

APEC Economic Policy Report 2012

APEC's Ease of Doing Business Interim Assessment

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Australia

I. General Information

Under Australia's Constitution, powers are distributed between the Commonwealth (Australian Government) and six states. In addition to the states, there are several territories, three of which are self-governing, but over which the Commonwealth retains ultimate power. Each state has its own constitution and government.

The Council of Australian Governments (COAG) is the peak intergovernmental forum. The role of COAG is to initiate, develop, and monitor the implementation of policy reforms that are of economy-wide significance and that require cooperative action by Australian governments. COAG comprises the Prime Minister, State Premiers, Territory Chief Ministers, and the President of the Australian Local Government Association. In turn, COAG is supported by the COAG Reform Council, a body that undertakes independent and evidence-based monitoring and assessment and reports publicly on the progress of reforms. In addition, the Productivity Commission is Australia's principal review and advisory body on microeconomic policy and regulation.

The main government agencies with policy responsibility for issues related to business are the Treasury and the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE). For example, the Treasury, *inter alia*, advises the government on competition policy and policy matters relating to the corporate law. The DIISRTE provides programs to facilitate business development; more broadly, DIISRTE is working to accelerate productivity growth and secure Australia's prosperity in a competitive global economy through discovery, skills, and innovation.

The main government regulators with responsibilities relevant to the business environment fall within the Treasury portfolio and are listed below.

- The Australian Competition and Consumer Commission (ACCC) is the independent statutory authority whose primary responsibility is to ensure that individuals and businesses comply with the government's competition, fair trading and consumer protection laws. The ACCC also regulates federal infrastructure markets.
- The Australian Securities and Investments Commission (ASIC) is the independent corporate, markets and financial services regulator. The ASIC is responsible for ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.
- The Australian Prudential Regulation Authority (APRA) oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies and most members of the superannuation industry.

- The Australian Taxation Office (ATO) is the principal revenue collection agency. The ATO's role is to manage and shape tax, excise and superannuation systems that fund services for Australians.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Australia

1.1 Background

The Corporations Act 2001 (the Corporations Act) sets out the laws dealing with business entities in Australia at federal and interstate level. It is the principal legislation regulating companies in Australia, covering matters such as the formation and operation of companies, duties of officers, takeovers, and fundraising.

Although the Corporations Act focuses primarily on companies, it also provides coverage of other entities such as partnerships and managed investment schemes. Partnerships are further regulated under the laws of each state and territory. Cooperatives, including agricultural cooperatives are also regulated under state and territory laws. There are no rules in the Corporations Act specifying minimum capital requirements.

A summary of registration requirements is provided below. Further information can be found on the Australian Government's business website (see Resources, below).

Company Registration

Registration of companies is dealt with under Chapter 2A of the Corporations Act. Two types of companies can be registered; public companies, which are able to raise capital from the public, and proprietary companies, which cannot.

Proprietary companies are divided for reporting purposes into large or small companies, depending on the magnitude of their assets, revenue, and number of employees. Large proprietary companies are required to prepare a profit and loss account and balance sheet, and must appoint an auditor. Small proprietary companies, the most typical type of entity for family businesses, do not have these requirements.

The Australian Securities and Investments Commission (ASIC) has responsibility for the registration of companies. Companies must be registered by filling out Form 201 and posting it to ASIC. Certain additional requirements apply to the registration of public companies, including its registered office hours, a copy of its constitution and particulars relating to share issues. Further information on registering and running a company can be found at the 'For companies' section of the ASIC website.

Registering a Business Name

Procedures in Australia for registering business names differ for incorporated and unincorporated businesses. All incorporated businesses need to register their business name with ASIC.

Unincorporated businesses only need to register their business name if they carry on a business or trade in Australia and are not trading under the proprietor's natural name or partners' names. At present, Australian unincorporated businesses need to register their names in each state or

territory in which they trade, with varying processes and fees. However, a new federal business names registration service (discussed below) is being established to address this issue.

Registering with the Australian Business Register (ABR)

Sole traders, partnerships, companies, and trusts may, and in some cases must, register with the ABR for an Australian Business Number (ABN), a unique 11-digit number that identifies a business to government and other businesses. Further information on who must register for an ABN can be found in the "Help" section of the ABR website.

After registering for an ABN, a business may register for an AUSkey (a single security key that allows a business to access government online services and lodge electronic reports and forms to government); as well as for various tax obligations (such as the Goods and Services Tax and Pay As You Go withholding).

Companies, partnerships, and trusts are required to register with the Australian Taxation Office (ATO) for a tax file number (TFN). Sole traders must use their personal TFN. A TFN is a unique number issued by the ATO to individuals and organisations to help manage tax and other government services.

Foreign Companies

There are no separate requirements for privately owned, non-Australian investors to establish a new business in Australia (screening requirements were lifted in 2009). However, foreign government-owned or controlled enterprises must seek prior agreement of the Australian Government.

Advisory Services

A range of entities provide advice and assistance to start-up businesses. For example, the Australian Government website (business.gov.au) is a whole-of-government service providing essential information on planning, starting, and growing a small business as well as convenient access to government information, forms and services. The Business Loan Finder, which can be accessed through the website, can help small businesses find and compare business loan options available from banks and other lenders, taking into account small business financial needs.

Electronic Transactions

In Australia, the federal law on electronic transactions is in the Electronic Transactions Act 1999. All states and territories have enacted similar legislation. Generally, electronic signatures are acceptable where an appropriate and reliable method is used to identify the person and to indicate the person's approval of the information communicated. Further information is provided below.

1.2 Trends

The most significant reforms to the Corporations Act to date have been the Corporate Law Economic Reform Program (CLERP) initiated in 1997 to reform key areas of corporate and business regulation. For example, CLERP included reforms to accounting standards to make them more relevant to business; improved takeovers regulation to promote a more competitive market for corporate control; more consistent and comparable regulation for financial products and markets; and reforms to encourage the use of electronic commerce. Further information is available on the Treasury website.

As part of the National Partnership Agreement to Deliver a Seamless National Economy (SNE NP) reforms (discussed further in Dealing with Permits in Australia), a new federal business names registration service is being established. This service will allow unincorporated businesses to register names federally and pay one fee, using an online application process through the ASIC website (asic.gov.au). This will reduce the costs for registering business names as businesses will pay a fee of AU\$70 to register their name federally for three years, compared to more than AU\$1,000 for businesses registering in each state and territory. There will also be a combined process for registering for an ABN with the ATO and a federal business name, the two most common registrations when starting an unincorporated business. Other related initiatives will deliver a whole of government online service with customized information about licenses, registrations, permits and other relevant information.

In addition, Standard Business Reporting (SBR) is an Australian Government reform under the SNE NP to reduce the business-to-government reporting burden. SBR has been operational since July 1, 2010. It is a voluntary initiative that offers businesses, accountants, bookkeepers, tax agents and payroll professionals a quicker and simpler way to complete and lodge reports for government. SBR is simplifying business-to-government reporting by:

- Removing unnecessary or duplicated information from government forms;
- Using business software to automatically pre-fill forms;
- Adopting a common reporting language, based on international standards and best practice;
- Making financial reporting a byproduct of natural business processes;
- Providing an electronic interface to agencies directly from accounting software, which will also provide validation and confirm receipt of reports; and
- Providing a single secure online sign-on (AUSkey) for users to all agencies involved.

2. Dealing with Permits in Australia

2.1 Background

State and territory governments administer and oversee the majority of permit and licensing systems. Most permits and licenses relate to construction and development approval processes and occupational licenses. A number of authorities at the Australian Government, state, and local government level are responsible for issuing permits.

For planning and zoning, state and territory governments have largely devolved responsibility to local governments, but maintained responsibility for environmental assessment reform, with the Australian Government retaining responsibility for approvals for areas of federal environmental significance. A range of regulatory bodies administer and enforce the planning system in each state and territory, and that system is overseen by the minister responsible for planning in that jurisdiction. The main planning authorities include the following:

- New South Wales Department of Planning and Infrastructure
- Victorian Department of Planning and Community Development
- Queensland Department of State Development, Infrastructure and Planning
- Western Australian Department of Planning and the Western Australian Planning Commission

- South Australian Department of Planning and Local Government
- Tasmanian Planning Commission
- Australian Capital Territory (ACT) Planning and Land Authority, which is now part of the Environment and Sustainable Development Directorate
- Australian Government *National Capital Authority* (planning in the ACT only)
- Northern Territory Department of Lands and Planning.

Web addresses for these agencies are listed in the Resources section. Further information on regulatory bodies and regimes, including dispute resolution processes, can be found in Chapter 3 of the Productivity Commission's report, *Performance Benchmarking of Australian Business Regulation: Planning Zoning and Development Assessments*, released in May 2011. That report is available on the Productivity Commission website.

2.2 Trends

The Australian Government and state and territory governments are advancing regulatory and competition reforms via the National Partnership Agreement to Deliver a Seamless National Economy (SNE NP), which was signed in 2008-2009.

These reforms encourage competition reform in key sectors to expand Australia's productive capacity and reduce regulatory costs for business. Several of the SNE NP reforms are aimed at reducing costs associated with obtaining and complying with various permit and assessment requirements. For example:

- A National Construction Code (NCC) is being developed to provide consistent and minimum necessary building design and construction standards for health, safety, amenity and sustainability across Australia. This includes a consistent approach to building and plumbing regulation. The reform also includes governance and funding arrangements for the Australian Building Codes Board to produce, maintain, and administer the NCC. It requires all states and territories to make legislative arrangements necessary for formal adoption and effective operation of the NCC.
- Environmental assessment processes are being streamlined. For example, bilateral assessment agreements between the Australian Government and each state and territory to provide for a single environmental assessment process of developments that would otherwise require assessment by the Australian Government as well as state and territory authorities.
- Development assessment reforms are being undertaken to improve processes across Australia. All states and territories have agreed on and are implementing a common set of planning system principles to guide an economy-wide approach to assessment.
- An economy-wide occupational licensing system is being established. Under this reform, tradespersons such as plumbers and electricians will need only one license to work in all states and territories. This will not only lower costs for business and consumers, but also enhance workforce mobility and allow employers to hire interstate staff to address local skill shortages.

Further information about the SNE NP reforms is available on the websites for COAG, the COAG Reform Council, and the Productivity Commission.

In April 2012, the Council of Australian Governments (COAG) committed to exploring ways to further enhance productivity through regulatory and competition reform. COAG agreed to work

on six priority areas for major reform to lower costs for business and improve competition and productivity — including environmental regulation, streamlining approvals for major projects, and improving assessment processes for low-risk, low-impact developments.

3. Getting Credit in Australia

3.1 Background

Australia's policies, practices, and institutions are designed to ensure that the financial system is both safe and competitive.

Three agencies operate on functional lines; the Reserve Bank of Australia, the Australian Prudential Regulation Authority (APRA), and the Australian Securities and Investments Commission (ASIC). These agencies bear primary responsibility for the safety and soundness of financial institutions, protecting consumers and promoting systemic stability by implementing and administering the regulatory regimes in the financial sector. Together with the Treasury they form the Council of Financial Regulators.

Nearly all lending to Australian businesses is provided by banks. A small amount of lending is provided by other Australian deposit-taking institutions (ADIs) and a mix of other small lenders, including individuals. Banks and ADIs are subject to prudential oversight by APRA, which requires capital to be held against loans, with the level of capital determined according to the loan's risk (whether for personal or business use). ASIC is responsible for ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.

There is no comprehensive regulation of the relationship between lenders and businesses/borrowers. There is a mixture of high level regulation (such as prohibitions on unconscionable conduct), limited industry-specific regulation (in relation to farmers), and voluntary self-regulation (where the lender has agreed to comply with a Code of Conduct that imposes standards of conduct in relation to matters such as dispute resolution and disclosure of costs).

Some banks offer limited microfinance programs in which low-cost small amount business loans are offered. Currently there is minimal regulation of small business lending, however, this is under review. In addition, brokers have played an expanding role in arranging credit over the past 15 years.

Secured Transactions

The creation and enforcement of security interests in personal property was once governed by a range of Australian Government and state and territory laws, as well as common law rules, including a range of electronic and paper-based registers. These have been replaced by a single federal law, the Personal Property Securities Act 2009 (the PPSA), discussed below. This law was modeled on legislation in New Zealand, Canada, and the United States. It also drew on work by the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT).

It remains the case that security can be given by a person over an asset on the strength of a security agreement without forgoing possession of the asset. Under the provisions of the PPSA,

there must be a written agreement that, in substance, gives rise to a security interest in personal property.

Credit Reporting

The current provisions relating to consumer credit reporting are in Part IIIA of the Privacy Act 1998, which regulates the collection, use, and disclosure of personal information concerning consumer credit. The information in the credit reporting system is primarily negative information that detracts from an individual's credit worthiness, such as defaulting on a loan. However, the Australian Government has announced reforms to introduce a more comprehensive credit reporting regime, discussed below.

3.2 Trends

Secured Transactions

On 30 January 2012, as part of its SNE NP reforms, Australia implemented significant reform to the law of secured transactions by introducing a single economy-wide law governing the creation and priority of security interests in personal property. This federal approach under the PPSA harmonizes and reduces the complexity of using personal property as security for loans. It also reduces uncertainty for those involved in lending arrangements.

Central to the reforms was the development of a federal electronic register of security interests, the PPS Register. Security interests in personal property are registrable electronically on the PPS Register regardless of the form of the security interest, the legal personality of the person granting the interest, the type of collateral or the jurisdiction in which the property or the parties are located. Registration of security interests is voluntary and made online in real-time. Although not mandatory, the registration of security interests on the PPS Register does have legal implications, most notably the priority the security interest will have as against another security interest in the same collateral.

This functional approach means that wider varieties of non-traditional financing techniques can be accommodated and are subject to the same rules governing the creation, priority, and enforcement of security interests in personal property generally. Specifically, the PPSA provides rules regarding leasing and consignment arrangements, the transfer of accounts receivable and chattel paper as well as provisions that recognize alternative methods of providing credit in the agricultural sector. Further information on the PPSA and the PPS Register is available on the Personal Property Securities Register website.

Banking and Related Reforms

In December 2010, the Australian Government announced a package of reforms for a competitive and sustainable banking system. The reforms are intended to empower consumers to get a better deal, position smaller lenders as safe and competitive alternatives to the big banks, and secure the long-term safety and sustainability of the financial system so it can continue to provide reasonably priced credit to households and small businesses. This includes supporting the lending activities of smaller lenders through investments in residential mortgage-backed securities, as well as a range of other reforms. Most measures in the package have been implemented. Further information is available on the Australian Banking Reforms website.

These reforms are in addition to other measures to support prudential regulation, as well as reforms to create a single federal approach to consumer protection regulation in relation to the use of credit as part of the SNE NP, discussed above.

Credit Reporting Reforms

The Australian Government has also announced reforms to the credit reporting system as part of the broader privacy law reform agenda to implement the Government's first stage response to the Australian Law Reform Commission's 2008 report, *For Your Information: Australian Privacy Law and Practice*. These reforms will introduce a more comprehensive credit reporting scheme. The proposed reforms will *inter alia* broaden the types of personal information that may be collected for credit reporting purposes. This includes measures to make the credit regime more flexible and less prescriptive, by emphasizing industry-led complaint resolution through external dispute resolution and placing more responsibility on credit reporting bodies and credit providers. Industry will create a new Credit Reporting Code of Conduct to support the operation of the new credit reporting system. In addition, the rights of individuals will be enhanced, including rights to access and correct their credit reporting information.

4. Enforcing Contracts in Australia

4.1 Background

The Australian legal system is a common law system that comprises several branches of law, including contract law. Australia's contract law derives from a number of sources, namely, case law as a result of judicial decisions, laws enacted by the Australian Government, State and Territory parliaments, and international instruments ratified by the Australian Government. The term 'law on obligations' does not have formal status in Australia but generally refers to the law of contract, tort, unjust enrichment and restitution, equity and trusts, remedies and private law theory.

Under Australian contract law people are generally free to enter contracts on their own terms. However, in doing so, the parties must observe the general law — such as consumer, industrial and tax laws — and must not contract to perform a crime or other act against the public interest. Some mandatory laws are designed to protect weaker parties, such as minors and consumers, and others have more general application such as the Insurance Contracts Act 1984. Under the common law, private remedies are available to individuals who are victims of fraud.

Australia has ratified a number of relevant international conventions, including the United Nations Convention on Contracts for the International Sale of Goods and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. These and other conventions have been given effect in Australian law through legislation.

When a dispute arises about a contract or its enforcement, the parties may follow the procedure specified in the contract or try to resolve the dispute through negotiation, alternative dispute resolution, or court action. Australian courts are highly effective in resolving contract disputes. Generally, before hearing a case, most courts and tribunals will consider the scope for alternative dispute resolution.

Australia has a number of institutions and organisations that support alternative dispute resolution. These include the National Alternative Dispute Resolution Advisory Council, which undertakes research and provides advice to the Australian Government; organisations of dispute

resolution professionals, such as the Institute of Arbitrators and Mediators Australia; and the Mediator Standards Board, which was established with the support of grants from the Australian Government, to strengthen the quality and reputation of mediation across Australia.

If the court determines that a contract should be enforced, the procedures are relatively straightforward. Contracts can be enforced through state or territory courts at various levels or — if there is a federal element to the dispute — through the Federal Magistrates Court or Federal Court of Australia. There is significant shared jurisdiction between federal and state courts in commercial matters. For example, the Federal Court of Australia and State Supreme Courts share jurisdiction for civil matters arising the Corporations Act 2001 and the Competition and Consumer Act 2010.

Australian governments have enacted statutes governing each court and their enforcement roles, and courts have developed rules under which enforcement may occur. For example, the Service and Execution of Process Act 1992 provides the framework for enforcing judgements involving an interstate element. Court orders allow for enforcement of judgements with the assistance of court officials or police.

A number of statutes provide for the enforcement of foreign and domestic arbitral awards and foreign and domestic judgements. To enforce a foreign judgement, it is necessary to seek recognition and enforcement either under common law or statute. The Foreign Judgments Act 1991 (FJA) establishes a streamlined procedure for recognising and enforcing judgements by way of registration. Judgements may be registered if they originate from certain foreign courts of countries prescribed in regulations and meet the criteria in the FJA. Where the FJA does not apply, the common law applies and parties will need to start proceedings in an Australian court to enforce a foreign judgement. Once registered, arbitral awards can be enforced as if they were an order of the relevant court.

While Australian states and territories have enacted laws for public notaries and their regulation, the formation and enforcement of contracts in Australia does not generally require the involvement of a public notary. Public notaries in Australia may witness documents, administer oaths, and perform other wide-ranging administrative functions, including the preparation and certification of contracts.

Government Procurement

In 2011, the Australian Government developed a basic contract suite for low-risk procurements under AU\$80,000 for its agencies. Where used, the contract suite reduces the need for businesses to negotiate contract provisions between agencies, reducing procurement time, complexity, and cost. In addition to the basic contract suite, the Government is also working with agencies to reduce red tape and barriers to suppliers contracting with the Government, especially for low value (those valued under AU\$80,000) and low-risk procurements. To this end, a standard process for procurement valued under AU\$80,000 is due for release in 2012. It will further support the basic contract suite.

To put these initiatives into perspective, in 2010-2011, Australian Government agencies entered into over 56,000 contracts valued at less than \$80,000. This represents 71 percent of the 79,000 contracts reported by agencies, but only AU\$1.7 billion (5 percent) of the AU\$32.6 billion of procurement contracts reported by agencies in this period. It is envisaged that these reforms will

simplify the procurement process for both government and suppliers' for procurement activities below AU\$80,000.

In addition, the Australian Government has a policy to pay all invoices from small business up to and including AU\$5 million within 30 days of a correctly rendered invoice; and small business can charge penalty interest if an invoice is not paid within 30 days for contracts worth up to AU\$1 million.

Electronic Transactions

Between 1999 and 2003, the Australian Government and all states and territories enacted uniform Electronic Transactions Acts based on the UNCITRAL Model Law on Electronic Commerce. Since then, model amendments have been enacted in the majority of jurisdictions to update the uniform law to align with the Convention on the Use of Electronic Communications in International Contracts 2005 (also developed by UNCITRAL).

4.2 Trends

In relation to alternative dispute resolution, in 2009 the Australian Government amended the Federal Court of Australia Act 1976 to strengthen and clarify the case management powers of the Federal Court to ensure more efficient civil litigation. The reforms also streamline the appeal pathways for civil proceedings, and clarify the powers of judicial officers of the federal courts, particularly the heads of each federal court. A key objective of the reforms is to bring about a cultural change in the conduct of litigation so that, at the same time as resolving disputes justly, the following considerations are at the forefront:

- Focusing the attention of the Court, the parties, and lawyers on resolving disputes as quickly and cheaply as possible;
- Reducing the costs of litigation;
- Allocating resources in proportion to the complexity of the issues in dispute;
- Avoiding unnecessary delays; and
- Managing the Court's judicial and administrative resources as efficiently as possible.

In 2009, the Australian Government adopted a Strategic Framework for Access to Justice to guide civil justice reform according to the principles of accessibility, appropriateness, equity, efficiency, and effectiveness. The framework focuses on providing practical, affordable and easily understood information and options to help people and businesses prevent or resolve disputes. In May 2010, the Australian Government announced a package of measures to improve access to justice, consistent with the strategic framework. Recent reforms relevant to business dispute resolution and contract enforcement include:

- Introducing a new law, the Civil Dispute Resolution Act 2011, which encourages people to consider taking genuine steps to resolve their disputes before going to court;
- Developing an action plan to ensure Australian Government laws are clearer and easier to understand; and
- Examining options to improve the discovery process in civil litigation through a review by the Australian Law Reform Commission.

The Civil Dispute Resolution Act 2011 encourages parties to take "genuine steps" to resolve disputes before beginning civil proceedings in the Federal Court of Australia and the Federal

Magistrates Court of Australia. The Act requires parties, when commencing proceedings, to file a statement saying what steps they have taken to resolve their dispute or, if they have not taken any steps to resolve the dispute, the reasons why. The Court can take this statement into account when determining case management directions and costs. This process is aimed at encouraging parties to resolve disputes outside of court. The Act is flexible in that what constitutes a “genuine step” is determined by the parties in the context of their particular dispute. The reforms took effect on August 1, 2011.

Greater fairness in contracting has been achieved through reforms establishing an Australian Consumer Law (ACL), which commenced on January 1, 2011. The ACL provides an economy-wide consumer protection framework, including with respect to unfair contract terms; consumer rights when buying goods and services; product safety; unsolicited consumer agreements; and penalties, enforcement powers and consumer redress options. Further information can be found on the ACL website.

In March 2012, the Australian Government announced a review to determine whether Australian contract law should be reformed to improve domestic and international commerce. A discussion paper entitled “Review of Australian Contract Law” calling for submissions on key aspects of contract law can be found on the website of the Attorney-General’s Department.

In April 2012, the Standing Committee on Law and Justice agreed to commence consultations to determine whether further reform in the harmonization of jurisdictional, applicable law and choice of court rules, including in relation to contract law, would deliver worthwhile microeconomic benefits for the community.

5. Trade Across Borders in Australia

5.1 Background

Under Australia’s Constitution, the federal Parliament, *inter alia*, has exclusive power to impose and alter customs duties. The states and territories remain responsible for a number of trade-related policies, such as standards, state government procurement, and state-trading.

Trade policies are formulated by the federal government, on advice from dedicated advisory bodies. The Minister for Trade and the Department of Foreign Affairs and Trade (DFAT) bear primary responsibility for bilateral, regional, and multilateral trade policy as well as administrative responsibility for all treaties. Lists of Australia’s “in-force” and “under-negotiation” free trade agreements can be found on the DFAT website.

Laws, decrees or other regulatory approaches governing trade across borders have not been consolidated into a single law. Similarly, there is no specific law on trade in services. Rather, separate measures address specific areas of activity relating to trade and investment (for example, customs, telecommunications, foreign investment, and intellectual property).

Australia takes a whole-of-government approach in implementing its international trade policies. Several government agencies have significant implementation responsibilities relevant to trade policy. Two of those agencies are the Australian Customs and Border Protection Service and the Australian Trade Commission, discussed below.

Australian Customs and Border Protection Service

Customs and Border Protection's main role is to facilitate trade across the Australian border while protecting the community and maintaining compliance with Australian law. In fulfilling this role it aims to manage the movement of international trade without impeding the flow of legitimate trade. It does this by adopting risk management techniques that rely on the provision of accurate and timely information. Its intervention activity is minimal where international traders are compliant with the laws.

The Customs and Border Protection National Consultative Committee (CBPNCC) provides a forum for the discussion of customs and border protection issues that affect the trading community, businesses, and import/export specialists. The Committee is not a decision-making body and does not have executive powers or financial responsibility. Three subcommittees, provide technical advice and recommendations to the CBPNCC on customs matters affecting industry.

Since October 2005, Customs and Border Protection has had a federal single window for international traders in the form of the Integrated Cargo System (ICS). The ICS provides a single window interface for industry to connect electronically for coordinated clearance at the border for the vast majority of international trade-related reporting to the Australian Government. The ICS facilitates clearance for around 99.5 percent of imports and 99.7 percent of export transactions.

For a small proportion of transactions, border agencies request the presentation and sighting of trade documents to complete risk assessment. In some instances, exporters and importers may present trade documents electronically to border agencies. Areas of ongoing work on paperless interaction include advanced testing of the feasibility to electronically submit declarations in the postal environment and for household effects, which are currently paper-based transactions. The goal is to electronic solutions constituting 100 percent of postal declarations and 68 percent of personal effects consignments.

Other initiatives are being investigated across the Australian Government to improve the range of electronically accessible trade documents, including permits, which would then further facilitate electronic clearance.

The Customs Information and Support Centre is Customs and Border Protection's main point of contact with ICS users.

Australian Trade Commission (Austrade)

Austrade is the Australian Government's trade and investment development agency. Austrade's role is to advance Australia's international trade and investment interests by providing information, advice and services. Among other things, Austrade:

- Helps Australian companies to expand their business in international markets;
- Provides coordinated government assistance to attract and facilitate productive foreign direct investment into Australia;
- Provides advice to the Australian Government on its trade and investment policy agenda; and
- Manages a program to enhance awareness of Australian skills and capability and enrich Australia's global reputation.

Advisory Bodies

The development of Australia's trade policy involves interactions between the executive branches of government, advisory bodies, businesses, nongovernmental organisations (NGOs), and other stakeholders. The Government also establishes taskforces to carry out inquiries from time to time. The transparent nature of this process, especially the use of independent institutions, such as Australia’s Productivity Commission to assess the economic impact of government policy, has greatly facilitated economic reforms and helped to maintain support for their continuation.

5.2 Trends

Foreign Investment

In August 2009, the Australian Government increased the fixed foreign investment screening thresholds and introduced indexation of these thresholds to keep pace with inflation and to prevent foreign investment screening from becoming more restrictive over time. The multiple thresholds for business investment were replaced with a single threshold of 15 percent in a business worth \$244 million (as of January 1, 2012). This means private foreign investment in Australian businesses below \$244 million can proceed without review.

In addition, the Australian Government abolished the requirement that private investors notify the government when establishing a new business in Australia valued above \$10 million.

Antidumping and Countervailing Reforms

Australia’s antidumping and countervailing regime works to remedy the harmful effects of dumped imports on Australian industries. The Productivity Commission completed an inquiry into the system, with a final report on December 18, 2009. The Commission made 20 recommendations to improve the system. The Australian Government released a final response to the Commission’s report on June 22, 2011. The Government has committed to implementing 15 of the 20 recommendations in full or in part. The reforms will reduce costs for Australian business seeking remedies against dumping and improve timeliness and transparency for all parties to anti-dumping investigations.

III. Resource Bibliography

Resource	Website
AUSTRALIAN GOVERNMENT WEB RESOURCES	
Council of Australian Governments (COAG)	coag.gov.au
COAG Reform Council	coagreformcouncil.gov.au
Productivity Commission	pc.gov.au
Australian Competition and Consumer Commission	accc.gov.au
Australian Securities and Investments Commission	asic.gov.au
Australian Prudential Regulation Authority	apra.gov.au
Australian Government’s business website	business.gov.au
Reserve Bank of Australia	rba.gov.au
Australian Taxation Office	ato.gov.au
Treasury	treasury.gov.au
Department of Industry, Innovation, Science, Research	innovation.gov.au

Resource	Website
and Tertiary Education	
Australian Government Attorney-General's Department	ag.gov.au
Personal Property Securities Register	ppsr.gov.au
Insolvency and Trustee Service Australia	itsa.gov.au
Australian Government legislation	comlaw.gov.au
Standard Business Reporting	sbr.gov.au
Australian Banking Reforms	bankingreforms.gov.au
Australian Consumer Law	consumerlaw.gov.au
Department of Foreign Affairs and Trade	dfat.gov.au
Cargo Support	cargosupport.gov.au
AUSTRALIAN PLANNING AUTHORITIES	
New South Wales Department of Planning and Infrastructure	planning.nsw.gov.au
Victorian Department of Planning and Community Development	dpcd.vic.gov.au
Queensland Department of State Development, Infrastructure and Planning:	dlgp.qld.gov.au
Western Australian Department of Planning and the Western Australian Planning Commission:	planning.wa.gov.au
South Australian Department of Planning and Local Government	dplg.sa.gov.au
Tasmanian Planning Commission	planning.tas.gov.au
Australian Capital Territory (ACT) Planning and Land Authority, now part of the Environment and Sustainable Development Directorate	actpla.act.gov.au
Australian Government National Capital Authority (planning in the ACT only)	nationalcapital.gov.au
Northern Territory Department of Lands and Planning	dlp.nt.gov.au

Brunei Darussalam

I. General Information

Brunei Darussalam has established a National Steering Committee Chaired by the Minister of Industry and Primary Resources to provide a platform for national inter-agency cooperation and coordination and to strategize and drive reforms and initiatives to improve the Ease of Doing Business in Brunei Darussalam. The committee membership is comprised of the Permanent Secretaries of the following agencies:

1. Starting a Business: Ministry of Home Affairs
2. Dealing with Construction Permits: Ministry of Development
3. Getting Credit: Ministry of Finance
4. Enforcing Contracts: Prime Minister's Office
5. Trading Across Borders: Ministry of Finance

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Brunei Darussalam

1.1 Background

Company Law

The Companies Act (Chapter 39) provides the guidelines for the incorporation and registration of companies in Brunei Darussalam; regulations governing the relationships between members of a company and the company and between the company and its creditors and the public; the conditions under which companies incorporated outside Brunei may conduct business in Brunei and generally regulate the functioning of companies registered locally or that conduct businesses in Brunei.

Business Registration

The Companies Act (Chapter 39) governs the incorporation and registration of companies in Brunei Darussalam. Sole proprietorships and firms are regulated by the Business Names Act (Chapter 92). The Business Names Act makes no reference to "simple partnerships." The term "firm" refers to an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who or which have entered into partnership with one another. The Limited Liability Partnerships Order was passed in 2010.

The Registrar of Companies and the Registrar of Business Names are now housed at the Ministry of Finance, effective April 1st 2012. Both Registrars are responsible for the incorporation and registration of companies and business names in Brunei Darussalam. Limited liability

partnerships are similarly governed by the Limited Partnership Order, 2010. The Office of the Registrar of these entities is appointed according to their specific legislation.

There are three ways in which an individual may conduct business. The Companies Act (Chapter 39) requires that all companies be incorporated and registered. An individual may conduct business as a sole proprietor. However, if he or she forms a firm or partnership, these types of firm are registered under the Business Names Act (Chapter 92). It is a legal requirement that any individual who wishes to conduct business must be registered. It is unlawful to conduct business under any name or title without registration. An individual conducting business, whether as a pushcart peddler or a sole proprietor, is still required to register under the Business Names Act.

