



The second annual complimentary
guide to understanding Foreign
Investment practices around the
world with an Asia-Pacific focus

阐述以亚洲为重点的全球外国投资操作的
终极指南(免费赠送)

LexisNexis® Foreign
Investment Law Guide
外国投资法指南 2018-2019

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Jurisdictional Q&As
司法管辖区 Q&A

Jurisdiction: Bangladesh
Firm: The Legal Circle
Authors: Masud Khan, N.M. Eftakharul Alam Bhuiya, Sameera M Reza and Nauriin Ahmed

1. What are the main reasons foreign investors invest in your jurisdiction?

Bangladesh offers the most liberal foreign direct investment (“FDI”) regime in South Asia. It benefits from a cost-effective industrial workforce, a strategic geopolitical location having good regional connectivity and complete duty and quota free access to EU, Japan, Canada, Australia and most other developed countries with access to international sea and air routes. Also, no restriction on equity participation and repatriation of profits and income, allowance of tax holidays and accelerated depreciation in most sectors, cash incentives for selected products, repatriation of dividends and capital at exit, equal treatment for local and foreign investors, protection of FDI from expropriation and nationalization under the Foreign Private Investment (Promotion & Protection) Act 1980 (‘FPIA 1980’) etc. are the key considerations to attract FDI in Bangladesh.

Additionally, the low cost of energy, good supply of natural gas, established export and economic zones, fertile & favorable land and climate, macroeconomic stability, open and diversified economy and other competitive incentives by the government provide foreign investors an economical and business friendly environment. It is also to be noted, that in spite of many constraints, Bangladesh has maintained over 6% GDP growth rate per annum for the last 6 years. Due to its steady progress, it is now the second largest garment and apparel exporter in the world after China.

FDI inflow in Bangladesh has significantly increased over the past decade and it rose by

24% year-on-year to US\$ 1.6 billion in 2013. It climbed to US\$ 2.45 billion in 2017. The FDI receipt was 22.5% higher compared to that of 2016.

Bangladesh also published a robust FDI Policy Framework in September 2014 through the Ministry of Commerce which is pending further approval, which not only sanctions numerous attractive incentives to the foreign investors but also protects and guarantees the safety of the investments and their returns.

Moreover, Bangladesh is a signatory to Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group, as well as the Overseas Private Investment Corporation (OPIC) of USA and the International Centre for Settlement of Investment Disputes (ICSID) and is also a member of World Association of Investment Promotion Agencies, which facilitates foreign investment in Bangladesh.

2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

The most relevant laws, regulations and guidelines that play an operative role in FDI in Bangladesh are as follows:

- a. The Foreign Exchange Regulation (Amendment) Act 2015 (‘FERA’) – This Act provides the legal basis for regulating certain payments, dealings in foreign exchange and securities in Bangladesh;
- b. The Guidelines for Foreign Exchange Transactions, Volume 1 & 2 (2009) and updated by

circulars of Bangladesh Bank ('BB') issued from time to time (collectively, the 'FX Guidelines'). FX Guidelines are a compilation of instructions and directives issued by BB regulating foreign exchange transaction. It also deals with specific instructions to be followed by the authorized dealers (banks authorized by BB to deal in foreign exchange under FERA and their constituents) ('AD').

- c. The FPIA 1980 – This Act deals with promotion and protection of foreign investment in Bangladesh. The Act ensures equal treatment for local and foreign investors and legal protection to foreign investment in Bangladesh against nationalization and expropriation. It also guarantees repatriation of dividend and capital at the exit of business.
- d. The Bangladesh Export Processing Zone Authority Act 1980 ('BEPZAA 1980') – This Act regulates the economic development of Bangladesh by encouraging and promoting foreign investments in certain areas ('Export Processing Zones' or 'EPZ') designated by the government of Bangladesh ('GOB').
- e. Double Taxation Treaties – Bangladesh has entered into double taxation treaties with 28 (twenty-eight) countries, which reduces tax impediments of cross-border trade and investment and assist tax administration.

Other relevant laws and regulations applicable or indirectly related to foreign direct investment are:

- a. The Companies Act 1994 ('CA 1994') – This Act regulates the formation and incorporation of companies. This Act sets the framework for the management, operation and administration of companies. It also regulates the Registrar of Joint Stock Companies and Firms ('RJSC') which is the regulatory authority designated for registration and filings required by such companies. The Act also specifically governs the requirements for establishing foreign companies in Bangladesh and the rules for regulating them including preparation, maintenance,

audit and submission of their accounts to the host country regulators.

- b. Bangladesh Economic Zones Act 2010 ('BEZA 2010') – This Act makes provisions for the establishment of private economic zones in potential areas including underdeveloped regions jointly or individually by local, non-resident Bangladeshis or foreign investors.
- c. Bangladesh Investment Development Authority Act 2016 ('BIDA 2016') – This Act has established Bangladesh Investment Development Authority ('BIDA') for the purpose of promoting industrial investments and offering facilities and assistance necessary for the establishment of industries in the non-governmental sectors and to promote and facilitate investment both from domestic and overseas sources.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

Depending on the sector of trade, restrictions may be placed by the GOB on FDI; please see answer to question no. 6 for the list of restricted and unrestricted sectors for FDI.

At the local levels of government, a foreign investor is required to be registered with BIDA, which is responsible for screening, reviewing and approving FDI in Bangladesh. The BIDA registration is mandatory for obtaining an industrial plot in the special economic zone. It may take around 15–30 days to obtain a "Registration Certificate" from BIDA if all the required documents are submitted properly.

Foreign investors, depending on the type of sector, may also be required to obtain many licenses and permits such as a Trade License, Import Registration Certificate, Export Registration Certificate, Bond License, etc. to run their business in Bangladesh.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

In order to choose the business vehicle, the foreign investors must first choose the type of business operation they wish to operate in Bangladesh. This could be either by establishing industrial projects/factories/plants etc. or by operating a "Branch Office" or "Liaison Office" in Bangladesh.

In order to establish industrial projects/factories/plants, it is essential to form a company and incorporate the same locally or incorporate a company abroad and register it with RJSC in Bangladesh. Companies in Bangladesh could be classified in the following major categories:

- a. Company limited by shares:
 - i. Private limited company; and
 - ii. Public limited company
- b. Company limited by guarantee.

The most common incorporation options for foreign investors include the following:

- a. A 100% foreign-owned company in Bangladesh where 100% directors and shareholders are foreign citizens (allowed in most sectors including construction, information technology and development);
- b. A "Joint Venture" company with local Bangladeshi partners / investors where Bangladeshi shareholders and foreign shareholders jointly hold stake in the company;
- c. A Branch Office or Liaison Office.

Incorporation of 100% foreign owned company and Joint Venture company:

A 100% foreign owned company or a Joint Venture company can either be registered as a "public limited company" or a "private limited company". The type of company most commonly chosen by foreign investors is private limited company. The CA 1994 s 2(q) defines a

private limited company as one which by its articles restricts the right to transfer its shares, if any, prohibits any invitation to the public to subscribe for its shares or debenture, if any, and limits the number of its members to 50 not including persons who are in its employment.

As per the provisions of the CA 1994, the incorporation of a private limited company requires it to be first registered with the RJSC including name clearance from RJSC. Requisite documents such as memorandum and articles of association ('MemArts'), necessary forms and schedules, and an encashment certificate obtained from an AD of a scheduled bank need to be submitted to RJSC for registration of such a company.

Furthermore once registration with RJSC is completed, the private limited company shall have to further obtain the following for the successful incorporation of the entity:

- a. Registration with BIDA;
- b. Trade license from the local governmental authority;
- c. TIN certificate from the National Board of Revenue ('NBR');
- d. VAT registration (if applicable) from NBR.

Time Frame:

The set-up and securing of all required certificates for such an entity may take a minimum of 2 (two) months.

Establishing a Branch Office or Liaison Office in Bangladesh:

A foreign investor wishing to merely have a presence in Bangladesh, but not incorporate a company may set up a Branch Office or Liaison Office. It is essential for both a Branch Office and Liaison office to obtain approval from BIDA before setting up its office in Bangladesh. A Branch Office or Liaison Office does not have a separate legal entity and is considered to be an extension of its parent company. The parent company's MemArts dictates the activities for the Branch Office or Liaison Office.

Following are the traits of a Branch Office and Liaison Office:

Liaison Office:

A Liaison Office can maintain liaison/ coordination between its principal and local agent, promote its products and do activities as approved under its application to BIDA. However it will have no local source of income in Bangladesh. All setup and operational costs including salaries of the foreign and local employees of the Liaison Office will have to be borne by the parent company abroad. No outward remittances of any kind from the Liaison Office will be allowed except the amount brought in from abroad that hasn't been spent.

Branch Office:

A Branch Office can undertake the same business as its head office and engage in commercial activities with prior approval of BIDA. It can also have a local source of income from the approved field of business.

Once approval from BIDA has been obtained, the Branch or Liaison Office, (whichever is applicable), will have to report to BB within thirty (30) days of obtaining such approval.

Furthermore such an office must also obtain the following before it can go into operation:

- a. Registration with RJSC;
- b. Trade license from the local governmental authority;
- c. TIN certificate from NBR;
- d. VAT registration (if applicable) from NBR.

It is also required that within 2 (two) months from the date of issuance of the BIDA approval, a Liaison office or Branch office bring in an inward remittance of foreign exchange equivalent to a sum of US\$ 50,000 in Bangladesh through an AD, as an estimated initial establishment cost and 6 (six) months' operational cost.

Time Frame:

The set-up and securing of all required approvals for establishing of a Branch Office or Liaison Office may take a minimum of one (1) month.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

Please see answer to question nos. 3 and 4 above.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

The National Council for Industrial Development ('NCID') has listed the following four sectors as "Restricted Sectors" for FDI:

- a. Arms and ammunitions and other military equipment and machinery;
- b. Nuclear power;
- c. Security printing and minting; and
- d. Forestation and mechanized extraction within the boundary of reserved forest.

NCID has again listed seventeen sectors as "Controlled Sectors" which require prior permission from the respective line ministries/ authorities before allowing FDI. These are:

- a. Fishing in the deep sea;
- b. Bank/financial institutions in the private sector;
- c. Insurance companies in the private sector;
- d. Generation, supply and distribution of power in the private sector;
- e. Exploration, extraction and supply of natural gas/oil;
- f. Exploration, extraction and supply of coal;
- g. Exploration, extraction and supply of other mineral resources;
- h. Large-scale infrastructure projects (e.g. flyover, elevated expressway, monorail,

economic zone, inland container depot/ container freight station);

- i. Crude oil refinery (recycling/refining of lube oil used as fuel);
- j. Medium and large industries using natural gas/condensed and other minerals as raw material;
- k. Telecommunication services (mobile/cellular and land phone);
- l. Satellite channels;
- m. Cargo/passenger aviation;
- n. Sea-bound ship transport;
- o. Sea-port/deep sea-port;
- p. VOIP/IP telephone; and
- q. Industries using heavy minerals accumulated from sea bed.

On the other hand, some of the more unrestricted and encouraged sectors of industries include the following amongst others:

- a. Agro based;
- b. Chemical;
- c. Engineering;
- d. Food and Allied;
- e. Glass and Ceramics;
- f. Printing, Publishing and Packaging;
- g. Tannery and Rubber products;
- h. Textile;
- i. Energy and Infrastructure;
- j. Services etc.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions).

Bangladesh has placed a restriction on maintaining any diplomatic relationship with Israel. Hence, it can be presumed that Bangladesh shall not accept any FDI from any Israeli national or entity.

8. What grants or incentives are on offer to foreign investors, if any?

In addition to the benefits mentioned in answer to question no. 1, there are various incentives provided by the GOB to incentivize the foreign investors. These include the following:

Tax Holiday:

Foreign investors enjoy a corporate tax holiday of 3 to 7 years for selected sectors subject to the relevant rules and procedures set by NBR. For instance, under the Income Tax Ordinance 1984, Sch 6 Pt. A at para 33 (as amended by Bangladesh Income Tax Paripatra (Circular) 2015 and Finance Act, 2016), tax exemption is allowed on any income derived from the business of software development, information technology, information technology enabled services and nationwide telecommunication transmission network up to 30 June, 2024.

The location of the establishment also plays a role in determining such periods of tax holiday.

Tax Exemption:

Tax exemptions are permitted on the following:

- a. Royalties, technical know-how and technical assistance fees and facilities received by any foreign firm, company or expert;
- b. Income tax for foreign technicians, employed in industries as specified in the ITO 1984 for a period of up to three years;
- c. Capital gains from the transfer of shares of public limited companies listed with a stock exchange; and
- d. Foreign loans in regard to its interest.

Investment and Repatriation:

Bangladesh does not have any ceiling on the amount that can be brought in as foreign investment by foreign investors. There is also no restriction or the requirement of any prior approval from the GOB in remitting profits by the foreign companies operating in Bangladesh to their head offices. Hence full repatriation of invested capital, profits and dividends are

allowed. Reinvested, repatriable dividends or retained earnings are treated as new investment. Employed foreigners in Bangladesh are allowed to remit up to 50% of their salaries and are also allowed to repatriate their savings and retirement benefits on their return. No prior approval for remittance of sale proceeds, including capital gains of portfolio investments of non-residents through stock exchanges in Bangladesh is required.

Exit policy:

Once the investor wishes to leave the country after completion of all formalities, he/she can repatriate the net proceeds after obtaining approvals from BB.

Foreign employees:

There is no restriction on issuance of work permits to foreign employees related to the project. The foreign national may become citizen of Bangladesh by investing a minimum of US\$ 500,000 or by transferring US\$ 1,000,000 to any recognized financial institution (non-repatriable). Also a foreign national can become a permanent resident by investing a minimum of US\$ 75,000 (non-repatriable).

Avoidance of double taxation:

As mentioned earlier Bangladesh has various international agreements in place, including bi-lateral agreements and investment treaties for avoiding double taxation and for promotion and protection of foreign investments. Bangladesh is also a signatory to MIGA, OPIC, ICSID and a member of the World Intellectual Property Organization ('WIPO') permanent committee on development co-operation related to industrial property.

Export-oriented Industries:

The foreign investors are provided the following incentives amongst others:

- a. 1% import duty on capital machinery and spare parts;
- b. Bonded warehouse and back to back letter of credit facility;

- c. Cash incentives and subsidies ranging from 5% to 20% on free on board ('FOB') value of the selected products;
- d. Fund for export promotion;
- e. Export credit guarantee scheme facility;
- f. 90% loans against letters of credit (by banks);
- g. 100% export-oriented industries located outside the EPZ are allowed to sell 20% of its products in the domestic market subject to payment of applicable tax and charges.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

Export Processing Zones ('EPZs') have been established in Savar (Dhaka), Mongla, Ishwardi, Comilla, Uttara, Karnaphuli (Chittagong) and Adamjee (Dhaka) in accordance with BEPZAA 1980. 100% foreign owned (Type A), Joint Ventures (Type B) and 100% Bangladeshi-owned (Type C) companies are allowed to operate and enjoy the benefit of equal treatment in the EPZs.

In 2010, the Bangladesh Economic Zones Act 2010 ('BEZA 2010') was enacted to facilitate the creation of privately-owned Special Economic Zones (SEZs) that can cater to export and domestic markets. The International Finance Corporation ('IFC') is assisting the GOB in establishing a Special Economic Zone Authority, similar to that of the Bangladesh Export Processing Zones Authority ('BEPZA'), which shall implement the new law and oversee the establishment of SEZs.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments).

The most relevant taxes applicable under the prevailing laws of Bangladesh can be classified as follows:

Corporate Tax:

Generally a foreign company is taxed only on the income received or deemed to be received from the operations of the company in Bangladesh. The tax year is calculated yearly, starting from July 1 to June 30 of the succeeding year. At present, the rate of corporate tax of a non-listed company is 35% of a company's total income in a year, and 25% in the case of a listed company (except for certain industries such as banks, financial institutions and merchant banks).

Personal Income Tax:

Personal income tax is levied on capital gains and income from dividends. Income tax ranges from 10% to 25% depending on the taxable income. However, rates may also vary in accordance with the gender of the person.

However, a foreign technician employed in foreign companies will not be subjected to personal tax up to three (3) years, and beyond that period his/ her personal income tax payment will be governed by the existence or non-existence of an agreement on avoidance of double taxation with the country of citizenship.

Value Added Tax:

In Bangladesh, VAT is applied to local sales. The rate of VAT usually depends on the respective HS Code (an internationally standardised system of names and numbers to classify traded products) of the products and/or services traded by the company. However, the most common percentage of VAT in Bangladesh is 15%.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

The Labour Act 2006 ('LA 2006') and the Labour Rules 2015 ('LR 2015') regulate and provide for prescribed guidelines in connection to employment conditions, working hours, minimum wages, leave policies, health and sanitary

conditions, compensation for injured workers, trade unions and other employment relations. Any labour related disputes/issues are generally resolved before a Labor Tribunal.

An important point to note regarding the application of the LA 2006 and LR 2015 is that the provisions of both LA 2006 and LR 2015 are applicable to employees who fall within the definition of a 'worker' as defined in the LA 2006. The LA 2006 s 2(65), as amended in 2013, defines 'worker' as including all employees except for those engaged in a managerial, administrative [or supervisory] capacity'. The Bangladesh High Court has defined 'worker' broadly by holding that a manager etc. may be deemed a non-worker only if he or she has the power to make hiring and/or firing decisions over employees under his or her management.

Any employee who falls outside the ambit of the term 'worker' is a 'non-worker'. The terms of employment of a non-worker are governed solely by the contract of employment between the non-worker and the employer

Furthermore, the EPZ Workers Association and Industrial Relations Act 2004 regulates the consolidating laws for Trade Unions and Industrial Relations in the EPZs in Bangladesh.

Foreign nationals willing to be employed in Bangladesh must apply for their work permit by applying in the prescribed form to either BIDA (for private sector industrial enterprise, Branch Office and Liaison Office, outside of EPZ) or BEPZA (for employment of foreign national in the EPZs).

In order to issue the work permit, BIDA usually consider the following:

- a. The foreign national must not be below 18 years of age;
- b. Only nationals from countries recognized by Bangladesh are eligible;
- c. Foreign nationals are only considered for such job where there is scarcity of local experts/ technicians in that specific field;

- d. The number of foreign nationals employed should not exceed 5% in the industrial sector and 20% in the commercial sector of the total employees, including upper management employees;
- e. The employment of the foreign national may be considered for an initial term of two years, which may subsequently be extended for additional terms on the basis of merits of the case. After expiry of a term of work permit, the foreign national is required to leave the country and then re-apply for a fresh work permit;
- f. A security clearance certificate may be needed to be issued by the Ministry of Home Affairs for obtaining the work permit.

As discussed earlier, the foreign nationals may become citizens of Bangladesh by investing a minimum of US\$ 500,000, or become a permanent resident by investing US\$ 75,000 in Bangladesh.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

According to the Constitution of Bangladesh Art 42 only a citizen of Bangladesh can acquire real property and land in Bangladesh. A foreign investor can only acquire land under the capacity of its company's name and not under his/her personal name. There are effectively three ways by which this can be done:

- i. The foreign investor can register his or her company with RJSC. This would cause the company to become a "local entity" whose name could be used to acquire land and property.
- ii. Foreign Investors who invest a minimum of US\$ 500,000 or transfer US\$ 1,000,000 to any recognized financial institution (non-repatriable) can apply for Bangladeshi citizenship. Once citizenship is granted, a foreign investor can apply for the purchase

of real property on the same basis as a Bangladeshi citizen.

- iii. Foreign Investors can invest into local businesses as joint partners and then acquire land and property in the name of the locally registered businesses.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Please see answer to question no. 6 above, which discusses about Restricted Sectors and Controlled Sectors for FDI in Bangladesh.

14. What foreign currency or exchange controls should foreign investors be aware of?

The core legislation that governs this area is the FERA. The first thing to remember for a foreign investor is that any inward remittance transaction and/or outward remittance transaction must be done through an AD. Secondly, any amount of foreign currency can be brought into the country; however it is essential that any amount above US\$ 5,000 should be declared to customs authorities through a Foreign Currency Declaration form, commonly known as an FMJ form. Also if anyone wishes to buy foreign currency up to US\$ 10,000, it must be done through an AD. Any purchases upwards of the above mentioned amount must be done with prior permission from BB. Not doing so would constitute an offence under FERA.

In addition, it is also important to be aware of the FX Guidelines issued by BB from time to time on practices to be adopted.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

There are no such restrictions and penalties upon foreign investors who wish to withdraw their investments. It is considered an essential

that the freedom to set up and the freedom to exit are preserved. There are essentially two ways by which a business can terminate- a business may choose to wind up on its own initiative under the CA 1994 s 286 or a competent court under of the CA 1994 s 241 can wind up a company.

Investors do have the opportunity to sell their shares to local concerns after which they may leave the country. The sales proceeds can be repatriated after proper and prior authorization from BB. As per FX Guidelines for such prior authorization of BB, the foreign investor is required to submit encashment certificate(s), form 117, copy of the registration certificate obtained from BIDA, if any, and other relevant reporting documents applicable for inward remittance, through its AD.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

The legal system of Bangladesh is a common law legal system that is modelled to a great extent on the English Common Law legal system. Therefore, contractual enforcement follows the trend that is familiar to most other common law traditions. One of the most striking principles of legal protection and enforceability is found in the Constitution Art 31 which affords the protection of the law to all within the jurisdictional boundaries of Bangladesh i.e. to both citizens and non-citizens alike.

In addition, it is widely becoming the status quo that commercial entities resort to methods of alternative dispute resolution ('ADR') to obtain a more amicable settlement of disputes, to preserve business relationships as far as possible. The Civil Procedure Code (Amendment) Act 2012 ('CPC 2012') inserted s 89A and 89B to allow parties to settle their disputes through arbitration and mediation. The growing inclination towards the use of ADR is evidenced by commercial parties regularly inserting ADR

clauses into their contractual documents and agreements.

Bangladesh being a member of MIGA, additional protection against political risks such as expropriation, war-damage and inconvertibility are also provided to foreign investors. Moreover, FPIA 1980 provides protection to foreign investors against expropriation and nationalization. In the event, where expropriation is necessary, the GOB is to adequately compensate the investors with the market value of the investment as per the said Act.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

Bangladesh has signed bilateral double taxation treaties with 28 countries, including Austria, the Belgium-Luxembourg Economic Union, China, Denmark, France, Germany, India, Indonesia, Iran, Italy, Japan, Democratic People's Republic of Korea, Republic of Korea, Malaysia, Netherlands, Pakistan, Philippines, Poland, Romania, Singapore, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Uzbekistan and Vietnam. These treaties provide such benefits as tax holidays and prevent such incidences as double taxation, promoting good trade relations and creating an environment conducive to proliferate investment.

Moreover, Bangladesh does have investment protection treaties with Asia-Pacific jurisdictions namely through, Asia-Pacific Trade Agreement ('APTA'), South Asian Free Trade Area ('SAFTA') and Bay of Bengal Initiative for Multi-Sectoral, Technical and Economic Cooperation ('BIMSTEC').

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

Bangladesh is both a signatory to the Paris Convention on Industrial Property (instituted in the year 1883 and revised as it stands in 1979) since 1991 and continues to be a member of WIPO since 1985. The importance of having a legal infrastructure to promote and protect intellectual property rights as an attraction to foreign investment is well understood and the legislations governing this vital area are listed below:

- a. Patent and Design Act 1911;
- b. Patent and Designing Rule 1933;
- c. Copyright Act 1999;
- d. Trademarks Act 2009 amended in 2015;
- e. Geographical Indication of Goods (Registration and Protection) Act 2013;
- f. Trademarks (Amendments) Act 2015; and
- g. Geographical Indication of Goods Act 2015.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

Bangladesh is a country in the South-East Asian region with a particularly rich ecological diversity. It lies on one of the world's richest delta regions boasting a rich network of navigable rivers, and fertile land for agriculture and habitation sustaining the livelihoods of many. Bangladesh also boasts possession of two-thirds of the world's largest mangrove forest (the Sundarbans) and the world's longest sea-beach at Cox's Bazaar. It is considered to be of paramount importance that the richness in this country's ecology is maintained. To that end, the Department of the Environment ('DOE') is duty-bound to ensure that new and old ventures alike pay due respect and diligence towards the protection of the environment.

The Bangladesh Environment Conservation Act 1995 (amended in 2010) is currently the main legislation governing environmental protection in Bangladesh, which provides the legal basis for the Environment Conservation Rule, 1997 (amended in 2002).

Under the said Act, the DOE is required to issue "Environmental Safety Clearance Certificates" when it is satisfied that the applicants have conformed to the requisite safety standards. Any proposal for an undertaking that is industrial in nature must contain a comprehensive and appropriate environmental impact assessment and proposed environmental impact management measures.

Usually the DOE takes a minimum of 15 working days to issue an Environmental Safety Clearance Certificate for industries with low levels of adverse impact. For ventures that may pose a significant adverse impact on the environment, the processing time extends to around 30 days or more.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

BIDA is the principal private investment promotion and facilitation agency of Bangladesh, which provides information regarding investments in Bangladesh. Also, the Bangladesh Small Cottage and Industry Corporation (BSCIC) is dedicated to the advancement of small cottage industries in the private sector. Investors seeking to set up in the various EPZs often consult with BEPZA which possesses approval granting jurisdiction for all projects located in the designated EPZ.

In addition, there are numerous law firms and privately owned commercial think-tanks that are able to provide specialist knowledge and advice in various commercial matters on a more customer-oriented basis.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

BIDA has drafted the One-Stop Service Act 2017 aiming to attract foreign investors by providing quick services from a single window. This law is being enacted in order to reduce various complexities in getting clearance from different government offices as was the case earlier. Rules will be framed under the said Act describing the timeframe for receiving various services from the "Once-Stop Service Centre". Any failure to provide services within the timeframe stipulated in the rules will be deemed as 'misconduct' and will be punishable under the law.

According to the Act, four (4) organizations—namely BIDA, BEPZA, Bangladesh Economic Zone Authority and Bangladesh Hi-tech Park Authority will act as the "Central One-Stop Service Authority" in their respective area. Sixteen (16) types of services will be provided to the investors from the Once-Stop Service Centre, which include issuance of trade licenses, land registration and mutation, environmental clearances, construction permits, explosives licenses and boiler certificates, and connections for power, gas, water, telephone and the internet. It is expected that such a Once-Stop Service Centre will reduce the cost of doing business for foreign investors and will also reduce the time to obtain all regulatory permissions for doing business in Bangladesh.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

Please see answer to question numbers 1 and 8, which details the benefits, key considerations and incentives granted to foreign investors in Bangladesh, which makes it the most liberal jurisdiction for FDI in South Asia.

专题：孟加拉

律所：The Legal Circle

作者：Masud Khan, N.M. Eftakharul
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1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

在南亚国家中，孟加拉国提供了最为自由的
外国直接投资制度。孟加拉国受益于其成本
低廉的工业劳动力，具有良好区域连通性的
战略地理位置，以及与欧盟、日本、加拿大、
澳大利亚，及其与之具有国际海路与航空路
线联结的大多数其他发达国家之间完善的零
关税与零配额准入制度。此外，孟加拉国
吸引外国直接投资的关键要素还包括：对股
权参与及将利润与收入汇回母国没有任何限
制，对大多数行业设置免税期与加速折旧优
惠政策，对指定产品提供现金激励措施，退
出时可将股本和资本汇回，对本地及外国投
资者实行平等待遇，根据 1980 年《外国私
人投资（促进与保护）法案》保护外国直接
投资免受征用和国有化等等。

此外，低成本的能源、良好的天然气供应、
已建立的出口经济区、肥沃的土地与宜人
的气候、稳定的宏观经济、开放与多元的经
济以及政府提供的其他具有竞争力的激励措
施均为外国投资者提供了一个经济与商业友
好的环境。还需要指出的是，尽管有诸多限
制，但是孟加拉国在过去的 6 年中始终保持
了年均增速 6% 以上的国内生产总值增长。
由于其稳步的发展，孟加拉国现已成为继中
国之后的世界第二大服装服饰出口国。

孟加拉国的外国直接投资流入量在过去的十
年中大幅增加；2013 年，其外国直接投资流
入量达到 16 亿美元，同比增长 24%。2017 年，
这一数字攀升至 24.5 亿美元。外国直接投资
流入量较 2016 年上升了 22.5%。

孟加拉国也于 2014 年 9 月通过商务部公布
了一个健全的“外国直接投资政策框架”，并
正在等待进一步的批准。该政策框架不仅制

定了大量对外国投资者具有吸引力的激励措
施，而且还对外国投资者投资及其回报的安
全性提供了保护与保障。

此外，孟加拉国是世界银行集团的多边投资
担保机构、美国的海外私人投资公司及国际
投资争端解决中心的签署国，也是世界投资
促进机构协会的成员之一，这些都促进了在
孟加拉国的外国投资。

2. 在您所在司法管辖区，现行外国投资立法
有哪些（例如外国投资法或外商投资目录）？
请简要概述此类立法。

在孟加拉国，在外国直接投资方面发挥有效
作用的最为相关的法律法规及准则如下：

- a. 2015 年《外汇管理（修订）法案》：该
法案为规范孟加拉国的某些支付行为、
外汇与证券交易提供了法律依据。
- b. 《外汇交易指引》第 1 卷和第 2 卷（2009
年），经孟加拉国银行不定期发布的通
告予以更新（以下统称“《外汇指引》”）。
《外汇指引》是对孟加拉国银行发布的
用以规范外汇交易的指示和指令的汇
编。它还涉及授权交易商（经孟加拉国
银行授权，根据 2015 年《外汇管理（修
订）法案》规定进行外汇交易的银行及
其附属机构）须遵循的明确指示。
- c. 1980 年《外国私人投资（促进与保护）
法案》：该法案涉及促进与保护在孟加
拉国的外国投资。该法案确保对本地及
外国投资者实行平等待遇，并从法律上
保护在孟加拉国的外国投资免受国有化
和征用。该法案还为在业务结束时汇回
股息以及资本提供了保证。
- d. 1980 年《孟加拉国出口加工区管理局法
案》：该法案通过鼓励和促进在孟加拉

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国政府指定的某些地区（以下称“出口加工区”）的外国投资，来规范孟加拉国的经济发展。

- c. 避免双重征税协定：孟加拉国已经与 28（二十八）个国家签订了避免双重征税协定，这些避免双重征税协定减少了跨境贸易与投资中的税收障碍，并有助于税收管理。

其他适用于外国直接投资或与之间接有关的相关法律法规如下：

- a. 1994 年《公司法案》：该法案对公司的组建及设立进行了规范。该法案规定了公司的管理、运营及行政框架。它还对股份公司及企业注册登记处进行了规范，其是办理此类公司所需的注册登记与申报的指定机构。该法案还具体规定了在孟加拉国建立外资公司的要求以及对此类外资公司进行管理（包括向其所在国监管机构报送的财务报表的准备、维持、审计与提交）的规则。
- b. 2010 年《孟加拉国经济区法案》：该法案对孟加拉国本地居民、非定居的孟加拉人或外国投资者共同或单独地在潜在地区（包括欠发达地区）建立私营经济区进行了规定。
- c. 2016 年《孟加拉国投资发展局法案》：已根据该法案建立了孟加拉国投资发展局，旨在促进工业投资并为非政府部门所属行业的建立提供必要的设施与援助，进而推动和促进国内外投资。

3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？

根据贸易部门的具体情况，孟加拉国政府可能会对对外国直接投资施以限制措施；关于外国直接投资的限制性与非限制性行业，请参阅问题 6 中的相关答复。

在各级地方政府层面，要求外国投资者在孟加拉国投资发展局进行注册登记。孟加拉国投资发展局负责对孟加拉国的外商直接投资进行筛选、审查与批准。在孟加拉国投资发展局进行注册登记是在经济特区获得工业用地的强制性要求。在所有要求的文件均已妥

善提交的情况下，从孟加拉国投资发展局获得“注册登记证书”可能需要约 15-30 天的时间。

根据行业的类型，外国投资者也可能需要取得诸如贸易许可、进口登记证、出口登记证、债权许可之类的许可与特许，以便能够在孟加拉国经营业务。

4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的企业的主要要求有哪些？

为选择适当的企业形式，外国投资者必须首先选择其希望在孟加拉国进行经营的业务类型。可通过在孟加拉国建立工业项目、工厂、厂房等，或者通过在孟加拉国设立“分支机构”或“联络处”的方式来实现这一目的。

为建立工业项目、工厂、厂房，必须在当地成立并注册一家公司，或者在国外注册公司，然后向孟加拉国的股份公司及企业注册登记处进行注册登记。孟加拉国公司可分为以下几个主要类别：

- a. 股份有限公司：
 - i. 私人有限公司；以及
 - ii. 公众有限公司

- b. 担保责任有限公司

外国投资者最普遍选择的公司设立方式包括以下几种：

- a. 孟加拉国设立外商独资公司，公司的董事和股东全部都是外国公民（大多数行业中均允许使用该种公司形式，如建筑行业、信息技术与开发行业）；
- b. 与孟加拉国当地合作伙伴、投资者共同设立“合资公司”，并由孟加拉国股东和外国股东共同持有公司的股权。
- c. 分支机构或联络处。

设立外商独资公司与合资公司：

外商独资公司或合资公司可注册为“公众有限公司”或“私人有限公司”。外国投资者最常选择的公司类型为私人有限公司。1994 年《公司法案》第 2(q) 条将私人有限公司定义为：通过其公司章程限制转让其股份

的权利（若有），禁止向公众做出认购其股份或债权（若有）的任何要约邀请，以及将其成员人数限定为 50 人以内（不包括其所雇佣的人员）的公司。

根据 1994 年《公司法案》的规定，私人有限公司的设立首先需要在股份公司及企业注册登记处进行注册登记，包括在股份公司及企业注册登记处取得名称许可。进行此类公司的注册登记时，须向股份公司及企业注册登记处提交必要的文件，譬如公司章程大纲及章程细则，必要的表格与附表，以及表列银行的授权交易商签发的兑换证明等。

此外，一经完成在股份公司及企业注册登记处的注册登记，私人有限公司须进一步完成下列事项，方能成功设立该实体：

- a. 在孟加拉国投资发展局进行注册登记；
- b. 任何地方政府机构签发的贸易许可；
- c. 国家税务总局签发的税务识别号证书；
- d. 国家税务总局签发的增值税注册登记证（若适用）。

时间表：

准备并完成此类实体所需的全部必要证书，可能需要至少 2（两）个月的时间。

在孟加拉国建立分支机构或联络处：

对于仅希望在孟加拉国设点，但不想设立公司的外国投资者而言，其可选择建立分支机构或联络处。对分支机构或联络处而言，其均必须在孟加拉国设立办公地点之前取得孟加拉国投资发展局的批准。分支机构或联络处并不具备独立的法人实体资格，而是被视为其母公司的延伸。母公司的公司章程大纲及章程细则确定分支机构或联络处从事的活动。分支机构或联络处的特点如下：

联络处：

联络处可以维持其委托人与地方代理人之间的联络 / 协调，推广其产品以及从事在其向孟加拉国投资发展局提交的申请中被批准从事的活动。但是，联络处在孟加拉国当地没有收入来源。包括外国及本地雇员薪资在内的所有设立及运营成本均将由其国外母公司

承担。不允许联络处进行任何形式的汇款汇出，但从国外带来的尚未用尽的资金除外。

分支机构：

分支机构可以从事与其总公司相同的业务并可以在取得孟加拉国投资发展局事先批准的情况下从事商业活动。分支机构还可从经批准的业务领域获得当地的收入来源。

一经取得孟加拉国投资发展局的批准，分支机构或联络处（以实际适用的形式为准），必须在取得此类批准后的三十（30）天内向孟加拉国银行进行报告。

此外，此类分支机构在开始营业之前还必须取得下述文件：

- a. 在股份公司及企业注册登记处进行注册登记；
- b. 任何地方政府机构签发的贸易许可；
- c. 国家税务总局签发的税务识别号证书；
- d. 国家税务总局出具的增值税注册登记证（若适用）。

此外，在自孟加拉国投资发展局签发批准之日起的 2（两）个月内，联络处或分支机构还须通过授权交易商向孟加拉国汇入金额相当于 50,000 美元的外汇汇款，以作为其预估的初始设立成本以及 6（六）个月的运营成本。

时间表：

准备并完成分支机构或联络处设立所需的全部必要批准，可能需要至少一（1）个月的时间。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

请参阅上述问题 3 和问题 4 中所做的相应答复。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的有哪些（如有）？

国家工业发展委员会已将下列四个行业列为外国直接投资的“限制行业”：

- a. 武器弹药及其他军事装备和机械；
- b. 核电；
- c. 防伪印刷和铸币；以及
- d. 在保育林边界内进行造林和机械化开采。

国家工业发展委员会再次将 17 个行业列为“受控行业”，此类行业在允许外国直接投资前须取得相应主管部门 / 机构的事先批准。这些受控行业包括：

- a. 深海捕鱼；
- b. 民营的银行、金融机构；
- c. 民营的保险公司；
- d. 民营的发电、供电及配电；
- e. 天然气、石油的勘探、开采及供应；
- f. 煤炭的勘探、开采及供应；
- g. 其他矿产资源的勘探、开采及供应；
- h. 大型基础设施项目（如天桥、高架高速公路、单轨铁路、经济区、内陆集装箱堆场、集装箱货站）；
- i. 原油炼油（用作燃料的润滑油的回收 / 精炼）；
- j. 以天然气 / 压缩天然气及其他矿物为原料的大中型工业；
- k. 电讯服务（移动电话、手机服务及固定电话）；
- l. 卫星频道；
- m. 航空货运、客运；
- n. 海上船舶运输；
- o. 海港、深海港口；
- p. VoIP、IP 电话；以及
- q. 使用从海滩积累的重质矿物的行业。

另一方面，部分较不受限制及较为鼓励的行业包括如下：

- a. 农基行业；
- b. 化学工业；
- c. 机械工业；
- d. 食品及相关工业；
- e. 玻璃与陶瓷工业；

- f. 印刷、出版和包装业；
- g. 制革和橡胶制品业；
- h. 纺织工业；
- i. 能源和基础设施业；
- j. 服务业等等。

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？(例如制裁)

孟加拉国限制与以色列保持任何形式的外交关系。因此，可以推定，孟加拉国不接收来自任何以色列国民或实体的任何外国直接投资。

8. 对外国投资者有哪些优惠或激励措施（如有）？

除了在问题 1 的答复中所提及的益处外，孟加拉国政府还提供了各种激励措施，以鼓励外国投资者进行投资。这些激励措施包括如下内容：

免税期：

指定行业的外国投资者可享受 3 至 7 年的企业所得税免税期，但须遵守国家税务总局规定的相关规则与程序。例如，根据 1984 年《所得税条例》（经 2015 年《孟加拉国所得税法令（通告）》以及 2016 年《财政法案》修订）附表 6 第 A 部分第 33 项的规定，对从软件开发和信息技术业务、以信息技术为支撑的服务以及全国电信传输网络中取得的任何收入在 2024 年 6 月 30 日之前实行免税政策。

企业所在地也在确定此类免税期之期限时起到了一定作用。

免税：

对下列事项实行免税待遇：

- a. 任何外国企业、公司或专家所获得的特许权使用费、专有技术信息以及技术援助费用与设施；
- b. 受雇于 1984 年《所得税条例》所规定的行业并工作满三年的外国技术人员的所得税；

- c. 转让在证券交易所上市的公众有限公司的股份所得的资本收益；以及
- d. 外国贷款的利息。

投资与汇回：

对于外国投资者作为外国投资而带来的资金数额，孟加拉国并未规定任何上限。对于在孟加拉国进行业务经营的外国公司将其利润汇回总部，也不存在须取得孟加拉国政府任何事先批准的限制或要求。因此，孟加拉国允许将所投资资本、利润及股息予以全部汇回。用于再投资的可汇回股息或留存收益，将被视为新的投资。对于在孟加拉国受雇的外国人，允许将其最多 50% 的工资汇回，并允许在其归国时将其储蓄及退休福利汇回。对于销售收益（包括非居民通过孟加拉国证券交易所进行证券投资取得的资本收益）的汇转，无须任何事先批准。

退出政策：

一旦投资者希望在完成所有手续之后离开孟加拉国，则其可在取得孟加拉国银行的批准之后汇回其净收入。

外国雇员：

向与项目有关的外国雇员签发工作许可没有任何限制。外国公民可以通过投资至少 500,000 美元或通过向任何被认可的金融机构转入 1,000,000 美元（不可汇回）的方式成为孟加拉国公民。此外，外国公民还可以通过投资至少 75,000 美元（不可汇回）的方式成为永久居民。

避免双重征税：

如前所述，孟加拉国已经签订了各种国际协议，包括为避免双重征税以及为促进和保护外国投资而签订的双边协议和投资条约。孟加拉国也是世界银行集团的多边投资担保机构、美国的海外私人投资公司及国际投资争端解决中心的签署国，还是世界知识产权组织工业产权发展合作常设委员会的成员国。

出口导向型行业：

除其他措施外，向外国投资者提供的激励措施如下：

- a. 对资本机械及备件征收 1% 的进口关税；
- b. 保税仓库和背对背信用证工具；
- c. 对指定产品提供相当于其离岸价格的 5% 至 20% 不等的现金奖励和补贴；
- d. 出口促进基金；
- e. 出口信贷担保计划安排；
- f. 额度为信用证金额 90% 的信用证贷款（由银行提供）；
- g. 对于位于出口加工区以外的 100% 出口导向型产业，允许其在国内市场销售 20% 的产品，但须缴纳相应的税费。

9. 在您所在司法管辖区，是否存在任何自由贸易区、经济特区或工业区？这些地区有哪些要求？

根据 1980 年《孟加拉国出口加工区管理局法案》的规定，已经在萨瓦（达卡）、勳拉、依苏瓦迪、库米拉、郁多罗、卡纳普利（吉大港）及阿达姆吉（达卡）建立了出口加工区。允许外商独资公司（A 类）、合资公司（B 类）以及孟加拉国全资子公司（C 类）在出口加工区进行业务经营并享受同等待遇。

2010 年，2010 年《孟加拉国经济区法案》出台，该法案旨在促进面向出口及国内市场需求的民营经济特区的创建。国际金融公司正在协助孟加拉国政府建立类似于孟加拉国出口加工区管理局的特别经济区管理局，后者将实施新的法律并对经济特区的建立进行监督。

10. 在您所在司法管辖区，可能适用于外国投资者的主要税种有哪些？(例如个人所得税、企业所得税、增值税与社会保险费)

根据孟加拉国现行法律规定，相关度最高的适用税种分为如下几类：

企业所得税：

一般而言，仅对外国公司来自或被视为来自其在孟加拉国的公司经营中的收入征税。税务年度按年计算，即自 7 月 1 日到下一年度的 6 月 30 日。目前，非上市公司的企业所得税税率为其年度总收入的 35%；上市公司

公司的企业所得税税率则为 25%（但某些行业除外，如银行、金融机构以及商业银行）。

个人所得税：

对于资本收益及股息收入，征收个人所得税。根据应税收入类型，所得税的税率从 10% 到 25% 不等。但是，个人所得税税率也可因纳税人的性别而有所不同。

但是，外国公司雇佣的外国技术人员免征个人所得税，免税期最长为三（3）年，三年免税期满后，该等人员的个人所得税缴纳情况将视孟加拉国是否与其国籍国之间具有避免双重征税协议而定。

增值税：

在孟加拉国，增值税适用于在当地进行的销售行为。增值税税率通常取决于该公司所交易的产品和 / 或服务各自的 HS 编码（以名称和号码对贸易产品进行分类的国际标准化体系）。但是，孟加拉国最常见的增值税税率为 15%。

11. 在您所在司法管辖区，外国投资者应该注意哪些劳动法律法规？外国人是否能够通过投资活动获得居留许可或者工作签证？

2006 年《劳动法》和 2015 年《劳动条例》规范并制定了有关就业条件、工时、最低工资、休假政策、健康与卫生条件、工伤补偿、工会及其他雇佣关系的准则。一般而言，任何劳动相关的争议、问题均在劳动法庭予以解决。

关于适用 2006 年《劳动法》和 2015 年《劳动条例》需要指出的一个重点是，2006 年《劳动法》与 2015 年《劳动条例》的规定均适用于属于 2006 年《劳动法》所定义的“工人”范围内的员工。2006 年《劳动法》（于 2013 年修订）第 2(65) 条将“工人”定义为包括除从事管理、行政 [或监督] 职能以外的所有员工。孟加拉国高等法院已对“工人”进行了宽泛的定义，认定只有当经理等人员具有对在其管理之下的员工做出雇佣和 / 或解雇决定的权限，该经理等人员方可被视为非工人。

任何超出“工人”一词范围的雇员都是“非工人”。非工人的雇佣条件完全由非工人和雇主之间的雇佣合同进行约定。

此外，2004 年《出口加工区工人协会与劳动关系法案》对孟加拉国出口加工区关于工会与劳动关系的法律进行整合与规范。

对于愿意在孟加拉国境内工作的外国国民，其须以规定的表格向孟加拉国投资发展局（适用于出口加工区以外的私营部门工业企业、分支机构及联络处）或者孟加拉国出口加工区管理局（适用于在出口加工区工作的外国国民）申请工作许可。

孟加拉国投资发展局在签发工作许可时通常会考虑以下几点：

- a. 外国国民必须年满 18 周岁；
- b. 只有来自孟加拉国承认的国家的国民才具有相应资格；
- c. 只有在特定领域缺乏本地专家 / 技术人员的情况下，才会考虑雇佣外国国民从事此类工作；
- d. 在工业部门，受雇外国国民的人数不得超过总雇佣人数的 5%；在商业部门，受雇外国国民的人数则不得超过总雇佣人数的 20%，其中包括上层管理人员；
- e. 外国国民的初始雇佣期限可以考虑定为两年，期限届满后，则可以根据具体情况相应地延长期限。工作许可的有效期限届满后，外国国民必须离开孟加拉国，然后再次申请新的工作许可；
- f. 为取得工作许可，可能需要由民政事务部签发的安全许可证。

如前所述，外国国民可通过投资至少 500,000 美元成为孟加拉国公民，或者通过在孟加拉国投资 75,000 美元而成为其永久居民。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

根据《孟加拉国宪法》第 42 条的规定，只有孟加拉国公民才可以在孟加拉国取得不动产和土地。外国投资者只能以其公司而非其个人的名义取得土地。外国投资者可以通过以下三种有效方法取得土地：

- i. 外国投资者可以在股份公司及企业注册登记处对其公司进行注册登记。这将使该公司成为“本地实体”，其名称可被用于获取土地和不动产。
- ii. 投资至少 500,000 美元或者向任何经认可的金融机构转入 1,000,000 美元（不可汇回）的外国投资者可申请成为孟加拉国公民。一旦获得公民身份，外国投资者即可作为孟加拉国公民申请购买不动产。
- iii. 外国投资者可以作为共同合伙人投资本地企业，然后以本地注册企业的名义取得土地和不动产。

13. 在您所在司法管辖区，是否存在在特定情形下阻止外国投资的任何程序？

请参阅针对上述问题 6 所做的答复，该答复对在孟加拉国的外国直接投资的受限制行业以及受控行业进行了讨论。

14. 外国投资者应该注意哪些外国货币或外汇管制？

对这一领域进行管理的核心法律是 2015 年《外汇管理（修订）法案》。对于外国投资者而言，首先需要记住的是，任何汇入汇款交易和 / 或汇出汇款交易都必须通过授权交易商进行。其次，任何数量的外币均可带入孟加拉国境内；但是，重要的是，带入任何金额超过 5,000 美元的外币都必须通过《外币申报表》（通常称为“FMJ 表”）向海关进行申报。此外，如果任何人意欲购买价值高达 10,000 美元的外币，则其必须通过授权交易商进行购买。任何超过上述金额的行买行为均必须获得孟加拉国银行的事先许可。未如

此行事将构成违反 2015 年《外汇管理（修订）法案》的违法行为。

此外，了解孟加拉国银行不定期发布的有关将要采取的措施的《外汇指引》也十分重要。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

对于希望撤回投资的外国投资者，不存在任何此类限制和处罚。保护投资与撤资自由被视为是十分重要的。基本上，企业可通过两种方式终止其业务：根据 1994 年《公司法》第 286 条规定自愿选择进行解散，或者根据 1994 年《公司法》第 241 条规定由具有管辖权的法院予以解散。

投资者也将有机会将其股份出售给当地企业，售出之后即可离开孟加拉国。经过孟加拉国银行适当的事先授权，可以将销售收入予以汇回。根据《外汇指引》关于孟加拉国银行此类事先授权所做的规定，外国投资者须通过其授权交易商提交兑换证明、“表 117”、从孟加拉国投资发展局取得的注册登记证书复印件（如有）以及适用于汇入汇款的其他相关报告文件。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

孟加拉国的法律制度是普通法律制度，其在很大程度上是建立在英国普通法律制度基础之上的。因此，合同执行遵循大多数其他普通法的传统做法。关于法律保护与执行力最显著的原则之一见于《宪法》第 31 条，该条规定对孟加拉国管辖范围内的所有人，即公民和非公民，均提供法律保护。

此外，普遍的现状是，商业实体选择通过非诉讼纠纷解决程序来获得更为友好的争议解决方案以及尽可能地保持业务关系。2012 年《民事诉讼法（修正案）》增加了第 89A 和第 89B 条规定，允许当事各方通过仲裁与调解来解决争议。商业当事人已普遍将非诉讼纠纷解决程序的条款纳入其合同文件与协议之中，从这一做法即可看出在商业背景中使用非诉讼纠纷解决程序的趋势日益明显。

作为世界银行集团多边投资担保机构的成员之一，孟加拉国也向外国投资者提供额外的保护以防范政治风险，如征用、战争破坏及不可兑换风险。此外，1980年《外国私人投资（促进与保护）法案》为外国投资者提供了免于被征用及国有化的保护。在需要被征用的情况下，孟加拉国政府将按照该法案的规定向投资者按其投资的市场价值进行充分的补偿。

17. 您在所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

孟加拉国已经与28个国家签署了双边避免双重征税协定，其中包括奥地利、比利时-卢森堡经济联盟、中国、丹麦、法国、德国、印度、印度尼西亚、伊朗、意大利、日本、朝鲜民主主义人民共和国、大韩民国、马来西亚、荷兰、巴基斯坦、菲律宾、波兰、罗马尼亚、新加坡、瑞士、泰国、土耳其、阿拉伯联合酋长国、英国、美国、乌兹别克斯坦以及越南。这些条约提供了诸如免税期之类的优惠，防止诸如双重征税之类事项的发生，促进良好的贸易关系以及创造有利于扩大投资的环境。

此外，通过《亚太贸易协定》、南亚自由贸易区以及“孟加拉湾多部门、技术与经济合作倡议”，孟加拉国与亚太各个司法管辖区之间实际上已经有了投资保护条约。

18. 您在所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

孟加拉国自1991年以来一直是《工业产权巴黎公约》(于1883年制定并于1979年修订)的签署国，且自1985年以来一直是世界知识产权组织的成员国。建立促进和保护知识产权的法律基础制度并将其作为吸引外国投资的着力点，这一做法的重要性已得到了很好的理解。规范这一重要领域的法律规定如下：

- a. 1911年《专利与设计法案》；
- b. 1933年《专利与设计规则》；
- c. 1999年《版权法案》；

- d. 2009年《商标法案》(2015年修订)；
- e. 2013年《商品地理标志(注册与保护)法案》；
- f. 2015年《商标(修订)法案》；以及
- g. 2015年《商品地理标志法案》。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在(潜在的)外国投资者应该注意的任何环境政策与法规？

孟加拉国是东南亚地区具有特别丰富的生态多样性的国家。孟加拉国位于世界上最富有的三角洲地区之一，拥有丰富的可通航河流网络、适宜耕种与居住并维持了众多人口生计的肥沃土地。孟加拉国还拥有世界上最大红树林(孙德尔本斯)的三分之二以及位于科克斯巴扎尔的世界上最长的海滩。维护孟加拉国生态的丰富性被认为是至关重要的。为此，环境部有责任确保新老企业都能够相当重视并勤勉尽责地保护环境。目前，1995年《孟加拉国环境保护法案》(2010年修订)是孟加拉国环境保护的主要法规，它为1997年《环境保护规则》(2002年修订)提供了法律依据。

根据上述环境保护法案的规定，如果环境部确信申请人已经符合必要的安全标准，则其即应签发“环境安全许可证书”。关于具有工业性质的项目的任何建议书都必须包含全面且适当的环境影响评估以及拟采取的环境影响管理措施。

通常，环境部向负面影响较小的行业签发环境安全许可证书至少需要15个工作日。对于可能对环境产生重大负面影响的企业，这一处理时间则延长至30天左右或更长的时间。

20. 您在所在司法管辖区，是否存在任何可以让(潜在的)外国投资者了解更多投资信息的政府机构或非政府实体？

孟加拉国投资发展局是孟加拉国主要的私人投资推动与促进机构，其提供有关孟加拉国投资的信息。此外，孟加拉国小型及家庭手工业公司致力于推动私营部门的小型家庭手工业。寻求在各个出口加工区建立企业的投资者经常向孟加拉国出口加工区管理局进行

咨询，后者对位于指定出口加工区的所有项目拥有审批权。

此外，还有诸多律师事务所及私营商业智囊团，能够以更加客户导向型的方式提供关于各种商业事项的专业知识和建议。

21. 您在所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

孟加拉国投资发展局已起草了2017年《一站式服务法案》，旨在通过从单一窗口提供快速服务的方式来吸引外国投资者。该项法案正在制定中，以便精简以往那种需要向不同政府部门取得许可的复杂程序。根据上述法案，将制定相应规则来规定“一站式服务中心”完成各项服务的时间表。任何未能在该规则规定的时间表内提供相应服务的行为都将被视为“不当行为”，并将依法予以处罚。

根据该法案的规定，四(4)个组织(即孟加拉国投资发展局、孟加拉国出口加工区管理局、孟加拉国经济区管理局以及孟加拉国高科技园区管理局)将在其各自的区域担任“中央一站式服务机构”的角色。一站式服务中心将向投资者提供十六(16)类服务，包括签发贸易许可，土地登记与变更，环境许可，建筑许可，爆炸物许可与锅炉证书，以及电力、天然气、水、电话和互联网连接等等。预计这种一站式服务中心将降低外国投资者营商的成本，同时也将减少办理在孟加拉国营商所需的所有监管机构许可的时间。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

请参阅针对问题1和问题8所做的答复，其中详细说明了孟加拉国给予外国投资者的优惠措施、关键考量因素以及激励措施，这些措施与因素使得孟加拉国成为对外国直接投资最为开放的南亚国家。

Jurisdiction: Ghana
Firm: N. Dowuona & Company
Authors: NanaAma Botchway
and Achiaa Akobour Debrah

1. What are the main reasons foreign investors invest in your jurisdiction?

Ghana's relatively stable macro-economic environment, abundant natural resources, political stability makes it an attractive destination for foreign investment in Africa. Cocoa, gold and crude oil make up Ghana's primary sources of revenue from foreign trade. It is the third largest producer and the second largest exporter of cocoa in the world. It is also the second biggest producer of gold in Africa. The existence of investment protection laws and Ghana's status as an emerging market for various goods and services, due particularly to gaps in infrastructure and technology, also serve to attract foreign investment into the country. Foreign direct investment (FDI), which accounts for more than a quarter of Ghana's GDP, has increased gradually in recent years, with the mining, oil and gas, energy and construction sectors attracting the most investment. The highest FDI inflow of USD 4.91 billion was reported in 2017, with China being the largest investor in terms of both value and volume and the Ghanaian government has set itself an ambitious target of raising USD 10 billion in foreign investment by the end of 2018, with special focus on agriculture, industrialization, rail, health and education.

