

# **Global FDI Trends**

**an**

**International Trade and Investment Policy Capstone Project**

**presented to**

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**by**

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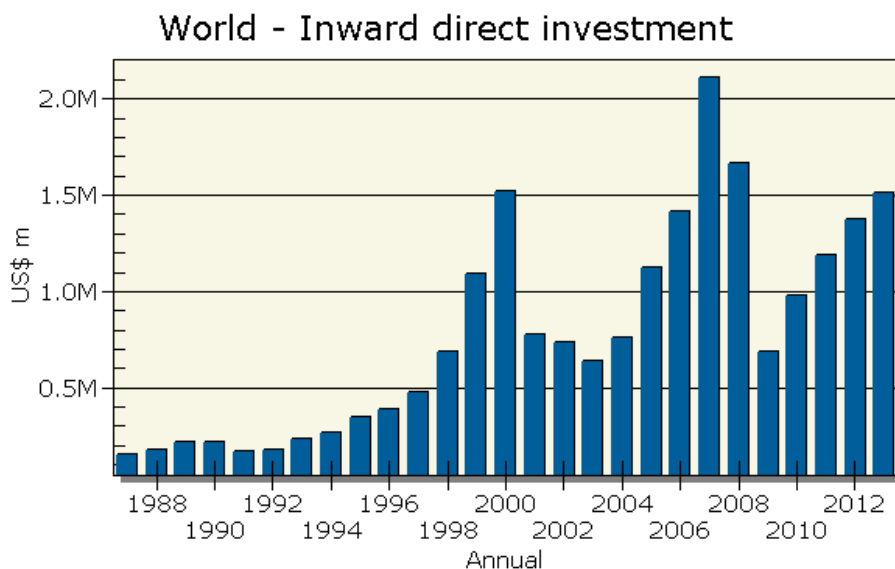
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## Introduction/Overview

The purpose of this paper is to survey official global attitudes toward Foreign Direct Investment (FDI), and to catalogue corresponding policy positions and resulting degrees of openness.

The IMF defines FDI as a physical investment of one country in another, by starting or constructing a new business, or by purchasing an existing one. When the investment is made in an existing business, the acquiring organization must purchase a “controlling” stake for the investment to be classified as FDI. What constitutes a “controlling” stake is subjective, but the IMF threshold is 10% ownership.<sup>1</sup> For example, an investment fund purchasing a 9% stake in a public, listed company would not qualify as FDI, but would instead be termed “portfolio” investment. When the investment is not made in an existing business, but instead through the establishment of a new business, the investment is called “Greenfield.”

Along with trade liberalization, FDI is widely accepted as a key pillar of globalization, and has been generally increasing over the past 20 years. Global investment flows reached an all-time high in 2007 of over US\$2.1 trillion. Although in 2009 investment flows are projected to fall by nearly 75% from that high-water mark, global cross-border investment is expected to continue on a robust growth path.



Foreign investment is generally viewed positively by countries, since foreign capital and business expertise can be leveraged for domestic job creation. In fact, all of the countries that we surveyed had a government agency dedicated to inward investment promotion. However, countries generally chose to exercise some control over foreign capital, particularly in cases of national defense. The rationale for restricting incoming investment includes: national security concerns, anti-monopoly or anti-competitive concerns, and the desire to preserve domestic jobs that may be off-shored by a foreign entity.

## Country Selection

Our goal in selecting countries was to provide a relevant, representative sample of global FDI attitudes and policies. We were committed to a selection of countries that met the following criteria:

- a) significant global FDI players
- b) geographically diverse
- c) advanced economies and emerging markets
- d) market and non-market economies

We feel that our 15 selected countries successfully meet these criteria. They include the following characteristics:

- representation by every continent
- 6 advanced economies and 9 emerging markets
- both market and non-market economies
- 43% of all inward cross-border investment flows globally
- 61% of global GDP

The following countries were selected:

- Australia
- Brazil
- Chile
- China
- Colombia
- Germany
- India
- Indonesia
- Japan
- Russia
- Singapore
- South Africa
- United Kingdom
- United States
- Vietnam

## **Industry Selection**

For our analyses by industry cross-sections, we selected industry groups that, in our research, we found faced common restrictions:

- Agriculture
- Extractives/Natural Resources
- Financial Services
- Government Procurement
- Manufacturing
- Medical Industries
- National Defense
- Telecommunications and Media
- Utilities

## **Methodology**

We felt that it would be useful for the reader of this document to be able to approach FDI regulations beginning with a high-level view and narrowing in with increasing levels of specification.

As a result, this paper contains three main deliverables:

- a summary of findings, which includes a high-level, quick reference table of qualitative assessments organized by country and industry cross-section
- an annex that serves as quick-reference guide for the FDI policies of our selected countries, organized by industry. These profiles include, for each selected industry, a descriptive general narrative followed by a tabular display of industry restrictions cross-sectioned by country. This annex provides the reader with a medium-to-high level perspective of global FDI policies by industry.
- an annex of more in-depth reviews of the FDI policies of each of our selected countries, organized by country

To facilitate use of this report as an at-a-glance reference tool, we developed a system for qualitatively evaluating the openness of industrial sectors and affixing a visual ranking symbol. These symbols are meant to inform the reader, at first glance, of the relative openness or closure of a particular industrial sector.

We felt that a qualitative assessment methodology was useful because it allowed us to include technical and non-formal investment barriers into our overall assessment.

A description of each indicator follows:

### **Open Investment Climate**



For the country/industry combination under evaluation, there are no formal barriers to investment. The country does not have an investment review board. We did not find substantial cases of technical barriers.



For the country/industry combination under evaluation, there are no formal restrictions. The country may have a review board, but it is a generally permissive one. We found evidence of moderate technical barriers.



For the country/industry combination under evaluation, there are formal restrictions that still permit some level of investment (e.g. limits on share percentage ownership or capital controls). If there is a review board, it is considered more stringent. Certain sub-sectors may be closed.



The sector/industry combination is partially closed or foreign investors face serious technical hurdles. If there is a review board, it is considered prohibitive.



The sector/industry combination is closed to foreign investment

## **Findings**

### **Global Trend toward Liberalization**

The general trend we observed across most countries and industries was toward more liberalization of FDI. Liberal FDI policies are generally consistent with free market policies. Many countries have embraced FDI as an important part of their growth strategies. In many emerging economies, FDI growth and economic growth are strongly correlated. In developed countries, FDI is often viewed as a way to compensate for low rates of national savings. Transitional economies have often liberalized FDI regulations in response to pressure from foreign countries and multilateral organizations. For example, much of the liberalization by China and Vietnam occurred for the purpose of meeting the requirements for accession into the WTO. The vast majority of liberalization, however, has occurred as a result of unilateral economic strategies to attract FDI. Nearly every country studied provided incentives to foster sectoral or regional growth, which reflects the general enthusiasm toward FDI.

Bilateral trade agreements often incorporate provisions for FDI and are often seen as significant steps toward liberalization by policymakers. The actual effect of bilateral liberalization, however, appears to be marginal. An example of this is the United Kingdom, which has numerous bilateral agreements, often with former colonies. The United Kingdom does not, however, have such an agreement with its largest FDI partner, the United States.

Future multilateral efforts to standardize FDI classification systems will likely revolve around the International Standard Industrial Classification (ISIC) system. Most countries' current systems for classifying FDI are based on the ISIC, with notable exceptions such as China. International harmonization of FDI policy is limited by the lack of a multilateral governing body specifically responsible for monitoring investment policies.

### **Restriction Mechanisms**

Despite this trend toward liberalization, many restrictions on FDI still exist. The most common mechanisms for restriction were equity limits and review boards. Equity limits are ceilings on how much foreign ownership is allowed in a domestic firm. These limits vary widely by country and sector, and total foreign ownership is usually limited to less than a controlling stake. Because equity caps often differ across closely related sectors, it can be difficult for companies receiving FDI to diversify their operations. When countries choose to liberalize foreign investment into a sector, a common way to do so is by raising limits on foreign equity. Many countries have established positive lists of industries in which 100 percent foreign ownership is allowed, and more sectors are added to these lists as liberalization occurs.

Ten of the 15 countries studied have investment review boards, which can be broadly defined as any government oversight agency that reviews inbound FDI. The least restrictive review boards require foreign investors to register their FDI before they can gain access to foreign exchange. While this is a benign process, it presents transaction costs in the form of time and money, and it may present political risk to an investor. More restrictive review boards

approve or deny specific investments based on set criteria. These criteria may include minimum investment thresholds, sectors of interest, and country of origin. In many cases, review boards are very permissive. For example, Chile's constitution requires the review board to approve virtually all FDI applications in a timely manner. The most restrictive review boards are those that have the least permissive criteria for approval and lack transparency into the review process. Countries that wish to liberalize FDI may do so by making their investment review boards more permissive or transparent.

Some of the less common mechanisms for restricting FDI include employment practices, technical barriers, and different procedures based on whether the investment is classified as Greenfield, a joint venture, or an acquisition of existing equity. Restrictive employment practices can limit board and management positions to domestic citizens, or they may differentiate between foreign investors based on nationality. Technical barriers are essentially any informal procedures or customs that reduce transparency, increase transaction costs, and add to the time required to initiate investment. Most countries have actively adopted policies to reduce this type of "red tape". In general, countries do not restrict investment based on whether it is classified as Greenfield, a joint venture, or a merger or acquisition. One exception is Vietnam, which actively promotes Greenfield development while limiting the ability of foreigners to take control of Vietnamese firms.

### **Industry Trends across Countries**

FDI restrictions vary considerably depending upon the industry of destination. In the most open sectors, governments have tended to actively attract investment from foreigners, in many cases offering incentives. Liberal FDI policies are often intended to take advantage of foreign technologies that are not readily available domestically. This is especially true for emerging economies. China, for example, only encourages foreign investment when local technology is insufficient. FDI is also encouraged in industries which require significant amounts of capital, and foreign investors are often eager to provide capital to countries with abundant supplies of cheap labor.

Of the sectors we studied, the most open are the agriculture, medical, and manufacturing industries. FDI in agriculture is encouraged in developing countries where large percentages of the labor force are employed in rural sectors. Medical industries tend to be open everywhere, as medical technologies are held by relatively few companies. FDI in pharmaceuticals creates local jobs in production and distribution of medicines, which are in turn available more cheaply in local markets. Manufacturing FDI is also encouraged, as these industries are capital intensive and provide employment to locals of all skill levels.

Sectors that remain closed include national defense supporting industries, government procurement investments, and media and telecommunications. These industries remain closed due to a variety of reasons deemed to be in the public's or government's interests. Foreign investors eager to invest in the manufacture of weapons and other national defense-related industries are often restricted for reasons of national security. Governments often define defense or national security more broadly in order to restrict investment in strategic

industries. Even the most liberal countries maintain provisions to restrict national defense FDI, and this sector remains one of the least transparent for investors seeking to operate in foreign countries. This applies to government procurement contracts as well, as local firms are usually granted preference over foreign investors.