Section 5 of the Companies Act states that every company incorporated must include:

- The word “Berhad” or “Bhd” in the company name of companies limited by shares or by guarantee;
- The word “Sendirian” or “Sdn” in the company name, inserted immediately before “Berhad” or “Bhd” in the case of a private limited company; or in the case of private unlimited company, at the end of its name;

Section 19 of the Limited Partnership Order 2010 states that a limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as part of its name.

The Laws and Regulations govern all type of business ranging from General Partnerships, Closely held companies with limited liability as well as Joint Stock Companies.

- Companies Act (Chapter 39) – In 2010, the Act is amended to include the definition of “Public Company” and “Unlimited Company”
- Business Names Act (Chapter 92)
- Limited Liability Partnerships Order, 2010

Companies Act	Securities Order	Business Names Act	Limited Liability Partnership Order (pending implementation)
Private Limited Companies by Shares Private Limited Companies by Guarantee Private unlimited Companies Public Limited Companies	Public Limited Companies (if they shares are in the Stock Exchange)	Sole ownership Partnership	Professional Partnership such as Law Firms, Accountant Firms, Engineering Firms, Surveyor Firms.

Public Information

The Acts can be accessed and available from the Attorney General’s Chamber website (see Resource Bibliography). Procedures and guidelines are widely available online as well as in the form of brochures from respective agencies.

Translations of regulations and institutional procedures, as well as other measures designed to make registering a business easier, faster, and cheaper for foreign companies.

Regulations are available in English at the Ministry of Industry and Primary Resources website and the Brunei Economic Development Boards website (see Resource Bibliography), and also the Brunei Darussalam Business & Investment Guidebook (2009 Edition). Currently the Municipal Department’s procedures are available in Malay only.

Government agencies responsible of looking after the welfare needs of the **informal sector** include the Ministry of Home Affairs; Ministry of Industry and Primary Resources; and the Ministry of Culture, Youth and Sports.

Public sector institutions that support business startups include:

- Ministry of Industry and Primary Resources- Financial Schemes for start-up and Entrepreneurial Training
- Ministry Youth, Culture and Sport cooperation with Brunei Economic Development Board – LEAP programs
- Ministry of Home Affairs- One Village One Product Program
- Brunei Economic Development Board and AiTi, -The Future Fund for IT Start-up Business

The Co-operative Societies Act (Chapter 84) regulates the establishment of **co-operative societies** in Brunei Darussalam. The legislation contains provision on deregistration and its effect. Currently, this legislation is under review.

A reform initiative is underway for business licensing system's **online services** for business registration, permits and licenses. This is expected to go into effect in June 2012. The relevant legislation for electronic transactions is the Electronic Transactions Act (Chapter 196).

Detailed, publicly available procedure for the **private sector** to engage in regulatory reform and development is made available through Stakeholder Engagement Dialogue, roadshows, and relevant websites.

The Registrar of Companies and Business Name (RoCBN), Ministry of Finance for Business Registration provides a **one stop shop** system for the registration of sole proprietorships and simple partnerships. Further improvement is expected with the implementation of BLS in June 2012.

The **advisory services** (which include registration and post-registration such as filings etc) are made freely available when businesses are using registration services. Other support and advisory services are generally provided through agencies such as the Ministry of Industry and Primary Resources through the Entrepreneurial Development Centre, the Local Enterprise Development Division of the Brunei Economics Development Board, and the Ministry of Youth Culture and Sports.

1.2 Trends

Starting a Business regulatory reforms since 2009 are represented in the table below.

2009	2010	2011	2012
No Reforms	Introduction of Electronic System for name searches Amendment and implementation of the Companies (Amendment) Order	Review, revise and update Miscellaneous License act and Companies Act and policies to enable migration to electronic services. Review and revise cost schedules. Introduction of Fast Tracking of issuance of miscellaneous License for simple business (16 April 2012)	Registrar of Companies and Business Names (RoCBN) moved to Ministry of Finance Business Licensing System (BLS)-an online business registration system, expected to go live June/July 2012 Review, revise and update Miscellaneous License act and Companies Act and policies to enable migration to electronic services Review and revise cost schedules
Procedures:18 Time: 116 days Cost: 0.2% of income per capita	Procedures: 18 Time: 116 days Cost: 9.8% of income per capita	Procedures: 15 Time: 105 days Cost: 13.5% of income per capita	Procedures: 9 Time: 21 days Cost: 11.2% of income per capita

Future reforms planned include i) continued consolidation and streamlining of business process; ii) review, revision and updating any relevant act and Companies Act and policies where necessary; and iii) review and revision of cost schedules.

2. Dealing with Permits in Brunei Darussalam

2.1 Background

Sources of legal authority for all licenses required for conducting business include the Municipal Department Bandar Seri Begawan, the Ministry of Home Affairs - Miscellaneous License Act (Chapter 127) for areas under the jurisdiction of Bandar Seri Begawan Municipality; and the Town and Country Planning (Development Control) Act-1984, for all other areas.

Major license/permit issuing authorities include i) ABCi (Authority of Building Control Industry) for all areas other than BSB Municipality designated areas; and ii) the Municipal Department, Ministry of Home Affairs for BSB Municipality designated areas.

Governmental and quasi-governmental agencies/institutions that support the private sector in licensing/permitting include:

- Telecom Brunei, Berhad
- Public Works Department Brunei Darussalam (JKR), Ministry of Development
- Department of Electrical Services, Prime Minister's Office
- Department of Environment, parks and Recreation (JASTRE)
- Brunei Fire and Rescue Department, Ministry of Home Affairs
- Department of Health Services, Ministry of Health

Information on laws, regulations and procedures can be accessed through the Attorney General's Chamber website (see Resource Bibliography). Regulations and procedures can be accessed through the respective relevant agencies such as The Municipal Department Bandar Seri Begawan and ABCi. Regulations are available in English; however procedures are only available in Malay.

The following agencies play a role in the issuance of construction/development permits:

- National planning authority: Town and Country Planning, Ministry of Development.
- National environmental authority: Department of Environment, Parks and Recreation (JASTRE), Ministry of Development.
- Regional and local planning authorities: Municipal Departments for Bandar Seri Begawan and Belait
- Other regional and local authorities that may inspect, monitor, or otherwise be involved in the construction process: District Offices, Ministry of Home Affairs
- Department of Water Services
- Brunei Fire and Rescue Department, Ministry of Home Affairs
- Authorities dealing with construction standards: Ministry of Development and ABCi
- Authority dealing with occupational safety and health: Ministry of Health
- Authority dealing with infrastructure: Public Works Department, Ministry of Development
- Authorities dealing with utilities and communications: Department of Electrical Services, Prime Minister's Office and Regulator for telecommunication in Brunei Darussalam is AiTi.

Respective government agencies establish the cost for permits, guided by the cost schedules prescribed under the relevant acts.

Information on procedures is made available through website and brochures. Government Agencies also conduct occasional road shows and public consultations for public awareness on updated regulations.

The Authority of Building Control Industry (ABCi) under Ministry of Development is a **one-stop-shop** for building and construction permits. The formation of ABCi in 2010 consolidated relevant government agencies dealing with the construction industry, namely:

- Public Works Department Brunei Darussalam JKR (Drainage & Sewerage& Water Services), Ministry of Development
- Housing Development Department, Ministry of Development
- Department of Electrical Services, Prime Minister's Office
- Department of Health Services, Ministry of Health
- Brunei Fire and Rescue Department, Ministry of Home Affairs.

ABCi handles any **disputes** regarding licenses and permit on an ad hoc basis. However, ABCi does not have jurisdiction in Bandaran areas.

Management Service Department under The Prime Minister's Office play similar functions as The **Ombudsman office**.

2.2 Trends

Reform activities in the area of Dealing with Permits since 2009 are represented in the table below.

2009	2010	2011	2012
No Reforms	Establishment of Authority of Building Control Industry (ABCi)	Introduction of e-DAS (Planning Application Tracking in TCP Only)	The Architect, Professional Engineers and Quantity Surveyor Order 2011 Process Reform: Previously ABCi check the drawing but now QP are responsible to ensure all requirements are met, set by ABCi. ABCi still conduct auditing.
Procedure: 31 Time:167 days Costs (percent income per capita): 3.9	Procedure: 31 Time:163 days Costs (percent income per capita): 3.5	Procedure: 31 Time:163 days Costs (percent income per capita): 4.8	Procedure:3 Time:29 days Costs (percent income per capita): 4.2

Future reforms planned include the following:

- Business License System (BLS): an online construction permit system
- Building Control Order: regulatory support for infrastructure and building and construction standards
- The introduction of E-Submission
- Further consolidation and streamlining of processes

3. Getting Credit in Brunei Darussalam

3.1 Background

The Autoriti Monetari Brunei Darussalam (AMBD) was established in January 2011 under the Autoriti Monetari Brunei Darussalam Order, 2010. AMBD is a statutory body responsible for the formulation and implementation of monetary policy, the regulation and supervision of financial institutions and for financial system stability.

All licensed banks in Brunei are regulated by the Banking Order, 2006 and Islamic Banking Order, 2008, which include the receiving of deposits or other repayable funds from the public and the granting of credit as stipulated in Section 2 of the Orders. Finance companies are also permitted to provide financial services specified in the Finance Companies Act, Chapter 89.

Banks and finance companies in Brunei practice secured lending, where the financing facilities given to a borrower are secured by some form of tangible security in which the bank acquires a security interest in the collateral owned by the borrower and is entitled to foreclose on, or repossess the collateral, in the event of the borrower's default.

- The Autoriti Monetari Brunei Darussalam Order, 2010 governs the following Banks and Non-Bank institutions:
- Banks licensed under sections 4 or 23 of the Banking Order, 2006 (S 45/06),

- International banks licensed under section 7 of the International Banking Order, 2000 (S 53/00)
- Islamic banks licensed under sections 4 or 23 of the Islamic Banking Order, 2008 (S 96/08);
- Insurers registered under the Insurance Order, 2006 (S 48/06) or the Takaful Order, 2008 (S 100/08)
- Individuals or entities licensed under the International Insurance and Takaful Order, 2002 (S 43/02);
- Finance companies licensed under the Finance Companies Act (Chapter 89);
- Individuals licensed under the Registered Agents and Trustees Licensing Order, 2000 (S 54/00), the Mutual Funds Order, 2001 (S18/01), the Securities Order, 2001 (S 31/01) or the International Insurance and Takaful Order, 2002 (S 43/02);
- Individuals licensed to conduct currency exchange or remittance activity under the Money-Changing and Remittance Businesses Act (Chapter 174);

Recent reforms undertaken to improve the ability of credit bureaus to support the efficient dissemination of credit information include the establishment of a Credit Bureau as a unit under the Regulatory Department of the AMBD and via an amendment to the Autoriti Monetari Brunei Darussalam Order, 2010 to enable the AMBD to formulate further rules and regulations for the governance of Credit Bureau participating institutions.

Credit Reporting

The Autoriti Monetari Brunei Darussalam is in the process of establishing a Public Credit Registry/Bureau.

Part II of the Third Schedule of the Banking Order 2006, and Part II of the Third Schedule of the Islamic Banking Order 2008 provides for the submission of data by member institutions to the Credit Bureau.

The Bureau collects both positive and negative data of all the credit facilities (funds-based and non-funds based). Apart from the credit details, it also collects details of bounced checks.

The information is collected for both individual and commercial entities (including Small and Medium Enterprises). The information is submitted by the participating institutions at the end of every month.

The Credit Bureau, functioning as a unit of the Regulatory Department, will have the following features:

- Participation by all licensed banks (conventional and Islamic) and finance companies, including an Islamic Trust Fund for data submission and credit report subscription
- Collection of both positive and negative credit data
- Collection of information on both individual and commercial borrowers including small and medium enterprises
- Maintaining credit histories dating back to January 2010 (for a period of over 24 months)
- Operating on the principle of reciprocity
- Collecting information on credit facilities, including loans below 1 percent of per capita income

- Is a repository of credit information on more than 60% percent of the adult population and more than 60% percent of registered firms that have borrowings thus far. Reports can be requested only for authorized purposes, which include:
 - Assessing creditworthiness of prospective borrower/guarantor
 - Assessing creditworthiness of existing borrower/guarantor on a periodical basis
 - Borrowers may request a credit report to inspect the data

Brunei Darussalam's legal framework for **secured transactions** enables quick, inexpensive, and simple creation of a proprietary security right without depriving the individual giving the security of the use of his or her assets. The prudential framework for secured and unsecured credit transactions by banks and finance companies is governed by the following enactments:

- Autoriti Monetari Brunei Darussalam Order, 2010
- Banking Order, 2006
- Islamic Banking Order, 2008
- International Banking Order, 2000
- Finance Companies Act, Chapter 89

Details are available on the Autoriti Monetari Brunei Darussalam website (see Resource Bibliography).

Brunei Darussalam's laws leave room for new, as yet unanticipated, forms of **nontraditional financing**. Nontraditional financing activities conducted by the banks require approval in writing by the Authority. Banks are primarily engaged in various forms of traditional financing products and leasing, the financing of agricultural equipment, inventories of companies and accounts receivable are all part of such traditional financing activities. Franchising is permitted as a form of non-traditional financing in Brunei Darussalam.

Accordingly, there has not been a need for a separate **collateral** registry, for such products. However, the Credit Bureau collects information on all credit transactions pertaining to the above activities and collateral provided by the borrower. Collateral information can be submitted electronically to the Credit Bureau, as part of the credit transaction. However there is no registration system as such for collateral.

3.2 Trends

Reform activity since 2009 in the area of Getting Credit includes the following:

2009	2010	2011	2012
No reform	No reform	No reform	Establishment of Public Credit Bureau is expected to take effect in 2012 Review and amendment of relevant law and legal clauses
Strength of legal right: 7 Depth of credit info index: 0 Public registry coverage (% of adults): 0	Strength of legal right: 7 Depth of credit info index: 0 Public registry coverage: 0	Strength of legal right: 7 Depth of credit info index: 0 Public registry coverage: 0	Strength of legal right: 7 Depth of credit info index: 0 Public registry coverage: 0

2009	2010	2011	2012
Private bureau coverage (% of adults):0	Private bureau coverage: 0	Private bureau coverage: 0	Private bureau coverage: 0

SOURCE: *Doing Business Report 2012*.

Depth of Credit Information Index (0-6)	Private Credit Bureau	Public Credit Registry	Index Score: 5
Are data on both firms and individuals distributed?	N.A.	Yes	1
Are both positive and negative data distributed?	N.A.	Yes	1
Does the registry distribute credit information from retailers, trade creditors or utility companies as well as financial institutions?	N.A.	No	0
Are more than 2 years of historical credit information distributed?	N.A.	Yes	1
Is data on all loans below 1% of income per capita distributed?	N.A.	Yes	1
Is it guaranteed by law that borrowers can inspect their data in the largest credit registry? (Remarks: The law allowing the borrowers to inspect their data is pending implementation)	N.A.	Yes	1

Data as of 09-May-2012 based on the population estimate of Jul 2012 from CIA World Facts.

Future reforms planned include the following:

- Improve depth of credit information and percentage coverage of the adult population
- Improve strength of legal rights index and provide legal infrastructure for the operation of the Credit Bureau

4. Enforcing Contracts in Brunei Darussalam

4.1 Background

Under the Application of Laws Act (Cap 2), the Common Law of England and the doctrine of equity as of 25 April 1951, together with the statutes of general application that are administered or in force in England, also have the force of law in Brunei Darussalam. This provision however applies on the condition that said common law, doctrine of equity and statutes of general application do not contradict the circumstances of Brunei Darussalam or its inhabitants and is subject to such qualifications or local circumstances and customs as necessary.

The Supreme Court of Brunei Darussalam is largely guided by the written Constitution and the laws of Brunei Darussalam. The relevant legislation in relation to the judicial enforcement of contracts is in the Supreme Court (Cap 5) and the Subordinate Court Act (Cap 6).

The courts also draw upon principles of law that are found in case law or judicial precedent. Similar to other countries using the Common Law of England, Brunei Darussalam also practices the doctrine of *stare decisis*, whereby decisions of a higher court are binding in the lower courts.

Commercial courts and arbitration/mediation tribunals include the Magistrates Court, Intermediate Court, High Court, Court of Appeal, Privy Council, Small Claims Tribunal (not yet in force).

In Brunei, Contracts Act (Cap 106) is the codified law on contracts. The last amendment to the Contracts Act was made in 2002 and came into force on 1 August 2005.

Brunei is a common law jurisdiction and as such the Law on Obligations is not applicable.

The law on contracts/obligations starts with the presumption of freedom of contract. Section 11 of the Contracts Act (Cap 106) defines the competency of an individual to contract if he has attained the age of majority, is of sound mind and is not disqualified from contracting by any law to which he is subject.

The law allows private enforcement of contracts following a court order as well as private remedies against fraud.

Brunei Darussalam has not ratified the United Nations Convention on Contracts for the International Sale of Goods, but did accede to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards on 25 July 1996. Brunei will only apply the New York Convention to the recognition and enforcement of awards made in the territory of another contracting state. In 2010, Brunei Darussalam enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006.

No recent procurement reforms have been undertaken.

Brunei's Electronic Transactions Act (Cap 196) is based on the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures

Notaries

In Brunei, a commissioner for oaths may administer an oath or take an affidavit for any purpose. The Commissioner for Oaths Act (Cap 169) provides that the Chief Justice may, with the approval of the Minister by notification in the Gazette, appoint advocates and solicitors of the Supreme Court as commissioners for oaths.

Enforcing Judgments

The system for enforcing both domestic and foreign judicial judgments and arbitral awards is as follows. Domestic judgments can be enforced under the Subordinate Courts Act (Cap 6) and the Supreme Court Act (Cap 5). Foreign judgments may be recognized and enforced by virtue of the Reciprocal Enforcement of Foreign Judgments Act (Cap 177). Judgments of the High Courts of Brunei, Malaysia and Singapore are enforceable in any of the three countries by virtue of the Reciprocal Enforcement of Foreign Judgments Act (Cap 177).

The process for enforcing judgments is defined in the law under the Subordinate Courts Act (Cap 6) and the Supreme Court Act (Cap 5). A typical magistrate court summons process entails – issue of summons by the court, service of summons by the court, attendance in court on date of summons, summary hearing, judgment and execution of judgment. A typical intermediate/high court summons process entails – issue of summons by the court, service of writ of summons, close of pleadings, summons for directions, pre-trial conference, trial, judgment and execution of judgment.

Arbitration

Arbitration in Brunei is governed by two separate legal regimes. The Arbitration Order, 2010 governs domestic arbitrations while the International Arbitration Order, 2009 governs

international arbitrations. Under the International Arbitration Order, 2009 Brunei will apply the New York Convention to the recognition and enforcement of foreign awards made in a territory of another New York Convention country which recognizes and enforces awards made in Brunei. The procedure is set out in Part III of the International Arbitration Order, 2009.

The Arbitration Association of Brunei Darussalam (AABD) was formed in 2004. AABD's objectives include assisting Brunei Darussalam in developing and providing advisory and assistance support in the field of arbitration. The AABD panel of arbitrators is kept to a very high standard, and there is a wide choice of leading international arbitrators that are mainly non-Brunei nationals.

4.2 Trends

No particular reform activity in the area of Enforcing Contracts has taken place since 2009.

The process of contract enforcement has remained unchanged since 2009 and requires 540 days, costs 36.6 percent of the claim, and 47 procedures in total.

5. Trade Across Borders in Brunei Darussalam

5.1 Background

Sources of legal authority for conducting import, export, and other cross-border activities include:

- Customs Act (Chapter 36) & Excise Act (Chapter 37): Royal Customs and Excise Department (RCED)
- Customs Order 2006: Royal Customs and Excise Department
- Excise Order 2006: Royal Customs and Excise Department
- Port Act (Chapter 144): Port Department
- Fisheries Order ,2009: Fisheries Department
- Halal Certificate and Halal Label Order, 2005: Ministry of Religious Affairs
- Halal Meat Act (Chapter 183): Ministry of Religious Affairs
- Public Health (Food) Act (Chapter 182) and Regulation: Ministry of Health Medicines Order 2007, Ministry of Health
- Wholesome Meat Order 2011:, Department of Agriculture and Agri-Food

Institutions with critical authority over trade include:

- Royal Customs and Excise, Ministry of Finance
- Ministry of Health
- Ministry of Religious Affairs
- Department of Agriculture and Agri-Food, Ministry of Industry and Primary Resources
- Fisheries Department, Ministry of Industry and Primary Resources

A regular stakeholder engagement dialogue program is the mechanism of public sector support of (as well as regulatory framework for) organizations such as customs brokers and freight forwarders.

The laws governing trade across borders are not consolidated into a single law on trade. eg. RCED and the Food Health Department, Ministry of Health have their own regulations.

There is currently no overall law on Trade and Services in Brunei Darussalam.

Taking into account our commitment to ASEAN and other trade-related associations/conventions such as APEC and TPP, RCED has adopted some basic standards and procedures to enhance faster flow of goods across borders without compromising security.

Some amendments have been made to Customs Law/ Rules and Regulation in order to facilitate more efficient movement of goods, such as *De Minimis* Value for Express Consignment.

Trade-related Treaties and Conventions

	FTA	Signed	Entered into Force
ASEAN FTAs			
1	ASEAN – China (ACFTA)	4 November 2002	1 January 2010
2	ASEAN – Korea FTA (AKFTA)	27 February 2009	1 January 2010
3	ASEAN-Japan Comprehensive Economic Partnership	14 April 2008	1 December 2008
4	ASEAN-India Trade in Goods (TIG) Agreement	13 August 2009	1 January 2010
5	ASEAN- Australia – New Zealand FTA (AANZFTA)	27 February 2009	1 January 2010
BILATERAL FTA			
6	Brunei-Japan Economic Partnership Agreement (BJEPA)	18 June 2007	31 July 2008

Even though Brunei has not acceded to Revised Kyoto Convention, it has adopted several of the Annexes to the Kyoto Convention, such as on declarations and clearance of goods. RCED has adopted best practices and guidelines in relation to WCO Risk Management Techniques and established a post-clearance audit to strengthen enforcement and provide necessary support and confidence in trade facilitation.

RCED continues to strengthen customs and border protection through several measures, including coordinated operation with other enforcement agencies such as Royal Brunei Police Force, Narcotics Control Bureau, Ministry of Health, Ministry of Religious Affairs, and Brunei Internal Security Department to curb smuggling activities, especially on subsidized items and uncustomed goods. Additionally, RCED has enforced intellectual property rights rules and CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). Brunei remains open to further reforming law, rules and regulation due to Brunei's commitment of trade-related associations.

Institutional Framework

On 1 August 2005, the Ministry of Foreign Affairs (MFA) was renamed the Ministry of Foreign Affairs and Trade (MoFAT). This came with the incorporation of the International Relations and Trade Development (IRTD) Division from the Ministry of Industry and Primary Resources into the Ministry of Foreign Affairs. Following the transfer, the IRTD division and the Department of Multilateral Economics of MFA were merged and divided into three trade departments under the Ministry, namely:

- Department of Economic Cooperation (DEC)
 - Aims to maximize benefits from involvement in regional and international fora
 - Monitors various regional and international trade and economic issues

- Promotes an outward-looking and conducive enabling environment for trade and investment
- Coordinates bilateral, regional and international economic cooperation
- Department of International Trade (DIT)
 - Explores and identifies market opportunities
 - Oversees and coordinates Brunei Darussalam's involvement in regional and multilateral economic organizations
 - Participates in various regional and international meetings in order to promote Brunei Darussalam's trade and investment interests
 - Coordinates and facilitates international trade cooperation
- Department of Trade Development (DTD)
 - Explores and identifies market opportunities for Brunei Darussalam
 - Facilitates trade and investment flows
 - Formulates short-term and long-term domestic trade policies
 - Provides a national focal point for trade and investment information
 - Coordinates and facilitates regional and international trade cooperation

There is no specific government body dedicated to trade facilitation and reform of trade institutions as these cross-cutting issues involving several government agencies.

5.2 Trends

2009	2010	2011	2012
No reform	Introduction of electronic systems	1. Ongoing work on e-customs and e-ports interface 2. Introduction of e-Certificate of Origin	Review document consolidation and streamlining of procedures
Documents to export: 6 Time to export: 27 Cost to export (US\$ per container): 630 Number of Documents to import: 6 Time to import: 19 Cost to import (US\$ per container): 708	No. of Doc. to ex.: 6 Time to ex.: 27 Cost to ex.: 630 No. of Doc. to im.: 6 Time to im.: 19 Cost to im.: 708	No. of Doc. to ex.: 6 Time to ex.: 25 Cost to ex.: 25 No. of Doc. to im.: 6 Time to im.: 20 Cost to im.: 708	No. of Doc. to ex.: 6 Time to ex.: 19 Cost to ex.: 680 No. of Doc. to im.: 6 Time to im.: 15 Cost to im.: 745

Future reforms planned include the following:

- To continue document consolidation and streamlining of procedures;
- To introduce a national Single Window, merging all of the relevant agencies and their procedures; and
- To improve the efficiency of ports services.

III. Resource Bibliography

Resource	Website
Ministry of Industry and Primary Resources	www.bruneimipr.gov.bn
Prime Minister's Office	www.pmo.gov.bn
Attorney General's Chamber for Acts/ Orders	www.agc.gov.bn
Judiciary Brunei Darussalam	www.judicial.gov.bn/
Management Service Department	www.msd.gov.bn/
Department of Electrical Services	www.des.gov.bn/
Ministry of Finance	www.mof.gov.bn
Royal Customs and Excise Department, Ministry of Finance	www.mof.gov.bn/English/RCE/Pages/default.aspx
Ministry of Foreign Affairs & Trade	www.mofat.gov.bn
Ministry of Home Affairs	www.home-affairs.gov.bn/
Municipal Department Bandar Seri Begawan	www.municipal-bsb.gov.bn/
Ministry of Development	www.mod.gov.bn
ABCI	www.mod.gov.bn/abci/
Public Works Department	www.pwd.gov.bn/
Town and Country Planning	www.tcp.gov.bn
Department of Environment, Parks and Recreation (JASTRE)	www.env.gov.bn/
Ministry of Health	www.moh.gov.bn
Department of Health Service (environment)	www.moh.gov.bn/medhealthservices/environmentservices.htm
Ministry of Industry and Primary Resources	www.bruneimipr.gov.bn
Department of Agriculture and Agri-Food	www.agriculture.gov.bn/
Fisheries Department	www.fisheries.gov.bn/
Brunei Industrial Development Authority (BINA)	www.bina.gov.bn/
Entrepreneurial Development Centre:	www.bruneimipr.gov.bn/index.php?option=com_content&view=article&id=69&Itemid=100
Treaties	
ASEAN Treaties	www.aseansec.org
Brunei-Japan Economic Partnership Agreement (BJEPA)	www.mofa.go.jp/region/asia-paci/brunei/epa0706/index.html
Authority Monetari Brunei Darussalam	www.ambd.gov.bn/
Brunei Economic Development Boards	www.bedb.com.bn
Authority for Info-communication Technology Industry Brunei Darussalam	www.aiti.gov.bn

Canada

I. General Information

Canada is a federal state in which legislative authority is constitutionally divided between the federal and provincial or territorial governments. This report describes the federal government's efforts to ensure as competitive an environment as possible in which to do business in Canada.

The Government of Canada has taken steps to address the challenges facing businesses. Providing small businesses and entrepreneurs with the tools they need to succeed and prosper is a priority. The government has implemented plans to reduce taxes and red tape, ensure access to credit, and offer programs and services that help businesses establish themselves, develop, and stay competitive.

In January 2011, the government launched a Red Tape Reduction Commission to identify and recommend ways to remove impediments to business growth, competitiveness, and to reduce the compliance burden on a lasting basis without compromising the environment or the health and safety of Canadians. In January 2012, the Commission presented its recommendations, identifying the root causes of red tape and focusing its analysis on the most important issues. The government is already implementing the recommendation for a "one-for-one" rule to control the administrative burden on business. This rule requires that regulators remove at least one regulation each time they introduce a new one that imposes an administrative burden on businesses. In the coming months, an action plan responding to the other recommendations will be developed.

Canada's public sector structure for the five areas of APEC's Ease of Doing Business Action Plan is as follows:

- ***Starting a Business.*** A federal jurisdiction and 13 provincial or territorial jurisdictions administer their own corporate law. Approximately 90 percent of businesses are incorporated under provincial or territorial jurisdictions. Corporations Canada, a federal body, oversees the incorporation of businesses, not-for-profit corporations, and other corporate entities.
- ***Dealing with Permits.*** All levels of government (i.e., federal, provincial/territorial, municipal) issue the permits and licenses required to conduct business in Canada. Standards associations support these governments in issuing permits and licenses.
- ***Getting Credit.*** The Office of the Superintendent of Financial Institutions (OSFI), an independent agency of the Government of Canada, was established in 1987 to contribute to the safety and soundness of the financial system. It is the primary regulator and supervisor of federally regulated deposit-taking institutions, insurance companies, and federally regulated private pension plans. Its mandate is to supervise these entities from a prudential perspective to protect the rights and interests of depositors, policyholders, and creditors of financial institutions with due regard to the need for competition and the taking of reasonable risks.

- **Enforcing Contracts.** Contract law is enforced primarily at the provincial level. Sources of legal authority for judicial enforcement of contracts include common law, civil law in the Province of Québec, and legislation. Governing legislation varies from province to province and at the federal level. Legislation enacted at both the federal and provincial levels tends to address specific issues.
- **Trade Across Borders.** Canada's regulation of international trade is governed by an array of federal legislation implemented largely by the Canada Border Services Agency. Trade policy development and trade promotion are undertaken by a number of federal departments, including the Department of Foreign Affairs and International Trade, the Department of Finance, the Department of Agriculture and Agri-Food, the Canada Border Services Agency, and the Department of Public Safety.

Activity in each of these areas is described in detail in Section II.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Canada

Company Law

In Canada, a federal jurisdiction and 13 provincial or territorial jurisdictions each administer their own corporate law. Approximately 90 percent of businesses are incorporated under provincial or territorial jurisdictions. Corporations Canada, a federal body, oversees the incorporation of businesses, not-for-profit corporations, and other corporate entities. The federal government administers the *Canada Business Corporations Act (CBCA)*, *Canada Not-for-Profit Corporations Act (NFP Act)*, and several other corporate laws governing federal companies. Cooperatives are governed at the federal level under the *Canada Cooperatives Act*; the provinces and territories also have legislation governing cooperatives.

Business Registration

In Canada, there are four types of business structures: sole proprietorships, partnerships, corporations, and cooperatives. A business can choose only one jurisdiction in which to incorporate. Once incorporated, it need not incorporate again elsewhere in Canada but it must register in each jurisdiction where it conducts business. Registration also applies to sole proprietorships and partnerships, and is undertaken at the provincial/territorial level.

The CBCA does not restrict the type of businesses incorporated under it.⁷ These range from small, single-owner corporations to large, widely-held companies. It does not distinguish between a corporation and a joint-stock corporation. The CBCA governs limited liability companies with closely or widely held stocks. It does not apply to partnerships or other unincorporated businesses.

Depending on the province/territory, conducting business in a jurisdiction can involve running a business, having an address, a post office box or phone number in that location, or offering services or products in the jurisdiction in order to make a profit.

⁷ Other than financial institutions, which are governed by different laws.

The website of Invest in Canada (see Resources) provides foreign owned businesses an overview of opportunities in Canada and related legal and tax requirements in the “Establish a Business” section. Foreign-owned businesses wishing to incorporate a branch in Canada follow the same procedures as other businesses, that is, they file articles of incorporation to establish a corporate entity.