2. What foreign investment legislation is in place in your jurisdiction?

The Ghana Investment Promotion Centre Act 2013 (ACT 865) ("GIPC Act") serves as the main basis for the regulation of foreign investments in Ghana. It is supplemented by the Technology Transfer Regulations 1992 (L.I. 1547). The GIPC Act passed in 2013, established the Ghana

Investment Promotion Centre ("GIPC") as the government's monitoring and coordinating agency for all investment activities in Ghana. The GIPC has the primary objective of encouraging, promoting and monitoring investment in the Ghanaian economy through the formulation and initiation of investment promotion policies and incentives, registration and monitoring of foreign-owned businesses in Ghana and registration of technology transfer agreements, among others. Foreign investors are required to comply with the requirements of the GIPC Act and the Technology Transfer Regulations and are offered various incentives and investment protections under the GIPC Act.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

The GIPC Act also restricts foreign investors from engaging in certain activities that are exclusively reserved for Ghanaians only. These activities include petty trading, selling of goods or provision of services in markets or stalls, operation of beauty salons and barber shops, operation of taxi or car hire services involving a fleet of less than 25 vehicles, retail of finished pharmaceutical products, production, retail and supply of sachet water, pool betting businesses and lotteries (other than football pools), printing of scratch cards for telecommunications services and production of exercise books and basic stationery. Further, the GIPC Act imposes a minimum equity requirement on foreign investors who wish to invest in areas in which foreign participation is permitted. A foreign investor looking to participate in a joint venture with a Ghanaian citizen may do so upon investing a

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minimum amount of USD 200,000 as equity in cash or capital goods or a combination of both, if the Ghanaian investor holds at least 10% of the equity of the joint venture. In the case of a wholly foreign-owned enterprise, the investor is required to invest a minimum capital of USD 500,000 in cash or capital goods or a combination of both. Foreign investors who engage in trading, i.e. the buying and selling of imported goods and services, must meet a minimum capital requirement of USD 1,000,000 and must employ at least 20 skilled Ghanaians. These minimum capital requirements however, do not apply to portfolio investments, enterprises set up for export trading or their branch offices.

Specific industries such as the power, oil and gas, and telecommunications sectors impose additional local participation rules on foreign investors. For instance, in the power sector, the newly passed Energy Commission (Local Content and Local Participation) Electricity Supply Industry Regulations, 2017 (L.I. 2354) requires a company that intends to engage in wholesale power supply activities to have an initial local equity participation of at least 15% by a Ghanaian partner which must be progressively increased to at least 51% within a period of 10 years.

Foreign real estate investors are restricted from acquiring a freehold interest or a leasehold interest of more than 50 years at a time in any land located in Ghana. Foreign investors are also prohibited from engaging in small scale mining activities and the retail of finished pharmaceutical products. Under Ghana's constitution, a non-Ghanaian citizen who acquires a freehold interest in land will have the interest converted to a 50-year leasehold interest. A contract between the Government of Ghana and a foreign entity must be approved by Parliament if it qualifies as an international business transaction. In the absence of such approval, the agreement is void and unenforceable.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

The most common business vehicles for foreign investors are the incorporation of a private company limited by shares or the registration of an external company. Private companies limited by shares may be incorporated with the primary aim of making profit and limit the liability of their shareholders to the extent of capital invested. Ghanaian law requires companies limited by shares to have at least two (2) directors, a secretary and at least one (1) shareholder providing capital investment. Corporate bodies incorporated outside Ghana that seek to operate within the jurisdiction need not automatically incorporate a subsidiary in Ghana. Such corporate bodies are permitted to register as external companies with the Registrar of Companies. External companies must appoint a local manager to manage the business of the company in Ghana. To incorporate a limited liability company, tax identification numbers must be acquired for the proposed company, its directors and shareholders and the appropriate incorporation forms setting out the name, address, objects and shareholding structure must be completed and submitted together with a copy of the proposed regulations of the company. A foreign company which wishes to register an external office in Ghana is required to provide a notarised copy of the company's constitutional documents, specific details of the company including its name, address in the jurisdiction of incorporation, objects and shareholding structure, notarised power of attorney authorising the local manager to act on behalf of the company, details of its address in Ghana and the details of any charges on any of its property. Incorporation of a private limited liability company or registration of an external company usually takes 5–10 working days, following the payment of the applicable

fees, provided that all the necessary documents and paperwork are in order. Where there is a defect with regards to the required documents, the incorporation or registration may take longer. After the incorporation or registration with the Registrar of Companies is completed, the company is required to submit certain periodic returns and to file certain documents with the Registrar of Companies. Companies with foreign investors must register with the GIPC thereafter and depending on the nature of its activities, additional registrations with the municipal authority (for a business operating permit), the Social Security and National Insurance Trust (for purposes of social security payments for employees), the Environmental Protection Agency (for an environmental permit), the Ghana National Fire Service (for a fire certificate), VAT registration with the Ghana Revenue Authority and licensing by a specific regulator may be required to lawfully carry on business.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

Investments that involve transacting with government or certain government agencies or departments may qualify as international business transactions, and hence, they may require parliamentary approval. Additionally, Public-Private Partnership investments require governmental approval of various forms, depending on the nature and value of the transaction. Government approval processes and timelines vary based on the type required. Also, in heavily regulated industries, transfers of significant stakes in licensed entities, are subject to the prior approval of the public regulator, irrespective of the nationalities of the transferor and the transferee.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

Sectors such as mining, oil and gas, financial services, minerals and commodity trading, power and telecommunications are heavily regulated in Ghana. A public regulator oversees each of these sectors. The agriculture, entertainment, technology and the road transport and construction sectors are more open.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

No. Ghana does not have any business restrictions when it comes to dealing with other nations.

8. What grants or incentives are on offer to foreign investors, if any?

Generally, there are industry-based and location-based tax incentives. For instance, there are reduced corporate income tax rates for targeted industries such as agriculture, agro-processing and waste management companies, which may be taxed at rates as low as 1%. Manufacturing companies located in regional capitals of Ghana aside Accra, pay corporate tax at the rate of 18.75% and those located outside regional capitals pay tax at the rate of 12.5%. Specific tax breaks may also be granted in order to reduce the tax burden of investors in relation to certain strategic projects. Additional incentives also exist under the GIPC for various industries. Entities registered with the GIPC are entitled to automatic immigration quotas for expatriate staff, protection against nationalisation or expropriation and, subject to foreign exchange laws, guarantee that capital, dividends and net profits may be transferred outside Ghana in freely convertible currency. Foreign investors that are licensed by the Ghana Free Zone Board

to operate as free zone enterprises enjoy certain incentives, including exemption from the laws regulating the import and export of goods or services to and from free zone areas. A free zone company is an enterprise that exports at least 70% of its annual production of goods or services.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

Yes, there are. Certain areas have been declared as free zones by the President of Ghana, in consultation with the Free Zones Board, pursuant to powers granted under the Free Zone Act 1995 (Act 504). Free zones are areas specially demarcated to promote the production of goods and services in Ghana for export to foreign markets. To qualify for a free zone license, an investor must incorporate a limited liability company in Ghana, to undertake export oriented and environmentally friendly activities in Ghana. In particular, the company must demonstrate its ability and intention to export at least 70% of its annual production of goods or services. Incentives aimed at attracting investment in free zones include exemption from the payment of direct and indirect duties and levies on all imports for production and exports from free zones; exemption from the payment of income tax on profits for 10 years from the date of commencement of operation (income tax thereafter shall not exceed 15%); exemption from payment of withholding taxes from dividends arising out of free zone investments; and relief from double taxation for foreign investors and employees. Additionally, there are no conditions or restrictions on the repatriation of dividends or net profit, payments for foreign loan servicing, payments of fees and charges for technology transfer agreements and remittance of proceeds from sale of any interest in a free zone investment. Further, free zone companies are permitted to operate foreign currency accounts

with banks in Ghana. Free Zone investments are also guaranteed protection against nationalisation and expropriation.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

The main taxes that could apply to foreign investors in Ghana are corporate income tax and personal income tax. Income tax rates are subject to applicable double taxation treaties. Ghana operates a worldwide income tax regime, and therefore, resident companies, other those exempted from corporate income tax or those that are subject to special tax-rates, are taxed at a general rate of 25% on incomes derived from their activities, irrespective of the source of the income. Non-resident companies that operate through a permanent establishment or may be deemed to have a permanent establishment in Ghana, are also taxed at the same rates as Ghanaian resident companies on any income connected to that Ghanaian permanent establishment irrespective of the source of the income. Income of non-resident individuals that are subject to tax in Ghana are taxed at a 20% flat rate. Foreign investors may also be subject to a Value Added Tax (VAT) of 12.5%, National Health Insurance Levy (NHIL) of 2.5% and Ghana Education Trust (GET) Fund Levy of 2.5% in connection with the supply of goods and services made in Ghana, the importation of goods, the exportation of non-traditional goods and the supply of imported services. Additional taxes such as customs and excise duties, communication service tax on telecommunications and airport taxes on use of the international and domestic airports may also apply.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of?

Foreigners looking to work in Ghana must acquire a work permit prior to their arrival in the country. Foreigners who are not members of ECOWAS are required to acquire visas prior to or on arrival in Ghana. Further, any foreign national who intends to remain in Ghana for a substantial period must obtain a residency permit. Companies that intend to employ foreign nationals must obtain immigration quotas from the Ghana Immigration Service. Companies registered with the GIPC are entitled to automatic immigrant quotas based on their equity investment. Free zone licensed companies are also entitled to automatic immigration quotas. Where a company on behalf of its employees makes the application for a work permit, the company in addition to the required personal documents of the employee must provide additional documents pertaining to the company itself.

Foreign investors are also required to comply with the country's employment laws. These are generally set out in the Labour Act 2003 (Act 651) and the regulations made thereunder. Under the Labour Act every employment contract made in Ghana for a duration of more than six (6) months, other than those involving casual workers, must be evidenced in writing and specify the whole of the employee's cash and non-cash remuneration. The minimum age of employment in non-hazardous work in Ghana is 18 years and 21 years for employment in hazardous work.

Ghana operates a three-tier pension scheme with the first two tiers being mandatory. The National Pensions Act 2008 (Act 766) requires every employer to pay on behalf of each employee, an amount equal to 13% of the worker's salary as contribution towards the employee's pension and deduct 5.5% from the salary of every employee at the end of each month, which are transmitted to the first two mandatory tiers of

the pension scheme. The Ghanaian Constitution safeguards the right of all persons to freedom of association which includes the freedom to form or join trade unions for the protection of their interests. The right to engage in commercial or industrial strike is recognised by law but strictly regulated, with specific mechanics for resolving industrial disputes. Employment laws also contain specific protections against unfair termination of the employment of employees.

Sector-specific legislation may also require foreign investors to comply with local content requirements, which may involve the use of local expertise and the employment of Ghanaian citizens in certain positions in an undertaking. For instance, under the Petroleum (Local Content and Local Participation) Regulations 2013 (L.I. 2204), by the fifth year of being licensed by the Petroleum Commission, a licensed company must show that Ghanaian citizens comprise 50–60% of its management staff, 50–60% of its core technical staff and 90% of all other staff.

12. Can foreign investors acquire real property and land in your jurisdiction?

Yes, foreign investors may acquire interests in land and real property. However, non-Ghanaians are prohibited from acquiring a freehold interest in any land in Ghana or from acquiring a leasehold interest or right of more than fifty years at a time in any land.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

There are currently no such processes that we are aware of.

14. What foreign currency or exchange controls should foreign investors be aware of?

Under the Foreign Exchange Act 2006 (Act 723) and notices issued thereunder by the Bank of Ghana, the sole legal tender in Ghana is the

Ghana Cedi. Accordingly, unless otherwise authorised by the Bank of Ghana, no resident of Ghana is permitted to price, advertise, receive or make payment in any foreign currency for goods and/or services. However, Ghanaian residents may transfer foreign exchange abroad to meet bona fide external payment obligations, including debt obligations to a foreign lender provided that there is sufficient documentary evidence of the foreign debt obligation. Ghanaian residents and non-residents are permitted to maintain foreign exchange accounts (FEAs) and foreign currency accounts (FCAs) with licensed banks in Ghana. FEAs must be credited with foreign exchange generated from activities in Ghana (for example, export proceeds), while FCAs are credited with unrequited transfers from abroad. Transfers from FCAs to FEAs are permitted, but not vice versa. Transfers from FCAs and FEAs to cedi accounts are also allowed. Dividends and net profits attributable to foreign investments may be transferred through any authorised dealer bank in freely convertible currency. Repayments of foreign loans in foreign currency, payments made in settlement of trade debts and remittance of proceeds of investments and interests attributable to investments in foreign currency are permitted and must be made through an authorised commercial bank.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

.....
We are not aware of any such restrictions.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

.....
There are various contract enforcement and investor protection mechanisms that are available to foreign investors. An investor may bring an action before the Ghanaian courts to enforce a contract, subject to the terms of such contract. Ghanaian courts will enforce a

contract according to the terms agreed between the parties provided that the contract is devoid of illegality and other vitiating factors and the remedy being sought is not against public policy or the rules of equity. Contract enforcement rights are also subject to laws relating to liquidation, insolvency, reorganization and any other laws relating to or affecting the enforcement of creditors' rights generally. Foreign judgments and arbitral awards may also be enforceable in Ghana subject to the satisfaction of certain conditions prescribed by law. A final judgment obtained from a foreign court, under which a sum of money is payable, may be enforced in Ghana if there exists a reciprocal agreement between Ghana and the foreign jurisdiction from which the judgment emanates. This may be done by an application to the High Court in Ghana to have the judgment registered. The courts of Ghana will, subject to the conditions in the provisions of the Courts Act 1993 (Act 459), recognise, accept and enforce such judgment without any retrial or examination of the merits of the case. In the absence of a reciprocal arrangement between Ghana and the foreign country, a foreign judgment can only be enforced by issuing of a fresh writ in the High Court. There are also alternative dispute resolution mechanisms that investors may avail themselves of to seek redress in order to protect their investments.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

.....
There are bilateral investment treaties between Ghana and China, as well as Ghana and Malaysia. These treaties enjoin the contracting state parties to create favorable conditions for investors of the other contracting party and admonishes states to at all times accord equitable treatment and adequate protection to investors.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

.....
There are a number of legislations that offer protection of various forms of intellectual property, including trademarks, patents, industrial designs and copyright. These laws regulate the use of intellectual property in Ghana and provide adequate protections for owners of intellectual property provided that the conditions specified under the specific laws are met. Whereas some intellectual property rights such as trademarks, industrial designs and patents must be registered in order to take advantage of the provisions in the applicable law, others such as copyright are automatically protected whether or not registered by the intellectual property owner. Additionally, common law rules and the provisions of the Protection Against Unfair Competition Act 2000 (Act 589) and the Geographical Indications Act 2003 (Act 659) may afford protection for both registered and unregistered intellectual property rights owners. Ghana is also signatory to various intellectual property related treaties, including the Harare Protocol, the Paris Convention and the TRIPS Agreement, which grant additional protections for intellectual property rights registered by member states.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

.....
Yes, foreign investors must comply with the Environmental Protection Agency Act 1994 and the regulations promulgated thereunder. The Environmental Protection Agency ("EPA") is responsible for ensuring compliance with environmental laws. The EPA is mandated to regulate the relationship between industry and other related projects and the impact these may have on the environment. The EPA Act and regulations provide rules and standards of conduct

relating to the use of environmental resources, the proper disposal of industrial waste and other associated matters. Depending on the nature of their activities, especially if those activities are likely to have a significant impact on the environment, foreign-owned businesses may need to register with the EPA. Following registration and screening by the EPA, an entity may be required by the EPA to undertake an environmental impact assessment and obtain an environmental permit. Environmental permits are renewable and entities are required to maintain certain records and file periodic reports on the impact of their activities on the environment.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

.....
Yes, the Ghana Investment Promotion Centre provides information and assistance to foreign investors. Other agencies such as the Ghana Free Zones Authority may also assist potential investors on various investment-related issues.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

.....
The GIPC has indicated that it is in the process of reviewing its existing law with the view of proposing amendments that will impact foreign investment in Ghana, however, the details of these proposals have not yet been made public. There are also various local content requirements being developed across board in various industries, particularly, the downstream petroleum and power sectors, which are likely to impact foreign investment in Ghana. Additionally, the Public Private Partnership Bill when passed will impact procurement and implementation of PPP projects in Ghana,

which would have implications for investment structures used by foreign investors.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

In recent times, the grant of sovereign guarantees for relatively high-risk projects in the power sector for example, has been severely restricted due to public debt limitations imposed by the International Monetary Fund (“IMF”) on the government of Ghana as part of an extended credit facility programme. As a result, foreign investors are having to rely increasingly on alternative credit enhancement facilities, such as political risk guarantees from multilateral finance/investment agencies and other political risk insurance providers.

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1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

加纳相对稳定的宏观经济环境，丰富的自然资源和政治稳定性使其成为非洲地区对外国投资极具吸引力的一个目的地。可可、黄金和原油构成了加纳外贸收入的主要来源。它是世界上第三大可可生产国和第二大可可出口国，也是非洲第二大黄金生产国。投资保护法律的存在以及加纳作为各种商品和服务的新兴市场的地位，尤其是基础设施和技术方面的差距，都有助于吸引外国投资。外国直接投资占加纳国内生产总值的四分之一以上，且近年来逐渐增加，采矿、石油与天然气、能源及建筑业吸引的投资最多。据报道，2017年的外国直接投资流入量最高，为49.1亿美元，无论是从价值还是从数量上而言，中国都是首屈一指的投资者；加纳政府已制定了一项雄心伟略，即到2018年底筹集100亿美元的外国投资，特别侧重于农业、工业化、铁路、卫生和教育领域。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

2013年《加纳投资促进中心法案》（第865号法案）是监管加纳外国投资的主要依据。1992年《技术转让条例》（L.I. 1547）对其进行了补充。《加纳投资促进中心法案》于2013年通过，并成立了加纳投资促进中心，作为政府对加纳所有投资活动的监督与协调机构。加纳投资促进中心的主要目标旨在通过投资促进政策与激励措施的制定与实施、对加纳外资企业进行注册登记与监督以及对技术转让协议进行注册登记等方式，鼓励、促进和监督加纳经济中的投资活动。外国投资者必须遵守《加纳投资促进中心法案》和《技术转让条例》的规定，同时还将获得《加

纳投资促进中心法案》所规定的各种激励和投资保护措施。

3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？

《加纳投资促进中心法案》还限制外国投资者参与某些仅针对加纳人的活动。这些活动包括小型贸易，在市场或摊位上销售商品或提供服务，经营美容院和理发店，经营出租车或车队车辆少于25辆的租车服务，成品药零售，袋装水的生产、零售和供应，赌博业务和彩票（足球博彩除外），电信服务刮刮卡的印刷以及练习册和基本文具的生产。此外，对于想投资于允许外国参与的领域的外国投资者，《加纳投资促进中心法案》设定了最低股权要求。如果外国投资者希望与加纳公民共同参与到合资企业中，则其可通过投资至少200,000美元现金股权、实物资本或二者组合的方式实现这一目的，前提是加纳投资者须持有该合资企业至少10%的股权。对于外商独资企业，投资者必须以现金股权、实物资本或二者组合的方式投入至少500,000美元资本。从事贸易的外国投资者（即买卖进口货物和服务的投资者）必须满足1,000,000美元的最低资本要求，并且必须雇佣至少20名熟练的加纳工人。但是，这些最低资本要求不适用于证券投资以及为出口贸易而设立的企业或其分支机构。

电力、石油与天然气以及电信行业等特定行业对外国投资者设置了额外的地方参与规则。例如，在电力领域，2017年新通过的《能源委员会（地方规定和地方参与）电力供应行业条例》（L.I. 2354）规定，对于拟从事电力供应批发活动的公司，其内部必须具有一名持有至少15%初始地方股权的加纳合作伙伴，且该持股比例必须在10年内逐步增加到至少51%。

禁止外国房地产投资者在加纳的任何土地上一次性获得永久业权或超过 50 年的租赁权。外国投资者也被禁止从事小规模采矿活动和成品药零售。根据加纳宪法的规定, 获得土地永久业权权益的非加纳公民须将该权益转换为 50 年的租赁权益。对于加纳政府与外国实体之间的合同, 如果其符合国际商业交易的条件, 则必须经议会批准。在没有上述批准的情况下, 该协议无效且无法执行。

4. 外国投资者最常用的企业形式有哪些? 设立这些形式的企业需要多长时间? 设立和运营这些形式的企业的主要要求有哪些?

外国投资者最常见的企业形式是成立私人股份有限公司或注册外部公司。私人股份有限公司成立的主要宗旨即为盈利, 并将其股东的责任限于股东的投资范围之内。加纳法律要求股份有限公司须至少有两 (2) 名董事, 一 (1) 名公司秘书和至少一 (1) 名提供资本投资的股东。对于在加纳境外成立的法人机构, 如果其寻求在加纳境内进行经营, 则无需一定要在加纳设立子公司。允许此类法人机构在公司注册处注册登记为外部公司。外部公司必须指定一名当地经理来管理该公司在加纳的业务。要成立有限责任公司, 必须获得拟设公司及其董事与股东的税务识别号, 且必须填写说明名称、地址、目的和股权结构的相应注册登记表, 并将该等表格与公司拟定的相关规章制度的副本一起予以提交。希望在加纳注册外部办事处的外国公司必须提供经公证的公司章程文件副本、公司的具体详情 (包括公司名称、公司在注册登记地的地址、目的和股权结构)、授权当地经理代表公司行事的经公证的授权委托书、其在加纳的详细地址以及在其任何财产之上设定的任何抵押的详情。如果所有必要的文件和书面资料均齐备无误, 在支付相应的费用后, 成立私人有限责任公司或注册外部公司通常需要 5-10 个工作日。如果所需文件有误, 则成立或注册过程可能需要花费更长的时间。在公司注册处完成设立或注册登记程序后, 公司必须提交某些定期报表并向公司注册处提交相关文件。有外国投资者的公司必须在此之后于加纳投资促进中心进行注册登记; 根据其活动的性质, 可能还需要向市

政当局 (以获得商业运营许可)、社会保障与国家保险信托基金 (为了雇员的社会保险金)、环境保护署 (以获得环境许可)、加纳国家消防局 (以获得消防证书) 进行额外的登记, 向加纳税务局进行增值税登记以及获得特定监管机构可能要求的其他许可, 以便合法地开展业务。

5. 在哪些情形下外国投资项目需要政府审批? 该等审批的流程与时间表如何?

涉及与政府、某些政府机构或部门进行交易的投资可能符合国际商业交易的条件, 因此, 此类投资可能需要获得议会的审批。此外, 公私合作投资项目需取得各种形式的政府批准, 具体取决于交易的性质和价值。政府批准的程序和时间范围因所需的批准类型而异。另外, 在受到严格监管的行业中, 被许可实体的重大股权转让须经过公共监管机构的事先批准, 而不论转让人和受让人的国籍如何。

6. 在您所在司法管辖区, 哪些行业受到严格监管或限制 (如有)? 相反地, 较为开放或不受限制的行业有哪些 (如有)?

采矿、石油和天然气、金融服务、矿产和商品贸易、电力和电信等行业在加纳受到严格监管。公共监管机构负责对这些部门进行监督。农业、娱乐、科技以及公路运输和建筑行业则较为开放。

7. 在您所在司法管辖区, 是否存在针对与某些国家或地区进行经商的任何限制? (例如制裁)

没有。加纳在与其他国家进行经商时, 不存在任何商业限制。

8. 对外国投资者有哪些优惠或激励措施 (如有)?

一般而言, 有基于行业和基于位置的税收激励措施。例如, 对于诸如农业、农产品加工业和废弃物管理公司之类的目标行业, 会降低企业所得税税率且税率可低至 1%。对于位于加纳除阿克拉外的地区首府内的制造公司, 其以 18.75% 的税率支付公司税, 而位

于地区首府以外的制造公司则按 12.5% 的税率缴纳税款。还可能给予特定的税收减免, 以减少投资者在某些战略项目上的税负。加纳投资促进中心还为各行业提供了额外的激励措施。在该中心注册登记的实体可自动获得外派员工配额, 保护其免于被国有化或被征用, 并且根据外汇法律规定, 保证其资本、股息和净利润能够以可自由兑换的货币转移到加纳境外。获得加纳自由区委员会许可可作为自由区企业运营的外国投资者可享受某些激励措施, 包括不受规范自由区内货物或服务进出口活动的法律的限制。自由区公司是指将其每年生产的 70% 以上的商品或服务予以出口的企业。

9. 在您所在司法管辖区, 是否存在任何自由贸易区、经济特区或工业区? 这些地区有哪些要求?

是的, 有。根据 1995 年《自由区法案》(第 504 号法案) 授予的权力, 经与自由区委员会协商, 加纳总统已将某些地区宣布为自由区。自由区是专门划定的区域, 用于促进出口到国外市场的加纳产品和服务的生产。要获得自由区许可, 投资者必须在加纳设立有限责任公司, 用以在加纳开展出口导向型且有利于环保的活动。尤其是该公司必须证明其具有将其每年所生产的 70% 以上的商品或服务予以出口的能力和意图。旨在吸引自由区投资的激励措施包括: 免除对在自由区内为生产而进行的进口以及自由区内的出口所征收的直接与间接税费; 自经营开始之日起的 10 年内免征利润所得税 (此后的所得税税率不得超过 15%); 免除自由区投资所产生的股息须支付的预扣税; 并减免外国投资者和雇员的双重征税。此外, 对于股息或净利润的汇回、外国贷款服务的支付、技术转让协议费用的支付以及出售自由区投资的任何利益所得收益的汇转, 也不存在任何条件或限制。另外, 允许自由区公司在加纳的银行开立外币账户。亦保证自由区投资不会被国有化和征用。

10. 在您所在司法管辖区, 可能适用于外国投资者的主要税种有哪些? (例如个人所得税、企业所得税、增值税与社会保险费)

可能适用于加纳外国投资者的主要税种是企业所得税和个人所得税。所得税税率视所适用的双重征税协定而定。加纳实行全球所得税制度, 因此, 居民公司、其他免征企业所得税的公司或享受特殊税率的公司, 一般对其活动所得收入按照 25% 的税率征税, 而不论其收入来源如何。对于通过常设机构进行经营或可能被视为在加纳具有常设机构的非居民公司, 均须按与加纳居民公司相同的税率对与加纳常设机构有关的任何收入进行征税, 而不论其来源如何。在加纳纳税的非居民个人的收入按 20% 的固定税率纳税。对于从事与产于加纳的商品和服务的供应、进口货物、出口非传统商品及供应进口服务相关的活动的外国投资者, 可能还需要缴纳 12.5% 的增值税, 2.5% 的国民健康保险税和 2.5% 的加纳教育信托基金费。除此之外, 还可能需缴纳海关和消费税、电信通信服务税以及国际和国内机场使用的机场税等附加税。

11. 在您所在司法管辖区, 外国投资者应该注意哪些劳动法律法规? 外国人是否能通过投资活动获得居留许可或者工作签证?

希望在加纳工作的外国人必须在抵达加纳之前获得工作许可。非西非国家经济共同体成员国的外国人必须在抵达加纳之前或抵达时获得签证。此外, 任何拟在加纳长时间逗留的外国人都必须获得居留许可。拟聘用外国国民的公司必须从加纳移民局获得移民配额。在加纳投资促进中心注册登记的公司拥有权基于其股权投资而自动获得移民配额。自由区许可公司也有权自动获得移民配额。如果公司代表其员工提出工作许可申请, 则该公司除了提供员工的必要个人文件外, 还必须提供与公司本身有关的其他文件。

外国投资者也必须遵守加纳的就业法律。相关规定通常载于 2003 年《劳动法案》(第 651 号法案) 及根据该法案予以制定的条例。根据《劳动法案》的规定, 所有在加纳订立的期限超过六 (6) 个月的劳动合同, 除涉

及临时工的劳动合同外，都必须以书面形式证明并明确雇员的全部现金和非现金报酬。在加纳，从事非危险工作的最低就业年龄为18岁，从事危险工作的最低就业年龄为21岁。

加纳实行三级养老金计划，其中前两个级别是强制性的。2008年《国家养老金法案》（第766号法案）要求雇主必须代表雇员支付相当于工人工资13%的金额作为雇员的养老金，并在每个月月底从雇员的工资中扣除5.5%，该部分金额将转入养老金计划前两个强制性的等级之中。《加纳宪法》保障所有人享有结社自由的权利，其中包括组建或加入工会以保护其利益自由。参与商业或工业罢工的权利受法律认可，但受到严格监管，也有一些具体机制用于解决劳资纠纷。就业法律还包含一些具体的保护措施，避免员工遭受不公正的解雇。

特定行业的法律也可能要求外国投资者遵守当地规定的要求，这可能涉及使用当地的专业技能人才和雇佣加纳公民担任企业的某些岗位。例如，根据2013年《石油（地方规定和地方参与）条例》（L.I. 2204）的规定，在获得石油委员会许可的第五年，持牌公司必须证明公司内的加纳公民占其管理人员的50-60%，占其核心技术人员50-60%，占所有其他员工的90%。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

是的，外国投资者可以获得土地和不动产之上的利益。但是，非加纳人士不得获得加纳任何土地的永久业权，也不得一次性获得任何土地超过五十年的租赁利益或权利。

13. 在您所在司法管辖区，是否存在在特定情形下阻止外国投资的任何程序？

据我们所知，目前没有此类程序。

14. 外国投资者应该注意哪些外国货币或外汇管制？

根据2006年《外汇法案》（第723号法案）和加纳银行根据该法案发布的通知，加纳唯一的法定货币是加纳塞地。因此，除非加纳银行另有授权，否则不允许加纳居民以任何外币对商品和/或服务进行定价、推广、接收或支付。但是，加纳居民可以将外汇转到国外以履行真实的外部支付义务，包括对外国贷款人的债务义务，前提是有足够的外债义务证明文件。允许加纳居民和非居民在加纳的持牌银行持有外汇账户和外币账户。外汇账户必须贷记在加纳的活动所产生的外汇（例如出口收益），而外币账户则贷记来自国外的无偿转账。允许从外币账户转入外汇账户，但不得从外汇账户转入外币账户。外币账户和外币账户也可以转入塞地账户。外国投资所产生的股息和净利润可以通过任何授权的交易商银行以可自由兑换的货币进行转移。允许以外币偿还国外贷款、结算贸易债务、汇转投资收益及外币投资的利息，但上述操作必须通过授权的商业银行进行。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

据我们所知，没有任何此类限制。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

针对外国投资者，具有各种合同强制执行和投资者保护机制。投资者可以向加纳法院提起诉讼以强制执行合同，但须遵守该合同条款的约定。加纳法院将根据当事人之间约定的条款执行合同，条件是合同没有违法和其他无效因素，并且所诉请的补救措施不得违反公共政策或公平规则。合同强制执行权还受到与清算、破产、重组相关的法律以及与债权人权利执行有关或影响债权人权利执行的任何其他法律的约束。在符合法律规定的某些条件的情况下，外国判决和仲裁裁决也可在加纳强制执行。如果加纳与作出判决的外国司法管辖区之间存在互惠协议，则可以在加纳执行外国法院作出的须支付金钱的

最终判决。这可以通过向加纳高等法院申请对该判决进行注册登记的方式来实现。根据1993年《法院法案》（第459号法案）的规定，加纳法院将承认、接受和执行此类判决，而无需重审或审查相关案件的案情。如果加纳与外国之间没有互惠安排，则外国判决只能通过高等法院签发新令状的方式来强制执行。此外，还有一些替代性争议解决机制，投资者可以利用这些机制寻求补救措施以保护其投资。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

加纳和中国以及加纳和马来西亚之间具有双边投资条约。这些条约要求缔约国为另一方的投资者创造有利条件，并敦促各国始终给予投资者公平的待遇和充分的保护。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

加纳有许多法律保护各种形式的知识产权，包括商标、专利、工业品外观设计和版权。这些法律对加纳的知识产权使用进行规范，并为知识产权所有者提供充分的保护，前提是满足特定法律所规定的条件。某些知识产权（如商标、工业品外观设计和专利等）必须进行注册登记之后才能享有适用法律中规定的益处，而其他权利（如版权）则可以自动受到保护，无论知识产权所有者是否进行了注册登记。此外，普通法规则和2000年《防止不正当竞争法案》（第589号法案）和2003年《地理标志法案》（第659号法案）中的规定可以为注册和未注册的知识产权所有人都提供保护。加纳还签署了各种与知识产权有关的条约，包括《哈拉雷议定书》、《巴黎公约》和《与贸易有关的知识产权协议》，这些协定为在成员国注册登记的知识产权提供额外的保护措施。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

有的，外国投资者必须遵守1994年《环境保护署法案》及根据该法案颁布的条例。《环境保护署法案》负责确保遵守环境法律。环境保护署的任务是规范行业与其他相关项目之间的关系以及这些项目可能对环境产生的影响。该法案及相关条例为与环境资源的使用、工业废物的适当处置以及其他相关事项提供了行为规则 and 标准。根据其活动的性质，特别是如果这些活动可能对环境产生重大影响，则外资企业可能需要在环境保护署进行登记。在环境保护署进行登记并由环境保护署筛查之后，环境保护署可能要求实体开展环境影响评估并获取环境许可。环境许可可以更新，企业实体需要保留某些记录，并定期报告其活动对环境的影响。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

存在，加纳投资促进中心向外国投资者提供信息与协助。加纳自由区管理局等其他机构也可以协助潜在投资者处理与投资有关的各种问题。

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

加纳投资促进中心表示，其正在审查其现有法律，以期提出影响加纳外国投资的修正案，但这些提案的细节尚未公布。针对各行各业的各类本地规定要求也正在制定中，特别是下游石油和电力行业，这可能会对加纳的外国投资产生影响。此外，已经通过的《公私合作法案》将用于规范加纳PPP项目的采购和实施，而这可能会对外国投资者所使用的投资结构产生影响。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

作为其扩展信贷计划的一部分，国际货币基金组织对加纳政府施加了公共债务限制，导致近期诸如电力行业等相对高风险项目的主权担保受到严格限制。因此，外国投资者不得不越来越多地依赖其它信贷增强工具，例如来自多边金融 / 投资机构和其他政治风险保险提供商的政治风险担保。

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1. What are the main reasons foreign investors invest in your jurisdiction? (Please provide a brief introduction to your jurisdiction and some facts and figures related to foreign investment.)

With its unique competitive advantages in economic growth, abundance of market opportunities and strategic location, Indonesia proves to be a promising and attractive country for foreign direct investment (“FDI”).

For the past decade Indonesia has been able to maintain a stable yet remarkable economic growth with an average of 5% annual GDP growth for the past 5 years. In the year 2017 alone Indonesia’s GDP stood at 5.07%, a number which shows a robust growth due to its strengthening investment, net exports and international trade flows. OECD forecasts this growth to continue even higher in the year 2018 and 2019 thus offering a promising and attractive aspect for foreign investors to invest in Indonesia. Indonesia’s credit rating has been rated stable (investment grade) by S&P, Moody’s and Fitch respectively.

Along with Indonesia’s increasing economic growth, its market opportunities continue to expand. Indonesia ranks as the 4th most populated country in the world, with over 266 million people and 42.4% of them being within the peak of productive working ages of 25–54 years. This not only illustrates Indonesia’s immense market opportunities but also gives Indonesia a vast

potential workforce to support its ever-growing economy and markets.

The exclusivity of Indonesia’s geographical location makes it a major shipping lane, since it is an archipelagic country between the Indian and Pacific Ocean and the two continents of Asia and Australia. This gives Indonesia a competitive geographical advantage in the business of exports and imports as well as ease in reaching foreign markets.

With the estimated economic growth, abundance of market opportunities and strategic location, Indonesia proves to be a promising and attractive country for FDI.

2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

Foreign investment in Indonesia is governed by a few regulations which are briefly described below.

Investment Law and its implementing regulations:

Law No. 25 of 2007 concerning Investment (“Investment Law”) regulates the principles of FDI, such as the rights and obligations of a foreign investor and the requirement of all FDI in Indonesia to be made in the form of a limited liability company (*Perseroan Terbatas* or “PT PMA”).

There are several implementing regulations to the Investment Law. One of the most important implementing regulations is the so-called negative list. The “Negative List” is a presidential regulation which contains a list of business activities that are either closed or open to investment with restrictions. The Negative List is amended from time to time and currently the enforcing Negative List is based on the Presidential Regulation No. 44 of 2016.

At end of June 2018, the government enacted Government Regulation 24 of 2018 concerning Electronically Integrated Business Licensing Service (“GR 24/2018”). GR 24/2018 introduces the so-called Online Single Submission (“OSS”) system for issuance of licenses and permits by the government which replaces the earlier centralized FDI processing done through the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “BKPM”).

At the time this guide was prepared, the implementation of OSS had been launched, but certain aspects remain unclear as to implementation and subject to implementing regulations.

Other implementing regulations to the FDI include the BKPM Regulations, which regulates in detail among others, the norms, standards, and procedures for the implementation of FDI. Also BKPM Regulation No. 6 of 2018 regarding the Guidelines and Procedures for investment licensing and facilities, as well as Regulation No. 8 of 2018 concerning Guidelines and Procedures for Investment Implementation Control have recently been passed.

Company Law:

The Company law stipulates the general regulation concerning the limited liability company (*perseroan terbatas* or “PT”), including, among others, establishment, corporate organs, and requirements of PT.

In particular, all FDI in Indonesia must be made in the form of a PT. Hence in the case of FDI, the Company Law must be read in conjunction with Investment Law and its implementing regulations.

Civil Code:

The Indonesian Civil Code serves as a general foundation to the concepts in civil law, including that of people (in relation to companies being an artificial legal person), ownership of goods, and contractual relationship principles. The Indonesian Civil Code was adopted from the colonial Dutch civil law and has been in force for more than a century.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

The general restrictions on foreign investment are listed in the Negative List. The Negative List contains a list of business activities that are closed or open to foreign investment with restrictions. Restrictions imposed by the Negative List are in the form of, among others:

- a. Partnership obligations with small, micro and medium business, or cooperatives;
- b. A maximum foreign shareholding;
- c. Special licenses; and
- d. Investors from ASEAN countries may have a higher foreign ownership allowance than non-ASEAN countries for certain business activities that are allowed with restrictions in Indonesia.

Further, although lines of business not listed in the Negative List would theoretically be open to FDI with 100% foreign shareholding, in practice, technical authorities may impose an unwritten policy to impose certain restrictions or conditions.

The Negative List applies nation-wide, although facilities for FDI in certain business activities or business activities in certain regions may be available. Such facilities include the deduction of income tax as regulated under the Government Regulation No. 9 of 2016 regarding Facility of Income Tax for Investment in Certain Business Activities and/or in Certain Regions.



Kevin Omar Sidharta
Partner, Ali Budiardjo, Nugroho,
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Kevin joined ABNR in October 2002 and was made partner in 2016. After graduating in 2000 from the University of Indonesia’s Faculty of Law, majoring in business law, he went on to earn an LL.M degree (cum laude) in international business law from Leiden University, Netherlands, in 2002. In 2015, he was seconded to a leading law firm in the Netherlands.

Prior to obtaining his LL.M, he worked as a researcher in the Indonesian Bankruptcy Law Monitoring Project under a technical assistance project funded jointly by the International Monetary Fund and the Netherlands Government. Armed with his experience of working on this project and of handling numerous restructuring & insolvency matters, he is a regular contributor to publications, workshops, and seminars on Indonesian bankruptcy law and practice.

He currently focuses his practice on restructuring & insolvency, M&A, FDI, telecommunications, aviation and commercial arbitration / litigation. He also has considerable experience in advising and representing multinational companies across various sectors and industries, including manufacturing, oil and gas, TMT, trading/distribution, construction, mining and plantations.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

The most common business vehicles for foreign investors is foreign investment PT (“PT PMA”).

Other than PT PMA, foreign companies may also establish a Foreign Company Representative Office (*Kantor Perwakilan Perusahaan Asing* or “KPPA”) or a Foreign Trading Company

Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing* “KP3A”). However, KPPA and KP3A are merely cost centers and may not generate any revenue in Indonesia, as their activities are limited to the promotion and marketing of products only or taking care of the interest of its offshore principal company.

Please find the table of comparison between PT PMA, KPPA and KP3A below:

Type of vehicles	Purpose	Limitations
PT PMA	To Conduct Business Activities as a legal entity in Indonesia in form of a limited liability company.	Subject to the limitations of business activities that are closed or open to investment with restrictions within the Negative List.
KPPA	a. As a supervisor, liaison, coordinator, and care taker of the principal's interest in Indonesia; and b. Prepare the establishment of a PT PMA in Indonesia.	a. May not directly seek profit from a source in Indonesia; b. Prohibited to enter a contract/ transaction on the selling and buying of commercial goods or services; and c. May not participate in any form of management of a company, subsidiary or branch of a company in Indonesia.
KP3A	a. Introduce, promote and enhance the marketing of goods manufactured by the principal; b. provide information or guidelines regarding the utilization and importation of the goods to the user of the products; c. conduct market research and monitoring/ supervision of the sale of goods within Indonesia (domestically) in the framework of promotion of goods of the principal; d. conduct market research of products required by the principal and to connect the principal with local companies and provide guidelines or information regarding delivery/export requirements; and e. forge and on behalf of the principal, to close contracts with local companies within the framework of exports.	A KP3A may not generate any revenue in Indonesia. In general, a KP3A is prohibited from to engaging in the following activities: a. entrance into sales contracts or transactions, from the initial stage up to and including completion and implementation; b. submission of tenders or bids; c. execution of contracts; d. settlement of claims, and the like; and e. conducting importation of goods.

Type of vehicles	Key requirements for the establishment and operation	Approximate time of setting up
PT PMA	a. Minimum investment of IDR10++ billion. The minimum investment may be higher for certain types of business; b. Minimum of 2 shareholders; and c. Requires a business license for conducting business.	3–4 months, and conceivably faster under the OSS System.
KPPA	a. KPPA must obtain a KPPA license which is valid for a maximum of 3 years and may be renewed; and b. The KPPA chief must be residing in Indonesia, and may not hold a double position as a chief of another KPPA or any other company in Indonesia.	2–3 months.
KP3A	Similar with KPPA above.	2–3 months.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

All FDI in Indonesia are subject to government approvals, particularly in the establishment process and to enable them to conduct business activities. At the end of June 2018, the government enacted GR 24/2018 which introduces the OSS system for issuance of licenses and approvals by the government. The objective of GR 24/2018 is to unify and simplify licensing processes and government approvals nationwide. The OSS system will be a “single-reference” online licensing system for the handling of licenses previously managed by different ministries and government agencies, including from the regional government. The system will for the time being be administered by the Coordinating Ministry of Economic Affairs (the Ministry).

The licensing and government approvals processes are divided into several stages in the following order:

- a. The establishment of PT PMA. In this stage, the founders of PT PMA execute the deed

of establishment in front of a notary public, obtain validation as a legal entity from the Minister of Law and Human Rights; and obtain Taxpayer Registration Number (*Nomor Pokok Wajib Pajak* or NPWP).

- b. Registration at the OSS system. In this step the PT PMA activates its online account at the OSS system by completing the required documentations.
- c. Obtaining a Single Identity Number or *Nomor Induk Berusaha* (NIB). NIB serves as the business identity number to process further licenses and also valid as business registration certificate and import licenses.
- d. Obtaining preliminary business licenses such as a location permit, building permit and environmental permit.
- e. Obtaining a Business License as the mandatory license required prior to commencement of business activities.
- f. Obtaining Operational/Commercial License which is a subsequent license after the obtainment of a Business License, required to commence commercial or operational activities.

At the time this write-up was prepared, the OSS system had been launched, but certain implementing regulations as mandated by GR 24/2018 have not been issued as of this date. Thus, certain aspects remain unclear.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

Heavily regulated industries include banking and financial institutions, natural resources, i.e. mining and oil and gas, pharmaceuticals and transportation. Some of the more open or unrestricted sectors include industry, trading and management consultancy.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

No. There are no restrictions and/or sanctions on doing business with certain countries or territories in Indonesia.

8. What grants or incentives are on offer to foreign investors, if any?

There are several grants or incentives in the form of facilities for foreign investors in doing business in Indonesia, such as:

- a. Import Duty Facilities;
- b. Tax Allowances;
- c. Tax Holidays; and
- d. Ease of Direct Investment in Construction (Kemudahan Langsung Investasi Konstruksi “KLIK”).

The table below gives a brief description on what such facilities entails:

Type of Facilities	Available Facility
Import Duty Facilities	Exemption of import duties facilities for machinery and raw material.
Tax Allowance	Deduction of net income tax of company amounting to 30% from investment value for a period of 6 years.
Tax Holiday	Deduction of income tax to pioneers in the industry for a period of 5–20 years.
Ease of Direct Investment in Construction (KLIK)	Allows investors in certain industrial locations to start the construction project prior to obtaining its construction licenses. This facility is only available in 47 specific industrial locations including; Kenda, Bukit Semarang Baru, Wjiaya Kusuma, etc.

Type of Facilities	Remarks												
Import Duty Facilities	The imported machineries must fulfill the following criteria: <ul style="list-style-type: none"> a. the machineries have not been produced locally; b. the machineries have been produced locally, but do not meet the requirements; or c. the quantity of the locally produced machinery is not sufficient. The imported raw materials can be exempted from import duty if the industry has utilized machineries with 30% or more local content.												
Tax Allowance	<ul style="list-style-type: none"> a. There are 145 business sectors that may fulfil the requirement for tax allowance. b. Requirements include investment value, export orientation, opening of employment opportunities, level of domestic components, location of project. 												
Tax Holiday	Applicable for pioneers in certain industries, among others: <ul style="list-style-type: none"> a. integrated refining and/or refineries of oil and gas; b. integrated pharmaceutical raw materials; c. integrated manufacturing of the main components of communication equipment (smartphones); and d. integrated manufacturing of the main components of aircraft. The period of tax holiday is subject to the investment value, as follows: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Investment Value</th> <th>Tax Holiday Period</th> </tr> </thead> <tbody> <tr> <td>IDR 500 billion</td> <td>5 years</td> </tr> <tr> <td>IDR 1 trillion</td> <td>7 years</td> </tr> <tr> <td>IDR 5 trillion</td> <td>10 years</td> </tr> <tr> <td>IDR 15 trillion</td> <td>15 years</td> </tr> <tr> <td>IDR 30 trillion</td> <td>20 years</td> </tr> </tbody> </table>	Investment Value	Tax Holiday Period	IDR 500 billion	5 years	IDR 1 trillion	7 years	IDR 5 trillion	10 years	IDR 15 trillion	15 years	IDR 30 trillion	20 years
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Ease of Direct Investment in Construction (KLIK)	<ul style="list-style-type: none"> a. No minimum requirement of investment amount/value or employees; b. Available only in certain industrial locations; c. Construction license can be obtained in parallel with the construction process. 												

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

Law No. 39 of 2009 on SEZ (“Law 39/2009”) and its implementing regulations regulates Facilities and ease of doing business for the Special Economic Zone (“SEZ”) in Indonesia, which among others include facilities for taxation, customs and excise. Pursuant to Law 39/2009, SEZ is made up of a few zones in export processing, logistics, industry, technology development, tourism, energy and/or other economies. These incentives are put in place to encourage investment in such sectors and particular locations. Facilities include ease of doing business in the aspects of taxation, customs and excise; obtaining rights to land; and obtaining certain licenses.

In addition to SEZ, some area of Indonesia has been declared as Free Trade Zones (“FTZ”), i.e., Batam-Bintan-Karimun. Similar to SEZ, FTZ has exempting facilities from some taxation, customs and excise requirements.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

The main taxes that could apply to foreign investors in Indonesia include:

- a. Income Tax;
- b. Withholding Tax;
- c. Value Added Tax (for goods and/or services); and
- d. Luxury Goods Tax.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

Law No. 13 of 2003 concerning Manpower (“Manpower Law”) regulates certain key characteristics of employment in Indonesia which ultimately protects labor welfare. Some key characteristics of the Manpower Law includes minimum standards in employment contracts, working hours, income, company regulations, social security and rules regarding expatriates.

The compulsory social security in Indonesia is registered with *Badan Penyelenggara Jaminan Sosial* or “BPJS”. BPJS is further divided into two, Manpower BPJS and Health BPJS which are both compulsory. Manpower BPJS comprises of (i) *Jaminan Kecelakaan Kerja* (employment accident benefits), (ii) *Jaminan Kematian* (death benefits), (iii) *Jaminan Hari Tua* (old age benefits), (iv) *Jaminan Pemeliharaan Kesehatan* (health benefits), and (v) pensions. Expatriates who work in Indonesia for a minimum of 6 months must also be registered with both Manpower BPJS and health BPJS. Under GR 24/2018, a BPJS application may be incorporated into the OSS system.

Expatriates are allowed to work in Indonesia, provided that they have the necessary licenses and permits. The recently passed Presidential Regulation No. 20 of 2018 concerning Expatriate (“PR 20/2018”) has come into force on 29th June 2018. However, there are certain positions that are prohibited for expatriates, including those that relate to human resources and personnel departments. Under PR 20/2018, expatriates are allowed to hold a position in more than one company in Indonesia, provided that: (i) the two employers fall into a particular sector; (ii) the expatriate serves the same position; and is (iii) hired for the same employment period.



Agus Ahadi Deradjat
Partner, Ali Budiardjo, Nugroho,
Reksodputro

Agus is a senior ABNR partner whose key practice areas are M&A, FDI, Competition, and TMT. A 1996 graduate of the University of Indonesia’s School of Law, majoring in commercial law, he has been a partner of ABNR since 2004. He was recently recognized by Vantage Asia / Asia Business Law Journal as one of Indonesia’s 100 most influential lawyers.

Over the last year, Agus’ significant M&A and FDI mandates included:

- advised Singapore-based Tobacco company Renzoluc Pte. Ltd., and its parent

company, Korea Tobacco & Ginseng Corporation (S. Korea’s largest tobacco company) on their acquisition of 3 Indonesian tobacco companies located in East Java;

- assisted PT Kideco Jaya Agung (Indonesia’s third largest producer of bituminous coal) on all aspects of its sale to South Korean mining company Samtan;
- represented Henkel, the global producer of laundry & home care, beauty care and adhesive products, and its Indonesian subsidiary on their acquisition of the business and assets of Pt CGP Applied Technologies Indonesia as part of Henkel’s global acquisition of GCP Applied technologies Inc;
- advised Mitsubishi Steel MFG Co. Ltd on its acquisition of a controlling interest in an Indonesian steelmaker located in East Java.

Meanwhile, in the TMT arena, he recently advised a Singapore-based investment fund on its acquisition of an interest in an Indonesian ride-hailing company; and assisted a PRC-based online news aggregator and content platform in relation to its establishment of a legal presence and commencement of commercial operations in Indonesia. He is currently advising an international web-based entertainment company on its proposed establishment of a JV with an Indonesian telecommunications provider.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

Indonesian law permits a PT PMA to acquire land under certain land titles. There are generally 4 common types of land titles recognized in Indonesia, as follows:

- a. Right of Ownership (*Hak Milik* or “HM”) – available only to Indonesian citizens and specific types of legal entity as determined by the Indonesian Government, grants the right to own and utilize land, valid for unlimited period;
- b. Right to Build (*Hak Guna Bangunan* or “HGB”) – available to Indonesian citizens and Indonesian legal entities (including a PT PMA), grants the right to utilize and build upon a plot of land, valid for a maximum 30 years with possible extension of 20 years and renewal for another 30 years;
- c. Right to Cultivate (*Hak Guna Usaha* or “HGU”) – available to Indonesian citizens and Indonesian legal entities (including a PT PMA), grants the right to utilize land for agricultural/fisheries/animal husbandry purposes, valid for maximum 35 years with possible extension of 25 years and renewal for another 35 years; and
- d. Right to Use (*Hak Pakai* or “HP”) – available to Indonesian citizens, Indonesian legal entities (including a PT PMA), foreign citizens who reside in Indonesia, and foreign legal entities, grants the right to utilize land and/or collect harvested products of such land, valid for 25 years with possible extension of 20 years and may be renewed.

HM is similar to the concept of freehold, while HGB, HGU, and HP are similar to the concept of leasehold with certain qualifications for each right.

A Land Certificate obtained through registration with the National Land Agency (*Badan Pertanahan Nasional* or BPN) serves as a valid evidence of title over land. The land title is

transferred upon the buyer and seller entering into a legal Sale and Purchase Agreement before a Land Conveyancer. The transfer of title must be followed by the registration of the land title in the buyer’s name.

It is important to note that despite the issuance of a Land Certificate as a valid evidence of title over land, there are still certain circumstances in which the title may be revoked for the sake of public interest. In addition to certificated land, there are still vast areas of uncertified lands in Indonesia.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Regulatory-wise, there are no official processes that can block foreign investment under specific circumstances, as long as the restrictions under the Negative List are complied with.

14. What foreign currency or exchange controls should foreign investors be aware of?

There is no foreign exchange control in Indonesia. Persons may freely hold, use and transfer foreign currency. The transfer of foreign exchange to and from abroad is, however, subject to a reporting requirement to the Indonesian Central Bank. The Indonesian Central Bank restricts the use of Indonesian currency for certain transactions. For export financing and offshore loans, Bank Indonesia also requires that any export and offshore borrowing proceeds (in foreign currency) must be drawn down through domestic banks appointed by the Indonesian Central Bank licensed as a foreign exchange bank. The Indonesian Central Bank does not require the proceeds in foreign currency to be converted into Indonesian Rupiah or to be kept for a specified time period. The rule seeks to bring the Indonesian export’s proceeds into an Indonesia banking system, but maintains the free foreign exchange movement policy.