Telecommunications is traditionally a closed sector, but has experienced liberalization in recent years as a result of technology gaps. Colombia, for example, which has never had an extensive fixed phone line network, has a growing mobile-telephony market that is dominated entirely by foreign firms. In many countries, the private sector has often filled gaps in demand left open by public telecommunication utilities. Media companies have also historically been protected by governments, usually due to the fear of foreign influence on public airwaves. Traditional media such as television, radio, and periodicals remain closed for the most part to FDI. In cases where the government dominates national media, such as in China, Russia, and Singapore, foreign investment in media is prohibited and is unlikely to be opened soon.

Several sectors do not necessarily follow any general trend toward liberalization or restrictiveness, and vary widely between countries and sub-sectors. This lack of consistency exists in industries that require resources that are not necessarily available domestically but have been traditionally tightly regulated or controlled. Extractive industries, such as mining, petroleum, and logging, are often viewed as strategically important by countries that have derived much of their historical wealth through exporting these primary products. These sectors are highly capital and technology intensive, however, and governments have increasingly allowed certain industries to have access to foreign investment.

Utilities are historically state-owned companies that are publically managed to provide a public good to the country's citizens. Many countries, especially developing countries, lack the funds to provide these services using only domestic funds. Governments have therefore faced fiscal pressure to allow foreign companies to invest and operate in utilities.

Financial services industries are often volatile, and many countries have sought to tightly regulate depository and investment banks, insurance companies, and accounting firms. Human capital and corporate experience are crucial for success in this sector, however, and enthusiasm for FDI in financial services has increased. Whether liberalization of FDI occurs is dependent upon the relative importance placed on the public's need and domestic abilities to provide resources.
















**Annex One – High-level Qualitative Overviews; Industry and Country  
Cross-Sections**

	Inward Investment Review Board (Y/N)	National Defense	Extractive/Natural Resources	Agriculture	Financial Services	Manufacturing	Utilities	Media & Telecoms	Medical Industries	Government Procurement
Australia	Y	🟡	🟢	🟢	🟡	🟡	🟢	🟡	🟢	🟢
Brazil	N	🟡	🟡	🟡	🟡	🟠	🟡	🟡	🟢	🟡
Chile	Y	🟢	🟡	🟢	🟢	🟢	🟢	🟡	🟢	🟢
China	Y	🟡	🟡	🟡	🟢	🟡	🟡	🟡	🟡	🟡
Colombia	N	🟢	🟢	🟠	🟡	🟠	🟠	🟡	🟠	🟢
Germany	N	🟡	🟢	🟠	🟢	🟢	🟠	🟢	🟠	🟢
India	Y	🟡	🟢	🟢	🟡	🟡	🟡	🟡	🟢	🟢
Indonesia	Y	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟡
Japan	Y	🟡	🟢	🟢	🟢	🟢	🟡	🟢	🟢	🟡
Russia	Y	🟡	🟡	🟢	🟡	🟡	🟡	🟡	🟢	🟡
Singapore	N	🟡	🟠	🟠	🟡	🟠	🟡	🟡	🟠	🟡
South Africa	N	🟢	🟡	🟠	🟡	🟢	🟠	🟡	🟠	🟡
United Kingdom	Y	🟡	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟢
United States	Y	🟡	🟢	🟢	🟢	🟢	🟢	🟡	🟢	🟡
Vietnam	N	🟡	🟢	🟢	🟢	🟢	🟡	🟡	🟢	🟢

## **Annex Two – FDI Restrictions by Industry**

- **National Defense**
- **Extractives and Natural Resources**
- **Agriculture**
- **Financial Services**
- **Manufacturing**
- **Utilities**
- **Media & Telecommunications**
- **Medical Industries**
- **Government Procurement**

# National Defense

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•FDI in defense is considered sensitive, even under FTAs, and is subject to more stringent thresholds than for other goods
Brazil	N		•For national security reasons, foreign investors are unable to purchase land in border areas
Chile	Y		•Non-discrimination between foreign and domestic investors
China	Y		•Foreign investment is allowed in firms producing less-sensitive military equipment and products for broader civil and consumer markets
Colombia	N		• FDI is banned
Germany	N		•Foreign investors seeking M&A of firms involved in manufacture of armaments or cryptographic equipment are required to notify the Federal Economics and Technology Ministry
India	Y		•Industrial licenses required for FDI in defense aerospace, defense electronics, and industrial explosives •Other national defense FDI is not on the automatic approval list and is reviewed by the FIPD •Most industries face a 26 percent FDI cap
Indonesia	Y		•Sectors deemed vital to national defense are closed to FDI
Japan	Y		•Foreign controlling ownership is restricted. Investing companies must submit ex ante notification
Russia	Y		•Considered a strategic sector; need government approval to acquire more than 50% of any company in this sector •Need prior approval for foreign investment in any defense-related project, and FDI is prohibited in many sub-sectors
Singapore	N		•Foreign investment to the defense industry is highly restricted for national security purposes
South Africa	N		•No specific FDI restrictions on National Defense
United Kingdom	Y		•Ownership participation in BAE Systems (the main defense company) for foreigners is limited to 15%
United States	Y		•Foreign investment in national defense industries is tightly controlled and subject to foreign investment review board approval
Vietnam	N		•Subject to common investment law, which states that investment cannot be detrimental to national defense •Foreign M&A has a range of caps, usually below controlling stake •Require approvals from prime minister

## **National Defense**

### Openness for Investment

In general, the national defense sector is closed to foreign investors. Due to the sensitive nature of national defense – both for security and political reasons, governments tend to restrict access to the sector to foreigners. In most of the cases where foreign investment is permitted, there are stringent controls on the level of foreign ownership

### Overview of Investment Practices and Investment Regime Structure

Nearly all of the countries researched had some limit on FDI in the National Defense sector. The exceptions were Chile (which has an expansive, though seldom used, investment review board), and South Africa.

In Colombia and Indonesia, the sector is entirely closed. Most other countries, including the United States, restrict National Defense market access but allow foreign investment based on controls (e.g. ownership limits) or functions (e.g. diversified equipment suppliers).

### Current Investment Regulations

In Colombia and Indonesia, FDI is banned.

In Brazil, ownership of companies is permitted, but ownership of border-occupying land is prohibited on national security grounds.














In the UK, ownership of BAE Systems (the national defense contractor) is limited to 15%.

In most other countries, investment is restricted on a case-by-case basis, with the term “national security” being subject to interpretation.

### Future of Investment Regulations

Unlike other industries, there are no rumors or trends suggesting that national security will become more open to foreign investment in the future. In fact, the opposite is actually true. More and more countries, including the U.S., are using national security as an overarching reason to prohibit investment in other industries.

# Extractive/Natural Resources

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•Subject to government review if foreign investment reaches a certain threshold (varies by sub-sector)
Brazil	N		•Currently, there are minimal restrictions on foreign involvement in natural resource extraction. There are rumors of oil sector nationalization
Chile	Y		<ul style="list-style-type: none"> <li>•FDI in major industries such as copper and commercial fishing requires approval from regulatory bodies beyond the Foreign Investment Committee (FIC)</li> <li>•FDI in commercial fishing companies is prohibited without a relevant reciprocity agreement</li> <li>•Uranium mining and petroleum industries are controlled by state-owned enterprises, and FDI is therefore limited in these industries to contracts for exploration</li> </ul>
China	Y		<ul style="list-style-type: none"> <li>•The state must own a majority share in the oil sector</li> <li>•Foreign investment in non-renewable resources is either heavily restricted or prohibited, depending on the resource</li> <li>•Investment in renewable resources and green technology is encouraged</li> </ul>
Colombia	N		<ul style="list-style-type: none"> <li>•Government ownership in some sectors restricts both domestic and foreign investment, but exploration and exploitation contracts may be given to foreign firms</li> <li>•Non-discrimination between foreign and domestic investors</li> </ul>
Germany	N		•Non-discrimination between foreign and domestic investors
India	Y		•Foreign ownership is available up to 100 percent in many energy and mining sectors through the automatic route, but large state companies tend to dominate many of the country's major projects
Indonesia	Y		<ul style="list-style-type: none"> <li>•The government encourages FDI in mining</li> <li>•Foreign investors can hold a controlling stake of up to 95% in oil and gas</li> </ul>
Japan	Y		•There are no formal barriers beyond the review board process; Japan possesses a limited number of natural resources
Russia	Y		<ul style="list-style-type: none"> <li>•Considered a strategic sector</li> <li>•Need government approval to acquire more than 10% of any mining or exploration company</li> </ul>
Singapore	N		•Few barriers, but the sector doesn't really exist in the country
South Africa	N		<ul style="list-style-type: none"> <li>•Mineral and extractive resources are owned by the state under the Minerals and Petroleum Resources Development Act of 2002</li> <li>•Foreign companies are given access to resource development subject to BEE requirements</li> <li>•Significant presence by BHP Billiton and Anglo-American</li> </ul>
United Kingdom	Y		•No formal restrictions
United States	Y		•No foreign investment restrictions except as specifically pertains to national security
Vietnam	N		<ul style="list-style-type: none"> <li>•Foreign M&amp;A has a range of caps, usually below controlling stake</li> <li>•Require approvals and registrations from prime minister, government ministries, community committees</li> <li>•100% foreign-owned Greenfield investments allowed in certain sectors</li> </ul>

## **Extractive Industries**

### Openness for Investment

Extractive industries, such as mining, petroleum, logging, and commercial fishing, are often viewed as vitally important by countries that have derived much of their historical wealth through exporting these primary products. These sectors are highly capital and technology intensive, however, and governments have increasingly allowed certain industries to have access to foreign investment in order to bring these resources into the country. Emerging economies that have been heavily reliant on natural resource exports often liberalize FDI after privatization of large state-owned or state-subsidized companies.

### Overview of Investment Practices and Investment Regime Structure

Restrictions in natural resource extraction sectors vary widely across the countries studied. In several countries, such as Russia and China, foreign investment faces stringent approval processes or joint-venture requirements. Many countries allow totally unrestricted FDI in extractive sectors, but several of these include countries that effectively have no valuable natural resources, such as Japan and Singapore. Most countries allow investment in extractive resources, but require either special review mechanisms or a partnership with large, nationally supported companies industries.

### Current Investment Regulations

Brazil, China, and Russia consider their growing natural resource industries to be crucial to the national interest, and therefore are more restrictive of FDI into these sectors. Brazil's industries are largely dominated by state-owned or state-subsidized companies. FDI in China requires a joint-venture with the state, where the state controls the majority of any project's equity. China heavily limits foreign investment in non-renewable resources, but encourages investment in renewable and green energy industries.
















Russia heavily guards its vast natural resources from foreign interests, and investment in projects with foreign equity of greater than 10 percent requires government approval. Foreign investment in Russian extractive industries is generally not transparent.

India, Colombia, Chile, and South Africa have dominant state-owned companies which dominate petroleum and mineral sectors. Foreign investors are encouraged to compete for exploration and exploitation contracts.