Public Sector Institutions Supporting Start-ups

Canada takes a whole-of-government approach to ensure that small and medium-sized businesses are positioned to succeed. Departments across the federal government implement measures that support small businesses and enable them to grow and compete on the world stage. No single organization is responsible for supporting small businesses. Industry Canada works to improve investment conditions for small businesses and to ensure an efficient and competitive market. Public Works and Government Services Canada supports small business in the context of government procurement, and Finance Canada does so through supportive taxation policy.

Access

Federal laws, regulations, procedures, policies, and other documents for the public are available in Canada’s two official languages, English and French.

The website of Canada Business Network provides information on everything from business start-up support to taxes and market research and statistics. Information on incorporating businesses is readily available on the Corporations Canada website, which includes an online system for filing for incorporation and making changes to corporations. No regulations govern the use of electronic signatures when filing for incorporation with Corporations Canada. The client submits the articles of incorporation electronically and must keep a signed copy of the document with its corporate records. Corporations Canada also has a toll-free telephone number to provide businesses with assistance.

Stakeholder Engagement

The government is required to consult with stakeholders during regulatory and legislative processes. Consultations on changes to legislation may be undertaken during the development stage and are debated publically in Parliament. Proposed changes to regulations are published in the *Canada Gazette*, and stakeholders can comment on the proposed changes directly to the federal government. Proposed changes to policies follow less formal procedures, with department level policymakers informing stakeholders and gathering responses.

1.1 Trends

Since 2009, Corporations Canada has been undertaking consultations on a number of proposed changes to CBCA regulations and policies. A list of notices relating to consultations, proposals, and changes is publically available. Replacing Part II of the Canada Corporations Act, the Not for Profit Corporations Act (NFP) came into force in October 2011. NFP establishes modern and flexible rules for federally incorporated not-for-profits more suited to the needs of that sector.

2. Dealing with Permits in Canada

Authority and Delivery

Legal and issuing authority for permits and licenses required to conduct business in Canada resides with federal, provincial/territorial, and municipal governments. Standards associations support these governments in issuing permits and licenses.

Permits and licenses are regulated by the government or agency in question and are subject to that agency's rules and regulations for transparency. Fees are determined by the government (federal, provincial/territorial, municipal).

The issuing level of government is responsible for resolving disputes about permits and licenses; there is no central ombudsperson's office for resolution. Inquiries and complaints are directed to the various authorities.

Availability of Information

BizPaL is an online service that helps Canadian businesses identify which permits and licenses they need to start and/or run a business and how to obtain them. Entrepreneurs provide information on the type of business they want to start or expand, and the activities they plan to undertake. BizPaL then generates a list of permits and licenses required from all levels of government, basic information on each permit and license, and links to government websites that provide more information and that sometimes allow for online application.

BizPaL is a collaborative service provided by the federal, provincial/territorial, and municipal governments. Information originating from the federal government is provided in English and French. Information provided by other participating jurisdictions is offered in the official language(s) of the originating jurisdictions.

Construction

The agencies that issue construction/development permits vary greatly across the levels of government. While BizPaL provides information on licensing procedures for construction it does not, at this time, partner with every province, territory, or municipality (currently 660 out of a 4,000). In addition, construction licensing may be within the purview of quasi-governmental agencies with whom BizPaL does not partner at this time.

3. Getting Credit

The Office of the Superintendent of Financial Institutions (OSFI), an independent agency of the Government of Canada, was established in 1987 to contribute to the safety and soundness of the financial system. It is the primary regulator and supervisor of federally regulated financial institutions (FRFI), which consist of deposit-taking institutions, insurance companies, and private pension plans. Its mandate is to supervise these entities to protect the rights and interests of depositors, policyholders, and creditors with due regard to the need for competition and the taking of reasonable risk.

Canada does not separate the prudential supervision of banks and federal insurance companies, but the federal and provincial governments share jurisdiction over the financial services sector. Section 91 of the Constitution Act, 1867, grants the federal government exclusive jurisdiction over banking and bank incorporation. The primary governing statute, the *Bank Act*, was enacted

by the federal Parliament of Canada. Section 92 of the Constitution Act, 1867, grants provincial governments regulatory jurisdiction over property and civil rights in the provinces. This has been interpreted as granting the provinces the right to regulate securities dealing activities.

Consequently, each province and territory has a securities regulatory body, the largest being the Ontario Securities Commission (OSC). Credit unions and *caisses populaires* are almost exclusively regulated at the provincial level for both prudential soundness and market behavior.

Insurance companies can be incorporated at the federal or provincial level. Those incorporated at the federal level are supervised and regulated by the OFSI; those incorporated at the provincial level are governed by the provincial regulator.

OSFI administers a number of federal laws, including the Bank Act, the Insurance Companies Act, and the Trust and Loan Companies Act. OSFI's authority to regulate and supervise FRFIs is derived from these statutes as well as the Office of the Superintendent of Financial Institutions Act. In Canada, management and boards of directors are primarily responsible for the safety and soundness of financial institutions and those institutions are expected to have processes and controls to minimize risk; the OFSI reviews these processes and controls and identifies any deficiencies.

The Bank of Canada is the ultimate provider of Canadian-dollar liquidity to the financial system. The ability to undertake this function derives from the Bank of Canada Act, which gives the Bank the unique capacity to create Canadian-dollar claims on the central bank and the power to make secured loans or advances to chartered banks and other members of the Canadian Payments Association. In its day-to-day operations, the Bank supplies overnight credit on a routine basis through the Standing Liquidity Facility to direct participants in the Large Value Transfer System (LVTS). The Bank can also provide Emergency Lending Assistance (ELA) to deposit-taking institutions that are solvent but require more substantial and prolonged credit. Authority to provide such loans is provided under the Payment, Clearing and Settlement Act. The Bank also oversees payment and settlement systems designated for oversight under the Act.

The Canada Deposit Insurance Corporation (CDIC) is a Crown corporation governed by the Canada Deposit Insurance Corporation Act. CDIC insures deposits in federally regulated banks, trust or loan companies and retail cooperative credit associations, and provincially regulated trust or loan companies (or "member banks") up to C\$100,000 per depositor, per institution. It has the power to issue statutory instruments known as bylaws to direct certain actions of its member banks, and on a day-to-day basis monitors and assesses member banks' risks.

The Financial Consumer Agency of Canada (FCAC) is an independent body established in 2001 by the federal government to strengthen oversight of consumer issues and expand consumer education in the financial sector. In July 2010, the FCAC was tasked with also overseeing payment card network operators and their commercial practices. As a federal regulatory agency, the FCAC is responsible for

- Ensuring that federally regulated financial entities comply with federal legislation and regulations;
- Promoting policies and procedures by which federally regulated financial entities implement legislation, regulations, voluntary codes of conduct and public commitments;
- Monitoring these entities' compliance with voluntary codes of conduct and their own public commitments;

- Informing consumers about their rights and responsibilities when dealing with financial entities and about the obligations of payment card network operators to consumers and merchants;
- Providing timely and objective information and tools to help consumers understand, and shop for, a variety of financial products and services; and
- Monitoring and evaluating trends and issues that could affect consumers of financial products and services.

With respect to the framework for secured transactions regarding banks, the Bank Act sets out the prudential framework for secured transactions (i.e., lending money and making advances on security). The Act defines a “security interest” as an interest in, or charge on, property by way of mortgage, lien, pledge or otherwise taken by a creditor or guarantor to secure the payment or performance of an obligation. Please see Bank Act s.418, 425 – 436 for provisions governing secured transactions.

With respect to the legal framework for the governance of banks (and federally regulated financial institutions more generally), Part VI of the Bank Act (and relevant parts of institution-specific statutes in respect of other federally regulated financial institutions) sets out the Corporate Governance Framework. OSFI’s Corporate Governance Guideline elaborates on expectations for corporate governance and how governance quality is assessed. Guideline E-17 describes expectations regarding the assessment of the suitability and integrity of responsible persons of a federally regulated institution.

3.1 Commercial Lending Environment

The Canadian banking industry is comprised of six large domestic banks and many smaller deposit-taking institutions (DTIs). The six large banks account for approximately 90 percent of assets in the federally regulated DTIs. Their business lines extend beyond traditional deposit-taking and lending into insurance, trading, investment banking, and wealth management. The largest have extensive operations in the United States and other parts of the world as well. The remaining 10 percent of Canadian banking assets are held by smaller institutions that focus on a single or a few business lines such as mortgage lending, commercial real estate, or credit cards. In 2010, with adequate capital and a relatively favorable operating environment, this group reported a positive financial performance similar to that of the conglomerates.

The Trust and Loan Companies Act, the Insurance Companies Act, and the Cooperative Credit Associations Act provide full commercial lending powers to federally registered trust and loan companies, Canadian incorporated life insurance companies, and cooperative credit associations respectively, subject to certain conditions. These conditions include a capital base of at least C\$25 million and supervisory approval by the OSFI. Companies that do not meet these conditions are limited to commercial lending not exceeding five percent of total assets as defined by regulations. The OSFI grants approval to engage in commercial lending when certain criteria are met. These criteria help to ensure that companies have proper mechanisms for making commercial loans, and for controlling and monitoring a loan portfolio subject to the prudent person approach.

The Bank Act provides full commercial lending powers to banks. It provides that the directors of a bank shall establish, and that the bank shall adhere to, investment and lending policies, standards, and procedures that a reasonable and prudent person would adhere to avoid undue risk of loss and obtain a reasonable return. OSFI Guideline B-1 provides further guidance on that legislative provision. Guideline B-2 describes OSFI’s expectations regarding the issue of large credit risk exposures and its policy with respect to limits on these exposures.

Pursuant to the Bank Act, a bank shall not engage in any business other than banking and such business generally as appertains thereto. In Canada, the business of banking includes

- Providing any financial service,
- Acting as a financial agent,
- Providing investment counseling and portfolio management services, and
- Issuing payment, credit or charge cards and, in cooperation with others including other financial institutions, operating a payment, credit or charge card plan.

A bank may engage in certain types of leasing subject to certain conditions (see Section 646 of the Bank Act and the Financial Leasing entity regulations). For example, the Bank Act stipulates that a bank may not enter into lease agreements with persons in respect of any motor vehicle having a gross vehicle weight, as that expression is defined by the regulations, of less than 21 tonnes, or enter into lease agreements with natural persons in respect of personal household property, as that expression is defined by the regulations. As described above, Sections 425-436 of the Bank Act set out the regime for secured financing of agricultural equipment, crops etc. The Act is not clear about whether a bank has the power to offer a certain service. OSFI has a process in place for service review. If it is determined that a bank should be permitted to engage in a certain service while the legislation is too restrictive, a process is in place that would cause the legislation to be reviewed and possibly amended.

3.2 Credit Reporting/Information System

The Bank of Canada's Senior Loan Officer Survey (SLOS) enables an understanding of the credit conditions faced by nonfinancial firms from the perspective of Canada's major financial institutions. It provides a supply-side perspective on lending conditions. The Bank's Business Outlook Survey (BOS) provides insight into credit conditions from the perspective of the borrower. Both surveys are carried out and published quarterly. For further information, see the Bank of Canada website (Resource, below).

The SLOS gathers information on business lending conditions of major financial institutions in the Canadian market. It asks a standard set of questions about price and non-price lending. Respondents indicate how lending conditions have changed over the current quarter relative to the preceding quarter and provide possible reasons for any reported changes.

The survey results are useful in analyzing credit trends. The balance of opinion suggests the future growth of business credit and real business investment. For example, tightening credit conditions are usually associated with future declines in the growth rates of business credit and investment. The SLOS results can thus be used as one leading indicator of the borrowing and investment intentions of nonfinancial firms.

4. Enforcing Contracts in Canada

4.1 Background

Contract law is enforced primarily at the provincial level. Sources of legal authority for judicial enforcement of contracts include common law, civil law in the Province of Québec, and

legislation. Governing legislation varies from province to province and at the federal level.⁸ Legislation enacted at both the federal and provincial levels tends to address specific issues. Provincial legislatures have constitutional authority, pursuant to the power to legislate in the area of property and civil rights in the province, and therefore to enact legislation setting out principles of contract law applicable in the province. The enforcement of all contracts is subject to statutory limitation periods.

Commercial matters are heard at all four levels of court in Canada, depending on the subject matter and monetary value at issue. The provincial/territorial courts hear the majority of cases, including cases up to a certain monetary value, the threshold of which is set by the jurisdiction. Provincial/territorial superior courts hear appeals from the provincial/territorial courts and hear cases that involve higher monetary values. The provincial/territorial courts of appeal hear appeals from the provincial/territorial superior courts. The Federal Court of Canada has jurisdiction over contractual matters specified in federal legislation. The Federal Court of Appeal hears appeals from the Federal Court. Finally, the Supreme Court of Canada hears appeals from the appeal courts, and is the final court of appeal.

Courts that hear exclusively commercial matters include the Commercial List of the Superior Court of Justice of Ontario, and the Quebec Superior Court Commercial Division. The Canadian International Trade Tribunal hears complaints concerning federal government procurement and appeals on customs and excise matters. The Competition Tribunal hears competition matters including mergers, deceptive advertising practices and restrictive trade practices. In addition, various provincial tribunals address commercial issues.

Arbitral awards are enforced, pursuant to provincial and territorial arbitration legislation, through an application to the court with jurisdiction over the matter. This process converts the arbitral award into a judgment of the court, after which ordinary court order enforcement proceedings may begin.

In Québec, a civil law jurisdiction, contract law is part of the Civil Code of Québec. In common law jurisdictions, contract law is mainly found in common law as interpreted by the courts as well as in certain statutes. Book Five of the Civil Code of Québec contains articles on obligations. Common law jurisdictions have not passed legislation on the law of obligations specifically.

In Canada, the law on contracts/obligations start with the presumption of freedom of contract; there are, however, exceptions, namely the doctrines of duress, undue influence (actual and presumptive), and unconscionability. Excuses for nonperformance also include illegality or rendering the contract void for reasons of public policy, mistake, misrepresentation, and fraud. In addition, there are some statutory restrictions set out in federal and provincial statutes. Finally, the enforcement of all contracts is subject to statutory limitation periods.

Canadian law also allows private enforcement of contracts following a court order. Following a hearing, a court will render a judgment and make an order. If the person against whom the order was made (the judgment debtor) does not voluntarily pay, the judgment creditor must enforce the judgment and collect the money. Enforcement of judgments must be through the court that has

⁸ The information provided here is not nor is meant to be construed as legal advice. Readers should seek independent legal advice from Canadian lawyers qualified in the jurisdiction of interest for any matters pertaining to them or proposed activities. The information provided here has no warranty as to accuracy.

jurisdiction over the matter. Several methods are available for collecting an order and the rules for each method may vary by jurisdiction. Judgments can be registered. The judgment is like a charge or lien on the title of the judgment debtor's property, creating a right in the property for an amount equal to the judgment. Writs of Execution permit items (other than land) to be seized by the Sheriff's Office and sold, with the proceeds being paid to the creditor. The Sheriff is a court officer empowered to enforce court orders. In some jurisdictions, such as Alberta and Québec, private bailiffs may enforce judgments and the Sheriff's involvement is not necessary. The third method, garnishment, is a court order demanding that a third party who owes money to a judgment debtor pay the judgment creditor instead of the judgment debtor. Depending on the jurisdiction, garnishment allows the judgment creditor to pursue the debtor's wages, bank account, and/or funds that are owed to the debtor by the third party.

There are also provisions in Canada that permit private remedies against fraud. Specifically, the Competition Act provides a statutory right of action for damages suffered as a result of false or misleading representations. There are also remedies against fraud in tort law. Specifically, the tort of deceit is established when a person has made a fraudulent statement that intentionally causes another person to rely on it to his or her detriment. The Civil Code of Québec also permits private remedies against fraud.

Two of international treaties on contract law ratified by the Government of Canada has ratified and implemented include

- The United Nations Convention on Contracts for the International Sale of Goods, and
- The New York Convention and Enforcement of Foreign Arbitral Awards.

Canada has declared that it will apply the New York Convention only to differences arising out of legal relationships, contractual or not, that are considered commercial under the laws of Canada, except in the Province of Québec, where the law does not provide for such limitation.

As part of the Federal Accountability Act (2006), the Government of Canada has also been reforming procurement. It established the Office of the Procurement Ombudsman, an independent organization with a government-wide mandate to improve fairness, openness, and transparency in federal procurement. It introduced the Code of Conduct for Procurement (2007) to aid the government in fulfilling its commitment to reform procurement, ensuring transparency, accountability and the highest standards of ethical conduct. The Code consolidates the government's legal, regulatory and policy requirements into a concise and transparent statement of expectations for government employees and its suppliers.

The federal government's contract regulations were recently updated to improve fairness, openness, and transparency in contracting by deeming integrity clauses to be included implicitly in all federal bid solicitation documents and procurement contracts.

Canada is a party to the World Trade Organization Agreement on Government Procurement as well as other free trade agreements that contain obligations for government procurement. Canada recently expanded the scope of the WTO AGP to include provincial and territorial procurement, as per the terms of the agreement. These new obligations will take effect once Canada and other AGP parties have ratified the agreement.

Provincial jurisdictions have enacted legislation on electronic commerce on the basis of the Uniform Electronic Commerce Act. Federally, the applicable law is the Personal Information Protection and Electronic Documents Act.

Finally, Canadian law enshrines a process for enforcing judgments. Orders are enforced pursuant to rules of the court with jurisdiction. Foreign orders are enforced using the same procedure applied to domestic orders, once the foreign orders have been recognized. The process for recognizing judgments is defined in provincial legislation and the applicable court rules.

5. Trade Across Borders in Canada

Under Canada's constitution, the regulation of trade and commerce is under federal jurisdiction. Canada's regulation of international trade is governed by an array of federal legislation implemented largely by the Canada Border Services Agency. Trade policy development and trade promotion are undertaken by a number of federal departments, including the Department of Foreign Affairs and International Trade, the Department of Finance, the Department of Agriculture and Agri-Food, the Canada Border Services Agency, and the Department of Public Safety.

Procedures for the importation of goods are established in the Customs Act, while the Customs Tariff establishes rates of customs duties for imported goods. Additional laws address specific issues pertaining to imports, such as restricted imports (Exports and Import Permits Act), food safety (Food and Drug Act), and trade remedies or emergency action (Canadian International Trade Tribunal Act, Special Import Measures Act). Generally, Canada does not regulate or restrict the export of goods, except in a few cases required by domestic or foreign policy. The Government of Canada's laws, including those related to trade, are available in English and French on the Department of Justice website.

Under the Department of Foreign Affairs and International Trade Act, the Minister of International Trade has particular responsibilities with respect to the promotion and expansion of Canada's international trade and commerce. The Minister for International Trade

- Assists Canadian exporters with international marketing and the promotion of export sales;
- Improves the access of Canadian produce, products and services into external markets through trade negotiations and the provision of service and support to business through the global network of the Canadian Trade Commissioner Service;
- Fosters trade relations with other countries; and
- Contributes to the improvement of world trading conditions.

Canada is party to many international trade agreements, including the World Trade Organization (WTO) agreements, the North American Free Trade Agreement (NAFTA), as well as foreign investment protection and promotion agreements. The Minister of International Trade is responsible for implementing these agreements. The Minister also exercises responsibility under the *Export and Import Permits Act*, which supports domestic policy interests (e.g., import controls on supply-managed products and textiles and apparel) and foreign policy interests (e.g., export controls on strategic and military goods). The Minister is also responsible for implementing a number of programs for Canadian exporters and foreign importers. These include:

- ***Export Development Canada (EDC)***. This crown corporation mandated through the Export Development Act facilitates trade between Canada and other countries by providing financial services to Canadian exporters and foreign buyers, including insurance, guarantees, and export financing. In 2009, as part of its Economic Action Plan, the Government temporarily expanded EDC's domestic financing and insurance powers for an initial two-year period. This period has been extended to March 2013.

- **Trade Commissioners.** These operate out of Canadian embassies, high commissions, consulates and regional offices in Canada. They assist Canadian companies seeking export markets by collecting and analyzing information on legislation and commercial practices in foreign markets; by providing businesses with local contact information; by researching and investigating opportunities abroad; and by troubleshooting commercial issues with local authorities, as appropriate.
- **Virtual Trade Commissioner.** This computerized tool allows exporters to access market reports and request services from trade commissioners and personalize a web page of with country information and business opportunities that match their international business interests.
- **Canadian Commercial Corporation (CCC).** This crown corporation established under the Canadian Commercial Act helps exporters enter markets abroad through government-to-government contracts and procurements.

Canada has streamlined customs processing procedures for low-value commercial shipments (the current threshold is C\$1600, to increase to C\$2,500, pursuant to the Canada-United States Border Action Plan, later this year), which account for close to 70 percent of shipments processed by commercial delivery companies. Authorized importers, including delivery companies such as FedEx, UPS and DHL, post a bond and are eligible for streamlined and expedited processing.

Recent policy developments for implementation of the Bogor Goals and which will facilitate trade in the Asia Pacific region are summarized in the attached table. The report includes web links.

III. Resources Bibliography

Resource	Website
Bank of Canada	bankofcanada.ca
BizPal	bizpal.ca
Canada Business Network	canadabusiness.ca
Canadian Commercial Corporation	ccc.ca
Canadian Trade Commissioner	tradecommissioner.gc.ca
Department of Justice	justice.gc.ca
Export Development Canada	edc.ca
Foreign Affairs and International Trade	international.gc.ca
Invest in Canada	investincanada.gc.ca
Office of the Superintendent of Financial Institutions	osfi-bsif.gc.ca

Highlights of recent policy developments that indicate how Canada is progressing towards the Bogor Goals and key challenges it faces in meeting the goals.

Individual Action Plan Update for Canada for 2012

IAP Chapter (subchapter and section heading, if any)	Improvements Since 2010 IAP	Improvements Planned
Tariffs	<p>On October 1, 2010, the Government of Canada announced the implementation of a new duty remission framework for imported cargo vessels, tankers and large-sized ferry-boats which will lead to estimated annual customs duties savings of C\$25 million.</p> <p>On November 27, 2011, the Government announced the elimination of a further 70 tariffs on items used in manufacturing. Since 2009 the Canadian government has eliminated customs duties on more than 1800 tariff items used by manufacturers.</p>	
Website	<p>www.gazette.gc.ca/rp-pr/p2/2010/2010-10-13/html/sor-dors202-eng.html</p> <p>www.fin.gc.ca/n11/11-123-eng.asp</p> <p>www.canadagazette.gc.ca/rp-pr/p2/2011/2011-12-07/html/sor-dors260-eng.html</p>	
Nontariff measures	No new information to report	
Services	No new information to report	
Investment	<p>Pursuant to the Investment Canada Act, new thresholds for review for WTO member investors, or where a Canadian business is ultimately controlled by a WTO member (other than a Canadian) before its acquisition, must be determined and become effective on January 1 of each year. The amount is equivalent to the growth in Nominal Gross Domestic Product at market prices as published by Statistics Canada for specified periods, multiplied by the amount determined for the previous year.</p> <p>The amount for the year 2011 is C\$312 million and the amount was published in the Canada Gazette Part I on February 12, 2011, page 238.</p>	It is expected that the review threshold for 2012 will be C\$330 million dollars. The official amount will be published in the Canada Gazette in early 2012.
Website	www.ic.gc.ca/eic/site/ica-lic.nsf/eng/home	
Standards and Conformance	<p>The Standards Council of Canada (SCC) accredits Canada's standards-development organizations and approves National Standards of Canada. In addition, SCC accredits over 400 conformity assessment bodies, which test or certify millions of products or services or systems for the Canadian and international marketplace.</p> <p>Canada (through) SCC maintained strategic participation in International Organisation for Standardisation (ISO) and International Electrotechnical Commission (IEC) technical committees. The total number of Canadians participating in international standards development committees increased from 2,648 to 2,758 by March 31, 2011</p> <p>The total number of Canadian federal government employees involved in international standards development increased from 378 to 401, by March 31, 2011.</p> <p>SCC signed a cooperation arrangement with the Mongolian Agency for Standards and Technology and renewed its cooperation arrangement with the Standardization Administration of China (SAC).</p> <p>SCC continues to be actively involved in a number of multilateral accreditation arrangements, including the International Accreditation Forum (IAF), the International Laboratory Accreditation Cooperation (ILAC), the Pacific Accreditation</p>	Canada's goal is to continue to increase the harmonization between new Canadian standards and those adopted by international organisations such as the ISO and the IEC, whenever appropriate.

IAP Chapter (subchapter and section heading, if any)	Improvements Since 2010 IAP	Improvements Planned
	<p>Cooperation (PAC), and the Asia-Pacific Laboratory Accreditation Cooperation (APLAC).</p> <p>Canada maintained its international influence with the election of SCC's CEO to ISO's Technical Management Board and the election of Canadian candidates to the IEC standards management board and the IEC Council Board.</p>	
Website	<p>www.scc.ca</p> <p>www.wto.org/english/tratop_e/tp346_e.htm</p>	
Contact	<p>info@scc.ca</p>	
Customs Procedures Measures to Secure Trade	<p>On June 25, 2010, the Canada Border Services Agency (CBSA) signed three Mutual Recognition Arrangements (MRAs) with customs organizations in Japan, Singapore and South Korea. MRAs allow customs administrations to work together to improve their capability to target high risk shipments while expediting legitimate cargo.</p>	
Website	<p>www.cbsa.gc.ca/media/release-communique/2010/2010-06-25-eng.html</p>	
Contact	<p>pip-pep@cbsa-asfc.gc.ca</p>	
Customs Procedures Use of Information Technology and Automation	<p>On November 1, 2010, the Canada Border Services Agency (CBSA) announced the implementation of the first stage of the eManifest initiative. Electronic data interchange (EDI) systems are now available for highway carriers who can transmit their pre-arrival cargo and conveyance data to the CBSA before arriving at the border. In 2011, the eManifest Portal was introduced by the CBSA to allow highway and rail carriers, freight forwarders and marine mode importers to electronically transmit their pre-arrival information through the Internet. The eManifest Portal was developed primarily for small- to medium-sized enterprises to facilitate their compliance and ease the transition from paper reporting to pre-arrival electronic data transmission.</p>	<p>When fully implemented, eManifest will be a virtually paperless process that starts before shipments reach the border. The collection and risk assessment of advance commercial information, sent electronically to the CBSA, will allow low-risk shipments to be identified before arrival and processed in a more efficient manner upon arrival in Canada.</p>
Website	<p>www.cbsa.gc.ca/prog/manif/menu-eng.html</p>	
Contact	<p>eManifest-manifestelectronique@cbsa-asfc.gc.ca</p>	
Intellectual Property Rights	<p>On September 29, 2011 the Government of Canada introduced Bill C-11 the Copyright Modernization Act. This legislation: implements the rights and protections of the World Intellectual Property Organization Internet Treaties, which brings Canada in line with international standards; gives copyright owners the tools they need to combat piracy; clarifies the roles and responsibilities of Internet Service Providers (ISPs) and search engines; promotes creativity and new methods of teaching in the</p>	

IAP Chapter (subchapter and section heading, if any)	Improvements Since 2010 IAP	Improvements Planned
	<p>classroom by providing greatly expanded exceptions for education; provides legal protection for businesses that choose to use technological protection measures or "digital locks", to protect their intellectual property as part of their business models; encourages innovation by eliminating some uncertainty facing innovative businesses; and gives consumers the ability to, among other things, record their favorite TV shows to watch at a convenient time using the technology of their choice, put music from a CD on their MP3 player, or create a mash-up and post it on a social media website. Second Reading on Bill C-11 began in the House of Commons on October 18, 2011 and the Government intends to deliver on its commitment to move quickly to modernize the Copyright Act.</p>	
Website	<p>www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5144516</p>	
Competition Policy	<p>In 2009, the Canadian Parliament passed amendments to the Competition Act that included, among other things: reforms to the merger review process; amendments to the conspiracy provisions; the introduction of financial penalties for abuse of dominance; higher penalties for deceptive marketing and for obstruction and non-compliance; and the repeal of various industry-specific and pricing practices provisions. The amendments came into force on March 12, 2009, with the exception of the reforms to the competitor collaboration provisions (i.e., amendments related to sections 45 and 90.1), which came into force on March 12, 2010.</p> <p>To provide transparency and predictability with respect to the enforcement of the Competition Act, the Competition Bureau has developed or revised many of its guidance documents.</p> <p>On December 15, 2010, Bill C-28, Canada's Anti-Spam Law received Royal Assent. The intent of the legislation is to deter the most damaging and deceptive forms of spam that impact Canadians and Canadian businesses. The legislation contains amendments to the Competition Act that will promote greater truth in online advertising for the benefit of consumers, legitimate businesses, and the economy.</p> <p>The new law will be enforced by three organizations, the Canadian Radio-television and Telecommunications Commission, the Competition Bureau, and the Office of the Privacy Commissioner. It also includes a private right of action that will allow Canadian consumers and businesses to take civil action against those who violate the legislation.</p> <p>The Anti-Spam Law is not in force at this time. A specific date for coming into force will be set in the coming months.</p>	
Website	<p>2009 amendments: www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_03036.html</p> <p>Guidance documents: www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00139.html</p> <p>Canada's Anti-Spam Law: fightspam.gc.ca/eic/site/030.nsf/eng/home</p>	

IAP Chapter (subchapter and section heading, if any)	Improvements Since 2010 IAP	Improvements Planned
Government Procurement	<p>On December 15, 2011, Canada welcomed the successful conclusion of negotiations in Geneva to modernize the World Trade Organization's Agreement on Government Procurement (GPA) and expand market access opportunities for the 15 parties—covering a total of 42 WTO members—to the agreement.</p> <p>In addition, since 2007, Canada has negotiated a number of Government Procurement Chapters in new Free Trade Agreements, including those with Peru, Panama and Colombia. The Government Procurement Chapter negotiated with Chile concluded in 2006 and came into force in 2008. In February 2010, Canada concluded the Canada-U.S. Agreement on Government Procurement, which for the first time includes commitments at the subfederal level. Specifically, Canada now includes entities from two territories and all ten provinces under its GPA commitments with respect to goods, services and suppliers from the U.S. This coverage has now been extended to most other GPA parties with the conclusion of those negotiations, pending eventual ratification. The thresholds for procurements subject to international trade agreements are updated every two years and published by the Treasury Board Secretariat, most recently in January 2012.</p>	
Website	www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/2011/12-19-eng.asp	
Deregulation/Regulatory Review	No new information to report	
Implementation of WTO Obligations/ROOs	No new information to report	
Dispute Mediation	No new information to report	
Mobility of Business People	<p>55 countries and territories are visa exempt for travel to Canada. The following APEC economies qualify for a visa exemption for travel to Canada : Australia, Brunei Darussalam, Hong Kong, Japan, Korea, New Zealand, Papua New Guinea, Singapore, the U.S., and Chinese Taipei* (since November 2010)</p> <p>(*holders of an ordinary passport that contains a personal identification number)</p> <p>Canada continues to facilitate APEC Business Traveller Card (ABTC) members through special service counters at its eight major international airports.</p> <p>Canada's transitional membership has been extended until 2014.</p>	<p>Canada has committed to piloting a domestic ABTC scheme offering Canadian businessmen the same level of service that Canada currently offers other APEC economies</p> <p>The pilot will be available to Canadian business travelers only.</p> <p>The pilot will offer participants the same level of service currently offered</p>

IAP Chapter (subchapter and section heading, if any)	Improvements Since 2010 IAP	Improvements Planned
		to ABTC holders when they arrive in Canada.
Website	www.cic.gc.ca/visit cbsa-asfc.gc.ca/media/facts-faits/064-eng.html	
Contact	Lily Ooi, Director, Trusted Travellers, Canada Border Services Agency	Same
Official websites that gather economies' information	<p>Statistics Canada is a federal government agency which produces statistics that help Canadians better understand their country—its population, resources, economy, society and culture. In addition to conducting a Census every five years, there are about 350 active surveys on virtually all aspects of Canadian life. In Canada, providing statistics is a federal responsibility. As Canada's central statistical office, Statistics Canada is legislated to serve this function for the whole of Canada and each of the provinces and territories.</p> <p>The Bank of Canada is the nation's central bank, responsible for Canada's monetary policy, bank notes, financial system and funds management.</p>	
Website	www.statcan.gc.ca www.bankofcanada.ca	
Transparency	No new information to report	

RTAs/FTAs	
Current agreements and agreements under negotiation	<p>Canada currently has 7 FTAs with 11 countries in force (of which Canada is working towards modernizing 3), has successfully concluded negotiations on an additional 3 FTAs (which are pending ratification), and is engaged in 9 ongoing negotiations, at various levels of progress.</p> <p>Canada has 24 Foreign Investment Promotion and Protection Agreements in force and 12 under negotiation, as well as a range of other types of agreements and initiatives such as Science and Technology Cooperation Agreements and Air Agreements.</p>
Future plans	Canada has a number of other initiatives underway with key markets of interest, including a Joint Study with Japan on a possible Economic Partnership Agreement, and consultations with Trans-Pacific Partnership members on our possible participation in the negotiations.
Website	Detailed information on all Canadian trade and investment agreements and negotiations can be found on the Department of Foreign Affairs and International Trade's website at: www.international.gc.ca/trade-agreements-accords-commerciaux/index .