There is a specific regulation on the mandatory use of Rupiah within the Republic of Indonesia, which basically lay down the rule that any transaction carried out in Indonesia, both by residents or non-residents must be in Indonesian Rupiah, and parties are prohibited from refusing to accept the Indonesian Rupiah as payment for the transaction. It also prohibits the use of dual price denomination using Indonesian Rupiah and any other currency. Several types of transactions are specifically exempted from this obligation, such as international financing transactions and FDI in the form of capital contribution/transfer of shares. Under the Investment Law, foreign investors are allowed to transfer and repatriate in foreign currency for, among others, capital, profits (dividends), and royalties.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

No. A foreign investor is allowed to withdraw its investment or transfer its ownership in a PT PMA to another qualified party. However, particularly for withdrawal of FDI which results in the winding up of a PT PMA, Company Law requires such company to be dissolved and liquidated, which processes includes revocation of all licenses and settlement of liabilities, especially for taxation. In practice, a dissolution and liquidation process may take up to 2 years or more to complete.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

Under the Investment Law, all investors (including foreign investors) are generally entitled to certainties of right, law, and protection. “Certainty of right” means that the Indonesian Government guarantees the rights of investors insofar that they have satisfied the specified obligations. “Certainty of law” means that the Indonesian Government guarantees

the placement of laws and regulations as the primary foundation in any measure and policy for investors. “Certainty of protection” means that the Indonesian Government guarantees that the investors are protected in performing their investment activities.

Furthermore, the Investment Law also stipulates that the Indonesian Government will not take any measures in the form of nationalization or expropriation against the proprietary rights of investors, unless provided for by law. In the event that a nationalization or expropriation takes place, the Indonesian Government will provide compensation whereby such amount shall be determined based on market value.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

Indonesia has a model bilateral investment treaty and has entered into 42 bilateral investment treaties with countries all over the world including those in the Asia-Pacific region. As of August 2018, twenty six of such treaties are in force. Further, Indonesia has also entered into nineteen treaties with investment provisions, of which fifteen are in force.

Indonesia is also a party to a multilateral investment treaty among ASEAN countries, as well as multilateral investment treaties between ASEAN countries and non-ASEAN countries such as China and Japan. Some of these were made in the form of framework agreements.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

There are no specific intellectual property rights (IPR) protections for foreign investors. Indonesia recognizes seven IPR that may be held by individuals and business entities (including by a PT PMA) being as follows:

- a. Copyright;
- b. Trademark;
- c. Patent;
- d. Trade Secrets;
- e. Industrial Design;
- f. Layout Design of Integrated Circuit; and
- g. Geographical Indication.

Indonesia applies “first-to-file” system for trademarks, meaning that a party who first registers the trademark with the Directorate General of IPR will be protected under the Indonesian law, even though such party is not the first user of the trademark. Nonetheless, if a party registers a trademark which is an imitation of a well-known mark, the owner of the well-known mark may file for cancellation of the registration on the basis of bad faith and/or well-known status of the trademark.

In addition to the abovementioned types of IPR, Indonesia also recognizes Plant Variety Protection which gives protection to the breeder of plant variety.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

In general, any business and/or activity in Indonesia must be equipped with environmental license, which type and requirement differ depending on the impact of the said business and/or activity to the environment.

Under Law No. 32 of 2009 concerning Environmental Management and Protection, any company whose business and/or activity brings significant impact to the environment must obtain and maintain an Environmental Impact Analysis (*Analisis Mengenai Dampak Lingkungan* or “AMDAL”). Other businesses and/or actions that are not required to maintain an AMDAL as stipulated in the Environmental Law must conduct environmental management

efforts and environmental monitoring efforts through the preparation of Environmental Management Efforts (*Upaya Pengelolaan Lingkungan* or “UKL”) and Environmental Monitoring Efforts (*Upaya Pemantauan Lingkungan* or “UPL”) documents. Other businesses and/or actions that are not required to maintain UKL-UPL must maintain an Environment Management Statement Letter (*Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup* or “SPPL”). Timely completion of AMDAL and/or UKL-UPL documents determines the granting of an effective Environmental Permit.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

Following the recent launch of OSS system, foreign investors can access the OSS website for detailed information on licensing. Please see <https://oss.go.id/oss>

Additional information can also be accessed through the BKPM website at www.bkpm.go.id. The BKPM also established the Indonesia Investment Promotion Center (IIPC) that foreign investors may find in certain countries.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

The recent issuance of GR 24/2018 and introduction of OSS system resulted in the temporary suspension of application of investment licenses submitted to the BKPM. At the time of this report, the OSS system had been launched and has served licensing of new FDIs. However, certain implementing regulations mandated under GR 24/2018 have not been issued which results in certain aspects to be somewhat unclear.



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Adri obtained his law degree from the Faculty of Law, University of Indonesia, majoring in Business Law. In 2009, he joined ABNR as an associate and the year after was admitted as an advocate by the Indonesian Advocates Association.

Adri specializes in Indonesian corporate and commercial law matters and has plenty experience in handling investment projects, M&A transactions, capital market projects and corporate restructuring.

Worthy of note is his specific knowledge of pharmaceutical laws and regulations and his very good understanding of the pharmaceutical business. In 2013 and subsequently in 2014, he divided his time between routine practice at the firm and secondment at a leading multinational pharmaceutical company. The experience has further strengthened his knowledge in pharmaceutical law and has helped develop his understanding of the commercial side of the pharmaceutical industry.

The latest issue of the Negative List was released in 2016 and is generally updated from time to time. As per the date of this write-up, various stakeholders have taken part in discussions to revise the existing Negative List. However, there is still no information on the exact timing of issuance and the content of the revisions to the existing Negative List.

In 2016, the Indonesian Government commenced the drafting of a Government Regulation concerning settlement of investment disputes. However, to date, the draft is still being discussed by stakeholders at the executive level. Furthermore, Indonesia will hold general elections for the posts of President and members

of the House of Representatives in 2019. It is worth noting that changes in administration may affect the overall Indonesian policy for the subsequent years, including the overall climate and inclination for FDI in Indonesia.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

Presidential Regulation No. 13 of 2018 concerning Implementation of the Principle on Identifying Beneficial Owners of Corporations in the Framework of Prevention and Eradication of Money Laundering Criminal Act and Terrorism Funding Criminal Act implements

the ‘Know Your Beneficial Owner for Corporations’. The term “Corporation” herein refers to various types of business activities in Indonesia, such as limited liability company (including a PT PMA), foundation, association, and partnership. Different types of beneficial owners can apply for different types of business activities. Each Corporation is required to provide information on its beneficial owner(s) to the Authorized Agency, which must be updated annually. The data collected will be managed by the Authorized Agency (which varies according to the type of business activity) in the Corporation Administration Services System, and forms a database which helps the Indonesian Government to indicate the source or use of funds or property associated with a corporate vehicle. Despite its immediate effect, the regulation grants a transitional period of one year for Corporations that are already established or in the process of establishment.

In practice, the implementation of this new regulation is still unclear due to the lack of the implementing regulations.

Another important note is the imposition of Indonesian-language requirement in agreements. Under Law No. 24 of 2009 concerning Flag, Language, National Emblem, and National Anthem, memoranda of agreements or agreements involving an Indonesian individual or legal entity must have an Indonesian language version, and, if involving a foreign party, the agreement may also be added with the language of the relevant foreign party and/or in English. Nevertheless, the parties may agree to choose foreign language as the governing language.

专题： 印度尼西亚
律所： Ali Budiardjo, Nugroho, Reksodputro
作者： Agus Ahadi Deradjat, Kevin Omar Sidharta 和 Adri Yudistira Dharma
共同作者： Nina Cornelia Santoso 和 Tania Faramutia



1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

凭借在经济增长、丰富的市场机会和战略位置方面的独特竞争优势，印度尼西亚成为了一个在外国直接投资方面充满希望和吸引力的国家。

在过去十年中，印度尼西亚始终保持稳定且显著的经济增长，过去 5 年的年均国内生产总值增长率为 5%。仅在 2017 年，印度尼西亚的国内生产总值增长就达到 5.07%，这一数字显示出了基于其不断加强的投资、净出口及国际贸易流量而带来的强劲增长。经济合作与发展组织预测 2018 年和 2019 年这一增长将继续保持更高水平，从而为外国投资者在印度尼西亚投资展现了充满希望和吸引力的一面。印度尼西亚的信用评级分别被标准普尔、穆迪和惠誉评为稳定级（投资级别）。

随着印度尼西亚经济的不断增长，其市场机会持续扩大。印度尼西亚是世界上第四人口大国，拥有超过 2.66 亿人口，其中 42.4% 的人口处于 25-54 岁的适合生产性工作的黄金年龄。这不仅说明了印度尼西亚巨大的市场机遇，也为印度尼西亚提供了巨大的潜在劳动力队伍，从而为其不断增长的经济和市场提供了支持。

作为印度和太平洋以及亚洲和澳大利亚两大洲之间的群岛国，印度尼西亚地理位置的独特性使其成为一条主要航运线路。这使得印度尼西亚在进出口业务方面具有竞争上的地理优势，并且易于进入国外市场。

基于其预计的经济增长、充足的市场机会及战略性地理位置，印度尼西亚被证明是一个对外国直接投资充满希望和吸引力的国家。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

印度尼西亚的外国投资由为数不多的法规予以管理，下面进行简要介绍。

《投资法》及其实施条例：

关于投资的 2007 年第 25 号法律（简称“《投资法》”）规定了外国直接投资的原则，例如外国投资者的权利和义务以及所有在印度尼西亚的外国直接投资均须以有限责任公司（外资有限责任公司）的形式成立。

《投资法》之下有几项实施条例。最重要的实施条例之一即为所谓的《负面清单》。《负面清单》是一项总统条例，其中包含不开放投资或限制性开放的业务活动清单。《负面清单》会不定期予以修订，目前正在实行的《负面清单》以 2016 年第 44 号总统条例为基础。

2018 年 6 月底，政府颁布了关于电子综合商业许可服务的 2018 年第 24 号政府条例（简称“2018 年第 24 号政府条例”）。2018 年第 24 号政府条例引入了所谓的在线单一提交系统，用于政府签发许可和特许，该系统投入使用后，早期由投资协调委员会完成的集中式外商直接投资手续即开始通过该系统进行处理。

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Kevin于2002年10月加入ABNR律师事务所,并于2016年成为合伙人。他在印度尼西亚大学法学院主修商法,并于2000年毕业;此后,他在荷兰莱顿大学继续深造并

于2002年获得国际商法法学硕士学位(优等生)。2015年,他被借调到荷兰一家领先的律师事务所。

在获得法学硕士学位之前,他曾在国际货币基金组织和荷兰政府共同资助的技术援助项目下担任印度尼西亚破产法监测项目的研究员。凭借其在该项目上的工作经验以及处理众多重组与破产事宜的经验,他成为了印度尼西亚破产法和实践方面出版物、研讨会和学术讨论会的定期撰稿人。

他目前专注于重组与破产、并购、外国直接投资、电信、航空及商业仲裁/诉讼等业务领域。他还具有为各行各业的跨国公司提供咨询和代理服务方面的丰富经验,包括制造、石油与天然气、数字新媒体、贸易/分销、建筑、采矿以及种植园等行业。

在编写本指南时,已经启动了在线单一提交系统的实施,但有关实施的某些方面尚不明确,且受实施条例的规范。

外国直接投资的其他实施条例包括《投资协调委员会条例》,除其他规定外,该条例详细规定了实施外国直接投资的规范、标准和程序。此外,最近还通过了投资协调委员会关于投资许可和设施的指南与程序的2018年第6号条例以及关于投资实施控制的指南与程序的2018年第8号条例。

《公司法》:

《公司法》规定了关于有限责任公司的一般规定,其中包括有限责任公司的设立、公司机构及相关要求。

特别是,印度尼西亚的所有外国直接投资都必须以有限责任公司的形式做出。因此,就外国直接投资而言,《公司法》必须与《投资法》及其实施条例一起解读。

《民法典》:

《印度尼西亚民法典》是民法概念的一般性基础,包括人的概念(与公司系法律拟制人相关)、商品所有权及合同关系原则等的概念。《印度尼西亚民法典》源自殖民时期荷兰民法,已经实施了一个多世纪。

3. 对外国投资有哪些限制?这些限制在各级地方政府有无不同?

《负面清单》中列出了关于外国投资的一般限制。《负面清单》包含不向外国投资开放或限制性开放的业务活动清单。除其他形式外,《负面清单》所规定的限制采取以下形式:

- a. 与小型、微型及中型企业或合作社的合伙义务;
- b. 最高外方持股比例;
- c. 特别许可;以及
- d. 针对某些在印尼虽被许可但受限制的商业活动,来自东盟国家的投资者可能享受比非东盟国家投资者更高的外方所有权许可。

此外,对于《负面清单》中并未列出的业务领域而言,尽管理论上可以对外国直接投资开放且可由外方全额持股,但在实践中,技术部门可能会采取不成文的政策来施加某些限制或条件。

《负面清单》适用于全国范围,但某些商业活动或某些地区商业活动中的外国直接投资

可能会有一些扶助措施。此类扶助政策包括关于某些业务活动和/或某些区域中投资所得税政策的2016年第9号政府条例所规定的所得税减免政策。

4. 外国投资者最常用的企业形式有哪些?设立这些形式的企业需要多长时间?设立和运营这些形式的企业的主要要求有哪些?

对外国投资者而言,最常见的企业形式是外资有限责任公司。

除外资有限责任公司外,外国公司还可以设立外国公司代表处或外贸公司代表处。但是,外国公司代表处和外贸公司代表处仅仅是成本中心,而不得在印度尼西亚产生任何收入,这是因为它们的活动仅限于推广和营销产品或者照管其主要离岸公司的利益。

有关外资有限责任公司、外国公司代表处和外贸公司代表处之间的对比,请见下表:

企业类型	目的	限制	建立和运营的关键要求	设立所需的大致时间
外资有限责任公司	以有限责任公司的形式在印度尼西亚作为法人实体开展业务活动。	须遵守《负面清单》中不向外国投资开放或限制性开放的业务活动的限制。	<ul style="list-style-type: none"> a. 最低投资额为100亿印尼盾。某些类型业务的最低投资额可能会更高; b. 至少有2名股东;以及 c. 需要取得开展业务的营业许可。 	3-4个月,使用在线单一提交系统可能会更快。

企业类型	目的	限制	建立和运营的关键要求	设立所需的大致时间
外国公司代表处	<ul style="list-style-type: none"> a. 作为外国公司在印度尼西亚利益的管理人、联络员、协调人及照管人；以及 b. 筹备在印度尼西亚建立外资有限责任公司。 	<ul style="list-style-type: none"> a. 不得直接寻求源自印度尼西亚的利润； b. 禁止就商品或服务的买卖订立合约/进行交易；以及 c. 不得参与印度尼西亚公司、或印度尼西亚公司之子公司或分支机构任何形式的管理。 	<ul style="list-style-type: none"> a. 外国公司代表处必须获得外国公司代表处许可，该等许可的有效期限最长为3年，且可以续展；以及 b. 外国公司代表处主管必须居住在印度尼西亚，并且不得同时担任另一个外国公司代表处或印度尼西亚任何其他公司的主管。 	2-3个月。
外贸公司代表处	<ul style="list-style-type: none"> a. 引入、推广并促进外国公司所制造商品的营销； b. 向产品使用者提供有关商品使用与进口的信息或指南； c. 在推广外国公司商品的框架内，对印度尼西亚境内（国内）的商品销售进行市场调查和监测/监督； d. 开展外国公司要求的产品市场调查，建立外国公司与当地公司之间的联系，并提供有关交付/出口要求的指南或信息；以及 e. 代表外国公司与当地公司签订和终止在出口框架内的合同。 	外贸公司代表处不得在印度尼西亚产生任何收入。一般而言，禁止外贸公司代表处从事下列活动： <ul style="list-style-type: none"> a. 订立销售合同或进行交易（自初始阶段直至完成与实施阶段）； b. 提交标书或投标； c. 执行合同； d. 索赔的解决及类似事项；以及 e. 进行货物进口。 	与上面的外国公司代表处类似。	2-3个月。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

印度尼西亚的所有外国直接投资要想能够进行业务活动，都需要取得政府的批准（特别是在成立过程中）。在2018年6月底，政府颁布了2018年第24号政府条例，引入了在线单一提交系统，用于签发政府出具的许可和批准。2018年第24号政府条例的目标旨在统一并简化全国范围内的许可流程和政府审批。在线单一提交系统将成为一个“单一参考性”在线许可系统，用于处理先前由不同部委和政府机构（包括地方政府）管理的许可。该系统暂时由经济事务协调部予以管理。

许可和政府审批流程按以下顺序分为几个阶段：

- a. 设立外资有限责任公司。在这一阶段，外资有限责任公司的创始人在公证人面前签署设立契约，取得法律与入权事务部长关于法人实体的确认，并取得纳税人识别号。
- b. 于在线单一提交系统进行注册登记。在该步骤中，外资有限责任公司通过完成所需的文件来激活其在在线单一提交系统中的在线账户。
- c. 取得单一身份号码。单一身份号码用作处理其他许可的业务识别号，也可用作商业注册登记证书及进口许可。
- d. 取得初步营业许可，如地点许可、建筑许可及环境许可。
- e. 在开展业务活动之前须取得作为强制许可的营业许可。
- f. 取得运营/商业许可，该许可是在取得营业许可后的后续许可，为开始商业或经营活动所必需。

在编写本文时，在线单一提交系统已经启动，但截至目前，尚未发布根据2018年第24号政府条例制定的某些实施条例。因此，某些方面仍不清楚。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的行业有哪些（如有）？

受到严格监管的行业包括银行和金融机构、自然资源（即采矿和石油与天然气）、制药和运输业。一些更为开放或不受限制的产业包括工业、贸易和管理咨询行业。

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？（例如制裁）

不存在。在印度尼西亚，不存在针对与某些国家或地区进行经商的任何限制和/或制裁。

8. 对外国投资者有哪些优惠或激励措施（如有）？

对于在印度尼西亚经商的外国投资者，存在以政策形式体现的几种补助或激励措施，例如：

- a. 进口关税政策；
- b. 税收减免；
- c. 免税期；以及 a 表简要说明了此类政策的内容；

政策类型	可用政策	备注												
进口关税政策	免除机械和原材料的进口关税政策。	进口机器须符合以下标准: a. 该机器尚未在当地进行生产; b. 该机器已在当地生产,但不符合要求;或者 c. 当地生产的机器数量不足。 如果该行业已使用了30%或以上本地生产的机器,则可免征进口原材料的进口税。												
税收减免	公司净所得税扣除额为投资额的30%,减免期为6年。	a. 有145个业务领域可以满足税收减免的要求。 b. 此类要求包括投资价值、出口导向、就业机会开放、国内组件水平、项目所在地等。												
免税期	向所有行业的先锋者扣除5至20年内的所得税。	适用于某些行业的先锋者,其中包括: a. 石油与天然气的综合冶炼和/或冶炼厂; b. 综合医药原料; c. 通信设备(智能手机)主要部件的综合制造;以及 d. 飞机主要部件的综合制造。 免税期限取决于投资价值,具体如下: <table border="1"> <thead> <tr> <th>投资价值</th> <th>免税期限</th> </tr> </thead> <tbody> <tr> <td>5000亿印尼盾</td> <td>5年</td> </tr> <tr> <td>1万亿印尼盾</td> <td>7年</td> </tr> <tr> <td>5万亿印尼盾</td> <td>10年</td> </tr> <tr> <td>15万亿印尼盾</td> <td>15年</td> </tr> <tr> <td>30万亿印尼盾</td> <td>20年</td> </tr> </tbody> </table>	投资价值	免税期限	5000亿印尼盾	5年	1万亿印尼盾	7年	5万亿印尼盾	10年	15万亿印尼盾	15年	30万亿印尼盾	20年
投资价值	免税期限													
5000亿印尼盾	5年													
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15万亿印尼盾	15年													
30万亿印尼盾	20年													
建设领域的直接投资便利	允许某些工业场所的投资者在获得施工许可之前启动建设项目。 该政策仅在47个特定工业场所予以提供,包括 Kenda, Bukit Semarang Baru, Wjiaya Kusuma等。	a. 没有投资金额/价值或员工数量的最低要求; b. 仅适用于某些工业场所; c. 施工许可可在施工的过程中取得。												

9. 在您所在司法管辖区,是否存在任何自由贸易区、经济特区或工业区?这些地区有哪些要求?

关于经济特区的 2009 年第 39 号法律及其实施条例规定了在印度尼西亚经济特区经商的政策和便利性,其中包括税收及关税政策。根据 2009 年第 39 号法律的规定,经济特区由从事出口加工、物流、工业、技术开发、旅游、能源和 / 或其他经济活动的几个区域组成。这些激励措施的制定旨在鼓励对此类部门及特定点进行投资。这些政策包括税收与关税、取得土地权利以及取得某些许可方面的营商便利性。

除经济特区外,印度尼西亚的一些地区已被宣布为自由贸易区。与经济特区类似,自由贸易区具有免除某些税收及关税要求的豁免政策。

10. 在您所在司法管辖区,可能适用于外国投资者的主要税种有哪些?(例如个人所得税、企业所得税、增值税与社会保险费)

可能适用于印度尼西亚外国投资者的主要税种包括:

- a. 所得税;
- b. 预扣税;
- c. 增值税(用于商品和 / 或服务);以及
- d. 奢侈品税。

11. 在您所在司法管辖区,外国投资者应该注意哪些劳动法律法规?外国人是否能够通过投资活动获得居留许可或者工作签证?

关于人力资源的 2003 年第 13 号法律(简称“《人力资源法》”)规定了印度尼西亚就业的某些关键特征,这些特征最终对劳工福利进行保护。《人力资源法》的一些主要特征包括雇佣合同、工时、收入、公司规定、社会保障以及外籍人员规则等方面的最低标准。

印度尼西亚的强制性社会保障须在社会保障体系(Badan Penyelenggara Jaminan Sosial)中进行注册登记。社会保障体系被进一步分为人力资源社保和健康社保两部分,这两

个部分都是强制性的。人力资源社保包括:(i) 工伤意外保险;(ii) 死亡保险;(iii) 老年福利;(iv) 健康福利;以及(v) 养老金。在印度尼西亚工作至少 6 个月的外籍人员也必须在人力资源社保和健康社保中进行注册登记。根据 2018 年第 24 号政府条例的规定,社会保障体系申请可纳入在线单一提交系统之中。

外籍人员可以在印度尼西亚工作,前提是拥有必要的许可和特许。最近通过的关于外籍人士的 2018 年第 20 号总统条例已于 2018 年 6 月 29 日生效。但是,某些职位禁止由外籍人士担任,包括与人力资源和人事部门有关的职位。根据 2018 年第 20 号总统条例的规定,允许外籍人士在印度尼西亚的多家企业中担任职务,前提是:(i) 两名雇主属于某一特定行业;(ii) 外籍人士担任同一职务;并且(iii) 受雇期限相同。

12. 在您所在司法管辖区,外国投资者是否可以取得不动产与土地?是否存在任何约束或限制?

印尼法律允许外资有限责任公司根据某些土地权利获得土地。印度尼西亚承认的土地权利通常有 4 种常见类型,具体如下:

- a. 仅适用于印度尼西亚公民和印度尼西亚政府所确定的特定类型法人实体的所有权,该权利授予拥有和使用土地的权利,且无期限限制;
- b. 适用于印度尼西亚公民和印度尼西亚法律实体(包括外资有限责任公司)的建造权,该权利授予使用土地并在土地上进行建造的权利,其有效期最长可达 30 年,并可能延长 20 年或续约 30 年;
- c. 适用于印度尼西亚公民和印度尼西亚法律实体(包括外资有限责任公司)的耕种权,该权利授予将土地用于农业 / 渔业 / 畜牧业目的的权利,其有效期最长为 35 年,并可能延长 25 年或续约 35 年;以及
- d. 适用于印度尼西亚公民、印度尼西亚法律实体(包括外资有限责任公司)、居住在印度尼西亚的外国公民以及外国法



Agus Ahadi Deradjat
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Agus是ABNR律师事务所的高级合伙人,其主要业务领域为并购、外国直接投资、竞争以及数字新媒体产业。他于1996年毕业于印度尼西亚大学法学院,主修商法,且自2004年以来一直担任ABNR律所的合伙人。他最近被Vantage Asia/Asia Business Law Journal评为印度尼西亚100位最具影响力的律师之一。

在过去一年中, Agus在重大并购和外国直接投资方面的工作包括:

- 为新加坡烟草公司 Renzoluc Pte.Ltd. 及其母公司韩国烟草与人参公司(韩国最大的烟草公司)收购位于东爪哇的3家印度尼西亚烟草公司提供咨询服务;
- 为 PT Kideco Jaya Agung (印度尼西亚第三大烟煤生产商)出售给韩国矿业公司 Samtan 提供各方面的协助;
- 代表洗衣与家居护理、美容护理及粘合剂产品全球生产商汉高公司及其印尼子公司收购 Pt GCP Applied Technologies Indonesia 的业务和资产,作为汉高全球收购 GCP Applied technologies Inc 的一部分;
- 为三菱制钢股份有限公司收购位于东爪哇的印尼钢铁企业的控股权提供咨询。

与此同时,在数字新媒体领域,他最近为一家新加坡投资基金收购一家印度尼西亚约车公司股权的项目提供咨询;并为一家中国在线新闻聚合商和内容平台提供有关在印度尼西亚设立合法商业存在以及开展商业运营方面的协助。他目前正在为一家国际网络娱乐公司拟与一家印度尼西亚电信供应商建立合资企业的项目提供咨询。

人实体的使用权,该权利授予使用土地和/或收获此类土地的产品权利,其有效期为25年,且可能延长20年并予以续约。

所有权类似于永久业权的概念,而建造权、耕种权和使用权则类似于租赁权的概念,其中每项权利均须对应一定的资格。

通过向国家土地局进行注册登记获得的土地证书可作为土地权利的有效证据。在买卖双方土地转让事务员面前签订合法的《买卖协议》后,即可转让土地权利。转让权利后,必须以买方的名义进行土地权利的注册登记。

值得注意的是,尽管签发了作为土地权利有效证明的土地证书,但在某些情况下,仍然可能出于公共利益而撤销此类土地权利。除了经认证的土地外,印度尼西亚仍有大量未经认证的土地。

13. 在您所在司法管辖区,是否存在特定情形下阻止外国投资的任何程序?

从监管角度来看,只要符合《负面清单》所规定的限制,就不存在可以在特定情况下阻止外国投资的任何官方程序。

14. 外国投资者应该注意哪些外国货币或外汇管制?

印度尼西亚没有外汇管制。人们可以自由持有、使用和转移外币。但是,外汇跨境转移须遵守向印度尼西亚中央银行进行报告的要求。印度尼西亚中央银行限制使用印尼货币进行某些交易。对于出口融资和离岸贷款,印度尼西亚银行还要求任何出口和离岸借款收益(外币形式的)都必须通过由印度尼西亚中央银行指定为外汇银行的国内银行进行提取。印度尼西亚中央银行不要求将外币收益兑换成印尼盾或将其保留一段特定的时间。该规则旨在将印度尼西亚出口的收益纳入印度尼西亚的银行系统的同时,维持自由的外汇流动政策。

具有关于在印度尼西亚共和国境内强制使用印尼盾的具体规定,该等规定基本上确定了这样一个规则,即居民和非居民在印度尼西亚所进行的任何交易都必须使用印尼盾,并禁止当事人拒绝接受印尼盾作为交易的支付货币。该规则还禁止使用以印尼盾和任何其他货币进行计价的双重价格面值。有几种类型的交易特别免除该义务,例如国际融资交易和采取资本出资/股份转让形式的外国直接投资。根据《投资法》的规定,允许外国投资者以外币形式将资本、利润(股息)和特许权使用费等进行转移及汇回。

15. 如果外国投资者撤回在您所在司法管辖区的投资,对此是否有任何限制、审批要求或可能的处罚?

无。允许外国投资者撤回其投资或将其在外资有限责任公司中的所有权转让给另一适格方。但是,特别是对于导致外资有限责任公司清盘的外国直接投资撤回,《公司法》要求此类公司须予以解散并进行清算,这一程序包括撤销所有许可及清偿债务(尤其是所

欠税款)。实践中,解散和清算过程可能需要长达2年或更长的时间才能完成。

16. 在您所在司法管辖区,有哪些现行的合同强制执行和投资者保护机制(如有)?

根据《投资法》的规定,所有投资者(包括外国投资者)通常都有权享有权利、法律及保护方面的确定性。“权利的确定性”指的是,在投资者已经履行了规定义务的情况下,印度尼西亚政府将保证投资者的权利。“法律的确定性”指的是印度尼西亚政府保证将法律法规作为针对投资者的任何措施与政策的首要基础。“保护的确定性”指的是印度尼西亚政府保证投资者在进行投资活动时将得到保护。

此外,《投资法》还规定,除非法律予以规定,否则印度尼西亚政府不会对投资者的所有权采取国有化或征用形式的任何措施。如果发生国有化或征用,则印度尼西亚政府将提供补偿,具体数额应根据市场价值予以确定。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约?

印度尼西亚有一个双边投资示范条约,并与世界各国(包括亚太地区的国家)签订了42项双边投资条约。截至2018年8月,已生效的此类条约有26项。此外,印度尼西亚还签订了19项涉及投资条款的条约,其中15项已经生效。

印度尼西亚也是东盟国家之间多边投资条约以及东盟国家与中国和日本等非东盟国家之间多边投资条约的缔约国。其中一些条约是以框架协议的形式做出的。



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Adri在印度尼西亚大学法学院获得了法律学位,主修商法。2009年,他作为律师助理加入了ABNR律师事务所,并在一年后取得印度尼西亚律师协会的律师资格。

Adri专注于印尼公司和商业法律事务,在处理投资项目、并购交易、资本市场项目及公司重组方面具有丰富的经验。

值得一提的是,他具有制药法律法规方面的专业知识且对制药业务具有深刻的理解。2013年及之后的2014年,在该律师事务所从事常规业务的同时,他还曾借调至一家领先的跨国制药公司进行工作。这一经历进一步增强了他对制药法律方面的知识储备,并帮助他加深了对制药行业商业方面的理解。

18. 在您所在司法管辖区,对外国投资者的知识产权保护措施有哪些?

对外国投资者而言,没有特定的知识产权保护措施。印度尼西亚承认个人及商业实体(包括外资有限责任公司)可能持有的七项知识产权如下:

- a. 版权;
- b. 商标;
- c. 专利;
- d. 商业秘密;
- e. 工业品外观设计;
- f. 集成电路布局设计;以及
- g. 地理标志。

印度尼西亚对商标实行“申请在先”制度,这意味着首先向知识产权总局注册商标的一方将受到印度尼西亚法律的保护,即使该方不是该商标的首个用户。尽管如此,如果一方注册的商标是模仿驰名商标的商标,则驰名商标的所有人可基于恶意和/或商标的知名地位而申请取消该商标注册。

除了上述类型的知识产权外,印度尼西亚还承认植物品种保护,为植物品种的育种者提供保护。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中,是否存在(潜在的)外国投资者应该注意的任何环境政策与法规?

一般而言,印度尼西亚的任何业务和/或活动必须具备环境许可,其类型与要求因所述业务和/或活动对环境的影响而有所不同。

根据关于环境管理和保护的2009年第32号法律,其业务和/或活动对环境产生重大影响的所有公司都必须取得并保持环境影响分析。根据《环境法》的规定,无需保持环境影响分析的其他业务和/或行动都必须通过准备环境管理措施和环境监测措施文件的方式进行环境管理和环境监测工作。无需维护环境管理措施-环境监测措施的其他业务和/或行动都必须保留环境管理声明函。是否及时完成环境影响分析和/或环境管理措施-环境监测措施文件将决定是否签发有效的环境许可。

20. 在您所在司法管辖区,是否存在任何可以让(潜在的)外国投资者了解更多投资信息的政府机构或非政府实体?

在最近推出在线单一提交系统之后,外国投资者可以访问在线单一提交系统网站获取有关许可的详细信息。请参阅 <https://oss.go.id/oss/>

其他信息也可通过投资协调委员会网站 www.bkpm.go.id 予以获取。投资协调委员会还建立了外国投资者可在某些国家发现的“印度尼西亚投资促进中心”。

21. 在您所在司法管辖区,最近是否存在将影响外国投资的改革提案或监管变化?

最近发布的2018年第24号政府条例和在线单一提交系统的引入已导致暂时中止向投资协调委员会提交投资许可申请。在本报告编写时,在线单一提交系统已经启动,并已服务于新外国直接投资的许可事宜。但是,根据2018年第24号政府条例制定的某些实施条例尚未予以颁布,这导致某些方面仍存在一定程度的模糊性。

最新版的《负面清单》于2016年发布,且通常会不定期予以更新。截至本文撰写之日,各利益相关方已参与了修订现有《负面清单》的讨论。但是,仍然没有关于确切发布时间及现有《负面清单》修订内容方面的信息。

2016年,印度尼西亚政府开始起草关于解决投资争端的政府条例。但是,到目前为止,执行层面的利益相关方仍在对该草案进行讨论。

此外,印度尼西亚将于2019年举行总统和众议院议员席位的大选。值得注意的是,行政管理的变化可能会影响印度尼西亚后续几年的整体政策,包括针对印度尼西亚外国直接投资的整体氛围和倾向。

22. 关于您所在司法管辖区或亚洲区域内的外国投资,是否有任何其他特点您想特别强调?

关于在《预防与根除洗钱犯罪法案》和《恐怖主义融资犯罪法案》的框架内实施公司受益所有人识别原则的2018年第13号总统条例规定实施“了解您的公司受益所有人”原则。此处的术语“公司”指的是印度尼西亚各种类型的商业活动,例如有限责任公司(包括外资有限责任公司)、基金会、协会和合伙企业。不同类型的受益所有人可以申请不同类型的商业活动。每个公司都必须向授权机构提供有关其受益所有人的信息,该等信息必须按年予以更新。所收集的数据将由公司管理服务系统中的授权机构(因业务活动类型而有所不同)进行管理,并形成一个数据库,帮助印度尼西亚政府确定与之相关的资金或财产的来源或用途。尽管该条例立即生效,但对于已经建立或正在建立中的公司,该条例规定了一年的过渡期。实践中,由于缺乏实施条例,这项新规定的实施仍不明确。

另一个重要的注意事项是在协议中施加了印度尼西亚语的要求。根据关于国旗、语言、国徽和国歌的2009年第24号法律,涉及印度尼西亚个人或法人实体的协议或协议的备忘录都必须具有印度尼西亚语版本;并且,如果涉及国外方,协议也可以增加相关国外方的语言版本和/或英语版本。尽管如此,双方可商定选择外国语言作为适用语言。

Jurisdiction: Kenya
Firm: Daly & Inamdar Advocates
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1. What are the main reasons foreign investors invest in your jurisdiction? (Please provide a brief introduction to your jurisdiction and some facts and figures related to foreign investment.)

Kenya has been touted as East Africa's investment hub and the most preferred investment destination in East Africa. In a report by Ernst & Young in 2017, Kenya was ranked as the second most attractive destination in Africa after Morocco. The main reasons that have been cited by investors for choosing Kenya as an investment hub are the improving infrastructure, the big pool of skilled workers and the high adaptability of Kenyans to new goods and services.

2. What foreign investment legislation is in place in your jurisdiction? Please provide a brief overview of such legislation.

The main legislation on Foreign Investments are:

- i. The Investment Promotion Act No. 6 of 2004 which establishes the Kenya Investment Authority to promote and facilitate investment by assisting investors in obtaining the licences necessary to invest and by providing other assistance and incentives;
- ii. The Foreign Investments Protection Act (Cap 518) which gives protection to approved foreign investments, foreign investors' properties, and allows for repatriation of profits.

Other legislation includes:

- i. The Constitution of Kenya 2010 provides that the general rules of international law, and treaties ratified by Kenya, form part of

the laws of Kenya. This brings international trade and investments treaties ratified by Kenya into focus such as the General Agreement on Tariffs and Trade (GATT), Agreement Establishing the World Trade Organization (WTO), Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), UNCITRAL Model Law on International Commercial Arbitration and the New York Convention, 1958.

- ii. The Companies Act 2015, the Business Registration Act and the Insolvency Act are meant to fast track the registration and operationalization of businesses in Kenya. These laws establish various institutions to facilitate the registration of both local and foreign companies and on matters of insolvency.
- iii. The Proceeds of Crime and Money Laundering Act provides for the offence of money laundering and introduces measures for combating the offence like providing for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime in a bid to creating a peaceful country that will attract foreign investments.
- iv. The Export Processing Zones Act and Special Economic Zones Act are meant to attract foreign direct investment (FDI) and engender technological transfer, knowledge spill-over and demonstration effects that would act as catalysts for domestic entrepreneurs to engage in the production of non-traditional products.

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3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

Generally, Kenya allows for foreign private entities to establish and own business enterprises and engage in all forms of remunerative activity. However, there are certain sectors such as land, mining, financial institutions, capital markets, engineering, health and telecommunications which require a minimum percentage of shareholding to be held by Kenyan citizens.

There is also a restriction on ownership of agricultural and freehold land by non-Kenyans as discussed elsewhere in this Guide.

These restrictions do not differ at local levels of government as the legislation on foreign investment are national laws applicable throughout the country.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

The most common business vehicles for foreign investors are:

- i. Companies limited by shares (either private or public) established under the Companies Act 2015;
- ii. Foreign Branches;
- iii. Limited liability partnerships (LLPs) established under the Limited Liability Partnership Act 2011.

The most common business vehicle, however, is the Company limited by shares. The process of establishment has been made fairly easy by the introduction of the online Business Registration Service (BRS) available on www.ecitizen.go.ke. The process of setting up the company usually takes about 7–10 working days.

A person intending to set up a company in Kenya is required to provide the following details:

- the corporate structure and details of the structure
- the address and contact details of the company;
- details of the proposed shareholders of the company;
- details of the proposed directors and authorised signatories;
- details of the proposed company secretaries; and
- details of the corporate history (for example, is the company being incorporated a subsidiary, is the parent company in Kenya, is the incorporation a result of a merger or acquisition, etc)

Upon setting up of the Company, the directors of the Company must file Annual Returns with the Companies Registry on the anniversary of their incorporation date or on their accounting reference date if it is different from the date of incorporation.

Private companies must also prepare annual financial statements and file certain financial records with the Registrar of Companies.

Failure to file the requisite statutory documents with the Registrar of Companies may result in fines or criminal sanctions against the Company and its individual officers.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

There are generally no requirements for approval of foreign investments in Kenya.

The Kenya Investment Authority (KIA) processes and grants approvals of new investments once proposals are submitted on a prescribed application form. Proof of company registration must be attached to the application.

Where the investment may have adverse impact on security, health or environment, clearance from the competent authorities (such as

National Environment Management Authority, Public Health authorities, etc) will be required before approval is granted.

Further, clearance is required from parent ministries for investments in certain restricted areas before the Kenya Investment Authority approval is granted. These investments comprise:

- investments to produce excisable goods (clearance from Customs and Excise);
- investments in forest products and mining (clearance from the Ministry of Environment and Natural resources);
- investments in energy and petroleum products (clearance from the Ministry of Energy);
- investments in the tourism industry (clearance from the Ministry of Tourism).

The process and timelines for obtaining such approvals vary depending on the body issuing the approvals and the nature of the investment.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

The sectors that are heavily regulated in Kenya include:

- i. Telecommunications sector;
- ii. Mining sector;
- iii. Private Security sector
- iv. Construction sector;
- v. Financial & Banking sector; and
- vi. Insurance sector.

The sectors that are more open for investment in Kenya include:

- i. Energy sector;
- ii. Transportation sector;
- iii. Retail sector;
- iv. Restaurants;
- v. Technology; and
- vi. Health care

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction?

Kenya does not have a distinct and individual sanctions regime and does not maintain a formal database of sanctioned states or entities.

Kenya is however a member state of the United Nations (UN) and is therefore bound by the Charter of United Nations including any resolutions and sanctions by the UN.

8. What grants or incentives are on offer to foreign investors, if any?

Kenya has limited foreign investment incentives and generally treat local and foreign investors equally except in the sectors that the government enjoys statutory monopoly or where there are requirements for local content or ownership.

The main area where Kenya has concentrated its incentives is in the Special Economic Zones (SEZ) and the Export Processing Zones (EPZ) where enterprises enjoy a number of tax benefits.

The tax benefits include exemption on dividends payable to non-residents by enterprises operating in the SEZ, a reduction of withholding tax on interest payable to non-residents by SEZ companies from 15% to 5%, 0% Value Added Tax on supply of taxable goods and services, exemption on excise duty for importation of goods and services, allowing a capital deduction of 150% of the cost of buildings and machinery owned by SEZ companies.

Motor vehicle assemblers have also been catered for in a move to welcome international motor vehicle manufacturers into the Kenyan market. They shall enjoy a reduced corporation tax of 15% down from 30% for the initial five years of operation.

Kenya also exempts Value Added Tax on goods imported or purchased for direct and explicit use in specified industries, such as construction of tourism facilities, construction of specialised hospitals and industrial parks.



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He is a qualified Advocate of the High Court of Kenya, an Attorney and Counsellor at Law in New York and a Solicitor of the Senior

Courts of England & Wales. He holds a current Practicing Certificate issued by the Solicitors Regulation Authority of England & Wales.

Shitul obtained his LLB (Hons.) from the London School of Economics, University of London, in 1999, trained with Kaplan & Stratton and qualified as an Advocate of the High Court of Kenya in 2001. He joined Daly & Figgis as an Associate in the Corporate & Commercial Department until 2005, practiced in various sectors in the UK for 6 years during which time he headed the Legal Department of a multinational IT/Telecoms Consultancy, was a lawyer in a not for profit public organisation with over 2500 employees and acted as an independent UK law legal expert for an online US based business.

Shitul has a wide range of experience in both local and foreign law cross border commercial transactions.

He is ranked as a Highly Regarded lawyer by IFLR1000 and Legal 500.

However, approval must be obtained from the relevant cabinet secretary before the exemption is enjoyed.

Kenya has also made strides in reducing bureaucratic delays in relation to setting up a business in Kenya and obtaining requisite licences. With the introduction of the online Business Registration System and measures initiated by the Business Environment Delivery Unit at the Ministry of Industrialisation and Enterprise Development, the time and cost of setting up and operating a business has reduced drastically. The Investment Protection Act has established the Kenya Investment Authority which is a one-stop shop for obtaining all requisite investment licences, approvals, and exemptions. This is in a bid to improve doing business in Kenya.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

Yes, Kenya does have special economic zones and export processing zones established under the Special Economic Zones Act (No. 16 of 2015) and the Export Processing Zones Act (Cap 517), respectively.

Requirements for Special Economic Zone:

A foreign entity is able to set itself up as a developer, operator, or an enterprise of an SEZ. The requirements prior to set up is as follows:

- The entity must be a company registered in Kenya under the Companies Act 2015, for the purpose of undertaking special

economic zone activities. There is no restriction on foreign ownership of the company.

- The entity must acquire, in any way, land on an SEZ territory
- The entity must have the technical and financial expertise to carry out the proposed SEZ activity
- The entity must engage in activities allowed within an SEZ
- The entity’s activities must not endanger the environment or national security in any way.

Requirements for Export Processing Zone:

For any entity to establish itself in an Export Processing Zone, the following requirements must be met:

- The proposed business enterprise must be incorporated in Kenya whether or not it is one hundred percent foreign owned, for the sole purpose of producing goods or services for export within an export processing zone;
- The enterprise proposes to engage in any activity or activities eligible to be undertaken by an export processing zone enterprise in the export processing zone;
- The enterprise shall not have a deleterious impact on the environment, or engage in unlawful activities, impinging on national security or may prove to be a health hazard; and
- conducts business in accordance with the laws for the time being in force save for any exemptions that may from time to time be granted.

Kenya is yet to establish a Free Trade Zone but the plan is underway to create one in the coastal city of Mombasa for motor vehicles following approval by Parliament almost four years ago.

The Kenyan Parliament however signed a protocol dubbed the African Continental Free Trade Area (AfCTA) allowing for free movement of goods and services within the AU member states. The treaty is yet to be ratified.

Parliament also approved the ratification of the Common Markets for East and Central Africa (Comesa), East Africa Community (EAC), Southern Africa Development Community (SADC) and Tripartite Free Trade Area (TFTA) agreements.

10. What are the main taxes that could apply to foreign investors in your jurisdiction?

- i. Income Tax;
- ii. Capital Gains Tax;
- iii. Withholding Tax;
- iv. Excise Duty;
- v. Value Added Tax;
- vi. Import Duty; and
- vii. Stamp Duty.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

Employment regulation is enshrined in the Employment Act, 2007 and the Labour Relations Act, 2007. These statutes cover a number of issues from employment relationships, sexual harassment, forced labour, discrimination, right to inform employees of their rights, fair wages, termination to trade unions and dispute resolutions.

Foreign investors should equip themselves with the information contained in these statutes to avoid any potential employment disputes.

Foreign investors should note the following provisions:

- Minimum wage is set by the government dependent on skills of the employee and are specific for different urban areas;

- Employees are allowed to join and participate in trade unions related to their sectors of work;
- Employment disputes are settled through the Employment and Labour Relations Court and the courts tend to be employee-friendly;
- Employers are required to remit income tax deductions on behalf of their employees to the Kenya Revenue Authority.
- An employee cannot be terminated at will and the procedure laid out in the Employment Act must be followed to the letter.
- Employees are entitled to basic human rights protections, including freedom from discrimination and the right to equality and fair labour practices. Labour laws in Kenya prohibit child labour, forced labour and slavery.

Work/Residence Permits:

Foreign nationals who intend to work in Kenya are required to obtain work/residence permits issued by the Department of Immigration Services established under the Kenya Citizenship and Immigration Act 2011.

The work/residence permits are classified according to the areas of work to be undertaken as follows:

Class A: Issued to persons who intend to engage in prospecting for minerals or mining.

Class B: Issued to persons wishing to invest in Agriculture and Animal Husbandry.

Class D: Issued to a person who is offered specific employment by a specific employer who is qualified to undertake that employment.

Class G: Issued to investors in specific trade, business or consultancy.

Class I: Issued to a member of a missionary society approved by the Government of Kenya and whose presence is beneficial to the country.

Class K: Residence permit issued to persons who have an assured income derived from sources

outside and undertakes not to accept paid employment of any kind.

Class M: Issued to Conventional Refugees.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

Yes, the Constitution of Kenya 2010 guarantees ownership of land in Kenya by any person. This provision is however not absolute. The Constitution restricts land ownership by non-citizens to a leasehold of a term not exceeding 99 years. A non-citizen may however apply for an extension or renewal of the lease upon the expiration of the 99-year term.

For the purpose of ownership of land through a company, a corporate entity that is wholly owned by Kenyan citizens is deemed to be a citizen. If, however, one of the shareholders is a non-citizen then the company is deemed to be a foreign company and cannot therefore own freehold land.

There exists a further restriction of ownership of agricultural land or land situated in controlled areas as provided under the Land Control Act (Cap 302). The Act describes this land as land that is situated outside a municipality, a township, market, or land that the Cabinet Secretary at the time being in charge of land designates as being controlled and subject to the protections contained in the Act.

The Act provides that any dealing in agricultural land or controlled land the purported effect of which is to sell, transfer, lease, charge, partition or exchange land with a non-citizen is void for all intents and purposes. Therefore, unless exempt by the President of the Republic of Kenya, a non-citizen cannot acquire or deal in any way with agricultural land or land designated as being controlled under the Land Control Act.



Ashwini Bhandari
Partner, Daly & Inamdar Advocates

Ashwini is a Partner in the Corporate & Commercial Department of the Firm, an Advocate of the High Court of Kenya and Solicitor of the Supreme Court of England and Wales. She has over 30 years

of experience practicing Corporate and Commercial Law.

Admitted English Solicitor 1984, Kenyan Advocate 1998, Assistant Solicitor in the Legal Department of British Coal Corporation 1985 and subsequently with Nabarro Nathanson Solicitors until 1991; Head of Legal Affairs at Polygram Film International Limited from 1992 to 1995; subsequently moved to Kenya and joined Daly & Inamdar Advocates in August 1998 as an associate and subsequently became a Partner in the firm in January 2001.

Ashwini is ranked as a leading lawyer by IFLR1000 and Legal 500.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Generally, Kenya encourages foreign investments and ordinarily a company can be 100% foreign owned. As discussed herein, there are a few industry-specific restrictions that could block foreign investments if not adhered to. The restrictions are in the land, mining, financial institutions, capital markets, engineering, health and communications sectors.

An investor is therefore required to acquaint himself with the sector-specific requirements and regulations before setting up business in Kenya.

14. What foreign currency or exchange controls should foreign investors be aware of?

There are no foreign exchange controls in Kenya. In 1995, Kenya repealed the Exchange Control Act and has since moved to a fully market-determined exchange rate system.

Foreign investors are permitted to buy or sell foreign currency without restriction up to the maximum equivalent of US\$ 10,000. If this sum is exceeded, the purpose for the transaction must be explained.

Foreign investors departing or getting into Kenya are allowed to carry up to a maximum of Kshs 500,000 and foreign currency equivalent to a maximum of US\$ 6,250 without having to declare at the point of entry or departure.



Roy Gatheca
Associate, Daly & Inamdar Advocates

Roy is an Associate in the Corporate & Commercial Department of the Firm.

He obtained his Law Degree from the University of Nairobi in 2013.

Roy joined Daly & Inamdar in January 2015 where he undertook his Pupillage, prior to qualifying as an Advocate of the High Court of Kenya in January 2016.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

No, there are no restrictions, approval requirements or potential penalties for withdrawal of investment by a foreign investor. A foreign investor may enter leave the Kenyan market as they please as long as they have remitted all necessary taxes to the relevant authority.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

Kenya has adequate mechanisms to protect foreign investors while doing business within the country.

The Law of Contract Act (Cap 23), as applied together with common law principles, allows any person to apply to court of competent jurisdiction in Kenya for a determination over a contract dispute.

The remedies available to an aggrieved person include damages for breach of contract, specific performance of an obligation under the contract, rescission and injunction.

Numerous contracts drawn and performed in Kenya have also adopted international arbitration clauses to allow for dispute resolution in a neutral jurisdiction that the parties deem fair and relevant to the nature of the transaction.

Foreign investors have further protection under the Foreign Investments Protection Act (Cap 518) that allows them to transfer their profits out of Kenya to their home country. The Act also protects the foreign investor’s property from deprivation without compensation through compulsory acquisition by the government.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

Yes, among the Asia-Pacific jurisdictions, Kenya has entered into bilateral investment treaties with China, India, Pakistan, South Korea and Thailand for the promotion and protection of investments.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

Kenya has a diverse and comprehensive legal framework that ensures the protection of intellectual property rights. These include the following:

- i. Anti-Counterfeit Act ;
- ii. Industrial Property Act;
- iii. Trade Marks Act;
- iv. Copyright Act;
- v. Seeds and Plant Varieties Act; and
- vi. Universal Copyright Convention.

Kenya is also a member of the World Intellectual Property Organization (WIPO) and of the Paris Union (International Convention for the Protection of Industrial Property).

Kenya is a member of the African Regional Intellectual Property Organization (ARIPO) that was established by the Lusaka Agreement of 1976 and has the capacity to hear applications for patents and registered trademarks in its member states.

Kenya is also a signatory to the Madrid Agreement Concerning the International Registration of Marks.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

Yes, foreign investors need to acquaint themselves with the Environment Management and Coordination Act 1999 which is the main legislation governing environment regulation in Kenya. The Act establishes the National Environmental Authority which oversees the enforcement of environmental regulation in the country.

Of importance, foreign investors should be aware that before embarking on a project

touching upon land, an environmental impact assessment will need to be carried out to assess the impact of the project on the environment.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

Yes. The main government body that foreign investors can turn to for information on investment is the Kenya Investment Authority. Potential foreign investors may interact with the Authority online through www.invest.go.ke.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

The proposed Income Tax Bill 2018 intends to introduce a raft of changes that would impact foreign investment in Kenya.

The Bill proposes to eliminate the 150% investment deduction allowances currently available to investors constructing buildings or installing machinery outside of Nairobi, Mombasa and Kisumu. This deduction was an incentive to spur investment outside these major cities and it remains to be seen whether such investment will ease with the proposed elimination of the deduction.

The Bill proposes an introduction of a 10% tax on income repatriated by foreign branches that will be calculated on the basis of the net value of the branch rather than the amounts actually repatriated. This will be paid in addition to the 30% prevailing corporation tax.

The Bill further proposes a change in thin capitalisation rules for foreign-controlled companies that place heavy reliance on loans rather than equity. The Bill proposes to change the current debt to equity ratio of 3:1 to 2:1. This proposed change is likely to reduce the headroom for

foreign borrowing and thereby affect foreign financing.

The Bill proposes to make changes to the deemed interest rate introduced in 2009 on interest-free loans on foreign-controlled companies. The proposal is that the deemed interest rate will be based on market interest rates applicable in the country of origin and not local rates applicable in Kenya.

The Bill introduces a 5% withholding tax on payments made to foreign insurance companies in a bid to promote local insurance companies.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

Enforcement of local laws by various government agencies has greatly increased in a bid to promote tax collection and curb restrictive trade practices, corruption, money laundering and financial reporting.

The Competition Authority has augmented its monitoring of restrictive trade practices such as price-fixing within certain industries, including instituting enforcement action.

The Ethics and Anti-Corruption Commission embarked on a large-scale drive to curb corruption and more-so with the enactment of the Bribery Act 2016 which has criminalised bribery within the private sector and made it an offence to give and receive a bribe. The Bribery Act 2016 has far reaching implications on Kenyan businesses as well as foreign organisations doing business in Kenya.

The Kenya Revenue Authority has in the recent years implemented major reforms in its tax collection systems. The Authority has introduced an online system for the filing of tax returns and tax payments. The online system links other public services such as land transactions so as to widen the base of registered taxpayers and ensure the efficient collection of taxes. There has also been a change in legislation increasing penalties for noncompliance.

The Central Bank of Kenya has implemented rules requiring detailed written disclosures for any cash deposit or withdrawal exceeding US\$ 10,000. This is in line with the Proceeds of Crime and Anti-Money Laundering Act with the assistance of the Financial Reporting Centre.