Vietnam, Australia, and Indonesia allow FDI in extractive industries, but permissive review processes exist or high equity caps exist.

Germany, Japan, Singapore, the United Kingdom, and the United States do not formally restrict FDI in natural resource extracting industries. Japan, Singapore, and the United Kingdom, however, have very few FDI opportunities in this sector.

# Agriculture

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•Need government approval for projects over 66 million USD (100 million AUD), but most are approved
Brazil	N		•Agricultural investment by foreigners is allowed, but is subject to congressional authorization
Chile	Y		•Non-discrimination between foreign and domestic investors
China	Y		•Investment in genetically modified seeds is prohibited •Investment in most other forms of agriculture is encouraged
Colombia	N		•Non-discrimination between foreign and domestic investors
Germany	N		•Non-discrimination between foreign and domestic investors
India	Y		•FDI in the tea sector is subject to FIPD approval
Indonesia	Y		•Few barriers, but the sector doesn't really exist in the country
Japan	Y		•While there are no barriers to agriculture production that specifically target foreign companies, corporate involvement in the agricultural sector is prohibited
Russia	Y		•Foreign investment in this sector is a priority for the Russian government; few restrictions
Singapore	N		•Few barriers, but the sector doesn't really exist in the country
South Africa	N		•No specific FDI restrictions
United Kingdom	Y		•No formal restrictions
United States	Y		•No formal restrictions
Vietnam	N		•Foreign M&A has a range of caps, usually below controlling stake •Require approvals from government ministries, community committees •100% foreign-owned Greenfield investments allowed in certain sectors

## **Agriculture**

### Openness for Investment

Agriculture is overall very open to FDI across the countries studied, with major exceptions for Brazil and Japan. In many countries, the agricultural sector employs a large percentage of the nation's poor, and investment in this sector can directly benefit these people. Furthermore, improvements in agricultural technology can contribute to a nation's food security, so many governments encourage FDI to bring in these technologies for the good of the country. agriculture.

### Overview of Investment Practices and Investment Regime Structure

Most of the countries researched do not have specific restrictions on foreign ownership in agriculture. Where ceilings on foreign ownership exist, the amount allowed ranges from below 50 percent in Vietnam up to 95 percent in Indonesia. China generally encourages FDI in agriculture, but prohibits FDI related to genetically modified seeds.

Several countries require government approval for agricultural projects. Of the countries studied, only Vietnam varies restrictions based on Greenfield versus M&A, which is done for many sectors in the country.

Japan is the major exception to these general practices. Technically, the country has no formal barriers to FDI in agriculture. However, no corporate involvement is permitted in the sector, which effectively makes FDI impossible.

### Current Investment Regulations

Chile, Colombia, Germany, Russia, South Africa, the United Kingdom, and the United States do not discriminate between domestic and foreign investment.

In Australia, government approval is required for projects over 100 million AUD (71 million USD).<sup>2</sup>

In Brazil, FDI is allowed, but subject to congressional authorization.

In China, FDI in genetically modified seeds is prohibited, but FDI in most other forms of agriculture is encouraged.

In India, FDI is only subject to government approval in the tea sector.
















In Indonesia, foreign investors can hold a controlling stake up to 95 percent.

In Japan, there are no barriers to agriculture that specifically target foreign investment, but corporate involvement in agriculture is prohibited.

In Singapore, there are no barriers to FDI, but the sector does not exist in the country, so there are no FDI opportunities.

In Vietnam, approval is required from government ministries and community committees. There are caps on foreign M&A, usually below a controlling stake, but 100 percent foreign-owned Greenfield investment is allowed in certain sub-sectors.

# Financial Services

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•Any proposed foreign takeover or acquisition of an Australian bank will be considered on a case-by-case basis by the Foreign Investment Review Board
Brazil	N		•Foreign participation in banking is limited to ½ of an institution's capital and ⅓ of its voting stock. Private reinsurance companies are prohibited from the market
Chile	Y		•Non-discrimination between foreign and domestic investors
China	Y		•Investment in banking and insurance industries is restricted, and most of the banking sector is state-run
Colombia	N		• Financial Superintendency must authorize the investment in or establishment of financial institutions •Special capital requirements apply
Germany	N		•Non-discrimination between foreign and domestic investors
India	Y		•Multiple sectors face FDI caps •Multiple sectors face FIPD approval •While aggregate foreign equity is allowed up to the FDI cap, individual investors often must limit their holdings to 5–10 percent ownership
Indonesia	Y		•No foreign ownership restrictions for securities and insurance companies •Number of foreign banks is restricted •Government approval required for foreign ownership of local banks of more than 5 percent
Japan	Y		•No foreign ownership restrictions for securities and insurance companies •Japanese keiretsu system (whereby banks can be owned by creditors) decreases competition in the sector
Russia	Y		•Majority foreign ownership is allowed in the banking sector •Minority foreign ownership is allowed in the insurance sector
Singapore	N		•No foreign ownership restrictions for securities and insurance companies •Number of foreign banks is restricted •Government approval required for foreign ownership of local banks of more than 5 percent
South Africa	N		•Any equity stake in a South African bank by a foreign company over 15% must be approved by the Registrar of Deposit-taking institutions; over 49% by the Ministry of Finance. Foreign companies are also restricted in local borrowing activities
United Kingdom	Y		•No formal restrictions on foreign ownership; speculation that additional restrictions may be put in place as a result of the recent financial crisis
United States	Y		•The sector is open but potentially subject to the foreign investment review board
Vietnam	N		•Foreign M&A has a range of caps, usually below controlling stake •Require approvals from government ministries, community committees •100% foreign-owned Greenfield investments allowed in certain sector

## **Financial Services**

### Openness for Investment

Financial Services are generally open an open industry. Most countries recognize the benefits that can be accrued from inexpensive foreign capital, and the high-paying jobs associated with a flexible financial services investment regime.

### Overview of Investment Practices and Investment Regime Structure

The United Kingdom and Singapore are cases of extreme openness to financial services investment. The UK in particular has built an economic model off of openness to foreign participants in financial services.

The only researched example of extreme closure was in China. Not coincidentally, China is also the only surveyed country with an entirely fixed currency regime, necessitating a closed financial services sector.

The several countries that levied partial restrictions on the financial services sector did so mainly through limits on foreign share ownership.

### Current Investment Regulations

In China, FDI is heavily restricted.

In Singapore, Russia, Brazil, and South Africa, share ownership by foreigners is limited.
















In Australia and Colombia, special approval is required.

In most other countries, such as Japan, technical barriers exist.

### Future of Investment Regulations

Financial services restrictions are for the most part on an even path. Rather than increasing their levels of liberalization, countries have shifted tactics in financial services industry restrictions. For example, rather than imposing capital controls, countries have shifted to restricting share ownership.

# Manufacturing

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		<ul style="list-style-type: none"> <li>Foreign investors are given national treatment</li> <li>FDI in the manufacturing of goods, equipment or technology with potential military uses, or security technologies and communications systems is considered sensitive and are subject to more stringent thresholds than other goods, even under FTAs</li> </ul>
Brazil	N		<ul style="list-style-type: none"> <li>No formal restrictions in foreign investment</li> </ul>
Chile	Y		<ul style="list-style-type: none"> <li>Non-discrimination between foreign and domestic investors</li> </ul>
China	Y		<ul style="list-style-type: none"> <li>Foreign investment is prohibited in manufacturing of traditional Chinese products, weapons, and carcinogens</li> <li>Lower taxes for investing in “high technology” sectors</li> </ul>
Colombia	N		<ul style="list-style-type: none"> <li>Non-discrimination between foreign and domestic investors</li> </ul>
Germany	N		<ul style="list-style-type: none"> <li>Non-discrimination between foreign and domestic investors</li> </ul>
India	Y		<ul style="list-style-type: none"> <li>Industrial licenses required for FDI in certain sectors, including cigarettes and hazardous chemicals</li> <li>100 percent foreign ownership allowed for manufacturing activities within 25 km of the Standard Urban Area limits</li> <li>Certain industries are reserved for small-scale domestic producers, and foreign ownership of more than 24 percent is not generally allowed, except for in export-processing zones</li> </ul>
Indonesia	Y		<ul style="list-style-type: none"> <li>Full foreign equity is allowed</li> </ul>
Japan	Y		<ul style="list-style-type: none"> <li>Foreign investment in manufacturing is encouraged. However, review board approval is required for investments greater than 10% in certain technologies, such as batteries and semiconductors</li> </ul>
Russia	Y		<ul style="list-style-type: none"> <li>Restrictions vary by sub-sector</li> </ul>
Singapore	N		<ul style="list-style-type: none"> <li>Foreign investment in MNEs is encouraged, especially in high technology sectors</li> </ul>
South Africa	N		<ul style="list-style-type: none"> <li>Foreign investors are given national treatment, as well as active incentives</li> </ul>
United Kingdom	Y		<ul style="list-style-type: none"> <li>The Secretary of State for Trade and Industry may block transfers of control that are “contrary to the interests of the United Kingdom or a substantial part of it”. This provision has not been used to date</li> </ul>
United States	Y		<ul style="list-style-type: none"> <li>No FDI restrictions except those related to national security</li> </ul>
Vietnam	N		<ul style="list-style-type: none"> <li>Foreign M&amp;A has a range of caps, usually below controlling stake</li> <li>Require approvals from prime minister, government ministries, community committees</li> <li>100% foreign-owned Greenfield investments allowed in certain sectors</li> </ul>

## **Manufacturing Industries**

### Openness for Investment

Manufacturing industries, with the exception of manufacturing for national defense, are overall very open to FDI. This is largely due to the fact that manufacturing is capital intensive, and foreign companies therefore provide much needed funds and technologies to joint venture and Greenfield projects. Manufacturing provides jobs and stimulates economic activity, and is therefore actively encouraged by national investment regimes.

### Overview of Investment Practices and Investment Regime Structure

Most of the countries actively incentivize FDI in manufacturing, and allow FDI with few equity caps and approval requirements. National treatment is offered to foreign companies operating inside domestic markets, and joint ventures and mergers are rarely prohibited.

Several exceptions exist, however. FDI in manufacturing is limited in sectors depending on preferences for high technology production versus low technology production. Multiple countries restrict FDI in industries crucial to national security or that violate public interest, such as the manufacture of weapons, military technology, carcinogens, alcohol and cigarettes, and “vice items”.

### Current Investment Regulations

In Brazil, Chile, Colombia, Germany, Indonesia, Singapore, South Africa, and the United States, there is no discrimination between domestic and foreign investors.

In accordance with a national interest in high technology sectors and a desire to overcome technology gaps, certain industries such as semiconductors and computers are actively incentivized in Singapore and China.
















In Australia, FDI in manufacturing of equipment and technology with potential military, communications, or security uses are subject to stringent thresholds for approval. Once approved, sectors are given national treatment. Russia also reviews FDI in certain manufacturing industries.