Other voluntary reporting areas: No new information to report

Chile

I. General Information

A sound macroeconomic leadership along with a high degree of international economic integration has led Chile to achieve sustained growth over recent years. In addition, Chile provides one of the most stable institutional frameworks within Latin America, with outstanding performances in the spheres of rule of law, corruption control and regulatory quality, as evidenced by the Worldwide Governance Indicators; thus, the country is rapidly rising as one of the most attractive business environments in the neighborhood.

As a matter of fact, Chile stands first in the World Bank Ease of Doing Business Rank in Latin America and ranks 39th worldwide, after a dramatic rise of 35 positions in the starting a business indicator and 27 places in the getting credit index in the 2012 rank. This is a reflection of the strong commitment of the policy makers to boost competitiveness, productivity and growth, while consolidating Chile as a world-class hub for foreign investment and promoting entrepreneurship and innovation. This commitment has resulted in the implementation of several new programs, as well as the reinforcement of existing ones, under a unified and comprehensive strategy to achieve development by 2018.

Furthermore, Chile has notably achieved this market openness without jeopardizing its economic stability. A sound and institutionalized fiscal policy along with an independent monetary policy have fostered an ideal business setting, as unveiled by the remarkable performance of the country during the recent global financial crisis.

Although several entities take part on the various stages of business activities, the general outline of public sector structure related to the EoDB areas is depicted in the following table:

EoDB Area	Governmental Entity	Related Agencies
Starting a business	Ministry of Economy	Technical Cooperation Services (SERCOTEC)
		Production Development Corporation (CORFO)
		Smaller Enterprises Division
	Ministry of Agriculture	Institute of Agricultural Development (INDAP)
	Ministry of Social Development	Solidarity and Social Investment Fund (FOSIS)
	Ministry of Finance	Internal Tax Service (SII)
Dealing with permits	Ministry of Housing and Urban Development	
	Ministry of Transport and Telecommunications	

EoDB Area	Governmental Entity	Related Agencies
	Ministry of Public Works	
	Ministry of Health	
	Ministry of Environment	
	Municipalities	
Getting credit	Ministry of Finance	Superintendence of Banks and Financial Institutions (SBFI)
	Ministry of Economy	Production Development Corporation (CORFO)
Enforcing contracts	Ministry of Justice	
Trade across borders	Ministry of Finance	National Customs Service
	Ministry of Foreign Affairs	General Directorate of International Economic Relations (DIRECON)

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Chile

The process of starting a business in Chile is relatively simple (a detailed list of the steps in order is provided below). The first step is to define the type of company to be created. In Chile, there are several types of company. The next step is to obtain a **Tax Identification Number**, called the RUT (*Rol Unico Tributario*). This can be done either online or on site at the Internal Tax Service or SII (*Servicio de Impuestos Internos*).

The next step is to define the **type of company** to be created. In Chile, there are three main types of company. While there is no minimum capital requirement, the SII requires sufficient capital on hand.

Once a company has been established, a **business start-up statement** must be submitted to the SII stating that the business will undertake activities that may be subject to taxation.⁹

The steps for starting a business are as follows:

1. Notarize articles of incorporation, record them in a public deed and send an excerpt of the public deed to the Official Gazette and to the Commercial Registry
2. Request the registration of the company online and obtain a registration certificate
3. Obtain a RUT (*Rol Unico Tributario*) and submit a business start-up statement to the National Tax Service, which may be done online
4. Print receipts and invoices at an authorized printing company
5. Stamp accounting books, invoices and other documents at the SII
6. Obtain a working license (*patente municipal*) from the appropriate municipality
7. Register with the labor-related accident insurance (*Seguro Social contra Riesgos de Accidentes del Trabajo y Enfermedades Profesionales*) at a Security Mutual (*Mutuales de Seguridad*).

There are various projects underway that attempt to further simplify this process (see section 1.2, Trends), incorporating new technologies for greater efficiency and simplicity in the process of

⁹ “Doing Business in Chile.” Mediaside SARL and the Chilean government, 2012.

starting a business. For example, in January 2011, the Congress approved Law 20,494, which reduced the amount of paperwork.

Types of businesses

Chilean laws distinguish between different types of businesses:

- Limited Liability Company (Law 3,918, 1923)
- Individual Limited Liability Company, EIRL (Art. 2 Law 19,857)
- Corporation (Law 18,046, 1981)
- Joint Stock Company (Law 20,190)

Additional distinctions between businesses are specified by Law 20,416 as follows:

- Micro businesses: Companies with an annual income from sales, services and other activities under 2,400 UF¹⁰ in the last calendar year
- Small businesses: Businesses with an annual income from sales, services and other activities between 2,400 UF and 25,000 UF in the last calendar year
- Medium-sized enterprises: Enterprises with an annual income from sales, services and other activities between 25,000 UF and 100,000 UF in the last calendar year

Regulations provide separately for general partnerships, closely held companies with limited liability, and joint stock companies. For example, general partnerships are regulated by the Chilean Civil Code, closely held companies with limited liability are regulated by Law 3,918, and joint stock companies are regulated by Law 20,190. Finally, sole proprietorships or partnerships are regulated by the Civil Code.

Several pieces of legislation regulate the process of starting a business. The General Law of Cooperatives (DFL 5, 2003) allows the formation of “special agricultural cooperatives”. Agricultural cooperatives are subject to special taxation of corporations and partners to shareholders.

Law 19,799 regulates **electronic documents and signatures** and their authentication. The government is currently assessing ways to expand the use of electronic signatures and electronic transactions.

Government agencies dedicated to the **informal economy** include Technical Cooperation Services (SERCOTEC), the Institute of Agricultural Development (INDAP), the Solidarity and Social Investment Fund (FOSIS). SERCOTEC promotes and supports initiatives that improve the competitiveness of the micro and small businesses, while strengthening the management capacity of its entrepreneurs. INDAP supports and promotes small farmers by promoting productive activities that contribute to overcoming poverty and to the sustainability and competitiveness of domestic agriculture. FOSIS is a fund that supports people in poverty and vulnerability in the areas of entrepreneurship, work and social empowerment, mainly through community enterprise programs, seed capital, training and technical advice.

¹⁰ Unidad de Fomento (UF) is an inflation-linked Chilean unit of account.

The **public sector** institutions that support business start-ups include SERCOTEC, INDAP, FOSIS, and the Production Development Corporation (CORFO). CORFO is a government agency that seeks to increase productivity by promoting entrepreneurship and innovation.

Public information on laws and regulations is available to the public in the library of the National Congress (see Resource Bibliography).

Specifically, translations of regulations and institutional procedures, as well as other measures designed to make registering a business easier, faster and cheaper for foreign companies, can be found for the following:

- Decree Law 600: Foreign Investment Statute
- Law 18,045: Securities Market Law
- Law 18,406: Corporations Law
- Compendium of Foreign Exchange Regulations, Central Bank of Chile

With respect to **public participation**, Law 20,500 creates a mechanism for public participation, including the private sector, which requires that public consultations are actively sought during the process of regulatory reform for certain types of laws and regulations.

Law 20,494 simplifies the procedures for the registration of businesses, creating a **one stop shop**.

Although **advisory services** are not available free of charge during the business registration process, there is a strong legal framework with accessible public information to service entrepreneurs.

Trends

The process of starting a business in Chile is fast becoming one of the simplest in Latin America. This is particularly true since the passage of Law 20,494 in March 2011 that reduces costs and simplifies requirements for the publication and registration of the articles of incorporation.

This law

- Obligates local governments (municipalities) to provide either a temporary or permanent working license immediately upon request if the specified requirements are met. Before this law, the average waiting period was 14 days.
- Obligates the SII to authorize the use of electronic invoicing (including the initial invoice) upon obtaining the RUT and submitting the business start-up statement. This reform will allow entrepreneurs to operate immediately, eliminating the previous 16 day waiting period.
- Obligates the Official Gazette to publish the excerpt of the public deed on its web page rather than in hardcopy, while eliminating the publication fee for all companies with an initial capital under 5,000 UF (around USD 230,000), which in turn only have to pay a 1 UTM¹¹ (approximately USD 80) fee.

This reform reduces time for business creation, from 22 days to 7 days, as well as the associated costs, while eliminating several procedures.

¹¹ Chilean monthly tax unit.

Additionally, the Congress is now reviewing the Company Establishment Bill, which would allow a business to start in one day, free of charge. The initiative is based on a fully electronic system that would permit the following:

- A simplified, free registration process
- A public, electronic Registry of Companies and Societies
- Automatic issuance of the RUT and the business start-up statement by the SII
- Simple, cheap and efficient modifications, transformations, mergers, divisions, dissolutions and terminations of business and management companies

Alongside this, the Government is making efforts to increase entrepreneurship and business formalization. It seeks to target the different stages of the life cycle of companies, from facilitating the creation of a business, supporting it in the early stages of growth and maturation processes and improving the exit and closure process. This aims to increase entrepreneurship and opportunities in a global economy, while promoting “second chance” start-ups. Other projects aspiring to increase formality and enhance entrepreneurship are:

- **Street Vending Modernization Act:** regulates the operation of street vendors
- **Establishment of an SME Financing Portal:** Facilitates the provision of credit and improves lending conditions
- **“Corre el IVA para el 20” (“Move the VAT payment for the 20th”):** campaign to encourage the widespread use of electronic billing
- **Creation of the “Sello Pro PYME” (Pro-SMEs Stamp):** Provides a certification to companies that pay SME suppliers within 30 days.
- **Competitive Boost Agenda:** Originally considered 50 measures of high economic impact by improving the performance of business and economic activity in the country; 10 additional measures have been devised to be completed during 2012. The agenda forms the most comprehensive package of microeconomic measures in the last 10 years to raise the productivity of the economy in general, with an emphasis on the exporting sector, which is crucial to development goals. The measures were devised upon the identification of barriers to entrepreneurship in a public-private effort which encompassed several working groups. It includes 18 bills, plus updates of regulations, development of new programs and improvements in management and processes in public services that work with the productive sector.
- **Immediate Establishment of Micro Family Businesses:** Modification of Micro Family Business Law to mandate that municipalities offer an electronic platform for associated paperwork. This may be the same platform used by the municipality, or the Ministry of Economy’s free platform. With this, the business establishment process is reduced from an average of 19 days to immediate.
- **“Chile, País de Emprendedores Propietarios” (Chile, Country of Proprietary Entrepreneurs):** Aims to facilitate the ownership of entrepreneurs’ business premises.
- **CORFO Productive Promotion:** In 2011, the resources for smaller firms increased by 130 percent and the proportion of beneficiary companies increased by 50 percent.
- **Seed Capital (CORFO):** Aims to move from 250 to 10,000 operations in seed capital through secured bank loans with grace periods and incubator certification requirements. The application requires submission of the *Ficha de Protección Social* (Social Security Scorecard). There are two distinct lines:

- Seed Capital Company, for the growth and strengthening of micro and small enterprises, which in 2011 delivered resources between CLP 3 and 6 million per beneficiary.
- Seed Capital Entrepreneurship, which aims to promote and support a new generation of businesses, providing resources and technical assistance.
- ***Start-Up Chile (CORFO)***: Seeks to attract early stage, high-potential entrepreneurs to bootstrap their startups in Chile, using it as a platform to go global. The end goal of the accelerator program is to convert Chile into the definitive innovation and entrepreneurial hub of Latin America. In 2010, the program --at that point just a pilot-- brought 22 startups from 14 countries to Chile, providing them with US\$40,000 of equity-free seed capital, and a temporary 1-year visa to develop their projects for six months, along with access to the most potent social and capital networks in the country. The following year, during the first two processes, 241 startups from more than 30 countries were chosen from over a 1,000 applicants, aiming to achieve 1,000 startups by 2014.
- ***Emporio SME (SERCOTEC)***: Consists of the provision of a space located in the most important mall of a regional capital that brings together a significant group of micro and small businesses to display and sell their products.
- ***Bee Capital (SERCOTEC)***: Transfers resources through a competitive and non-refundable fund to support female micro and small entrepreneurs. CLP 3.7 billion will benefit 1,550 female entrepreneurs.
- ***Digital Entrepreneurship (SERCOTEC)***: Training program for entrepreneurs to foster their use of e-commerce tools
- ***Project “Second Chance” Start-Ups (express Bankruptcy Act)***: This would allow entrepreneurs to initiate “second chance” start-ups. It is intended to facilitate the liquidation of assets of smaller companies and the distribution of surplus among the creditors, settling unpaid balances and removing entries from the trade journal.
- ***“Proyecto de Ley de Reorganización y Liquidación de Empresas y Personas” (Companies’ Reorganization and Liquidation Project)***: This would allow the reorganization of viable enterprises and liquidation of nonviable firms in a short time.
- ***Law amending the tax incentives for research and development (R&D)***: This law aims to double spending on R&D performers for 2014 (0.4 percent of GDP to 0.8 percent). It allows a tax discount of up to 35 percent of total project costs. This benefits society as a whole and accelerates economic growth through the promotion of innovation, productivity and competitiveness.

2. Dealing with Permits in Chile

Background

In Chile all construction requires, before its execution, a building permit issued by the Director of Municipal Works of the respective municipality, then, to use the new construction will require receipt of the work by the same authority as required by Decree 458 of 1975, General Law of Urban Planning and Construction, Articles 116 and 144.

Then, if any commercial activity requires a "business license" before its operation, one must be granted by the Municipality, pursuant to Article 58 of the General Law of Urban Planning and Construction and Article 23 of Decree 2,385, 1996, the Interior Ministry, which sets the updated

text of Decree Law 3,063, 1979, Municipal Revenue Act. In summary, the main permit is the aforementioned "building permit". The authority is the Director of Municipal Works of the respective municipality.

The government agency that supports the private sector in permitting is the Government: Municipal Works Division. Claims can appeal to the Regional Secretariat of the Ministry of Housing and Urban Development, with powers to resolve according to the General Law of Urban Planning and Construction.

There are several areas where the public can gain access to information on these matters, including (1) The Official Gazette (in Chile laws enter into force only once published in this media), (2) the Internet (using www.bcn.cl and looking up the law by its number), and (3) the respective Municipality or offices of the Ministry of Housing and Urban Development. In addition, on the internet translations of regulations and institutional procedures can be found.

The following economy-wide agencies play a role in the issuance of construction/development permits:

- The economy-wide environmental authority: In case of projects having to go through the System of Environmental Impact Assessment in accordance with Law 19,300.
- Regional and local planning authorities: The buildings must meet the current regulatory plans, at both regional and communal level.
- Other regional and local authorities that may inspect, monitor, or otherwise be involved in the construction process: Municipality, Ministry of Housing and Urban Development, Ministry of Environment.
- Fire authorities: Only once the construction is ready.
- Authorities dealing with construction standards: Municipality, Regional Secretary of the Ministry of Housing and Urban Development, Regional Secretary of the Ministry of Environment.
- Authorities dealing with occupational safety and health: Municipality, Regional Secretariat of Health.
- Authorities dealing with infrastructure: Government Inspector of the Ministry of Public Works, in the case of public buildings.
- Authorities dealing with utilities and communications: The Superintendence of Electricity and Fuel, the Superintendence of Sanitary Services and the Telecommunications Under-secretariat, where appropriate.
- All other authorities dealing with post-license inspections: Mainly the Municipality. Then depending on the type of building, the Superintendence of Electricity and Fuel, Fire Department, the Regional Ministerial Secretariat of Health, Regional Ministerial Secretariat for the Environment.

In certain cases, regional and local counterparts play an important role in authorizing permits. For example, projects that include over 150 parking spaces must be approved by an Impact Study on Transport System EISTU (in its Spanish acronym) by the Regional Ministerial Secretary for Transport and Telecommunications before requesting the building permit.

The fees payable for permits are set by law, Article 130 of the General Law of Urban Planning and Construction.

Government licensing authorities are transparent in their processes in that the permits issued are public documents, for which anyone can apply. In addition, any claims are resolved by the Regional Ministerial Secretariat of Housing and Urban Development.

To comply with all construction licensing procedures, one must have all the information and certificates required by the General Law of Urban Planning and Construction and its rules, as well as the General Urban Development and Construction Ordinance. Permission and reception of certificates can be found in section 5.1.6 and 5.2.6, respectively of the Ordinance.

The Regional Ministerial Secretariat of Housing and Urban Development is responsible for resolving permit related disputes. In addition, The National Consumer Service (SERNAC) serves as the ombudspersons office.

Trends

A bill amending the General Law of Urban Planning and Construction which will facilitate obtaining building permits, the “Construction Quality Bill,” is currently pending in Congress.

Also in progress is the issuance of two modifying decrees of the General Urban Development and Construction Ordinance for the same purpose. Both correspond to current government initiatives, through the Ministry of Housing and Urban Development.

During the second half of 2012, another bill amending the General Law of Urban Planning and Construction, which will facilitate obtaining building permits, will be presented to the Congress, “The Contributions to Public Space Bill”, which replaces the current processing of Impact Studies over the Transportation System (EISTU).

3. Getting Credit in Chile

Background

The General Banking Act states that Superintendence of Banks and Financial Institutions (SBFI) is responsible for the supervision of banks and financial institutions that are not supervised by other authorities. Additionally, the Superintendence is responsible for the supervision of entities that extend credit to the public or specific populations. Savings and Credit Cooperatives with assets over 400,000 UF (approximately USD 18,000,000) are also supervised by the SBFI.

All banks must be organized as corporations (*sociedades anónimas*) and are therefore managed by directors appointed by the shareholders. In general terms, the Board of Directors is governed by the same rules as those of any other corporation and by some special rules contained in the General Banking Act and in specific regulation issued by the Superintendence.

Cooperatives, in turn, are managed by an Administration Counsel (*Consejo de Administración*) appointed by the partners.

Under Chilean law, financial intermediaries that receive deposits and lend money (banks and savings and credit cooperatives) are supervised by the SBFI. To date, 24 banks and six cooperatives are under the Superintendence’s supervision. The main provisions applicable to such

entities are contained in the General Banks Act, General Cooperatives Law, Law 18,010 of Credit Operations and other regulation issued by the Superintendence.

Financial entities that do not take deposits and engage in activities such as leasing, factoring or other credit operations are not under the Superintendence's supervision and are not subject to special regulation. However, such entities may be under supervision of the Superintendence of Securities and Insurance if they are public corporations, and shall comply with provisions of Law 18,010. Nearly 100 of these entities operate in Chile as credit suppliers of a relevant scale.

With respect to **guarantees registries**, there are two agencies in charge of record keeping: the Real Estate Registry, in which all mortgages are registered; and the Civil Registry, for pledges on vehicles and pledges without displacement. Aside from these registries, deposit warehouses (*almacenes generales de depósito*) receive goods in deposit, which can be transferred or pledged by the endorsement of the documents representative of the deposit. These activities are regulated by Law 18,690, and are subject to the SBFI's supervision.

There is currently one public **credit information system** and at least four private systems. Regarding the public system, the SBFI collects all information related to debtors in the banking system and then distributes it to the banks. The information includes debt amounts, delayed payments and number of banks in which the debtor has credit. Guarantees, collateral, leasing, and factoring operations are not reported.

The specific legal framework for the public credit information system is the General Banking Law and the Superintendence's regulations (Chapters 18-5 and 20-6 of the Updated Compilation of Regulations or *Recopilación Actualizada de Normas*). These regulations define the type of information to be reported, its periodicity, statute of limitations applicable to the information (6 years from the repayment deadline), confidentiality, purpose and exclusivity of the information.

The information in the private credit information systems depends on the system itself. They generally record negative information on debtors, collected from banks, financial institutions not under the Superintendence's supervision, and other companies. The private systems contain the same information as the public system, with the addition of information from non-banking operations, leasing, factoring and other types of documented debts such as checks, bills of exchange, and promissory notes, among others. They also contain more detailed information, such as age, nationality, gender and occupation. Only the reporting agencies and the debtors have access to the public system. In the private systems, access is open to anyone for a fee, as long as the purpose is credit-risk assessment or the affected party authorizes it.

Regarding the private systems, Law 19,628, Law 19,812 and Law 20,575, as well as Supreme Decree 998 set forth, amongst other, the following:

- Obligation of banks and notaries public to report violations or disputes to the Santiago Chamber of Commerce;
- Rules over the use and treatment of personal information; and
- The statute of limitations for the data in the registries is of 5 years. Also, it is forbidden to continue to display information about debts that have already been paid.

The main legal framework regarding **mortgages and pledges** is codified in the Chilean Civil Code. Chilean law recognizes different kinds of pledges, but the most important is the Pledge without Displacement, regulated by Law 20,190.

The legal framework for **secured transactions** enables a quick, inexpensive and simple creation of a proprietary security right without depriving the applicant's use of his or her assets, as regulated by Law 20,190.

Chilean law allows **non-traditional financing**. Types of non-traditional financing include financing for franchisees through agreements between franchisees and financial institutions (through loans or credit lines), leasing and factoring (which may even be guaranteed through CORFO if the company lacks sufficient financing guarantees). There is also a Guarantee Fund for Small Entrepreneurs (FOGAPE), a state fund designed to guarantee a certain percentage of the capital of credits, leasing and other financing mechanisms used by micro and small businesses who have no or insufficient collateral to access financing. Its scope was expanded to provide temporary guarantee to medium and large enterprises

In Chile, the following can be used as **collateral**: tangible property (e.g. motor vehicles, machinery and animals), rights (e.g. credits and concession fees), debt securities (e.g. stocks, bonds and promissory notes) or others, such as future profits or inventories. Also, future crops can be used as collateral, as stipulated in Article 2 of Law 4,097. Finally, the law also allows for new, yet undefined forms of non-traditional financing.

The creation and modification of pledges must be made by public deed or private document, in which case the signatures of those present must be authenticated by a notary public and formalized in the notary's records. Within three working days of signing the deed of pledge agreement, the notary must submit a certified copy of the agreement for entry in the registry of pledges. This registry allows one to record in a public, electronic, nationwide and single way, whereby the pledge agreements can be made on a variety of goods such as vehicles, machinery or profits of a business, allowing public access to credit through various means, with guaranteed goods left as a security by a particular debtor.

The fees associated to the Registry of Pledges without Displacement are as follows:

- Entry in the Registry of Pledges without Displacement: CLP 30,490 (around USD 60)
- Lifting of the Registry of Pledges without Displacement: CLP 30,490 (around USD 60)
- Amendments to the pledge contract: CLP 7,500 (around USD 15)

As this is an electronic registry, electronic applications are required, with an electronic signature.

The registry was created on June 5, 2007, by Act 20,190, to encourage access to credit small and medium enterprises.

Trends

Chile has recently strengthened its secured transactions system by implementing a unified collateral registry and a new legal framework for nonpossessory security interests.

Although no current reforms are underway to improve credit bureaus' efficient dissemination of credit information, there are several notable trends and bills in Congress relevant to credit information systems. The most important are:

- To include any entity acting as a creditor, especially retail entities
- To strengthen quality controls and security of information
- To improve the structure and capacity of regulatory and supervisory frameworks

- To strengthen information property rights
- To reduce the use of the information for discrimination

4. Enforcing Contracts in Chile

Background

One of the requirements for a healthy national economy is the institutional framework for resolving conflicts and enforcing contracts. Given that both foreign and domestic investors seek security and stability, they pay particular attention to the quality of the judicial and public institutions. Therefore, the economies with stronger institutions will receive more investments and business activity, helping to decrease the unemployment rate and increase economic growth.

The **judicial enforcement of contracts** in Chile is regulated by law and centralized in the Courts of Justice. Trials, judgments and the enforcement of judgments are carried out by the Civil Courts of Justice. Although you can get an enforcement title outside the jurisdiction (v.gr. arbitration judgment, a Deed) to force it, you must submit a formal executive claim in the Civil Courts and initiate an enforcement procedure. There is no private enforcement of contracts in any case, even if the party has obtained a judgment in its favor.

With respect to the **alternative dispute resolution** systems (ADRs), only arbitration is regulated by civil law. The Organic Court Code and the Civil Procedure Code provide a framework of basic rules of arbitration that must be followed. It also regulates certain forced arbitration matters (v.gr. conjugal society partition, goods partition). Even so, in almost all civil and commercial contracts, the parties to those contracts include arbitration clauses. The other ADRs (conciliation, mediation, negotiation) are not included in the civil procedure rules, but in family and labor procedural rules, among others.

With respect to ADR development in Chile, the recent judicial reform in labor judicature (since 2008) has incorporated conciliation, a voluntary process in which the parties discuss their problem with a third party ('conciliator'), who listens to their arguments and provides an agreement, which the parties can accept, thus terminating the process.

Commercial courts do not exist, but labor, family and antitrust courts do, among others. That being said, the commercial conflicts are handled by the Civil Courts in its ordinary (common) procedure.

As mentioned previously, **arbitration** is outside the scope of the common jurisdiction but is frequently included in civil and commercial contracts to solve disputes. In Chile, there is no official data on the mediation mechanism and its application to commercial conflicts because the judicial system is not involved in civil¹² or commercial mediation processes. The judicial system's only involvement occurs when the parties want to present a mediation agreement to the Court in order to finalize a procedure.

The arbitration award is binding to the parties, but if one of them requires the use of the public force to attain enforcement, that party has to request so the Civil Courts of Justice.

¹² In Chile, family jurisdictions (v.gr. divorce, custody of the children, food responsibility) are handled separately from other civil issues, and this report assumes that distinction.

The Civil Procedure Code contains a specific paragraph regarding the enforcement procedure. It specifies that the process begin with an executive demand that must be submitted in the Civil Courts, which evaluate the admission of the writ. If it is declared admissible, the judge resolves the writ of execution and seizure, the request for payment, and the notification order. With the notification, the defendant has the option to oppose an exception, pay the debt or take no action. In the first case, the procedure takes about 1,000 days on average.¹³ On the other hand, if the defendant does not object, the average length is reduced to 522 days.¹⁴

To enforce **international judgments** in the Chilean system, the interested party must initiate the ‘*exequatur*’ process in the Supreme Court of Justice, which evaluates the request under different standards, per the existence of international Treaties or the reciprocity principle. Also, the Court requires the concerned parties to present their discharges and a report to the Judicial Attorney of the respective Court. If the requirement qualifies, the Court will resolve ratifying the foreign judgment as a domestic one.

There are two legal sources for contract regulation and **freedom of contract**: the Civil Code and the Code of Commerce. Both laws regulate the framework within which the commercial and civil contracts must be honored (e.g. sale, lease or mortgage contracts). Specifically, in the Civil Code, contract law is regulated in the Obligations section.

The freedom of contract principle is established in the Civil Code. Moreover, it is one of the main principles of the private law system, which the Civil Code protects with several rules (e.g. it sustains the force on the contract as one of the vices of consent that can void the contract). Also, the Constitution ensures the right to acquire all kind of goods, except for those which are, by nature, common to all or forbidden by law (Articles 19, 23 and 24).

According to the Chilean Constitution, the only restrictions to this principle must be imposed by law related to national issues, such as national security, public use, public health, or environmental concerns.

With respect to **international treaties**, Chile has ratified the United Nations Convention on Contracts for the International Sale of Goods (signed in 1980 and ratified in 1990) and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (in 1975), among others.

Regarding the regulatory framework for **notaries public**, the Assistants to the Management of Justice of the Organic Code of Courts serve as the main officers of public faith responsible for authorizing and ensuring the security of the files of the legal instruments that they grant, among other tasks established by law. They hold the exclusivity to grant deeds, and the most important transactions must be made by a deed (eg. real estate sale).

According to the law, there must be at least one notary public in each borough or group of boroughs of the country. They are appointed by the President after a tender process.

¹³ According to research by the Ministry of Justice and the Justice Studies Center of the Americas (2011)

¹⁴ Ibid.

Trends

As of March 2012, a bill establishing a new Code of Civil Procedure for Chile is pending in Congress. Regarding the development of contract activity, this draft of law proposes the instatement of an **enforcement officer**. These are professional officials in charge of the enforcement of court judgments, as well as instruments and writs of execution. It is expected that this new officer will reduce the time needed to enforce contracts, as well as the steps required to do so. It is also hoped that the enforcement officer will help to improve the recovery of unpaid debts.

With respect to reform in the notary and real estate registration systems, the Executive is preparing a draft law that reforms the current system. The main objective of this reform is to modernize these institutions in order to incorporate technology that allows users to view online records. It is expected that the proposed changes will improve the service provided by notaries public and by the real estate registration system, making it timelier.

Another noteworthy reform that is currently taking place is a modification of the Banking Act in order to facilitate access to credit for entrepreneurs.

Finally, the current government has announced that a draft law that modifies the Bankruptcy Act will be sent to Congress. The purpose of this bill is to expedite the closing process of companies in bankruptcy, so that they can function again as soon as possible.

5. Trade Across Borders in Chile

Background

Chile's global economic integration is grounded in economic policy based on free trade, following a unilateral and progressive reduction of tariffs since the 1980s. Since 1990, it has consolidated this policy by ratifying several trade agreements with its main trading partners worldwide. In 2011, Chile's weighted average import tariff was 1.02 percent.

Chile, according to the World Bank, leads the ease of doing business ranking at the regional level, standing at 39 in the ranking of 183 economies in accordance with the Doing Business of June, 2011. Three reforms that improved the business environment have been recently adopted: i) facilitation in starting a business when a temporary license has been granted; ii) strengthening of the guarantee system, implementing a unified record and; iii) expediting cross-border trade with the implementation of an online data exchange system for customs operations. Moreover, the above-mentioned study highlights Chile's ability to create businesses.

In order to enhance the position achieved by Chile internationally in the signing of Free Trade Agreements, innovation in the facilitation approach is essential; adopting the security standard of foreign trade supply chains, which involves actors from both the public and private sectors and improving its cross-border trade-related processes through the implementation of technologies, are crucial to this objective.

Moreover, Chile has achieved significant competitive advantages, allowing a cost reduction associated with documents, customs clearance costs and technical control and other fees within the country.