专题：肯尼亚

律所：Daly & Inamdar Advocates

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1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

肯尼亚一直被奉为东非的投资中心，也是东非最受欢迎的投资目的地。在安永会计师事务所 2017 年的一份报告中，肯尼亚被评为继摩洛哥之后非洲第二大最具吸引力的目的地。投资者选择肯尼亚作为投资中心的主要原因是其不断完善的基础设施，大量的熟练工人以及肯尼亚人对新产品和服务的高度适应性。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

外国投资的主要法律有：

- i. 2004 年第 6 号《投资促进法案》，该法案设立了肯尼亚投资局，以通过协助投资者获得投资所需的许可并提供其他协助和激励措施来促进和鼓励投资；
- ii. 《外国投资保护法》（第 518 章），该法案对已获批的外国投资和外国投资者的财产提供保护，并允许将利润汇回本国。

其它法律有：

- i. 2010 年《肯尼亚宪法》规定，国际法的通行规则和肯尼亚批准的条约构成肯尼亚法律的一部分。这使得肯尼亚批准的国际贸易和投资条约成为焦点，例如《关税与贸易总协定》、《建立世界贸易组织协定》、《关于解决国家与其他国家国民之间投资争端的公约》、《联合国国际贸易法委员会国际商事仲裁示范法》和 1958 年《纽约公约》。
- ii. 2015 年《公司法案》、《商业登记法案》和《破产法案》，上述法律旨在促进肯

尼亚企业的注册和运营。这些法律建立了各种机构，以促进本地和外国公司的注册以及解决破产问题。

- iii. 《犯罪收益和洗钱法案》规定了洗钱罪，并采取了打击犯罪的措施，例如规定识别、追查、冻结、扣押和没收犯罪所得，以便建立一个和平的国家，吸引外国投资。
- iv. 《出口加工区法案》和《经济特区法案》旨在吸引外国直接投资并产生技术转让、知识溢出和示范效应，这将成为国内企业家参与非传统产品生产的催化剂。

3. 对外国投资有哪些限制？这些限制在各级政府有无不同？

一般而言，肯尼亚允许外国私营实体建立和拥有商业企业，并从事各种形式的有偿活动。但是，诸如土地、采矿、金融机构、资本市场、工程、卫生和电信之类的领域要求肯尼亚公民持有最低比例的股权。

如本指南其他部分所述，非肯尼亚人对农业和永久业权土地的所有权也有限制。

这些限制在地方政府层面没有差异，因为外国投资立法是适用于全国的国家法律。

4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的企业的主要要求有哪些？

外国投资者最常见的企业形式如下：

- i. 根据 2015 年《公司法案》成立的（私人或公众）股份有限公司；
- ii. 外国分支机构；

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iii. 根据 2011 年《有限责任合伙法案》设立的有限责任合伙企业。

然而,最常见的企业形式还是股份有限公司。通过引入在线商业登记服务(可通过 www.ecitizen.go.ke 获取),使得公司的设立过程相当容易。设立公司的过程通常需要约 7-10 个工作日。

拟在肯尼亚成立公司的人必须提供以下详细信息:

- 公司结构及该结构的详细信息;
- 公司的地址和联系人的详细信息;
- 公司拟议股东的详细信息;
- 拟议董事和授权签字人的详细信息;
- 拟议公司秘书的详细信息;以及
- 公司历史的详细信息(例如,该公司是否成立子公司,母公司是否位于肯尼亚,是否为合并或收购的公司等)

一旦公司成立,公司的董事必须于每年的公司注册成立周年日或其会计参考日期(如与公司注册成立日期不同)向公司注册处提交年度申报表。

私人公司还必须编制年度财务报表并向公司注册处提交某些财务记录。

未向公司注册处提交必要的法定文件可能导致对公司及其个别高级职员进行罚款或刑事制裁。

5. 在哪些情形下外国投资项目需要政府审批? 该等审批的流程与时间表如何?

肯尼亚一般没有对外国投资进行审批的要求。

一旦在规定的申请表上提交提案,肯尼亚投资局就会处理并批准新的投资。公司注册证明必须附在申请表上。

如果投资可能对安全、健康或环境产生不利影响,在获得批准之前,该投资还需得到主管当局(如国家环境管理局、公共卫生当局等)的许可。

此外,在获得肯尼亚投资局批准之前,必须获得其母国相关部门对某些限制区域投资的许可。这些投资包括:

- 生产消费品方面的投资(海关许可);
- 林业产品和采矿方面的投资(环境与自然资源部的许可);
- 能源和石油产品方面的投资(能源部的许可);
- 旅游业投资(旅游部的许可)。

获得此类批准的流程和时间范围取决于签发批准的机构以及投资的性质。

6. 在您所在司法管辖区,哪些行业受到严格监管或限制(如有)?相反地,较为开放或不受限制的行业有哪些(如有)?

在肯尼亚受到严格监管的领域包括:

- 电信领域;
- 采矿领域;
- 私人安保领域;
- 建筑领域;
- 金融和银行领域;以及
- 保险领域。

肯尼亚投资较为开放的领域包括:

- 能源领域;
- 交通领域;
- 零售领域;
- 餐厅;
- 技术;以及
- 卫生保健

7. 在您所在司法管辖区,是否存在针对与某些国家或地区进行经商的任何限制?(例如制裁)

肯尼亚没有明确的个人制裁制度,也没有针对受制裁国家或实体的正式数据库。

然而,肯尼亚是联合国的成员国,因此受《联合国宪章》的约束,包括联合国的任何决议和制裁。



Shitul Shah
合伙人, **Daly & Inamdar Advocates**

Shitul是该律师事务所企业与商业部的合伙人。

他是在肯尼亚高等法院具有辩护资质的律师,纽约的律师代理人及法律顾问,同时也是英格兰和威尔士高级法院的事务律

师。他持有英格兰和威尔士律师管理局颁发的现行执业证书。

Shitul于1999年获得伦敦大学伦敦经济学院法学学士学位(荣誉学位),于2001年在Kaplan&Stratton接受培训并获得肯尼亚高等法院的辩护律师资格。他随后加入Daly&Figgis律师事务所并在企业与商业部担任助理至2005年;之后,他在英国不同的行业执业6年,且在此期间曾担任跨国IT/电信咨询公司的法律部门负责人,曾在一个员工总数超过2500人的非营利性公共组织担任律师,并曾在美国一家在线业务公司担任独立英国法律专家。

Shitul在本地和外国法律跨境商业交易方面拥有丰富的经验。

他被《国际金融法律评论》和《法律500强》评为高度认可级律师。

8. 对外国投资者有哪些优惠或激励措施(如有)?

肯尼亚的外国投资激励措施有限,一般不区别对待本地和外国投资者,但政府享有法定垄断的领域以及有当地限制或所有权有要求的领域除外。

肯尼亚激励措施集中的主要地区是经济特区和出口加工区,企业在这些地区享受多项税收优惠。

税收优惠包括在经济特区经营的企业应付给非居民的股息免税,经济特区公司向非居民支付的利息预扣税从15%减免至5%,提供应税商品和服务实行0%的增值税,进口货物和服务的消费税免税,允许150%扣除经济特区公司拥有的建筑物和机械的成本。

在迎接国际汽车制造商进入肯尼亚市场的举措下,也为汽车装配商提供了优惠措施。汽车装配商可在公司运营初期的前五年享受公司税从30%降低至15%的优惠政策。

肯尼亚还对直接或明确用于特定行业而进口或购买的货物免征增值税,例如旅游设施的建设、专科医院和工业园区的建设。但是,在享受豁免之前,必须获得相关内阁秘书的批准。

肯尼亚在减少与在其国内设立企业和获得必要许可等相关流程的官僚主义拖延方面也取得了长足进展。随着在线商业登记系统的引入以及工业化和企业发展部下属的商业环境保护部门对所发起措施的实施,建立和经营企业的时间和成本大幅下降。

《投资保护法》设立了肯尼亚投资局，该机构提供一站式服务，可在此获得所有必要的投资许可、批准和豁免。肯尼亚投资局旨在改善在肯尼亚的经商环境。

9. 在您所在司法管辖区，是否存在任何自由贸易区、经济特区或工业区？这些地区有哪些要求？

是，肯尼亚确实有根据《经济特区法案》(2015年第16号)和《出口加工区法案》(第517章)而分别设立的经济特区和出口加工区。

对经济特区的要求如下：

外国实体可以将自己设立为经济特区的开发商、运营商或企业。设立前的要求如下：

- 该实体必须是根据2015年《公司法案》在肯尼亚注册登记的，旨在开展经济特区活动。对该等公司的外国所有权没有限制。
- 不管使用何种方式，该实体必须在经济特区内获得土地。
- 该实体必须具备相应的技术和财务专业知识，以开展拟议的经济特区活动。
- 该实体必须从事经济特区内允许的活动。
- 该实体的活动不得以任何方式危害环境或国家安全。

对出口加工区的要求如下：

对于任何在出口加工区建立的实体，其均须满足以下要求：

- 无论其是否百分之百由外资所有，拟议的商业企业都必须在肯尼亚注册成立，且其唯一目的是在出口加工区内生产用于出口的产品或服务；
- 该企业拟从事出口加工区内出口加工企业有资格开展的任何活动；
- 该企业不得对环境产生有害影响，不得从事非法活动，不得侵犯国家安全，也不得构成潜在健康危害；且
- 除了可能不时获得的豁免外，须根据当时有效的法律开展业务。

肯尼亚尚未建立自由贸易区，但正筹划在沿海城市蒙巴萨建立一个针对机动车辆的自由贸易区，该计划在四年前即已获得了议会的批准。

然而，肯尼亚议会签署了一项名为《非洲大陆自由贸易区》的协定，允许非洲联盟成员国之间货物和服务的自由流动。该条约尚待获得批准。

议会还批准正式认可中东非共同市场、东非共同体、南非发展共同体和三方自由贸易区协议。

10. 在您所在司法管辖区，可能适用于外国投资者的主要税种有哪些？(例如个人所得税、企业所得税、增值税与社会保险费)

- i. 所得税；
- ii. 资本利得税；
- iii. 预扣税；
- iv. 消费税；
- v. 增值税；
- vi. 进口税；以及
- vii. 印花税。

11. 在您所在司法管辖区，外国投资者应该注意哪些劳动法律法规？外国人是否能够通过投资活动获得居留许可或者工作签证？

2007年《就业法案》和2007年《劳动关系法案》对就业监管进行了规定。这些法规涉及一系列问题，包括雇佣关系、性骚扰、强迫劳动、歧视、雇员知情权、公平工资、工会终止以及争议解决等。

外国投资者应该掌握这些法规中包含的信息，以避免任何潜在的雇佣纠纷。

外国投资者应注意以下规定：

- 最低工资由政府根据员工的技能进行设定，在不同的城市地区有不同的具体标准；
- 允许员工加入和参加与其工作领域相关的工会；

- 雇佣纠纷通过就业与劳动关系法院解决，法院往往倾向于保护雇员一方；
- 雇主必须代表其雇员向肯尼亚税务局汇转雇员的所得税扣除额。
- 不得随意终止与雇员的雇佣关系，且必须严格遵守《就业法案》中规定的相应流程。
- 雇员有权享受基本的人权保护，包括免于歧视、享受平等以及公平的用工制度的权利。肯尼亚的劳工法律禁止使用童工、强迫劳动和进行奴役。

工作 / 居留许可：

拟在肯尼亚工作的外国国民必须获得根据2011年《肯尼亚公民和移民法案》设立的移民局所签发的的工作 / 居留许可。

根据所从事的工作领域，工作 / 居留许可的分类如下：

- a. 类：签发给拟从事矿产或采矿勘探的人员。
- b. 类：签发给希望进行农业和畜牧业投资的人员。
- d. 类：签发给获得某一特定工作的人员，且该工作由有资格从事该工作的特定雇主提供。
- g. 类：签发给特定贸易、商业或咨询领域的投资者。
- i. 类：签发给肯尼亚政府批准的传教会成员，且该成员的存在须对肯尼亚有益。
- k. 类：签发给可以从外部来源获得保障性收入的且承诺不接受任何形式有偿工作的人员的居留许可。
- m. 类：签发给常规难民。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

是，2010年《肯尼亚宪法》保障任何人对其在肯尼亚土地的所有权。然而，这项规定并非绝对。《肯尼亚宪法》将非公民的土地所有权限制在不超过99年的租赁期内。但是，非

公民可以在99年期限届满时申请延长或续签租约。

为了通过公司拥有土地，由肯尼亚公民全资拥有的公司实体被视为公民。但是，如果其中一个股东为非公民，则该公司将被视为外国公司，从而不能拥有永久业权土地。

根据《土地管制法案》(第302章)的规定，对农业用地或位于受管制地区的土地的所有权有进一步的限制。《土地管制法案》将该等土地描述为位于市区、乡镇、市场之外的土地，或者被当时掌管土地的内阁秘书指定为受管制并受该法案保护的土地区。

该法案规定，无论是出于何种意图与目的，任何拟将农业用地或受管制土地出售、转让、出租、抵押、分割给非公民或与之交换此类土地的交易均是无效的。因此，除非获得肯尼亚共和国总统的豁免，否则非公民不得以任何方式获得或交易农业用地或被《土地管制法案》指定为受管制土地的土地。

13. 在您所在司法管辖区，是否存在在特定情形下阻止外国投资的任何程序？

一般而言，肯尼亚鼓励外国投资，且通常情况下公司可以100%由外资所有。如本文所述，某些特定行业会有一些限制，如果不遵守此类限制，即可能会阻碍外国投资。这些限制涉及土地、采矿、金融机构、资本市场、工程、卫生及通信行业。

因此，在肯尼亚设立企业之前，投资者必须熟悉行业特定的要求和规定。

14. 外国投资者应该注意哪些外国货币或外汇管制？

肯尼亚没有外汇管制。1995年，肯尼亚废除了《外汇管制法案》，并自此转向完全由市场决定的汇率制度。

允许外国投资者在10,000美元的限度内，不受限制地购买或出售外币。如果超过此金额限制，则必须说明交易的目的。



Ashwini是该律师事务所企业与商业部的合伙人，肯尼亚高等法院的辩护律师以及英格兰和威尔士最高法院的事务律师。她拥有超过30年的公司法和商法执业经验。

她于1984年获得英国事务律师资格，1998年获得肯尼亚辩护律师资格，1985年在英国煤炭公司法律部担任助理律师，随后加入Nabarro Nathanson担任律师直至1991年；1992年至1995年，在Polygram Film International Limited担任法律事务主管；随后移居肯尼亚，并于1998年8月加入Daly & Inamdar Advocates担任助理，之后于2001年1月成为该律师事务所的合伙人。

Ashwini被《国际金融法律评论》和《法律500强》评为领先级律师

Ashwini Bhandari
合伙人, Daly & Inamdar Advocates



Roy是公司企业与商业部的助理。

他于2013年获得了内罗毕大学的法律学位。

Roy于2015年1月加入Daly & Inamdar 律师事务所并在此完成了见习期，之后于2016年1月获得了肯尼亚高等法院的辩护律师资格。

Roy Gatheca
律师, Daly & Inamdar Advocates

离开或进入肯尼亚的外国投资者可以携带最高 500,000 肯尼亚先令和最高相当于 6,250 美元的外币，而无需在入境或离境时进行申报。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

没有，外国投资者撤回投资没有任何限制和审批要求，也不存在可能的处罚。只要将所有必要的税款汇给有关当局，外国投资者即可以随意退出肯尼亚市场。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

肯尼亚有充分的机制来保护在其国内经商的外国投资者。

根据与普通法原则一起适用的《合同法》（第23章）的规定，允许任何人向肯尼亚有管辖权的法院申请裁决合同纠纷。

受害人可以享有的补救措施包括违约赔偿、合同义务的具体履行、撤销和禁令。

在肯尼亚拟定和执行的众多合同也采用了国际仲裁条款，允许在当事方认为系公正且与交易性质相关的中立管辖区内解决争议。

《外国投资保护法案》（第518章）规定了为外国投资者提供的进一步保护。该法案允许外国投资者将其利润从肯尼亚转移至其母国。该法案还通过政府的强制收购来保护外国投资者的财产免于被无偿剥夺。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

存在。在亚太国家中，肯尼亚与中国、印度、巴基斯坦、韩国和泰国签订了双边投资协定，以促进和保护投资。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

肯尼亚拥有多元化且全面的法律框架，可确保知识产权的保护。其中包括：

- i. 《反伪造法案》；
- ii. 《工业产权法案》；
- iii. 《商标法》；
- iv. 《版权法》；
- v. 《种子和植物品种法案》；以及
- vi. 《世界版权公约》。

肯尼亚还是世界知识产权组织和巴黎联盟（《保护工业产权国际公约》）的成员。

肯尼亚是非洲地区知识产权组织的成员，该组织是根据1976年《卢萨卡协定》设立的，并且能够受理其成员国的专利和注册商标申请。

肯尼亚也是《商标国际注册马德里协定》的签署国。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

是，外国投资者需要了解1999年《环境管理与协调法案》的规定，该法案是肯尼亚环境监管的主要法规。该法案设立了国家环境管理局，负责监督国内环境法规的执行情况。

重要的是，外国投资者应该意识到，在开始涉及土地的项目之前，需要进行环境影响评估，以评估项目对环境的影响。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

是。外国投资者可以获得投资信息的主要政府机构是肯尼亚投资局。潜在的外国投资者可以通过 www.invest.go.ke 与投资局进行线上互动。

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

拟议的2018年《所得税法案》旨在引入一系列可能影响肯尼亚外国投资的变化。

该法案提议取消目前在内罗毕、蒙巴萨和基苏木以外的地区建造建筑物或安装机械的投

资者可享受的 150% 投资扣除补贴。该等扣除是刺激在这些主要城市之外的地区进行投资的激励措施，这类投资是否会随着扣除激励的取消而有所放缓仍有待观察。

该法案还建议对外国分支机构转回其母国的收入征收 10% 的税，该税额将基于该分支机构的净值而非实际汇回的金额进行计算。该项税收是在 30% 的现行公司税的基础上额外支付的费用。

2018 年《所得税法案》进一步建议对高度依赖贷款而非自有资产的外资控股公司的资本弱化规则进行修改。该法案建议将目前的负债股权比率从 3:1 调整至 2:1。这一提议的变更可能会减少外国借款的空间，从而影响外国融资。

该法案建议修改 2009 年引入的针对外资控股公司无息贷款的认定利率，即认定利率将基于来源国适用的市场利率，而非肯尼亚适用的当地利率。

2018 年《所得税法案》对向外国保险公司支付的款项征收 5% 的预扣税，以促进当地保险公司的发展。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

各种政府机构大幅增加了对当地法律的执行，以促进征税并抑制限制性贸易行为、腐败、洗钱和财务虚报。

竞争管理局加强了其对限制性贸易行为的监督（例如某些行业内的价格垄断），包括采取执法行动

道德与反腐败委员会开始了大规模遏制腐败的行动，且随着 2016 年《反贿赂法案》的制定，该行动的力度更大。该法案将私营部门的贿赂视为犯罪，并将行贿和受贿也定为犯罪行为。2016 年《反贿赂法案》对肯尼亚企业以及在肯尼亚经商的外国组织产生了深远的影响。

肯尼亚税务局近年来对其税收征收系统进行了重大改革。税务局引入了一个在线系统，用于提交纳税申报表和征税。该在线系统将土地交易等其他公共服务联系起来，以扩大注册纳税人的基础，并确保有效征税。立法也发生了变化，增加了对违规行为的处罚。

肯尼亚中央银行已实施了一些细则，要求对任何超过 10,000 美元的现金存款或提款进行详细的书面披露。在财务报告中心的协助下，这一要求与《犯罪收益与反洗钱法案》中的规定保持一致。

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1. What are the main reasons foreign investors invest in your jurisdiction?

New Zealand has a market-focused economy which encourages foreign investment, not only through its laws, but indirectly through government policy and its foreign exchange and financial markets. This is evidenced by the significant level of foreign investment in New Zealand's stock exchange and in New Zealand property.

2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

While there are very few restrictions imposed on foreign companies as to the type of business operations permitted in New Zealand, foreign investment is controlled in New Zealand by the Overseas Investment Act 2005 (OI Act) and the Overseas Investment Regulations 2005 made pursuant to the OI Act (OI Regulations). In essence, they regulate investment by overseas persons in New Zealand's sensitive land, significant business assets and fishing quota.

The definition of an "overseas person" is set out in section 7 of the OI Act and includes any:

- individual not a New Zealand citizen and not ordinarily resident in New Zealand;
- body corporate incorporated outside New Zealand or any New Zealand subsidiary owned 25% (per cent) or more by any such body corporate;

- body corporate of which 25% (per cent) or more of any class of shares is held by an overseas person;
- body corporate of which the power to control the composition of 25% (per cent) or more of the governing body of the body corporate is held by an overseas person; and
- body corporate of which the right to exercise or control the exercise of 25% (per cent) or more of the voting power at any meeting of the body corporate is held or owned 25% (per cent) or more by an overseas person.

The definition of "sensitive land" is set out in full in Part 1, Schedule 1 of the OI Act. Examples of sensitive land include any:

- non-urban land that exceeds five hectares;
- land on islands which is not the main islands (North Island and South Island), and other islands listed in Part 2 of Schedule 1;
- the foreshore and seabed; and
- land greater than 0.4 hectares which adjoins sensitive land.

The definition of "significant business assets" is set out in section 13 of the OI Act. Examples include:

- establishing a new business for a period exceeding 90 days in any year (either on its own or in partnership with another person) where the total expenditure expected to be incurred in setting up the business exceeds NZ\$ 100 million;
- acquiring 25% (per cent) or more ownership or control of the securities of a New Zealand company where the value of the securities, the consideration for the transfer, or the value of the assets of the New Zealand target

company, and any 25% (per cent)* or more subsidiaries, exceed NZ\$ 100 million;

- increasing the proportion of ownership or control of the securities of such a company where the overseas person already has 25% (per cent) or more ownership or control; and
- acquiring property (including goodwill and other intangible assets) used in carrying on a business in New Zealand where the consideration provided for the acquisition exceeds NZ\$ 100 million.

Note that these thresholds are increased for Australian investors. Specifically, NZ\$ 516 million in the case of Australian non-government investors and NZ\$ 108 million for Australian government investors.

Where consent is required for an investment, it may only be given if the “investor test” is satisfied by the applicant. This test includes that the overseas person or, if that person is not an individual, the individuals with control of the relevant overseas person, must:

- have business experience and acumen;
- have demonstrated financial commitment;
- be of good character; and
- not be an individual of the kind referred to in the Immigration Act 2009 ss 15 or 16 (which lists persons not eligible for exemptions or permits under the Act, usually because of criminal or terrorist records).

There are additional criteria that are required to be satisfied by the applicant as set out in the OI Act and OI Regulations.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

As noted above, the OI Act places restrictions on investments by overseas persons in relation to sensitive land, significant business assets and fishing quotas. Each of these investments require consent under the OI Act.

The restrictions under the OI Act are consistent across all levels of the New Zealand government.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

Overseas companies or investors may establish their presence in New Zealand through:

- registering in New Zealand as a branch of an overseas company or enterprise;
- establishing a local subsidiary in New Zealand (as a limited liability company);
- the acquisition of a New Zealand registered company, which would become a subsidiary of the overseas company;
- establishing a limited liability partnership or general partnership;
- creating a trust; or
- pursuing a joint venture.

Incorporating a limited liability company

The most common type of investment vehicle used in New Zealand is a limited liability company. In order to incorporate a company in New Zealand, the proposed company must have:

- a unique company name;
- one or more shares;
- one or more shareholders, having limited or unlimited liability for the obligations of the company; and
- at least one director who must be either a New Zealand or an Australian resident. In the case of an Australian resident director, they must also be the director of a company in Australia (excluding a branch).

While there are a number of steps required to incorporate a New Zealand company with the New Zealand Companies Office (being the Government agency responsible for administering New Zealand’s business registers), the process itself is relatively straightforward.

Outside of special circumstances, a New Zealand company can typically be incorporated in one to two weeks. The key steps to incorporate a company include:

- reserving a company name;
- providing company contact details;
- providing the names, date of birth, addresses of all of the directors and shareholders (and, in most cases, evidence of such);
- providing the country of origin, company registration number or identifier and address of the ultimate holding company (if any); and
- providing the Companies Office with signed consent forms from the proposed director(s) and shareholder(s) of the company.

Financial reporting for companies

Financial reporting in New Zealand is relatively straightforward for most small to medium-sized companies. Companies are generally not required to prepare full, general-purpose financial statements unless they fall within certain categories. These categories include:

- “large” companies;
- public companies;
- “large overseas companies” that carry on business in New Zealand;
- companies with more than 10 shareholders, unless the company has opted out of compliance; and
- companies with fewer than 10 shareholders if the company has opted into compliance.

Large companies, public companies and large overseas companies will be required to file their financial statements with the New Zealand Companies Office. The financial statements filed with the Companies Office are registered and are publicly available on the Companies Office website.

All companies, regardless of size and shareholder numbers, are required to file an annual return with the New Zealand Companies Office

(confirming the information provided to the Companies Office is up-to-date) by the end of the company’s filing month.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

As discussed in respect of questions 2 and 3 above, foreign investors must obtain consent under the OI Act for transactions which involve sensitive land and significant business assets.

Applicants are expected to complete the application template provided by the Overseas Investment Office (the regulatory unit within Land Information New Zealand, tasked with the administration of the OI Act) (OIO). The application and its supporting information must be submitted electronically.

The OIO will review the application, before making a recommendation on whether the application should be permitted to the relevant Minister. In assessing the application, the OIO will consider both the investor and the investment itself, including the benefits it will bring to New Zealand. The Minister of Finance, the Minister of Land Information (for sensitive land applications), and the Minister of Primary Industries (for fishing quota applications) make the final decision on whether to allow a proposed investment to proceed and are not bound by the OIO’s recommendations.

The timeframe for obtaining OIO consent will vary depending on the kind of application made. On average, it takes approximately 105 working days from start to finish. The timeframe for significant business asset applications are the longest, as it takes approximately 120 working days. These timeframes exclude days where the OIO has put the application on hold while:

- the OIO is waiting for the applicant to provide further information;
- the OIO is consulting with a third party about the application; or

- the recommendation is with the Ministers for decision.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

Despite welcoming foreign investment, New Zealand was considered the most restrictive country in the 2017 OECD Foreign Direct Investment Regulatory Restrictiveness Index. In particular, the following sectors / industries are considered to be heavily restricted in New Zealand:

- primary industry;
- fisheries;
- air; and
- telecommunications.

Generally speaking, New Zealand's financial markets (equity, debt, futures and options) are principally regulated by industry regulators via a layer of statutory regulation. Securities and stock exchanges are required to be registered and are regulated by the Financial Markets Authority. Currently, New Zealand has one registered exchange, the New Zealand Exchange Limited, which operates the main stock exchange (known as the NZSX), a debt market (known as the NZDX) and an alternative exchange (known as the NZAX) for smaller issuers.

Due to New Zealand's unequivocal policy on free trade, foreign companies investing in certain sectors in New Zealand, such as tourism or the exportation of locally manufactured goods (which directly contribute to foreign exchange earnings), are particularly welcomed by the New Zealand government through such bodies as Tourism New Zealand and New Zealand Trade and Enterprise, which provide assistance in these areas. Some regional authorities also provide limited assistance to investors in their particular area.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

New Zealand does not have its own legislation that imposes standalone sanctions. However, as a UN Member State, New Zealand implements the sanctions the UNSC imposes under the United Nations Act 1946.

8. What grants or incentives are on offer to foreign investors, if any?

Aside from the New Zealand Screen Production Grant (which incentivises international production to take place in New Zealand), there are limited grants or incentives on offer to foreign investors specifically.

Foreign investors may also apply to Callaghan Innovation, a Crown entity of New Zealand, which offers government funding and grants. To apply for research and development grants, the business must be either registered under the Companies Act 1993 or the Limited Partnerships Act 2008.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

New Zealand does not have any specific free trade, special economic or industrial zones.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

Income tax

As a general rule, residents in New Zealand are taxed on their worldwide income, whereas non-residents are only taxed on income derived from New Zealand sources. Individuals are treated as New Zealand tax residents if they:

- have a permanent place of abode in New Zealand, whether or not they have such an abode outside New Zealand;
- are physically present in New Zealand for more than 183 days within any 12-month period; or
- are away from New Zealand in the service of the New Zealand government.

Companies are treated as New Zealand tax residents if:

- they are incorporated in New Zealand;
- they have their head office situated in New Zealand;
- they have their centre of management in New Zealand; or
- control of the company by their directors is exercised in New Zealand whether or not decision-making by their directors is confined to New Zealand.

New Zealand residents pay the following rates of tax:

- income up to NZ\$ 14,000 — 10.5% (per cent);
- income from NZ\$ 14,001 up to NZ\$ 48,000 — 17.5% (per cent);
- income from NZ\$ 48,001 up to NZ\$ 70,000 — 30% (per cent);
- income of NZ\$ 70,001 or more — 33% (per cent); and
- all companies pay a flat rate tax of 28% (per cent).

If New Zealand is a party to a double tax agreement with a foreign country, then the rate New Zealand imposes on dividend income is generally 10% (per cent), with the maximum being 15% (per cent).

Goods and Services Tax

Goods and services tax (GST) is payable at the rate of 15% (per cent) on the value of any goods or services supplied in New Zealand by a GST-registered person. It is an indirect consumption tax based on a value-added principle.

GST is levied on goods and services supplied by a person carrying on a taxable activity. GST is also levied on imported goods. Persons who are registered for GST must charge GST on all of their taxable supplies (or sales) and can claim a credit for any GST paid on expenditure incurred in carrying on their taxable activity. The net difference results in either a payment to or a refund from the New Zealand Inland Revenue Department.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

New Zealand's employment relations are based on a legislative minimum code. The Employment Relations Act 2000 is the main piece of employment legislation and requires the employee and employer to deal with each other in good faith. It oversees matters of employment, including:

- minimum terms and conditions in employment agreements;
- collective bargaining; and
- processes and remedies for unjustified dismissals and unjustified actions during employment (in New Zealand, an employer must justify every employee's dismissal).

There are further statutes which provide minimum entitlements for employees, including the following:

- the Human Rights Act 1993 which prohibits discrimination on a wide range of grounds;
- the Minimum Wage Act 1983 which establishes minimum working wages;
- the Equal Pay Act 1972 which prohibits unequal payment for work of substantially the same type for men and women;
- the Holidays Act 2003 which provides sick leave, bereavement leave, annual holidays and statutory holidays;

- the Parental Leave and Employment Protection Act 1987 which provides parental leave;
- the Wages Protection Act 1983 which sets out how wages must be paid and how deductions (for example, union-related deductions or Kiwisaver, New Zealand’s superannuation scheme) are taken from an employee’s wages; and
- the Health and Safety at Work Act 2015 which sets requirements to keep people in the workplace safe.

Residence permits and visas are required for potential migrants who wish to settle permanently in New Zealand. New Zealand residence permits and visas may be obtained through the ‘Investor’ category (in which an applicant may qualify for residence on the basis of investments made in New Zealand). To be eligible for the ‘Investor’ visa classes, the applicant must either have at least NZ\$ 10 million to invest into New Zealand for a three-year period or be an experienced business person who has a minimum of NZ\$ 3 million in available funds or assets to invest into New Zealand over four years.

If an ‘Investor’ residence application is approved, the applicant must retain the investment funds in an acceptable investment for three years for Investor Plus (Investor 1 Category) or four years for Investor (Investor 2 Category). The principal applicant must meet the requirements for the minimum amount of time spent in New Zealand (44 or 146 days) each year in years two, three, and four of the four-year investment period for ‘Investor’ migrants, or in years two and three of the three-year investment period for ‘Investor Plus’ migrants.

There are two ways an applicant may qualify for residence under the ‘Entrepreneur’ category by:

- establishing or purchasing a business in New Zealand; and
- being self-employed in that business for the last two years; and

- that business to have significantly benefited New Zealand; or
- the applicant investing NZ\$ 0.5 million or more into its business; and
- creating a minimum of three new full-time jobs for New Zealand citizens or residents.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

As set out in respect of questions 2 and 5, the acquisition of ‘sensitive land’ by an overseas person requires consent under the OI Act. The OI Act is currently under review by the New Zealand government and is expected to be amended with further restrictions. The most significant change proposed is to include residential land in the definition of ‘sensitive land’, so that residential properties and land may only be acquired by foreign investors in very limited circumstances.

The New Zealand government is also looking to introduce a further set of conditions which the Minister must be satisfied with before approving an OI Act application. This may involve the applicant showing:

- its commitment to New Zealand and meeting the occupation and on-selling requirements; and
- that the investment has a substantial and identifiable benefit to New Zealand in that the transaction will or is likely to increase housing on the land.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

As set out in question 2, foreign investment can be blocked if the relevant Ministry does not approve it under the OI Act.

14. What foreign currency or exchange controls should foreign investors be aware of?

New Zealand has a largely unrestricted currency exchange regime. Almost all exchange controls were lifted at the end of 1984. Since March 1985, the New Zealand dollar, known as the ‘Kiwi’, has been allowed to float freely. The absence of exchange controls has had significant effects on the New Zealand economy, including:

- all remittances of money can be made through registered banks (subject to United Nations sanctions, disclosures required under New Zealand’s financial transactions reporting rules, and anti-terrorism financing rules);
- interest, profits and dividends earned in New Zealand can be freely remitted to non-resident persons (subject to non-resident withholding tax considerations and other taxation issues); and
- no approval is required in respect of the repatriation of non-resident capital, including gains or capitalized profits.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

There are presently no restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in New Zealand.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

Reciprocal Enforcement of Judgments Act 1934 (REJ Act)

For judgments that are from Australia, the United Kingdom or a country in which New Zealand has a reciprocal agreement with (which includes countries such as Hong Kong,

Singapore and Malaysia), parties may register a foreign superior court judgment for New Zealand courts to enforce a judgment for money.

Trans-Tasman Proceedings Act 2010 (TTP Act)

The TPP Act allows Australian judgments which are final and conclusive to be enforced in New Zealand. Unlike the REJ Act, the TTP Act allows judgments from lower courts (and tribunals in specific circumstances) to be enforced. Further, non-money orders may be enforced under the TTP Act.

Senior Courts Act 2016

If the judgment was entered into in any Commonwealth court, and is a money order, a party may also file a memorial judgment in the New Zealand High Court, and the court may order for the judgment to be enforced in New Zealand.

If the country is not in the Commonwealth or does not have a reciprocal agreement with New Zealand, then the party may seek enforcement under the common law.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

New Zealand has a number of free trade agreements in force, including:

- NZ-China Free Trade Agreement;
- NZ-Republic of Korea Free Trade Agreement;
- NZ-Australia Closer Economic Relations;
- ASEAN-Australia-New Zealand Free Trade Area;
- NZ-Hong Kong, China Closer Economic Partnership;
- NZ-Malaysia Free Trade Agreement;
- NZ-Singapore Closer Economic Partnership Agreement;

- NZ-Thailand Closer Economic Partnership Agreement;
- Economic Cooperation with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and
- Trans-Pacific Strategic Economic Partnership Agreement.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

New Zealand's intellectual property legislation is essentially derived from English legislation and common law. In accordance with the Berne Convention, to which New Zealand is a signatory, copyright vests as soon as the work is created and it does not need to be registered.

In 2012, New Zealand adopted the Madrid Protocol; this provides a single procedure for the registration of a trade mark in a country that is a party to the Madrid Protocol. In recent years, the New Zealand Government has been reviewing the copyright legislation in light of the new digital and electronic world.

Key legislation relating to intellectual property includes the:

- Copyright Act 1994 which grants copyright protection to original works;
- Trade Marks Act 2002 which provides a system of trade mark protection;
- Designs Act 1953 which provides an exclusive right to create a marketing advantage from the visual design of products; and
- Patents Act 2013 which provides a system for protecting patents. International protection requires registration of the invention in each country of use.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

The Resource Management Act 1991 sets out the laws relating to the use of New Zealand's natural resources and each decision made under the act must promote the "sustainable management of physical and natural resources". Each investment proposal will, therefore, need to be separately considered in the light of this legislation and applicable regional and district plans, and specialist legal and related expert advice.

New Zealand's environmental policies are also found in legislation, including:

- Hazardous Substances and New Organisms Act 1996 – regulating harmful substances affecting human safety and the environment;
- Heritage New Zealand Pouhere Taonga Act 2014 – promoting, protecting and conserving New Zealand's historical and cultural heritage;
- Conservation Act 1987 – promoting conservation of indigenous biodiversity and history resources;
- Maritime Transport Act 1994 – regulating pollution from ships;
- Biosecurity Act 1993 – regulating exclusion, eradication and effective management of pests and unwanted organisms in New Zealand;
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 – assisting with sustainable management of natural resources in the Exclusive Economic Zone; and
- Fisheries Act 1996 – managing fisheries in New Zealand's territorial sea and Exclusive Economic Zone.

A number of different regulatory bodies are involved with managing the New Zealand environment and ensuring statutory and policy compliance. Key regulatory bodies include:

- Parliamentary Commissioner for the Environment;
- Minister and Ministry for the Environment;
- Minister and Department of Conservation;

- Minister and Ministry for Primary Industries;
- Minister of Energy and Resources
- Ministry of Business, Innovation and Employment;
- Environmental Protection Authority;
- Maritime New Zealand;
- Heritage New Zealand Pouhere Taonga;
- Land Information New Zealand;
- local councils; and
- Environment Court.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

Investment New Zealand is a division of New Zealand Trade and Enterprise which is responsible for attracting and facilitating potential foreign investment opportunities in New Zealand. The division provides case management services, including:

- information on investment opportunities;
- assistance for companies during the investigation and due diligence phase;
- facilitating location visits by investment decision-makers;
- referring investors to independent professional advice; and
- attracting private organisations and agencies of central and local government to provide support where possible.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

Overseas Investment Amendment Bill

- Please refer to question 12 in relation to proposed changes that would mean that

foreign investment into residential land will be subject to OI Act consent.

- The New Zealand Government is also looking to bring the forestry rights under the OI Act regime. Under the current proposal, applicants will require consent under the OI Act for the acquisition of forestry rights of more than 1,000 hectares per calendar year.

Anti-Money Laundering and Countering Financing of Terrorism

The New Zealand government has increased the reporting obligations within various professions, including:

- banks;
- lawyers;
- businesses that provide trust and company services;
- real estate agents;
- accountants;
- conveyancers; and
- high-value dealers.

These changes are to ensure those professions comply with more stringent processes to deter money laundering and the financing of terrorism. This will likely result in foreign investors being asked to provide material confirming their identities and information in relation to the source of funds and key people involved in the business when using these services in order for these professions to comply with their customer due diligence requirements.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

There are no further features regarding foreign investment in New Zealand we would like to highlight.

专题： 新西兰
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1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

新西兰实行以市场为中心的经济，不仅通过其法律，而且还间接通过政府政策及其外汇与金融市场鼓励外国投资。从新西兰证券交易所及新西兰房地产中大量的外商投资即可见一斑。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

虽然对外国公司可在新西兰开展的业务类型几乎没有限制，但外国投资在新西兰须受到2005年《海外投资法案》以及依据《海外投资法案》制定的2005年《海外投资条例》的约束。本质上，这两部法律对外国人在新西兰敏感土地、重要商业资产及渔业捕捞配额方面的投资进行了规范。

《海外投资法案》第7条对“外国人”的含义进行了界定，其包括：

- 既非新西兰公民、也非新西兰普通居民的个人；
- 在新西兰境外注册的法人实体，或由任何此类法人实体持股25%（百分之二十五）或以上的任何新西兰子公司；
- 由外国人持有任何类别股份25%（百分之二十五）或以上的法人实体；
- 25%（百分之二十五）或以上的控制权由外国人持有的法人实体；以及
- 外国人持有其任何会议的投票权或投票控制权达到或超过25%（百分之二十五）的法人实体。

《海外投资法案》附表1第1部分对“敏感土地”的含义进行了界定。敏感土地示例如下：

- 超过5公顷的非城市土地；
- 非主要岛屿（北岛和南岛）及附表1第2部分所列的其他岛屿上的土地；
- 前滩与海床；以及
- 毗邻敏感土地且面积超过0.4公顷的土地。

《海外投资法案》第13章对“重要商业资产”的含义进行了界定。示例如下：

- 在任一年度（单独或与他人合伙）设立存续90天以上的新企业，且预计设立该企业的总支出将超过1亿新西兰元；
- 收购新西兰公司25%或以上证券的所有权或控制权，且证券价值、转让对价或者新西兰标的公司及其25%或以上子公司的资产价值超过1亿新西兰元。
- 在外国人已经持有25%（百分之二十五）或以上所有权或控制权的情况下，继续增持对此类公司的股权或控制权；以及
- 为在新西兰经营企业而购置的财产（包括商誉及其他无形资产），且购置对价超过1亿新西兰元

请注意：对澳大利亚投资者而言，这些门槛会更高。具体而言，澳大利亚非政府投资者为5.16亿新西兰元，澳大利亚政府投资者为1.08亿新西兰元。

在投资须取得同意的情况下，仅在申请人满足“投资者测试”时，方会同意其投资。该测试包括——外国人或控制相关外国人的个人（在该外国人非系自然人的情况下）必须满足以下条件：

- 具备商业经验和商业敏锐度；
- 具备财力证明；
- 品格良好；以及

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- 不属于 2009 年《移民法案》第 15 或 16 条提及的那类个人（该法案列举了通常因犯罪或恐怖记录而无资格根据该法享受豁免或许可的人）。

《海外投资法案》及《海外投资条例》还规定了申请人须满足的其他标准。

3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？

如上所述，《海外投资法案》对外国人在敏感土地、重要商业资产及渔业捕捞配额方面的投资进行了限制。所有这些投资均须根据《海外投资法案》的规定进行审批。

《海外投资法案》规定的限制在新西兰各级政府中均保持一致。

4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的企业的主要要求有哪些？

外国公司或投资者可通过以下方式在新西兰建立商业存在：

- 在新西兰登记为外国公司或企业的分支机构；
- 在新西兰设立当地子公司（作为有限责任公司）；
- 收购在新西兰注册的公司，作为外国公司的子公司；
- 设立有限合伙企业或普通合伙企业；
- 创设信托；或者
- 寻求企业合资。

设立有限责任公司

在新西兰，最常用的投资工具是有限责任公司。欲在新西兰设立公司，拟议公司必须具备：

- 独一无二的公司名称；
- 一份或多份股权；
- 对公司负债承担有限或者无限责任的一名或多名股东；以及
- 至少有一名董事须为新西兰或澳大利亚居民。如果该董事为澳大利亚居民，则

其必须同时担任澳大利亚公司（不包括分支机构）的董事。

尽管在新西兰公司注册登记处（负责管理新西兰企业注册登记的政府机构）办理新公司注册登记须经若干步骤，但过程本身相对较为简单。如无特殊情况，通常一两周内即可设立一家新西兰公司。设立公司的主要步骤包括：

- 预留公司名称；
- 提供公司联系方式；
- 提供全部董事及股东的名字、出生日期、地址（多数情况下，须有上述信息的证明材料）；
- 提供最终实际控股公司（如有）的国籍、公司注册登记号或识别号及地址；以及
- 向公司注册登记处提供经公司拟任董事和股东签署的同意书。

公司财务报告制度

对于大多数中小型企业而言，新西兰的财务报告相对简单。除非属于某些类别，否则公司一般无须编制完整的通用财务报表。这些公司类别包括：

- “大型”公司；
- 公众公司；
- 在新西兰开展业务的“大型海外公司”；
- 股东人数超过 10 名的公司，但该公司选择不受合规约束的情况除外；以及
- 股东人数少于 10 人的公司，且该公司选择接受合规约束。

大型公司、公众公司和大型海外公司须向新西兰公司注册登记处提交其财务报表。向公司注册登记处提交的财务报表须进行登记，并可在公司注册登记处的官方网站上公开查阅。

所有公司，无论其规模与股东人数如何，都必须在公司申报月的月底前向新西兰公司注册登记处提交年度申报表（确认提供给公司注册登记处的信息是最新的）。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

如上文问题 2 和问题 3 中所讨论的，外国投资者必须根据《海外投资法案》的规定取得对涉及敏感土地和重要商业资产的交易批准。

申请人须填写海外投资办公室（新西兰土地管理局下设的监管机构，负责《海外投资法案》的行政管理）提供的申请模板。申请及其配套信息必须以电子方式提交。

在向有关部长提出是否批准该申请的建议之前，海外投资办公室将对申请进行审查。在评估申请时，海外投资办公室将同时审议投资者及投资本身，包括其将给新西兰带来的益处。财政部长、土地管理局局长（针对敏感土地申请）以及初级产业部长（针对渔业捕捞配额申请）将决定是否批准推进拟议投资作出最后决定，且不受海外投资办公室建议的约束。

取得海外投资办公室批准的时间表会因申请内容而有所不同。平均而言，从开始申请到最终结束大约需要 105 个工作日。涉及重要商业资产的申请时间最长，需要大约 120 个工作日。这些时间不包括海外投资办公室因如下原因而搁置申请的时间：

- 海外投资办公室正在等待申请人提供进一步信息；
- 海外投资办公室正在就该申请而向第三方进行相关咨询；或者
- 相关建议正待由部长做出决策。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的有哪些（如有）？

尽管欢迎外国投资，但在 2017 年经合组织外国直接投资监管限制指数中，新西兰被认为是限制性最强的国家。特别是以下行业被认为在新西兰受到严重限制：

- 初级产业；
- 渔业；
- 航空业；和

- 电信业。

一般而言，新西兰的金融市场（股票、债务、期货和期权）主要由行业监管机构通过法规进行监管。证券和股票交易所须进行注册登记并由金融市场管理局进行监管。目前，新西兰具有一个经注册登记的交易所，即新西兰交易所有限公司。该交易所经营主板股票交易所（称为“NZSX”），一个债券市场（称为“NZDX”）以及针对小型发行者的备选交易所（称为“NZAX”）。

由于新西兰具有相当明确的自由贸易政策，在新西兰某些行业（如直接有助于创造外汇收入的旅游业或当地制成品出口）投资的外国公司特别受到新西兰政府的欢迎，并通过诸如新西兰旅游局和新西兰贸易发展局之类的机构为这些领域提供协助。一些地方当局也对其特定地区的投资者提供有限的帮助。

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？（例如制裁）

新西兰自身没有关于实施单独制裁的法律。但是，作为联合国会员国，新西兰执行联合国安理会依据 1946 年《联合国法案》作出的制裁。

8. 对外国投资者有哪些优惠或激励措施（如有）？

除新西兰影视项目资助金（旨在鼓励国际影视项目在新西兰制作）外，专门向外国投资者提供的资助或激励措施极为有限。

外国投资者也可以向卡拉翰创新院提出申请。卡拉翰创新院是新西兰的一家皇家机构，负责提供政府资金和资助。欲申请研发资助金，企业须根据 1993 年《公司法案》或 2008 年《有限合伙法案》的规定进行注册登记。

9. 在您所在司法管辖区，是否存在任何自由贸易区、经济特区或工业区？这些地区有哪些要求？

新西兰没有任何特定自由贸易区、特别经济区或工业区。

10. 在您所在司法管辖区，可能适用于外国投资者的主要税种有哪些？(例如个人所得税、企业所得税、增值税与社会保险费)

所得税

一般来说，对新西兰居民按其世界范围的收入征税，而非居民则只按源自新西兰的收入征税。若个人满足下列条件，则其将被视为新西兰的税务居民：

- 在新西兰拥有永久居所，而无论其在新西兰境外是否具有此类居所；
- 在任何为期 12 个月的期间内，在新西兰实际停留 183 天以上；或者
- 为履行新西兰政府公职而离开新西兰。

如果公司满足下列条件，其将被视为新西兰的税务居民：

- 在新西兰设立；
- 其总部位于新西兰；
- 其管理中心位于新西兰；或者
- 其董事在新西兰对公司实行控制，而无论其董事的决策是否仅限于新西兰。

新西兰居民按以下税率缴纳所得税：

- 收入在 14,000 新西兰元以下的部分——10.5%；
- 收入在 14,001 至 48,000 新西兰元之间的部分——17.5%；
- 收入在 48,001 至 70,000 新西兰元之间的部分——30%；
- 收入超过 70,000 新西兰元的部分——33%；以及
- 所有的公司按照 28% 的固定税率缴纳所得税。

如果新西兰与某国签订了避免双重征税协定，则新西兰对股息收入征收的税率一般为 10%（百分之十），最高为 15%（百分之十五）。

商品及服务税

商品及服务税的注册纳税人在新西兰境内提供商品或服务时，应当按照商品或服务价值

的 15%（百分之十五）缴纳商品及服务税。它是一种基于增值原则的间接消费税。

商品及服务税的征税对象是从事应纳税活动的人所提供的商品和服务。也对进口商品开征商品及服务税。商品及服务税的注册纳税人必须对其提供的全部应税商品（或销售）缴纳商品及服务税，并可要求抵扣其就从事应税活动支出的全部费用而缴纳的商品及服务税。净差额即是应向新西兰税务局支付的税款或新西兰税务局应退回的款项。

11. 在您所在司法管辖区，外国投资者应该注意哪些劳动法律法规？外国人是否能够通过投资活动获得居留许可或者工作签证？

新西兰的雇佣关系必须满足法律的最低限度要求。2000 年《雇佣关系法案》是雇佣立法中的一部主要法律，它要求雇员和雇主真诚地处理彼此间的事务。该法案对雇佣事宜进行监管，其中包括：

- 雇佣协议中最低限度的条款与条件；
- 集体谈判；以及
- 针对不正当解聘以及雇佣期间的不正当行为的程序和补救措施（在新西兰，雇主解雇雇员需有正当理由）。

还有其他一些法律规定了雇员最低限度的权益，此类法律包括如下：

- 1993 年《人权法案》，该法案禁止基于各种理由的歧视；
- 1983 年《最低工资法案》，该法案建立了最低工资制度；
- 1972 年《同工同酬法案》，该法案禁止男女同工不同酬；
- 2003 年《假期法案》，该法案规定了病假、丧假、年假以及法定节假日；
- 1987 年《亲子假及劳动保护法案》，该法案规定了亲子假；
- 1983 年《工资保护法案》，该法案对工资的支付及雇员工资的扣除项目（例如，与工会有关的扣除项目或新西兰的养老金计划——Kiwisaver）进行了规定；以及

- 2015 年《工作场所健康与安全法案》，该法案规定了保障工作场所安全的要求。

欲永久定居新西兰的潜在移民须取得居留许可和签证。新西兰的居留许可和签证可以通过“投资者”类别获得（在该类别下，申请人可基于其在新西兰的投资获得居留资格）。为具备获得“投资者”签证的资格，申请人必须在新西兰投资至少 1,000 万新西兰元，且投资期须满三年；或者，须是经验丰富的商人，且在四年期内至少具有可投资于新西兰的 300 万新西兰元可用资金或资产。

如果“投资者”类型居留申请获批，对高额投资移民类申请人（1 类投资者）而言，其必须将投资资金保留在可接受的投资项目中且须满三年；对普通投资移民类申请人（2 类投资者）而言，这一期限则为四年。对普通投资移民类申请人而言，在四年投资期限的第二年、第三年和第四年，主申请人必须满足每年在新西兰逗留的最低时间要求（44 天或 146 天）；对高额投资移民类申请人而言，则须在三年投资期限的第二年和第三年满足这一每年逗留的最低时间要求。

申请人可以通过以下方式满足“企业家”居留类签证的要求：

- 设立或者购买在新西兰的企业；并且
- 在最近的两年内自雇佣于该企业；并且
- 该企业已为新西兰带来了显著益处；或者
- 申请人向其企业投资不低于 50 万新西兰元；并且
- 为新西兰公民或居民新创造至少三个全职工作机会。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

如关于问题 2 及问题 5 所述，外国人取得“敏感土地”须取得《海外投资法案》所规定的批准。目前，新西兰政府正在对《海外投资法案》进行审查，预计将对其进一步修订。最为显著的变更提议是将住宅用地纳入“敏感土地”的定义范畴，从而使外国投资者仅

可在极为有限的情况下取得住宅物业与土地。

新西兰政府还拟增加一系列额外条件，即在批准《海外投资法案》项下申请之前，必须令部长得以信服。这可能需申请人表明：

- 其对新西兰的承诺，并满足职业与持续性要求；以及
- 由于该交易将或可能增加土地上的住房，因而该投资对新西兰具有重大且可识别的益处。

13. 在您所在司法管辖区，是否存在在特定情形下阻止外国投资的任何程序？

如问题 2 中所述，如果相关部长根据《海外投资法案》并未批准该项投资，则外国投资即会被阻止。

14. 外国投资者应该注意哪些外国货币或外汇管制？

新西兰有一个基本上不受限制的货币兑换制度。1984 年底，几乎所有的外汇管制措施都被取消了。自 1985 年 3 月以来，被称为“kiwi”的新西兰元被允许自由浮动。不进行外汇管制的政策对新西兰经济产生了重大影响，其中包括：

- 所有汇款均可通过注册银行进行（但须遵守联合国制裁、新西兰金融交易报告规则要求的披露义务以及反恐融资规则的要求）；
- 在新西兰赚取的利息、利润及股息均可自由地汇给非居民人员（但须缴纳非居民预扣税，并满足其他税收事项）；并且
- 非居民资本（包括收益或资本化利润）的汇回无需取得任何批准。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

对于外国投资者撤回在新西兰的投资，目前尚无任何限制、批准要求或潜在的处罚。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

1934年《互相执行判决法案》

对于来自澳大利亚、英国或新西兰与之具有互认协议的国家（包括香港、新加坡和马来西亚等国家/地区）的判决，当事方可依据外国高等法院判决，要求新西兰法院执行金钱判决。

2010年《跨塔斯曼诉讼法案》

该法案允许澳大利亚作出的最终判决在新西兰强制执行。与《互相执行判决法案》不同，《跨塔斯曼诉讼法案》还允许执行下级法院（及特殊情况下的审理委员会）作出的判决。此外，还可根据该法案规定执行非金钱判决。

2016年《高等法院法案》

如果判决是在英联邦法院作出的，且系金钱判决，则当事人也可以向新西兰高等法院申请追认判决，法院可据此要求在新西兰执行该判决。

如果该国不属于英联邦或与新西兰没有互认协议，则当事人可根据普通法寻求强制执行。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

新西兰目前具有若干有效的自由贸易协定，包括：

- 新西兰—中国自由贸易协定；
- 新西兰—韩国自由贸易协定；
- 新西兰—澳大利亚更紧密经济关系协定；
- 东盟—澳大利亚—新西兰自由贸易区；
- 新西兰—香港（中国）更紧密经济伙伴关系协定；
- 新西兰—马来西亚自由贸易协定；
- 新西兰—新加坡更紧密经济伙伴关系协定；
- 新西兰—泰国更紧密经济伙伴关系协定；

- 与台湾、澎湖、金门和马祖的独立关税区的经济合作协定；以及
- 跨太平洋战略经济伙伴关系协定。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

新西兰的知识产权法律基本上源自英国的制定法及普通法。根据新西兰作为签署国之一的《伯尔尼公约》，作品一经创作即产生版权，无须进行注册登记。

2012年，新西兰通过了《马德里议定书》，该议定书规定了在其签署国进行商标注册登记的单一程序。近年来，鉴于数字及电子世界的发展，新西兰政府一直在审查与版权相关的法律。

与知识产权有关的主要法律包括：

- 1994年《版权法案》，该法案对原创作品提供版权保护；
- 2002年《商标法案》，该法案制定了商标保护体系；
- 1953年《外观设计法案》，该法案规定了针对产品视觉设计所产生的营销优势的专有权利；以及
- 2013年《专利法案》，该法案制定了专利保护体系。欲取得发明的国际保护，则需在使用发明的每个国家均进行发明注册登记。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

1991年《资源管理法案》制定了有关新西兰自然资源使用的法律规定，根据该法案作出的每项决定都必须促进“物质和自然资源的可持续管理”。因此，每项投资建议都需要根据该法案、适用的区域与地区计划、专门的法律以及相关专家意见进行单独审议。

新西兰的环境政策还体现在如下法律之中：

- 1996年《危险物质与新生物体法案》：该法案对危害人类安全与环境的有害物质进行了规范；

- 2014年《新西兰遗产法案》：该法案促进、保护并保存新西兰的历史文化遗产；
- 1987年《保护区法案》：该法案促进土著生物多样性及历史资源的保护；
- 1994年《海洋运输法案》：该法案对船舶污染进行规范；
- 1993年《生物安全法案》：该法案规范了新西兰对有害生物和不良生物的排除、根除及有效管理；
- 2012年《专属经济区和大陆架（环境影响）法案》：该法案协助专属经济区内自然资源的可持续管理；以及
- 1996年《渔业法案》：该法案对新西兰领海和专属经济区的渔业进行管理。

新西兰的环境管理涉及众多不同的监管机构，且这些监管机构应确保法律和政策得以遵守。主要的监管机构包括：

- 议会环境专员；
- 环境部及其部长；
- 环境保护部及其部长；
- 初级产业部及其部长；
- 能源与资源部长；
- 商业、创新与就业部长；
- 环境保护局；
- 新西兰海洋局；
- 新西兰珍贵遗产组织；
- 新西兰土地管理局；
- 地方议会；以及
- 环境法庭。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

新西兰投资局是新西兰贸易发展部下设的一个部门，负责吸引和促进新西兰潜在的外国投资机会。该部门提供个案管理服务，包括：

- 投资机会信息；
- 在调查和尽职调查期间为公司提供协助；

- 协助投资决策者来当地拜访；
- 向投资者提供独立的专业建议；以及
- 吸引私人组织以及中央和地方政府机构在可能的情况下提供支持。

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

《海外投资法案》修订议案

- 请参考问题12，其中涉及拟议的变化。这意味着外国人对住宅用地的投资将须依据《海外投资法案》获得审批同意。
- 新西兰政府也在考虑将林业权引入到《海外投资法案》的框架内。根据目前的提议，若欲于每个日历年度内购买1,000公顷或以上的林业权利，则申请者须取得《海外投资法案》项下的批准。

反洗钱及反恐融资

新西兰政府增加了各专业行业的报告义务，包括：

- 银行；
- 律师；
- 提供信托和公司服务的企业；
- 不动产中介；
- 会计师；
- 承办产权转让事务的律师；以及
- 高价值物品交易者。

这些变化的目的旨在确保这些专业行业遵循更为严格的程序，以阻止洗钱和恐怖主义融资。这可能要求外国投资者在使用这些服务时提供材料，以确认他们的身份和有关资金来源以及参与业务的主要人员的信息，从而满足这些行业对客户尽职调查的要求。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

关于在新西兰的外国投资，我们没有想要强调的其他特点。

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1. What are the main reasons foreign investors invest in your jurisdiction?