Vietnam is unique in its limitations of FDI. While actively encouraging Greenfield FDI investments, it limits foreign ownership of FDI in existing Vietnamese firms and state-owned companies to below controlling stakes. The Government of Vietnam blocks investment in industries deemed to be “vice industries”, such as tobacco and alcohol products.

Japan requires a review board approval process for investments greater than 10 percent in certain technologies, such as batteries and semiconductors.

While the United Kingdom maintains a provision to block FDI that is contrary to national interest, this provision has never been used.

# Utilities

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•Subject to government review if foreign investment reaches a certain threshold. (varies by sub-sector)
Brazil	N		•Foreign investment in utilities is allowed in electric power generation, highways and dams. Foreign investment in nuclear power is prohibited •Foreign ownership is prohibited in aerospace
Chile	Y		•Shipping industry foreign ownership limited to non-controlling stake •Non-discrimination between foreign and domestic investors
China	Y		•Foreign investment in public utilities is either heavily restricted or prohibited
Colombia	N		•Non-discrimination between foreign and domestic investors
Germany	N		•Non-discrimination between foreign and domestic investors
India	Y		•Transportation sectors, such as civil aviation and railways, face FDI caps and government dominance
Indonesia	Y		•Foreign investors can hold a controlling stake of up to 95% in power generation and water
Japan	Y		•The power generation sector is gradually being opened to competition but has been state-owned until recently
Russia	Y		•Varies by subs-sector •Foreign ownership is limited to 25% in electrical power •No foreign ownership restrictions in natural gas
Singapore	N		•The power generation sector is gradually being opened to competition but has been state-owned until recently
South Africa	N		•There are no formal restrictions of foreign investment; however, most utilities are government-owned and have not been privatized
United Kingdom	Y		•No formal restrictions on foreign ownership in most utilities; energy companies are subject to a review the Secretary of State for Trade and Industry
United States	Y		•No FDI restrictions except those related to national security
Vietnam	N		•Foreign M&A has a range of caps, usually below controlling stake •Require approvals from prime minister, government ministries, community committees

## Utilities

### Openness for Investment

Utilities are mixed in terms of openness; restrictions vary widely by country and sub-sector. Furthermore, many countries consider it a sensitive sector for security purposes. The nature of the sector often gives rise to natural monopolies or central control by the government, which automatically deters foreign investment without the need for regulation. This can be overcome, however, and some countries are able to privatize their utilities and open them to competition, which may allow them to receive FDI.

### Overview of Investment Practices and Investment Regime Structure

Several of the countries studied have little or no restrictions on FDI in utilities. In some countries, such as Australia and the United Kingdom, this allows a large amount of FDI into the sector. In other countries, such as South Africa, the lack of restrictions stems from a complete absence of investment opportunities because of complete state control over utilities. In countries like Japan and Singapore, however, utilities were formerly state-owned, and the sector is being opened to competition, so it is clear that change is possible as the potential for FDI is slowly being realized.

Another common practice is for countries to vary their restrictions by sub-sector, placing caps on power generation, water, natural gas, and other sub-sectors. The ceilings on foreign ownership of utilities in the countries researched vary between 25 percent and 95 percent.

### Current Investment Regulations

In Colombia, Chile and Germany, there is no discrimination between domestic and foreign investment.

In Japan and Singapore, the power generation sector is gradually being opened to competition, but it has been state-owned until recently.

In Australia, foreign investment is subject to government review if investment reaches a certain threshold. This is consistent with regulation in other sectors, and thresholds vary by sub-sector.

In China, foreign investment is either heavily restricted or prohibited, depending on the sub-sector.

In India, transportation sectors, such as civil aviation and railways, face FDI caps and government dominance.

In Indonesia, foreign investors can hold a controlling stake of up to 95 percent in power generation and water.
















In Russia, restrictions vary by sub-sector. Foreign ownership is limited to 25 percent in electrical power, and there are no foreign ownership restrictions in natural gas.

In South Africa, there are no formal restrictions on FDI in this sector, but most utilities are government-owned

In the United Kingdom, there are no formal restrictions on foreign ownership in most utilities, but energy companies are subject to review by the Secretary of State for Trade and Industry.

In Vietnam, FDI in this sector requires approvals from the prime minister, government ministries, and community committees. Foreign M&A has a range of caps, usually below the controlling stake.

# Medical Industries

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•Subject to government review if foreign investment reaches a certain threshold. (varies by sub-sector)
Brazil	N		•Foreign investment is prohibited in the medical industry
Chile	Y		•Non-discrimination between foreign and domestic investors
China	Y		•Investment in new medical technologies and research is encouraged, but investment in products and equipment that can be easily produced with China's existing technology is restricted •Investment in medical treatment establishments is restricted and limited to equity joint ventures or contractual joint ventures
Colombia	N		•Non-discrimination between foreign and domestic investors
Germany	N		•Non-discrimination between foreign and domestic investors
India	Y		•Non-discrimination between foreign and domestic investors
Indonesia	Y		•Foreign investors can hold a controlling stake of up to 75% in pharmaceuticals and 65% in health services
Japan	Y		•Investment in the medical industries and pharmaceuticals must pass through investment review board
Russia	Y		•Investment in this sector is encouraged by the government of Russia
Singapore	N		•Investment in the pharmaceuticals sector is strongly encouraged by the government
South Africa	N		•No formal restrictions
United Kingdom	Y		•No formal restrictions
United States	Y		•No restrictions
Vietnam	N		•Foreign M&A has a range of caps, usually below controlling stake •Require approvals from government ministries, community committees •100% foreign-owned Greenfield investments allowed in certain sectors

## **Medical Industries**

### Openness for Investment

Medical industries are overall very open to FDI across the countries studied, with notable exceptions for Brazil and China. The sector is conducive to foreign investment, since it often involves technologies that are exclusively owned by foreign companies. Furthermore, domestic firms tend to benefit from FDI, as they are often contracted for manufacturing and distribution.

### Overview of Investment Practices and Investment Regime Structure

Most of the countries researched do not have specific restrictions on foreign ownership in medical industries. Where ceilings on foreign ownership exist, the amount allowed ranges from below 50 percent in Vietnam up to 75 percent for pharmaceuticals in Indonesia.

The notable exceptions to this are in China and Brazil. In Vietnam, there are caps on M&A that are usually below 50 percent, and government approval is required for all FDI in the industry. In China, the government only encourages FDI in products and equipment that cannot be produced with existing technology, which is a common practice for many sectors in the country. Brazil completely prohibits FDI in medical services, but allows FDI in pharmaceuticals.

### Current Investment Regulations

In Chile, Colombia, Germany, India, Russia, Singapore, South Africa, and the United Kingdom, there is no discrimination between domestic and foreign investors. Furthermore, the governments of Russia and Singapore actively encourage FDI in this sector.

In Australia, FDI is subject to government review if it reaches a certain threshold. This is a common restriction across sectors in Australia, and thresholds vary by sub-sector.

In Brazil, foreign investment is prohibited in medical services but allowed in pharmaceuticals.

In China, investment in new medical technologies and research is encouraged, but investment in products that can be easily produced with China's existing technology is restricted. Investment in medical services is restricted and limited to equity joint ventures or contractual joint ventures.

In Indonesia, foreign investors can hold a controlling stake of up to 75 percent in pharmaceuticals and 65 percent in health services.

In Japan, investment in medical services and pharmaceuticals must pass through an investment review board.

In Vietnam, investment in the sector requires approval from government boards and community committees. Foreign M&A has a range of caps, usually below the controlling stake, but 100 percent foreign-owned Greenfield investment is allowed in certain sub-sectors.

# Media and Telecommunications

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y	◐	<ul style="list-style-type: none"> <li>Foreign ownership in Telstra, the country's formerly state-owned provider of telecommunications services, is limited to 35 per cent of the 49.9 per cent privatized equity (i.e. 17.4 per cent of total equity) and individual foreign investors are limited to owning no more than 5 per cent of the privatized equity (i.e. 2.5 per cent of total equity)</li> <li>Investment in this sector is considered sensitive, even under FTAs</li> </ul>
Brazil	N	◑	<ul style="list-style-type: none"> <li>Ownership of media companies by foreigner is limited to 30%; management cannot be foreign</li> </ul>
Chile	Y	◐	<ul style="list-style-type: none"> <li>Foreign investment projects must acquire a license, which are limited in availability in some new sectors</li> <li>Chile prohibits foreign investment in media companies unless investor home country has a relevant reciprocity agreement</li> <li>Radio stations must be owned (85 percent) and managed by Chileans</li> </ul>
China	Y	◐	<ul style="list-style-type: none"> <li>Open to minority foreign ownership</li> </ul>
Colombia	N	◐	<ul style="list-style-type: none"> <li>FDI in local television companies is limited to 40 percent</li> </ul>
Germany	N	◑	<ul style="list-style-type: none"> <li>Non-discrimination between foreign and domestic investors</li> </ul>
India	Y	◐	<ul style="list-style-type: none"> <li>Foreign ownership capped on a sector-by-sector basis between 49 percent and 100 percent, with any majority stakeholding reviewed by the FIPD</li> <li>Foreign companies owning 100 percent of any telecom company must divest 26 percent to the Indian public within 5 years</li> </ul>
Indonesia	Y	◑	<ul style="list-style-type: none"> <li>Foreign investors can own up to a 65% controlling stake in mobile phone operators, but only 49% for mobile phone companies</li> </ul>
Japan	Y	●	<ul style="list-style-type: none"> <li>The broadcasting and telecommunications sector is highly restricted in Japan, with foreign ownership greater than 10% prohibited</li> </ul>
Russia	Y	◐	<ul style="list-style-type: none"> <li>Considered a strategic sector</li> <li>Need government approval to acquire more than 50% of any company in this sector</li> <li>Foreign-owned companies can operate as 100% foreign-owned</li> </ul>
Singapore	N	◑	<ul style="list-style-type: none"> <li>The power generation sector is gradually being opened to competition but has been state-owned until recently</li> </ul>
South Africa	N	◑	<ul style="list-style-type: none"> <li>Foreign ownership of media companies is limited to 20%</li> </ul>
United Kingdom	Y	◑	<ul style="list-style-type: none"> <li>No formal restrictions</li> </ul>
United States	Y	◐	<ul style="list-style-type: none"> <li>Majority ownership of major media is restricted to domestic nationals</li> <li>Other acquisitions subject to national security concerns</li> </ul>
Vietnam	N	◐	<ul style="list-style-type: none"> <li>Foreign M&amp;A has a range of caps, usually below controlling stake</li> <li>Require approvals from prime minister, community committee</li> </ul>

## **Telecommunications and Media Industries**

### Openness for Investment

Telecommunications is traditionally a closed sector, but has experienced liberalization in recent years due to gaps in mobile technology. In many countries, the foreign private sector has often filled gaps in demand left open by public telecommunication utilities, especially when a land-line system is underdeveloped.

Traditional media such as television, radio, and periodicals have remain closed for the most part to FDI, largely due to a government fear that foreign interests will undermine stability and national interest on public airwaves and in major news sources. In cases where the government dominates national media, such as in China, Russia, and Singapore, foreign investment in media is prohibited and is unlikely to be opened soon.