Regarding the legislative and policy framework, Chile supports its cross-border trade mainly through the following provisions:

- Law 18,525/86, concerning Rules on Import of Goods, includes the implementation of Article VII of the GATT valuation code as the valuation source.
- Law 19,912/03 implements the Agreements signed by Chile with the WTO.
- Law 20,322/09 details the customs and tax jurisdiction.
- Decrees related to Free Trade Agreements
- Decree with Force of Law 30/04, also known as the Customs Ordinance, is the consolidated statutory standard specifying the definitions and proceedings of customs administration.
- Customs Organic Law, DFL 329/79, establishes the faculties of the National Customs Authorities.
- Resolution 1,300/06, also known as the Customs Rules Compendium, is the main administrative regulation of operations of foreign trade related to both entry and exit.

Other relevant legislation includes:

- Regarding border measures, Chile adjusted, through Law 19,912/03, its legislation according to the agreements signed with the WTO related to the enforcement of intellectual property rights.
- Law 20,269 establishes the tariff reduction for import of capital goods.
- Decree with Force of Law 341/77, establishes free trade zones to support geographically remote areas.

There are four types of **trade treaties** ratified in Chile. Free Trade Agreements (FTA), which are enacted through Supreme Decree, are regional or bilateral trade agreements that expand the market for goods and services between the participating countries. Chile has several FTAs: Australia, Canada, Central America (enacted with Guatemala, Costa Rica, El Salvador and Honduras, pending ratification with Nicaragua), China, Colombia, EFTA (Switzerland, Norway, Lichtenstein and Iceland), Korea, Mexico, Malaysia, Panama, Peru, Turkey and the United States. Also, a negotiation with Vietnam concluded recently.

The second category is the Economic Partnership Agreements (AAE). This type of agreement is as complete as the FTA, however, also includes matters of public policy and cooperation. There are three AAEs: P-4 (New Zealand, Singapore, Brunei and Chile), European Union and Japan.

Likewise, Economic Complementation Agreements (ECA) are used by Latin American countries to mutually open their markets for goods within the legal framework of the Latin American Integration Association (ALADI). These aim for greater market openness than that of a partial scope agreement, but less openness than a FTA. In these agreements, all the products of the signing countries are negotiated. There are six ECAs: Bolivia, Cuba, Ecuador, MERCOSUR and Venezuela.

The last category is the Partial Agreement (AAP). It is a basic trade agreement limited to tariffs, but only for specific goods. Normally it is seen as a first step in the process of opening in the long term, as in the case of India.

Chile has participated in APEC since 1994 and became a member of the OECD in 2010.

Chile has ratified the following conventions in the international trade sphere:

- World Trade Organization, including the Valuation Agreement and others (1994)
- World Customs Organization (1966)
- Harmonized System of Designation and Codification of Goods (WCO)
- Istanbul Convention on temporary admission (2005)

To actively enforce trade related treaties, the Ministry of Foreign Affairs acts through the General Directorate of International Economic Relations (DIRECON). Through its various tasks, it aims to manage existing agreements, prevent and settle trade disputes compatible with the World Trade Organization. It aims to ensure full compliance with and enforcement of laws, regulations and standards and international agreements. Thus, the FTAs have incorporated new and complex dimensions of international trade, such as are Trade in Services, Investment, Intellectual Property and Trade Standards, among others.

In the specific case of problems related to tax justice, the **Tax and Customs Courts** are responsible of solving claims on tax and customs matters from individuals or corporations, against administrative decisions made by Customs and the SII.

In the **public sector** field, the National Customs Service is the public body with the most extensive participation in foreign trade logistics, since it is responsible for managing all import and export operations; moreover, it shares the responsibility of authorizing the movement of goods into and out of the country with other bodies. Depending on the nature of the good, these may be the Agriculture and Livestock Service, National Fisheries Service, Health Service, National Directorate for State Borders and Limits, National Forestry Corporation or Directorate of Libraries and Museums, among others.

Related to the aforementioned, although the public sector plays a significant role in terms of regulation, control and facilitation, the private sector is the counterpart for the implementation of cross-border trade operations. Today, more than 4,000 service suppliers, such as customs brokers, freight-forwarders, couriers, warehouse operators, ship suppliers, ship agents, ports and others participate in the international trade supply chain. They are all subject to regulatory provisions under the guarantee, registry and enforcement system of the National Customs Service.

Trends

Reforms implemented to facilitate cross-border trade in the customs field include:

- Implementation of non-invasive advanced technology for inspecting cargo containers. The acquisition of mobile container scanners, since 2009, has enabled to carry out the examination of the goods entering the country in a timely and efficient manner, reducing customs clearance times and improving the security of the cargo.
- Chile is currently working in the development of a single window for foreign trade, in order to expedite import, export and transit procedures, thus reducing costs and procedure times. This is consistent with international standards, recommendations and good practices, making intensive use of information technologies. This project is led by the Finance Ministry and the National Customs Service.
- Electronic submission of transit, transshipment and re-destination operations (Resolution 6,548/10)
- Introduction of the electronic release file (General Director Resolution 2,277/12)

Upcoming challenges include:

- Web service connecting Customs and the General Treasury to access online payments, eliminating its paper-based accreditation
- Establishment of a standard procedure for scanning containers for risk management purposes
- Implementation of uniform criteria for cases of invoicing by third countries, according to the formal criteria of each Agreement
- Further modernization of customs procedures in the context of trade facilitation
- Since 2012, the National Customs Service enabled the electronic submission of import and export declaration on a 24/7 basis.

Resource Bibliography

Resource	Website
Central Bank of Chile	www.bcentral.cl
Competitive Boost Agenda	www.impulsocompetitivo.gob.cl
CORFO	www.corfo.cl
FOSIS	www.fosis.cl
General Directorate of International Economic Relations (DIRECON)	www.direcon.gob.cl
Government of Chile	www.gobiernodechile.cl
INDAP	www.indap.gob.cl
Library of the National Congress (<i>Biblioteca del Congreso Nacional</i>)	www.bcn.cl
Ministry of Agriculture	www.minagri.gob.cl
Ministry of Economy	www.economia.cl
Ministry of Environment	www.mma.gob.cl
Ministry of Finance	www.minhda.cl
Ministry of Foreign Affairs	www.minrel.gob.cl
Ministry of Health	www.minsal.cl
Ministry of Housing and Urban Development	www.minvu.cl
Ministry of Justice	www.minjusticia.gob.cl
Ministry of Public Works	www.mop.cl
Ministry of Social Development	www.ministeriodesarrollosocial.gob.cl
Ministry of Transport and Telecommunications	www.mtt.gob.cl
National Customs Service	www.aduana.cl
Official Gazette	www.diariooficial.cl
SBFI	www.sbif.cl
SERCOTEC	www.sercotec.cl
Start-Up Chile	www.startupchile.org

Hong Kong, China

I. General Information

Hong Kong, China (HKC) is renowned for its competitiveness, openness and ease of doing business in the international league. In the World Bank's *Doing Business Report 2012* (released in 2011), HKC is ranked the 2nd easiest place to do business in the world. As such, the performance of HKC in EoDB amongst APEC and OECD economies is top notch.

HKC is in the top 5 in all five areas of EoDB, in particular, we remain the top performer (1st) in dealing with construction permits and the 2nd in trading across borders. Indeed, over the years HKC has been striving to improve further its business environment. For Starting a Business, HKC's rank has improved from 18th in 2009 (in 2010 report) to 5th in 2011 (in 2012 report), reflecting World Bank's recognition of HKC's efforts to expedite the process of company incorporation and business registration. In particular, the time needed for Starting a Business was reduced from 6 days in 2009 to 3 days in 2011. Private bureau coverage under the area of Getting Credit and the time needed to export under the area of Trading Across Borders also made remarkable improvements of 20 percent and 17 percent in 2011 over 2009 respectively. Taking all five areas together, HKC managed to achieve a 4.5 percent improvement in 2011 over 2009.

The public sector agencies overseeing policies/issues in the five priority areas are as follows:

- Starting a business: The Companies Registry (CR) and the Inland Revenue Department (IRD) under the Financial Services and the Treasury Bureau (FSTB)
- Dealing with permits: The Buildings Department (BD), Water Supplies Department (WSD) and Drainage Services Department (DSD) under the Development Bureau (DEVB) as well as the Fire Services Department (FSD)
- Getting credit: The Financial Services and the Treasury Bureau (FSTB) and the Hong Kong Monetary Authority (HKMA)
- Enforcing contracts: Department of Justice (DoJ)
- Trading across borders: The Commerce and Economic Development Bureau (CEDB), the Transport and Housing Bureau (THB), the Customs and Excise Department (C&ED) and the Trade and Industry Department (TID).

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Hong Kong

The Financial Services and the Treasury Bureau (FSTB) oversees the policies in relation to starting a business. Under FSTB's supervision, the Companies Registry (CR) is responsible for

providing services to incorporate local companies and register non-Hong Kong companies while the Inland Revenue Department (IRD) is responsible for providing business registration services.

1.1 Background

Company Law

The Companies Ordinance, or CO (Chapter 32 of the Laws of Hong Kong), specifies the statutory requirements for company incorporation. Pursuant to section 14A of the CO, a person who wishes to incorporate a company shall apply to the Registrar of Companies (“the Registrar”) in a specified Incorporation Form. The Incorporation Form shall contain the proposed company name, the company’s registered office address in Hong Kong, and particulars of the founder member(s), the first director(s) and company secretary. Pursuant to section 15 of the CO, the Incorporation Form, signed by a founder member, shall be delivered to the Registrar together with copies of the company’s memorandum and articles of association for registration. A Certificate of Incorporation will be issued upon registration of the Incorporation Form and copies of the memorandum and articles of association.

The Business Registration Ordinance, or BRO (Chapter 310 of the Laws of Hong Kong), requires “every person commencing to carry on any business or carrying on any business” to apply for business registration with the Commissioner of Inland Revenue (“the Commissioner”), and such persons include sole proprietors, partners, companies and other body of persons. Besides, any person who has registered his business under the BRO is required to notify the Commissioner in writing of any change of the registered particulars within 1 month of such change. Please also refer to Part 1.2 below.

The Companies Registry handles companies with limited liability while the Inland Revenue Department deals with all types of business including sole proprietorship, partnership, etc.

Public Sector Support for Start-ups

Invest Hong Kong and the Support and Consultation Centre for SMEs (SUCCESS) under the Trade and Industry Department (TID) of HKC provide support for startups. The Support and Consultation Centre for SMEs (SUCCESS) run by the Trade and Industry Department provides small and medium-sized enterprises (SMEs), including business start-ups with free, reliable and practical information and consultation services. Its Business Start-up Information Services provides potential business start-ups with comprehensive information on starting business in Hong Kong, including requirements on government licenses and permits, tips for drafting business plans, market information, costing and expenditure analyses, etc. Through an online Business License Information Service on the SUCCESS website (see Resource Bibliography), business start-ups may also look up requirements on government licenses and permits for running different types of business in Hong Kong.

SUCCESS also runs a "Meet the Advisors" Business Advisory Service to arrange SMEs, including business start-ups, to meet with experts of various sectors for professional consultation and practical advice on questions related to setting up and running of businesses. In addition, SUCCESS implements an SME Mentorship Program for SME entrepreneurs who are at their early stage of business to develop entrepreneurial skills and enhance their competitiveness through learning from accomplished businessmen during a 12-month mentorship period.

Hong Kong Trade Development Council

A statutory body established in 1966, the Hong Kong Trade Development Council (HKTDC) is the international marketing arm for Hong Kong-based traders, manufacturers, and service providers. The HKTDC organizes a variety of business missions and trade fairs, including Entrepreneur Day and World SME Expo, each year to connect SMEs with opportunities. It also offers advisory services and workshops year-round at the HKTDC SME Centre on a range of themes, including entrepreneurship and doing business in China.

The HKTDC SME Centre, a 16,000 square-foot business information and networking facility, provides resources for business start-ups and SMEs. It also features comprehensive export marketing services. The SME Centre houses a library of 8,000 business publications and reference material, including business directories, market reports and trade-fair catalogues, and offers access to Kompass and other electronic databases that may be beyond the financial reach of start-ups.

Labour Department

The youth employment resource Youth Employment Start (YES) operated by the Labour Department assists young people with business aspirations in assessing their capabilities and pursuing self-employment via a multifaceted approach. YES provide careers assessment and advisory services, training on basic skills and knowledge for self-employment, experience-sharing by entrepreneurs and business leaders, professional consultation services on legal and accounting matters encountered by young people in their businesses, free access to a full range of office facilities for running a business, and opportunities to acquire experience running a stall in centrally located shopping malls on Self-Employment Experience Days.

Hong Kong Science and Technology Parks Corporation

The HKSTPC provides infrastructural support and one-stop service to technology-based companies and activities, ranging from providing premises and services in the Science Park for applied research and development activities, creating and sustaining a design cluster in the InnoCentre, to offering land and premises in the industrial estates for production activities. The Corporation also offers a comprehensive incubation program to assist technology start-ups during their vulnerable inception stages. The program includes subsidized office accommodation, consultancy services, investment matching, and a small financial aid package to facilitate research and development. The program has already benefitted over 340 technology start-ups.

Relevant information on laws, regulations and procedures are available to the public as follows:

- The list of documents required for company incorporation is prescribed in sections 14A and 15 of the CO Version date: 21 February 2011. Incorporation Form can be downloaded from the website of the Companies Registry.
- The forms required for business registration are prescribed in section 5D of the BRO and regulation 9 of the Business Registration Regulations (Chapter 310A of the Laws of Hong Kong), both of Version date : 21 February 2011.
- Brochures, information pamphlets, or other public notices at the offices of the CR and the IRD (for pick-up without prior appointment).
- Available online via the respective websites of the CR and the IRD (see Resource Bibliography)

- Information on CO and BRO is available at the Department of Justice website (see Resource Bibliography)

Regulations and guidelines on institutional procedures are available in Chinese and English.

Business Entity Types

The BRO specifically defines the person carrying on business as single person, corporate body, partners in case of a partnership, and the principal officers of any other body of persons.

The CO defines the following distinct business entity types:

- Company limited by shares—a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
- Company limited by guarantee —a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.
- Unlimited company— a company not having any limit on the liability of its members.

Moreover, section 29 of the CO defines a “private company” as a company which by its articles of association (a) restricts the right to transfer its shares; (b) limits the number of its members to 50, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company; and (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

The BRO does not provide separately for the above entities except

- Where the person carrying on business is a company, the secretary, manager, or any director of the company is answerable for that which the company is required under the BRO to do;
- In case of a partnership, each partner is answerable for the same.

The CO does not provide separate regulations for “closely held companies with limited liability” and “joint stock companies that may be widely held and/or publicly traded.”

The Partnership Ordinance (Chapter 38 of the Laws of Hong Kong) codifies the law relating to general partnerships. A partnership is deemed to be a general partnership unless one or more partners are registered as limited partners under the Limited Partnerships Ordinance (Chapter 37 of the Laws of Hong Kong).

The Limited Partnerships Ordinance is also administered by the Companies Registry. A limited partnership must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners with limited liability. A limited partner shall not be liable for the debts or obligations of the firm beyond the amount so contributed as capital.

Under the CO, persons conducting business without having registered are considered sole proprietorships or partnerships by default.

Agricultural co-operatives are regulated in Hong Kong under the Co-operatives Societies Ordinance, Chapter 33 of the Laws of Hong Kong. The Ordinance specifies how agricultural co-operatives are formed, registered and operate.

Electronic transactions with the Companies Registry and the Inland Revenue Department are not mandatory. Under the CO, companies or their presenters may submit applications for company incorporation and business registration either in the form of electronic records or in paper form. Sections 346A and 346B of the CO provide for electronic communications with the Registrar of Companies (“the Registrar”), including the delivery of documents to the Registrar in the form of electronic records, and the signing of electronic documents using digital signature or password.

In exercise of the powers conferred under sections 346A and 346B of the CO, the Registrar has specified the requirements for documents delivered in the form of electronic records by a gazette notice (G.N. 1076) published on 18 February 2011. Similarly, sole proprietorship or partnership businesses may submit their applications for business registration either in the form of electronic records or in paper form. Regulation 8A of the Business Registration Regulations (Chapter 310A) provides that an application for business registration in the form of electronic records (“e-application”) must be furnished to the Commissioner using a system and template specified by the Secretary for Financial Services and the Treasury (“the Secretary”).

As specified by a gazette notice (G.N. 1058) published on 18 February 2011, e-applications must be formatted using the template available on the Government of Hong Kong website (see Resource Bibliography). An applicant must sign his e-application either using a password approved by the Commissioner or affixing his digital signature.

The Government consults with the private sector through public consultation exercises and advisory bodies on any major regulatory reform and development. Reforms and developments that involve legislative changes have to be endorsed by the Legislative Council, whose members come from different sectors of the community. The Legislative Council would also consult stakeholders as necessary.

Sole proprietorships and simple partnerships (not including partnerships of limited liability) can complete the whole process of business registration with the IRD in a single effort. Both CR and IRD provide free general enquiry services (not limited to the registration process) in relation to the requirements and procedures for company incorporation and business registration to the public.

1.2 Trends

CR and IRD jointly introduced an online one-stop service for company incorporation and business registration at an e-Registry Portal (see Resource Bibliography) in February 2011. Incorporation fees, business registration fees, and levies can be paid electronically. Upon incorporation of a company, an electronic Certificate of Incorporation and a Business Registration Certificate are issued immediately. Since the launching of this service, over 90 percent of successful cases take less than 15 minutes to issue the electronic Certificate of Incorporation and the Business Registration Certificate, enabling entrepreneurs to begin business immediately.

Upon the commencement of the Companies Ordinance (Amendment of Eighth Schedule) Order 2012, tentatively scheduled for 1 June 2012, the capital duty levied on local companies will be abolished. This initiative is intended to reduce the cost of starting a business, encourage entrepreneurs to set up companies in Hong Kong, raise capital, and expand their businesses.

A comprehensive rewrite of the CO is underway. The Companies Bill was introduced into the Legislative Council on 26 January 2011 and a Bills Committee was formed in February 2011 to scrutinize the provisions in the Bill. The Bill was passed on 12 July 2012. After the commencement of the new CO, tentatively in 2014, the mandatory requirement for a company to keep a corporate seal will be removed. This will reduce the cost, number of procedures, and time required to start a business in Hong Kong. Under the new CO, the legal requirement of preparing a Memorandum of Association to incorporate a company will be abolished. This will help simplify the incorporation procedures and reduce time and cost.

2. Dealing with Permits in Hong Kong

The Buildings Department (BD), Water Supplies Department (WSD), Drainage Services Department (DSD) and Lands Department (LandsD) are the authorities in dealing with applications for construction permits. BD, WSD, DSD and LandsD come under the policy portfolio of the Development Bureau (DEVB) of the Government of the Hong Kong Special Administrative Region. The director of DEVB is the Secretary for Development, who oversees the operation of BD, WSD, DSD, LandsD and other government departments concerned.

2.1 Background

Sources of Legal Authority

The Buildings Ordinance (BO) (Cap 123) governs the planning, design, and construction of buildings and associated works. The following construction permits are required under the BO: (i) approval of building plans for the proposed building works; (ii) consent for commencement of the approved building works; and (iii) occupation permit for the completed new building.

Applications for water supply shall be submitted to WSD for the approval of the Water Authority. Plumbing installation that receives water supply from the WSD has to comply with the waterworks requirements on plumbing arrangements and materials for pipes and fittings under the provisions of the Waterworks Ordinance/Regulations, Hong Kong Waterworks Standard Requirements for Plumbing Installation in Buildings, and WSD Circular Letters issued to Licensed Plumbers and Authorized Persons.

Connecting private pipes to public drains or sewers for the discharge of rainwater or sewage is subject to regulation, but no permit as such is required. Land or building owners may be required to discharge rainwater or sewage to public drains, streams or sewers according to the following regulations:

- Conditions imposed under the Town Planning Ordinance (Cap.131)
- Land lease conditions; or in the case of discharge arising from building submissions. the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap.123I)
- In other cases involving the discharge of sewage, the Water Pollution Control Ordinance (Cap.358) and the Water Pollution Control (Sewerage) Regulation (Cap.358AL)

Pursuant to section 21(6)(d) of the BO (Cap 123), a certificate (FS 172) from the Director of Fire Services certifying that the fire service installations (FSI) and equipment shown on the building plans have been provided and are in satisfactory condition is required to be produced to the Building Authority for considering the issue of an occupation permit.

Under the land lease conditions, there are usually requirements for development proposals to be submitted to the LandsD for approval. Such requirements are to ensure that the development proposals are in accordance with the lease conditions and confine within the lot boundaries

License/permit Issuing Authorities

The Buildings Department is responsible for issuing the relevant permits. Applications for water supply shall be submitted to the WSD for the approval of the Water Authority, whereas applications for connection to public drains or sewers received by the authorities on planning, lands or the environment will be referred to DSD for vetting to make sure the design and construction of the connection works will not adversely affect the integrity and functioning of public drains or sewers. The Fire Services Department (FSD) is responsible for issuing the certificates (FS 172) under section 21(6)(d) of the BO (Cap 123). LandsD is responsible for approving development proposals and issuing certificates of compliance under the land lease conditions.

Connection to public drains or sewers is straightforward. DSD has no specific requirement on the expertise for the design and construction of connection works, though connections arising from building submissions are normally implemented by Authorized Persons and contractors on registers maintained by the Building Authority under the BO (Cap.123).

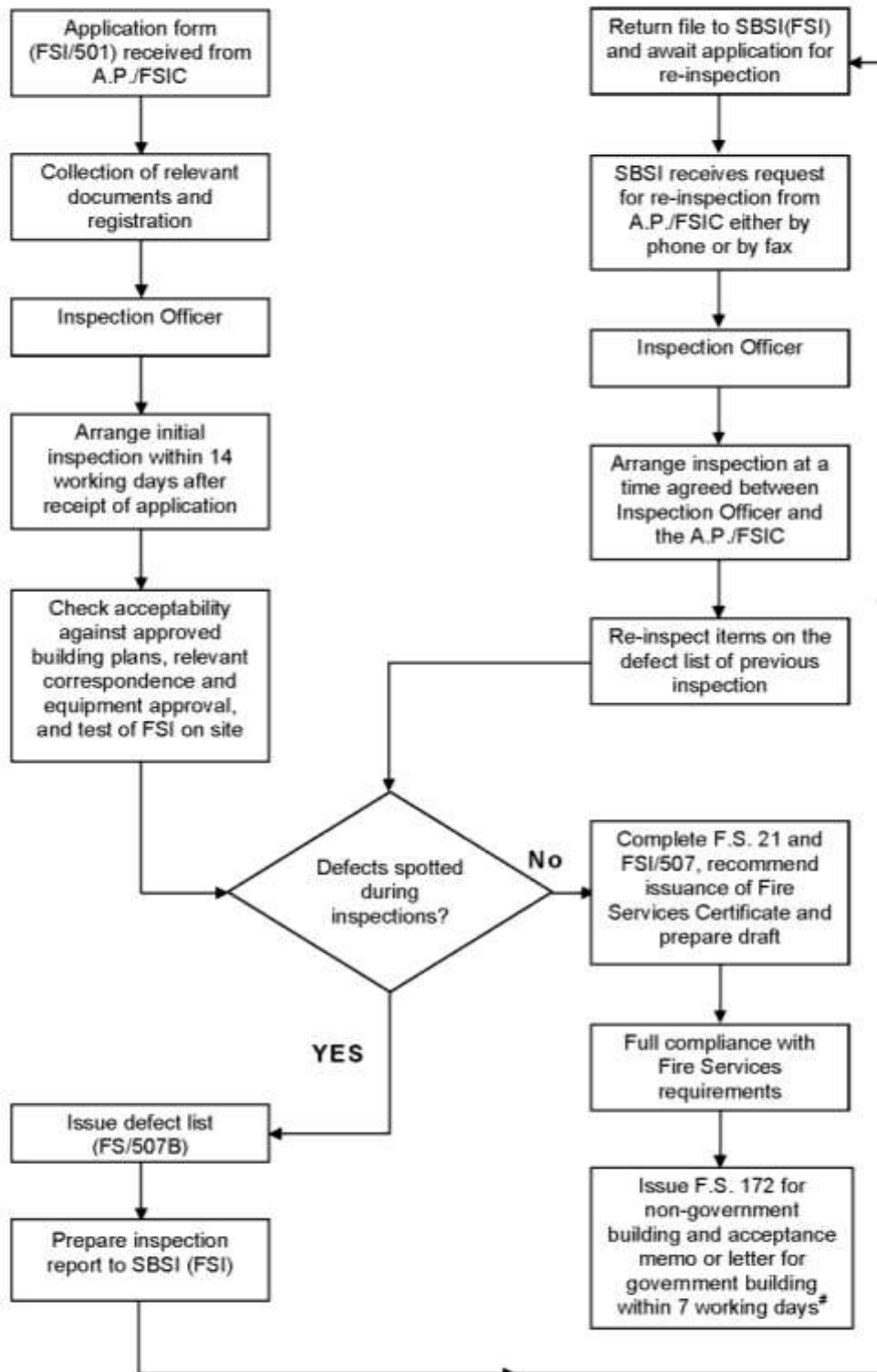
FSD is responsible for processing applications for FSI acceptance inspection and issuing the certificates (FS 172) under section 21(6)(d) of the BO (Cap 123).

Public Information

The BO and its allied regulations and codes of practice stipulate the statutory requirements for the three permits mentioned above. Supplementary details are elaborated under the practice notes issued to building professionals and contractors by BD. Updated versions of the BO and regulations, codes of practice, and practice notes are available on BD's website. The relevant documents and the procedure for applications for water supply are available via WSD's website. Guidance notes on making connections to public drains or sewers are posted on DSD's website, and guidelines for the works under the Helping Business Program are also available at the website of DEVB (see Resource Bibliography).

A flow chart for application for FSI acceptance inspection and issuance of certificate (FS 172) is shown on the next page.

Flow Chart for FSI Acceptance Inspection and Issuance of Certificate



* Issue F.S. 172 within 4 working days for projects submitted under the One Stop Centre for Warehouse Construction Permits administered by the Efficiency Unit, i.e. a total of 18 working days is required for processing applications for Fire Services Certificate submitted under the One Stop Centre.

Other authorities relevant to dealing with permits in Hong Kong include the following:

- ***Economy-wide planning authority***: Planning Department
- ***Environmental authority***: Environment Bureau / Environmental Protection Department
- ***Construction standards***: BD aims to make the built environment of Hong Kong safe and healthy by setting and enforcing safety, health, and environmental standards for private buildings. BD promotes and facilitates the construction process, including dealing with application for construction permits, within the purview of the BO and its regulations.
- ***Occupational safety and health***: Labour and Welfare Bureau/Labour Department
- ***Utilities and communications***: Development Bureau, Environment Bureau, and Office of Communications Authority.

The fees for processing submissions of plans are prescribed in the BO and allied regulations. Details can be found on BD's website. Fees are chargeable for proposals of new buildings (permanent or temporary) involving accountable gross floor area (GFA), which necessitate the issue of an occupation permit or a temporary occupation permit. They are charged on the basis of building plans only. The scale of fees is based on a unit rate charged on the total GFA in multiples of 100 m² or part thereof.

For buildings not involving accountable GFA as well as alteration and addition works and other works not resulting in a new building, fees are charged on the basis of all types of plans (i.e., building plans, structural plans, site formation plans and drainage plans). Calculation of fees is based on the number of A1 or smaller size drawings submitted.

The fees for provision of water supply connection and connection to the public drainage/sewage system under the Helping Business Program are available on the DEVB website (see Resource Bibliography).

BD is committed to adopting a positive attitude towards building development and to facilitating the approval process whilst ensuring public safety and health. If building professionals wish to enquire about the status of their submissions or applications, they may contact BD's case officers. BD entertains both verbal and written enquiries.

It is a statutory requirement for BD to process the first submission of building plans in respect of a building development within 60 days; resubmission or amendment of building plans within 30 days; application for consent to commence works within 28 days; and application for occupation permit within 14 days, all counting from date of receipt of the application.

Water supply applications are handled on a first-come-first-served basis. The Water Authority has target response times for completing key activities in respect of the application for new water supply. Details on the target response times are on the WSD website.

DSD will reply to applications for drainage/sewerage connections within nine working days. The contact details of case officers are always stated in the reply. Enquiries may be directed to the case officers in writing, by telephone, or by email.

A One Stop Centre (OSC) has been set up since December 2008 for handling building proposals in respect of small-scale building projects like a two-story warehouse, including receiving submissions of proposals and coordinating joint inspections by relevant government departments, including BD. Details on OSC services are in a practice note issued to building professionals. For building proposals satisfying the criteria set out in the practice note, applications for approval for

building plans and consent for commencement of approved works may be submitted concurrently either to the OSC or directly to BD. BD undertakes to process the concurrent applications for approval and consent within 45 days from the date of submission.

The applicant may apply for water supply for a two-story warehouse through the OSC operated under the Efficiency Unit (EU) of Chief Secretary for Administration's Office with effect from 1 December 2008. The OSC is an option in addition to the existing channels of application. It aims to streamline the application process by setting a centralized office for receiving submissions of building plans and related applications (including technical audit for water supply connection works) and coordinating joint inspections for two-story warehouses. For applicants who would like to join the service, the scope of works must satisfy the criteria specified by the EU. For details, please refer to the EU's website.

Handling of Disputes

A person aggrieved by a decision by the BD may appeal that decision in accordance with the relevant provisions of the BO. An independent Appeal Tribunal considers and determines appeals. To dispute how an application to WSD was handled, the applicant can contact the responsible case officer and business facilitation officer as listed on the WSD's website. If the case still cannot be resolved, the applicant can raise the matter in writing with WSD's headquarters.

There is an Office of the Ombudsman in Hong Kong. Its role is to redress grievances and address issues of maladministration in the public sector, including BD and other government departments. Through independent, objective and impartial investigation into complaints received and by self-initiated studies, the Office of The Ombudsman aims to improve public administration and enhance the culture of service.

2.2 Trends

BD has enhanced its services by introducing a mechanism for handling pre-submission enquiries, convening conferences with building professionals before formal submissions, processing concurrent applications for approval and consent, and implementing fast track processing of proposals for simple alterations and addition works within 30 days. Details of the mechanism are set out in the practice note issued to building professionals in December 2008. The purpose of pre-submission enquiries and conference is to ensure that proposed designs comply with statutory requirements before plans are formally submitted.

In the plan approval process and the construction process, BD works with the building professionals (including authorized persons, registered structural engineers, registered geotechnical engineers and registered building contractors) who assume statutory responsibilities on supervising the implementation of approved building works and ensuring compliance with statutory requirements and codes of practice. Being the regulatory authority under the BO, BD audits construction works to ensure compliance with statutory building standards.

BD conducts regular review of the BO, allied regulations, codes of practice, and practice notes to keep the building control system commensurate with the advancement in technology as well as the practice and needs of the construction industry and public aspiration.

As mentioned, there is an OSC for receiving building proposals in respect of small-scale building projects like a two-story warehouse. A Working Group comprising eight relevant bureaus and

departments will continue to review one-stop services when necessary with an aim to further enhance the operating mechanism.

To further enhance service rendered to the public and practitioners, the Water Authority has, from time to time, reviewed application procedures and target response times.

In March 2012, the Government and utility service providers in Hong Kong collaborated to launch a composite form to streamline the procedures for utility application/notification at the post-construction stage. Those seeking a two-storey warehouse construction permit can now submit applications for electricity and telecommunication services and plumbing works completion notification simultaneously via the OSC.

3. Getting Credit in Hong Kong

Companies and individuals can obtain credit from authorized institutions (AIs) in Hong Kong. While the Hong Kong Monetary Authority (HKMA) exercises prudential supervision on AIs, the FSTB oversees the financial services sector in general. However, companies may also get credit from other institutions that are outside the scope of the banking and financial industry.