Nigeria is presumably the largest economy in Africa. Recovering from an oil crisis-induced recession, its current GDP of \$ 405.1 billion USD is projected by economic analysts to grow exponentially to over \$ 3.3 trillion by 2050, making it one of the top 15 largest economies in the world. For the past decade, up until 2014, Nigeria has consistently been ranked as one of the top three destinations for foreign direct investment (FDI) in Africa, with Nigeria's FDI stock reaching USD \$ 959.52 billion as at January 2018.

Investors are attracted by a free market, a relatively advantageous tax system, significant natural resources, and inexpensive labour. In addition, it is strategically located for access to West African markets.

With a youthful and growing population, currently estimated to be about 186 million people and increasing to 399 million by 2050, making it the third largest country in the world – the potential for an able labour force and consumer base is enormous. Nigeria also reportedly has the fastest growing internet user base in the world, with the highest number of internet users in Africa.

There is a renewed determination to develop the Nigerian economy through a private-sector driven and free-market approach. The Nigerian Government encourages strategic alliances and public-private partnerships with foreign companies. The Nigerian Government has introduced many programs to boost FDI in agriculture, mining, oil & gas, and the export sectors. Tax incentives are granted to pioneering industries,

and rewards for investment opportunities exist in barely-tapped sectors such as agriculture (roughly a third of the population works in this sector) manufacturing, tourism, mining, media & entertainment, private education and information & communication technology services.

The Presidential Enabling Business Environment Council was set up in 2016 to remove bureaucratic constraints in doing business in Nigeria. The Council introduced regulatory reforms which led to Nigeria being ranked as one of the top 10 Most Improved Economies in the World by The World Bank's "Ease of doing business" index for 2018.

Nigeria's legal and regulatory framework encourages foreign investment, and foreigners may invest and participate in any business except a small number of strategically sensitive sectors set out on the country's Negative List. Also, certain sectors are subject to local content policies, such as oil & gas sector – where Nigerians must have majority ownership.

Repatriation of investment proceeds is guaranteed in freely convertible currency, and investor confidence has been re-established with the introduction of the Investors Export Foreign Exchange Window in 2017, which eliminated previous reservations in respect of the foreign exchange management system following the 2016/2017 oil price crisis.

2. What foreign investment legislation is in place in your jurisdiction?

The main pieces of legislation governing foreign investment in Nigeria are as follows:

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- a. Nigerian Investment Promotion Commission (NIPC) Act:
The NIPC Act established the Nigerian Investment Promotion Commission to promote investment, to enhance the Nigerian investor climate, and to co-ordinate all investment promotion activities in Nigeria. All businesses with foreign participation must be registered with the commission prior to the commencement of business.
- b. The Companies and Allied Matters Act (CAMA):
CAMA regulates the establishment and operations of various types of business entities in Nigeria. All foreign enterprises must be locally registered at the Corporate Affairs Commission (CAC) before commencing operations in Nigeria. The Act covers matters including membership, company proceedings, directors, the protection of minority shareholders, financial statements and the winding up of companies.
- c. Investment and Securities Act (ISA):
The ISA establishes the Securities and Exchange Commission and charges it with the responsibility of regulating the capital market. It regulates mergers and acquisitions and provides policies for the control and regulation of IPOs. It sets formal rules for the registration of capital market operators as well as the registration and regulation of securities.
- d. National Office for Technology Acquisition and Promotion (NOTAP) Act:
The Act establishes the NOTAP, which is mandated to regulate the inflow of technology into the Nigerian economy and to develop means of adapting such technology. The Act provides for the evaluation, registration and monitoring of all agreements entered into by Nigerian entities that relate to the transfer and acquisition of foreign technology, as a pre-condition for

the approval of payments in foreign currency due under these agreements, including agreements relating to trademarks, patents and technical services.

- e. Foreign Exchange (Monitoring and Miscellaneous Provisions) Act:
This is the principal law for foreign exchange transactions in Nigeria. It establishes an Autonomous Foreign Exchange Market and provides a framework for the monitoring and supervision of all foreign exchange transactions conducted in the market.
- f. Industrial Inspectorate Act:
The Act establishes the Industrial Inspectorate Division of the Federal Ministry of Industry Trade and Investment, for the purpose of determining the investment valuation of an undertaking. Certificates of Acceptance which are granted, are required by the Federal Inland Revenue Service to grant capital and investment allowances in the computation of corporate tax.
- g. Industrial Development (Income Tax Relief) Act:
This Act governs the Pioneer Status Incentive Policy which exempts qualified enterprises from corporate tax for an initial 3-year period.
- h. Immigration Act:
The Immigration Act regulates and controls the entry, employment and departure of foreigners wishing to do business in Nigeria. Companies who wish to employ foreigners may apply for authorisation in the form of an expatriate quota approval and must comply with the provisions of the Act dealing with work permits and visas.
- i. Nigeria Export Processing Zone Act:
This Act establishes and regulates export processing zones. Enterprises operating within the zone are exempted from all federal, state, and government taxes.

- j. Double Taxation Treaties:
Nigeria has entered into double taxation treaties with several countries, providing foreign tax relief and reducing tax impediments.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

Restrictions are generally imposed by Federal legislation.

- a. Exclusions in the Negative List
By the provisions of the NIPC Act, foreign investors are free to carry out business in any sector, except those on the Negative List. This includes:
 - i. Production of arms/ammunitions
 - ii. Production and dealing in narcotic drugs and psychotropic substances
 - iii. Manufacture of military/ para-military wear;
 - iv. Such other items as the Federal Executive Council may determine.
- b. Restrictions on the level of foreign equity participation.
Restrictions are placed on equity participation in the following sectors:
 - i. Oil and gas: The Nigerian Oil and Gas Content Development Act requires all oil & gas operators to give exclusive consideration or priority to Nigerian services companies with at least 51% Nigerian equity ownership, in the award of contracts.
 - ii. Advertising: In accordance with the Advertising Practitioners Council's 2013 Proclamation, only agencies with at least 74.9% Nigerian ownership may service the domestic market.
 - iii. Shipping: Under the Coastal and Inland Shipping (Cabotage) Act, only shipping vessels which are built in

Nigeria, wholly owned and manned by Nigerian citizens may engage in the domestic coastal carriage within the waters of Nigeria. Waivers may however be granted where there are no suitable wholly owned vessels, where there is no local capacity to build a certain type or size of vessel, or where there are no qualified Nigerian crew available.

- iv. Private Security: All private guard companies must be wholly-owned by Nigerians, and all the directors of such a company must be Nigerian, in accordance with the Private Guards Act.
- v. Broadcasting: Broadcasting licenses are granted only to applicant companies that can demonstrate they are not representing any foreign interest, under the National Broadcasting Commission (NBC) Act. Additionally, the NBC must ensure that the company is substantially owned and operated by Nigerians.
- vi. Aviation: Only Nigerians or Nigerian companies having their principal place of business in Nigeria and controlled by Nigerians can be granted aviation licenses, permits or certificates under the Civil Aviation Act.
- vii. Engineering: Nigerian Directors who are registered members of the Council for the Regulation of Engineering in Nigeria (COREN) must hold at least a 55% equity stake in a company before it can be registered and licensed to carry out engineering work in Nigeria.
- viii. Pharmacy: Foreigners are permitted to be registered and to practice as pharmacists in Nigeria only where the applicant has been resident in Nigeria for at least 12 months prior to the application and his/her home country grants reciprocal registration to Nigerians.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

There are various types of business entities, the most common of which include:

- a. Private Company limited by Shares:
Private companies are required to have a minimum of 2 members and a maximum of 50 members. Their Articles of Association must restrict the transfer of its shares and the company cannot offer its shares to the general public. A company which requires the grant of Expatriate Quota will require a minimum share capital of N 10,000 and at least 25% of the authorised share capital, must be issued and allotted at incorporation.
 - b. Public company limited by shares:
Public companies are required to have a minimum share capital of N 500,000. Such companies can offer their securities to the public and have no limitation as to the number of its members. However, the company must meet the legal minimum of at least 2 members. The name must end with 'PLC'.
 - c. Business Name:
This is the most convenient form of doing business by a sole proprietor or partnership. A business name has no legal personality and cannot sue or be sued in its name. Registration requirements are less formal. Membership of partnerships is limited to between 2–20 members, except for law and accounting firms.
- Timelines for the Establishment of a business entity:
- a. A company limited by shares (whether public/private) is generally registered with the CAC within 3–5 business days of submission of documentation. Registration may

- b. A Business Name is registered within three 3–5 business days of submission of documentation.

The key requirements for the establishment and operation of a corporate entity:

Following the registration of a business vehicle, certain steps must be taken depending on the type of business vehicle and the nature of the proposed business.

- a. A public company is required to register its securities with the Securities and Exchange Commission. The registration process takes about 5–10 Business Days.
- b. A company with foreign participation is required to:
 - i. Register with the NIPC. This typically takes about 24 hours using the One Stop Investment Centre within NIPC.
 - ii. Obtain a Business Permit, Expatriate Quota and working and residential visas from the Federal Ministry of the Interior. The grant of a business permit typically takes 5–10 business days and between 1–4 months for the Expatriate Quotas. Processing of working and residential visas normally takes 3–7 days.
 - iii. Where the foreign investment involves the importation of foreign capital, the approval of NOTAP would be required. Obtaining an approval may take between 3 to 6 months.

In addition to the above, the following will be required for the efficient operations of the business entity:

- a. Opening of Bank Account. This occurs within 24 hours of the application being submitted.
- b. Importation of foreign capital and obtaining a Certificate of Capital importation. The certificate is issued within 48 hours of submission.

- c. Obtaining a Tax Identification number and Value Added Tax registration. This is obtained within 3 business days.
- d. Registration for income Tax PAYE at the State Tax Office. The registration can be completed within 48 hours.
- e. Registration of a business premises with the State Government and the payment of a Business Premises levy at a designated bank. The registration can be completed within 72 hours.

Further regulatory approvals including those mentioned below in Question 5 may be required depending on the sector of operation.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

All businesses with foreign participation must be registered with the NIPC prior to the commencement of business. Registration with the NIPC and the grant of a Business Permit takes between 5–10 working days.

Regulatory approvals may be required in certain commercial sectors, such as a Communications License, Banking License and the Department of Petroleum Resources (DPR) Permit. It takes about 3–6 months to obtain a Communications license, 9–12 months for a banking license and 72 hours to obtain a DPR Permit subject to the submission of requisite documentation.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

The following sectors are heavily regulated in Nigeria:

- a. Financial and Banking services
- b. Oil and Gas
- c. Food and Pharmaceuticals
- d. Telecommunications

- e. Insurance
- f. Aviation

Some of the more open investment sectors in Nigeria are:

- a. Real estate
- b. Construction
- c. Entertainment
- d. Agriculture
- e. Information technology
- f. Hospitality and Tourism
- g. Solid minerals
- h. Automobile

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions)

Nigerian law does not place any restrictions on corporate entities seeking to carry out business with other countries, or territories.

8. What grants or incentives are on offer to foreign investors, if any?

The Nigerian Government encourages investments through a variety of tax incentives, export incentives, sector specific incentives and incentives contained in bi-lateral investment agreements. Qualifying enterprises are encouraged to apply for the appropriate incentives. Some of these include:

- a. The Pioneer Status Incentive Policy which exempts qualified enterprises from company income tax for an initial 3-year period, which is renewable for 1 or 2 years.
- Some of the qualifying industries include those that engage activities including cocoa processing; textile, apparel and leather production; e-commerce services; motion pictures, video and television program production; software development; and business process outsourcing.

- b. A tax credit of 20% is granted for 5 years to industries that attain the prescribed minimum level of local raw material sourcing and utilization.
- c. Double Taxation Agreements entered into between Nigeria and certain countries including the U.K., France and Canada, provide relief from double taxation in relation to taxes on company profit and like-for-like taxes abroad.
- d. Organizations that engage in research and development activities for commercialisation enjoy 20% investment tax credit on their qualifying expenditure.
- e. The interest payable in respect of foreign loans, and loans granted for manufacturing for export, the agricultural trade or fabrication of local machinery are exempt from tax to varying degrees subject to qualifying loan tenor and moratorium.
- f. Manufacturers and purchasers of local plants and machinery are permitted an investment credit of 15% for machinery and 25% for plants, which are convertible to an investment allowance.
- g. The Companies Income Tax Act provides a tax relief for profits earned in Commonwealth countries which are also liable to tax in Nigeria.
- h. Capital Gains Tax is not charged in respect of gains from the sale of shares and stocks.
- i. A tax break for a period of 3 years which is renewable for an additional 2 years, is provided for companies utilising natural gas resources.
- j. Companies doing business in agricultural activities are entitled to an exemption from the minimum tax imposed on all companies.
- k. Companies in the downstream natural gas sector are entitled to a three (3) year tax holiday (which can be extended for another two (2) years) or a capital allowance at the rate of 35%.

- l. Applicable tax exemption on interests in respect of short term federal government securities, bonds issued by the federal, state or local government and their agencies; corporate bonds and bonds issued by supra-national bodies for a period of 10 years effective from 2011.
- m. Investment in an economically disadvantaged area will attract a 100% tax break for 7 years.
- n. There are significant tax reliefs and allowance available to companies engaged in export, subject to qualifying conditions, and all new industrial undertakings operating in export processing zones may obtain a 100% tax break for 3 years.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

There are 34 free trade zones (FTZ) in Nigeria of which 12 FTZs are in active operation. FTZs are regulated by the Nigeria Export Processing Zones Authority (NEPZA) and the Oil and Gas Free Zone Authority (OGFZA).

There are two types of FTZ in Nigeria; (a) General and (b) Specialised. Currently, the only specialised FTZ is the Oil and Gas Export Free Zone (OGEFZ), at Onne Port in Port Harcourt, Rivers State.

Any individual or business (including business not incorporated in Nigeria) may apply to NEPZA for a Free Zone Enterprise License to operate an approved activity in an FTZ. An export-oriented manufacturing company or farm located within the free-zone customs territory, which has the capacity to export over 75% of its production may upon application be granted an Export Processing Factory/Farm Licence.

A public, private or combination of a private and public entity seeking the establishment,



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While her special interest is in corporate reorganisations and acquisitions, Bola provides general corporate representation to a broad pool of closely-held businesses, international subsidiaries and public companies. This general representation covers a wide range of corporate legal matters including private share and business acquisitions and disposals, joint ventures and strategic alliances, the ongoing governance of entities, advising startups and entrepreneurs, business succession planning, as well as structuring negotiating a vast array of related organisational and commercial transactions.

A member of the Nigerian Bar Association, International Bar Association and the Society for Corporate Governance of Nigeria, Bola's legal advice is widely sought in the development and expansion of businesses, corporate governance matters, as well as their day-today operations and corporate crises.

Bola holds a degree in Bachelor of Arts degree in Economic and Social Studies from the University of Manchester, U.K., and a Law degree from the Obafemi Awolowo University, Nigeria. She was admitted to the Nigerian Bar in 1993.

operation and management of a free zone in Nigeria, may be granted a Free Zone Developers Licence.

Upon the grant of license, the enterprise is required to apply for a serviced land or factory and obtain a building permit. The enterprise is also required to pay (a) ground rent and (b) Zone management and Marketing/ promotion fees.

The NEPZ regulations provide that any approved FTZ enterprise investment in an approved activity within an FTZ must have a minimum value of \$ 500,000 USD.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

The main taxes include:

- a. Companies' income tax: Annual tax levied on Nigerian companies at the rate of 30% on their worldwide profits, except for companies engaged in manufacturing or agricultural production with a turnover of less than N 1million. Foreign companies deemed to have a fixed base in Nigeria by

the tax authorities will be taxed on the profits attributable to that fixed base. Any investment income earned from a Nigerian company by a non-resident foreigner is subject to withholding tax of 10% which is the final tax on such income.

- b. **Withholding Tax:** This is an advance tax of 5% or 10% payable in respect of specific transactions including dividends and directors' fees, which is credited against income tax. Withholding tax is reduced from 10% to 7.5% in respect of dividends, royalties and interest where a Double Tax Treaty is applicable.
- c. **Value Added Tax:** A standard rate of 5% imposed on goods and services, except for items that have been specifically exempted.
- d. **Capitals Gains Tax:** This is levied at the rate of 10% of any profits made from the disposal or exchange of an asset.
- e. **Petroleum Profits Tax:** This tax is chargeable on the profits of any company carrying out upstream petroleum operations at varying rates between 50 to 85%.
- f. **Information Technology Tax:** This applies to telecommunication companies, cyber related companies, pension companies, financial institutions and insurance companies who have an annual turnover of N 100,000,000.
- g. **Educational Tax:** This is a 2% tax on the assessable profit of Nigerian companies.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

Key legislation governing employment relations in Nigeria include:

- a. **The Labour Act:** This is the principal legislation governing employment in Nigeria. Its application is however limited

to employment contracts for manual labour and clerical work in the private and public sectors.

- b. **The Constitution of the Federal Republic of Nigeria 1999 (as amended):** This is the overarching Law providing for the rights of Nigerian citizens.
- c. **The Employment Compensation Act 2010:** Employers are required to remit 1% of their total monthly payroll into the employee compensation fund to compensate employees suffering death or permanent incapacity as a result of employment-related accidents.
- d. **Pension Reforms Act:** Employers are required to deduct 8% from an employee's salary and to contribute 10% of the employee's salary to a pension fund administrator of the employee's choice.
- e. **Industrial Training Fund Act:** An employer with at least 5 employees or where less, a turnover of N 50, 000,000.00 is required to remit 1% of its annual payroll to the industrial training trust fund annually.
- f. **Immigration Act:** The Immigration Act regulates and controls the entrance and employment of foreigners in Nigeria.
- g. **Factories Act:** This provides for the safety of factory workers and other professionals exposed to occupational hazards.
- h. **Trade Unions Act:** this Act provides for the regulation and formation of trade unions in Nigeria.
- i. **National Minimum Wage Act:** This provides regulations on minimum wage.

Residency permits/work visas for foreigners: A company intending to employ foreigners is required to apply to the Federal Ministry of Interior for expatriate quota positions for the number of foreign nationals required. If the company is engaged in the oil & gas sector, it will require a certificate of No Objection from the Nigerian Content Development and Monitoring Board prior to the application for Expatriate Quota.

After the expatriate quota positions are granted, foreign nationals may obtain a Subject-to-Regularisation (STR) Visa from the Nigerian Embassy in their country of residence.

Upon arrival, the employer is required to apply for a Temporary Work Permit which is valid for three months or a Combined Expatriate Resident Permit and Aliens Card (CERPAC) which is initially granted for 12 months and is renewable. Once obtained, the foreign employee is able to live and work in Nigeria in accordance with stipulated conditions. The foreign national has 3 months from the grant of the STR within which to regularise his/ her immigration status.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

Foreign investors may acquire real property through a Nigerian incorporated corporate vehicle without any restriction, subject to the payment of registration fees and the provision of relevant documents to the relevant State Government.

A direct acquisition by a foreign national does not appear to be possible in view of provisions of the Land Use Act that vest all land in Nigeria in the Governors of the respective territories to be held in trust for Nigerians. While the Act empowers the National Council of States to make regulations for the transfer of land to foreign nationals, as of date no specific regulations are in force with regards the implementation of this provision.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Mergers, acquisitions and business combinations, as well as transactions that result in a change of control of a company, are required to be reviewed and approved by the Securities & Exchange Commission (SEC), subject to prescribed thresholds, in order to determine

if such transactions are likely to substantially lessen competition. Under Nigeria's proposed anti-competition legislation, The Federal Competition and Consumer Protection Bill, the Competition Commission will effectively take over SEC's role in this regard.

In addition to SEC's oversight, statutory regulators of certain sectors such as Telecommunications, Banking and the Nigerian Civil Aviation Authority require a regulatory prior review of significant changes in interests.

14. What foreign currency or exchange controls should foreign investors be aware of?

By virtue of the NIPC Act and the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, the repatriation of the proceeds of foreign investment can be made freely and unconditionally, subject to obtaining a Certificate of Capital Importation (CCI) issued by a Nigerian bank as evidence of foreign direct investment into Nigeria, within 48 hours of application.

Foreign exchange controls which were introduced by the Central Bank during the recent recession have been liberalised and investors may now convert investment funds at market driven rates through the Investor and Exporters FX Window.

15. Are there any restrictions, approvals requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

In addition to anti-competition regulations requiring SEC approval for qualifying transactions, certain sector approvals are required for divestments. These include (a) the CBN approval for divestment of subsidiaries by financial holding companies, (b) additional government consent to certain divestitures in the oil & gas industry, (c) regulatory consent for certain divestitures in the maritime industries, and (d)

the sale of assets within free trade zones upon divestiture to Nigerians.

Subject to contractual provisions, there are no penalties for divestments.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction?

Contract enforcement

The Nigerian legal system, which is based on the English common law, guarantees freedom of contract and access to the judicial system or any other dispute resolution mechanism agreed by the parties.

- a. **Judicial System:** The Nigerian Constitution guarantees individual rights to the courts for the determination of civil rights and obligations. Nigerian courts will typically enforce contractual terms including choice of governing law in the absence of any public policy reasons. Also, final and conclusive foreign judgments and arbitral awards will be recognized and enforced by the Nigerian courts subject to certain conditions.
- b. **Alternative Dispute Resolution:** Mediation and conciliation processes as means of dispute resolutions are recognised in Nigeria. In certain instances, the court may refer cases to mediation and conciliation. Arbitration is common in Nigeria, usually governed by the Arbitration and Conciliation Act, which is the principal local legislation, or any arbitration law or procedures chosen by the parties.

Investor Protection Mechanisms

Foreign investors in Nigeria are protected under the NIPC Act. Foreigners may participate in any form of businesses in Nigeria with the exception of those listed in the Negative List. Further, investments are guaranteed against expropriation and nationalisation except in the national interest or for public purposes. In the event of such expropriation or nationalisation, investors are entitled to adequate compensation. Any

dispute between an investor and the government is to be determined by arbitration governed by the bilateral investment treaty between the investor's home country and Nigeria.

Investors are guaranteed unconditional transfer of capital and returns on capital brought into Nigeria through an Authorised Dealer.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

Nigeria has ratified 15 bilateral investment treaties with several countries including China, the United States, and South Korea. Some of these treaties protect the rights of citizens of the contracting States against expropriation and repatriation of investment and returns thereon, and compensation for losses occasioned by wars, riots and related causes to the same extent that the contracting states would compensate their citizens.

Nigeria is party to double tax treaties with 13 countries in respect of income taxes and capital gains including Pakistan, China and Philippines. A key benefit of these treaties is that they offer a reduction of up to 2.5% on the standard withholding tax rate.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

Innovative ideas, inventions and brands of enterprises operating within the Nigerian economy are protected under the following laws:

- a. **The Copyrights Act:** This protects literary, musical, cinematograph, sound recording and broadcast works. Copyright protection under the Nigerian law is conferred on every work from the time the work was made for a period of 50–70 years, after the author dies or from the year the work was published - depending on the type of work.

- b. **The Patent and Designs Act:** The registration of a patent guarantees an exclusive right which will be secured for a period of 20 years from the date of the filing of the patent application.
- c. **Trade Marks Act:** This protects any mark, words, design, device, label, numerals or combinations of these which are distinctive or have acquired distinctiveness as used in relation to goods for the purpose of indicating a connection in the course of trade. The trade mark will be secured for a period of 7 years from the date of registration, subject to periodic renewals for 14 years each.
- d. **The Merchandise Marks Act:** This prohibits the act of forgery, false application of marks so nearly resembling a trademark as to be calculated to deceive and provides for sanctions ranging from payment of fines, forfeiture of chattel and imprisonment.
- e. **The Trade Malpractices (miscellaneous Offences) Act:** This Act criminalizes trademark related offences like false packaging, misleading advertisement of products in a manner to create a wrong impression as to its quality, character and provides for a payment of fine as sanction for the offences.

The infringement of IP rights generally constitutes an offence under the relevant laws punishable with fines and/or imprisonment. Also, injured parties may institute legal proceedings in the relevant Nigerian Court for civil remedies including damages, order for account, injunctions and delivery of possession of infringed articles.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

The main pieces of legislation regulating environmental matters are as follows:

- a. **The National Environmental Standards and Regulations Enforcement Agency Act:** The Act established the National Environmental Standards and Regulations Enforcement Agency as the enforcement agency and primary regulatory authority for maintaining environmental standards, rules and guidelines, and to eliminate pollution and degradation of the environment.
- b. **The Environmental Impact Assessment Act:** This Act sets out principles and procedure in relation to effect of activities of the public and private sector on the environment and requires that due consideration of the environment is taken into account when embarking on an undertaking.
- c. **The Harmful Waste (Special Criminal Provisions, etc.) Act:** This law prohibits all activities relating to the purchase, sale, importation, transportation, deposit, storage of harmful wastes which is declared unlawful. Conviction of a crime under the Act could lead to a forfeiture of land or the vessel transporting the harmful waste and life imprisonment of the offender.
- d. **The Federal Solid and Hazardous Waste Management Regulations:** This law creates an obligation on industries to identify solid hazardous wastes which are dangerous to public health and to consider the possibility of recycling it. It also makes mandatory the notification of the agency of any discharge into the environment.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

The NIPC is the primary regulatory authority for foreign investments in Nigeria and can provide information on all investment related enquiries.

The NIPC has established the One Stop Investment Centre, where relevant agencies of the government including the CAC, the Nigerian Immigration Service, the Federal Inland Revenue Service, the Nigerian Customs Service, and the NOTAP are brought together to provide efficient services to investors and business entrepreneurs.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

There are a number of ongoing legal reforms before the National legislature which may impact on foreign investment in Nigeria. Some of these include:

- a. The Companies and Allied Matters Act and the Investment Securities Act, which were passed in the 1990s, are currently being updated to reflect contemporary corporate and securities law development, to clarify ambiguous provisions and generally enhance the ease of doing business in Nigeria. The amendments to these legislations are at advanced stages of legislative review and are expected to be passed in the very near future.
- b. The Petroleum Industry Governance Bill, which is presently awaiting Presidential Assent, seeks to establish an efficient and value-added governance structure in the petroleum industry by the unbundling of Nigerian National Petroleum Corporation and into more commercially-driven entities.

- c. The ongoing legislative review of the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act seeks to enhance the control and monitoring mechanisms of the foreign exchange market and tighten anti-money-laundering rules as regards foreign currencies.
- d. The review of the NOTAP Act which seeks to expand the functions of the NOTAP to encourage an efficient process for the development of local research and intellectual property and technological innovation in Nigerian Universities and Higher Institutions for commercial and industrial use.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

No.


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1. 外国投资者来您所在司法管辖区进行投资的主要原因有些？

尼日利亚可能是非洲最大的经济体。尼日利亚正从石油危机导致的经济衰退中复苏，经济分析师预计其目前的国内生产总值将达到4051亿美元，到2050年将成倍增长至3.3万亿美元以上，其将成为世界上最大的15个经济体之一。

在过去的十年中，截至2014年，尼日利亚一直被列为非洲外国直接投资的三大目的地之一；2018年1月，尼日利亚的外国直接投资存量达到了9595.2亿美元。

投资者被自由的市场、相对有利的税收制度、大量的自然资源以及廉价劳动力所吸引。此外，它处于进入西非市场的战略位置。

尼日利亚的人口年轻且不断增长，目前估计约有1.86亿人口，到2050年将增加到3.99亿，其将成为世界上人口第三大的国家 - 精干的劳动力和消费群体的潜力巨大。据报道，尼日利亚拥有世界上增长最快的互联网用户群，是非洲互联网用户数量最多的国家。

尼日利亚重新决定以私营部门为驱动并通过自由市场发展其经济。尼日利亚政府鼓励与外国公司建立战略联盟和公私合作伙伴关系。尼日利亚政府已经推出了众多计划，以推动农业、采矿、石油和天然气以及出口行业的外国直接投资。尼日利亚对创业产业给予税收优惠，且诸如农业（约三分之一的人口从事该行业的工作）、制造业、旅游业、采矿业、媒体娱乐业、私立教育以及信息与通信技术服务等几乎未被开发的领域存在着投资机会。

2016年，总统授权成立了商业环境委员会，该委员会旨在消除在尼日利亚营商的官僚主

义限制。该委员会引入了监管改革，这导致尼日利亚在世界银行2018年的“营商便利度”指数中被评为世界十大最佳经济体之一。

尼日利亚的法律与监管框架鼓励外国投资，外国人可以投资并参与除在该国的《负面清单》上列出的少数战略敏感行业以外的任何业务。此外，某些行业（如石油和天然气行业）受地方政策的约束，在此类受限制行业中，尼日利亚人必须拥有多数所有权。

通过可自由兑换的货币将投资收益汇回母国的行为受到保障，且随着2017年“投资者出口外汇窗口”的引入，投资者信心得以重建，这消除了之前在2016/2017年度石油价格危机后对外汇管理制度的保留措施。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

规范尼日利亚外国投资的主要立法如下：

- a. 《尼日利亚投资促进委员会法案》：
《尼日利亚投资促进委员会法案》设立了尼日利亚投资促进委员会，以推动投资、优化尼日利亚的投资环境、以及协调尼日利亚的所有投资促进活动。所有有国外参与的企业必须在开业前向该委员会登记。
- b. 《公司及相关事务法案》：
《公司及相关事务法案》规范尼日利亚各类商业实体的建立和运营。在开始在尼日利亚开展业务之前，所有外国企业都必须在公司事务委员会进行本地注册登记。该法案涉及的事项包括成员资格、公司诉讼程序、董事、中小股东保护、财务报表以及公司清算。

- c. 《投资与证券法案》：
《投资与证券法案》成立了证券交易委员会，并赋予其监管资本市场的职责。该法案规范兼并和收购行为，并制定关于管理与规范首次公开售股的政策。它为资本市场运营商的注册登记以及证券的注册和监管制定了正式的规则。
- d. 《国家技术引进与推广办公室法案》：
该法案成立了国家技术引进与推广办公室，该办公室被授权规范尼日利亚的技术流入并开发改造此类技术的方式。该法案规定，对尼日利亚实体签订的与外国技术转让和引进有关的所有协议的评估、注册登记及监督，是批准以外币支付此类协议项下应付款项的先决条件，这些协议包括有关商标、专利和技术服务的协议。
- e. 《外汇（监督和杂项规定）法案》：
这是尼日利亚外汇交易方面的主要法律。该法案建立了自主外汇市场，并规定了市场上进行的所有外汇交易的监管与监督框架。
- f. 《工业监察法案》：
该法案设立了联邦工业贸易与投资部下属的工业监察局，用以确定企业的投资价值。所授予的验收证书系联邦税务局要求提供的文件，以便在计算公司税时授予资本及投资补贴。
- g. 《工业发展（所得税减免）法案》：
该法案规范先锋地位激励政策，该政策在最初的3年内免除合格企业的公司税。
- h. 《移民法案》：
《移民法案》规范并管理希望在尼日利亚经商的外国人的入境、就业和离境。希望聘用外国人的公司可以以外籍人员配额批准的形式申请授权，且必须遵守该法案中有关工作许可和签证的规定。
- i. 《尼日利亚出口加工区法案》：
该法案建立并规范出口加工区。在出口加工区内进行经营的企业免征所有的联邦、州及政府税。
- j. 避免双重征税协定：
尼日利亚已经与若干国家签订了避免双重征税协定，以提供外国税收减免措施并减少税收障碍。
3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？
.....
联邦法律通常会施加限制。
- a. 《负面清单》中的除外情形
根据《尼日利亚投资促进委员会法案》的规定，外国投资者可以在任何领域自由开展业务，但《负面清单》上的业务除外。此类业务包括：
- i. 生产武器 / 弹药
- ii. 生产和经营麻醉药品和精神药物
- iii. 制造军用 / 准军用服装；
- iv. 联邦执行委员会可能确定的此类其他项目。
- b. 对外国股权参与程度的限制。
对以下行业的股权参与进行了限制：
- i. 石油和天然气行业：《尼日利亚石油与天然气含量开发法案》要求所有石油与天然气运营商在授予合同时，对尼日利亚方拥有至少51%股权的尼日利亚服务公司给予排他性的考虑或优先权。
- ii. 广告业：根据广告从业者委员会2013年的公告，只有尼日利亚方拥有至少74.9%所有权的代理商方可国内市场提供服务。
- iii. 航运业：根据《沿海与内陆航运（沿海运输）法案》的规定，只有在尼日利亚建造的、由尼日利亚公民全资拥有和管理的船舶才可以在尼日利亚水域内从事国内沿海运输。但是，如果没有合适的全资所有的船舶，当地没有能力建造某种类型或尺寸的船舶，或者没有合格的尼日利亚船员，则可给予豁免。
- iv. 私人安保行业：所有私人安保公司都必须由尼日利亚人全资拥有，并且根据《私人安保法案》的规定，此类公司的所有董事都必须是尼日利亚人。
- v. 广播业：根据《国家广播委员会法案》的规定，广播许可仅会授予可证明其不代表任何外国利益的申请公司。此外，国家广播委员会必须确保该公司由尼日利亚人占多数所有权并由尼日利亚人予以经营。
- vi. 航空业：只有尼日利亚人或者在尼日利亚拥有主要营业地并由尼日利亚人控制的尼日利亚公司才能根据《民航法案》获得航空牌照、许可或证书。
- vii. 工程行业：系尼日利亚工程监管委员会的注册会员的尼日利亚董事必须至少持有公司55%的股权，才能在尼日利亚进行注册登记并获得从事工程工作的许可。
- viii. 制药业：只有申请人在申请前的至少12个月内居住于尼日利亚且其母国向尼日利亚人提供互惠登记政策的情况下，才会允许外国人在尼日利亚进行注册登记并作为药剂师执业。
4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的企业的主要要求有哪些？
.....
尼日利亚有各种类型的业务实体，其中最常见的类型包括：
- a. 私人股份有限公司：
私人公司必须至少有2名成员，最多50名成员。此类公司的公司章程必须限制其股份的转让，且公司不得向普通大众发行其股票。需要授予外籍人员配额的公司将需要10,000奈拉的最低股本以及至少25%的法定股本，且必须在设立之时予以发行和配发。
- b. 公众股份有限公司：
公众公司须拥有500,000奈拉的最低股本。此类公司可以向公众提供其证券，且对其成员的数量没有限制。但是，公司必须满足至少2名成员的法定最低要求。其名称必须以“PLC”结尾。
- c. 企业名称：
这是独资企业或合伙企业开展业务最便捷的形式。企业名称不具有法人资格，且不得以其名义起诉或被起诉。注册登记要求相对不那么正式。除律师事务所和会计师事务所外，合伙企业的成员人数限于2-20名。
- 建立商业实体的时间表：
- a. 通常，股份有限公司（无论是公众还是私人性的）在提交文件后的3-5个工作日内由公司事务委员会进行注册登记。注册登记也可以通过加急流程在24小时内完成。
- b. 企业名称在提交文件后的3-5个工作日内进行注册登记。
- 建立和运营公司实体的关键要求：
在企业类型进行注册登记后，必须根据企业的类型及拟议业务的性质采取某些步骤。
- a. 公众公司须向证券交易委员会对其证券进行登记。注册登记过程大约需要5-10个工作日。
- b. 具有外国参与的公司应：
- i. 在尼日利亚投资促进委员会进行注册登记。使用尼日利亚投资促进委员会所属的一站式投资中心，则通常需要24小时左右。
- ii. 取得联邦内政部签发的营业许可、外籍人员配额以及工作和居留签证。授予营业许可通常需要5-10个工作日，外籍人员配额需要1-4个月。处理工作和居留签证通常需要3-7天。
- iii. 如果外国投资涉及引进外国资本，则需要取得国家技术引进与推广办公室的批准。获得批准可能需要3至6个月。

除上述内容外，商业实体的有效运营还需要以下内容：

- a. 开立银行账户。这发生在提交申请后的 24 小时内。
- b. 引进外国资本并取得资本输入证书。该证书将在提交后的 48 小时内出具。
- c. 取得税务识别号和增值税注册登记。这可在 3 个工作日内获得。
- d. 在国家税务局进行所得税预扣注册登记。该注册登记可在 48 小时内完成。
- e. 向州政府登记营业场所并在指定银行支付营业场所税费。该注册可在 72 小时内完成。

根据运营部门的不同，可能需要进一步的监管批准，包括下面问题 5 中所提到的那些批准。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

所有具有外国参与的企业都必须在开始营业前在尼日利亚投资促进委员会进行注册登记。在尼日利亚投资促进委员会的注册登记及营业许可的授予需要 5-10 个工作日的時間。

某些商业部门可能需要取得监管部门的批准，例如通信许可、银行许可以及石油资源部许可。在提交必要的文件之后，取得通信许可需要约 3-6 个月的时间，取得银行许可约 9-12 个月，取得石油资源部许可约 72 小时。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的有哪些（如有）？

以下行业在尼日利亚受到严格监管：

- a. 金融与银行服务行业
- b. 石油与天然气行业
- c. 食品与药品行业
- d. 电信行业
- e. 保险业
- f. 航空业

尼日利亚一些较为开放的投资行业如下：

- a. 房地产
- b. 建筑
- c. 娱乐
- d. 农业
- e. 信息技术
- f. 酒店与旅游
- g. 固体矿产
- h. 汽车

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？（例如制裁）

尼日利亚法律对寻求与其他国家或地区开展业务的公司实体没有任何限制。

8. 对外国投资者有哪些优惠或激励措施（如有）？

通过各种税收激励措施、出口激励措施、针对特定行业的激励措施以及双边投资协议中包含的激励措施，尼日利亚政府鼓励进行投资。鼓励有资格的企业申请适当的激励措施。其中一些激励措施包括：

- a. 先锋地位激励政策，该政策在最初的 3 年期限内免除合格企业的企业所得税，且该免税期可延长 1 年或 2 年。
一些合格的行业包括从事下列活动的行业：可可加工；纺织、服装和皮革生产；电子商务服务；电影、录像和电视节目制作；软件开发；以及业务流程外包。
- b. 达到规定的当地原材料采购及利用最低水平的行业，5 年内可获得 20% 的税收抵免。
- c. 尼日利亚与包括英国、法国和加拿大在内的某些国家签订的避免双重征税协议免除了对有关公司利润征税和国外同类税收征税的双重征税。
- d. 从事商业化研发活动的组织在其符合条件的支出上可享有 20% 的投资税收抵免。

- e. 外国贷款以及向出口制造业、农产品贸易或当地机械制造提供的贷款可在不同程度上免税，但须符合合格的贷款期限和延期偿付期限。
- f. 允许当地工厂和机器的制造商和购买者为购买机械获得 15% 的投资贷款以及为购买工厂获得 25% 的投资贷款，此类贷款可转换为投资补贴。
- g. 《公司所得税法案》为在英联邦国家赚取的、亦须在尼日利亚纳税的利润提供税收减免。
- h. 对于出售股份和股票所得的收益，不收取资本利得税。
- i. 为使用天然气资源的公司提供 3 年的减税期，且该减税期可再延期 2 年。
- j. 在农业活动中从事业务的公司有权享受针对所有公司征收的最低税的免税待遇。
- k. 属于下游天然气行业的企业有权享受三（3）年的免税期（该免税期可再延长两（2）年）或 35% 的资本减免。
- l. 对联邦、州或地方政府及其代理机构发行的短期联邦政府证券以及公司债券和超国家机构发行的债券，适用债券利息免税政策，该政策自 2011 年起生效，为期 10 年。
- m. 对经济欠发达地区的投资将具有为期 7 年的 100% 减税优惠。
- n. 在符合条件的情况下，从事出口的公司可享受大量税收减免与优惠，并且在出口加工区经营的所有新工业企业均可享受为期 3 年的 100% 减税优惠。

9. 在您所在司法管辖区，是否存在任何自由贸易区、经济特区或工业区？这些地区有哪些要求？

尼日利亚有 34 个自由贸易区，其中 12 个自由贸易区正在活跃发展之中。自由贸易区由尼日利亚出口加工区管理局和石油与天然气自由区管理局进行监管。

尼日利亚有两种类型的自由贸易区：（a）一般类和（b）专业类。目前，唯一的专业自

由贸易区是位于河流州哈科特港的恩纳港的石油与天然气出口自由区。

任何个人或企业（包括未在尼日利亚注册成立的企业）均可向尼日利亚出口加工区管理局申请自由区企业许可，以在自由贸易区内经营经批准的活动。对于位于自由区关税区内且有能力出口其 75% 以上产品的出口导向型制造公司或农场，可在申请时向其授予出口加工厂 / 农场许可。

寻求在尼日利亚建立、运营和管理自由区的公众实体、私人实体或私人与公众实体的联合体可被授予自由区开发商许可。

授予许可后，企业必须申请服务性土地或工厂并取得建筑许可。企业还需要支付（a）地租和（b）自由区管理和营销 / 推广费用。

尼日利亚出口加工区法规规定，任何经批准的自由贸易区企业对自由贸易区内经批准活动的投资必须至少为 500,000 美元。

10. 在您所在司法管辖区，可能适用于外国投资者的主要税种有哪些？（例如个人所得税、企业所得税、增值税与社会保险费）

主要的税收包括：

- a. 企业所得税：对尼日利亚公司全球利润按 30% 的税率所征收的年度税，但从事制造业或农业生产且营业额低于一百万奈拉的公司除外。对于被税务机关视为在尼日利亚具有固定场所的外国公司将就归属于该固定场所的利润向其进行征税。非居民外国人从尼日利亚公司赚取的任何投资收入均须缴纳 10% 的预扣税，该税是此类收入的最终税。
- b. 预扣税：该税是针对特定交易（包括股息和董事费用）按 5% 或 10% 的税率缴纳的预缴税，该税已计入所得税。对于适用避免双重征税协定的股息、特许权使用费和利息，预扣税税率从 10% 降至 7.5%。
- c. 增值税：商品和服务的标准税率为 5%，特殊豁免的项目除外。
- d. 资本利得税：针对处置或交换资产所产生的任何利润按 10% 的税率进行征收。

- c. 石油利润税：对于从事上游石油业务的任何公司的利润，应按 50% 至 85% 的不同税率进行征收。
- f. 信息技术税：该税适用于年营业额为 100,000,000 奈拉的电信公司、网络相关公司、养老金公司、金融机构以及保险公司。
- g. 教育税：这是对尼日利亚公司的应税利润按 2% 的税率所征收的税种。

11. 在您所在司法管辖区，外国投资者应该注意哪些劳动法律法规？外国人是否能够通过投资活动获得居留许可或者工作签证？

规范尼日利亚就业关系的主要立法包括：

- a. 《劳动法案》：这是规范尼日利亚就业的主要立法。但是，其适用范围仅限于私营和公共部门的体力劳动和文书工作的雇佣合同。
- b. 1999 年《尼日利亚联邦共和国宪法》（经修正）：这是规定尼日利亚公民权利的首要法律。
- c. 2010 年《劳工补偿法案》：雇主须将其月工资总额的 1% 汇入员工赔偿基金，以补偿因就业相关事故而死亡或永久丧失工作能力的员工。
- d. 《养老金改革法案》：雇主须从雇员的工资中扣除 8%，并另将雇员工资的 10% 缴至雇员选择的养老基金管理人。
- e. 《工业培训基金法案》：至少有 5 名雇员或营业额为 50,000,000.00 奈拉（在雇员人数少于 5 名的情况下）的雇主每年须将其 1% 的年度工资总额汇至工业培训信托基金。
- f. 《移民法案》：该法案规范并监管外国人在尼日利亚的入境和就业。
- g. 《工厂法案》：该法案对暴露于职业危害之中的工厂工人和其他专业人员的安全进行了规定。
- h. 《工会法案》：该法案对尼日利亚工会的监管和组建进行了规定。
- i. 《国家最低工资法案》：该法案制定了关于最低工资的规定。

外国人居留许可 / 工作签证：

拟雇佣外国人的公司须向联邦内政部申请外籍人员配额，以满足所需外国国民的数量。如果该公司从事石油和天然气行业，则在申请外籍人员配额之前，其须取得尼日利亚内容开发与监督委员会出具的无异议证书。

外籍人员配额职位获得批准后，外国国民可以从驻其居住国的尼日利亚大使馆获得长期工作签证。

外籍人员抵达后，雇主须申请有效期为三个月的临时工作许可或外国人居留证，该证授予 12 个月的初始期限且可续签。一旦获得，外国雇员即可按照规定的条件在尼日利亚生活与工作。自获得长期工作签证后，外国国民有 3 个月的时间可以使其移民身份合法化。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

外国投资者可以无限制地通过在尼日利亚注册登记公司车辆的方式来取得不动产，但须向相关国家政府机构支付注册登记费用并提供相关文件。

鉴于《土地使用法案》规定将尼日利亚的所有土地归属于尼日利亚人信托的各自领土的州长，因此外国国民的直接收购似乎不可能。虽然该法案授权国家全国委员会制定向外国国民转让土地的规定，但迄今为止没有关于该条款实施的具体规定。

13. 在您所在司法管辖区，是否存在特定情形下阻止外国投资的任何程序？

合并、收购和业务合并以及导致公司控制权变更的交易，都必须经证券交易委员会的审查与批准，并遵守规定的门槛，以确定此类交易是否可能会大幅减少竞争。根据尼日利亚拟议的反竞争立法——《联邦竞争和消费者保护法》，竞争委员会将有效地接管证券交易委员会在这方面的职能。

除了证券交易委员会的监督外，电信、银行及尼日利亚民航局等某些部门的法定监管机构还要求对重大利益变化进行事先的监管审查。



Bola Tinubu
合伙人, Olajide Oyewole

Bola Tinubu 是 Olajide Oyewole LLP 律师事务所的合伙人，该律师事务所是位于尼日利亚拉各斯的 DLA Piper Africa Group 的成员。其已执业 25 年，主管该律师事务所的企业集团事务，并提供有关公司法律和实践的各个方面的建议。

除了她所专长的公司重组和收购业务，Bola 还为众多寡头控股企业、跨国子公司及上市公司提供一般性企业代表服务。此类一般性代表服务涉及广泛的公司法律事务，包括私人股份和业务的收购与处置、合资企业和战略联盟、实体的持续治理、为初创公司和企业家提供咨询、业务承继计划以及大量相关组织和商业交易的构建与谈判。

作为尼日利亚律师协会、国际律师协会及尼日利亚公司治理协会的会员，Bola 的法律建议广泛应用于企业的发展和扩展、公司治理事项以及日常运营和公司危机等方面。

Bola 拥有英国曼彻斯特大学经济与社会研究文学学士学位及尼日利亚 Obafemi Awolowo 大学法律学位。她于 1993 年加入尼日利亚律师协会。

14. 外国投资者应该注意哪些外国货币或外汇管制？

根据《尼日利亚投资促进委员会法案》和《外汇（监督和杂项规定）法案》的规定，外国投资收益可以自由且无条件地汇回，但须在提出申请后的 48 小时内取得尼日利亚银行签发的资本输入证书以作为进入尼日利亚的外国直接投资的证据。

中央银行在最近的衰退期间所引入的外汇管制政策已经放开，投资者现在可以通过“投资者与出口商外汇窗口”按市场化利率进行投资资金的兑换。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

反竞争法规要求须取得证券交易委员会对合格交易的批准，除此之外，撤资还须取得某些行业的批准。其中包括：(a) 中央银行对金融控股公司剥离子公司的批准；(b) 政府对石油与天然气行业某些剥离的同意；(c) 海事行业某些剥离的监管同意；以及 (d) 在剥离给尼日利亚人后，在自由贸易区内出售资产。

不存在针对撤资的处罚，但以合同约定为准。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

合同执行

尼日利亚的法律制度以英国普通法为基础，保障合同自由以及使用司法系统和双方商定的任何其他争议解决机制的权利。

- a. 司法系统：《尼日利亚宪法》保障个人在法院确定民事权利和义务的权利。尼日利亚法院通常会在缺乏任何公共政策理由的情况下执行合同条款，包括管辖法律的选择。此外，在某些条件下，尼日利亚法院也将承认并执行终局性的外国判决和仲裁裁决。
- b. 替代性争议解决：尼日利亚承认作为争议解决方式的调解和调停程序。在某些情况下，法院可以将案件提交调解和调停。仲裁在尼日利亚较为普遍，且通常受到作为该国主要立法的《仲裁与调解法案》或者由当事人选择的任何仲裁法律或程序的管辖。

投资者保护机制

尼日利亚的外国投资者受《尼日利亚投资促进委员会法案》的保护。除《负面清单》中所列出的企业外，外国人可以参与尼日利亚任何形式的企业。此外，除出于国家利益或公共目的外，尼日利亚保证投资不被征用及国有化。如果被征用或国有化，则投资者有权获得充分的补偿。投资者与政府之间的任何争议将通过投资者母国与尼日利亚之间签署的双边投资条约所规定的仲裁方式予以解决。

尼日利亚确保投资者可通过授权交易商将资本及带入尼日利亚的资本所产生的回报进行无条件的转移。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

尼日利亚已经批准了与包括中国、美国 and 韩国等国在内的几个国家之间签署的 15 项双边投资条约。其中一些条约保护缔约国公民的投资及其收益免于被征用和遣返的权利，

以及对因战争、骚乱及相关原因引起的损失将在缔约国对其公民进行赔偿的同等限度内向缔约国公民进行赔偿。

尼日利亚与 13 个国家（包括巴基斯坦、中国和菲律宾）就所得税和资本收益签署了避免双重税收协定。这些条约的一个主要益处即在于其可以将标准预扣税率降低高达 2.5%。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

在尼日利亚经济中运营的企业的创意、发明和品牌受以下法律的保护：

- a. 《版权法案》：该法保护文学、音乐、电影、录音及广播作品。自作品被创作或作者死亡后或者自作品被出版后的 50-70 年（具体取决于作品的类型）内，每部作品被给予尼日利亚法律项下的版权保护。
- b. 《专利和外观设计法案》：专利注册确保自专利申请之日起的 20 年内专有权均有效。
- c. 《商标法案》：该法律保护具有显著性的或者通过在交易中为指示某种联系使用于商品而取得显著性的任何标志、文字、设计、设备、标签、数字或前述要素的组合。商标自注册登记之日起的 7 年内有效，后续可进行定期续展，每次续展期限为 14 年。
- d. 《商品标志法案》：该法案禁止伪造商标、或虚假申请与商标极为相似以产生欺骗性的标志，并规定了相应的惩罚措施（从罚款到动产没收，直至监禁）。
- e. 《贸易不正当竞争（杂项犯罪）法案》：该法案将以其质量、性质产生错误印象的方式进行的商标相关违法行为（例如对产品的虚假包装、误导性宣传）定为刑事犯罪，并规定了罚款作为对违法行为的制裁。

侵犯知识产权一般会构成相关法律所规定的犯罪行为，并会被相应地处以罚款和 / 或监禁。此外，受害方可在相关尼日利亚法院提

起民事诉讼以获得民事救济，包括损害赔偿、调取账户命令、禁令及移转侵权物品所有权。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

规范环境事项的主要立法如下：

- a. 《国家环境标准与执法机构法案》：该法案将国家环境标准与执法机构确立为维护环境标准、规则和准则以及消除污染和环境退化的执行机构和主要监管机构。
- b. 《环境影响评估法案》：该法案规定了与公共和私营部门活动对环境的影响相关的原则与程序，并要求在开展业务时须对环境因素进行适当考虑。
- c. 《有害物质（特殊刑事规定等）法案》：该法律禁止与被宣布为非法的有害废物的购买、销售、进口、运输、存放及储存有关的所有活动。该法案所规定的定罪定罪可能导致土地或运送有害废物的船只被没收以及犯罪者被终身监禁。
- d. 《联邦固体和危险废物管理条例》：该条例规定工业界有义务识别危害公共健康的固体危险废物，并考虑回收利用此类废物的可能性。它还强制要求就向环境进行的任何排放而向有关机构进行通知。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

尼日利亚投资促进委员会是针对尼日利亚外国投资的主要监管机构，可以提供有关所有投资相关咨询的信息。

尼日利亚投资促进委员会建立了一站式投资中心，该投资中心将政府的相关机构（包括公司事务委员会、尼日利亚移民局、联邦税务局、尼日利亚海关总署及国家技术引进与推广办公室）汇集在一起，以便为投资者与企业提供高效的服务。

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

国家立法机构正在进行一些可能影响尼日利亚外国投资的法律改革。其中一些改革包括：

- a. 20 世纪 90 年代通过的《公司和相关事项法案》及《投资证券法案》目前正在更新，以反映当代公司和证券法律的发展、厘清模糊的条款以及广泛提高在尼日利亚营商的便利性。这些立法的修正案正处于立法审查的后期阶段，预计将在不久的将来获得通过。
- b. 目前正待总统签批的《石油工业治理法案》旨在通过将尼日利亚国家石油公司分拆为更多商业化实体的方式，在石油工业中建立一个有效且具有附加值的治理结构。
- c. 正在进行立法审查的《外汇（监督和杂项规定）法案》旨在加强外汇市场的管理与监督机制，并强化有关外币的反洗钱规则。
- d. 对《国家技术引进与推广办公室法案》的审查旨在扩大国家技术引进与推广办公室的职能，以鼓励尼日利亚大学和高等院校有效开展可用于工商业用途的本土研究、知识产权开发和技术创新。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

无。

Jurisdiction: Pakistan
Firm: RIAA Barker Gillette
Authors: Mayhar Mustafa Kazi,
Sara Ansari and Rafia Khatri

1. What are the main reasons foreign investors invest in your jurisdiction? (Please provide a brief introduction to your jurisdiction and some facts and figures related to foreign investment.)