### Overview of Investment Practices and Investment Regime Structure

Telecommunications and media industries are generally limited using equity caps. Telecommunications investment is generally allowed, but media investments are capped heavily in almost every country. Chile and Brazil also use employment laws to restrict foreign investment operations, where management of media operations must be conducted by citizens.
















### Current Investment Regulations

The United Kingdom and Germany are the only countries studied with no formal restrictions on FDI in the telecommunications and media industries.

FDI in telecommunications is not restricted in Colombia, Singapore, and Chile. All other countries restrict FDI, usually below controlling stakes. Japan and Australia are the most restrictive in this industry.

In traditional media, all countries studied besides United Kingdom and Germany limit FDI. Foreign investors are usually limited to minority shareholding positions, and in some countries (Chile and Brazil) management of television companies must be citizens even if foreigners own major shares. Some sectors are totally restricted, such as newspapers in India, are totally off limits to foreigners, while in other countries, such as Singapore, state dominance of media industries effectively prohibits FDI.

# Government Procurement

Country	Inward Investment Review Board	Qualitative Assessment	Notes
Australia	Y		•The Australian government does not discriminate against suppliers based on foreign ownership, with exceptions for the Department of Defense
Brazil	N		•Brazil technically has a non-discrimination policy in place, but in effect most government agencies follow “buy national” policies
Chile	Y		•Non-discrimination between foreign and domestic investors
China	Y		•With its accession to the WTO, China agreed to give other WTO members improved access to its government procurement market
Colombia	N		•Non-discrimination between foreign and domestic investors
Germany	N		•Non-discrimination between foreign and domestic investors
India	Y		•Non-discrimination between foreign and domestic investors
Indonesia	Y		•Foreign-owned firms bidding on government procurement contracts must purchase an equal value of Indonesian products
Japan	Y		•Japan has no formal restrictions governing the award of government procurement contracts to foreign invested companies; however, USTR has continually claimed that the process is discriminatory due to bid-rigging and other non-formal barriers
Russia	Y		•The government can procure goods from foreign firms only if a Russian supplier is unavailable or insufficient
Singapore	N		•Singapore is a signatory to the WTO Agreement on Government Procurement and is supposed to give equal treatment to domestic and foreign-owned firms, but the U.S. government has claimed that the country gives preference to state owned enterprises
South Africa	N		•Government procurement is restricted by Black Economic Empowerment (BEE) regulations that require at least partial ownership or management by Historical Individuals (HDI)
United Kingdom	Y		•Restricted only in cases of “overriding security reasons”
United States	Y		•Strong restrictions related to national security •Strong informal rules for non-national security based procurement, including the “Buy America” provision of the Economic Stimulus Plan
Vietnam	N		•Foreign M&A has a range of caps, usually below controlling stake •Require approvals from government ministries

## **Government Procurement**

### Openness for Investment

Government Procurement is a very politically charged industry. Since politicians push to restrict investment moves that may detract from local job growth, investment regimes generally favor local companies, or companies that employ local workers.

### Overview of Investment Practices and Investment Regime Structure

There are no countries whose government procurement sectors are entirely open. There are several countries, such as Australia, Chile, Colombia, Germany, India, and the United States, where foreign investment in Government Procurement-related industries is not actively prohibited, but has potential restrictions based on the activity of their investment review boards.

Certain countries, such as the United States, have incorporated local sourcing provision rules into their legislative appropriations.

### Future of Investment Regulations

Government procurement restrictions appear to be growing stricter. In addition to the political pressures created by the global economic downturn to keep jobs at home, other technical restrictions (such as carbon sourcing) have in effect restricted the procurement market.

## **Annex Three – Country Profiles**

- **Australia**
- **Brazil**
- **Chile**
- **China**
- **Colombia**
- **Germany**
- **India**
- **Indonesia**
- **Japan**
- **Russia**
- **Singapore**
- **South Africa**
- **United Kingdom**
- **United States**
- **Vietnam**

## Australia

### Overview of Investment Regime

Australia is very open in terms of receiving FDI. The country received AUD 377 billion (USD 329 billion) in FDI in 2007, which was approximately 40% of the country's GDP for that year.<sup>3</sup> The most FDI goes to the sectors of mining, manufacturing, wholesale and retail trade, and finance and insurance.<sup>4</sup> Australia gets the bulk of its FDI from the United States and Western Europe.<sup>5</sup> Australia is a relatively safe destination for FDI, and the World Bank ranks the country as 53<sup>rd</sup> in protections for investors and 20<sup>th</sup> in enforcing contracts.<sup>6</sup> Information on FDI is readily available through the Australian government's Bureau of Statistics.

### Investment Regime Structure

Investment regulations are very liberal in Australia, and the government encourages FDI, partly as a way to compensate for the country's low savings rate.<sup>7</sup> Large transactions are subject to government review, and the thresholds vary by sector and country of origin, but Americans are exempt in most cases due to a free trade agreement between the two countries.

Australia's Bureau of Statistics classifies investment based on industry, which are divided into 19 broad categories and numerous sub-categories. The classification system is called the Australian and New Zealand Standard Industrial Classification (ANZSIC), and it is based on the International Standard Industrial Classification of All Economic Activities (ISIC)<sup>8</sup>.

### Current Investment Regulations

Foreign acquisition of an Australian business must be reported if it exceeds AUD 100 million (USD 75 million). There are limits on foreign equity in sensitive sectors, such as airlines, shipping, telecommunications and defense technology. Australia has a Foreign Investment Review Board, which examines and approves proposals for foreign investment if they exceed a certain value, which varies by industry.<sup>9</sup>

In the manufacturing sector, foreign investors are given national treatment, with a few exceptions that can be interpreted broadly.<sup>10</sup> FDI in the manufacturing of goods, equipment or technology with potential military uses, or security technologies and communications systems is considered sensitive and are subject to more stringent thresholds than other goods, even under FTAs.<sup>11</sup>

### Liberalization Undertaken

Planned acquisitions of Australian companies by foreign investors must be reported if the transaction exceeds AUD 100 million, but this amount was increased from AUD 50 million in 2006. U.S. investors have higher thresholds for equity and reporting compared to investors from other countries due to the 2004 Free Trade Agreement between Australia and the U.S.<sup>12</sup>

### History and Future of Investment Regulations

In 2008, the Australian government expressed the desire to attract more foreign investment in local banks. One method discussed was to reduce the tax rate for interest payments to overseas investors, but this has not become policy.<sup>13</sup> There has also been talk of increasing

the reporting threshold for Chinese investment to AUD 1 billion, much like the special threshold the U.S. has when investing in Australia, but this has not been written into policy yet either.<sup>14</sup>

## **Brazil**

### Overview of Investment Regime

Brazil received USD 34.6 billion in FDI in 2007, which, while only 2.6% of GDP<sup>15</sup>, represented 15% of gross fixed capital formation.<sup>16</sup> UNCTAD ranks Brazil as the fifth most attractive country in the world for foreign investment, meaning it by far outpaces its Latin American peers (with the exception of Mexico, which also scores attractively).<sup>17</sup> Brazil attracts over half of all FDI in South America.<sup>18</sup>

While foreign capital is generally welcome in Brazil, there are rules proscribing foreign acquisitions of public Brazilian companies. Foreign takeovers may not be made via the stock market without specific permission.<sup>19</sup>

### Investment Regime Structure

Foreign investors are required to register with the Foreign Direct Investment Module (RDE-IDE0), via the Central Bank Information System (SISBACEN). Registration is done electronically. According to provisions of Circular 2.997/00, while foreign investments are required to be registered, they are not subject to preliminary review or verification by the Central Bank.<sup>20</sup>

Foreign capital is restricted in: nuclear energy, health services; post office and telegraph services; and the aerospace industry.<sup>21</sup> However, amendments to the constitution in made 1995 grant foreign majority-controlled companies the same legal rights as domestic majority-controlled companies in other areas.

### Current Investment Regulations

In addition to the restrictions listed above, foreigners face restrictions on controlling ownership in a number of industries, such as domestic airlines, radio and television stations, and newspapers. Foreigners may invest in Brazilian financial services companies, but must first register with the Central Bank of Brazil.<sup>22</sup>

### Liberalization Undertaken

In 2002, Brazil increased the allowable foreign ownership percentage in newspapers, radio, and television stations to 30%. In 1997, Brazil undertook a very significant liberalization in the natural resources sector, allowing private and foreign-owned companies to explore and drill for oil.<sup>23</sup>

### History and Future of Investment Regulations

The EIU forecasts that Brazilian FDI regulations will continue along roughly their same trajectory in the near future: generally accepting FDI but restricting it in some sectors. However, they anticipate that further liberalizations will be directed toward companies that target Brazil as an export base.<sup>24</sup>

## Chile

### Overview of Investment Regime

Chile received USD 14.5 billion in FDI in 2007, which was 8.8 percent of GDP.<sup>25</sup> The majority of investment is targeted at the mining industry, but infrastructure industries such as water distribution and communications have also attracted high FDI inflows.<sup>26</sup> Chile has adopted as part of its larger development strategy a liberal policy toward FDI, and its business climate is relatively transparent and market-oriented. Transparency and openness toward FDI is guaranteed by the country's constitution, an indication of the broad political consensus on the advantages of FDI.<sup>27</sup>

### Investment Regime Structure

FDI in Chile is required to register using the procedures of the Decree Law (DL) 600 or Chapter XIV. The Foreign Investment Committee (FIC) manages the DL 600, while the Central Bank manages Chapter XIV. While the DL 600 procedure requires an FDI approval process, the Chapter XIV procedure does not. The DL 600 is by far the most popular method for registering FDI, however, due to preferential foreign exchange offered. Applications are almost always approved within days, never taking longer than one month, and the language of the DL 600 severely restricts the FIC's ability to reject applications.<sup>28</sup>

Chile classifies economic activity using the Clasificador de Actividades Economicas, which is identically linked to the International Standard Industrial Classification (ISIC). The ISIC is comprised of 22 broad categories, each given a two-digit code.<sup>29</sup> Data on FDI inflows is compiled by the Foreign Investment Committee, which measures both registered and applied FDI as well as the type of FDI by country and industry. The Central Bank compiles data on FDI that is broken down into capital, reinvested earnings and intra-company loans.<sup>30</sup>

### Current Investment Regulations

Chile's FDI policies, which are considered liberal by regional and global standards, are restricted in several sectors. FDI in major extractive industries such as copper mining requires approval from regulatory bodies beyond the FIC. Foreign investment in commercial fishing companies is prohibited without a relevant reciprocity agreement with the investor's home country. Telecommunications must be legally constituted entities under Chilean law, and radio stations must be owned and managed by Chileans. Foreign holdings in the shipping industry are limited to non-controlling interests.<sup>31</sup>

### Liberalization Undertaken

Chilean FDI was liberalized most dramatically by two legal documents. The 1974 foreign investment statute, DL 600, established the primary mechanism for free inflow of FDI. The Chilean constitution, ratified in 1981, assures the protection of foreign investments. Successive liberalizations include the creation in 2002 of the Investment Platform Initiative, which offers tax benefits to Latin American companies to set up headquarters in Chile. Bilateral treaties, such as the U.S.-Chile FTA, provides extra stability and security for investors, including provisions for national treatment, freedom to hire non-Chileans, and assurances that potential expropriation would occur under international legal norms.<sup>32</sup>

### Future of Investment Regulations

Broad political consensus on the advantages of FDI has been steady since the 1970s, and the security of liberalized FDI is guaranteed by the constitution. Therefore, it is likely that current liberal policies are unlikely to change in the foreseeable future.