3.1 Background

The Banking Ordinance provides the legal framework for banking supervision in Hong Kong. Section 7(1) of the Ordinance provides that the principal function of the HKMA is to “promote the general stability and effective working of the banking system.” Hong Kong maintains a three-tier system of deposit-taking institutions, namely, licensed banks, restricted license banks, and deposit-taking companies. They are collectively known as AIs.

Credit Growth

The banking sector’s total lending increased by 20.2 percent in 2011, although the pace of growth moderated in the second half. Rapid growth was recorded in the first half of last year (27.9%) followed by significant slowdown in the second half of the year (10.9%). Overall, the growth in bank lending for use in and outside Hong Kong, and for trade finance was slower than in 2010. The growth of the banking sector’s total lending in the first five months of 2012 was 8.4%. The slowdown in loan growth is expected to continue in 2012, as banks refrain from overly aggressive lending in an uncertain external environment and as banks prepare to implement Basel III.

SME Lending in Hong Kong

SME Financing Guarantee Scheme operated by the Hong Kong Mortgage Corporation (HKMC). The HKMC launched the SME Financing Guarantee Scheme (“Scheme”) in January 2011. The Scheme aims to help SMEs and non-listed enterprises obtain loans from participating lenders such as banks for meeting their business needs so as to enhance their productivity and competitiveness in a rapidly changing business environment. Under the Scheme, the HKMC will provide guarantee coverage on 50%, 60%, or 70 percent of the loans to eligible enterprises.

Eligibility. Eligible enterprises must have a business operation in Hong Kong and be registered in Hong Kong under the BRO (Chapter 310). They must also have a business operation for at least one year on the date of guarantee application, and have a good loan repayment record. Listed companies, lending institutions, and affiliates of the lender are not eligible for the Scheme.

Form and Use of Loans. The Scheme guarantees both term loans and revolving credit facilities. An enterprise can borrow a term loan and a revolving credit facility at the same time. There is no limitation on the proportion between the two types of facilities. Loans must be used to provide general working capital for operations or acquisition of equipment or assets in relation to the business. Loans can be used to refinance facilities that are guaranteed under the Special Loan Guarantee Scheme offered by the Hong Kong Government through the TID upon expiry of such a guarantee.

Max Loan Amount, Loan Tenor and Interest Rate. Each enterprise or each group of enterprises can borrow not more than HK\$12 million under the Scheme and the maximum loan tenor is five years. In general, the Scheme covers loans with an interest rate up to 10 percent per annum. But it will also consider applications with an interest rate exceeding 10 percent per annum on a case-by-case basis.

Guarantee Fee. In general, the annual guarantee fee ranges from 0.5 percent to 4.2 percent of the loan amount/credit limit.

Application Procedures. Enterprises should contact participating lenders to discuss their financing needs. The lender will assess the application based on its lending criteria and the financing needs of the enterprise.

Microfinance in Hong Kong

Currently no bank operates microfinance schemes in Hong Kong although some banks make limited donations available as part of their corporate social responsibility activities. There are a few microfinance schemes in Hong Kong, all operated by voluntary agencies. These local schemes have altogether made less than 200 loans during their few years of operation, mainly because of limited funds and the consequent need to be selective in picking borrowers. The schemes target different groups such as youths, ex-offenders, and the unemployed to facilitate business start-up or retraining. Lending is on an individual basis. The loan cap ranges from HK\$25,000 to HK\$100,000 with one to three years of tenor.

The HKMC formed a study group in 2011, with members drawn from different sectors (including the banking industry, voluntary agencies, academia, and the Government). The study group examined the feasibility of establishing a sustainable microfinance scheme in Hong Kong and recommended that Hong Kong follow five principles when launching a microfinance scheme:

1. The scheme should be self-sustaining in the long-run.
2. The scheme should not operate as a social welfare hand-out.
3. Borrowers must be willing to repay loans.
4. For micro-business start-up and self-employment, borrowers will need to present viable business plans.
5. Borrowers should have the ability to implement the business plan.

Under the preliminary framework suggested by the study report, a pilot scheme should cater to three categories of borrowers, namely, those aspiring to start up their own businesses, those wishing to become self-employed, and those wanting to achieve self-enhancement through training, upgrading of skills, or securing professional certification. The maximum loan amount for each loan in these categories would be HK\$300,000, HK\$200,000, and HK\$100,000, respectively. The maximum loan tenor will be five years.

After considering the report, the Financial Secretary announced in the 2012-13 budget a request for the HKMC to co-ordinate with banks, voluntary agencies and other stakeholders to carry out a sustainable microfinance pilot scheme for three years based on commercial principles, with a tentative aggregate loan amount of HK\$100 million. The HKMC is actively conducting the preparatory work, including discussion with banks and relevant bodies to work out the details of the scheme such as the interest rate level, application and approval procedures, and ancillary services.

Credit Reporting and Information System in Hong Kong

In Hong Kong, commercial and consumer credit data are shared through two separate credit reference agencies, the Commercial Credit Reference Agency (CCRA) and the Consumer Credit Reference Agency (CRA). Both are operated by private credit bureaus.

Consumer Credit Data Sharing. In Hong Kong, the handling of consumer credit information is governed by the Personal Data (Privacy) Ordinance (PDPO) and the Code of Practice on Consumer Credit Data (“Code”) issued by the Office of the Privacy Commissioner for Personal Data (PCPD).

The Code provides practical guidance to data users in Hong Kong on how to share and use consumer credit data. It deals with collection, accuracy, use, security and access and correction issues as they relate to personal data of individuals who are, or have been, applicants for consumer credit. The Code covers credit reference agencies and credit providers in their dealing with CRAs and debt collection agencies. Under the Code, credit providers refer to AIs (including banks) under the Banking Ordinance, subsidiaries of AIs, money lenders licensed under the Money Lenders Ordinance, or a person whose business is to provide finance for the acquisition of goods by way of leasing or hire purchase. Clause 3.1 and Clause 3.8 of the Code stipulate the types of information that CRAs may collect and share. The Code is available on the PCPD website (see Resource Bibliography).

In brief, a credit reference agency can collect and provide the following personal information to its members:

- General personal data such as name, address, contact telephone number, date of birth, Hong Kong Identity Card number, and the travel document number.
- Credit card and personal loan data, such as types of credit accounts, repayment history records, credit limits, and outstanding balances.
- Delinquent account information provided by its members, such as type of credit, the amount involved, date of default and date of repayment.
- Hire-purchase information on vehicles, vessels and equipment provided by its members.
- Public records such as action relating to recovery of debt, judgment entered for money owed, bankruptcy and discharge of bankruptcy.
- Individual credit enquiries made by CRA's members.

In April 2011, the PCPD amended the Code to allow expanded sharing of mortgage data among credit providers through the CRA to cover positive mortgage data sharing, which involves sharing of information on the number of mortgage loans.

An individual has the right to access to his or her credit file kept by CRA and to correct any wrong information contained therein.

The Code also specified the conditions under which a credit provider can access the consumer credit data or mortgage count held by a CRA on an individual. For instance, under Clause 2.9 of the Code, a credit provider may, through a credit report provided by the CRA, access consumer credit data (other than mortgage count) held by the CRA on an individual

- In the course of the consideration of any application for grant of consumer credit; the review of existing consumer credit facilities granted; or the renewal of existing consumer credit facilities granted to an individual as borrower or to another person for whom the individual proposes to act or acts as mortgagor or guarantor; or
- For the purpose of the reasonable monitoring of the indebtedness of the individual while there is currently a default by the individual as borrower, mortgagor or guarantor.

The HKMA has also issued a statutory guideline (SPM IC-6 refers) that specifies the minimum standards that AIs should observe in relation to the sharing and use of consumer credit data through a CRA.

Commercial Credit Data Sharing. In 2004, the banking industry set up a non-statutory CCRA scheme. The CCRA collates information about the indebtedness and credit history of commercial enterprises and makes such information available to AIs (and their participating subsidiaries if applicable) for the purpose of granting, reviewing or renewing commercial enterprises' credit.

The scheme initially covered SMEs, defined as non-listed, limited companies with an annual turnover not exceeding HK\$50 million. In March 2008, it was expanded to cover all sole proprietorships and partnerships (generally referred to as unlimited companies). Credit data on unlimited companies are regarded as personal data. Therefore, the sharing and use of such data is governed by the PDPO and the Code. Although participation is not mandated by legislation, HKMA expects all AIs that are involved in the provision of commercial credit to participate as fully as possible in the CCRA scheme.

Apart from basic general information such as the company name, address, phone number, business registration number and place etc., only credit information is submitted to the CCRA. Credit information in this context includes both positive and negative data. Positive data refer to the aggregate limit of credit facilities by different loan types and in the case of limited companies, the extent to which the facilities are supported by collateral. Negative data include information about defaults on loans, and the amount of loans which have been written off. In addition to credit information submitted by subscribers, the CCRA also collects court data with regard to information on civil suits. However, information relating to the assets of the company or personal wealth of the company's investors is not to be collected. Details can be found on the Dun & Bradstreet (HK) Ltd. website (see Resource Bibliography).

Only AIs and their subsidiaries can subscribe to the CCRA scheme. Subscribers may, through a credit report provided by a CCRA, access commercial credit data held by the CCRA relating to a company:

- In the course of considering any grant, review or renewal of credit to the company as borrower or to another person for whom the company proposes to act or acts as guarantor; or
- For the purpose of the reasonable monitoring of the indebtedness of the company while there is currently a default by the enterprise as borrower or as guarantor.

Subscribers cannot access the CCRA database for marketing purposes.

Regarding data protection safeguards, both AIs and the CCRA must, in respect of sole proprietorships or partnerships, observe the Code. The AIs and participating subsidiaries (where applicable) should comply with the data protection requirements in the HKMA's statutory guideline (SPM IC-7 refers) in relation to the sharing and use of commercial credit data through a CCRA. Among other things, the guideline requires AIs to maintain adequate systems of control to properly protect the data of their SME limited company or unlimited company customers.

Over the past years, Hong Kong has continued to enhance its credit data sharing system. In April 2011, the PCPD amended the Code to allow expanding the sharing of mortgage data among credit providers through the CRA to cover positive mortgage data sharing, which involves sharing of information on the number of mortgage loans (or mortgage count), for residential and non-residential properties.

When the CCRA was launched in 2004, only SMEs (non-listed, limited companies with an annual turnover not exceeding HK\$50 million) were covered. To enhance data comprehensiveness, coverage has been expanded since March 2008 to include sole proprietorships and partnerships.

Legal framework for the governance of bank and nonbank institutions

The Banking Ordinance provides the legal framework for banking supervision in Hong Kong. Section 7(1) of the Banking Ordinance provides that the principal function of the HKMA Authority is to "promote the general stability and effective working of the banking system."

More generally, as a bank is operating as a company in Hong Kong, it is required to be registered either as a Hong Kong incorporated or non-Hong Kong incorporated company under the Companies Ordinance and must comply with the ongoing obligations of a company as stipulated thereunder, including the timely disclosure and reporting of specified information about the company, its officers and shareholders, etc. and any changes in such information to the Registrar of Companies so that members of the public can have ready access to the latest information about the company. Depending on the corporate structure of the bank, it may also be subject to the provisions of other ordinances pertaining to such other corporate structures.

If a bank has its securities listed in Hong Kong, it is subject to the requirements and ongoing obligations for a listed issuer under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules) as well as the Codes on Takeovers and Mergers and Share Repurchases (Codes). In addition, such banks must also comply with applicable provisions under the Securities and Futures Ordinance, which governs the regulation of activities connected with financial products, the securities and futures market, and the securities and futures industry in Hong Kong.

A non-bank institution that makes loans to businesses is also subject to the provisions of the Money Lenders Ordinance, which provides for the control and regulation of money lenders and money-lending transactions in Hong Kong.

3.2 Trends

To help AIs better manage their credit exposure and to improve access to credit by borrowers, Hong Kong has been working to enable the development of a comprehensive database and require AIs to make full use of the database via CRA and CCRA in their credit decisions.

In the review leading to the expansion of credit data sharing through the CRA to include positive mortgage data, the PCPD required that a threshold be set for non-mortgage related consumer credit facilities, above which AIs would be allowed to access the number of mortgages held by a customer when considering the grant, renewal, or review of non-mortgage related consumer credit facilities. The HKMA is working with the industry to set an appropriate threshold, for which the PCPD's endorsement will be sought.

4. Enforcing Contracts in Hong Kong

As a result of its respect for the rule of law, an independent judiciary, zero tolerance for corruption, and clean and transparent governance, Hong Kong provides an excellent environment for the conduct of international business within which contractual obligations are taken very seriously. In Hong Kong, disputes arising from contracts may be resolved by way of litigation (i.e., legal proceedings instituted in court), arbitration, or alternative dispute resolution options, such as mediation. Court judgments, arbitral awards, and settlement agreements can be enforced in accordance with law in the Courts of Hong Kong. The Hong Kong judicial system operates on the principle, fundamental to its common law system, of the independence of the judiciary from the executive and legislative branches. The Courts make their own judgments, whether disputes before them involve private citizens, corporate bodies or the Government itself, and enforce judgments on applications. Court hearings are generally open to the public subject to exceptions in the interests of proper administration of justice.

In addition, Hong Kong has a strong legal profession, consisting of almost 8,300 local lawyers and over 1,400 registered foreign lawyers capable of handling complex financial and commercial transactions. They provide strong support to the business community seeking to enforce contracts in Hong Kong.

Enforcing contracts in a way that is easy to understand and efficient is key to attracting investment to developing economies; and enforcement capacity is considered a qualification for economic growth. The relationship between the quality of contract enforcement and the quality of the business and investment environment is vital. Lethargic, fickle enforcement of judgments triggers higher interest rates, makes credit less available, deters investment, raises prices of goods and services, raises the rate of business default and bankruptcy, and lowers the rate of successful bankruptcy reorganization.

4.1 Background

The source of legal authority for judicial enforcement of contracts and alternative dispute resolution is primarily legislation. The relevant legislation includes the following Laws of Hong Kong:

- Hong Kong Court of Final Appeal Ordinance (Cap. 484)
- Hong Kong Court of Final Appeal Rules (Cap. 484A)
- High Court Ordinance (Cap. 4)
- Rules of the High Court (Cap. 4A)
- District Court Ordinance (Cap. 336)
- Rules of the District Court, (Cap. 336H)
- Small Claims Tribunal Ordinance (Cap.338)
- Arbitration Ordinance (Cap. 609)
- Companies Ordinance (Cap. 32)
- Companies (Winding-up) Rules (Cap. 32H)

- Bankruptcy Ordinance (Cap.6)
- Bankruptcy Rules (Cap. 6A).

As Hong Kong adopts the common law system, case law on contracts is also relevant in determining contractual disputes and in enforcement.

Commercial Courts and Arbitration/Mediation Tribunals

The Courts of Hong Kong having jurisdiction to hear and enforce judgments in commercial disputes comprise the

- Small Claims Tribunal, which hears civil claims within its jurisdiction of up to HK\$50,000;
- District Court, which hears civil claims of over HK\$50,000 but no more than HK\$1,000,000;
- High Court, comprising the Court of Appeal and the Court of First Instance; and
- Court of Final Appeal.

There are specialist lists in the Court of First Instance which have been established to deal with particular types of proceedings, including the Commercial List for actions involving commercial matters and the Construction and Arbitration List for actions involving construction matters and applications under the Arbitration Ordinance (Cap. 609) and Order 73 of the Rules of the High Court (Cap. 4A) Details can be found on the Legal Reference System website (see Resource Bibliography).

There are no commercial arbitration or mediation tribunals established by the Hong Kong Government. The parties to a dispute may, pursuant to their arbitration agreement or by agreement (or in some cases in accordance with relevant legislation)¹⁵, appoint an arbitral tribunal consisting of a sole arbitrator or a panel of arbitrators, and including an umpire, to resolve their dispute.

Enforcement of Judicial Judgments

Judgments made by the Courts of Hong Kong can be enforced in the Courts by way of different enforcement actions, such as writ of execution, garnishee order, charging order, prohibition order, examination of debtor, attachment of property (as a provisional remedy in the nature of pre-trial security for judgment), winding-up, and bankruptcy petitions.

Certain foreign judgments, such as those obtained in Australia, Germany, France, Singapore etc., may be enforced by way of registration under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319). Relevant commercial judgments from the Mainland of China may be similarly enforced in Hong Kong under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597). Money judgments from outside Hong Kong to which the above legislation is not applicable may be enforced by writ action under the common law, provided that the relevant common law requirements are met.

Enforcement of Arbitral Awards

Arbitral awards may be enforced by way of a summary enforcement mechanism under Part 10 of the Arbitration Ordinance (Cap. 609). In accordance with the provisions of Part 10, Division 2 of the Arbitration Ordinance, an arbitral award made in the contracting States to the 1958 New York

¹⁵ See Sections 5(3) and (4) of the Arbitration Ordinance (Cap 609).

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) is enforceable in Hong Kong in the same manner as a judgment of the Court that has the same effect with the leave of the Court. A Mainland arbitral award is enforceable in Hong Kong in the same manner in accordance with Part 10, Division 3 of the Arbitration Ordinance. Awards other than the above two categories, including foreign and domestic arbitral awards, may be enforced under Part 10, Division 1 of the Arbitration Ordinance. Apart from the statutory regime, a party may bring an action at common law to enforce a foreign arbitral award in a Hong Kong Court. The applicant may, through proceedings by writ, apply to the Court for a summary judgment on the terms of the arbitral award.

Arbitral awards made in Hong Kong are enforceable in other jurisdictions through the courts of more than 140 contracting states to the New York Convention as well as in Mainland China through the arrangement with the Mainland on reciprocal enforcement of arbitral awards since 1999.

Contract Law in Hong Kong

Contracts made in Hong Kong or expressed to be subject to Hong Kong law will be governed by the law of contract in Hong Kong.¹⁶ There does not exist a codified law on contracts in Hong Kong. The law of contract in Hong Kong is essentially an inheritance from the English common law of contract and developed over the years by the Courts of Hong Kong in their judicial decisions. The common law of contract, however, is supplemented or modified by legislation in some cases (see below for details).

The “Law on Obligations” is imported from the civil law tradition and is now regarded as a common term in English law in professional practice and in academic writing. Under English law, the term “Law on Obligations” includes three areas of law, namely the law of contract, tort and restitution (unjust enrichment). The common elements of the various definitions of contract from both the common law and civil law traditions are the existence of an ‘agreement’, or a ‘promise’, or a ‘meeting of minds’ that create obligations binding in law.

In the past five years, certain aspects of the law of contract in Hong Kong have been developed. Amendment has been made to s.13A of the Conveyancing and Property Ordinance (Cap. 219) in 2008 regarding the delivery of original deeds or documents of title in the sale of land. The amendment was made to clarify what documents of titles that relate exclusively to the land have to be produced by a seller as proof of title in the land.

There has been some development concerning an electronic form of display. A website will generally constitute an invitation to treat only. However, despite the general rule, the Hong Kong Courts have affirmed the observation made in a Singapore High Court case¹⁷ which suggested that internet merchants have to be cautious in how they present an advertisement, since this determines whether the advertisement will be construed as an invitation to treat or a unilateral contract.

Following the recommendations of the Law Reform Commission of Hong Kong published in 2005, the Administration is proposing to introduce the “Contracts (Rights of Third Parties) Bill”

¹⁶ Hong Kong law will apply unless the contracting parties provide otherwise

¹⁷ Chwee Kin Keong v Digilandmall.com Pte Ltd [2004] 2 SLR 594

to reform the general rule of contract under common law that only parties to a contract may enforce rights under the contract. To reflect the recommendation that contracting parties should have the freedom to adhere to the doctrine of privity if they so choose, provisions have been included in the proposed bill allowing parties to opt out of any new statutory provisions giving rights of suit to a third party.

Freedom of Contract in Hong Kong

In traditional terms, the English law of contract allows people to make their own contracts with minimal interference and insists on performance. These are known as the principles of freedom and sanctity of contract. “Freedom of contract” denotes that it is for the parties to make their own contracts without the intervention of government, legislation or the courts. “Sanctity of contract” upholds the principle that once agreements are made they should be honored. The principles of “freedom of contract” and “sanctity of contract” remain of central importance to the law of contract.¹⁸ However, qualifications or restrictions have been made to the law of contract to ensure that the principle of good faith in contract or contractual fairness is preserved.¹⁹

Restrictions on Freedom of Contract

The common law of contract in Hong Kong is subject to the qualifications or restrictions set out in legislation, which mainly relates to consumer protection. The legislation includes the following:

- ***Sale of Goods Ordinance (Cap. 26)***. Under common law, if an essential term of a contract (e.g., the price) is not agreed the contract will be void for uncertainty. However, where the contract is a contract for the sale of goods or services, if the consideration is not fixed, a reasonable price would be implied to be payable.²⁰
- ***Misrepresentation Ordinance (Cap. 284)***. Where one party has made a false statement of fact that induced the other party to enter into a contract (“misrepresentation”), and if the misrepresentation is a negligent misrepresentation within the meaning of section 3(1) of the Misrepresentation Ordinance (Cap. 284), the representee is entitled to damages as if the misrepresentation was a fraudulent misrepresentation. A contract term exempting liability or any remedy for misrepresentation is void unless it satisfies the test of reasonableness in the Control of Exemption Clauses Ordinance (Cap. 71).²¹
- ***Control of Exemption Clauses Ordinance (Cap. 71)***. Any contract term that excludes or restricts a person’s liability for death or personal injury resulting from negligence is void. In the case of other loss or damage arising from negligence, the exemption clause will be effective only if it satisfies the requirement of reasonableness.²²

¹⁸ Chitty on Contracts (2008, Sweet & Maxwell), para 1-010

¹⁹ *Ibid.*

²⁰ Section 10 of Sale of Goods Ordinance (Cap. 26) and section 7 of Supply of Services (Implied Terms) Ordinance (Cap. 457)

²¹ Section 4 of Misrepresentation Ordinance (Cap. 284)

²² Section 7 of Control of Exemption Clauses Ordinance (Cap. 71)

Where a person is “dealing as consumer”²³ or where the contract is on the other’s written standard terms of business, the exemption clauses in these contracts will be subject to the Control of Exemption Clauses Ordinance (Cap. 71) (see Section 8(1) of Cap. 71).

The implied undertaking as to title in contracts for the sale or supply of goods cannot be excluded or restricted. As against a person dealing as consumer, liability for breach of the seller’s implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose cannot be excluded or restricted. In business-to-business contracts, such liability may be excluded or restricted if it passes the test of reasonableness.²⁴

- ***Unconscionable Contracts Ordinance (Cap. 458)***. In addition to the Control of Exemption Clauses Ordinance (Cap 71), the Unconscionable Contracts Ordinance (Cap. 458) further protects a party dealing as consumer. Where the court finds the consumer contract or any part of it to have been unconscionable in the circumstances relating to the contract at the time it was made, the court may refuse to enforce the contract, or enforce the remainder of the contract without the unconscionable part, or limit the application of, or revise or alter, any unconscionable part.²⁵
- ***Supply of Services (Implied Terms) Ordinance (Cap. 457)***. In a contract for the supply of a service, exemption clauses in the contract excluding or limiting liability of a party are controlled by the Supply of Services (Implied Terms) Ordinance (Cap. 457). The implied terms that the supplier will carry out the service with reasonable care and skill,²⁶ that the supplier will carry out the service within a reasonable time (if time is not fixed by the contract or by a course of dealings between the parties),²⁷ that the party contracting with the supplier will pay a reasonable charge (if the consideration is not fixed by the contract or by a course of dealings between the parties),²⁸ cannot be excluded or restricted as regards a contracting party “dealing as a consumer.”²⁹
- ***Conveyancing and Property Ordinance (Cap. 219)***. In contracts involving interests in land such as sale, purchase and lease of real properties in Hong Kong, the Conveyancing and Property Ordinance (Cap. 219) is relevant. Subject to certain exceptions, a legal estate in land may be created, extinguished or disposed of only by deed. This also applies to a lease for a term exceeding 3 years.³⁰ A contract for the sale or other disposition of land must be in writing for it to be enforceable. Interests in land created by parol and not in writing and signed have the force and effect of interests at will only notwithstanding that consideration has been given.³¹

²³ Section 4 of Control of Exemption Clauses Ordinance (Cap. 71)

²⁴ Section 11(3) of Control of Exemption Clauses Ordinance (Cap. 71)

²⁵ Section 5 of Unconscionable Contracts Ordinance (Cap. 458)

²⁶ Section 5 of Supply of Services (Implied Terms) Ordinance (Cap. 457)

²⁷ Section 6 of Supply of Services (Implied Terms) Ordinance (Cap. 457)

²⁸ Section 7 of Supply of Services (Implied Terms) Ordinance (Cap. 457)

²⁹ Section 8 of Supply of Services (Implied Terms) Ordinance (Cap. 457)

³⁰ Section 4 of Conveyancing and Property Ordinance (Cap. 219)

³¹ Section 6 of Conveyancing and Property Ordinance (Cap. 219)

Private enforcement of contracts following a court order is permissible in Hong Kong provided that such enforcement does not contravene the court order and any Laws of Hong Kong.

In Hong Kong, private remedies against fraud are permitted insofar as such remedies are permitted under the common law (e.g., laws of contract, tort, and trust) or under the provisions of the relevant statutes [e.g., Misrepresentation Ordinance (Cap. 284) or the Unconscionable Contracts Ordinance (Cap. 458)], and upon successful applications to the Court.

Hong Kong has ratified both the United Nations Convention on Contracts for the International Sale of Goods and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

In December 2010, the government procurement and stores management procedures/requirements/guidelines in the Store and Procurement Regulations (“SPR”) were amended and refined in respect of the sections pertaining to declaration of interest, publication of tender notices, standard tender report format, etc.

The Electronic Transactions Ordinance (Cap. 553), based on the UNCITRAL Model Law on Electronic Commerce (1996), facilitates the use of electronic transactions for commercial and other related purposes.

The process of enforcing judgments is primarily prescribed by the High Court Ordinance (Cap. 4), Rules of the High Court (Cap. 4A), District Court Ordinance (Cap. 336H) and the Rules of the District Court (Cap. 336H).

Enforcement actions upon application to the Courts in Hong Kong include the following:

Writ of Fieri Facias. The Court may issue a writ of execution to direct the bailiff to seize the goods, chattels and other property of the judgment debtor and realize the proceeds to satisfy the judgment debt and costs of execution [Orders 46 & 47 of the Rules of the High Court (Cap. 4A) and Orders 46 & 47 of the Rules of the District Court (Cap. 336H)].

Garnishee proceedings. The Court may order a garnishee (e.g., a bank) to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor [Order 49 of the Rules of the High Court (Cap. 4A) and Order 49 of the Rules of the District Court (Cap. 336H)].

Charging Order. The Court may impose a charge on the property (e.g., landed property, securities/stock or fund in Court) of the judgment debtor to provide security for the payment to the judgment creditor. The charge may be enforced by separate proceedings for order for sale of the property charged [Order 50 of the Rules of the High Court (Cap. 4A) and Order 50 of the Rules of the District Court (Cap. 336H)].

Prohibition Order. The Court may make an order that prohibits the judgment debtor from leaving the jurisdiction if the Court is satisfied that the judgment debtor is about to leave the jurisdiction and his departure would likely obstruct or delay the enforcement of judgment [Order 44A of the Rules of the High Court (Cap. 4A) and Order 44A of the Rules of the District Court (Cap. 336H)].

Examination of Debtor. The judgment creditor may apply to the Court for an order bringing the judgment debtor before the Court in order to cross-examine him as to his means. The examination will facilitate discovery of the judgment debtor’s means for further enforcement. [Orders 48 & 49B of the Rules of the High Court (Cap. 4A) and Orders 48 & 49B of the Rules of the District Court (Cap. 336H)].

Interim attachment of property of the debtor. This is a pre-judgment procedure for preserving the property of the debtor as a security for the creditor if it is believed that the debtor has the intent to obstruct or delay the execution of judgment to be given against him by disposal of his property or removing his property from the jurisdiction of the Court [Order 44A of the Rules of the High Court (Cap. 4A) and Order 44A of the Rules of the District Court (Cap. 336H)].

Appointment of Receiver. The Court may appoint a receiver by way of equitable execution to receive benefit of the judgment debtor in some property (even the interest is vested or contingent) on behalf of the judgment debtor for the purpose of satisfaction of judgment [Order 51 of the Rules of the High Court (Cap. 4A) and Order 51 of the Rules of the District Court (Cap. 336H)].

Winding-up and bankruptcy petitions. As a last resort, a judgment creditor may apply for a winding-up order against a judgment debtor (corporate) or for a bankruptcy order against a judgment debtor (natural person). However, the judgment creditor may rank *pari passu* with other creditor(s) of the judgment debtor [Bankruptcy Ordinance (Cap. 6), Bankruptcy Rules (Cap. 6A), Companies Ordinance (Cap. 32) and Companies (Winding-up) Rules (Cap. 32H)].

The Official Receiver's Office provides insolvency management services when appointed by the Court and creditors to act as liquidator or as trustee. The services include:

- realization of assets;
- adjudication of claims of creditors;
- distribution of dividends;
- investigation into the causes of failure;
- conduct and affairs of the bankrupt directors and officers of the insolvent companies; and
- administration of the ordinances relating to liquidation and bankruptcy.

When the private sector insolvency practitioners are appointed to act as liquidators or trustees in compulsory liquidations or bankruptcies, the Official Receiver's Office is responsible for monitoring their conduct and performance.

Role of and Regulatory Framework for Notaries Public in Hong Kong

In Hong Kong, the service of Notaries Public is not mandatory in relation to the preparation of contracts. A Notary Public is primarily concerned with the preparation and authentication of documents (including commercial contracts) for use abroad. A Notary Public is entrusted with the preparation, execution and verification of legal documents for use abroad (save documents which originate in Hong Kong for use in the Mainland China which will be notarized by China-Appointed Attesting Officers).

Some documents bearing the signature and seal of the Notary Public may be required by the law of the place where the documents are to be used to be further authenticated by a process called "legalization" before they could be used, that is to verify the identity, signature and seal of the Notary Public by the relevant state's or territory's diplomatic representative in Hong Kong. Legalization can be replaced by the issuance of Apostille for documents intended to be used in states or territories to which the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention) applies.

Notaries Public are appointed by the High Court of Hong Kong and regulated by the Legal Practitioners Ordinance (Cap. 159). Since 1993, solicitors with at least 7 years post-admission qualification may apply to sit the examination for Notaries Public as prescribed under the Notaries Public (Examinations) Rules (Cap. 159AH).

The practice of Notaries Public is regulated by the Notaries Public (Practice) Rules (Cap. 159AI). A Notary Public shall be liable to be disciplined if he/she has engaged in conduct [as set out under s. 40F of the Legal Practitioners Ordinance (Cap. 159)] involving fraud, dishonesty; prejudicial to the administration of justice; or bringing the profession into disrepute, etc.

Role of China-Appointed Attesting Officers

China-Appointed Attesting Officers are qualified Hong Kong lawyers who have been appointed by the Ministry of Justice of the People's Republic of China after passing the prescribed qualifying examinations as set out under the Measures of the People's Republic of China on the Management of China-Appointed Attesting Officers (Hong Kong) (promulgated by the Ministry of Justice on 24 February 2002) ("the Measures"). They are allowed to notarize any legal acts, facts and documents that take place in Hong Kong for use in Mainland China.

The scope of activities undertaken by a China-Appointed Attesting Officer includes attesting and certifying acts, matters, and documents of legal significance occurring in or emanating from Hong Kong and such attested documents are for use in Mainland China. In issuing attested documents, the Attesting Officers must ensure that the documents do not violate the law of Hong Kong and the PRC. The practice and conduct of China-Appointed Attesting Officers are regulated by the Measures.