In the recent past, Pakistan has seen strong growth performance and key regulatory reforms which, coupled with a drastically improved security situation and significant investments in power, infrastructure and e-commerce, have led Pakistan's economy to grow by 5.8% in 2017, the highest rate in 10 years. Recent investments, particularly in infrastructure projects being set up under the umbrella of the China-Pakistan Economic Corridor (CPEC), are likely to provide further momentum to GDP growth in the coming years. Pakistan is also currently enjoying its most politically stable period in history with a third consecutive democratically elected government having assumed power.

Pakistan is located at the crossroads between the Middle East, South Asia and Central Asia. Pakistan's strategic geographic location confers a number of economic advantages. The country has the potential to connect oil and gas rich Middle East and Central Asia to China, the engine of global economic growth. Such pipeline, road and rail projects are proposed to be established under the China-Pakistan Economic Corridor (CPEC), part of China's One Belt One Road initiative, entailing projects requiring investment of \$ 62 billion. The CPEC also includes power projects which have boosted generation capacity in Pakistan, alleviated the electricity shortfall and brought down the cost of electricity

Aside from an abundance of human capital, with its population estimated at around 200 million, and a growing middle class, Pakistan is rich in natural resources. In terms of fossil fuels, aside from oil and gas, which fulfil a significant proportion of Pakistan's domestic demand, Pakistan is home to one of the largest coal deposits in the world. These reserves, when converted into crude equivalent, are greater than oil reserves of Saudi Arabia and the gas reserves of neighbouring Iran. Pakistan has immense untapped hydroelectric potential and is home to the world's largest earth-filled dam. Investment in wind and solar power is also on the rise and a number of private sector wind power projects have been commissioned in recent years. Pakistan also has considerable deposits of copper, gold, marble, limestone, salt and various other minerals. In terms of agriculture, Pakistan is home to the world's largest irrigation system, and is the fourth-largest producer of cotton, fifth-largest producer of sugar cane and milk, and tenth-largest producer of rice. For a number of years, including in 2016, Pakistan's stock exchange has been among the top three best performing in the world.

The Investment Policy 2013 (the "Policy") has been framed to encourage foreign investment into Pakistan. The Policy prescribes removal of minimum foreign equity requirement across all sectors of the economy open to foreign investment, freedom to repatriate profits, dividends, and disinvestment proceeds subject to procedural requirements set by the State Bank of Pakistan (the "SBP") and no upper limit on the extent of the share of foreign equity except in specified sectors such commercial aviation, banking and agriculture.

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It is also easy to set up legal entities in Pakistan. Limited liability companies are generally incorporated within 2–4 working days from the day the requisite documentation for incorporation is submitted to the Securities and Exchange Commission of Pakistan (the “SECP”). Our response to Question 4 details the process by which companies are incorporated in Pakistan.

Various multi-national companies have invested in Pakistan and are running successful operations in the country. Unilever Pakistan is the largest fast-moving consumer goods company in Pakistan, as well as one of the largest multinationals operating in Pakistan, and generated revenue worth US\$ 660 million in 2015.

Pakistan has bilateral and multilateral trade agreements with several nations and is a member of the World Trade Organization, South Asia Free Trade Area and has a free trade agreement with China.

2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

In Pakistan, the Protection of Economic Reforms Act 1992 (“PERA”) and the Foreign Private Investment (Promotion and Protection) Act 1976 (“FPIA”) provide legal cover for protection of foreign investors and foreign investment in Pakistan.

PERA prohibits the Government of Pakistan from nationalizing any enterprise owned by a foreign investor or any share or equity held by a foreign investor. It also prevents financial obligations and contractual commitments of the government from being amended to the disadvantage of the beneficiaries of such financial obligations and contractual commitments.

FPIA requires equal treatment to be given to foreign and domestic private investment. Pursuant to the FPIA, foreign private investment will not be subject to taxes on income other than those

applicable to investments made in similar circumstances by the citizens of Pakistan. Further, industrial undertakings having foreign private investment are to be granted the same treatment as is granted to similar industrial undertakings having no such investment, in the application of laws relating to importation and exportation of goods.

For enforcement of foreign arbitral awards in Pakistan, please see our response to Question 16.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

a. Specific restrictions on investment:

All sectors and activities are open for foreign investment unless specifically prohibited or restricted for reasons of national security and public safety. Specified restricted industries include arms and ammunitions, high explosives, radioactive substances securities, currency, mint and consumable alcohol.

b. Restrictions on foreign shareholders/directors in Pakistani companies:

Pursuant to a directive issued by the Ministry of Interior (the “MOI”) (the “Directive”), foreign shareholders and directors of Pakistani companies are required to obtain security clearance/approval from the MOI. Ordinarily it takes up to 2 years to obtain clearance from the MOI. However, the SECP has clarified that foreign shareholders and directors may proceed with the incorporation of companies and with the registration of statutory returns prior to the MOI approval being granted, provided that the requisite documents for MOI approval are submitted by the foreign shareholders/directors, including an undertaking whereby the foreign shareholders and directors commit that in case of refusal of security clearance, the shareholder shall take immediate steps for transfer of his shares to another party or in the case of a director, such director will resign from his position as director in the company, and each shall be

replaced by a person who has obtained security clearance, or will submit an application for security clearance, or does not require security clearance. Companies having shareholders/officers of Afghan or Indian nationality or origin are only incorporated after receipt of security clearance from the MOI.

c. Foreign Exchange Restrictions:

Pakistan is a foreign exchange regulated environment that prohibits, except with the general or special permission of the SBP, payments made to or for the credit of non-residents, including by way of dividend and the issuance or transfer of shares to non-residents under the Foreign Exchange Regulation Act, 1947 (“FERA”) ss 5 and 13. The SBP has granted general permission for the issue or transfer of shares on repatriation basis (both with regard to dividends and disinvestment proceeds) to non-residents subject to conditions as set out in Chapter XX of the Foreign Exchange Manual of the SBP. Subject to the terms and conditions of such permission any issue of shares must be intimated by the company to the SBP through its bank within thirty (30) days of the issuance/ transfer on the prescribed form. Such form is required to be accompanied by an encashment certificate or a proceeds realization certificate showing that payment for the shares has been received in Pakistan, constitutional documents of the company, and particulars of the shareholders. Such restrictions placed on foreign investments are equally applicable at local levels of government.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

Following are the most common business vehicles for foreign investors:

a. Limited Liability Company:

It may be incorporated as a private or public limited company under the Companies Act 2017 and are registered with the SECP.

A private limited company is a company limited by shares and is required to have at least two directors and two shareholders. A public limited company is required to have at least three directors and three shareholders.

Limited liability companies are heavily regulated in Pakistan. They are required to maintain books of account and in many cases are also required to regularly file audited financial statements with the SECP. Companies must also file statutory returns with the SECP to report various types of decisions or activities, such as change in company officers, transfer of shares by members and increase in share capital. Filings made by companies are recorded in public registers maintained by the SECP which are open to public inspection.

The process of incorporation is fairly simple and quick. As mentioned above, incorporating a company generally takes between 2–4 working days from the day the requisite documentation for incorporation is submitted to the SECP.

b. Branch or liaison office:

The process for establishing such place of business involves: (i) obtaining permission from the Board of Investment (“BOI”) to set up a branch office or liaison office, and (ii) filing of documents with the SECP. Companies having such offices are required to submit various documents to SECP and are also required to file a list of Pakistani members and debenture holders, and audited financial statements of the branch on an annual basis. In comparison to companies established in Pakistan, foreign companies having a branch or liaison office have minimal reporting requirements to comply with. In case of a branch office, remittance of profits etc. is allowed subject to fulfillment of certain requirements of the SBP.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

Please refer to our response to Question 3 for discussion on MOI security clearance and restrictions imposed by FERA on a person in Pakistan from issuing and transferring shares to a person resident outside Pakistan.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

The power and the pharmaceutical sectors are heavily regulated in Pakistan.

Conversely, some of the more open or unrestricted sectors, are listed as follows:

- a. Construction;
- b. Agriculture;
- c. Infrastructure;
- d. Manufacturing;
- e. Education; and
- f. Health.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

The Government of Pakistan under the United Nations (Security Council) Act 1948 gives effect to the decisions of United Nations Security Committee (UNSC) whenever the Consolidated United Nations Security Council Sanctions List maintained by the UNSC is updated.

Pakistan does not recognize Israel as a state. Pakistan also has constrained relationships with India, Afghanistan and Bangladesh.

In Pakistan, import and exports of goods are regulated by the Ministry of Commerce under the Imports and Exports (Control) Act 1950 (the "Import and Export Act") and the notifications

issued thereunder. No import and export is permissible from Israel or from any other country, which may be notified by the Ministry of Commerce. Import of goods originating from any of these countries/ sources is also prohibited.

Imports from and exports to India are regulated as notified by the Ministry of Commerce from time to time. Although Pakistan allows goods to be imported from India, Pakistan has a negative list approach in relation thereto, which comprises items that are prohibited from being imported by Pakistan from India. Currently there are 1209 items on the negative list, and any items not on the list may be imported from India.

8. What grants or incentives are on offer to foreign investors, if any?

Pakistan has entered into taxation treaties with 65 countries offering investors relief against double taxation on account of taxes on income. While Pakistan is a foreign exchange regulated environment, the SBP has granted general permission for all inward remittances that may be made by foreign investors into Pakistan. With respect to outward flows, the SBP has granted permissions for various forms of outward remittances, including remittance of loans and interest, subject to the restrictions prescribed in the Foreign Exchange Manual of the SBP. Furthermore, foreign investors may lease land without limitation subject to compliance with applicable rules and regulations of the relevant authority. Foreign real estate developers are subject to the same rules and treatment as domestic real estate developers.

As discussed in our response to Question 2, there are specific laws to protect foreign investors, such as FPIA and PERA.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

Yes, there are special economic zones in Pakistan.

Special Economic Zones ("SEZ") are set up by the Federal and Provincial Governments themselves or in collaboration with the private sector under different modes of public-private partnership or exclusively through the private sector under the Special Economic Zone Act 2012.

The fiscal benefits under the SEZ law include a one-time exemption from custom duties and taxes for all capital goods imported into Pakistan for the development, operations and maintenance of a SEZ (both for the developer as well as for the zone enterprise) and exemption from all taxes on income for a period of ten years. The provincial SEZ authorities, set up under the law, are required to move the applications received from developers to the Federal Board of Investment which is to act as the secretariat to the Board of Approvals and the Approval Committee. Unless otherwise decided by the Board of Approval with respect to a particular SEZ or type of SEZ, any entity shall be eligible as a developer which is incorporated under the laws of Pakistan.

The Government of Pakistan established an Export Processing Zones Authority (EPZA) in 1980. The Export Processing Zones Authority Rules 1981 regulate the planning, developing, managing and operating of Export Processing Zones (EPZs) in Pakistan. EPZA undertook an extensive industrial program for setting up a chain of Export Processing Zones (EPZs) in Pakistan. These EPZs are set up in close cooperation or under joint venture arrangement with Private Sector/Provincial Governments, including the Karachi Export Processing Zones (KEPZ) and the Gwadar Export Processing Zones in Balochistan.

To be eligible to invest in an EPZ one has to be either of the following:

- a. Foreign investor;
- b. Non-resident Pakistani;
- c. Resident Pakistani; or
- d. Joint venture between the above in any proportion of investment.

All investment in EPZs are made in convertible foreign currencies.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

There are various types of taxes applicable to a foreign investors, including:

a. Income tax Ordinance 2001

Pursuant to the Income Tax Ordinance 2001 ("ITO") s 4, income tax is liable to be paid at the rates prescribed thereunder, by every person who has taxable income for the year. Pursuant to the ITO s 9, the taxable income of a person for a tax year is the total income after reduction by the total of any deductible allowances under the ITO. In accordance with the ITO s 11, the income of a non-resident person under any head of income is computed by only taking into account amounts which are Pakistan-sourced income. The total income of a person for a tax year is the sum of the person's income under each head of the following heads of income namely, salary, income from business, income from property, and capital gains and income from other sources.

Capital gain on disposal of immovable property

Under the ITO s 37, a gain arising on the disposal of a capital asset by a person in a tax year, other than a gain that is exempt from tax under the ITO, shall be chargeable to tax in that year under the head of 'Capital Gains'.

Capital gain on disposal of securities

Pursuant to the ITO s 37A, the capital gain arising on or after the first day of July 2010, from disposal of securities (other than a gain that is exempt under the ITO), shall be chargeable to tax at the rates specified in the schedule to the ITO.

Capital gain on disposal of other capital asset

The gain arising on the disposal of any other capital asset (calculation whereof is prescribed in the ITO) will be included in the general pool of income generation by such person and will be charged to tax based on whether such person is an individual, a company or otherwise.

b. Sales Tax Act 1990

Sales tax on goods in Pakistan is governed by Federal statute being the Sales Tax Act 1990. Sales tax is levied at the rate of 17% of the value of taxable supplies made by a registered person in the furtherance of any taxable activity carried on by him and goods imported into Pakistan irrespective of their final destination in territories of Pakistan. Such sales tax is a value added tax.

c. Sales Tax on Services

Sales tax on services is governed by provincial legislation: the Sindh Sales Tax on Services 2011, the Punjab Sales Tax on Services 2012, the Khyber Pakhtunkhwa Finance Act 2013 and the Balochistan Sales Tax on Services 2015. The foregoing statutes have substantially similar provisions. Sales tax on services is charged, levied and collected on the value of a taxable service at the rate specified in the relevant provincial legislation. A taxable service is a service listed in the schedule to such law, which is provided by a registered person from his registered office or place of business in a particular province, in the course of an economic activity, including in the commencement or termination of the activity. Sales tax on services is a value added tax. The capital territory of Islamabad is governed by Islamabad Capital Territory (Tax

on Services) Ordinance 2001 which is slightly different in application than the aforementioned provincial laws.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

Employment Regulations:

In 2010, the power to legislate on the matter of labour law was devolved to the provinces, which have enacted laws largely mirroring the provisions of the previous federal laws. Where the provincial assemblies of any province have not promulgated labour laws yet, the earlier federal laws shall apply.

Labour laws regulate the employment of workmen (persons employed in any industrial or commercial establishment to do any skilled or unskilled, manual or electrical work for hire or reward other than a person employed in a managerial or administrative capacity) and employees (employees other than workers, up to the cadre of managers). Employees belonging to the cadre of managers or above are regulated solely by the terms of their employment contract. The applicable labour laws regulate the terms of employment such as probation, working hours, annual leaves, overtime and termination.

Other relevant laws include:

- a. The Factories Act 1934 (applicable in Punjab and Balochistan), the KPK Factories Act 2013 and the Sindh Factories Act 2015, which regulate inter alia the working conditions in factories; and
- b. The Industrial Relations Act 2012 (applicable in KPK and Balochistan), the Punjab Industrial Relations Act 2010 and the Sindh Industrial Relations Act 2013 which deals with the formation of trade unions and improvement of relations between employers and workers.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

Yes, foreign investors can acquire real property and land in Pakistan. There are no restrictions or limitations imposed on foreign investors in this regard.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Pakistan has an open-admission system that does not require pre-screening and approval for new entrants. However, foreign companies are required to fulfil the conditions of corporate registration under company law. Please refer to our response to Question 3 for MOI security clearance requirements and restrictions imposed by FERA on a person in Pakistan from issuing and transferring shares to a person resident outside Pakistan.

14. What foreign currency or exchange controls should foreign investors be aware of?

The provisions of Foreign Exchange Regulation Act 1947 ("FERA") outline a framework of currency controls and foreign exchange regulations. Pursuant to FERA s 4, the general or special permission of the SBP is required for any dealing in foreign exchange. Further, FERA s 5 states that, save as may be provided in accordance with any general or special exemption which may be granted conditionally or unconditionally by the SBP, no person in, or resident in, Pakistan shall: (a) make any payment to or for the credit of any person resident outside Pakistan, or (b) acknowledge any debt so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Pakistan.

Pursuant to FERA s 13, no person shall, inter alia, take or send any security to any place outside Pakistan, or transfer any security or

create or transfer any interest in a security to or in favor of a person resident outside Pakistan, except with the general or special permission of the State Bank. Please see our response to Question 3 above.

In addition to FERA, there are exchange controls under the Foreign Exchange Manual, which is a compilation of various statutory notifications and circulars issued by the SBP pursuant to FERA. For example, pursuant to the Foreign Exchange Manual Paragraph 6 of Chapter XX, the SBP has granted a general exemption from the provisions of FERA in connection with the issue, transfer and export of securities of repatriation basis to certain non-residents specified therein.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

There are no statutory penalties or approval requirements if a foreign investor withdraws their investment in Pakistan. However, the repatriation of any investment is subject to approval of the SBP. As discussed above the SBP has granted various general permissions which allow foreign investors to make investments on a repatriable basis subject to the conditions prescribed by the SBP. Further investors withdrawing from their commitments may be liable for breach of contract if they had entered into agreements obligating them to make an investment in Pakistan prior to withdrawing such investment.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

a. Contract Enforcement

i. Courts of Pakistan

Disputes arising between parties pertaining to contract enforcement can be brought before the courts of Pakistan. Such courts

are organized into three tiers: the bottom tier is formed by subordinate courts and tribunals which include civil courts, criminal courts, and specialized courts and tribunals; these courts exercise original jurisdiction and ordinarily serve as the court of first instance; the second tier comprises of the High Courts of each province and of Islamabad who exercise supervisory jurisdiction over other courts in their territories and also exercise special constitutional jurisdiction; the Supreme Court of Pakistan forms the third tier being the ultimate court of appeal which exercises jurisdiction over all other courts.

ii. Arbitration

Arbitration is a common recourse for parties in Pakistan for resolution of commercial disputes, both local and foreign. Arbitration has a well-developed structure in Pakistan set out under the Arbitration Act 1940. In a court of law, the time taken for the resolution of a dispute can take anywhere between a year and ten years. However, arbitration proceedings are comparatively much quicker. Interim relief can be sought from courts for the duration of arbitration proceedings.

iii. Enforcement of Foreign Awards

Pakistan has given effect to the provision of the New York Arbitration Convention by enacting the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, which allows foreign arbitral awards to be enforced in Pakistan as if they were an order of the High Court in Pakistan and limits the possible challenges to such awards. This ensures that such foreign arbitral awards can be enforced in Pakistan with minimal interference.

The Arbitration (International Investment Disputes) Act 2011 incorporates the 'International Convention on the Settlement of Investment Disputes between States and Nationals of Other States'. This Act allows a party aggrieved by the Government of

Pakistan to seek relief from a court of their own jurisdiction. Any person seeking enforcement of an award rendered pursuant to the Convention is entitled to have such award registered in any High Court of Pakistan, following which, for the purposes of execution, such award shall be of the same force and effect as if it had been a judgment of a High Court of Pakistan.

iv. Enforcement of Foreign Decrees

The courts in Pakistan recognize and enforce decrees passed by courts of certain foreign jurisdictions. The Code of Civil Procedure 1908 s 44A, provides that a decree of a superior court of the United Kingdom or any reciprocating territory (i.e. territories notified by the Federal Government) may be executed in Pakistan as if it were a decree of a District Court in Pakistan.

b. Investor Protection Mechanism

The Board of Investment is Pakistan's premier investment promotion body and has formulated the Policy to create an investor-friendly environment with a focus on growing the economy, attracting foreign direct investment and providing equal treatment to foreign and local investors.

The Policy provides that all foreign investors will be accorded fair and equitable treatment without discrimination in relation to the establishment, expansion, management, operation and protection of their investments and have the right to due process of law. All foreign investors in relation to the establishment, expansion, management, operation, and protection of their investments will be entitled to treatment 'no less favorable' than that granted to national investors in like circumstances as per applicable law. Please also refer to our response to Question 2 on foreign investment legislation and benefits thereunder for foreign investors.

Pakistan has signed Bilateral Investment Treaties with 48 countries, which offer foreign investors from such countries stronger protections of their investments.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

Pakistan has signed Bilateral Investment Treaties with the followings Asia-Pacific jurisdictions:

- a. Australia;
- b. Bangladesh;
- c. Cambodia;
- d. China;
- e. Indonesia;
- f. Japan;
- g. South Korea;
- h. Malaysia;
- i. Singapore; and
- j. Sri Lanka

Pakistan has not entered into multilateral investment protection treaties with Asia-Pacific jurisdictions.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

There are four types of protections under the law relating to intellectual property in Pakistan, namely copyrights, patents, trademarks and registered design. Each of these protections is granted under separate legislations.

Patents are protected under the Patents Ordinance 2000. An invention under this law may be patented, if it is new, involves an inventive step, and is capable of industrial application.

The law relating to trademarks is the Trade Marks Ordinance 2001. Under this Ordinance, an application for registration of a trade mark is required to be made in the prescribed manner and the Trade Marks Registrar may register a mark subject to the requirements under the Ordinance being fulfilled. The proprietor of

a registered trademark is entitled to initiate proceedings in case of infringement.

Registered designs are protected under the Registered Designs Ordinance, 2000. The nature of the right is that the design can consist of three-dimensional features, such as the shape or surface of an article, or of two dimensional features, such as patterns, lines or colours. Such designs need to be registered with the Patent Office, and are protected for a period of ten years from the date of registration – the protection being renewable for a further period of ten years. Under such law claims for infringement can be raised, and the remedies that can be sought are damages and injunctions.

There is also the protection under the Copyrights Ordinance 1962. Copyright is a form of protection provided to the authors of original works of authorship, including literary, dramatic, musical, artistic, and other intellectual works, such as software. Though such work is copyrighted from inception, it needs to be registered with the Copyright Office, and thereafter the copyright owner can bring action for infringement for remedies such as damages and injunctions. Copyrights are protected for the length of the author's life and for a further fifty years after his death.

Additionally, the Plant Breeders' Rights Act 2016 ("PBRA") allows persons to protect new plant varieties of genera or species by seeking registration with the Federal Government where such plant varieties meet the criteria of novelty, distinctness, uniformity, stability, and designated by an acceptable denomination prescribed under the PBRA.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

Environmental protection in Pakistan is regulated by provincial laws promulgated by the provincial assemblies (the “Environmental Laws”):

- a. Sindh Environmental Protection Act 2014, applicable to Sindh;
- b. Balochistan Environmental Protection Act 2012, applicable to Balochistan;
- c. Punjab Environmental Protection Act 1997, applicable to the Punjab;
- d. Khyber Pakhtunkhwa Environmental Protection Act 2014, applicable to Khyber Pakhtunkhwa; and
- e. Pakistan Environmental Protection Act 1997, applicable to the Islamabad Capital Territory

Each of the Environmental Laws has established a provincial environmental protection agency, which is responsible for the protection, conservation, rehabilitation and improvement of the environment and has the power to inter alia review and approve initial environmental examinations and environmental impact assessments with respect to projects, issue licenses for the handling of hazardous substances and pass environmental protection orders.

Pursuant to the Environmental Laws, no person shall discharge or emit or allow the discharge or emission of any effluent or waste or air pollutant or noise in an amount, concentration or level, which is in excess of the National Environmental Quality Standards. A pollution charge may be levied on any person who contravenes or fails to comply with the foregoing provision, to be calculated in accordance with such procedure as may be prescribed. Any person who pays the pollution charge levied as prescribed, shall not be charged with an offence with respect to that contravention or failure.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

Yes.

- The SBP is the central bank of Pakistan and its operations include regulation of the monetary and credit system of Pakistan and the regulation of the banking sector.

A: I.I Chundrigar Road, Karachi, Pakistan
E: info@sbp.org.pk
T: +92-21-111-727-111

- The BOI established pursuant to Section 3 of the BOI Ordinance, 2001 assists companies and investors who intend to invest in Pakistan and facilitates the implementation and operation of their projects.

A: Ataturk Avenue, G-5/1, Islamabad, Pakistan
E: investpak@pakboi.gov.pk
T: +92-51-922-4101
F: +92-51-921-554

- The SECP regulated companies in Pakistan and has investigative and enforcement powers.

A: NIC Building, 63 Jinnah Avenue, Islamabad, Pakistan
T: +92-51-92-7091
F: +91-51-910-00471

- The Pakistan Business Council was established by the country’s leading corporations and business groups as an advocacy forum to improve the general business environment of the country and to present proposals for policy to the Government of Pakistan.

A: 8th floor, Dawood Center, M.T. Khan Road, Karachi, Pakistan
T: +92-213-563-0528
F: +92-213-563-053

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

Pursuant to the Finance Act 2018, the rate of tax on the taxable income of a company was reduced from 30% to 29% for the tax year 2019, 28% for 2020, 27% for 2021, 26% for 2022 and 25% for 2023 and onwards. Such reduction in tax liability is an incentive for foreign investors wishing to set up a company in Pakistan.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

Pakistan’s general elections took place on 25 July 2018 and resulted in Pakistan Tehreek – I – Insaaf (“PTI”) forming Government, with Imran Khan being elected as Prime Minister. The new government has announced its intention to bring about reforms in the tax and investment policies in Pakistan, with the aim of improving the ease of doing business in Pakistan and strengthening revenue collection to reduce fiscal deficit. A proposal for reforming the Federal Board of Revenue by separating the functions of tax policy on one hand and tax administration and collection on the other is in the process of being brought to the Federal Cabinet for approval. The new government has also announced that they intend to reform inefficiently managed state owned enterprises, which currently are a drain on the national exchequer, and then to privatize them where required.

专题： 巴基斯坦
律所： RIAA Barker Gillette
作者： Mayhar Mustafa Kazi,
Sara Ansari 和 Rafia Khatri

1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

最近几年，巴基斯坦有强劲的增长表现，对主要监管规则进行了改革，加上安全局势的显著改善和对电力、基础设施及电子商务的大量投资，使得 2017 年巴基斯坦经济增长了 5.8%，为最近 10 年来的最好水平。最近的投资，特别是中国—巴基斯坦经济走廊中设定的基础设施项目，有可能成为未来几年国内生产总值增长的动力。巴基斯坦目前也处于历史上政治最稳定的时期，连续第三届由民选政府执政。

巴基斯坦位于中东、南亚和中亚的交汇处。巴基斯坦的战略地理位置蕴含了许多经济优势。该国有潜力把拥有丰富石油和天然气资源的中东和中亚与作为全球经济增长引擎的中国联系起来。这些管道、道路和铁路项目均在作为中国一带一路倡议一部分的中国—巴基斯坦经济走廊中设定，涉及需要投资 620 亿美元的项目。中国—巴基斯坦经济走廊还包括电力项目，这些项目提高了巴基斯坦的发电能力，缓解了电力短缺，降低了电力成本。

巴基斯坦拥有丰富的人力资本：人口估计约 2 亿人，中产阶级不断增长。除此之外，巴基斯坦自然资源丰富。在化石燃料方面，除了石油和天然气之外（石油和天然气占巴基斯坦国内需求的很大比例），巴基斯坦还是世界上最大的煤炭储量国之一。这些储量换算成原油当量，大于沙特阿拉伯的石油储量和邻国伊朗的天然气储量。巴基斯坦拥有巨大的未开发水电资源，拥有世界上最大的填土大坝。风能和太阳能投资也在增加，近年来，一些民营的风能项目已经投产。巴基斯坦也有相当多的铜、金、大理石、石灰石、盐和其他各种矿产储备。在农业方面，巴基斯坦拥有世界上最大的灌溉系统，是棉花的

第四大生产国，甘蔗和牛奶的第五大生产国，水稻的第十大生产国。多年来，包括在 2016 年，巴基斯坦的证券交易表现已跻身世界前三强。

2013 年《投资政策》的出台，旨在鼓励外国投资进入巴基斯坦。该政策规定，在符合巴基斯坦国家银行规定的程序要求的前提下，在对外国投资开放的所有行业中，免除最低外国股本要求，可自由汇回利润、股息和撤资收益。除了民用航空、银行和农业等特定行业外，对外资持股比例不设上限。

在巴基斯坦设立法人实体也很容易。有限责任公司的设立一般在自向巴基斯坦证券交易委员会提交设立文件之日起的 2-4 个工作日内即可完成。我们对问题 4 所做的答复详细说明了在巴基斯坦设立公司的流程。

各种跨国公司已在巴基斯坦投资，并且在该国运营良好。联合利华巴基斯坦公司是巴基斯坦最大的快速消费品公司，也是在巴基斯坦最大的跨国公司之一。其 2015 年营业收入达 6.6 亿美元。

巴基斯坦与几个国家有双边和多边贸易协定，是世界贸易组织、南亚自由贸易区的成员国，并与中国有自由贸易协定。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

巴基斯坦的 1992 年《经济改革保护法》和 1976 年《外国私人投资（促进和保护）法案》为保护在巴基斯坦的外国投资者和外国投资提供了法律保障。

1992 年《经济改革保护法》禁止巴基斯坦政府将外国投资者拥有的任何企业或外国投资者持有的任何股份或股权国有化。它还禁

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止将政府的财政义务和合同承诺以不利于这些财政义务和合同承诺受益者的方式进行修改。

1976年《外国私人投资（促进和保护）法案》要求对外国和国内私人投资给予同等待遇。根据该法案，除了适用于巴基斯坦公民在类似情况下所做投资的税项外，外国私人投资无须对其收入缴纳其他税款。此外，在适用与货物进出口有关的法律时，无论工业企业是否有外国私人投资，都应当给予同样的待遇。

关于在巴基斯坦执行外国仲裁裁决，请参阅我们对问题16的答复。

3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？

a. 投资的特别限制：

除非出于国家安全和公共安全的原因特别禁止或限制，所有行业和活动都对外国投资开放。受限制的特定行业包括：武器弹药、高爆炸物、放射性物质、证券、货币、造币厂和消费性酒精。

b. 对巴基斯坦公司外国股东 / 董事的限制：

根据内政部发布的指令，巴基斯坦公司的外国股东和董事必须获得内政部的安全许可 / 批准。获得内政部的许可通常需要长达2年的时间。但是，巴基斯坦证券交易委员会已经明确规定，外国股东 / 董事在向内政部提交必要文件（包括外国股东和董事作出的承诺，即如果证券许可被拒，股东应立即采取步骤将其股份转让给另一方；或对董事而言，该人将辞任公司董事，并由已取得安全许可之人、或将申请安全许可之人、或无须取得安全许可之人接替担任）后，可以在获得内政部批准之前进行公司设立和法定申报表登记。如果公司具有现籍或原籍为阿富汗或印度的股东 / 管理人员，则该公司只有在其获得内政部的安全许可之后才可成立。

c. 外汇管制：

巴基斯坦有外汇管制。除非得到巴基斯坦国家银行的一般或特别许可，否则禁止向非居民支付款项或向非居民提供信贷，包括根据

1947年《外汇管理法案》第5条和第13条的规定通过股息和向非居民发行或转让股票的方式进行的款项支付或信贷。在符合巴基斯坦国家银行《外汇手册》第二十章规定的条件的前提下，巴基斯坦国家银行对非居民在汇回的基础上（包括股息和撤资收益）发行或转让股份给予了一般许可。在符合此类许可条款和条件的前提下，任何股份的发行都必须在发行 / 转让后三十（30）天内由公司通过其银行按规定的表格通知巴基斯坦国家银行。这种表格必须附有证明在巴基斯坦已收到股份付款的兑现证书或收益实现证书、公司的章程文件和股东的详细信息。

各地方政府对外国投资实行同样的上述限制。

4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的企业的主要要求有哪些？

以下是外国投资者最常用的企业形式：

a. 有限责任公司：

可以根据2017年《公司法案》将其设立为私人或公众有限公司，并在巴基斯坦证券交易委员会进行注册登记。

私人有限公司是股份有限公司，要求至少有两名董事和两名股东。公众有限公司要求至少有三名董事和三名股东。

有限责任公司在巴基斯坦受到严格监管。它们需要维护账簿，在许多情况下还要求定期向巴基斯坦证券交易委员会提交经审计的财务报表。公司还必须向巴基斯坦证券交易委员会提交法定申报表，以报告各种类型的决定或活动，如公司管理人员的变动、股东转让股份以及增加股本。公司提交的文件记录在巴基斯坦证券交易委员会维护的公开登记册上，公开登记册可供公众查阅。

设立的过程非常简单快速。如上所述，设立公司一般需要2-4个工作日，自向巴基斯坦证券交易委员会提交公司设立所需文件之日起算。

b. 分支机构或联络处。设立此类营业场所的流程包括：

(i) 获得投资委员会对设立分支机构或联络处的许可，以及 (ii) 向巴基斯坦证券交易委员会提交文件。拥有此类营业场所的公司必须向巴基斯坦证券交易委员会提交各种文件，并且还须提交巴基斯坦股东和债券持有人的名单，以及该分支机构每年经审计的财务报表。与设在巴基斯坦的公司相比，设有分支机构或联络处的外国公司须遵守的报告要求最少。如果是分支机构，则在满足巴基斯坦国家银行某些要求的条件下，可允许汇回利润等款项。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

有关内政部安全许可以及1947年《外汇管理法案》对巴基斯坦个人向居住在巴基斯坦境外的个人发行及转让股份实施的限制，请参阅我们对问题3所做的答复。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的行业有哪些（如有）？

巴基斯坦的能源和制药行业受到严格监管。

相反，一些更为开放或不受限制的产业，如下所列：

- a. 建筑业；
- b. 农业；
- c. 基础设施；
- d. 制造业；
- e. 教育；以及
- f. 健康产业。

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？（例如制裁）

根据1948年《联合国（安全理事会）法案》，巴基斯坦政府执行联合国安理会的决定，对由安理会更新的联合国安理会制裁清单的实施对象进行制裁。

巴基斯坦不承认以色列是一个独立国家。巴基斯坦与印度、阿富汗和孟加拉国的关系也较为紧张。

在巴基斯坦，由商务部根据1950年《进出口（控制）法案》及据此下发的通知对货物的进出口进行管理。不允许对以色列或商务部另行通知的其他国家的进出口活动。禁止进口原产于这些国家的任何货物。

对印度的进出口活动依照商务部不定期的通知进行监管。虽然巴基斯坦允许从印度进口货物，但巴基斯坦在此方面设置了负面清单，其中包含了巴基斯坦禁止从印度进口的物品。目前在负面清单上有1209个项目，任何不在清单上的项目都可以从印度进口。

8. 对外国投资者有哪些优惠或激励措施（如有）？

巴基斯坦与65个国家签订了税收条约，向投资者提供免除所得税方面双重征税的税收优惠。虽然巴基斯坦是一个外汇管制国家，但巴基斯坦国家银行对外国投资者向巴基斯坦汇入的所有汇款均予以一般批准。关于资本汇出，巴基斯坦国家银行准许多种形式的汇出，包括贷款和利息的汇款，但须遵守巴基斯坦国家银行《外汇手册》规定的限制。此外，外国投资者可以不受限制地租赁土地，但须遵守有关当局的适用规章制度。外国房地产开发商遵守与国内房地产开发商相同的规定并享受同等的待遇。

正如我们在对问题2的答复中所讨论的那样，有专门的法律来保护外国投资者，如1976年《外国私人投资（促进和保护）法案》和1992年《经济改革保护法》。

9. 在您所在司法管辖区，是否存在任何自由贸易区、经济特区或工业区？这些地区有哪些要求？

是的，巴基斯坦有特别经济区。

根据2012年《特别经济区法案》，特别经济区可由联邦和省单独设立，或依照不同的公私合伙模式与民营资本合作设立，或者由民营资本单独设立。

经济特区法律规定的财政优惠包括：一次性免除为开发、经营和维护经济特区而进口到巴基斯坦的所有资本品的关税和税收（适用于开发商以及经济特区企业），并且免除为期十年的全部所得税。根据法律规定设立的省级经济特区管理机构，必须将从开发商处收到的申请移交给联邦投资委员会，该委员会将作为审批理事会和审批委员会的秘书处。除非审批理事会就某一特定经济特区或某种经济特区类型另有决定，否则根据巴基斯坦法律设立的任何实体均有资格成为开发商。

巴基斯坦政府于1980成立了出口加工区管理局。1981年《出口加工区管理局规则》对巴基斯坦出口加工区的规划、开发、管理和运作进行了规定。出口加工区管理局承担一个意义深远的工业项目，即在巴基斯坦建立一个出口加工区链。这些出口加工区是民营资本/省政府密切合作或根据合资安排而设立的，包括卡拉奇出口加工区和位于俾路支省的瓜达尔出口加工区。

必须具备下列任一条件，才有资格在特别经济区进行投资：

- a. 外国投资者；
- b. 属于非居民的巴基斯坦人；
- c. 属于居民的巴基斯坦人；
- d. 由上述人员按照任意比例投资的合资企业；

须以可自由兑换的外币对特别经济区进行投资。

10. 在您所在司法管辖区，可能适用于外国投资者的主要税种有哪些？（例如个人所得税、企业所得税、增值税与社会保险费）

外国投资者适用于多种税，包括：

a. 2001年《所得税条例》

根据2001年《所得税条例》第4条，每个当年有应税所得的人均须按该条例所规定的比率缴纳所得税。根据该条例第9条，每个人的应税所得为税务年度的总收入减去该条例许可的各项扣除项目之后的净额。根据该条例第11条，非居民的收入（如有多国收

入来源）仅计算来源于巴基斯坦的收入数额。每个人在一个税务年度的总收入是下列各类收入的总和：即工资、营业收入、财产收入、资本收益和其他来源的收入。

处置不动产的资本利得

根据2001年《所得税条例》第37条，除根据该条例实行免税的收益外，每个人在纳税年度处置资本资产所获得的收益，应在该年度于“资本利得”项下纳税。

处置证券的资本利得

根据2001年《所得税条例》第37A条规定，自2010年7月1日起，因处置证券所得的资本收益（该条例项下免税的收益除外），应按照该条例附表中规定的税率纳税。

处置其他资本资产的资本利得

处置任何其他资本资产所产生的收益（其计算方式见2001年《所得税条例》中的规定）将被纳入该人的一般性收入，并视该人是一个人、公司还是其他形式来收税。

b. 1990年《销售税法》

巴基斯坦货物销售税由联邦立法，即1990年《销售税法》管辖。对于注册人从事的任何应税活动和进口到巴基斯坦的货物（不论其最终目的地是否在巴基斯坦境内），按照其价值的17%征收销售税。此类销售税是一种增值税。

c. 服务销售税

服务销售税由省级立法管辖：2011年《信德省服务销售税法》、2012年《旁遮普省服务销售税法》、2013年《开伯尔—普赫图赫瓦省金融法案》和2015年《俾路支省服务销售税法》。上述法律的条款基本类似。服务销售税是对应税服务的价值按照有关省立法规定的税率进行征收的。应税服务是此类法律附表中列出的服务，由注册人在经济活动的过程中（包括在活动开始或终止之时）从其在特定省份的注册办公地点或营业地点予以提供。服务销售税是一种增值税。伊斯兰堡的首都范围受2001年《伊斯兰堡首都（服务税）条例》的管辖，该条例的适用与上述省份的法律略有不同。

11. 在您所在司法管辖区，外国投资者应该注意哪些劳动法律法规？外国人是否能够通过投资活动获得居留许可或者工作签证？

就业规定：

2010年，劳动方面的立法权被移交给各省，各省颁布的法律在很大程度上反映了以前联邦法律的规定。如果某省的省议会尚未颁布劳动法律，那么应适用较早的联邦法律。

劳动法律对工人（以雇佣或奖励形式在任何工业或商业机构中受雇从事任何技术或非技术、手工或机械工作的人，不包括受雇从事管理或行政岗位的人）和雇员（工人以外的其他受雇人员，包括管理层）的雇佣进行了规范。属于管理层及以上的雇员，仅按照劳动合同的约定进行管理。适用的劳动法律规定了雇佣条件，如试用期、工作时间、年假、加班和离职。

其他相关法律包括：

- a. 1934年《工厂法案》（适用于旁遮普省和俾路支省）、2013年《开伯尔—普赫图赫瓦省工厂法案》和2015年《信德省工厂法案》，其中特别规定了工厂的工作条件；以及
- b. 2012年《劳资关系法案》（适用于开伯尔—普赫图赫瓦省和俾路支省）、2010年《旁遮普省劳资关系法案》以及2013年《信德省劳资关系法案》（该法案涉及建立工会和改善雇主与工人之间的关系）。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

是的，外国投资者可以在巴基斯坦获得房地产和土地。在这方面，对外国投资者没有任何限制或限度。

13. 在您所在司法管辖区，是否存在特定情形下阻止外国投资的任何程序？

巴基斯坦有一个开放的管理制度，不需要对新进入者进行预先筛选和批准。然而，外国

公司必须满足公司法律规定的公司注册登记条件。关于依据1947年《外汇管理法案》对巴基斯坦境内的个人向居住在巴基斯坦境外的人员发行和转让股票所需的内政部安全许可的要求和限制，请参阅我们对问题3所做的答复。

14. 外国投资者应该注意哪些外国货币或外汇管制？

1947年《外汇管理法案》的规定概述了货币管制和外汇管理的框架。根据该法案第4条的规定，任何外汇交易都需要巴基斯坦国家银行的一般或特别许可。此外，该法案第5条规定，除非获得巴基斯坦国家银行有条件或无条件给予的任何一般或特别豁免，否则巴基斯坦境内的任何人（包括巴基斯坦居民）不得：(a) 向居住在巴基斯坦以外的任何人支付任何款项或提供信贷；或者 (b) 承认任何债务，从而创设或者转让有利于居住在巴基斯坦境外之人的收款权利（无论是实际的还是偶然的）。

根据1947年《外汇管理法案》第13条，除非获得国家银行的一般或特别许可，否则任何人都不得将任何证券带至或发送至巴基斯坦境外的任何地方，也不得向居住在巴基斯坦境外的人转让任何证券、或者创设或转让有利于该等人士的任何证券利益。请参阅我们对上述问题3的答复。

除1947年《外汇管理法案》外，《外汇手册》也对外汇管制作了规定。该手册是巴基斯坦国家银行根据1947年《外汇管理法案》不定期发布的各种法定通知和通告的汇编。例如，根据《外汇手册》第二十章第6段，巴基斯坦国家银行已经对1947年《外汇管理法案》关于基于汇回原则对某些指定的非居民发行、转让或出口证券的条款进行了一般豁免。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

如果外国投资者撤回在巴基斯坦的投资，那么没有法定的处罚或批准要求。然而，任何

投资的汇回均须经巴基斯坦国家银行的批准。如上文所讨论的，巴基斯坦国家银行已授予各种一般许可，允许外国投资者在符合其规定条件下，按照可汇回的原则进行投资。此外，如果投资者在撤资之前签署了在巴基斯坦投资的协议，后又撤回其承诺，则其可能要承担违约责任。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

a. 合同执行

i. 巴基斯坦的法院

当事人之间与合同执行有关的纠纷可以在巴基斯坦法院提起诉讼。这些法院分为三级：第一级由下级法院和仲裁处组成（包括民事法院、刑事法院以及专门法院和仲裁处），这些法院行使最初管辖权，且通常充当一审法院；第二级包括各省和伊斯兰堡的高等法院，这些法院对其辖内的其他法院行使监督管辖权，并行使特别宪法管辖权；巴基斯坦最高法院构成第三级法院，即上诉的终审法院，并管辖所有其他法院。

ii. 仲裁

仲裁是各方在巴基斯坦解决国内外商业纠纷的常用救济手段。1940年《仲裁法案》使得巴基斯坦仲裁机构发展良好。在法庭上，解决争端所需的时间可能需要一到十年。但仲裁程序相对较快。可以在进行仲裁程序的期间内向法院寻求临时救济。

iii. 外国判决的执行

巴基斯坦通过颁布2011年《承认和执行（仲裁协议和外国仲裁裁决）法案》，使《纽约仲裁公约》的规定生效，该法案允许外国仲裁裁决具有类似巴基斯坦高等法院判决的效力，可按此在巴基斯坦执行，并减少对此类裁决的质疑。这确保了此类外国仲裁裁决可以在巴基斯坦执行，并受到最低限度的干扰。

2011年《仲裁（国际投资争端）法案》纳入了《解决国家与他国民间投资争端国际公约》的规定。该法案允许受巴

基斯坦政府侵害的一方向对自己具有管辖权的法院寻求救济。任何人在根据此公约寻求执行裁决时，都有权在巴基斯坦任何高等法院登记该裁决。完成此程序后，为执行之目的，该等裁决在执行上应具有与巴基斯坦高等法院出具的判决相同的效力。

iv. 外国判令的执行

巴基斯坦法院承认并执行某些外国司法管辖区法院作出的判令。1908年《民事诉讼法典》第44A条规定，英国上级法院或任何往复领土（即联邦政府通知的领土）的判令可在巴基斯坦执行，并具有类似巴基斯坦地区法院所做判决的效力。

b. 投资者保护机制

投资委员会是巴基斯坦的首要投资促进机构，并已制定政策，创造有利于投资者的环境。重点是发展经济，吸引外国直接投资，以及向外国和当地投资者提供平等待遇。

政策规定，所有外国投资者在其投资的设立、扩大、管理、经营和保护方面均不受歧视，并给予公平和平等的待遇，亦有权享有适当的法律程序。所有外国投资者在其投资的设立、扩大、管理、运营和保护方面，都有资格享受“不低于”其国内投资者根据适用法律在类似情形下所享有的待遇。有关外国投资法律及其项下的外国投资者利益，请参阅我们对问题2的答复。

巴基斯坦与48个国家签署了《双边投资条约》，为来自这些国家的外国投资者提供了更有力度的投资保护。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

巴基斯坦与以下亚太地区国家签署了《双边投资条约》：

- a. 澳大利亚；
- b. 孟加拉国；
- c. 柬埔寨；
- d. 中国；

- e. 印度尼西亚；
- f. 日本；
- g. 韩国；
- h. 马来西亚；
- i. 新加坡；和
- j. 斯里兰卡。

巴基斯坦尚未与亚太地区国家签订多边投资保护条约。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

根据巴基斯坦有关知识产权的法律，有四种类型的保护，即版权、专利、商标和注册外观设计。每种保护都有单独的法律规定。

专利处于2000年《专利条例》的保护之下。对于该条例项下的发明，如果其系新发明，涉及发明步骤，并且能够进行工业应用，那么就可以获得专利。

有关商标的法律是2001年《商标条例》。根据该条例，商标注册申请须按规定的方式提出，商标注册处可在符合该条例规定要求的情况下，对商标进行注册登记。注册商标的所有者有权在侵权情况下提起诉讼。

注册外观设计受2000年《注册外观设计条例》的保护。该权利的本质是，设计可以包括三维特征（如物品的形状或表面），或二维特征（如图案、线条或颜色）。此类设计需要向专利局进行注册，且从注册之日起，保护期为10年——保护期可再延长10年。可以依据该法律提出侵权诉讼，所寻求的补救措施是损害赔偿和禁令。

1962年《版权条例》也提供了保护。版权是向原创作品作者提供的一种保护形式，包括文学、戏剧、音乐、艺术和其他智力作品，如软件。虽然这些作品从一开始就受到版权保护，但是它需要向版权局进行注册，此后版权所有者即可就侵权行为提起诉讼，以获得诸如损害赔偿和禁令之类的救济措施。版权在作者的一生及其死后的五十年内均予以保护。

此外，如果植物品种符合新颖性、独特性、一致性、稳定性的标准，并被指定2016年《植物育种者权利法案》规定的可接受名称，则该法案允许人们通过向联邦政府申请注册来保护此类属或种的植物新品种。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

巴基斯坦的环境保护由各省议会颁布的省级法律（以下称“环境法律”）予以规范：

- a. 2014年《信德省环境保护法案》，适用于信德省；
- b. 2012年《俾路支省环境保护法案》，适用于俾路支省；
- c. 1997年《旁遮普省环境保护法案》，适用于旁遮普省；
- d. 2014年《开伯尔—普赫图赫瓦省环境保护法案》，适用于开伯尔—普赫图赫瓦省；以及
- e. 1997年《巴基斯坦环境保护法案》，适用于伊斯兰堡首都区。

每一项环境法律都设立了一个省级环境保护机构，负责保护、保存、恢复和改善环境，并有权审查和批准项目的初步环境检查和影响评估，颁发危险物质处理许可证，并发布环境保护命令。

根据环境法律，任何人不得排放或允许排放任何超过国家环境质量标准的量、浓度或水平的废水、废物、空气污染物或噪音。对违反或者不遵守前款规定的，可以按照规定的程序征收排污费。任何人如按规定缴纳污染费，就不会因污染行为或未遵守前款规定的行为而受到犯罪指控。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

是的。

- 巴基斯坦国家银行是巴基斯坦的中央银行，其职责包括规范巴基斯坦的货币、信贷体系，以及对银行业进行监管。

总部地址：

I.I Chundrigar Road, Karachi, Pakistan
(巴基斯坦卡拉奇市)

电子邮箱：info@sbp.org.pk

电话：+92-21-111-727-111

- 根据 2001 年《投资委员会条例》第 3 条设立的投资委员会对有意在巴基斯坦投资的公司和投资者进行协助，并促进其项目的实施和运作。

总部地址：

Ataturk Avenue, G-5/1, Islamabad,
Pakistan (巴基斯坦伊斯兰堡市)

电子邮箱：investpak@pakboi.gov.pk

电话：+92-51-922-4101

传真：+92-51-921-554

- 巴基斯坦证券交易委员会对巴基斯坦的公司进行监管，并拥有调查和执法权。

总部地址：

NIC Building, 63 Jinnah Avenue,
Islamabad, Pakistan (巴基斯坦伊斯兰堡市)

电话：+92-51-92-7091

传真：+91-51-910-00471

- 巴基斯坦商业理事会是由该国的主要公司和商业团体设立的，作为一个倡导性论坛，其致力于改善该国的一般商业环境，并向巴基斯坦政府提出政策建议。

总部地址：

8th floor, Dawood Center, M.T. Khan
Road, Karachi, Pakistan (巴基斯坦卡拉奇市)

电话：+92-213-563-0528

传真：+92-213-563-053

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

根据 2018 年《财政法案》规定，公司应纳税所得在 2019 年的税率将由 30% 降至 29%，2020 年为 28%，2021 年为 27%，2022 年为 26%，2023 年及以后为 25%。这样的税负减免是对希望在巴基斯坦设立公司的外国投资者的一种激励。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

巴基斯坦大选于 2018 年 7 月 25 日举行，由巴基斯坦正义运动党组阁，伊姆兰·汗当选为总理。新政府宣布拟对巴基斯坦的税收和投资政策进行改革，目的是改善在巴基斯坦营商的便利性，并加强税收征管以减少财政赤字。一项改革联邦税务委员会的提案正在提交联邦内阁批准，该提案拟将联邦税务委员会税收政策的职能与其税收管理和征收职能分开。新政府还宣布，其拟改革管理不善且目前消耗国家财政的国有企业，并根据需要对它们进行私有化。

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1. What are the main reasons foreign investors invest in your jurisdiction? (Please provide a brief introduction to your jurisdiction and some facts and figures related to foreign investment)

During recent years, Ukraine has progressed in implementing reforms across the economy and political system as a result of which the country has climbed over 30 places to rank 24th in the world since 2016 in the Global Open Data Index. The World Bank has improved its forecast for the growth of Ukraine's GDP in 2018 to 3.5% from 3%, while the forecast for 2019 has been revised upwards to 4% from 3%, according to the previous projections from January 2017.

Ukraine has an attractive geographical location which gives it a competitive advantage, particularly for manufacturing and food distribution. It is centrally located in Europe, with direct transport access to Asia via the Black Sea. With over 170,000 km of roadways, 22,000 km of rail lines and 13 sea ports, Ukraine has the infrastructure to quickly move goods within the country or abroad.

Ukraine has an educated workforce. Over 70% of the population have a secondary degree or higher education. The cost of labour is relatively low.

