to capital which is infinitely more attractive? In some of the Asian countries you can raise debt for half a per cent. Indeed, some countries which have

sovereign wealth funds do not even look for a return on their capital employed because they have so much of it. Do you look at the distortion in the marketplace that may occur? From the honest evidence that we have had from Hassad, which is owned by the Qatari government, they are looking for something to do with their money and they see it as a long-term food security benefit as well, so that makes them feel warm and fuzzy about it. Does the national interest test look at our local environment, at why the market pressures are as they are, and look to where the threat of a market distortion comes from—people with a load of money who can look for a completely separate driver for their investment in it?

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Mr Di Giorgio: Again, I am not going to go into specific cases.

CHAIR: Could you do that with us in camera?

Mr Di Giorgio: I would have to take advice, sorry.

CHAIR: Not today. Take that on notice.

Mr Di Giorgio: I would have to take that on notice.

ANSWER

Treasury is concerned about discussing the specifics of particular cases, including in-camera, with the Committee. The Treasury has provided assurances to investors and the market that it would protect information provided in confidence by foreign investors. Such disclosure is not related to the purpose for which information was obtained and may have adverse implications for the integrity of Australia's foreign investment screening system. This system relies heavily on the cooperation and confidence of foreign investors.

3. HANSARD, PG 39

CHAIR: No. The other day you said that if they give a written undertaking there is. There are three levels of undertakings, we were told. It is in the *Hansard*. The first one was a 'Yeah, mate, it'll be right' sort of thing. If they do not do it, there is nothing you can do about it. But could you take us, in camera, through that particular purchase?

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Ms Reinhardt: It is quite frequently that we put conditions around the commercial onsale of products in the market.

CHAIR: The best way to solve that problem is if we get agreement to go in camera and have a look at it.

Mr Di Giorgio: We will take advice on that, Senator, and get back to you, if we may.

ANSWER

See answer to Q2.

4. HANSARD, PG 39

Senator EDWARDS: I will finish up, because you are probably as troubled with the national interest test as I am—probably not! Does the national interest test cover things like sovereign wealth funds investing here? There are a lot of wealthy ones in Europe and everything that are

buying up half of London at the moment and have done so over the last four years. With a sovereign wealth fund, what happens to those assets in the event of those countries proclaiming war on Australia? If we get into conflict with them, what happens to those assets here in Australia and the produce which is grown from them?

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Senator EDWARDS: A government's wealth fund.

Mr Di Giorgio: from a country which then comes into conflict with Australia, what happens to the sovereign wealth fund?

Senator EDWARDS: What happens to the assets of the sovereign wealth fund?

Mr Di Giorgio: What happens to the assets? I am not qualified to answer that but I am sure that there is a range of emergency legislation which would cover off that situation. I am not equipped to answer that but I can—

Senator EDWARDS: It would be good. The chair is always focused on what happens in 50 years, and there are some people today in Darwin going, 'Why did they bomb us 70 years ago?' We have to project 50 years. If we do get an aggregation of foreign country sovereign funds owning land in Australia, do we have a policy on how we handle that in the event of conflict? I am just interested. It is nothing else apart from this: if they are looking at it for food security, if we become in conflict with them, what happens to their food security and the reasons they came here?

Ms Reinhardt: Presumably we would apply export conditions on the food. We usually do that in wartime—apart from the land. But we can get back to you with a full answer on that.

ANSWER

This question relates to the responsibilities of the Department of Foreign Affairs and Trade and will be answered by that agency as soon as possible.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

Public Hearing Friday, 17 February 2012

Questions Taken on Notice – Treasury

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Ms Reinhardt: Presumably we would apply export conditions on the food. We usually do that in wartime—apart from the land. But we can get back to you with a full answer on that.

ANSWER

As the matter falls outside of the Foreign Investment Review Board's immediate area of expertise, the Department of Foreign Affairs and Trade has been consulted. On the basis of this consultation, Treasury can advise that Australia would be able to expropriate the assets of a sovereign wealth fund of a country that came into conflict with Australia. Whether to do so or not would be a decision for the government of the day.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

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Questions Taken on Notice – ACCC

1. HANSARD, PG 48

CHAIR: I think history will prove you made a mistake. The question of SunRice: you will have dealt with that?

Ms Webb: I do not have any recollection of that matter being one that the ACCC reviewed, but that is not to say that we did not.

CHAIR: A Spanish company was to take over the single marketing arrangements for rice here, and ACCC did not get involved?

Ms Webb: I just cannot answer that question. I am happy to take it on notice.

2. HANSARD, PG 51

Senator COLBECK: How many of the 377 were foreign acquisitions?

Ms Webb: We would have to take that on notice. We do not keep our statistics in that form, but we could probably ascertain it.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

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Ms Webb: I just cannot answer that question. I am happy to take it on notice.

ANSWER

The ACCC assessed EBRO Foods' (EBRO) proposed acquisition of Ricegrowers Limited (SunRice) in 2010 and found there was no competitive overlap between EBRO and SunRice at the time, as EBRO did not have any presence in Australia prior to the acquisition. On this basis the ACCC concluded that the acquisition was unlikely to result in a breach of section 50 of the *Competition and Consumer Act 2010*.

2. HANSARD, PG 51

Senator COLBECK: How many of the 377 were foreign acquisitions?