HKSARG's Support for Alternative Dispute Resolution

Support for Arbitration. The Policy Address of the Chief Executive of the HKSAR of October 2007 stated that one of Hong Kong's policy objectives was to develop Hong Kong as a centre for dispute resolution in the Asia-Pacific region.

Hong Kong has its own arbitration body, the Hong Kong International Arbitration Centre (HKIAC), which was set up in 1985. The HKIAC is now one of the top international arbitration centers in the Asia Pacific region. In 2011, it handled 178 international arbitration cases and has always been amongst the highest in Asia in terms of number of cases.

Apart from supporting Hong Kong's home-grown arbitration body, the HKSAR Government also made efforts to attract other major international arbitration bodies to establish a presence and conduct arbitrations in Hong Kong. In November 2008, the International Court of Arbitration of the International Chamber of Commerce (ICC), which is based in Paris, opened a branch of its Secretariat in Hong Kong to administer ICC arbitrations conducted in Asia from its base in Hong Kong. The Asia Branch in Hong Kong currently handles more than 180 cases.

The HKIAC and the International Court of Arbitration of the ICC (Asia Office) have made Hong Kong a popular choice, in particular, for commercial, shipping, and construction arbitration.

Support for Mediation. Following the October 2007 Policy Address of the Chief Executive, a cross-sector Working Group on Mediation chaired by the Secretary for Justice was set up to review the development of mediation and to map out plans to employ mediation more extensively and effectively in both commercial disputes and at community level. The Working Group released its report on 8 February 2010 (see Department of Justice website). A Mediation Task Force chaired by the Secretary for Justice has been set up to implement the recommendations of the Working Group that received wide public support with a view to promoting the wider use of mediation in Hong Kong.

To enhance investor protection, the Financial Dispute Resolution Centre (FDRC) opened on 19 June 2012. FDRC will administer an independent and impartial dispute resolution scheme with an aim to resolve monetary disputes between individuals and financial institutions through “mediation first, arbitration next.”

4.2 Trends

Recent reforms related to the enforcement of contracts include the following:

Civil Justice Reform. The Judiciary introduced the Civil Justice Reform with the objectives to improve the cost-effectiveness of the civil justice system, to make it less complex and to reduce delays. The reform has been implemented since April 2009. The Judiciary is monitoring the reform to ensure its effective operation. The Practice Direction 31 on Mediation promulgated by the Judiciary since 1 January 2010 has facilitated legal practitioners in advising the parties to litigation on the benefits of mediation. It also promotes the wider use of mediation for resolving commercial and other disputes. An adverse costs order may be made by the Court against a party that unreasonably fails to engage in mediation.

Arbitration Ordinance. The regulatory framework for the conduct of arbitration in Hong Kong has been enhanced by Arbitration Ordinance (Cap. 609), which came into operation on 1 June 2011. The new ordinance unifies the domestic and international arbitration regimes on the basis of the UNCITRAL Model Law on International Commercial Arbitration. It is attuned to the latest and best international practice, and is more familiar and accessible to both local and foreign arbitration users and practitioners. It encourages the business community and arbitration practitioners to choose Hong Kong as a place to conduct arbitral proceedings, thereby facilitating the fair and speedy resolution of disputes by arbitration without unnecessary expenses.

Mediation Ordinance. The report of the Secretary for Justice’s Working Group on Mediation published in February 2010 recommended a stand-alone mediation ordinance with a view to promoting wider use of mediation in Hong Kong. The Mediation Bill was gazetted on 18 November 2011 and enacted by the Legislative Council in June 2012. The Mediation Ordinance (Cap. 620) was gazetted on 22 June 2012 and will come into operation on a day to be appointed by the Secretary for Justice. The objectives of the Ordinance are to promote, encourage, and facilitate the resolution of disputes by mediation, and to protect the confidential nature of mediation communications. It clearly defines mediation and mediation communication, and provides for confidentiality of mediation communications and for their admissibility as evidence in court in special circumstances or with the leave of the Court. The Mediation Ordinance, as enacted, will facilitate the wider use of mediation in resolving commercial and contract disputes.

Financial Dispute Resolution Centre. The Financial Dispute Resolution Centre (FDRC) opened on 19 June 2012. FDRC will administer an independent and impartial dispute resolution scheme with an aim to resolve monetary disputes between individuals and financial institutions through “mediation first, arbitration next.”³²

³² See announcement of appointments to FDRC:
www.info.gov.hk/gia/general/201203/01/P201203010250.htm

5. Trade Across Borders in Hong Kong

The Commerce and Economic Development Bureau (CEDB) is responsible for the formulation and co-ordination of policies and strategies in relation to trade facilitation. The Transport and Housing Bureau (THB), the Customs and Excise Department (C&ED), and the Trade and Industry Department (TID) are other important government agencies involved.

HKC is a tariff-free port. Only excise duties are levied on four types of goods, namely liquors, tobacco, hydrocarbon oil, and methyl alcohol. In comparison with those tariff economies, the movement of goods, people, and conveyances across borders in HKC is relatively simple, efficient, and facilitative. In regard to movement of cargo, C&ED will release import/export consignments instantly so long as sufficient information and necessary licenses/permits, if required, are provided by the importers/exporters. Even for cargo or conveyances detained for checks, C&ED will process them in a highly efficient manner. In respect of movement of people, C&ED has implemented the Red and Green Channel System to facilitate passenger clearance. The aforesaid C&ED's measures, coupled with its use of advanced non-intrusive technology in cargo inspection and the adoption of intelligence-led risk profiling in cargo and passenger clearance, have created a very favorable Trading Across Borders environment for HKC.

5.1 Background

The main legal authority for C&ED officers to conduct import, export, and other cross-border activities (e.g., cargo inspection) comes from the Import and Export Ordinance, Chapter 60, Laws of Hong Kong. C&ED has authority over trade and the main function at the border is to balance trade facilitation and enforcement.

The laws relating to improvements in EoDB will be amended or added if necessary. In terms of Customs, for example, the Import and Export (Electronic Cargo Information) Regulation, under the Import and Export Ordinance, Cap 60, Laws of Hong Kong, has been enacted to mandate the operation of the Road Cargo System (ROCARS).

ROCARS is an electronic platform developed by C&ED to facilitate customs clearance of road cargoes. ROCARS was launched in May 2010 and ROCARS submissions have been mandatory since November 17, 2011 after an 18-month transitional period, through an amendment to the Import and Export Ordinance (Cap 60). All cross-boundary trucks, except those selected for inspection, now enjoy seamless customs clearance at the land boundary. Riding on ROCARS, an Intermodal Transshipment Facilitation Scheme (ITFS) was launched in November 2010 to simplify customs clearance procedures for air-land and sea-land intermodal transshipment cargo. Under ITFS, for traders using ROCARS and certain tracking devices prescribed by the Customs and Excise Department, such cargo will normally be subject to one inspection at most, at either the point of entry or exit.

The Government also introduced an amendment to the Trade Descriptions Ordinance (Cap 362), taking effect on 5 April 2012, that would enable goods made in Hong Kong to enjoy preferential tariff treatment under the more flexible rules of origin provided for in agreements/arrangements of trade liberalization that Hong Kong has entered into with trading partners or may sign in future.

Mechanism Under the Istanbul Convention

Under the Convention, goods transported through Contracting Parties have to be covered by a standardized document known as "ATA carnet." Goods covered by ATA carnet will be granted temporary admission into a Contracting Party without payment of import duty and lodgment of

Customs declarations. Given the free port status of HKC, traders have been benefiting from zero tariffs on imports. The main benefit brought to traders on temporary admission of goods into HKC under the Convention is the waiving of lodgment of import/export declarations. For goods exported under ATA carnet from HKC to other Contracting Parties, the carnet issuing and guaranteeing association in HKC (i.e., the Hong Kong General Chamber of Commerce) will issue the carnet to traders, whose goods on temporary admission into other Contracting Parties can be exempted from payment of import duty and lodgment of Customs declarations.

Regarding customs and border protection, C&ED has recently undertaken reforms like the implementation of ROCARS and the launch of the Hong Kong Authorized Economic Operator (AEO) Program. The two reforms have embodied HKC's adherence to the principles of the Revised Kyoto Convention (an international instrument that advocates trade facilitation), namely "transparency and predictability of Customs actions", "simplified procedures for authorized persons", "maximum use of information technology", "minimum necessary Customs control to ensure compliance with regulations" and "use of risk management." The standards of the HK AEO Program also comply with the WCO SAFE Framework of Standards (FoS), which aims to establish standards that provide supply chain security and facilitation to goods being traded internationally.

CEDB is responsible for the formulation and co-ordination of policies and strategies in relation to trade facilitation.

5.2 Trends

Some major reforms in the area of trading across borders implemented by C&ED since 2009 are as follows:

ROCARS. The System, fully implemented since 17 November 2011, enables registered shippers or their authorized agents to submit advance road cargo information to C&ED by electronic means. By using the ROCARS, truck drivers enjoy seamless Customs clearance at land boundary control points.

Hong Kong Authorized Economic Operator Program. The Program was put on pilot in June 2010 and formally launched in early April 2012. Companies will be accredited as AEOs if they meet certain security standards, which are in compliance with the WCO SAFE FoS and the APEC Framework for Secure Trade, as required by C&ED. With the status of AEO, accredited companies will enjoy appropriate Customs facilitation. Following the formal launch of the program, C&ED will explore opportunities to develop AEO mutual recognition arrangement (MRA) with Customs administrations of other economies to enhance international supply chain security and facilitation to traders.

ITFS. The Scheme was launched on 20 November 2010. Under the Scheme, intermodal transshipment cargoes handled by registered operators (i.e., those using ROCARS and certain tracking devices like Electronic Lock and Global Positioning System as prescribed by C&ED) are subject to customs inspection at either the port of entry or exit only. ITFS is a voluntary scheme and no charge is imposed on participants.

In planning and developing Customs clearance systems and measures for future boundary control points, C&ED will continue to explore new or similar facilitative initiatives to ease the TAB process in HKC.

The Financial Secretary announced on 1 February 2012 that import and export declaration charges would be halved to provide timely assistance to the import and export trade. The plan is to complete necessary procedures as soon as possible so the proposal can go into effect in the 2011/12 legislative year.

To maintain Hong Kong's competitiveness as an international trading centre, the Government launched the Government Electronic Trading Services (GETS) system in 1997 to provide a platform for the trading community to submit certain trade related documents electronically, thereby discharging their statutory obligations in a cost-effective and environmentally friendly manner. The appointment of a third GETS service provider in 2010 has given users more choice and boosted competition. Enhancement measures have also been implemented to reduce traders' data input efforts.

III. Resource Bibliography

Resource	Website	Note
STARTING A BUSINESS		
Government of Hong Kong	www.gov.hk	
Financial Services and the Treasury Bureau	www.fstb.gov.hk	
Companies Registry	www.cr.gov.hk	
Inland Revenue Department	www.ird.gov.hk	
Invest Hong Kong	www.investhk.gov.hk	
Trade and Industry Department	www.tid.gov.hk	
Hong Kong Trade Development Council	www.hktdc.com	
e-Registry Portal	www.eregistry.gov.hk	
Department of Justice	www.legislation.gov.hk	Information on Companies Ordinance and Business Registration Ordinance is here.
GETTING CREDIT		
Financial Services and the Treasury Bureau	www.fstb.gov.hk	
Hong Kong Monetary Authority	www.hkma.gov.hk	
Hong Kong Mortgage Corporation	www.hkmc.com.hk	
Office of the Privacy Commissioner for Personal Data	www.pcpd.org.hk	
Stock Exchange of Hong Kong Ltd.	www.hkex.com.hk	
Dun & Bradstreet (HK) Ltd.	www.dnbasia.com/hk	
TransUnion Ltd.	www.transunion.hk	
DEALING WITH PERMITS		
Buildings Department	www.bd.gov.hk	Updated version of codes of practice and practice notes are available here.
Department of Justice	www.legislation.gov.hk	Buildings Ordinance and regulations are available here.

Resource	Website	Note
Efficiency Unit	www.eu.gov.hk	
Water Supplies Department	www.wsd.gov.hk	Documents and procedures for applications for water supply are available here.
Drainage Services Department	www.dsd.gov.hk	Guidance notes on making connections to public drains or sewers are available here.
Development Bureau	www.devb.gov.hk	Guidelines on provision of water supply connection and drainage connection works under the Helping Business Program are also available here.
ENFORCING CONTRACTS		
Hong Kong Judiciary	www.judiciary.gov.hk	
Department of Justice (Laws)	www.legislation.gov.hk	International agreements that are in force and applicable to Hong Kong are here.
Department of Justice (Legal System)	www.doj.gov.hk	Information on dispute resolution, the Working Group on Mediation is available here.
Legal Reference System	legalref.judiciary.gov.hk	
The Official Receiver's Office	www.oro.gov.hk	Insolvency process.
The Law Society of Hong Kong (Solicitors)	www.hklawsoc.org.hk	
Hong Kong Bar Association (Barristers)	www.hkba.org	
Hong Kong International Arbitration Centre & Hong Kong Mediation Council	www.hkiac.org	Dispute resolution services provider.
International Chamber of Commerce	www.icchkcbc.org	
Hong Kong Mediation Centre	www.mediationcentre.org.hk	
Financial Services and the Treasury Bureau	www.fstb.gov.hk	A guide to government procurement is available here.
Hong Kong Society of Notaries	www.notaries.org.hk	
Association of China Appointed Attesting Officers Ltd.	www.caaao.org.hk	
TRADING ACROSS BORDERS		
Commerce and Economic Development Bureau	www.cedb.gov.hk	
Transport and Housing Bureau	www.thb.gov.hk	
Trade and Industry Department	www.tid.gov.hk	
Service Providers for Government Electronic Trading Services (GETS):		
Brio Electronic Commerce Ltd.	www.brio.com.hk	
Global e-Trading Services Ltd.	vip.ge-ts.com.hk	
Tradelink Electronic Commerce Ltd.	www.tradelink.com.hk	

Indonesia

I. General Information

Commitment to reform and improve the business environment is not new in Indonesia. Improving the business environment is central in Indonesia's policy reforms especially at the wake of the financial crisis in 1997/1998.

In Indonesia, Small and Medium Enterprises (SMEs) account for approximately 60 percent of GDP.³³ The single most important form of employment in the country, they also provide livelihoods for more than 90 percent of Indonesia's workforce.³⁴ Cognizant that the Small and Medium Enterprises (SMEs) in Indonesia play a critical role as the backbone of the economy and in helping to buffer the economic slowdown by providing employment and commerce where large companies were failing, the Government of Indonesia wants to make sure that it is doing all it can to create a more favorable environments where SMEs can easily be formed and to operate.

As part of such commitment to support the SMEs, the Government of Indonesia looks to the growing body of research on business environments and investment climates - including the World Bank Group's Doing Business Reports - as a guiding reference in designing and implementing reforms that create a sound and efficient regulatory environment for businesses.

Reforms in the area measured by the Doing Business report have been part of a broader program of reforms contained in several of the Indonesian government's reform packages over the past years, namely:

- Presidential Instruction No. 3 of 2006 concerning Policy Package for the Improvement of the Investment Climate
- Presidential Instruction No. 6 of 2007 concerning Policy for the Acceleration of Real Sector Development and Empower the MSME Sector.
- Presidential Instruction No. 5 of 2008 concerning the Focus of the Economic Program for the Period of 2008-2009
- Presidential Regulation No. 5 of 2010 concerning the National Medium Term Development Plan (RPJMN) 2010-2014, which identified investment climate and business climate reform as one of the 11 national priorities for the period of 2010-2014.

The aforementioned policy packages incorporated a number of reform action plans, including those targeting the principal areas measured by the Doing Business report. The action plans implemented over the period of 2006 – 2011 to date have been recognized as positive reforms in

³³ Central Bureau of Statistics, Indonesia, 2010.

³⁴ IFC Indonesia. Small Enterprise Development Policies in Indonesia: An Overview. October 2007.

the 7 out of the 10 areas measured by the Doing Business report, namely Starting a Business, Dealing With Construction Permits (formerly Dealing With Licenses), Registering Property, Paying Taxes, Getting Credit and Trading Across Borders.

One of the pillars of Indonesia's performance has been an ambitious decentralization program. The number of districts grew to 480, up from 292 in 1998, and authority was devolved to local governments to allocate spending and regulate public service provision. Decentralization increased the accountability of local governments and brought policy decisions closer to citizens. It also allowed some local governments to introduce innovative service delivery mechanisms—such as one-stop shops. These innovations have been replicated by others, creating a healthy competition. (WB 2010)

In 2009, APEC's Economic Committee identified five priority areas for regulatory reform in APEC economies, namely: Starting a Business, Dealing with Construction Permits, Getting Credit, Trading Across Borders and Enforcing Contracts. The EoDB Initiative sets an APEC-wide target to make it 25 percent cheaper, faster and easier to do business within APEC economies by 2015 in the five priority areas, determined according to the World Bank's Ease of Doing Business (EoDB) indicators. This 25 percent target will be based on APEC-wide average improvements.

The Government of Indonesia is keen to keep reform process moving forward and is participating in the capacity-building programs led by champion economies within APEC to address topics related to Doing Business and a broader governance reform agenda in two out of the five priority areas, namely Starting a Business (New Zealand and the United States) and Enforcing Contracts (Korea).

The following sections of this report will provide brief descriptions of the regulatory and institutional landscape, as well as highlights of recent reform activities, for each of the priority areas.

The regulatory policy framework in Indonesia follows the official hierarchy set by Law No. 12 of 2011 on the Formulation of Laws and Regulations, namely:

- 1945 Constitution (*Undang-Undang Dasar* 1945 or UUD'45)
- Law (*Undang-Undang* or UU) and Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-Undang* or Perpu)
- Government Regulation (*Peraturan Pemerintah* or PP)
- Presidential Regulation (*Peraturan Presiden* or *Perpres*)
- Regional Regulation (*Peraturan Daerah* or *Perda*)

The above regulatory instruments are supported by implementing instruments that among others include the following:

- Presidential Instruction (*Instruksi Presiden* or *Inpres*), addressed to a ministers and heads of government agencies
- Presidential Decree (*Keputusan Presiden* or *Keppres*)
- Regulation or Decrees of Ministers/Heads of Government Agencies (*Peraturan/Keputusan Menteri/Kepala Badan*)
- Circular Letters (*Surat Edaran*)

Policy and regulatory responsibilities for business startups, operations and expansions are shared among several ministries and agencies both at the national and subnational level. Provincial, regency, and municipality-level activities often follow the guidelines provided by the national level government stated in government regulations and ministerial regulations/decrees. Thus, any regional regulation pertaining to public services under their authority should be based on the guidelines set by the national government.

Set forth in the next page is a chart outlining the relationships between various ministries and agencies responsible for overseeing reforms in the five Ease of Doing Business (EoDB) areas. As the World Bank/IFC's methodology for Doing Business focuses on the largest business city of an economy (in the case of Indonesia, it is Jakarta), this report will only focus on reforms and implementation by subnational level agencies in Jakarta.

Given the multi-institutional nature of ease of doing business reforms in Indonesia, the Coordinating Ministry of Economic Affairs serves as the focal point for the five key areas of Doing Business prioritized for reform by APEC economies.

Chart 1. Government Ministries and Agencies Responsible for Overseeing Reforms in Starting a Business

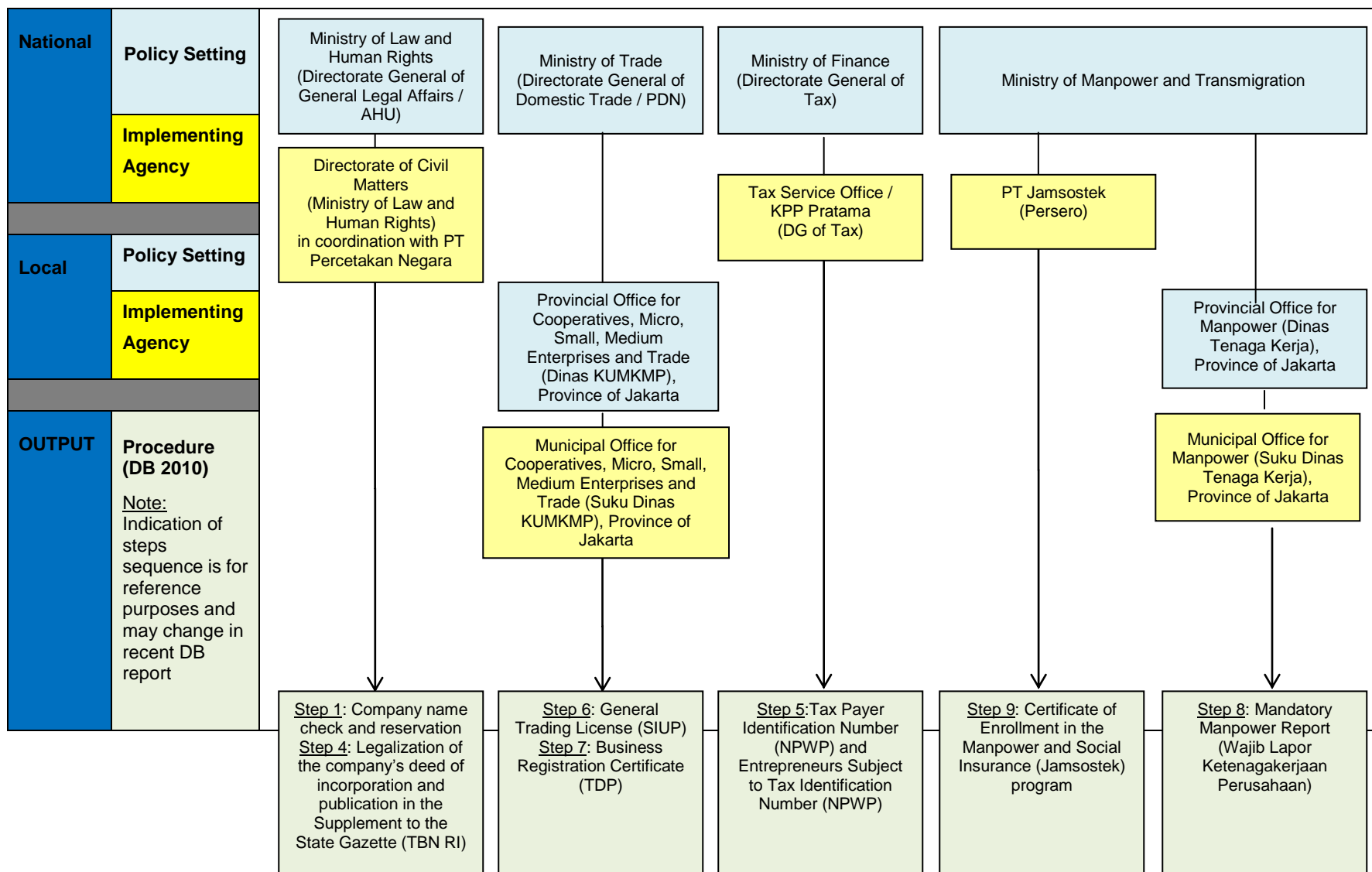


Chart 2. Ministries and Agencies Responsible for Overseeing Reforms in Dealing with Construction Permits

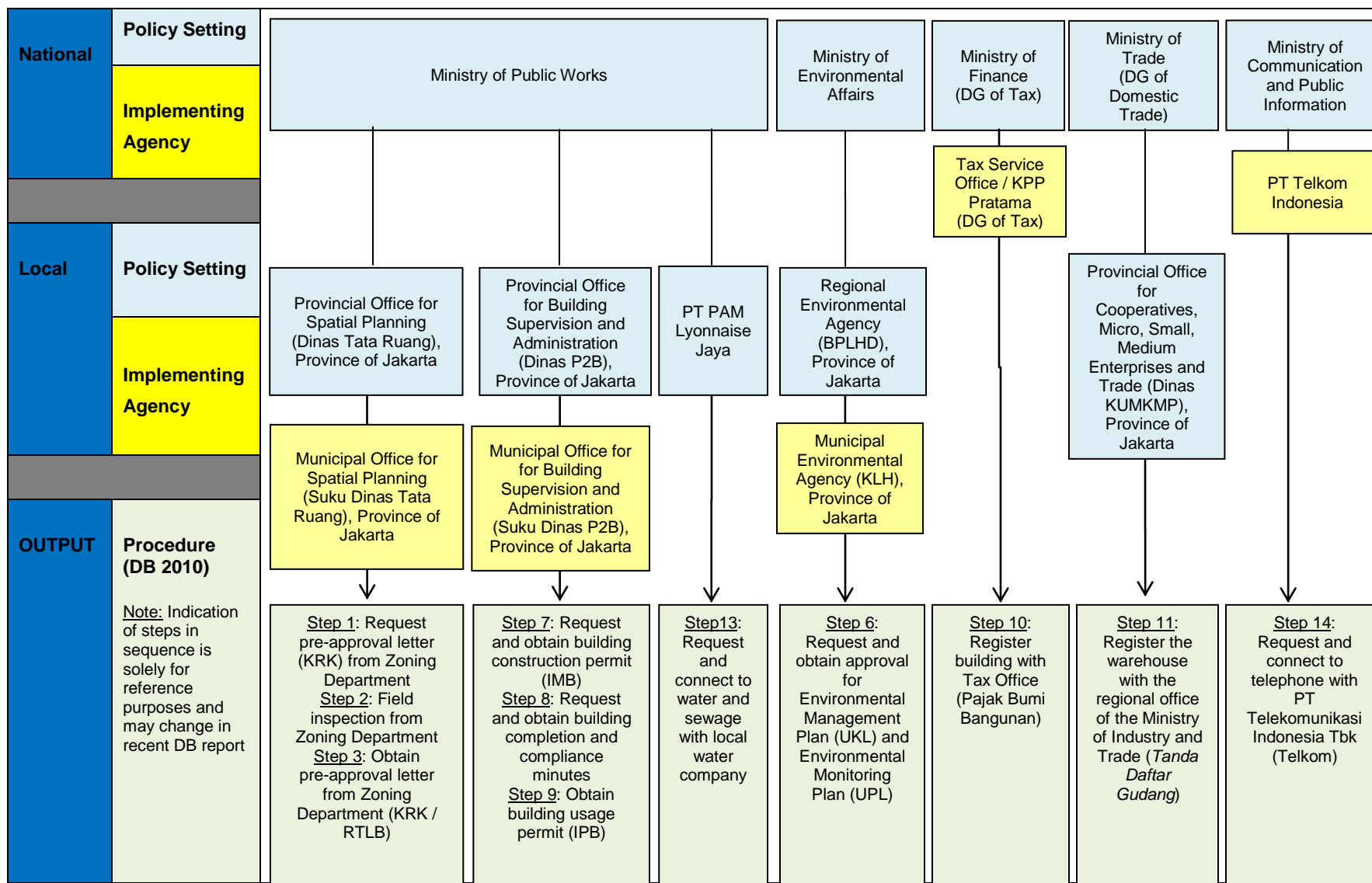


Chart 3. Ministries and Agencies Responsible for Overseeing Reforms in Getting Credit

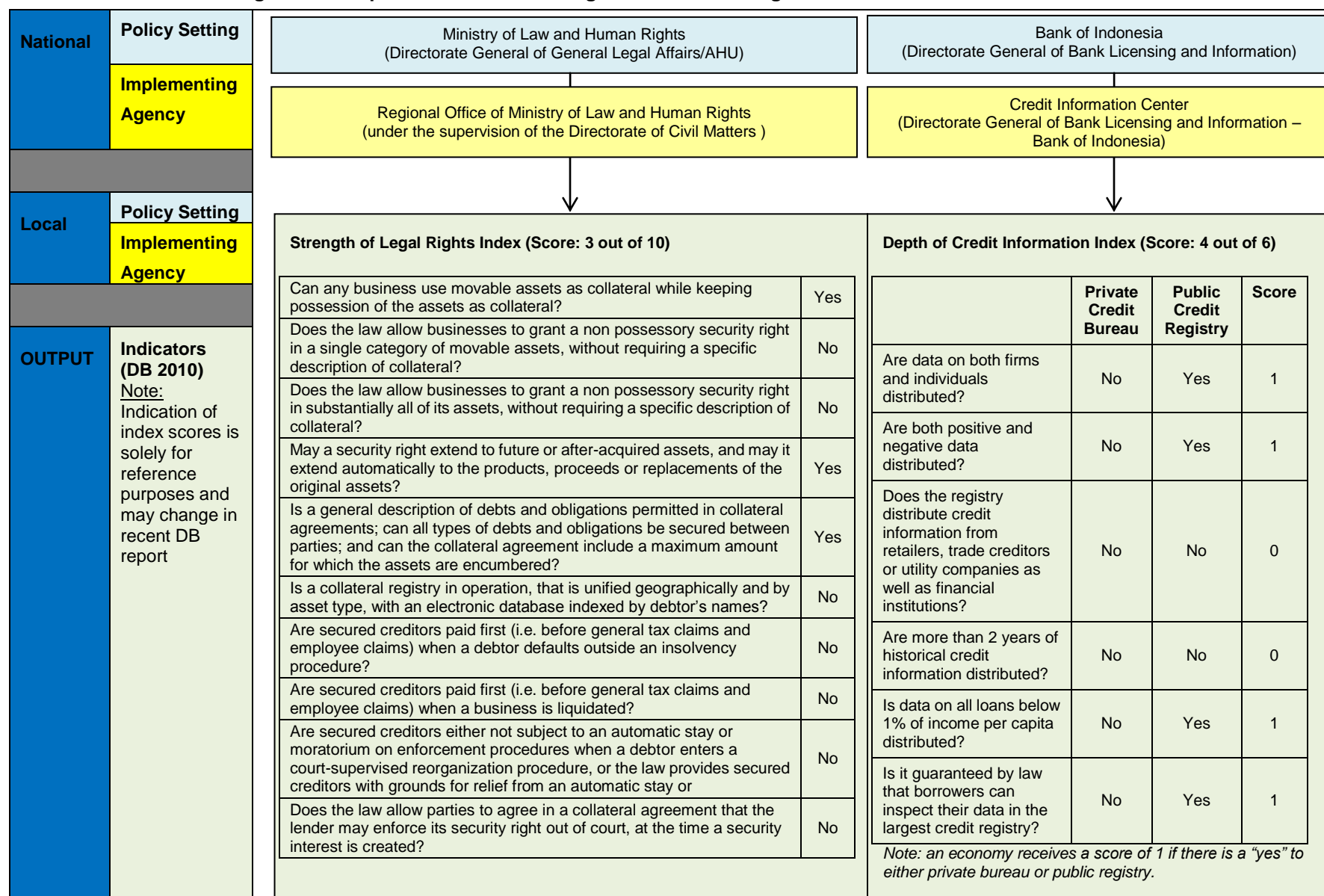


Chart 4. Ministries and Agencies Responsible for Overseeing Reforms in Trading Across Borders