Ukraine is a party to the EU Deep and Comprehensive Free Trade Agreement, 2014, and bilateral free trade agreements with other countries; it is also a member of the World Trade Organization (WTO) since 2008.

2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

The major laws governing foreign investment in Ukraine are the following:

- a. the Commercial Code of Ukraine which provides for, inter alia, the types of investments, guarantees for investors and envisages possible forms of foreign investments in Ukraine, including:
 - i. the participation in commercial entities or acquisition of a stake in existing entities;
 - ii. creation of foreign enterprises in Ukraine;
 - iii. acquisition of movable or immovable property, acquisition of shares or other securities;
 - iv. commercial activity within product sharing agreements; and
 - v. other respective forms of investment.
- b. the Civil Code of Ukraine which provides for, inter alia, general rules of companies' establishment and operation in Ukraine;
- c. the Law on Commercial Companies 1991, which contains detailed requirements as regards each respective company type it governs;
- d. the Law of Ukraine on Investment Activity 1991 which establishes the general principles for investment activity in Ukraine and provides for state assistance in the realisation of investment projects;

- e. the Law of Ukraine on Regime of Foreign Investment 1996, which envisages certain privileges and guarantees for foreign investors and the procedure for investment dispute settlement between investors and the state.

Specifics of investment activities are set out in the Law of Ukraine on Public-Private Partnership 2010, Law of Ukraine on Concessions 1999, Law of Ukraine on Production Share Agreements 1999. Besides, Ukraine is a party to numerous bilateral investment treaties (“BITs”) with other countries which envisage conditions and guarantees of foreign investment activity in more detail, in particular:

- a. BITs with European countries, e.g., Sweden, Spain, Italy, Poland, the Netherlands, Austria and others;
- b. BITs with United States, and Canada; and
- c. BITs with Asian countries, including Japan, Indonesia, Vietnam, and China.

Ukraine is also a party to the Energy Charter Treaty 1999.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

In general, foreign and local investors are treated in Ukraine equally. The legislation stipulates that foreign investors may be restricted from certain types of business activity based on laws in accordance with national security interests. Foreign investors should be aware of the following statutory restrictions:

- a. restrictions applied to either foreign or domestic investors as regards types of business activity which may be carried out only by state-owned enterprises (for example, issuance of banknotes, carrier rockets manufacturing, etc.); and
- b. certain specific restrictions (including industry – specific restrictions) applicable to foreign investors only. For example, foreign investors are not entitled to own agricultural

land, and may not pursue some publishing activities; investors registered in offshore jurisdictions (as defined by the Cabinet of Minister of Ukraine) and in the Russian Federation may not establish television and radio broadcasting companies in Ukraine and are prohibited from purchasing state or municipal property within the privatization process.

The Ukrainian Parliament has an exclusive authority to place restrictions on foreign investment. Local authorities cannot do the same and there are no restrictions on foreign investments at local levels in Ukraine.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

The most common corporate vehicles available for foreign investors in Ukraine are legal entities in the organizational form of a Limited Liability Company (an “LLC”) or a Joint Stock Company (a “JSC”). LLC is the most popular, widely used and easily administered form of legal entity for business setting up in Ukraine. In case the contemplated activity envisages the share issuance, an investor may consider the registration of a JSC. An LLC is usually registered within 1 (one) business day. No minimum charter capital requirement exists for an LLC. Participants of an LLC and a JSC are liable for its obligations within the amount of their respective contributions to the company’s charter capital.

Key requirements for the establishment and operation of an LLCs are the following:

- a. the prohibition for an individual or a legal entity to be the sole founder of and/or the sole participant in more than one LLC in Ukraine;
- b. the prohibition for a participant owned by a sole shareholder/participant to be a sole founder of an LLC;

- c. the limitation of the maximum number of participants to 100 persons.

However, upon entrance into force on 17 June 2018 of the Law on Limited Liability Companies and Additional Liability Companies, 2017, the above – mentioned restrictions will be abolished.

Key requirements for the establishment and operation of a JSC are the following:

- a. a legal entity owned by a sole shareholder cannot be a sole shareholder of a JSC;
- b. a JSC cannot be entirely owned by shareholders – legal entities which are owned by a one and the same shareholder;
- c. the minimum amount of JSC’s share capital is 1,250 times the official minimum monthly salaries as of the date of the formation of the JSC (as of 1 January 2018 and until 31 December 2018, this amount constitutes UAH 4,623,750 or approximately USD 167,040); and
- d. registration of the issuance of shares in the charter capital of a JSC must be done with the National Securities and Stock Market Commission (“NSSMC”).

Foreign investor may also set up a representative office of a foreign company in Ukraine which is not a legal entity, may not obtain licenses and permits for carrying out certain types of activities (contrary to the legal entity) and represents a parent company in Ukraine either with or without the right of carrying out commercial activity. In case of conducting any commercial activity, the representative office will be subject to taxation in Ukraine. Besides, such representative office will be recognized as a permanent establishment of a foreign company for tax purposes and will not be eligible for tax incentives envisaged by the Ukrainian legislation. The parent company is fully liable for the activity of the representative office. Representative offices of foreign legal entities are registered with the Ministry of Economic Development and Trade

of Ukraine. A one-time registration fee of USD 2,500 is payable.

The legislation also envisages contractual vehicles of conducting business by foreign investors, such as joint venture agreements (mostly used in the sphere of oil and gas extraction), joint cooperation agreements and other similar agreements, as well as special investment vehicles for portfolio, institutional and/or private investors.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

The general rule applies that a foreign investor does not need a governmental consent to set up and run a business in Ukraine. However, certain types of activity are subject to licensing/special permit, regardless of whether such activity is carried out by a foreign or local investor. Based on the Law of Ukraine on Licensing Types of Business Activities, 2015, the following types of activities are subject to licensing:

- a. banking;
- b. financial services;
- c. professional activities in the securities market;
- d. television and radio broadcasting activities;
- e. educational activity of educational institutions;
- f. manufacturing medical goods;
- g. import of medical goods;
- h. tour operator activity; and
- i. other types of activity as defined by law.

Foreign investors need also consider the requirements of the Ukrainian competition law. For example, there is the preliminary obligation to obtain a merger clearance of the Antimonopoly Committee of Ukraine (“AMC”) in case of the acquisition of shares of Ukrainian companies or assets in Ukraine and in other cases, once respective thresholds envisaged by law are met.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

The banking and financial sector is considered one of the most heavily regulated sectors (including in terms of currency control). All types of licensed activities (including but not limited to pharmaceutical sector, construction, telecommunications, etc.), as well as the food production sector, are also quite heavily regulated in Ukraine. Certain activities can be carried out only by the state-owned enterprises (for example, issuance of banknotes, military weapon manufacturing, carrying out criminalistics and judicial expertise, carrier rockets manufacturing, etc.).

Green energy and infrastructure are the main sectors that Ukraine actively promotes for investment. Besides that, agriculture and information technology are also subject to less regulation.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

The Ukrainian Council of National Security and Defense is entitled to impose personal sanctions to entities and individuals which are residents of the sanctioned country, including state-owned companies and state officials of the relevant country, private companies and individuals located in the sanctioned country, on the basis of the Law of Ukraine On Sanctions. Such sanctions include the prohibition of entry into Ukraine; prohibition to use and dispose of assets in Ukraine; prohibition to provide financing to companies located in the sanctioned country; prohibition on transit resources; limitation of trade operations and prevention of capital withdrawal from Ukraine by investors from the sanctioned country. A number of sanctions have been introduced in Ukraine against Russian individuals (including state officials) and legal

entities (in particular, Russian entities operating in IT, banking and financial sectors); ban on delivery of Russian online services in Ukraine, including Russian social networks, and the use of certain Russian software; the prohibition of entry into Ukraine for a number of Russian politicians, businessmen, artists and other persons; and imposition of customs duties on certain goods of Russian origin.

Following the illegal Russian annexation of Crimea in March 2014 and military conflict in certain eastern regions of Ukraine (namely, Donetsk and Luhansk regions), which territories are now considered “temporarily occupied territories”, special legislation in relation to operations with temporarily occupied territories had been adopted. Such legislation regulates payments within Crimea, as well as payments between legal entities and individuals in Crimea and imposes restrictions on operations with temporarily occupied territories. This includes special rules for entering and exiting such territories; prohibition of conclusion of agreements on transfer of ownership title to real property and land located on the temporarily occupied territory; prohibition of performing banking operations of Ukrainian banks within the temporarily occupied territories, prohibition of alienation of private, municipal or state property located on the temporary occupied territory to any person located in the Russian Federation.

Besides these, there are certain restrictions based on financial monitoring and anti-money laundering legislation. Ukrainian banks are required to deem operations involving certain states as risky and may apply increased scrutiny or suspend client operations with such states in certain cases. This includes states in the list of offshore countries approved by the Cabinet of Ministers of Ukraine; states which do not conduct anti-money laundering activity or activity combating financing terrorism; states that finance circulation of weapons of mass destruction, etc.

Finally, Ukraine usually adheres to the international sanctions imposed by the United Nations to some countries, such as Iran or North Korea, and does not permit any transactions with these countries.

8. What grants or incentives are on offer to foreign investors, if any?

Apart from certain privileges and guarantees, foreign investors are entitled to under the foreign investment legislation, a variety of other incentives are offered by Ukraine to support foreign investment, including, in particular:

- a. freedom from taxation of newly established taxpayers which have an annual income of UAH 3 million or less and meet respective requirements until 2021; and
- b. exemption from customs duty on import of assets as an in-kind contribution into the charter capital of a Ukrainian entity, provided that assets are not sold within the following three years.

The Law of Ukraine on Regime of Foreign Investment also envisages the possibility of the establishment of a priority regime of investment and commercial activity with respect to certain projects with the participation of foreign investors implemented pursuant to state programs of development of priority sectors of the economy.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

Ukrainian legislation provides for the establishment of free economic zones regulated by a special legislation on free economic zones which also governs the legal status of foreign investments into such zones and provides respective privileges and benefits for foreign and local investors. The status and territory of a free economic zone, the term of its creation and other requirements, are determined by the Parliament by means of approval of a separate law for each

respective free zone. The existing free economic zones include Zakarpattia, Interport Kovel, Kurortopolis Truskavets, Mykolayiv, Porto-Franko, Reni, Slavutych, and Yavoriv.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

The main taxes applied to individuals and companies in Ukraine (including subsidiaries of foreign companies) are the following:

- a. corporate income tax at the general rate 18%;
- b. value added tax at a standard rate of VAT is 20%;
- c. withholding tax on income (e.g. dividends, royalty, interest) payable by a Ukrainian company to a non-resident. The general rate of withholding tax is 15%; it may be lower based on relevant double tax treaties between Ukraine and a foreign country;
- d. a unified social security contribution at a rate of 22% payable by the employer on the amount of remuneration paid to an employee; and
- e. personal income tax at a rate of 18%.

Foreign entities are taxed in Ukraine on their taxable income derived from their commercial activities in Ukraine through a permanent establishment. Income derived by a foreign entity which is not engaged in commercial activities in Ukraine through its permanent establishment, will be taxed at the time of transfer of such income to a foreign entity by means of withholding the amount of tax from the sum due to the foreign entity. A branch or a permanent establishment of a foreign entity in Ukraine is considered a separate entity for tax purposes. The income of non-residents acting in Ukraine based on international agreements on technical and humanitarian assistance is exempt from taxation.

A foreign entity shall pay a corporate income tax with respect to the income derived from the source in Ukraine. General withholding tax rate of 15% shall be withheld by a resident company or by the permanent establishment of a foreign entity from the amount of any Ukrainian-source income (including dividends paid to a foreign shareholder by a Ukrainian entity) at the moment of transfer of such income, unless a lower withholding tax rate can be applied based on a relevant double tax treaty.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

Ukrainian legislation provides for the possibility of temporary and permanent residency (immigration) permits obtainment by foreigners based on the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, 2011. Unless there are grounds of permanent residency (immigration) permit obtainment by a foreign national, which are being issued within special immigration quota (or outside such quota, as the case may be), a foreign national may obtain a temporary residency. The most common ground of temporary residency obtainment by foreign nationals in Ukraine is either business setting up or employment with a Ukrainian company. A foreign shareholder may obtain the residency permit by investing into a share capital of a Ukrainian company, the amount of funds equivalent to not less than EUR 100,000. A temporary residence permit is issued for a limited period of time (usually, one year) and can be prolonged for the same period of time.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

Foreign investors can acquire real property in Ukraine without any limitations. However, agricultural land can only be owned by Ukrainian individuals and legal entities established by Ukrainian individuals and/or Ukrainian legal entities. Foreign investors may not obtain ownership title over agricultural land in Ukraine. The only exception is inheritance; however, in this case a foreign investor must alienate the agricultural land plot(s) within one year. Non – agricultural land may be acquired by foreign investors on an equivalent basis with Ukrainian residents.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Please refer to clause 7 of this Guide.

14. What foreign currency or exchange controls should foreign investors be aware of?

Only the Ukrainian national currency (UAH) can be used in the territory of Ukraine as a means of payment. The use of a foreign currency within the state requires an individual license of the National Bank of Ukraine (“NBU”).

There are a number of temporary currency control restrictions introduced by the NBU in 2014 with the aim of stabilizing the currency market of Ukraine, which tended to be gradually relaxed by the NBU, in particular:

- a. prohibition on early repayment of loans provided by non-residents to residents of Ukraine;
- b. limitation on cross – border transfer of funds abroad in case of charter capital decrease of Ukrainian legal entities, sale of securities of Ukrainian issuer and exit of an investor

- from Ukrainian legal entities (currently, a limit of \$ 5,000,000 per month applies); and
- c. limitation on payment of dividends abroad to \$ 7,000,000 per month.

Foreign currency income of a Ukrainian resident under an export contract (except for export of services, other than transport and insurance services, and IP rights) must be transferred to the resident’s bank account within 180 days from the date of customs clearance of the exported goods. Goods prepaid by a Ukrainian resident in foreign currency based on the foreign economic contract must be imported and cleared through the Ukrainian customs within 180 days from the date of the prepayment. In addition, 50% of foreign currency proceeds of a Ukrainian residents shall be sold in the interbank currency market for the Ukrainian currency (UAH). However, this rule does not apply to those proceeds which have been transferred in Ukraine as a foreign investment, for example as a contribution to charter capital of a Ukrainian company.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

The legislation of Ukraine does not establish any restrictions, approval requirements or penalties if a foreign investor withdraws its investments in Ukraine, apart from the temporary restrictions on cross-border transfers of foreign currency introduced by the NBU, as specified in more detail in question 14, in particular, the prohibition on early repayment of cross-border loans.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

Parties to foreign economic contracts are free to choose which institution is authorised to settle disputes arising out of such contracts. This can be either national courts of the states where the parties are residing or courts of arbitration.

Execution of Ukrainian courts’ judgements is provided by the state enforcement service of Ukraine. Following reforms in 2017, the enforcement service now includes private bailiffs, which is generally expected to increase the efficiency of the enforcement procedure.

Ukrainian law provides for the mechanisms of enforcement of foreign courts’ decisions and foreign arbitral awards. Ukrainian law also allows to receive Ukrainian courts’ assistance in obtaining interim measures, and the preservation and collection of evidence necessary for arbitral proceedings. Ukraine is a party to the United Nations Convention on the Recognition and Enforcement of Arbitral Awards 1958 (New York Convention), which makes it possible to enforce arbitral awards in Ukraine. Enforcement of investment contracts with the state is guaranteed by BITs. Thereby, failure to perform such a contract can be challenged through investment arbitration under the respective BIT.

Moreover, Ukraine is also a party to the ICSID (International Centre for Settlement of Investment Disputes) Convention 1966, which allows the settlement of investor-state disputes through the ICSID.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

Ukraine is a party to over 70 (seventy) BITs, under which investors may refer their disputes to the corresponding investor – state dispute settlement mechanisms. 10 (ten) of these treaties are signed with the Asia-Pacific jurisdictions, namely Australia, Brunei, Vietnam, India, Indonesia, China, Republic of Korea, Mongolia, Singapore, and Japan. The provisions of BITs are usually aimed at encouraging foreign investments and provide state guarantees for their protection. Although the majority of BITs usually have common language, they may differ in certain details which should be

specifically analysed in each particular case. Moreover, Ukraine is a signatory to several multilateral treaties which provide certain level of investment protection and involve some Asia-Pacific states, such as Energy Charter Treaty, GATT, GATS.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

Intellectual property rights (“IPR”), arising out of the copyright, registered trademark, registration of inventions and utility models, and registered industrial design are governed by international treaties (such as Paris, Berne and WIPO Conventions) to which Ukraine is a signatory and the local legislation, in particular the Law of Ukraine on Trademarks 1993, Law of Ukraine on Copyright 1993, Law of Ukraine on Inventions and Utility Models 1993, Law of Ukraine on Industrial Designs 1993, etc.

Generally, the nationality and residence of foreign investors are not taken into consideration when registering IPR and are irrelevant for IPR protection. At the same time, relations with the Ukrainian Patent and Trademark Office regarding IPR registration by foreign individuals and entities are mostly maintained through Ukrainian patent attorneys.

Intellectual property protection and remedies are mostly obtained by judicial measures (within civil, commercial or criminal proceedings). However, in the near future all IP-related cases will be resolved by newly created specialised High Intellectual Property Court which will start operating by the end of the year 2018.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

The environmental protection area is governed mainly by the Law of Ukraine On Environmental Impact Assessment, 2017, which establishes, in particular, the general procedure of environmental impact assessment (“EIA”) with fixed timelines, involving public consultations and subject to publication of all key documents relating to EIA in an online register which is publicly accessible.

The EIA is mandatory for a broad range of business activities and facilities which are grouped by the law into relevant categories. The Ministry of Ecology and Natural Resources of Ukraine or environmental departments of local state administrations issue conclusions on EIA for respective categories of business activities and facilities within their competence. EIAs should be carried out prior to the obtainment by the company of any permits authorising relevant type of business activity. Conclusions of the relevant authorities and results of EIA remain valid for 5 years.

A failure to comply with the legislation on EIAs can result in the temporary suspension or termination of business activities. Such suspension or termination can only be made by a court order based on the claim of the authorised state authority or any third party whose rights or interests have been affected.

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

For purposes of promoting foreign direct investments into Ukraine, in 2016 the Cabinet of Ministers of Ukraine established the Ukraine Investment Promotion Office (UkraineInvest). Detailed information on UkraineInvest and services it provides to foreign investors can be found at <https://ukraineinvest.com>.

The other state body dealing with foreign investments in Ukraine is the National Investment Council under the President of Ukraine whose main task is the development of proposals on stimulation and development of investment activity in Ukraine and assistance in formation of the main directions of the state policy on improving the investment climate in Ukraine. The council consists of the heads of main governmental bodies of Ukraine and representatives of non-governmental institutions, chambers and business associations, such as the American Chamber of Commerce in Ukraine, the European Business Association, the European Bank for Reconstruction and Development, and the International Finance Corporation.

Finally, foreign investors may seek the assistance on various issues of their activity in Ukraine and lobbying their business interests with the state authorities from local and international non-governmental member-funded non-profit organizations, such as the Ukrainian Business Association, the American Chamber of Commerce, and the European Business Association.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

In view of its Euro – integration process and the Association Agreement with the EU, Ukraine constantly takes best efforts for reforms aimed at, in particular, foreign investments attraction into the country. Among the most recent proposals for such reforms is the draft law No. 6141 approved by the Parliament for the second reading on 16 May 2018 which amends some Ukrainian laws regarding the promotion of attraction of foreign investments. In particular, the law introduces an institute of the “nominal holder” into the depository system of Ukraine, as well as the financial intermediary and global custodian. The adoption of the draft law will allow foreign investors with fewer bureaucratic procedures and with greater confidence to invest in securities such as government domestic loan bonds, shares of Ukrainian issuers, loan securities and other securities. Besides, the draft law improves the financial monitoring procedures, simplifies the identification and verification of the “nominal holder” and the clients of the nominal holder. Earlier, the National Depository of Ukraine (NDU, the central depository) predicted that the adoption of this law will increase the share of foreign capital up to 30%.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

Ukraine’s ongoing structural reforms have led to a significant improvement of its investment landscape, and are further expected to have a positive effect on foreign investment. A particular sign of improvement is Ukraine’s rising by four positions in the Doing Business 2018 rating and reaching a 76th position from 190 countries of the world.

专题： 乌克兰
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1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

近年来，乌克兰在实施经济和政治体制改革方面取得了进展。因此，自 2016 年以来，乌克兰在全球开放数据指数中排名上升了 30 多个位次，列至第 24 位。

根据之前在 2017 年 1 月的预测，世界银行已将其对乌克兰 2018 年国内生产总值增长率的预测从 3% 上调至 3.5%，2019 年的预测从 3% 上调至 4%。

乌克兰优越的地理位置赋予了它具有竞争力的优势，特别是在制造业和食品经销方面。它位于欧洲的中心位置，可直接经由黑海进入亚洲。乌克兰拥有超过 17 万公里的道路、22,000 公里的铁路线及 13 个海港，拥有在国内外快速运输货物的基础设施。

乌克兰具有教育程度良好的劳动力。超过 70% 的人口拥有中等或高等教育学历。劳动力成本相对较低。

乌克兰是 2014 年《欧盟深度全面自由贸易协定》的缔约国，并与其他国家签署了双边自由贸易协定。自 2008 年以来，乌克兰也是世界贸易组织的成员国。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

乌克兰规范外国投资的主要法律如下：

- a. 《乌克兰商法典》，其中规定了投资的类型、对投资者的保障，并预设了外国投资在乌克兰的可能形式，包括：
 - i. 参与商业实体或收购现有实体的股份；
 - ii. 在乌克兰设立外国企业；

- iii. 购买动产或者不动产，收购股份或者其他证券；
 - iv. 产品分成协议范围内的商业活动；以及
 - v. 其他相应的投资形式。
- b. 《乌克兰民法典》，该法对在乌克兰设立和经营公司的一般规则进行了规定；
 - c. 1991 年《商业公司法》，该法载有对其所规范的每一种公司类型的详细要求；
 - d. 1991 年《乌克兰投资活动法》，该法确立了在乌克兰的投资活动的一般原则，并为投资项目的实现提供国家援助；
 - e. 1996 年《乌克兰外国投资制度法》，该法规定了对外国投资者的某些特权和保障，以及投资者与国家之间投资争端的解决程序。

针对投资活动的具体规定也体现在 2010 年《乌克兰政府与社会资本合作法》、1999 年《乌克兰特许权法》、1999 年《乌克兰产量分成协议法》等法律中。此外，乌克兰与其他国家签订了许多双边投资协定，这些协定更为详细地规定了外国投资活动的条件和保障，特别是：

- a. 与欧洲国家（例如瑞典、西班牙、意大利、波兰、荷兰、奥地利和其他国家）签订的双边投资协定；
- b. 与美国和加拿大签订的双边投资协定；以及
- c. 与亚洲国家签订的双边投资协定，包括日本、印度尼西亚、越南和中国。

乌克兰还是 1999 年《能源宪章协定》的缔约国。

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3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？

一般来说，外国投资者和本地投资者在乌克兰享受同等待遇。法律规定，根据国家安全利益，可依法限制外国投资者从事某些类型的业务活动。外国投资者应注意以下法定限制：

- a. 对于只能由国有企业进行的商业活动类型（例如，发行纸币、运载火箭制造等），对外国或国内投资者均有限制；
- b. 某些特定限制（包括行业特定限制）仅适用于外国投资者。例如，外国投资者无权拥有农业用地，也不得从事某些出版活动；在离岸法域（如乌克兰内阁所定义）和俄罗斯联邦注册登记的投资者不得在乌克兰建立电视和电台广播公司；禁止购买私有化过程范围内的国家或市政财产。

乌克兰议会拥有对外国投资施以限制的专有权力。地方政府无此权力。在乌克兰，不存在在地方层面的外国投资限制。

4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的主要要求有哪些？

在乌克兰，外国投资者可以使用的最常见的公司形式是采取有限责任公司或股份公司组织形式的法人实体。其中，对于在乌克兰设立的企业而言，有限责任公司是最受欢迎、使用最为广泛且最易于管理的法人实体。如果拟开展的活动包含股份发行，则投资者可以考虑注册股份公司。有限责任公司通常在1（一）个工作日内即可完成注册登记。有限责任公司没有最低注册资本的要求。有限责任公司和股份公司的参与者以各自对公司注册资本的出资额为限承担责任。

设立和经营有限责任公司的主要要求如下：

- a. 在乌克兰，禁止单个个人或法人成为多个有限责任公司的唯一创始人或参与者；
- b. 禁止由唯一股东 / 参与者拥有的参与者成为有限责任公司的唯一创始人；

- c. 参与者人数最多为 100 人。

但是，自 2017 年《有限责任公司和追加责任公司法》于 2018 年 6 月 17 日开始施行后，上述限制即被废除。

设立和经营股份公司的关键要求如下：

- a. 由单一股东所有的法人不得作为股份公司的唯一股东；
- b. 股份公司不能完全由同一股东 100% 拥有的数个法人实体担任股东；
- c. 股份公司股本的最低数额为其成立之日的正式最低月薪的 1250 倍（自 2018 年 1 月 1 日至 2018 年 12 月 31 日，该数额为 4,623,750 格里夫纳，约合 167,040 美元）；
- d. 股份公司注册资本中股份的发行必须在国家证券和股票市场委员会登记。

外国投资者还可在乌克兰设立外国公司代表处。代表处不是法人实体，不可获得从事某些类型的活动的许可与特许（与法人实体不同）；但无论是否有权开展商业活动，代表处均可在乌克兰代表母公司。如果从事任何商业活动，那么代表处须在乌克兰纳税。此外，此类代表处将为税务目的而被承认为外国公司的常设机构，且不具备享受乌克兰法律规定的税收优惠的资格。母公司对代表处的活动负有全部责任。外国法人的代表处须在乌克兰经济发展和贸易部进行注册登记。须支付 2,500 美元的一次性注册登记费。

该法律还涉及了外国投资者开展业务的合同类型，例如合资协议（主要用于石油和天然气开采领域）、联合合作协议和其他类似协议，以及用于投资组合、机构投资者和 / 或私人投资者的特别投资工具。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

一般情况下，外国投资者在乌克兰设立和经营业务不需要取得政府同意。然而，某些类型的活动须经许可或特别许可，而不论这种活动是由外国投资者还是本地投资者开展的。根据 2015 年《乌克兰商业活动许可类型法》的规定，下列经营活动须经许可：

- a. 银行；
- b. 金融服务；
- c. 证券市场的专业活动；
- d. 电视和电台广播业务；
- e. 教育机构的教育活动；
- f. 医疗用品制造；
- g. 医疗用品进口；
- h. 旅行社业务；以及
- i. 法律规定的其他业务类型。

外国投资者也需要考虑乌克兰竞争法律的要求。例如，在收购乌克兰公司或资产的情况下，以及在其他情况下，一旦满足法律规定的相应门槛，即具有取得乌克兰反垄断委员会合并许可的初步义务。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的行业有哪些（如有）？

银行和金融部门被认为是监管最为严格的部门之一（包括在货币控制方面）。在乌克兰，所有需要许可的行业（包括但不限于制药、建筑、电信等行业），以及粮食生产行业也都受到相当严格的管制。某些活动只能由国有企业进行（例如，发行钞票、制造军事武器、进行犯罪和司法鉴定、制造运载火箭等）。

绿色能源和基础设施是乌克兰积极推动投资的主要领域。除此之外，农业和信息技术也受到较少的管制。

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？（例如制裁）

乌克兰国家安全与国防委员会有权根据《乌克兰制裁法》的规定对作为被制裁国居民的实体和个人（包括有关国家的国有企业和国家官员、及位于被制裁国家的私人公司和个人）实施单独制裁。这些制裁包括禁止进入乌克兰；禁止在乌克兰使用和处置资产；禁止向位于被制裁国家的公司提供资金；禁止资源运输；限制来自被制裁国家的投资者进行贸易经营以及防止其将资本撤出乌克兰。乌克兰对俄罗斯个人（包括国家官员）和法

人实体（特别是从事信息技术、银行和金融部门业务的俄罗斯实体）实施了一些制裁；禁止在乌克兰提供俄罗斯在线服务，包括俄罗斯社交网络以及使用某些俄罗斯软件；禁止一些俄罗斯政客、商人、艺术家和其他人员进入乌克兰；对原产于俄罗斯的某些货物征收关税。

2014 年 3 月，俄罗斯非法吞并克里米亚，乌克兰东部某些地区（即顿涅茨克和卢汉斯克地区）发生军事冲突，这些地区现在被视为“临时被占区”。此后，出台了有关在临时被占区开展经营活动的特别法律。该等法律对克里米亚境内的付款以及克里米亚境内法人实体和个人之间的付款进行了规范，并对在临时被占区领域内的经营活动施加限制。这包括进入和离开此类领域的特别规则；禁止缔结关于转让临时被占区不动产和土地所有权的协议；禁止乌克兰银行在临时被占区内开展银行业务；禁止将位于临时被占区领域内的私人、市政或国家财产转让给位于俄罗斯联邦的任何人。

除此之外，金融监管和反洗钱法律也规定了某些限制。要求乌克兰的银行将涉及某些国家的业务视为风险性业务，在某些情况下，可能加强对此类国家业务的审查，或者暂停与此类国家的客户业务。这包括乌克兰内阁批准的海外国家名单上的国家、不开展反洗钱活动或打击资助恐怖主义活动的国家、以及资助大规模毁灭性武器流通的国家等。

最后，乌克兰通常遵守联合国对一些国家（如伊朗或朝鲜）实施的国际制裁，不允许与这些国家进行任何交易。

8. 对外国投资者有哪些优惠或激励措施（如有）？

除了某些特权和保证外，根据外国投资法律规定，外国投资者有权享受乌克兰为支持外国投资而提供的各种其他激励措施，特别包括：

- a. 若新设立的纳税人年收入在 300 万格里夫纳或以下，并符合相应要求，则对其在 2021 年前实行免税；

- b. 免征作为乌克兰实体注册资本实物出资的进口资产的关税，前提是这些资产不得在未来三年内予以出售；

《乌克兰外国投资制度法》还讨论了针对经济优先发展行业国家计划涉及的有外国投资者参与的某些项目，建立投资和商业活动的优先制度的可能性。

9. 在您所在司法管辖区，是否存在任何自由贸易区、经济特区或工业区？这些地区有哪些要求？

乌克兰法律对自由经济区的建立进行了规定，并由自由经济区的特别法律对此类自由区进行规范，该等自由区特别法律还对进入这些自由区的外国投资的法律地位进行了规定，并为外国和当地投资者提供了相应的特权和福利。自由经济区的地位和区域、其设立期限和其他要求由议会通过批准相应经济区单独法律的方式来确定。现有的自由经济区包括萨卡巴蒂亚 (Zakarpattya)、科威尔港 (Interport Kovel)、Kurortopolis Truskavets、尼古拉耶夫 (Mykolayiv)、Porto-Franko、烈尼 (Reni)、斯拉夫蒂奇 (Slavutych) 和亚沃里夫 (Yavoriv)。

10. 在您所在司法管辖区，可能适用于外国投资者的主要税种有哪些？(例如个人所得税、企业所得税、增值税与社会保险费)

对乌克兰个人和公司（包括外国公司的子公司）征收的主要税种如下：

- a. 企业所得税，普通税率 18%；
- b. 增值税，标准税率 20%；
- c. 针对乌克兰公司向非居民支付的收入的预扣税（如股息、特许权使用费、利息）。扣缴税的普通税率为 15%，根据乌克兰与外国签订的避免双重征税协定，该税率可能会更低；
- d. 由雇主基于其向雇员支付的薪酬而应缴纳的统一社会保障费，按照 22% 的费率缴纳；
- e. 个人所得税，税率 18%。

在乌克兰，外国实体应就其通过常设机构在乌克兰开展的商业活动所取得的应税收入进行纳税。对于非系外国实体通过其常设机构在乌克兰从事商业活动所得的收入，在将这种收入转移给外国实体时，将通过从应归属于外国实体的款额中扣除税款的方式征税。外国实体在乌克兰的分支机构或常设机构被视为独立的纳税主体。对于根据有关技术和人道主义援助的国际协定而在乌克兰行动的非居民所得，实行免税。

外国实体应当对来源于乌克兰的所得缴纳企业所得税。居民公司或外国实体的常设机构在来自乌克兰的收入（包括由乌克兰实体向外国股东支付的红利）进行转移时，应当适用 15% 的普通预扣税率，除非可以根据相关的避免双重征税协定适用更低的预扣税率。

11. 在您所在司法管辖区，外国投资者应该注意哪些劳动法律法规？外国人是否能通过投资活动获得居留许可或者工作签证？

基于 2011 年《乌克兰外国人和无国籍人法律地位法》的规定，乌克兰法律规定了外国人获得临时和永久居留（移民）许可的可能性。除非外国国民具有获得永久居留（移民）许可的理由（该许可是在特别移民配额内（或视情况而定在配额之外）签发的），否则外国国民仅可获得临时居留许可。外国国民在乌克兰获得临时居留许可的最常见理由是建立企业或在乌克兰公司就业。外国股东可以凭借向乌克兰公司投入不低于 10 万欧元的股本而取得居留许可。临时居留许可具有期限限制（通常为一年），并且可以延长相同的期限。

12. 在您所在司法管辖区，外国投资者是否可以取得不动产与土地？是否存在任何约束或限制？

外国投资者可以不受任何限制地在乌克兰购买房地产。然而，农业土地只能由乌克兰个人和乌克兰个人和 / 或乌克兰法人实体设立的法人实体拥有。外国投资者不得在乌克兰取得农业土地所有权。唯一的例外是继承；但是，在这种情况下，外国投资者必须在一年

年内转让该农业用地。非农业用地可以由外国投资者在与乌克兰居民享有同等条件的基础上获得。

13. 在您所在司法管辖区，是否存在特定情形下阻止外国投资的任何程序？

请参考本指南第 7 条。

14. 外国投资者应该注意哪些外国货币或外汇管制？

只有乌克兰国家货币（格里夫纳）可以作为支付手段在乌克兰境内使用。在该国使用外币需要获得乌克兰国家银行的单独许可。

乌克兰国家银行在 2014 年推出了一些临时货币管制限制，旨在稳定乌克兰的货币市场。乌克兰国家银行倾向于逐步放宽上述管制措施，特别是在以下方面：

- a. 禁止提前偿还非居民向乌克兰居民提供的贷款；
- b. 在乌克兰法人实体的注册资本减少、出售乌克兰发行人的证券和投资者从乌克兰法人实体退出时，限制资金向海外跨境转移（目前适用每月 5,000,000 美元的限额）；以及
- c. 在向国外支付红利时，每月的限额为 7,000,000 美元。

乌克兰居民根据出口合同（不包括除运输和保险服务之外的服务出口，以及知识产权出口）获得的外汇收入，必须在出口货物通关之日起 180 天内转入该居民的银行账户。乌克兰居民根据外国经济合同用外币预付的货物，必须在预付之日起 180 天内通过乌克兰海关进口和清关。此外，乌克兰居民外汇收入的 50% 应在银行间货币市场出售以获得乌克兰货币。然而，这一规则并不适用于作为外国投资而汇入乌克兰的收益，例如作为对乌克兰公司注册资本的出资而转入的收益。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

除了问题 14 所详述的乌克兰国家银行对跨境转移外币的临时限制（特别是禁止提前偿还跨境贷款）之外，对于外国投资者撤回其在乌克兰的投资，乌克兰法律未规定任何限制、批准要求或处罚。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

外国经济合同的当事人可以自由选择有权机构，以解决由这些合同引起的纠纷。这些机构既可以是当事人所在国的国家法院，也可以是仲裁庭。乌克兰法院的判决由乌克兰国家执行局执行。随着 2017 年的改革，执法部门现在包括了私人法警，普遍预计这将提高执法程序的效率。

乌克兰法律规定了执行外国法院判决和外国仲裁裁决的机制。乌克兰法律还允许乌克兰法院协助获得临时救济，以及保存和收集仲裁程序所需的证据。乌克兰是 1958 年联合国《承认与执行外国仲裁裁决公约》（《纽约公约》）的缔约国，该公约使仲裁裁决在乌克兰执行成为可能。与国家签订的投资合同的执行由双边投资协定予以保障。因此，针对此类合同违约，可以通过相应双边投资协定中约定的投资仲裁程序进行解决。

此外，乌克兰还是 1966 年《解决国家与他国国民间投资争端国际公约》的缔约国，该公约允许通过国际投资争端解决中心解决投资者与国家之间的争端。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

乌克兰签署了超过 70（七十）个双边投资协定，根据这些协定，投资者可将其争端提交给相应的投资者—国家争端解决机制。这些条约中有 10 项条约是与亚太地区国家签署的，即澳大利亚、文莱、越南、印度、印度尼西亚、中国、韩国、蒙古、新加坡和日本。

双边投资协定通常旨在鼓励外国投资，并为外国投资保护提供国家担保。虽然大多数双边投资协定通常具有共同语言，但它们在某些细节上可能有所不同，对此类差异应在每个具体情况下进行具体分析。此外，乌克兰还签署了若干多边条约（如《能源宪章条约》、《关贸总协定》、《服务贸易总协定》），这些条约涉及一些亚太国家，并提供一定程度的投资保护。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

知识产权源自版权、注册商标、发明和实用新型注册和工业品外观设计注册，并受乌克兰签署的国际条约（例如巴黎、伯尔尼和世界知识产权组织公约）以及地方法律（特别是1993年《乌克兰商标法》、1993年《乌克兰版权法》、1993年《乌克兰发明和实用新型法》、1993年《乌克兰工业品外观设计法》）等管辖。

一般来说，外国投资者的国籍和住所知识产权注册登记时不予考虑，且与知识产权保护无关。同时，外国个人和实体在进行知识产权注册登记时，主要通过乌克兰专利代理与乌克兰专利和商标局维系关系。

知识产权保护和救济大多是通过司法措施（民事、商事或刑事诉讼）获得的。然而，在不久的将来，所有与知识产权有关的案件将由新成立的专门的高等知识产权法院解决，该法院将在2018年底开始运作。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

环境保护领域主要受2017年《乌克兰环境影响评估法》管辖，该法特别规定了具有固定时间表的环境影响评估的一般程序，该等程序会涉及到公众协商，且须在网上公布与环境影响评估（在可公开访问的在线注册处进行）有关的所有关键文件。

环境影响评估是强制性的，针对广泛的商业活动和设施，并由法律归为相应的类别。乌克兰生态和自然资源部或当地政府的环境部

门就其职权范围内的各类业务活动和设施做出环境影响评估结论。环境影响评估应在公司获得授权任何相关业务活动的许可之前进行。有关当局的结论和环境影响评估结论的有效期是5年。

不遵守环境影响评估法律会导致暂时中止或终止经营活动。这种中止或终止只能由法院根据被授权的国家当局或其权益受到影响的任何第三方的要求下达命令的方式进行。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

为了促进乌克兰的外国直接投资，乌克兰内阁在2016年设立了乌克兰投资促进办公室。有关乌克兰投资促进办公室和其提供给外国投资者的服务的详细信息可以在 <https://ukraininvest.com> 上找到。

处理在乌克兰的外国投资的另一个国家机构是乌克兰总统领导的国家投资委员会，其主要任务是拟定关于刺激和发展在乌克兰的投资活动的提案，并协助制定改善乌克兰投资环境的国家政策的主要方向。该委员会由乌克兰主要政府机构的负责人和非政府机构、商会和商业协会的代表组成，如设在乌克兰的美国商会、欧洲商业协会、欧洲复兴开发银行和国际金融公司。

最后，外国投资者可以从当地和国际非政府成员资助的非营利组织（如乌克兰商业协会、美国商会和欧洲商业协会）就乌克兰境内活动的各种问题、以及向国家当局游说其商业利益等方面寻求援助。

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

鉴于乌克兰的欧元一体化进程和与欧盟的《结盟协定》，乌克兰不断努力进行改革，特别是旨在吸引外国投资进入乌克兰的改革。在关于此类改革的最新建议中，其中一项是议会于2018年5月16日经第二读批准的第6141号法律草案，该草案修正了乌克兰关于促进吸引外国投资的一些法律。特别是该法律将“名义持有人”机制引入乌克兰的存款

系统，以及金融中介和全球托管人。该法律草案的通过将使得外国投资者能够以更少的官僚程序和更大的信心进行证券投资，如政府国内贷款债券、乌克兰发行人的股票、贷款证券和其他证券。此外，法律草案还完善了财务监督程序，简化了“名义持有人”及其客户的识别与核实。此前，乌克兰国家存管机构（中央存管）预测，该法的通过将使得外国资本份额增加到30%。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

乌克兰正在进行的结构性改革已显著改善了其投资局面，并进一步预期对外国投资产生积极影响。一个特别的改善迹象是，乌克兰在《2018年营商环境报告》中的排名上升了4位，在世界190个国家中排名第76位。

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1. What are the main reasons foreign investors invest in your jurisdiction?

The United Arab Emirates (“UAE”) is a federation of seven emirates. With its strategic location between the East and West, the UAE has become a world renowned commercial and financial hub of the Middle East and North Africa.

The UAE continues to promote the diversification of its economy into various industries and move away from an oil based economy. It adopts a very liberal foreign investments policy which permits 100% foreign ownership of various enterprises in over 45 sector-focused free zones and has implemented reform initiatives to attract, encourage and facilitate foreign investment.

Foreign investors are driven to invest in the UAE due to the general absence of corporate and income taxation, absence of exchange controls and limited restrictions on the repatriation of capital which can be easily facilitated through the number of international banks in the region, exemptions from custom duties and several domestic regulations, which are applicable within the customs territory. Other factors enhancing the attractiveness of the UAE as an investment location are its strong, reputable and profitable banking sector, stable political environment, its large and diverse pool of expatriate labour, good transport and production infrastructures, and its access to low-cost energy.

The UAE’s growing attractiveness as an investment destination is evidenced in various international reports and researches, for instance, according to the 2018 World

Investment Report by the UNCTAD¹, foreign direct investment (“FDI”) inflows to the UAE increased by 8% to US\$ 10.4 billion in 2017. In 2017, it was reported by the International Institute of Finance that in respect of FDI inflows, the UAE won a 22% share in the investments made in the Middle East and North Africa region. The UAE’s share of inward FDI in the GCC region was approximately valued at US\$ 80.8 billion between 2013 and 2016.² In addition, the World Investment Report 2017 declared the UAE as the 13th Most Promising Home Economy for Investment in 2017 to 2019³, and the World Bank has increased the UAE’s ranking for ease of doing business in 2018⁴ to an all-time high.

¹ UNCTAD, ‘Investor Nationality: Policy Challenges’ [2016] World Investment Report 2016.

² Gulf News, ‘UAE throws open FDI gates for investors’ gulfnews.com/gn-focus/special-reports/annual-investment-meet/uae-throws-open-fdi-gates-for-investors-1.2201899

³ UNCTAD, ‘World Investment Report 2017’ unctad.org/en/PublicationsLibrary/wir2017_en.pdf

⁴ World Bank, ‘Doing Business in the United Arab Emirates’ www.doingbusiness.org/data/exploreeconomies/united-arab-emirates

2. What foreign investment legislation is in place in your jurisdiction (e.g. Foreign Investment Law or Foreign Investment Catalogue)? Please provide a brief overview of such legislation.

The UAE has not implemented any specific foreign investment legislation in the UAE. However, given the absence of any specific foreign investment legislation in the UAE, foreign investments are dealt with through various general laws, which includes but is not limited to the:

- Federal Law No. 2 of 2015 on Commercial Companies (the “CCL”);
- Federal Law No. 18 of 1981 concerning the Organisation of Trade Agencies;
- Federal Law No. 1 of 1979 regarding the Regulation of Industries;
- Federal Regulation of Conditions of Purchases;
- Tenders and Contracts Financial Order No.16 of 1975; and the
- Various laws, rules and regulations of the various free zones.

The CCL in particular has the objective to continue UAE’s development into a global standard market and business environment and, in particular, raise levels of good corporate governance, protection of shareholders and promotion of social responsibility of companies.

In order to develop the legal infrastructure of the UAE with the aim of facilitating the growing business community in the UAE, the UAE’s government has recently issued Federal Law No.6 of 2018 on Arbitration and is currently in the process of issuing new draft laws which cover commercial fraud, anti-dumping, and foreign investment. It is expected that the proposed investment law, which will come into effect in the third quarter of 2018, will make the business ownership requirements less stringent, support economic diversification and promote competition in the economy.

3. What restrictions are placed on foreign investment? Does this differ at local levels of government?

Although UAE laws and regulations intend to support FDI, onshore laws stipulate certain restrictions on foreign investors. Under the CCL, foreign ownership of a company is restricted to 49% since there is a requirement that 51% of the company needs to be owned by a UAE national or a company wholly owned by a UAE national (the “49/51 Rule”). For public joint-stock companies, there is an additional requirement that the chair and majority of the board members should be UAE nationals.

In the case of a branch office of a foreign company, a UAE agent needs to be appointed for sponsorship. Nonetheless, these restrictions do not apply to companies wholly owned by GCC nationals, or corporate shareholders that are wholly owned by a GCC national.

There are also restrictions with regard to foreign ownership of real estate, which is only permissible for designated areas in each emirate.

In addition, foreign investors, who seek to distribute their products in the UAE must have an exclusive agent, who needs be a UAE national or a company wholly owned by a UAE national.

The aforementioned restrictions do not apply in the UAE free zones. However, businesses established in a free zone may not conduct their business outside the free zone area.

Nevertheless, restrictions on foreign investment can be expected to become less stringent as a result of the proposed new UAE investment law due to be introduced in the third quarter of 2018.

4. What are the most common business vehicles for foreign investors? How long do they take to be set up? What are the key requirements for the establishment and operation of these vehicles?

For a foreign investor to conduct business, they can establish a formal legal presence in the UAE through any of the following means:

1. Incorporating a local “on-shore” entity;
2. Registering a branch or representative office of a foreign company;
3. Establishing a free zone entity; or
4. Establishing Offshore/International Business Companies

Incorporating a local entity

There are five forms of companies permitted by the CCL but foreign investors commonly operate through a Limited Liability Company (“LLC”).

An LLC is a private company and its shares cannot be offered to the public. The number of shareholders can range from 2 to 50, and shareholders also have the benefit of limited liability.

An LLC must have at least 51% of its shares held by UAE nationals. However, an LLC may have 100% of its share capital owned by GCC nationals, but if any non-GCC national becomes a shareholder in the LLC, the minimum 51% UAE national ownership rule must be complied with. Nonetheless, it is possible to have a mutual agreement on the profit and loss distribution, and allocation of liquidation proceeds.

There is no minimum capital requirement, although the LLC should have “sufficient capital” to conduct its business according to the Department of Economic Development (“DED”) of the relevant emirate. Also, a physical premise is needed for the registered office address of the business.

Although the time frame for incorporation depends on the business activities to be undertaken by a company, the approximate time

frame for incorporation for a company that does not require external approvals is four weeks.

Branch/ Representative Office

The CCL allows foreign companies to establish wholly owned branches or representative offices. The scope of activities that may be carried out is limited to those activities permitted by the Ministry of Economy. A UAE national or a company wholly owned by UAE nationals is needed as a service agent to deal with local and federal government requirements.

Branch offices do not have a separate legal identity from its parent company. However, a branch office can negotiate and enter into contracts on behalf of the parent company and can provide supporting activities; only the parent company can fulfil contracts that require goods and services, or alternatively, a commercial agent can be appointed.

Representative offices can only market and conduct production capability studies and are not allowed to perform any commercial activity.

The approximate time frame for incorporation is four to six weeks.

Free Zone Entities

The UAE has introduced a number of free zones to attract foreign investment. Each free zone has its own regulatory authority with their own rules and regulations. Generally, the free zones are industry focused, and issue licenses for specific types of activities. Though free zones allow 100% ownership, free zone entities may only operate within the free zone boundaries. If a free zone company chooses to operate outside the free zone, it must comply with the CCL.

Most of the free zones have two main types of limited liability companies: Free Zone Establishment (FZE) and Free Zone Company (FZCO/FZC/FZ-LLC). The main difference between these two corporate structures is the number of shareholders; a FZE requires only one shareholder while the latter requires two or more shareholders.

Free zone entities also have to comply with minimum share capital requirement. However, the amount depends on the free zone, the structure of the business and the activities of the company. The approximate time frame for incorporation is usually two to eight weeks.

Offshore/International Business Companies (“IBC”)

Offshore companies are suitable for investors who do not intend to engage in any business within the UAE. Generally offshore companies act as holding companies and do not carry on commercial activities. Free zones which offer offshore company set ups in the UAE include the Jebel Ali Free Zone (“JAFZA”) and Ras Al Khaimah Investment Authority.

These allow international businesses to operate with 100% foreign ownership. There is no minimum capital requirement and no requirement to file audited accounts. IBCs allow the companies to acquire freehold property within approved areas and the option of maintaining multi-currency bank accounts. Companies under offshore regimes can enjoy the advantage of Double Taxation Avoidance Agreements which the UAE has entered into with several other countries.

When setting up an IBC, there is usually no need to deposit capital in a bank account, no financial statements need to be submitted, and no office space is required. It provides complete privacy and confidentiality ensuring a highly conducive business environment. Nevertheless, IBCs can only be set up using a registered agent, which also provide a registered office address for the IBCs.

The approximate time frame for incorporation is one to two weeks.

5. Under what circumstances are foreign investments subject to government approvals? What is the process and timeline for such approvals?

Business registration processes vary in each emirate and are generally done through the

emirates’ Department of Economic Development (“DED”). The company is also usually required to be registered with the Chamber of Commerce and Industry, the Ministry of Labour, and the General Authority of Pension and Social Security. The DED issues licences with the exception of hotels and tourism licences, which are issued by the Department of Tourism and Commerce Marketing.

There is no formal FDI review process in place, but restriction on foreign ownership of land and stock are common. Also, non-tariff barriers to investment are present in the form of restrictive agency, sponsorship, and distributorship requirements.

Examples of categories that need prior approval for a grant of license include:

- Banks, financial institutions and financial services providers, which need approval from the UAE Central Bank;
- Manufacturing companies from the Ministry of Finance;
- Pharmaceutical and medical products from the Ministry of Health; and
- Education related businesses which may require the prior approval of the Ministry of Education.

In addition, businesses engaged in oil and gas production related industries are required to follow a more detailed procedure.

6. What sectors are heavily regulated or restricted in your jurisdiction, if any? Conversely, what are some of the more open or unrestricted sectors, if any?

Some of the regulated sectors in the UAE include:

Banking

The UAE Central Bank is primarily responsible for overseeing banks in the UAE, except in the Dubai International Financial Centre (“DIFC”), where the Dubai Financial Services Authority (“DFSA”) is the regulatory authority, and in the



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Hasan Rizvi is the Middle East Managing Partner of RIAA Barker Gillette. He specialises in corporate, commercial and private equity. Hasan’s areas of practice include project finance, restructuring, corporate finance and dispute resolution. He has acted on a number of high profile transactions across the Middle East, Asia and Africa regions in diverse industries and sectors.

Hasan’s corporate expertise includes working with multinational and domestic corporations, private equity firms and family business groups on their operations and management, corporate structures, mergers, acquisitions and investments. He frequently acts for fund sponsors, investors and asset management firms on fund formation, investment structuring and regulatory compliance.

Hasan has extensively worked on infrastructure and energy projects, equity and debt capital markets transactions, and corporate restructurings.

His private client expertise covers strategic advisory services to high-net-worth individuals and family groups in relation to family offices, private investments and holding structures.

Prior to establishing RIAA Barker Gillette (Middle East) LLP, Hasan was a partner in other international law firms. He has been based in the Middle East for more than 15 years.

Abu Dhabi Global Markets where the regulatory authority is the Financial Services Regulatory Authority. The UAE Central Bank’s responsibilities include: issuing currency, advising the government on monetary issues, acting as a bank for other banks and the government, and formulating and supervising the implementation of banking policies.

The UAE Central Bank, ensures compliance with banking laws and supervises the other banks by requiring periodic reports; it has the power to inspect records and accounts of banks

at its discretion, and can appoint administrators or representatives to manage a bank.

The recently issued Federal Decree Law No. 9 of 2016 on Bankruptcy serves as an instrument of stability and risk mitigation enabling the creation of a pre-emptive settlement regime in the UAE.

Lastly, the UAE is also aligned with regulatory frameworks such as IFRS9 and Basel III, to enhance the credentials of financial instruments in the UAE and also to prepare itself for potential market shocks.

Insurance

The UAE established the Insurance Authority to ensure a suitable environment for the development of the insurance sector. The Authority grants licences and may issue regulations that facilitate insurance providers to comply with insurance laws such as Federal Law No. 6 of 2007 on the Establishment of the Insurance Authority and Regulation of Insurance Operations. It may also de-register companies for breaches of the regulations.

Securities and Commodities

The Securities and Commodities Authority (the “SCA”) was established to improve the efficiency of the UAE capital markets. The SCA has wide powers to regulate the securities markets, by establishing controls and producing frameworks pertaining to licensing and membership of the market, listing of securities, disclosure and transparency requirements, and arbitration in respect of disputes resulting from the negotiation of securities. The SCA is also in charge of communication with international markets in order to exchange information and expertise and join relevant organisations and associations.

Healthcare

The Ministry of Health, and the health authorities of each emirate administer the public healthcare services in the UAE. These authorities are responsible for licensing companies and individuals providing healthcare services, improving healthcare information systems and standards, developing a comprehensive healthcare insurance and funding policy, building and managing health facilities, and regulating areas of healthcare, including the practice of medicine, dentistry, nursing and pharmaceuticals.

The Ministry of Health along with the Medicines Pricing and Companies Committee regulate prices of both imported and locally manufactured medicines; they tend to favour lower prices to ensure affordability for patients.

Media

The UAE allows media outlets to establish themselves onshore or in the various media free zones across the emirates. Regardless of where the media companies operate, the National Media Council (“NMC”) is the federal regulator responsible for publishing licences and issuing press credentials to editors, although, there may be additional regulatory authorities for free zones. The role of the NMC also includes ensuring the implementation of media laws, and compliance with regulations, including content regulations that prohibit content criticising the UAE government, its rulers and content that can damage the UAE economy, among other prohibitions. Accordingly, the NMC may cancel licences for violations of content regulations.

Oil and Gas

Under the UAE Constitution, each emirate has complete ownership and control of the natural resources in its territory. Consequently, each has its own regulatory body and policies regarding the industry. In relation to oil, Abu Dhabi owns approximately 94% of the national oil reserves, followed by Dubai with approximately 4%; the remainder is split between the other emirates.