## China

### Overview of Investment Regime

According to China's official statistics, the country received USD 138 billion in FDI in 2007, totaling 4.0 percent of GDP for that year.<sup>33</sup> Many outside sources, however, believe this figure is inflated and that FDI inflows were closer to USD 83 billion in 2007, which still makes China one of the world's top five recipients of FDI. It is highly likely that the official figures are inflated, as several China's top FDI sources are tax havens such as Hong Kong, the British Virgin Islands, and Mauritius. The phenomenon called "round-tripping" occurs when investors channel funds out of China to take advantage of incentives in these tax haven countries, then channel the funds back into China as FDI.<sup>34</sup>

Overall, the Chinese government is pro-FDI, but has set up Special Economic Zones, each with different FDI regulations, to dictate where foreigners can invest. China's top sources of FDI are Hong Kong, the British Virgin Islands, South Korea, Japan and Singapore.<sup>35</sup> The top industries attracting FDI are Farming, Forestry; Husbandry and Fishing; Services; and Electricity, Gas, Water Production and Supply (categories defined by Foreign Investment Administration).<sup>36</sup> The World Bank considers China to be a fairly risky destination for FDI in terms of protecting investors. The country is ranked only 88<sup>th</sup> in protecting investors, but much better at enforcing contracts, with a ranking of 18<sup>th</sup>.<sup>37</sup>

### Investment Regime Structure

China categorizes FDI by industry, using a system that is not based on international standards of classification. The Catalogue of Industries for Guiding Foreign Investment was last updated in 2007. In addition to these industrial categories, the Catalogue also specifies whether foreign investment in each sub-sector is encouraged, allowed, restricted, or prohibited. These categories give a general idea of whether there will be foreign ownership limits or tax incentives for investment, but these vary based on the specific sector.

Foreign investment is classified as "prohibited" for the manufacturing of traditional Chinese products, weapons, and carcinogens. FDI in the manufacturing of "high technology" sectors, however, is "encouraged" according to the Catalogue, and investors in these sectors face lower taxes.<sup>38</sup>

### Current Investment Regulations

The government's special economic zones each have different FDI regulations with regard to region and industry. There have been some laws affecting all sectors, however. For example, the Enterprise Income Tax Law, approved in 2008, raises the tax rate for foreign-owned firms from 11 percent to 25 percent. The Anti-Monopoly Law, effective August 2008, introduced new guidelines to prevent anti-competitive behavior, but there are concerns that the central government will use the law to prevent some mergers under the pretense of national security.<sup>39</sup>

### Liberalization Undertaken

As China continues its transition from a centrally-planned, isolated economy to a market-oriented one, much liberalization has taken place. China's laws previously included performance requirements for FDI, but those are no longer in place. While the government is liberalizing FDI in many sectors, it is clear that the goal is to strategically control which sectors are heavily invested in. The government strongly promotes investment into export-oriented industries, the modernization of agriculture, transfers of technology, and infrastructure projects.<sup>40</sup>

### History and Future of Investment Regulations

FDI regulations have changed drastically in the past 25 years as the country has moved towards a market-oriented economy. The overall trend has been towards more liberalization and protection for investors. The strategy so far, however, has been to take advantage of China's enormous, low-cost labor pool and concentrate on export-oriented industries. It is not clear whether this will continue. The restrictions on labor have increased, as workers gain more rights and the government begins to protect the right to unionize, making labor more expensive.<sup>41</sup> At the same time, the world financial crisis is decreasing the demand for Chinese exports, and it seems as though the government may need to revisit the country's role in the global economy.

## Colombia

### Overview of Investment Regime

Colombia received USD 9.0 billion in FDI in 2007, which was 2.4 percent of GDP.<sup>42</sup> FDI tends to play a large role in extractive industries, such as mining, oil and gas; mass consumption goods; heavy manufacturing; and beverages. Telecoms are also heavily dominated by foreign investment, with mobile-telephony fully controlled by companies from Mexico, Spain, and Luxembourg. All of the major political parties in Colombia are in favor of FDI, and have increasingly liberalized it since the early 1990s despite changes in leadership. The government actively incentivizes FDI in many sectors. Despite this openness to foreign investment, foreigners tend to be wary of Colombia as a result of high levels of security risk.<sup>43</sup>

### Investment Regime Structure

All direct investment from abroad must be registered with the Central Bank of Colombia (Banco de la Republica). The registration process is not an authorization process, but it is required for access to foreign exchange rights.<sup>44</sup> The Central Bank compiles data based on industry and country of origin.<sup>45</sup> Industry classification uses a Colombian adaptation of the International Standard Industrial Classification (SIC) system.<sup>46</sup>

### Current Investment Regulations

Foreign investment registration with the Central Bank is generally very efficient, and is available electronically. Following the registration process, investors are entitled to national treatment under Colombian law, and are therefore not differentiated from local firms while doing business in Colombia.<sup>47</sup> As a result, there are few restrictions on FDI. Mergers and joint ventures face no legal opposition beyond laws that affect all domestic investors.<sup>48</sup> Investment in three sectors – banking, extractive industries, and television – require special approval from governmental organizations that govern these industries. FDI in local television companies is limited to 40 percent ownership. The only FDI that is not permitted at all is in the national defense and hazardous waste industries.<sup>49</sup>

### Liberalization Undertaken

Several major unilaterally adopted laws in the early 1990s were responsible for opening the Colombian economy to foreign capital, liberalizing reinvestment rules, and eliminating a ceiling on profit remittances. Since these first major pushes toward liberalization, industries have been increasingly eliminated from a small negative list which bans, limits, or requires approval for FDI. Beyond sectoral liberalization, laws have reaffirmed national treatment provisions, streamlined the FDI registration process, and lowered remittance caps.<sup>50</sup>

### Future of Investment Regulations

Colombia is relatively open to FDI, with few technical or legal barriers. Most of Colombia's future initiatives to improve FDI access to the domestic market will likely focus on maintaining macroeconomic stability and improving security guarantees to foreigners operating in Colombia.

## Germany

### Overview of Investment Regime

Germany experienced net FDI inflows of €37.9 billion (USD 55.8 billion) in 2007,<sup>51</sup> which was 1.7 percent of 2007 GDP.<sup>52</sup> Most FDI is in the sectors of real estate, manufacturing, and finance.<sup>53</sup> The German government encourages foreign investment in Germany, providing foreign investors the same rights as domestic investors under law. Foreign investors do not need to register investment intent with any government entity with the exception of ownership of defense and encryption industries. The main barriers to FDI tend to be the same barriers to domestic investment, primarily relatively high marginal tax rates and stringent labor laws.<sup>54</sup>

Germany actively seeks investment using a variety of incentives programs, especially for investment in East Germany.<sup>55</sup> Germany also seeks to promote its attractiveness as a leading industrial economy with first-class infrastructure, a secure legal structure, a productive workforce, and global economic power.<sup>56</sup> Investment disputes between Germany and foreign investors are rare.<sup>57</sup>

### Investment Regime Structure

Germany's Federal Statistical Office classifies FDI under the Classification of Economic Activities, which was last updated in 2003. This system is almost identical to the Statistical Classification of economic activities in the European Community (NACE Rev. 1.1), which is strongly related to the International Standard Industrial Classification (ISIC) system.<sup>58</sup> The Deutsche Bundesbank, the German central bank, is in charge of measuring the balance of payments, including FDI. Germany Trade and Invest is a new agency formed by the merger of the German Office of Foreign Trade and the Invest in Germany GmbH in January 2009, and is in charge of promoting and offering incentives for investment in Germany.

Germany is a member of the International Center for the Settlement of Investment Disputes (ICSID), and is also a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. These organizations provide the institutional mechanism for international investment disputes. German courts are available to foreign investors, and rulings are not impacted by government intervention.<sup>59</sup>

### Current Investment Regulations

The Foreign Trade and Investment Act allows for the imposition of restrictions on inward and outward FDI for reasons of foreign policy, foreign exchange, or national security, but this provision is never utilized in practice. Foreign investors seeking to gain more than 25 percent ownership of firms in manufactures of armaments or cryptographic equipment are required to notify the Federal Economics and Technology Ministry, which may veto the investment.<sup>60</sup> Large foreign investors, such as hedge funds, are required to disclose the origin and objective of their funds.<sup>61</sup>

### Liberalization Undertaken

Germany's FDI regulations have been almost entirely liberalized for several decades.

## History and Future of Investment Regulations

Legislation is currently being written to broaden the rules relating to ownership of armament and cryptographic manufactures, and procedures are being established similar to U.S. CFIUS.<sup>62</sup> Legislation is being considered which would revise the foreign trade and payments law to allow for limitations on investments from sovereign wealth or foreign private equity. This is justified by a need to protect German corporations from foreign political motivations.<sup>63</sup> Legislation is also being considered which would allow the economics or labor ministries to veto FDI up to 3 months after the investment arrangement has been finalized, but only in cases related to public safety or national security.<sup>64</sup>

## India

### Overview of Investment Regime

India received USD 23.0 billion in FDI in 2007, which was 1.9 percent of GDP.<sup>65</sup> The vast majority of FDI is targeted at the services sector.<sup>66</sup> India controls foreign investment by limiting equity, voting rights, and movement of capital, and mandates government approvals for many sectors. Many restraints have been relaxed in recent years, but reforms are enacted on a sector by sector basis. Therefore, while India is more liberal than it has been historically, its investment regime is still relatively complex and restrictive. In addition to restrictions that still exist in some sectors, a general resentment towards FDI exists among some politicians and national groups.<sup>67</sup>

### Investment Regime Structure

India classifies economic activity using the National Industrial Classification (NIC) system, which is almost entirely identical to the International Standard Industrial Classification. To cover national requirements, the NIC adds a five digit level to add subsectors to the four-digit SIC.<sup>68</sup>

The Foreign Investment Promotion Board (FIPB) and the Cabinet Committee on Foreign Investment are in charge of approving FDI in sectors not included on a positive list for automatic approval. For international dispute settlement, India is a member of the New York Convention of 1958, but not the International Center for the Settlement of Investment Disputes.<sup>69</sup>