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ANSWER

Of the 377 transactions assessed by the ACCC in 2010-11 FY, 133 were referred by the Foreign Investment Review Board (FIRB) to the ACCC for comment. Some of the remaining 244 transactions may have also involved foreign entities but were not required to be notified to FIRB. As the ACCC does not discriminate in its application of section 50 of the *Competition and Consumer Act 2010* between acquisitions by foreign and domestic firms, the ACCC is not able to provide a precise response as to how many of these remaining transactions involved foreign entities.

The majority of FIRB referrals are found not to raise any competition concerns and do not require public review. Of the 133 matters referred to the ACCC by FIRB in 2010 – 11 FY, 10 required review by the ACCC.

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into Foreign Investment Review Board National Interest Test

Public Hearing Friday, 17 February 2012

Questions Taken on Notice – ATO

1. HANSARD, PG 55

Senator NASH: I do. Would it be possible to provide to the committee how many foreign entities are currently being taxed for agricultural production? You were talking before about the tax system and how it operates, is it possible to provide us with just a number of foreign entities that are being taxed? I understand you would not be able to provide the companies.

Mr O'Neill: I certainly could not do that today.

Senator NASH: I did not expect you to do it now.

Mr O'Neill: We could consider that. The difficulty might be that tracing the underlying beneficial ownership of taxpayers is not something that we would do automatically. The rules are that resident taxpayers pay tax on their worldwide income. As to companies, there are question on their residency as to where they are incorporated as well as where their central management and control is. So the sorts of corporations that our ASIC colleagues were talking about today would be the typical taxpayer and the trace through to the ultimate beneficial owner, being somebody offshore, is not something that would be readily apparent to the tax office. I am not sure we would be able to distinguish taxpayers into those who are ultimately controlled offshore and those who are Australian in their ownership.

Senator NASH: Insofar as you can, if you could have a look at it, that would be useful.

2. HANSARD, PG 55-56

Senator NASH: ... You were talking about the transfer processing arrangements you have got in place. Perhaps you could take it on notice to provide for the committee any instances where that has occurred insofar as you can.

Mr O'Neill: Where we have made transfer pricing adjustments?

Senator NASH: Yes, the reality of the scenarios you were talking about before within agricultural production, if that has happened with regard to that transfer pricing process. If it is possible to turn up any information on the foreign entities being taxed, can we determine the amount of tax raised from foreign companies in agriculture? Is that at all possible or is it difficult for the same reason?

Mr O'Neill: For the same reason it would be almost impossible. We could check that, but I would be fairly confident interrogating our systems to get that demarcation would be almost impossible. If we were able to identify the numbers of agricultural companies owned beneficially offshore then we could perhaps give the tax paid by those over a period of time, for example, in a financial year. Since we do not have that detail on ultimate beneficial ownership, it may be very difficult or impossible.

3. HANSARD, PG 56

Senator NASH: Is there any way of cross-referencing where the FIRB has been involved and has approved a foreign acquisition in the agricultural area when that particular organisation has gone on to pay tax?

Mr O'Neill: Possibly, but there is a different difficulty there. I do not mean to be evasive. Most agricultural purchases are not referred to the ATO because they are below the threshold of $244 million.

Senator NASH: I realise it may be very small, but if you could at least have a look at that it would be useful.

Mr O'Neill: Certainly, if we have that data.

Rural and Regional Affairs and Transport Reference Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Foreign Investment Review Board National Interest Test

17 February 2012

Topic: **Number of foreign entities that are being taxed**

Hansard Page: **55**

Question: 1

Senator NASH: Would it be possible to provide to the committee how many foreign entities are currently being taxed for agricultural production? You were talking before about the tax system and how it operates, is it possible to provide us with just a number of foreign entities that are being taxed? I understand you would not be able to provide the companies.

Answer:

Australian Taxation Office (ATO) systems do not identify 'foreign' entities as a specific sub-set of the Australian taxpayer population. The ATO can identify some agricultural taxpayers with foreign connections if the taxpayers:

- use a 'primary production' business industry code;
- self assess as 'non-residents'; and/or
- identify that their beneficial owners are offshore. Without these indicators, which are self-selected by the taxpayer, the ATO cannot provide a precise answer as to the number of foreign primary producers.

The ATO has analysed taxpayer data to identify taxpayers where these indicators were present. The number of taxpayers identified was:

Financial year	Number of taxpayers identifying as non-residents (or with offshore beneficial ownership) and primary production business industry code
2007-08	227
2008-09	213
2009-10	212

Rural and Regional Affairs and Transport Reference Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Foreign Investment Review Board National Interest Test

17 February 2012

Topic:	**Amount of tax paid by foreign entities in agriculture**
Hansard Page:	**55**
Question:	2

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Answer:

ATO systems do not specifically identify and track the tax performance of foreign primary producers.

Therefore, we cannot reliably report on the amount of tax raised from these companies.

Rural and Regional Affairs and Transport Reference Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Foreign Investment Review Board National Interest Test

17 February 2012

Topic:	**Cross referencing FIRB approvals of foreign ownership of agricultural land - has that organisation gone on to pay tax?**
Hansard Page:	**56**
Question:	3

Senator NASH: Is there any way of cross-referencing where the FIRB has been involved and has approved a foreign acquisition in the agricultural area when that particular organisation has gone on to pay tax?

Answer:

It is not possible to accurately cross-reference Foreign Investment Review Board (FIRB) approvals to determine tax payments. This is due to a variety of factors including:

- Not all FIRB applications are referred to the ATO for comment.
- FIRB applications include information which is current at the time of the application (such as the target and the applicant structure). However, these details may change if FIRB approval is granted, for example the ultimate holding company.
- FIRB applications are just one source of intelligence taken into account by the ATO in risk identification and taking compliance action.