In Abu Dhabi, the Supreme Petroleum Council establishes policies and ensures that they are implemented. It also forms the board of directors of the Abu Dhabi National Oil Company, which is state-owned, and is the dominant company in the sector.

In Dubai, the Dubai Supreme Council of Energy develops policies, and coordinates with the Department of Petroleum Affairs to administer the exploration and production of oil and gas. The council also has representatives from the Emirates National Oil Company, which is owned by the Dubai government.

Telecommunication

The Telecommunications Regulatory Authority (“TRA”) is responsible for the oversight of all telecommunications and information technology industries. The TRA’s detailed

regulatory framework covers areas such as competition rules, price control, allocation of scarce resources, consumer protection requirements and reporting obligations.

Water and Electricity

Although there are federal laws governing electricity and water supply, they are limited. Each emirate therefore has the responsibility to regulate the industry based on its own economic agenda.

Private companies may only generate electricity, since only state-owned authorities may transmit and distribute it. Therefore the supply of electricity and water are carried out by state-owned entities such as Dubai Electricity and Water Authority, and the Abu Dhabi Electricity and Water Authority.

Abu Dhabi and Dubai also have Regulation and Supervision Bureaus, which issue licences and regulations, and monitor compliance with policies.

7. Are there any restrictions on doing business with certain countries or territories in your jurisdiction? (For example, sanctions.)

There is no public record of whether transactions with specific territories, countries or entities are prohibited in the UAE. However, whilst the UAE does not have a sanctions regime in force; it enforces European Union, United Nations (“UN”) and United States sanctions on an ad hoc basis through the issuance of internal directives. For instance, the Ministry of Interior confirmed the implementation of UN sanctions on Iran, North Korea, Libya, Sudan and Somalia.

In addition, from 2017, the UAE has implemented sanctions and restrictive measures against the State of Qatar, its citizens and certain Qatari companies. These restrictions includes the withdrawal of land and air space links, restrictions in respect of the exportation of products, and certain lending activities.

8. What grants or incentives are on offer to foreign investors, if any?

One of the most attractive features of the UAE for foreign investment is that it is largely a tax-free jurisdiction. Currently, there are no federal laws on corporate income tax. However there are tax decrees in the separate emirates that limit tax imposition to certain entities such as branches of foreign banks, courier companies, insurance companies and oil companies. In addition, on 1 January 2018, the UAE government introduced Value Added Tax (“VAT”) at a rate of 5% under Federal Law No. 7 of 2017 on Tax Procedures.

In respect of onshore incentives, the Dubai Department of Economic Development has introduced an online service for ‘Instant Licensing’, which can issue an onshore commercial license within 5 minutes. The aim of the service is to simplify a lengthy and sometimes cumbersome process and thereby incentivise individuals and corporations to conduct their business onshore. However, as this is a new development, the service is currently only available for ‘General Trading’ licenses for limited liability companies; although, more business activities and corporate structures will be added over time.

Another new onshore offering is the Dubai’s Business Incubator Licence for small and medium sized enterprises; this new type of licence allows 100% onshore ownership of a business, which is based on a novel idea and has been approved as a feasible venture by a special committee of the Dubai DED. The initiative provides an exception to the foreign ownership restriction outlined in question 3 above.

The various free zones across the UAE are another feature that draws foreign investment. These free zones allow 100% foreign ownership of a company, and full entitlement to company profits following the filing of VAT returns, if applicable. There are also no customs levied on imports in the free zone.

Other incentives include the strong and profitable banking sector, large and diverse pool of expatriate labour, and the developed infrastructure.

9. Are there any free trade, special economic or industrial zones in your jurisdiction and what are their requirements?

The UAE's various free zones have drastically transformed its economic market within the last 20 years. The rapid growth of JAFZA, the first free zone in the UAE, inspired the other emirates to set up their own free zones to attract foreign investors and businesses. Since then, the UAE has established over 45 free zones, and each caters to a specific business category such as information and communications technology, media, finance, gold and jewellery and equipment. As mentioned above, these various free zones permit 100% foreign ownership. However entities established in the various free zones are generally limited to conducting business activities within the remit of the relevant free zone and cannot engage in commercial activities in the UAE outside the relevant free zone.

An independent Free Zone Authority (the "FZA") is responsible for governing the relevant zone and the entities within it, formulating and enforcing the laws and regulations, issuing licenses and assisting companies with establishing their businesses in the free zone. For instance, the DFSA is the financial services regulator of the DIFC; it authorises and registers institutions and individuals who wish to conduct financial services in or from the DIFC. It also supervises regulated parties to ensure compliance with DFSA laws, regulations and rules, and enforces the DFSA administered legislation.

Procedures for setting up of an entity in the various free zones are usually straightforward and can be completed quickly. Although each free zone has its own set of rules on how investors

can set up their businesses, the general procedure includes:

- A questionnaire from the relevant FZA which will assist in assessing a company's requirements;
- License application, planning documents, and a consumer request for electricity;
- Provisional approval and lease agreement; and
- Meetings with the authority to finalise details of the project.

Apart from the free trade zones, the UAE has established special economic zones for small-and-medium sized businesses, examples include: the Zones Corp in Abu Dhabi, Industrial City in Dubai, and RAK Maritime City in Ras Al-Khaimah.

10. What are the main taxes that could apply to foreign investors in your jurisdiction? (For example, Personal Income Tax, Corporation Tax, Value Added Tax and Social Security Payments.)

Currently, there is no personal tax, capital gains tax and withholding tax levied in the UAE. In practice, corporation tax is levied on oil, gas and petrochemical companies, and branches of foreign banks.

Oil and gas companies also have to pay royalties on the total revenue derived, and income tax on the net profit after depreciation, as stipulated by the emirate's government. However, oil companies are usually owned by state-owned entities and where there is a consortium of companies, the foreign companies will only be minority shareholders.

In relation to customs duties, the UAE levies a 5% customs tariff on all goods imported from outside the GCC customs union.

As of 1st January 2018, UAE has implemented VAT at a rate of 5% subject to certain exemptions. Businesses which have taxable supplies and imports that exceed AED 375,000 per

annum are obliged to register and file their VAT returns with the Federal Tax Authority. However, it is optional for businesses whose taxable supplies and imports exceed 187,500 dirhams to register. Under the law, a business has to pay the government the tax it collects from its customers and will receive a refund for the tax that it has paid to its suppliers.

In addition, municipal taxes are also imposed, and the rate varies in every emirate. There is also an indirect tax imposed on rental incomes from residential and commercial properties.

There are no social security taxes imposed on expatriates in the UAE. However, there are retirement and pension schemes for UAE national employees.

Finally, even without taxation, there can be significant costs in registering a company, obtaining a business license and its subsequent renewal, and the fees for the local sponsorship agent of a branch office.

11. What are some of the employment regulations in your jurisdiction that foreign investors should be aware of? Is it possible to secure residency permits or work visas for foreign nationals under investment?

Federal Law No 8. of 1980 on Regulating Employment Relations as amended by Federal Laws No. 24 of 1981, No. 15 of 1985 and No. 12 of 1986 (the "Labour Law") imposes certain minimum standards on working hours, vacation and public holidays, leave policies, employee records, safety standards and termination of employment.

It is important to note that the Labour Law and certain ministerial decisions stipulate that UAE nationals have priority to work in the UAE. Therefore, preferences for vacancies are given to UAE nationals, then GCC nationals and then to nationals of other countries. The Emiratization policy which is applicable to both public and private sector and local/international

companies, stipulates a minimum percentage of UAE nationals to be employed.

Foreigners can be employed in the private sector subject to obtaining approval from the Ministry of Labour, and obtaining a residence visa and labour card. In addition to this, foreign employees need to have the professional qualifications required by the state. Most employee sponsored residence visas are only valid for two years, after which they have to be renewed in order for the employee to stay in the country. There are also limits on the number of foreign employees that can be employed by a business, however the limit usually depends on the business activity and size of the business.

Furthermore, all registered institutions in the UAE have to transfer their worker's salaries through the Wages Protection System, with the exception of some free zones like the DIFC.

Free Zones:

Free zones tend to have their own set of employment laws and regulations to which the employers and employees will be subject to.

Residency permits/work visa for foreign nationals under investment:

It has recently been announced by the UAE Government that a new category of visas will be introduced, which will allow investors to obtain a residence permit of up to 10 years. The long-term visa will also be available to family members of the investor.

Nevertheless, it should be noted that details such as the eligibility criteria and the date on which the initiative will come into effect are yet to be finalised.

12. Can foreign investors acquire real property and land in your jurisdiction? Are there any restrictions or limitations?

The UAE's Constitution grants each emirate the right to legislate on and govern real estate ownership in its territory. Dubai imposes the least restrictions on foreign ownership of land,

which makes it the most attractive for real estate investment in the UAE. The other emirates offer varying degrees of rights, with Fujairah offering the most limited ones.

In Dubai, only UAE nationals, GCC nationals, companies owned 100% by UAE and/or GCC nationals and public joint-stock companies can own property located in any area in Dubai. It should be noted that this does not include a company incorporated in the UAE or GCC with a foreign shareholder.

A non-UAE/GCC national can own property in the designated areas in Dubai outlined in Regulation No. 3 of 2006 (as amended by Regulation No. 1 of 2010) in three ways:

- Freehold;
- Leasehold (up to 99 years); and
- Usufruct (up to 99 years).

This also applies to foreign companies, subject to the Dubai Land Department's ("DLD") policy which allows the following types of companies to own property:

- Offshore companies incorporated in JAFZA or the Dubai Multi Commodities Centre Free Zone;
- Companies incorporated within free zones in Dubai;
- Companies incorporated in the DIFC, provided a special approval has been obtained by the DLD to purchase property outside the DIFC; and
- Companies incorporated onshore in Dubai, such as LLCs and private joint-stock companies.

13. Are there any processes in your jurisdiction that can block foreign investment under specific circumstances?

Under the CCL, a foreign entity can establish a legal presence in the UAE by way of a company or by setting up a branch office onshore.

As mentioned earlier, the CCL requires companies incorporated in the UAE to have at least

51% ownership by a UAE national. The 49/51 Rule stipulates that foreign investors may not own more than 49% of the share capital of an onshore UAE company (whether public or private). Thus, foreign investors acquiring a company are prevented from owning more than 49% of any onshore UAE company. There are however certain ways to get around this rule, some of these methods include:

- a. tailored constitutional documents to provide the foreign investor with more control and rights in the onshore company; and
- b. a shareholders' agreement, which can set out the rights of the shareholders, providing the foreign investor with more control over the onshore UAE company.

In the case of a branch office of foreign company, the branch must have a UAE national service agent.

In addition, certain regulated industry sectors including real estate outside defined zones remain off-limits to foreign investment and/or require approvals which can be time consuming and often difficult to obtain.

14. What foreign currency or exchange controls should foreign investors be aware of?

There are currently no foreign currency or exchange controls in the UAE.

15. Are there any restrictions, approval requirements or potential penalties if a foreign investor withdraws their investment in your jurisdiction?

Currently, there are no such restrictions or penalties as the UAE continues to welcome foreign investment into the UAE. However, there could be changes with the enactment of the proposed investment law due to be introduced in late 2018.

16. What contract enforcement and investor protection mechanisms are in place in your jurisdiction, if any?

Disputes are usually resolved through direct negotiation and settlement between parties, through recourse to the court, or arbitration. The UAE's accession to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("UN Convention"), which became effective in November 2006, makes an arbitration award issued in the UAE enforceable in all 138 states that have acceded to the UN Convention.

In addition, the UAE recently issued Federal Law No.6 of 2018, the UAE's new Arbitration Law, to improve the efficiency and finality of the arbitral process. The new Arbitration Law is based on the UNCITRAL Model Law on International Commercial Arbitration and aims to strengthen the UAE's position as an arbitration centre.

The UAE along with other GCC countries is a member of the Gulf Cooperation Council. The 1996 GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications (the "GCC Convention") provides for the mutual, automatic and reciprocal execution of the final judgments by the courts of any GCC member state in civil, commercial and administrative cases.

There are no specific courts for commercial disputes. Instead all commercial cases are heard by the civil courts, which includes: the Court of First Instance, Court of Appeal and the Court of Cassation.

17. Does your jurisdiction have any bilateral or multilateral investment protection treaties with Asia-Pacific jurisdictions that are commonly used for investing into the country?

The UAE has entered into various Bilateral Investment Treaties ("BITs") with Asia-Pacific jurisdictions, including China, Malaysia, South

Korea, India and Pakistan among others. Some common features of these BITs include:

- The requirement for each contracting party to treat investments fairly and equitably;
- Prohibition on expropriation;
- Prohibition on government measures that are unreasonable, arbitrary or discriminatory and that could harm investment;
- Most favoured nation protection, which guarantees that treatment of investors will be no less favourable than the treatment accorded to investments of its own investors or investors of any third state; and
- Investor-state dispute resolution, which provides mechanisms to resolve disputes between investors and the host state.

18. What intellectual property rights protections are available in your jurisdiction to foreign investors?

The UAE recognises the importance of intellectual property rights in fostering innovation, research and development, whilst securing consumer confidence. The UAE has a range of laws providing protection for intellectual property, and remedies for infringement of relating rights.

Federal Law No. 17 of 2002, as amended by Federal Law No. 31 of 2006 (Patents Law) protects patents. In addition, as a result of the UAE's membership of the GCC, if an application for a GCC patent is made, then protection can be granted in the six member countries. However, the effectiveness of enforcement of a GCC patent in the UAE is unclear.

Federal Law No. 7 of 2002 on Copyrights and Related Rights protects a range of works. In the case of infringement, it is possible to request the court for an injunction to stop the use of the work, seize copies or seize income generated from the use.

Federal Law No. 37, as amended by Federal Laws No. 19 of 2000 and No. 8 of 2002 (Trademarks Law) protects trademarks and trade names. The

trademark registration process can be quite lengthy. It is also noteworthy that although Dubai customs has an efficient system for seizing goods on the grounds of infringement, other emirates are not as proficient.

In the case of confidential information, there are a number of national laws that protect trade secrets and confidential information including, the Patents Law; Federal Law No. 3 of 1987 on issuance of the Penal Code; Federal Law No. 5 of 1985 on the Civil Transactions Law and the CCL. In the absence of a uniform law on this area, there is uncertainty regarding protection of these rights. Nevertheless, protection provided by a contract can be effectively enforced.

In general, remedies for enforcement of the above rights include damages, fines and/or imprisonment.

On the international front, the UAE is a member of international treaties and organisation such as the Agreement on Trade Related Aspects of Intellectual Property Rights, the World Intellectual Property Organisation, the Paris Convention for the Protection of Industrial Property, and the Berne Convention for the Protection of Literary and Artistic Works amongst others. Consequently, international intellectual property rights are also recognised and respected in the UAE.

In line with UAE's Vision 2021 to encourage innovation and create an attractive economic environment, the Ministry of Economy has signed a Memorandum of Understanding with the Korean Intellectual Property Office to establish the International Centre of Patent Registration in the UAE. This facility will include an international team of patent experts for patent evaluation, conducting research studies on areas of intellectual property, and training professionals in the field.

19. Are there any environmental policies and regulations that (potential) foreign investors should be aware of prior to or throughout the investment process in your jurisdiction?

Although FDI helps to achieve economic growth, it is important to consider its effect on environmental degradation. The UAE, by winning the Expo 2020 bid, focuses on sustainable development to promote complete welfare for all generations by achieving economic aims of society with fewer negative effects on the environment.

The vision statement of the Ministry of Climate Change and Environment is, 'we strive towards integrated management for environment ecosystem and natural resources to realise green economy for the present and future generations'.⁵

In 2009, the UAE embraced renewable energy by hosting the International Renewable Energy Agency. The green economy for sustainable development initiative was launched in 2012 as a pathway to jointly enhance the country's economic growth ambitions, social development priorities and vital environmental goals. In 2015, the UAE Cabinet issued a decision to approve and to implement the 'UAE Green Agenda 2015–2030'.

UAE has applied a series of fundamental policies and guiding principles to instil sustainable development at the core of its vision for growth in the 'UAE Vision 2021'.

The Federal Environmental Authority also has prepared a draft of environmental protection legislation including provisions on water, soil, air pollution, noise pollution, the protection and preservation of wildlife, environmental disasters and the handling of hazardous materials and waste. Entities will be required to comply with these provisions, and also with UAE treaty obligations.

⁵ 'UAE Ministry of Climate Change and Environment' (Moccae.gov.ae, 2017)

20. Are there any government agencies or non-governmental bodies that (potential) foreign investors can turn to for more information on investment in your jurisdiction?

The UAE welcomes foreign investments by having government agencies that provide investors with necessary information on investment.

The business registration process in the UAE varies based on the emirate, and is generally done through the DED. The company is usually required to be registered with DED, Chamber of Commerce and Industry, the Ministry of Labour, and the General Authority of Pension and Social Security. The respective websites and representatives at the offices of these authorities can provide relevant information, expert advice, and practical help. For instance, Dubai FDI is a department of the DED in Dubai which provides support to foreign businesses looking to invest in Dubai.

Apart from the above-mentioned ministries, the Department of Tourism and Commerce Marketing, the UAE Central Bank, the Ministry of Finance and Industry and the Ministry of Health also provide the necessary information on investment in the UAE on their websites, or alternatively, the potential investor can visit these offices.

Financial service providers, banks and law firms in UAE can also assist potential foreign investors.

21. Have there been any recent proposals for reforms or regulatory changes that will impact foreign investment in your jurisdiction?

Although the current legal framework favours nationals and GCC nationals over foreign investors, UAE laws and regulations are evolving in support of foreign investments.

The UAE is keen to increase its business competitiveness and is focused on creating a hub for businesses to start-up and expand. As

mentioned earlier, some examples of progress in this direction include the new Arbitration Law, Bankruptcy Law, the CCL, the anticipated new investment law, the 'Instant Licensing' service and most recently, Dubai's Business Incubator License (please see question 8).

In addition, the UAE has also been keeping up with the rising global interest in the financial technology ("FinTech") sector. The DIFC's FinTech Hive is considered the number one FinTech hub in the Middle East and South Asia region and ranked as one of the top ten FinTech hubs in the world. The DIFC has recently introduced a new commercial license for FinTech, RegTech and InsurTech firms, which allows the firms to be part of the DIFC financial community comprising of over 22,000 professionals working in over 1,800 DIFC registered firms.

It is also anticipated that the proposed investment law, which is expected to be enacted in 2018, will make the foreign ownership requirements less stringent. Additionally, the long-term visa, which investors will be able to apply for, will increase the economic competitiveness of the UAE as it will be another key feature that will attract more foreign investment.

22. Are there any other features regarding foreign investment in your jurisdiction or in Asia that you wish to highlight?

It is a principle of international law that every state is sovereign in controlling the entry and establishment of foreign businesses within its territory. The new generation of investment laws that have been implemented in countries share the common element of shifting from restricting FDIs towards encouraging and regulating the entry of FDIs. With this view, both the UAE and Asia have taken many initiatives and enacted laws and regulations with the aim of developing a more conducive environment for foreign investment.

According to UNCTAD statistics, the UAE has received the ninth largest FDIs in Asia⁶ in 2016. It has supported Asia in becoming the leading destination of FDI across the globe as Asia benefits from more than 35% of the world's total FDI inflows.

More specifically, Dubai was ranked fourth globally in respect of new investment projects, fifth in respect of re-investment projects and 10th in capital inflows into new investment projects, according to the Financial Times 'fDi Markets' index. The number of active businesses in Dubai alone increased to 148,842 in 2017, including 19,877 new trade licenses issued in 2017, according to the Dubai Economy, the trade licensing body of Dubai Government.

The UAE is a prime example of what can be achieved through economic vision and foreign investment. The UAE is guided by a strong leadership, and it has the public and private sectors working together to deliver the best return on investment in key sectors such as trade, tourism, real estate and retail sectors, which in turn continue to draw a large pool of foreign capital that creates employment and business opportunities for all stakeholders.

All information mentioned in this article is current at the date of publication of this article and available from public sources. Nothing in this article constitutes legal advice and should not be construed as any form of advice.

⁶ UNCTAD, 'Investor Nationality: Policy Challenges' [2016] World Investment Report 2016.

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1. 外国投资者来您所在司法管辖区进行投资的主要原因有哪些？

阿拉伯联合酋长国（简称“阿联酋”）是由七个酋长国组成的联邦国家。基于其连接东西方之间的战略位置，阿联酋已经成为中东和北非地区世界知名的商业与金融中心。

阿联酋持续发展诸多行业，促进其经济多元化，摆脱石油经济。它采取了非常宽松的外商投资政策，允许外资在聚焦 45 个行业的自由区内的各种企业中拥有 100% 的所有权，并实施了改革举措，以吸引、鼓励及促进外商投资。

阿联酋几乎没有公司税和所得税，没有外汇管制，有限的资本汇回限制（可通过该区域内的国际银行轻松实现）以及对适用于关税领域的关税及若干国内管制的豁免，这驱使外国投资者来阿联酋进行投资。提升阿联酋作为投资地点之吸引力的其他因素包括其强大、信誉佳且利润丰厚的银行业，稳定的政治环境，大量且多样化的外籍劳动力，良好的运输与生产基础设施，以及低成本的能源。

从各种国际报告及研究中可以看出，阿联酋作为投资目的地的吸引力日益增强。例如，根据联合国贸易暨发展会议的 2018 年《世界投资报告》¹，2017 年流入阿联酋的外国直接投资增加至 104 亿美元，增幅为 8%。2017 年，国际金融协会报告显示，在外国直接投资流入方面，阿联酋在中东和北非地区的投资额中占据了 22% 的份额。在 2013 年至 2016 年间，阿联酋在海湾合作委员会地区外国直接投资流入方面的金额约为 808 亿

¹ 联合国贸易暨发展会议：2018 年《世界投资报告》。

美元。² 此外，2017 年《世界投资报告》宣布阿联酋位列 2017-2019 年度“最具投资前景的国内经济体”第 13 名³，并且世界银行将阿联酋在 2018⁴ 年营商便利度排行榜中的排名提升至历史新高。

2. 在您所在司法管辖区，现行外国投资立法有哪些（例如外国投资法或外商投资目录）？请简要概述此类立法。

阿联酋尚未在其境内实施任何专门的外国投资立法。但是，鉴于阿联酋专门外国投资立法的缺失，外国投资通过各种普通法律进行规范，包括但不限于：

- 2015 年第 2 号《联邦商业公司法》（简称“商业公司法”）；
- 1981 年第 18 号《联邦贸易机构组组法》；
- 1979 年第 1 号《联邦行业监管法》；
- 《购买条件联邦条例》；
- 1975 年第 16 号《投标与承包财政规定》；以及
- 各个自由区的各种法律、规则及规章。

特别地，《商业公司法》旨在继续将阿联酋发展为全球标准的市场与商业环境，尤其是

² 《海湾新闻》：“阿联酋为投资者大开外国直接投资之门” <https://gulfnews.com/gn-focus/special-reports/annual-investment-meet/uae-throws-open-fdi-gates-for-investors-1.2201899>

³ 联合国贸易暨发展会议：2017 年《世界投资报告》。 http://unctad.org/en/PublicationsLibrary/wir2017_en.pdf

⁴ 世界银行：“在阿拉伯联合酋长国营商” <http://www.doingbusiness.org/data/exploreconomies/united-arab-emirates>

提高公司治理、投资者保护的水平以及促进公司的社会责任。

为了发展阿联酋的法律基础制度以促进阿联酋不断发展的商业社会，阿联酋政府最近出台了 2018 年第 6 号《联邦仲裁法》，且目前正在制定新的涵盖商业欺诈、反倾销及外国投资的法律草案。预计于 2018 年第三季度生效的拟议投资法将进一步放松企业所有权要求，支持经济多元化并促进经济竞争。

3. 对外国投资有哪些限制？这些限制在各级地方政府有无不同？

虽然阿联酋的法律法规旨在支持外国直接投资，但在岸法律却规定了对外国投资者的某些限制。根据《商业公司法》，由于公司 51% 的所有权须由阿联酋国民或由阿联酋国民全资拥有的公司持有，因而公司的外国所有权比例受到 49% 最高限额的限制（即“49/51 规则”）。对于公众股份公司而言，还有一项额外要求，即董事会主席及多数董事会成员均应为阿联酋国民。

如果是外国公司的分支机构，则需要指定阿联酋代理商作为保证人。尽管如此，这些限制并不适用于由海湾合作委员会成员国国民全资拥有的公司，也不适用于由海湾合作委员会成员国国民全资拥有的公司股东。

房地产的外国所有权也存在限制，仅在每个酋长国的指定区域方允许外资持有房地产的所有权。

此外，寻求在阿联酋分销其产品的外国投资者必须具有独家代理商，该等代理商须为阿联酋国民或由阿联酋国民全资拥有的公司。

上述限制不适用于阿联酋自由区。但是，在自由区内设立的企业不得在自由区外开展业务。

尽管如此，2018 年第三季度将推出新的阿联酋投资法，针对外国投资的限制可能会变得更为宽松。

4. 外国投资者最常用的企业形式有哪些？设立这些形式的企业需要多长时间？设立和运营这些形式的企业的主要要求有哪些？

对于欲开展业务的外国投资者，其可以通过下列方式之一在阿联酋建立正式的合法的商业存在：

1. 设立当地的“在岸”实体；
2. 注册外国公司的分支机构或代表处；
3. 建立自由区实体；或者
4. 建立离岸 / 国际商业公司

设立当地实体

《商业公司法》规定了五种公司形式，但外国投资者通常以有限责任公司的形式进行经营。

有限责任公司是一类私营公司，其股份不能向公众发售。股东人数可以在 2 至 50 人之间，并且股东负有有限责任。

有限责任公司至少 51% 的股份须由阿联酋国民持有。但是，海湾合作委员会成员国国民可以持有有限责任公司 100% 的股本；但若任何非海湾合作委员会成员国国民成为有限责任公司的股东，则必须遵守阿联酋国民所有权比例最低为 51% 这一规则。尽管如此，仍有可能就损益及清算收益的分配达成一致。

尽管有限责任公司应具有“充足的资本”以便根据相关酋长国经济发展局的要求开展业务，但对其并不存在最低资本要求。此外，企业的注册办公地址需要具有实体场所。

虽然公司设立所需的时间取决于其将开展的业务活动，但设立一家无须外部审批的公司所需的时间约为四周。

分支机构 / 代表处

《商业公司法》允许外国公司建立全资分支机构或代表处。可开展的活动范围仅限于经济部允许的活动事项。需要由阿联酋国民或阿联酋国民全资拥有的公司作为服务代理商来处理当地及联邦政府的要求。

分支机构不具有独立于其母公司的法律身份。但是，分支机构可以代表母公司进行谈判及签订合同，并可以提供支持活动；只有母公司方可履行需要商品和服务的合同，或者指定商业代理人履行。

代表处仅可进行营销及生产能力研究，而不得从事任何商业活动。

设立所需的时间大致为四到六周。

自由区实体

阿联酋已经引入了诸多自由区来吸引外国投资。每个自由区均有其自己的监管机构，以及自己的规则与规定。通常而言，自由区以行业为重点，并针对特定类型的活动颁发许可证。尽管自由区允许 100% 的所有权，但自由区实体可能只可在自由区的边界范围内从事经营活动。如果自由区公司选择在自由区以外进行经营，则其必须遵守《商业公司法》。

大多数自由区均有两种主要类型的有限责任公司：自由区企业及自由区公司。这两类公司结构之间的主要区别在于股东的数量：自由区企业仅需要一名股东，而后者则需要两名或以上的股东。

自由区实体还必须遵守最低股本要求。但是，具体金额则取决于自由区、业务结构及公司的活动。

设立所需的时间通常为二至八周。

离岸 / 国际商业公司

离岸公司适合于不打算在阿联酋境内从事任何业务活动的投资者。一般而言，离岸公司作为控股公司，且不从事商业活动。在阿联酋提供离岸公司设立的自由区包括杰贝阿里自由区和哈伊马角投资局。

这些地区允许国际企业持有 100% 的外国所有权进行经营。没有最低资本要求，也未要求提交经审计的账目。国际商业公司允许公司在批准的区域内获得永久业权，并可选择维持多币种银行账户。离岸制度下的公司可以享受阿联酋与其他几个国家签订的《避免双重征税协定》项下的待遇。

在建立国际商业公司时，通常无需将资金存入银行账户，无需提交财务报表，也不要任何办公空间。它拥有完全的私密及保密性，确保了高度有利的商业环境。尽管如此，国际商业公司只能通过注册代理商进行设立，该等注册代理商还为国际商业公司提供注册办公地址。

设立所需的时间大致为一到两周。

5. 在哪些情形下外国投资项目需要政府审批？该等审批的流程与时间表如何？

每个酋长国的商业登记程序各不相同，但通常均须通过酋长国的经济发展局来完成。通常还要求公司在工商协会、劳工部以及养老金与社会保障总局进行注册登记。除旅游商业推广局签发的酒店和旅游许可之外，其他许可均由经济发展局签发。

不存在正式的外国直接投资审查程序，但通常存在对土地和股份的外国所有权的限制。此外，对投资存在非关税壁垒，表现为限制性代理、保证担保和分销要求等形式。

需要事先批准以获得许可的类别如下：

- 需要阿联酋中央银行批准的银行、金融机构以及金融服务提供商；
- 需要财政部批准的制造业公司；
- 需要卫生部批准的药物和医疗产品；以及
- 可能需要得到教育部事先批准的与教育相关的企业。

此外，从事石油和天然气生产相关行业的企业需要遵循更为复杂的程序。

6. 在您所在司法管辖区，哪些行业受到严格监管或限制（如有）？相反地，较为开放或不受限制的有哪些（如有）？

在阿联酋，一些受到监管的行业包括：

银行业

阿联酋中央银行主要负责对阿联酋的银行进行监督，但迪拜国际金融中心与阿布扎比全球市场除外。迪拜国际金融中心的监管机构

为迪拜金融服务管理局，阿布扎比全球市场的监管机构则为金融服务监管局。阿联酋中央银行的职责包括：发行货币，就货币问题向政府提供建议，充当其他银行和当局政府的银行，以及制定银行业政策并监督其实施。

阿联酋中央银行通过要求定期报告确保银行业法律的实施并对其他银行进行监督；其有权自行决定审查银行的记录与账户，并可指定管理人或代表来管理银行。

最近颁布的 2016 年第 9 号《联邦破产法》在阿联酋建立了优先清算制度，该制度是稳定和缓解风险的工具。

最后，阿联酋还与诸如《国际财务报告准则 9》和《巴塞尔协议 III》之类的监管框架保持一致，以提高阿联酋金融工具的可信度，并为潜在的市场冲击作好准备。

保险业

阿联酋成立了保险业管理局，以确保为保险业的发展提供适宜的环境。保险业管理局会颁发许可证，并可发布促进保险公司遵守保险法律的法规，譬如 2007 年第 6 号《建立保险业管理局与保险经营监管的联邦法律》。公司还可能因违反该等规定而被注销。

证券与商品期货业

为提高阿联酋资本市场的效率，成立了证券与商品期货管理局。证券与商品期货管理局拥有监管证券市场的广泛权力，其监管方式包括在有关市场许可和成员身份、证券上市、披露与透明度要求以及由证券流通所产生的争议之仲裁事宜等方面建立监管措施并制定相应制度框架。证券与商品期货管理局还负责与国际市场沟通以进行信息与专业知识交流，并加入相关的组织与协会。

卫生保健行业

卫生部以及各酋长国的卫生管理机构对阿联酋的公共卫生服务进行管理。这些管理机构负责对提供医疗保健服务的公司和个人进行许可，优化医疗保健信息系统与标准，制定全面的医疗保险与融资政策，建设与管理卫生设施，以及规范包括行医、牙科、护理与药品在内的各个医疗领域。

卫生部与药品定价和公司委员会一同对进口的和当地生产的药品进行价格调节；他们致力于降低价格以确保患者对此有负担能力。

媒体行业

阿联酋允许在国内或各酋长国范围内的媒体自由区设立媒体机构。无论媒体公司在何地运营，国家媒体理事会均是负责签发出版许可证以及向编辑签发媒体资质的联邦监管机构，但是自由区可能存在额外的监管机构。国家媒体理事会的作用还包括确保媒体法律的执行以及对法规的遵守，其中包括内容管制，例如禁止批评阿联酋政府及其统治者的内容，以及可能有损阿联酋经济的内容等。相应地，国家媒体理事会可以基于违反内容管制而撤销许可。

石油与天然气行业

根据《阿联酋宪法》，各酋长国对其领土内的自然资源拥有完全的所有权与控制权。因此，各酋长国均对该产业具有其自己的监管机构和政策。在石油方面，阿布扎比拥有约 94% 的国家石油储备，其次是迪拜，约拥有 4%；余下的石油储备则散布于其他酋长国之间。

在阿布扎比，最高石油理事会负责制定政策并确保这些政策的实施。它也是阿布扎比国家石油公司的董事会成员，该公司是一家国有企业且为该行业的主导型公司。

在迪拜，迪拜最高能源委员会负责制定政策，并与石油事务部协调管理石油与天然气的勘探和生产。该委员会还具有来自于阿联酋国家石油公司的代表，该公司由迪拜政府所有。

电信行业

电信管理局负责对所有的电信与信息技术产业进行监管。电信管理局的具体监管框架涵盖诸如竞争规则、价格控制、稀缺资源分配、消费者保护要求以及报告义务等领域。

水电行业

尽管有规范电力和水供应的联邦法律，但这些联邦法律存在局限性。因此，各酋长国都有责任根据其自身的经济计划对该行业进行规范。



Hasan Anwar Rizvi
执行合伙人，RIAA Barker Gillette
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Hasan Rizvi 是 RIAA Barker Gillette (Middle East) LLP 的中东执行合伙人。他专注于公司

法、商业与私募股权。Hasan 的执业领域包括项目融资、重组、企业融资以及争议解决。他参与了中东、亚洲和非洲地区多个行业与部门的一系列备受关注的交易。

由于只有国有机构才能进行电力传输与配电，因此私人公司只能进行发电。因此，电力和水的供应由迪拜电力和水务局以及阿布扎比电力和水务局等国有企业承担。

阿布达比和迪拜都有监管局，该等监管局负责签发许可、发布规章以及监督政策的遵守情况。

Hasan 在企业方面的专长包括为跨国和国内企业、私募股权公司以及家族企业集团的业务和管理、企业结构、兼并、收购和投资合作提供咨询。他经常为基金发起人、投资者和资产管理公司就基金组建、投资、结构设计以及监管合规等方面提供帮助。

Hasan 在基础设施和能源项目、股权和债务资本市场交易以及企业重组方面有广泛的工作经验。

他在私人客户方面的专长包括向高净值个人和家族集团提供与家族办事处、私人投资和持股结构有关的战略咨询服务。

在建立 RIAA Barker Gillette (Middle East) LLP 之前，Hasan 曾在诸多其他国际律师事务所中获得过合伙人地位。他已在中东工作超过 15 年之久。

7. 在您所在司法管辖区，是否存在针对与某些国家或地区进行经商的任何限制？(例如制裁)

在阿联酋，并无公开记录显示是否禁止与特定地区、国家或实体进行交易。但是，阿联酋虽然没有现行有效的制裁制度，但它可以根据需要，通过发布国内指令的方式来实施欧盟、联合国和美国等国的制裁措施。例如，内政部已确认对伊朗、北韩、利比亚、苏丹和索马里实施联合国的制裁措施。

此外，自 2017 年起，阿联酋对卡塔尔国及其公民和某些卡塔尔公司实施了制裁和限制措施。这些限制措施包括中断陆地和空域的交通联系，限制产品出口以及某些借贷活动。

8. 对外国投资者有哪些优惠或激励措施 (如有)?

阿联酋对外国投资最具吸引力的特点之一在于,它几乎是一个不征税的国家。目前,阿联酋没有关于企业所得税的联邦法律。但是,各酋长国存在将税赋的征收限于某些实体的税务法令,这些实体如外国银行的分支机构、快递公司、保险公司和石油公司。此外,在2018年1月1日,根据2017年第7号《联邦税收程序法》,阿联酋政府引入增值税,税率为5%。

在境内激励措施方面,迪拜经济发展局已推出了“即时许可”在线服务,该服务可在5分钟内签发国内商业许可证。该服务的目的旨在简化漫长且有时繁琐的流程,从而激励个人和企业在境内开展其业务。但是,由于这是一项新的服务,该服务目前仅适用于有限责任公司的“一般贸易”许可;然而,随着时间的推移,更多的商业活动与公司结构将会被加入其中。

另一项新的国内服务是针对中小企业的迪拜企业孵化器许可;基于创新性的想法,这种新型许可允许企业存在100%的在岸所有权,并已被迪拜经济发展局特别委员会批准为可行的企业。该倡议为前述问题3中罗列的外国所有权限制提供了例外情形。

阿联酋境内的各个自由区是吸引外国投资的另一个特点。这些自由区允许外资对公司拥有100%的所有权,并允许外资在进行增值税申报(若适用)后享有公司的全部利润。另外,在自由区内不对进口商品征收关税。

其他激励因素包括强大且利润丰厚的银行业,大量且多样化的外籍劳动力以及发达的基础设施。

9. 在您所在司法管辖区,是否存在任何自由贸易区、经济特区或工业区?这些地区有哪些要求?

在过去的20年中,阿联酋的各种自由区极大地改变了其经济市场。作为阿联酋的首个自由区,杰贝阿里自由区的快速增长刺激了其他酋长国建立自己的自由区,以此吸引外国投资者和企业。此后,阿联酋已建成了超过45个自由区,每个自由区均适用于特定业务类别,例如信息与通信技术、媒体、金融、黄金和珠宝以及设备等。如上所述,这些不同的自由区允许100%的外国所有权。但是,在各自由区设立的实体通常仅限于在相关自由区范围内开展业务活动,而不得在相关自由区以外的其他阿联酋区域从事商业活动。

独立的自由区管理局负责对自由区域及其区域内的实体进行管理,制定并实施法律法规,签发许可以及协助企业在自由区内建立企业实体。例如,迪拜金融服务管理局是迪拜国际金融中心的金融服务监管机构;它对希望在迪拜国际金融中心内或由区内提供金融服务的机构和个人进行授权与注册登记。迪拜金融服务管理局也负责对受监管方进行监督,以确保其遵守迪拜金融服务管理局的法律、法规和规则,并执行由其制定的立法。

在各个自由区设立实体的程序通常都很简单,并且可以快速地完成。虽然对于投资者如何建立其自己的企业,每个自由区都有自己的规则,但一般性的程序包括:

- 相关自由区管理局的调查问卷,该问卷将有助于评估公司的要求;
- 许可申请、规划文件以及消费者的电力使用申请;
- 临时性批准和租赁协议;以及
- 与主管机构进行会谈以敲定项目细节。

除了自由贸易区之外,阿联酋还为中小企业建立了特别经济区,如位于阿布扎比的经济特区高级公司、位于迪拜的工业城以及位于哈伊马角的哈伊马角海洋城自由区。

10. 在您所在司法管辖区,可能适用于外国投资者的主要税种有哪些?(例如个人所得税、企业所得税、增值税与社会保险费)

目前,阿联酋不征收个人所得税、资本利得税和预扣税。在实践中,对石油、天然气、石化公司以及外国银行分支机构征收公司税。

石油和天然气公司也必须按照酋长国政府的规定,就所得的总收入缴纳特许权使用费,并就折旧后的净利润缴纳所得税。但是,石油公司通常由国有实体所有,且在由公司所组成的财团中,外国公司只会是小股东。

就关税而言,阿联酋对从海湾合作委员会关税同盟以外进口的所有货物征收5%的关税。

自2018年1月1日起,阿联酋已经实施了增值税制度,税率为5%,且存在某些免税规定。应税供应和进口金额超过375,000迪拉姆每年的企业有义务向联邦税务局进行注册登记并提交增值税申报表。但是,应税供应和进口金额超过187,500迪拉姆的企业则可以选择是否进行注册登记。根据法律规定,企业必须向政府支付其从客户处收取的税款,并将收到其已向供应商支付税款的退税款。

此外,还征收市政税,且各酋长国税率不同。对从住宅和商业物业中取得的租金收入也征收间接税。

对在阿联酋的外派人员不征收社会保障税。但对阿联酋国民雇员而言,则有退休和养老金计划。

最后,即便没有税收,注册公司、获得营业许可及其后续续期以及分支机构的当地保证机构费用等方面也可能带来高昂的成本。

11. 在您所在司法管辖区,外国投资者应该注意哪些劳动法律法规?外国人是否能通过投资活动获得居留许可或者工作签证?

经1981年第24号、1985年第15号以及1986年第12号联邦法律修订的1980年第8号《联邦劳动关系管理法》(简称“《劳动法》”)对工作时间、假期和法定假日、休假政策、

雇员档案、安全标准以及雇佣关系终止规定了一些最低标准。

值得注意的是,《劳动法》以及某些部门决定规定,阿联酋国民具有在阿联酋工作的优先权。因此,职位空缺优先倾向于阿联酋国民,其次是海湾合作委员会成员国国民,最后是其国家的国民。适用于公共和私营部门以及本地/国际公司的大国国际化政策对雇佣阿联酋国民的最低比例作出了规定。

在获得劳工部的批准以及取得居留签证和劳工卡后,外国国民可受雇于私营部门。除此之外,外国雇员需要具备国家所要求的专业资格。大多数雇员持有的居留签证有效期仅为两年,为使雇员能够继续留在该国,两年期满后必须续签。企业可以雇佣的外籍雇员数量也有限制,但该等限制通常取决于企业的业务活动与业务规模。

此外,阿联酋的所有注册机构都必须通过工资保障系统支付其工人的工资,但迪拜国际金融中心等一些自由区除外。

自由区:

自由区往往拥有一套其自身的适用于雇主与雇员的劳动法律和法规。

外国人投资的居留许可/工作签证:

阿联酋政府最近宣布将推出一种新类别的签证,允许投资者获得长达10年的居留许可。还将给投资者的家庭成员发放长期签证。

然而,应该注意的是,资格标准和该计划的生效日期等细节尚未最终确定。

12. 在您所在司法管辖区,外国投资者是否可以取得不动产与土地?是否存在任何约束或限制?

《阿联酋宪法》赋予每个酋长国制定关于其领土范围内房地产所有权的立法以及对该等房地产所有权进行管理的权利。迪拜对外资土地所有权所施加的限制最少,从而使其成为阿联酋房地产投资最具吸引力的地区。其他酋长国提供不同程度的权利,其中富查伊拉所提供的权利受限制程度最高。

在迪拜，只有阿联酋国民、海湾合作委员会成员国国民、由阿联酋和 / 或海湾合作委员会成员国国民全资拥有的公司以及公众股份公司可以拥有位于迪拜任何地区内的不动产的 100% 所有权。需要注意的是，这不包括在阿联酋或海湾合作委员会成员国设立且有外国股东的公司。

非阿联酋 / 海湾合作委员会成员国国民可以三种方式在 2006 年第 3 号条例（经 2010 年第 1 号条例修订）所列明的迪拜境内指定的区域拥有不动产：

- 永久业权；
- 租赁产权（最长 99 年）；以及
- 用益物权（最长 99 年）。

这也适用于外国公司，但应受迪拜地政局政策的约束，该政策允许以下类型的公司拥有不动产：

- 在杰贝阿里自由区或迪拜多种商品中心自由区设立的离岸公司；
- 在迪拜自由区内设立的公司；
- 在迪拜国际金融中心内设立的公司，但前提是已经取得由迪拜地政局签发的购买迪拜国际金融中心之外的房地产的特别批准；以及
- 在迪拜境内注册成立的公司，例如有有限责任公司和私人股份公司。

13. 在您所在司法管辖区，是否存在在特定情形下阻止外国投资的任何程序？

根据《商业公司法》，外国实体可以通过公司或设立境内分支机构的方式在阿联酋建立合法的商业存在。

如前所述，《商业公司法》要求在阿联酋注册登记的公司至少有 51% 的所有权须由阿联酋国民持有。49/51 规则规定，外国投资者在阿联酋国内公司（无论是公众公司还是私人公司）中持有的股本份额不得超过 49%。因此，收购公司的外国投资者无法拥有任何在岸的阿联酋公司 49% 以上的股份。但有一些方法可以绕过该规则，其中包括：

- a. 为外国投资者提供对境内公司更多控制与权利的有针对性的宪法性文件；以及
- b. 股东协议可以规定股东权利，从而为外国投资者提供对阿联酋境内公司的更多控制权。

对于外国公司的分支机构，也必须具有系阿联酋国民的服务代理人。

此外，某些受监管的行业部门（包括规定区域以外的房地产部门）仍然禁止外国投资和 / 或需要批准，而这类批准耗时长久且往往难以获得。

14. 外国投资者应该注意哪些外国货币或外汇管制？

目前，在阿联酋不存在外币或外汇管制。

15. 如果外国投资者撤回在您所在司法管辖区的投资，对此是否有任何限制、审批要求或可能的处罚？

目前，由于阿联酋继续吸引外国投资进入阿联酋，因此没有此类限制或处罚。但是，随着将于 2018 年底颁布的拟议投资法的制定，情况可能会有变化。

16. 在您所在司法管辖区，有哪些现行的合同强制执行和投资者保护机制（如有）？

通常通过当事人之间的直接协商与和解、诉诸法院或提交仲裁等方式解决争议。阿联酋加入了于 2006 年 11 月生效的《联合国承认及执行外国仲裁裁决公约》（简称“《联合国公约》”），该公约使在阿联酋做出的仲裁裁决在已经加入《联合国公约》的 138 个国家均可得到执行。

此外，阿联酋最近颁布了 2018 年第 6 号联邦法律，即阿联酋的新《仲裁法》，以提高仲裁程序的效率和终局性。新的《仲裁法》以《联合国国际贸易法委员会关于国际商业仲裁的示范法》为基础，旨在加强阿联酋作为仲裁中心的地位。

阿联酋和其他海湾合作委员会国家均是海湾合作委员会的成员。1996 年《海湾合作委员

会执行判决、委托及司法通知公约》（简称“《海湾合作委员会公约》”）对任何海湾合作委员会成员国的法院在民事、商业和行政案件中所做最终判决的互相、自动与互惠执行做出了规定。

不存在针对商业纠纷的特定管辖法院。相应地，所有的商业案件均由民事法庭进行审理，其中包括：一审法院、上诉法院和最高法院。

17. 您所在司法管辖区是否存在任何向亚太司法管辖区国家进行投资时常用的双边或多边投资保护条约？

阿联酋已经与亚太国家签署了诸多双边投资条约，这些国家包括中国、马来西亚、韩国、印度和巴基斯坦等。这些双边投资条约有如下一些共同特点：

- 要求缔约各方公平且公正地对待投资行为；
- 禁止征用；
- 禁止不合理的、武断的或歧视性的以及可能损害投资的政府措施；
- 提供最惠国待遇保护，保证对投资者的待遇不低于其对本国投资者或任何第三国投资者的投资待遇；以及
- 规定投资者与国家之间的争端解决方式，提供了投资者与东道国之间争端的解决机制。

18. 在您所在司法管辖区，对外国投资者的知识产权保护措施有哪些？

阿联酋认可知识产权在促进创新、研究和开发方面的重要性，也同时认识到知识产权对于坚定消费者信心的重要性。阿联酋有一系列保护知识产权的法律，以及针对侵犯相关权利的行为所采取的补救措施。

2002 年第 17 号联邦法律（经 2006 年第 31 号联邦法律修订）（简称“《专利法》”）对专利进行保护。此外，由于阿联酋是海湾合作委员会成员国，如果提交了海湾合作委员会专利申请，那么六个成员国均可以对该等专利给予保护。但是，在阿联酋实施海湾合作委员会专利的有效性尚不明确。

2002 年第 7 号《联邦著作权及邻接权法》为一系列作品提供保护。在发生侵权行为的情况下，可以请求法院签发强制令以停止对作品的使用，扣押复制品或者没收不法使用的所得收入。

第 37 号联邦法律（经 2000 年第 19 号和 2002 年第 8 号联邦法律修订）（简称“《商标法》”）对商标和商号提供保护。商标注册过程可能会非常漫长。还值得注意的是，虽然迪拜海关存在基于侵权而扣押货物的有效制度，但其他酋长国对此尚无有效措施。

关于保密信息，有多部国家法律对商业秘密和保密信息提供了保护，其中包括《专利法》、1987 年第 3 号《关于颁布刑法典的联邦法律》、1985 年第 5 号《联邦民事交易法》以及《商业公司法》。由于该领域缺乏一部统一的法律，对于这些权利的保护存在不确定性。但是，可以有效地实现通过合同提供的保护。

一般而言，实现上述权利的救济措施包括损害赔偿、罚款和 / 或监禁。

在国际层面，阿联酋是一些国际条约与组织的成员国，例如《与贸易有关的知识产权协定》、世界知识产权组织、《保护工业产权巴黎公约》以及《保护文学和艺术作品伯尔尼公约》等等。因此，在阿联酋，国际知识产权也得到认可和尊重。

“2021 年阿联酋愿景”的目标是鼓励创新以及创造具有吸引力的经济环境，与此一致，经济部与韩国知识产权局已经就在阿联酋建立国际专利注册中心签署了《谅解备忘录》。该中心将包括一个国际专利专家组，以进行专利评估、对知识产权领域进行研究以及进行该领域的专业培训。

19. 在您所在司法管辖区进行投资之前或在整个投资过程中，是否存在（潜在的）外国投资者应该注意的任何环境政策与法规？

尽管外国直接投资有助于实现经济增长，但必须要考虑到其对环境恶化的影响。以赢得 2020 年世博会主办权为契机，阿联酋重点关注可持续发展，通过实现减少负面环境影响

的社会经济目标，促进福泽万代的全面福利制度。

气候变化与环境部的愿景是“我们致力于环境生态系统和自然资源的综合管理，为今世及后代实现绿色经济”。⁵

在 2009 年，国际可再生能源机构总部落户阿联酋，阿联酋以此积极引入可再生能源。作为共同提高国家经济增长目标、社会发展优先事项和重要环境目标的途径，可持续发展绿色经济倡议于 2012 年启动。2015 年，阿联酋内阁决定批准和实施“2015-2030 年阿联酋绿色议程”。

阿联酋已采取了一系列基本政策和指导原则，将可持续发展作为“2021 年阿联酋愿景”中发展愿景的核心。

联邦环境管理部还编写了一份环境保护法案，其中包括关于水、土壤、空气污染、噪声污染、野生动物保护、环境灾难以及危险材料与废物处理等方面的规定。所有实体将须遵守这些规定以及阿联酋所加入的条约项下的义务。

20. 在您所在司法管辖区，是否存在任何可以让（潜在的）外国投资者了解更多投资信息的政府机构或非政府实体？

阿联酋欢迎外国投资，并为此设有为投资者提供必要投资信息的政府机构。

在阿联酋，商业登记程序根据酋长国而异，但一般都通过经济发展局办理。公司通常须向经济发展局、工商协会、劳工部以及养老金与社会保障总局进行登记。这些机构各自的网站和办公室代表可以提供相关信息、专家建议以及实际帮助。例如，迪拜外国直接投资机构是迪拜经济发展局的一个下属部门，该机构为计划在迪拜进行投资的外国企业提供支持。

除上述所提及的部门之外，旅游与商业营销部、阿联酋中央银行、财政部以及卫生部也在其网站上提供有关在阿联酋进行投资的必

要信息，潜在投资者也可以实地拜访这些部门。

阿联酋的金融服务提供商、银行和律师事务所也可以为潜在的外国投资者提供协助。

21. 在您所在司法管辖区，最近是否存在将影响外国投资的改革提案或监管变化？

虽然现行的法律框架更有利于国民和海湾合作委员会成员国国民而非外国投资者，但阿联酋的法律法规正在向支持外国投资的方向转变。

阿联酋热衷于提高其商业竞争力，并致力于创建一个企业创立与开拓的中心。如前所述，此方面所取得进展的一些示例包括新的《仲裁法》、《破产法》、《商业公司法》、预期将出台的新投资法、“即时许可”服务以及最近的“迪拜企业孵化器许可”（请参阅问题 8）。

此外，阿联酋也一直紧跟全球对金融科技领域日益增长的兴趣。迪拜国际金融中心的 FinTech Hive 被认为是中东和南亚地区的头号金融科技中心，并被评为全球十大金融科技中心之一。迪拜国际金融中心最近针对金融科技、监管科技以及保险科技企业推出了新的商业许可，该等许可允许此类企业成为迪拜国际金融中心的金融圈的一部分。其中，该共同体由超过 22,000 名专业人士组成，他们在 1,800 多家迪拜国际金融中心注册公司中工作。

预计拟议投资法（预期将于 2018 年颁布）将使对外国所有权的要求变得不那么严苛。此外，投资者可以申请的长期签证将提高阿联酋的经济竞争力，因为这将吸引更多外国投资的另一个关键特征。

22. 关于您所在司法管辖区或亚洲区域内的外国投资，是否有任何其他特点您想特别强调？

国际法的一个原则是每个国家均应独立自主地对其领土范围内外国企业的进入和建立事宜进行控制。各国已经实施的新一代投资法律有一个共同点，即从限制外国直接投资转向鼓励并规范外国直接投资的进入。在这种观点下，阿联酋和亚洲均已采取诸多举措并制定了法律法规，以便为外国投资创造一个更为有利的环境。

据联合国贸易暨发展会议统计，阿联酋是 2016⁶ 年亚洲第九大外国直接投资所在国。亚洲享有全球 35% 以上的外国直接投资流入总量，而阿联酋为亚洲成为全球外国直接投资的主要目的地提供了支持。

更具体地说，根据英国《金融时报》的“外国直接投资市场”指数，迪拜在新投资项目方面排名全球第四，在再投资项目方面排名第五，在新投资项目的资金流入方面排名第十。据迪拜政府的贸易许可机构迪拜经济发展局统计，2017 年，仅迪拜的活跃企业数量

⁶ 联合国贸易暨发展会议：“投资者国籍：政策挑战”[2016]，2016 年《世界投资报告》。

就增加到了 148,842 家，其中包括 2017 年签发的 19,877 个新贸易许可。

阿联酋是通过经济愿景和外国投资可以收获何等成果的一个典型例证。阿联酋在强有力的领导集体的指导下，公共和私营部门共同努力，在贸易、旅游、房地产和零售等关键领域实现最佳投资回报，从而继续吸引大量为所有利益相关者创造就业与商业机会的外国资本。

本文中提到的所有信息均为截至本文发布之日的最新信息，并可从公开来源获取。本文所含的任何内容均不构成法律意见，也不得被解释为任何形式的建议。

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⁵ 阿联酋气候变化与环境部 (Moccae.gov.ae, 2017)



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