### Current Investment Regulations

Equity caps, specific approval requirements, and employee nationality provisions are the most common means of restricting FDI. There are no universal rules for FDI as each sector has completely different regulations. Regulations for print media, for example, reflect this trend of fragmentation and restriction. Foreign investment for news publications must be limited to 26 percent equity, while this percentage is raised to 74 percent for non-news publications, and 100 percent for Science and Technology magazines. Editorial functions must be carried out by resident Indians, and FDI is subject to prior government approval.<sup>70</sup> The highly sector-specific regulatory environment means that the investment process is not often a straightforward one. Preferences given to domestic firms over foreign firms in many legal proceedings, relaxed regulations for non-resident Indians, and backlogged courts enhance this lack of transparency.<sup>71</sup>

### Liberalization Undertaken

India's primary mechanism for FDI liberalization has been the allowance of "automatic" FDI approvals in an expanding number of sectors. In these sectors, foreign investors do not need licenses or approvals to invest and simply need to notify the Reserve Bank of India (RBI) of their investment. Sectoral liberalization therefore takes the form of being placed on the positive list for automatic approval.<sup>72</sup>

### History and Future of Investment Regulations

The Government of India has moved toward more FDI liberalization, and has indicated support for the formulation of uniform guidelines on FDI across all sectors.<sup>73</sup> In February 2009, the government announced that a fairer method for calculation would be used to assess total foreign ownership of Indian companies, easing the application of caps on foreign equity ownership.<sup>74</sup>

## Indonesia

### Overview of Investment Regime

Indonesia received net USD 10.2 billion FDI in 2007.<sup>75</sup> This figure represents 2.4 percent of that year's GDP.<sup>76</sup> Since the fall of Suharto's dictatorship in the late 1990s, the government has taken steps to attract foreign investment, but it has not significantly reduced the country's high level of corruption, given sufficient legal protection to foreign investors, or consistently enforced contracts, though a major investment law was passed in 2007 to improve investor protections.<sup>77</sup> The World Bank considers Indonesia to be a fairly risky destination for foreign investors. Though the country ranks a respectable 53<sup>rd</sup> in protecting investors, it ranks 140<sup>th</sup> in enforcing contracts.<sup>78</sup>

Most of Indonesia's inward FDI is in the sectors of chemicals and pharmaceuticals, paper, transportation, and a category defined by the central bank as "electrical, trading and other services".<sup>79</sup> The top countries investing in Indonesia are the United States, Singapore, Malaysia, China, and South Korea, with the United States investing more than double the amount of any other country.<sup>80</sup>

### Investment Regime Structure

Most investment regulations deal with ceilings on the maximum level of foreign ownership.

The Indonesian government classifies foreign direct investment by country of origin, province of destination, and economic sector. There are 8 broad industry categories with several subcategories for some industries.<sup>81</sup> The classification system is not as sophisticated as those of developed countries, and the categories do not make it clear how much foreign investment goes into oil and gas, which are major industries in Indonesia with significant foreign investment.

### Current Investment Regulations

The Indonesian government has caps on the level of foreign ownership in many sectors. Transportation can only be 49 percent foreign-owned, 20 percent for broadcasting, 65 percent for mobile phone companies, 49 percent for fixed-line telecommunication companies, 80 percent for insurance, 75 percent for pharmaceuticals, 65 percent for health services, and 55 percent in construction. Several industries are allowed 99 percent foreign ownership, including banking, oil and gas, and agriculture.<sup>82</sup> Full foreign equity is allowed in the manufacturing sector.<sup>83</sup>

### Liberalization Undertaken

The Indonesia Investment Coordinating Board is a government agency that fosters both domestic and foreign investment in the country. Since its creation in 1973, it has served as a review board for all foreign investment into the country.<sup>84</sup>

In 2007, a new investment law designed to make Indonesia a more attractive destination for investment was passed.<sup>85</sup> The law improves government transparency and accountability. It allowed for international arbitration for disputes, simplified procedures for licensing and investment, gave foreign investors equal legal status to domestic investors, awarded stronger

land title rights for investment projects, and gave tax incentives for certain types of investment.<sup>86</sup>

With the new law, the caps on foreign ownership were increased for travel agencies and health and hospital services.<sup>87</sup>

#### History and Future of Investment Regulations

In the years since Indonesia gained independence in 1945, FDI regulations have undergone many changes, some in the form of restrictions and others moving toward liberalization. Under Suharto's regime in 1967, a law was passed to prevent any foreign ownership in many sectors, including airlines, telecommunications, media, and nuclear power. The following year, a new law was passed liberalizing these sectors and declaring that a company could still be considered state-owned if up to 49 percent was foreign-owned. The focus on retaining state-owned enterprises continued until the fall of Suharto in 1998 and the beginning of democracy. Since then, the barriers to investment have not involved government policy as much as the deterrents of corruption and bureaucratic red tape. The 2007 investment law makes it clear that the government is taking steps toward reducing these deterrents, and it seems that Indonesia will continue in this direction.

## Japan

### Overview of Investment Regime

Japan received USD 22.5 billion in FDI in 2007, which was a relatively small 0.5% of GDP, and accounted for a similarly small 2% of gross fixed capital formations.<sup>88</sup> Such limited capital flows suggest a restrictive inward investment regime. This is not the case in Japan, which places few formal restrictions on inward investment. However, Japanese public companies generally engage in extensive cross-shareholding, which limits the ability of foreign companies to target them for acquisition. As a result, most investment is done via joint-venture.<sup>89</sup> Correspondingly, UNCTAD ranks Japan 24<sup>th</sup> in the world for investment potential, but just 137<sup>th</sup> for FDI performance.<sup>90</sup>

### Investment Regime Structure

Officially, investment promotion is handled on a local or regional level, rather than on a national one. Most large municipalities have bureaus that facilitate inward FDI processing. Foreign companies register as a 1) Representative Office 2) Branch Office 3) Subsidiary Company (either as joint stock company, or Kabushiki-Kaisha (K.K.); or a limited liability company, or Godo-Kaisha (LLC)) 4) Limited Liability Partnership (Yugen Sekinin Jigyō Kumiai). The official filing process varies from very straightforward to quite complex, and involves notification of either the Legal Affairs Bureau, the Bank of Japan, or both.<sup>91</sup>

### Current Investment Regulations & Recent Liberalizations

Japan has recently taken steps to make its investment regime both more open and more restrictive. Restrictions on “triangular” takeovers have been relaxed (a triangular takeover is one in which a local subsidiary acquires a domestic target with the shares of a foreign parent). However, Japan has instituted a process similar to the American CFIUS process. In the Japanese version, companies are required to notify the government within 30 days of plans to acquire more than 10% of companies holding various technological capabilities. These include technologies related to weapons systems, titanium, batteries and semiconductors.<sup>92</sup>

### History and Future of Investment Regulations

While the Japanese External Trade Association (JETRO) formally has a target to increase FDI to USD 26 billion by 2011,<sup>93</sup> the EIU estimates that informal, company based restrictions (such as cross-shareholding) to FDI will continue through 2010.<sup>94</sup>

## **Russian Federation**

### Overview of Investment Regime

Despite the country's other economic issues, FDI has been consistently strong in Russia. In 2008, FDI inflows reached a record USD 57.8 billion (excluding the financial sector), which was 4.5 percent of that year's GDP.<sup>95</sup> The vast majority of Russia's FDI inflows comes from Western Europe, more than half coming from the United Kingdom, Cyprus, the Netherlands, and Luxembourg.<sup>96</sup> While the overall level of FDI is high, the level as a percentage of GDP is low compared to thriving Asian economies and some other Eastern European countries. This is a result of lack of government transparency, widespread corruption, and regulations limiting foreign investment in certain sectors. Overall, government policies tend to restrict FDI rather than enable it, but the opportunities for high return on investment keep the country attractive as a destination for potential investors.

### Investment Regime Structure

Goskomstat, the Russian government's department of statistics, classifies FDI by country of origin and industry.<sup>97</sup> Restrictions on FDI vary by industry and require a local partner in several sectors.

### Current Investment Regulations

In 2007, the Russian government took steps to increase state control in strategically important sectors. In April 2008, a new law was passed which improved transparency but also put tighter restrictions on foreign investment in extractive industries (oil, gas, mining, etc.).<sup>98</sup> The country has a strategic industries law, allowing the government to review potential foreign investment.<sup>99</sup> In addition to the extractive industries, barriers to foreign investment remain high in the sectors of insurance and transport. Corruption is also a huge deterrent for potential investors, and the procedures needed to register land and obtain work permits are unnecessarily burdensome.<sup>100</sup>

Investment regulations vary widely in the manufacturing sector, depending on the sub-sector. Foreign ownership limits, employment restrictions, capital mobility restrictions vary according

### Liberalization Undertaken

Russia has obviously liberalized FDI restrictions since the days of the planned economy. In 1989, the government began allowing joint ventures between Russian and foreign investors. In 1991, foreign-owned subsidiaries were allowed into the country. On an official level, FDI policies are fairly liberal, but in practice, there are many hurdles for potential investors at the federal and regional levels, in the form of red tape.<sup>101</sup> Although the Russian government removed exchange controls on the rouble in 2006, making Russia a more attractive destination for FDI than ever before. There are still many steps the government can take to make the country more attractive to potential investors, but it has come a long way in a very short time.<sup>102</sup>

### History and Future of Investment Regulations

Though transparency may continue to increase, it seems that the Russian government has no desire for foreign investment in the lucrative extractive industries and will continue to restrict it as much as possible. There has been no indication of an interest on the part of the Russian government to make land registration and work permits less cumbersome to obtain.

## Singapore

### Overview of Investment Regime

Singapore received SGD 25.3 billion (USD 17.6 billion) in FDI in 2007, which was 15.7% of that year's GDP.<sup>103</sup> The country is an international business hub and puts minimal constraints on foreign investment. Most FDI is in the sectors of chemicals, electronics, and biomedical, and the government is trying to promote Singapore as a center for research and development in science and technology.<sup>104</sup> The Singaporean government realizes that the country's rapid economic growth and development depend on high levels of investment from Japan and the West. For the most part, foreign investors operate under the same regulations as local companies.<sup>105</sup>

The World Bank considers Singapore to be one of the world's safest and easiest countries to invest in. The government's processes are very transparent with regard to foreign investment, and investors are given a high level of protection.<sup>106</sup> Singapore's Economic Development Board supports FDI and is involved with attracting and facilitating foreign investment in the sectors of manufacturing and services.<sup>107</sup>

### Investment Regime Structure

Singapore's investment regime is designed to attract FDI, but only in certain sectors as determined by the government. Singapore's Department of Statistics classifies FDI based on the country of origin and industry. The classification system is called the Singapore Standard Industrial Classification (SSIC) and is based closely on United Nations Standard Industrial Classification.<sup>108</sup> The SSIC is comprised of 22 broad industry categories and numerous sub-categories.<sup>109</sup>

### Current Investment Regulations

There are several exceptions to Singapore's liberal FDI policies, most notably in the areas of finance, media, and defense. Foreign banks have restrictions on the number of branches they can open in Singapore, but they are allowed to offer the same range of services as local banks. Foreign investment in defense is regulated for security purposes, and media is regulated because Singapore does not have a free press to the extent of other developed countries.<sup>110</sup>

### Liberalization Undertaken

Though Singapore has had very loose regulations on FDI for the past 30 years, there has been increased liberalization in several sectors in the past ten. In December 1999, Singapore's securities markets were liberalized through eased listing conditions. Additionally, the ceiling on foreign ownership of local brokerage firms was raised from 49% to 70%.<sup>111</sup>

Singapore had limits on foreign equity in public telecommunication services, but those limits were removed completely in 1999. Since the liberalization, penetration for mobile services has increased in the country. In 2003, Singapore's Infocomm Development Authority reduced the licensing requirements for telecommunications operators, thus reducing barriers to entry into the market and increasing competition.<sup>112</sup>

Foreign investment in MNEs is strongly encouraged by the government, especially in high technology sectors.<sup>113</sup>

### History and Future of Investment Regulations

Though the ceiling on foreign ownership of local brokerage firms was raised significantly in 1999, the goal is to remove this ceiling completely. In the telecommunications sector, more barriers to entry area being reduced, and the Singaporean government is working to increase competition further. In contrast to this culture of liberalization, it does not appear that there will be any relaxation of the regulations against foreign ownership in media or defense.

## South Africa

### Overview of Investment Regime

South Africa received USD 5.7 billion in FDI in 2007, which was just over 2% of GDP.<sup>114</sup> While just 2% of GDP, FDI accounted for 11.5% of South Africa's gross fixed capital formation, indicating the relative importance of FDI for industrial development.<sup>115</sup> FDI flows to South Africa represent roughly 14% of all direct investment in Africa, and over 80% of direct investment in Southern Africa.<sup>116</sup> Trade and Investment South Africa is a subdivision of the Department of Trade and Industry established to promote investment in South Africa and to serve as a single portal for international business people.

There are few overt limitations of foreign ownership of South African businesses. Exceptions exist in the Banking industry, where foreign stakes over 15% must be authorized by the Registrar of Deposit-Taking Institutions, and stakes over 49% by the Ministry of Finance; and in Media companies, where foreign ownership is limited to 20%.<sup>117</sup> However, investors face other institutional barriers, such as high taxation and the requirements of the Black Economic Empowerment (BEE) act, which affect foreign-owned firms seeking government contracts.

### Investment Regime Structure

Outside of the banking and media sectors, there are no special requirements for foreign investors in South Africa. All public companies are required to register with the Registrar of Companies and submit yearly audited financial statements; private companies are also required to register but not to submit financial statements. For foreign companies establishing local branches or merging with a local company, there is a separate registration document but no special requirements. The exception to the above is in the banking sector, where local equity participation must exceed 25%.<sup>118</sup>

### Current Investment Regulations

Aside from the above mentioned restrictions on banking and media companies, there are no overt restrictions on investment in South Africa. There are, however, exchange controls that limit profit taking. The restrictions do not apply to liquidations, but do apply foreign dividend payments, and to loan repayments to foreign creditors.<sup>119</sup>

### History and Future of Investment Regulations

The South African Department of Trade and Industry is keen to attract additional investment capital, minimizing the prospect of future restrictions. The EIU estimates that foreign exchange controls will be relaxed, and heavy industry projects encouraged leading up to the 2010 World Cup.<sup>120</sup>

## United Kingdom

### Overview of Investment Regime

The United Kingdom received USD 233.9 billion in FDI in 2007, a substantial 7% of GDP and 44% of gross fixed capital formation. The UK is consistently in the top five countries for FDI receipts globally. The UK's commitment to FDI openness has resulted in an FDI stock exceeding 50% of GDP.<sup>121</sup> The UK government takes an activist stance toward FDI promotion, and places no major restrictions on acquisitions. Some exceptions exist, such as equity participation limits in Rolls Royce (an aircraft engines producer), and BAE Systems (an aerospace and defense company); however, these are primarily implemented through clauses in the articles, rather than through statutory prohibitions.<sup>122</sup> UNCTAD ranks the UK as third (behind the United States and Singapore) in its Inward FDI Potential Index.<sup>123</sup>

### Investment Regime Structure

The Investment Act 1975 (amended) gives the government some authority to prevent foreign acquisitions and to force divestitures; however, in practice these are rarely used. Most regulatory challenges for foreign investors would come from the European Union, primarily from the EU's role in

### Current Investment Regulations & Recent Liberalizations

As noted, the UK has a takes a very liberal stance toward FDI, which is evidenced in the exceptionally high ratio of FDI stock to GDP that it has accumulated. Regulations on foreign holdings of Rolls Royce and BAE Systems have both been relaxed. The stipulation that 49.5% or less of these companies can be foreign owned has been lifted; however, the 15% individual limit on foreign ownership remains.<sup>124</sup> While it is the government's stated goal to maintain that openness in future, it remains to be seen how it will handle the re-regulation of the financial sector, and foreign control over financial institutions in light of the leading role that London based enterprises have played in the recent financial crisis.

### History and Future of Investment Regulations

The EIU projects that restrictions on foreign investment in the UK will continue to be liberal.<sup>125</sup> The UK Trade and Investment service is actively involved in lobbying the European Union to maintain low barriers to investment.<sup>126</sup>

## United States

### Overview of Investment Regime

The United Kingdom received USD 232 billion in FDI in 2007, or 9% of gross fixed capital formation. The US is consistently among the top countries for FDI globally. The U.S. has a formal review process, embodied in the Committee of Foreign Investment in the United States (CFIUS), which has the power to interrupt (ex-post-facto) foreign acquisitions of U.S. companies for controlling interests in national-security related businesses.

### Investment Regime Structure

The Exon-Florio Amendment to the Defence Production Act of 1950, permits voluntary notification of foreign investments in the US, triggering a CFIUS review. Exon-Florio has since been amended by the Foreign Investment and National Security Act of 2007 (FINSA), which alters some Exon-Florio provisions, but also seeks to make the CFIUS mechanism more predictable and transparent to businesses.

### Current Investment Regulations & Recent Liberalizations

The FINSA regulations are meant to make the CFIUS process more predictable. The following regulations remain:

- Foreign ownership may not exceed 25% of coastal or freshwater shipping enterprises, and domestic air-transport firms.
- Foreigners may purchase up to 49% of a US airline, but may own up to only 25% of voting shares.
- Hydroelectric power companies require a licence from the Federal Energy Regulatory Commission, which may issue such permits only to US citizens or domestic corporations. The issue of the degree of foreign ownership of a domestic corporation has never arisen in this area, and there are no specific regulations. A company that is the recipient of a voluntary transfer of such a licence must file with the commission for approval of that transfer (in accordance with the Code of Federal Regulations, 18 CFR Section 131.20).
- Foreign firms and individuals may be barred from obtaining operating licences to use certain nuclear materials.
- The Department of Defence restricts work on classified US government contracts, though these may be open to firms from allied nations.

Foreign firms may invest in communications industries (like telephone, telegraph, radio and television companies) but may not obtain a licence to broadcast or otherwise transmit. The Federal Communications Commission (FCC) and US communications laws bar any company that is more than 25% foreign owned from purchasing US telecommunications firms. Nevertheless, the FCC may waive this restriction as it deems necessary. Some state laws discriminate against foreign investors, although such laws are often reciprocal (that is, the discriminatory provisions apply only if the foreign investor's home country discriminates against US investors).<sup>127</sup>

## Vietnam

### Overview of Investment Regime

Vietnam received USD 6.7 billion in FDI in 2007, which was 9.4 percent of GDP.<sup>128</sup> FDI inflows have been largely cyclical, with the highest peaks in the mid 1990s and 2000s, and with decreases during periods of financial crisis. Most FDI originates from Asian investors, although much of this comes from U.S.-owned subsidiaries in these countries.<sup>129</sup> Vietnam has opened considerably since the early 1990s, and actively incentivizes Greenfield FDI in most sectors.<sup>130</sup> Joint ventures have increasingly become more liberalized, as the Government of Vietnam has significantly relaxed foreign capital requirements and registration requirements. Barriers to mergers and acquisitions still exist in many sectors, however, as the government has sought to protect dominant local firms (state-owned and private) through both official restrictions and informal technical barriers.

### Investment Regime Structure

The Vietnam Standard Industrial Classification (VSIC), Vietnam's economic activity classification system, is based on the International Standard Industrial Classification (ISIC). It is managed by the Department of Standard and Methodology, General Statistical Office of Vietnam. Foreign Direct Investment is governed by the Ministry of Planning and Investment.<sup>131</sup>

Disputes between domestic and foreign partners are usually handled outside of the Vietnamese legal system, as Vietnamese courts are generally deemed inadequate for settling claims and disputes.<sup>132</sup> The Government of Vietnam's obligation to foreign, third-party arbiters in cases of investment disputes is only guaranteed under ad hoc arrangements with partner countries.<sup>133</sup>

### Current Investment Regulations

Foreign investment regulations are covered by the Common Investment Law (CIL) and the Uniform Enterprise Law (UEL). Under these laws, foreign investment is generally allowed through "business cooperation contracts," or agreements where foreign partners contribute capital and management remains in the hands of the local investors; joint ventures; and 100 percent foreign-invested enterprises (FIEs), which are Greenfield investments that are regulated by sector.<sup>134</sup>

Investment in existing Vietnamese companies is governed by the CIL, and restricts ownership of equity to certain percentages based on certain sectors. Foreign ownership of publicly listed firms and most state-owned enterprises is capped at 49 percent, or below controlling stakes.<sup>135</sup> Several decrees have been passed which allow for investment without permission from federal government agencies in many key non-service sectors, but these investments must still be approved by Peoples Committees and local authorities.<sup>136</sup>

### Liberalization Undertaken

Liberalization of FDI has taken place within the wider *doi moi* (economic renovation) movement, which is a deliberate policy undertaken by the Vietnamese government to transform the planned economy into a free market economy. Since 1992, many of the

country's firms have become privatized, and the country has become a member of the WTO.<sup>137</sup> Further liberalization has taken part as a result of bilateral treaties, most notably the U.S.-Vietnam Bilateral Trade Agreement (BTA).<sup>138</sup> All investment liberalization covered in international agreements is limited to companies offering services; non-service FDI is entirely governed by domestic laws, and is therefore liberalized unilaterally.

Several important laws have been passed recently which allow foreign investors more freedom in how they register FDI. Decree 139, passed in 2007, allows for foreign investors to register FDI without specifying a project as long as the investment is less than 49 percent of equity. Other decrees allow for investors to change the destination for previously registered FDI without re-registering.<sup>139</sup>

#### History and Future of Investment Regulations

Vietnam is eager to continue attracting FDI growth despite projections of slow economic growth in 2009. For this reason, it is unlikely to pass laws which reverse FDI liberalization that has occurred in recent years.<sup>140</sup> The Ministry of Planning and Investment, which is generally a champion of investment within the Vietnamese Government, has submitted a proposal to the Government of Vietnam for accession into the Convention on the Settlement of Investment Disputes. This move would likely increase foreign investor confidence in dispute settlement transparency.<sup>141</sup>

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