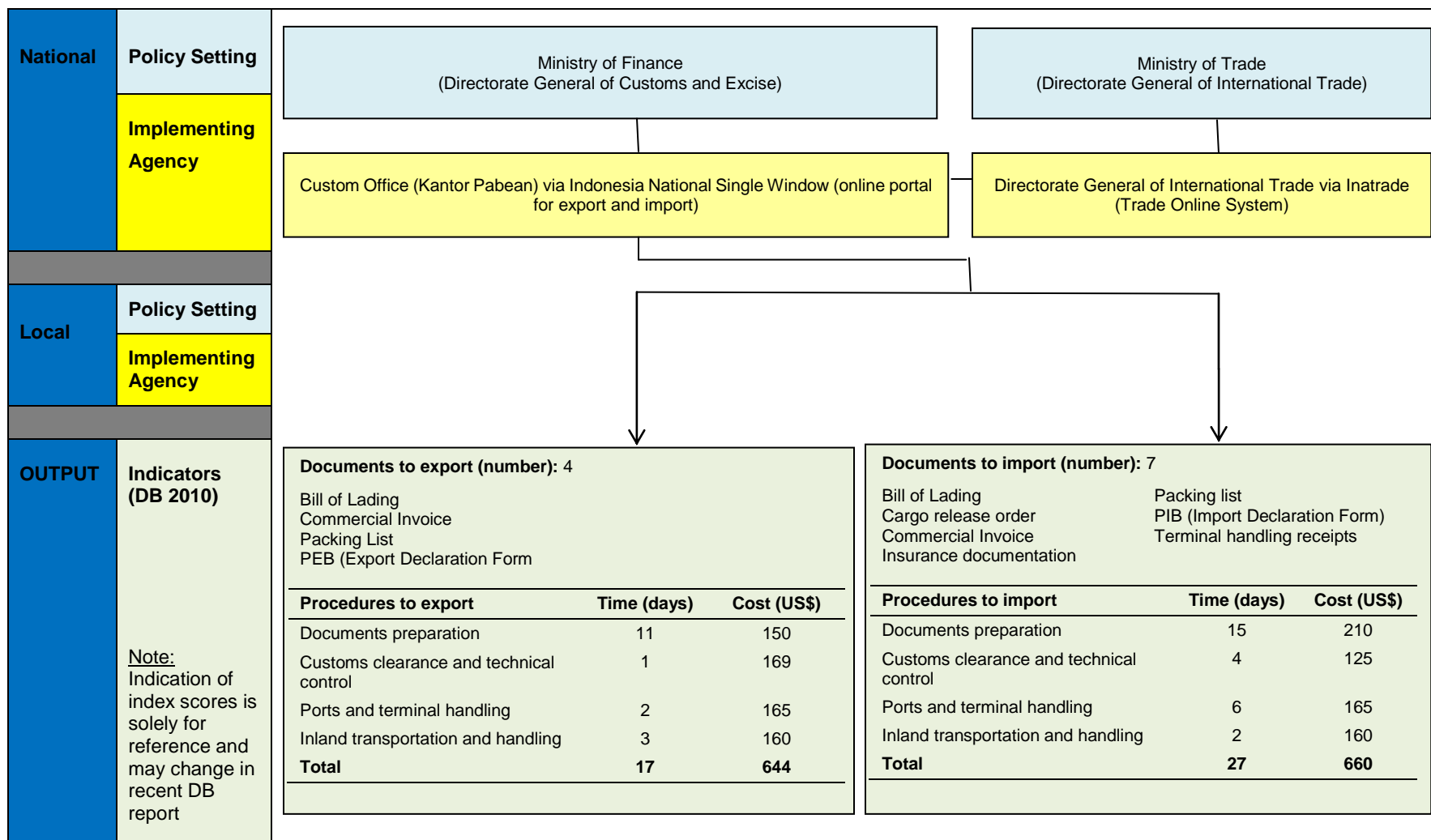
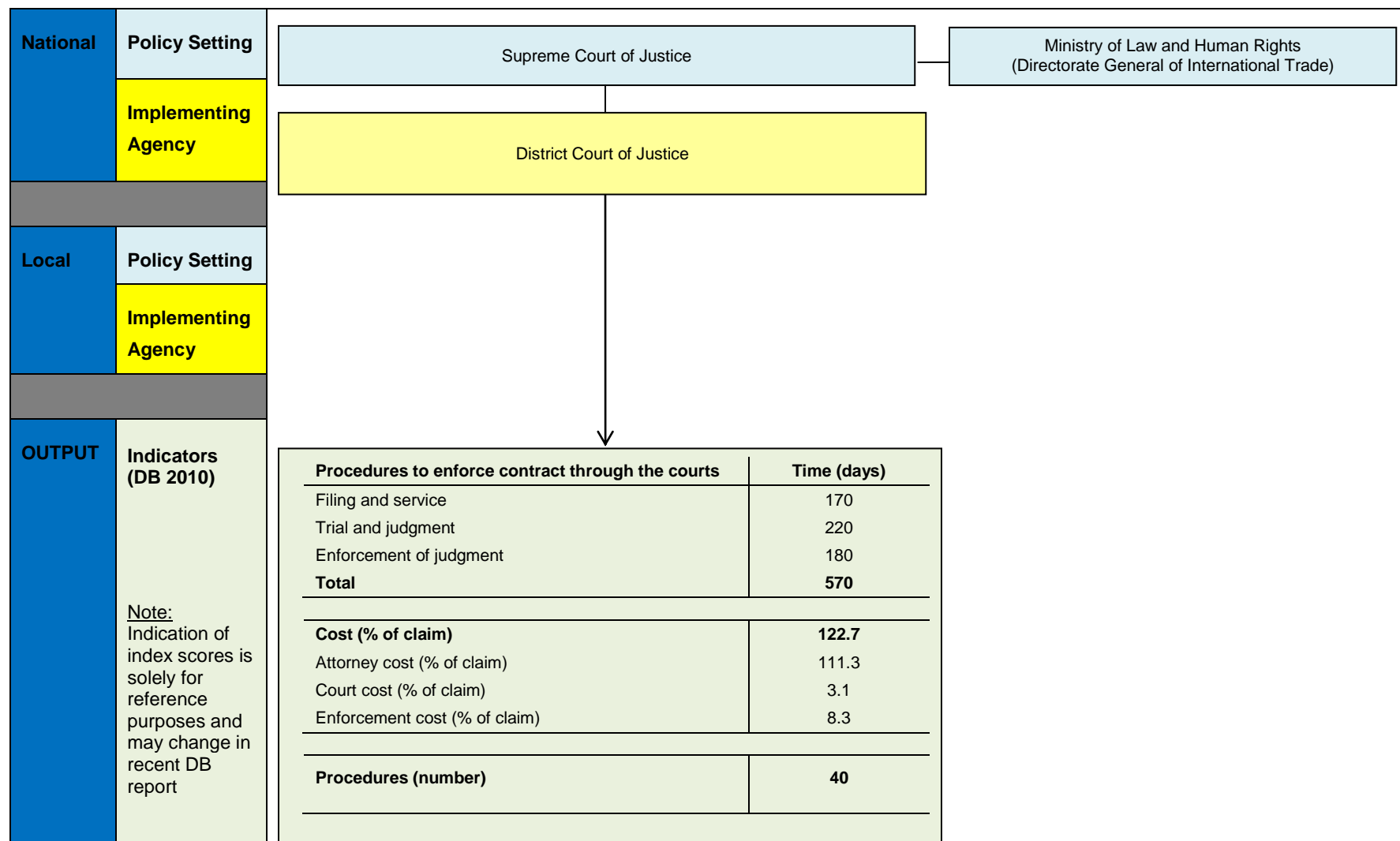


Chart 5. Ministries and Agencies Responsible for Overseeing Reforms in Enforcing Contracts



II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Indonesia

Suggested intro: While the overall policy-setting authority for business registration remains with the national government, decentralization provided local governments with the authority to administer business licenses. (WB 2010)

Seven procedures are required by national-level legislation. These are company name clearance, notarization, payment for company registration, legalization of the company establishment, as well as tax, labor and social security registrations. (WB 2010)

Four initial requirements—reserving the company name, signing the act of establishment, getting the act legalized and paying the administrative fee for incorporation—are mandatory across the country and administered nationally. A second set of 2 start-up steps are also mandatory in all cities, but executed at local level by branches of national agencies—namely tax and social insurance registrations. Between 2 and 5 more steps are needed to comply with labor regulation and local licensing requirements, which are administered at the local level. (WB 2012)

1.1 Background

The following is a representation of the regulatory framework for starting a business in Indonesia:

Regulations	Implementing Regulation (National)	Implementing Regulation (Subnational)
Law No. 7 of 1981 concerning Mandatory Manpower Report for Companies	Ministry of Manpower and Transmigration Regulation No. PER.14/Men/IVI/2006 concerning Procedures on Managing Mandatory Manpower Reporting for Companies	Standard Operating Procedure for Mandatory Manpower Reporting for Companies for the Jakarta Province and Municipalities
	Ministry of Manpower and Transmigration Circular Letter No. SE.180/Men/PPK-SES/VI/2007 concerning Mandatory Manpower Report for Companies	
Law No. 3 of 1982 concerning Mandatory Company Registration	Ministry of Trade Regulation No. 36/M-Dag/Per/9/2007 as amended by Regulation of the Ministry of Trade No. 46/M-Dag/Per/9/2009 concerning General Trading Business Permit (SIUP)	Jakarta Province Regional Regulation No. 1 of 2006 concerning Regional Levies
	Ministry of Trade Regulation No. 37/M-Dag/Per/9/2007 concerning Company Registration Certificate (TDP)	Standard Operating Procedure for Issuance of SIUP and TDP for Jakarta Province and Municipalities
Law No. 6 of 1983 as most recently amended by Law No. 28 of 2007 concerning General Provisions and Procedures on Taxation	Director General of Taxation Regulation No. 44-PJ of 2008 concerning Tax Payer Identification Number (NPWP)	No local regulation: managed centrally by the Directorate

Regulations	Implementing Regulation (National)	Implementing Regulation (Subnational)
		General of Taxation
Law No. 3 of 1992 concerning Social Security for Manpower (Jamsostek)	Government Regulation No. 14 of 1993 concerning Implementation of the Jamsostek Program	No local regulation as the step is managed centrally by PT Jamsostek (a state owned company)
	Board of Directors of PT Jamsostek Circular Letter No. SE/07/06/2007 concerning Provisions on the Issuance of Certificate of Jamsostek Participation	
Law No. 40 of 2007 concerning Limited Liability Companies	Government Regulation No. 43 of 2011 concerning Procedures to Submit Application and Usage of Names for Limited Liability Companies	No local regulation: managed by the Ministry of Law and Human Rights at the central level through the SABH
	Government Regulation No. 38, 2009 concerning Non Tax State Revenue for the Ministry of Law and Human Rights	
	Ministry of Law and Human Rights Regulation No. M.HH-02.AH.01.01, 2009 concerning Procedures to Submit Application for Legalization of Companies, Obtain Approval for Amendment to Articles of Association, Submission of Notification of Amendments to the Articles of Association and Changes in Company Data	
	Ministry of Law and Human Rights Decree No. M-01.HT.01.01, 2000 concerning Operationalization of the Online Enterprise Management System (SABH) within the Directorate General of General Legal Affairs	
Joint Ministerial Regulation December 17, 2009 (Ministry of Home Affairs No. 69 of 2009, Ministry of Law and Human Rights No. M.HH-08.AH.01.01.2009, Ministry of Trade No. 60/M-Dag/Per/12/2009, Ministry of Manpower and Transmigration No. Per.30/Men/XII/2009, Chairman of the Investment Coordinating Board No. 10 of 2009) concerning Acceleration of Licensing and Non-Licensing Services for Business Startups		

The agencies involved in starting a business from start to finish are as follows:

Summary of procedures for starting a business in Indonesia—and the time and cost (based on *Doing Business 2012 Report* findings)

No	Procedure	Responsible Agency	Time to Complete	Cost to Complete
1	Obtain company deed form; arrange for a notary electronically; obtain clearance for Indonesian company name at the Ministry of Law and Human Rights	SubDirectorate of Legal Entities, Directorate of Civil Matters (Ministry of Law and Human Rights)	4 days	Included in step 3
2	Notarize company documents before a notary public	Notary	4 days	IDR 2,526,816
3	Pay the State Treasury non-tax state revenue (PNBP) fees for legal services at a bank	Bank	1 days	IDR 200,000 (reservation of company name); IDR 1,580,000 (Official fee/PNBP for legal services)
4	Apply to the Ministry of Law and Human Rights for approval of the deed of establishment	SubDirectorate of Legal Entities, Directorate of Civil Matters (Ministry of Law and Human Rights)	7 days	Included in step 3
5	Apply at the One Stop Service for the permanent business trading license (Surat Izin Usaha Perdagangan, SIUP) and the company registration certificate (Tanda Daftar Perusahaan/TDP)	Municipal One Stop Shop and Municipal Office for Cooperatives, Micro, Small, Medium Enterprises and Trade (Suku Dinas Koperasi, Usaha Mikro, Kecil, Menengah and Perdagangan)	15 days	IDR 500,000 (retribusi daerah TDP PT)
6	Register with the Ministry of Manpower (Wajib Laporkan Ketenagakerjaan Perusahaan / WLP)	Jakarta Provincial Office for Manpower (Dinas Tenaga Kerja)	14 days	No cost
7*	Apply for the Workers Social Security Program (Jamsostek Program)	PT Jamsostek	7 days (concurrent with the previous step)	No cost
8*	Obtain a taxpayer registration number (NPWP) and a VAT collector number (NPPKP)	Tax Service Office / Kantor Pelayanan Pajak Pratama (Directorate General of Tax)	1-2 days (concurrent with the previous step)	No cost

* Takes place concurrently with another procedure.

SOURCE: *Doing Business* database.

1.2 Trends

Recent Reform Activities

Indonesia has been making steady progress in improving the ease of starting a business. Reforms implemented by the Indonesian Government between 2003 (reflected in *Doing Business 2004*) and 2011 (reflected in *Doing Business 2012*) have successfully reduced procedures and times by

73 percent, from 168 days (DB 2004) down to 45 days (DB 2012). This progress demonstrates the Indonesian Government's commitment to creating a more competitive business environment by making it easier to start and operate a business.

Specifically, between 2005 and 2009, Indonesia introduced 11 reforms to make it easier for firms to start up and operate. Reforms focused mainly on three areas: simplifying start-up procedures, expanding credit information and improving the rights of minority shareholders. (WB 2010)

Following a ministerial decree encouraging the establishment of one-stop shops nationwide, cities such as Yogyakarta, Palangka Raya and Surakarta consolidated all business licenses, resulting in simultaneous registration for the trading permit, business registration certificate and nuisance or business location permit. (WB 2010) Through continuous and integrated efforts by the national, provincial and subnational governments, the number of one-stop shops for local licenses³⁵ increased from only 49 before 2006 to 274 by the end of 2009.³⁶ (WB 2012)

Indicator	DB2004	DB2005	DB2006	DB2007	DB2008	DB2009	DB2010	DB2011	DB2012
Rank	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	156	155
Procedures (number)	12	12	12	12	12	11	9	9	8
Time (days)	168	151	151	97	105	76	60	47	45
Cost (% of income per capita)	136.7	130.7	101.7	86.7	80.0	76.7	25.0	21.5	17.9
Paid-in Min. Capital (% of income per capita)	69.1	62.8	48.9	41.7	38.4	74.2	59.7	53.1	46.6

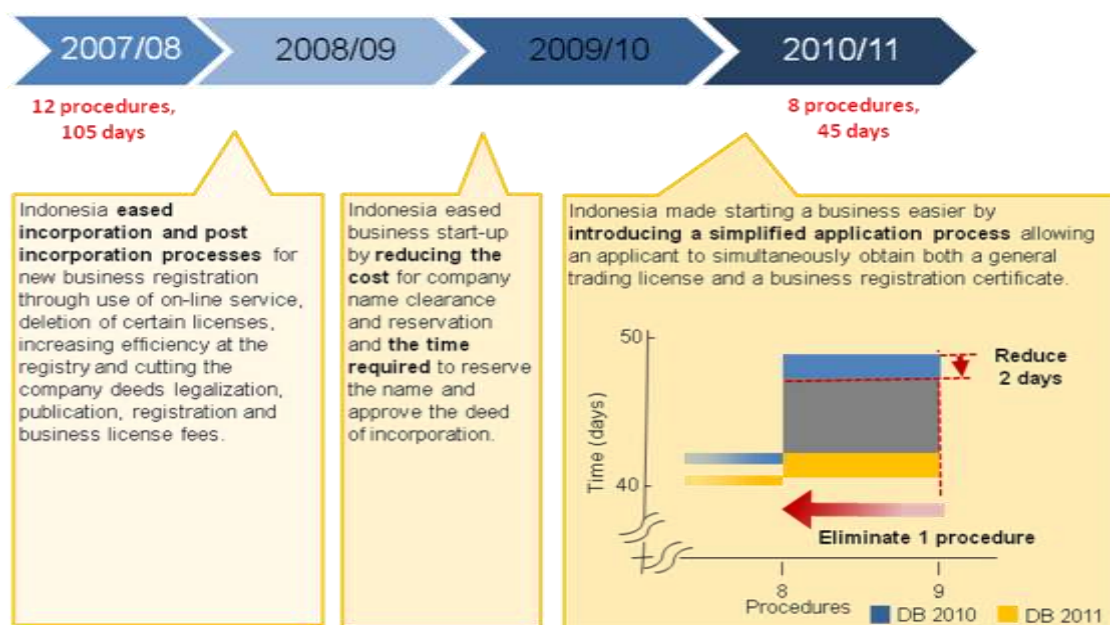
Note: n.a. = not applicable (the economy was not included in *Doing Business* for that year). DB2012 rankings reflect changes to the methodology.

Source: *Doing Business* database.

Reforms between 2009 (*Doing Business* 2010) to 2011 (*Doing Business* 2012) contributed to a 25 percent reduction in time (15 days) and 11 percent reduction in procedures (1 step).

³⁵ OSS–Pelayanan Terpadu Satu Pintu (PTSP).

³⁶ Subnational Business Climate Reform report prepared by the Asia Foundation for the International Finance Corporation and the Decentralization Support Facility for the National One-Stop Shop Project. March 2010.



Details of the reforms include the following.

Doing Business 2012 (June 2010–June 2011). In May 2011, the Jakarta Government endorsed a standard operating procedure (SOP) for the general trading license (SIUP) and business registration certificate (TDP) for all types of business classified as micro, small and medium enterprises (MSMEs). The new SOP introduced a simplified application process allowing an applicant to simultaneously obtain both a general trading license (SIUP) and a business registration certificate (TDP), eliminating one procedure and two days.

Before the implementation of the new and simplified SOP, in May 2011 the Jakarta Government introduced an administrative reform initiative to reduce the time for issuance of the general trading license (SIUP) and business registration certificate (TDP) for MSMEs at the municipality level, namely:

- Emphasizing completeness and accuracy of the required information in the application forms. Incomplete or ineligible applications are returned to the applicant.
- Official fee statement (if applicable) is issued after the verification process is completed.
- Proof of receipt of application with an agenda number is issued once the applicant has submitted proof of payment of the official fee.

The above administrative reforms were introduced to address one of the key contributing factors to the delay in processing and issuance time. The applicant often delays payment of the required official fee, which (if applicable) is a pre-requisite for processing the general trading license (SIUP) and business registration certificate (TDP) in Jakarta.

Doing Business 2011 (June 2009–June 2010). Indonesia has simplified the business start-up process by reducing the cost of company name clearance and reservation, resulting in a new tariff schedule stipulated under Government Regulation No. 38 of 2009, effective as of June 3, 2009. The new official tariffs are as follows:

- Name clearance and reservation: IDR 200,000
- Approval of the Articles of Incorporation: IDR 1,000,000
- Publication in the State Gazette: IDR 30,000
- Publication in the Supplement to the State Gazette: IDR 550,000

The Ministry of Law and Human Rights also reduced the time required to process name clearance and reservation applications and approvals of deeds of incorporation via the online system.

Doing Business 2010 (June 2008–2009). The online business entity administration system (*Sisminbakum*) was established by the Ministry of Law and Human Rights in 2001 to help expedite the process of establishing a limited liability company. Managed by PT Sarana Rekatama Dinamika (PT SRD)—a private company located in Jakarta contracted by the Ministry of Law and Human Rights—the online system was used to administer business start-up processes, including company name verification and legalizing companies' articles of incorporation. However, due to an alleged corruption case relating to the access fee, the system was discontinued on January 6, 2009.

The Restructuring Team led by the Ministry's IT Department took quick initiative to develop a temporary backup application and restored the online system (now referred to as SABH)—albeit in emergency mode—on February 10, 2009 using basic applications, standard computer equipment and a basic server. The Restructuring Team is making a serious effort to address the backlog of applications, and after three months they successfully completed 36,000, with only 6,000 backlog applications remaining. The Restructuring Team to date has completed development and launching of proper infrastructure and an improved system application that has allowed the system to be fully operational.

A new regulation has also been issued regarding the procedures and time to process applications for approval of the deed of establishment of companies, namely the Regulation of the Ministry of Law and Human Rights Number M.HH-03.AH.01.01 of 2009. While the regulation has not introduced any change to the time or procedures to legalize the deed of establishment of limited liability companies, the regulation merged the procedure to apply for the announcement of the articles of association in the Supplement to the State Gazette (TBN) with the procedure to apply for an approval of the deed of establishment of the company. Thus, these two steps have been integrated into a single step.

Obtaining a Tax Payer Identification Registration Number (NPWP) and VAT Collector Number (NPPKP) has been made easier with the improvement of the e-registration system supported with the issuance of the new regulation:

- Circular Letter of the Director General of Tax Number SE-33/PJ/2008 (June 27, 2008)
- SE Dirjen Pajak No. SE-65/PJ/2008 (November 18, 2008) concerning the Delivery of the Regulation of the Director General of Tax Number 44/PJ/2008 concerning the Procedure for Registration of the Tax Payer Registration Number and/or VAT Collector Number, Data Changes and Relocation of Tax Payer and/or VAT Collector
- Regulation of the Director General of Tax No. 24/PJ/2009 concerning Registration Procedure for NPWP and/or NPPKP and Data Changes for the Tax Payer and/or VAT Collector using the E-Registration System).

The Directorate General of Tax has also implemented reforms that improved the ease of Tax Payer Identification (NPWP) and VAT Collector Number (NPPKP) registration process. The processes can now be done online through the Directorate General of Tax eRegistration website (see Resource Bibliography). Even if the applicant applies in person at a local Tax Office (KPP), the NPWP and NPPKP will be issued within the same day (as quickly as within one hour of receipt of the completed application).

Plans for Future Reform Activities to Improve the Ease of Starting a Business in Indonesia

Short-term Activities. In the short term, Indonesia aims to apply the Standard Operating Procedures (SOP) and establish the one-stop service in five municipalities in Jakarta Province to shorten the process of applying for the permanent business trading license (*Surat Izin Usaha Perdagangan*, SIUP) and the company registration certificate (*Tanda Daftar Perusahaan/TDP*) from 15 days to under 6 days.

Indonesia also intends to modify the SOP to shorten the registration process for the Ministry of Manpower from 14 days to under 7 and shorten the application process for the Workers Social Security Program (*Jamsostek Program*) from 7 days to under 2.

Long-term Activities. In the long term, Indonesia aims to review the minimum capital requirement as stated in Law No. 40/2007 concerning Limited Liability Companies and also to review, revise and/or amend all local regulations that are burdensome to business activities.

2. Dealing with Construction Permits in Indonesia

2.1 Background

The regulatory framework for construction permits involves national, regional, local government as well as the private sector, represented in the following chart.

Regulations	Implementing Regulation (National)	Implementing Regulation (Subnational)
Law No. 28 of 2002 concerning Buildings	Government Regulation No. 36 of 2005 concerning Implementation of Law No. 28 of 2002 concerning Buildings	Jakarta Province Regional Regulation No. 7 of 2010 concerning Buildings
	Ministry of Public Works Regulation No. 6/PRT/M/2007 of 2007 concerning Guidelines on the Management of Buildings and the Environment	Jakarta Province Regional Regulation No. 1 of 2006 concerning Regional Levies
	Ministry of Public Works Regulation No. 24/PRT/M/2007 of 2007 concerning Technical Guidelines on Building Construction Permits	Governor of Jakarta Regulation No. 85 of 2006 concerning Building Licensing Services
	Ministry of Public Works Regulation No. 25/PRT/M/2007 of 2007 concerning Technical Guidelines on Certificate of Proper Function (SLF)	Head of the Jakarta Province's Office of Building Supervision and Administration Decree No. 143 of 2009 on the Guideline/Procedure of Building and/or Construction Licensing Service
	Ministry of Public Works Regulation No. 29/PRT/M/2007 of 2007 concerning Guidelines on the Technical Requirements for Buildings	
Law No. 26 of 2007 concerning Spatial Planning	Government Regulation No. 15 of 2010 concerning Spatial Planning Implementation	Head of the Spatial Planning Agency for the Province of Jakarta Decree No. 7 of 2003
Law No. 32 of 2009 concerning Environmental Protection and	State Ministry of Environmental Affairs Regulation No. 13 of 2010 concerning Environmental Management and Monitoring	Governor of Jakarta Decree No. 99 of 2002 concerning Implementation of the Analysis on Environmental Impact (AMDAL) and the Environmental

Regulations	Implementing Regulation (National)	Implementing Regulation (Subnational)
Management	Initiatives (UKL and UPL) and Statement of Undertaking on Environmental Management and Monitoring	Management Initiative (UKL) and Environmental Monitoring Initiative (UPL) Within the Regional Licensing Regime Governor of Jakarta Decree No. 189 of 2002 concerning Types of Business Activity and/or Activities That Are Subject to the UKL/UPL Requirement in Jakarta Governor of Jakarta Decree No. 2333 of 2002 concerning Types of Business Activity and/or Activities That Are Subject to the Statement of Undertaking on Environmental Management Requirement in Jakarta
Law No. 11 of 1965 concerning Promulgation of the Government Regulation in Lieu of a Law No. 5 of 1962 concerning Amendment of Law No. 2 of 1960 concerning Warehouses	Ministry of Trade Regulation No. 16/M-Dag/PER/3/2006 concerning Administration and Management of Warehouses	Standard Operating Procedure for issuance of Warehouse Registration Certificate (TDG) in Jakarta

2.2 Trends

Recent Reform Activities

Doing Business last recorded reforms in the process of obtaining licenses and permits required to construct, register and operate a warehouse in Jakarta in the Doing Business 2008 report. The Governor of Jakarta Decree No. 85 of 2006 simplified the licensing and inspection procedures to obtain a building permit (IMB). A new temporary permit allows construction to commence while the full permit is processed and has cut 28 days from the waiting period.

Since 2009, initiatives have been undertaken at the Jakarta Province level to simplify the process of obtaining permits and licenses required to construct a warehouse in Jakarta through the Jakarta Provincial Government's one stop shop initiative. On December 23, 2011, the Central Jakarta municipality—which has been designated by the Jakarta Governor as the pilot city for the One Stop Shop project—launched the one stop shop, offering services to receive and process applications for zoning permits, environmental permits and construction permits, among others. Efforts are underway to further simplify the process and reduce the time for issuance of the permits. No progress has been reported from 2009 to date.

Indicator	DB2006	DB2007	DB2008	DB2009	DB2010	DB2011	DB2012
Rank	n.a.	n.a.	n.a.	n.a.	n.a.	71	71
Procedures (number)	13	13	13	13	13	13	13
Time (days)	186	186	158	158	158	158	158
Cost (% of income per capita)	276.6	235.7	217.4	167.8	135.1	120.1	105.3

Note: n.a. = not applicable (the economy was not included in *Doing Business* for that year). DB2012 rankings reflect changes to the methodology. For more information on "no practice" marks, see the data notes for details.

Source: *Doing Business* database.

Plans for Future Reform Activities to Improve the Ease of Dealing With Construction Permits in Indonesia

In the short term, Indonesia plans to:

- Apply a standard operation procedure to reduce the time required to obtain a pre-approval letter from the Zoning Department from 20 days to 11 days in five Jakarta Province municipalities. One municipality has applied the SOP since December 23, 2011.
- Integrate all registration processes into the one stop shop.
- Apply a standard operation procedure to simplify the requirements to obtain the Warehouse Registration Certificate.

In the long term, Indonesia plans to review, revise and/or amend all local regulations that are burdensome to business activities.

3. Getting Credit in Indonesia

3.1 Background

The following is the regulatory framework for getting credit in Indonesia:

Regulation	Implementing Regulation (National)	Implementing Regulation (Subnational)
Indonesian Civil Code (Law No. 23 of 1847)		No local regulation as both the movable collateral registry and borrower information system are managed at the central level by the Ministry of Law and Human Rights and Bank Indonesia, respectively
Law No. 42 of 1999 concerning Fiduciary Securities	Government Regulation No. 76 of 2000 concerning Procedures for Registration of Movable Collateral	
	Government Regulation No. 38 of 2009 concerning Non Tax State Revenue for the Ministry of Law and Human Rights	
	Presidential Decree No.139 of 2000 concerning Establishment of Fiduciary Registries in all Provincial Capital Throughout Indonesia	
	Ministry of Law and Human Rights Decree No. M-01.UM.01.06 of 2000 concerning Forms and Procedure to Register Fiduciary Securities	
	Ministry of Law and Human	

Regulation	Implementing Regulation (National)	Implementing Regulation (Subnational)
	Rights Decree No. M.08-PR.07.01 of 2000 concerning Opening of Fiduciary Security Registries	
	Ministry of Law and Human Rights Decree No. M-03.PR.07.10 of 2001 as amended by Decree of the Ministry of Law and Human Rights No. M-02.PR.07.10 of 2002 concerning Opening of Fiduciary Security Registries in all Regional Offices of the Ministry of Law and Human Rights	
	Director General of General Legal Affairs Circular Letter No. C.UM.01.10-11 of 2001 concerning Calculation of the Stipulation on the Period of Adjustment and Registration of Fiduciary Security Agreements	
	Director General of General Legal Affairs Circular Letter No. C.UM.02.03-31 dated July 8, 2002 concerning Standardization of Reports on the Registration and Registration Process of Fiduciary Security	
	Director General of General Legal Affairs Circular Letter No. C.HT.01.10-22 of 2005 concerning Standard Procedure for the Registration of Fiduciary Securities	
Law No. 7 of 1992 concerning Banking	Bank Indonesia Regulation No. 9/14/PBI/2007 concerning the Borrower Information System	
Law No. 23 of 1999 concerning Bank Indonesia		

3.2 Trends

Recent Reform Activities

The Indonesian Government last implemented reforms that made Getting Credit easier by introducing Bank Indonesia Regulation No. 9/14/PBI/2007 concerning the Borrower Information System, which guarantees the right of borrowers to inspect their credit data at the Bank of Indonesia. This has helped to improve the quality and accuracy of the information financial institutions use in assessing the risk profiles of borrowers. As a result, Doing Business 2009 recorded that public credit bureau coverage in Indonesia has improved (from 20.5 to 26.1 percent of adult population).

Initiatives have been undertaken by Bank Indonesia to facilitate the development of private credit bureau in Indonesia through the drafting of a Bank Indonesia Regulation. Efforts are currently

still ongoing to finalize the draft, which has yet to be enacted. As such, no progress on the ‘Depth of Credit Information Index’ has been reported from 2009 to date.

The Ministry of Law and Human Rights is also currently looking into reforming the Law on Fiduciary Security and improving the existing movable collateral registration system along with the registries, which are currently managed by the regional offices (*Kanwil*) of the Ministry of Law and Human Rights. This initiative is still at a very early stage and as such, no progress on the ‘Strength of Legal Rights Index’ has been reported from 2009 to date.

Ease of getting credit in Indonesia over time by Doing Business report year:

Indicator	DB2005	DB2006	DB2007	DB2008	DB2009	DB2010	DB2011	DB2012
Rank	..	..	..	..	..	..	116	126
Strength of legal rights index (0-10)	3	3	3	3	3	3	3	3
Depth of credit information index (0-6)	2	2	2	3	4	4	4	4
Public registry coverage (% of adults)	0.4	0.0	8.4	20.5	26.1	22.0	25.2	31.8
Private bureau coverage (% of adults)	0.0	0.1	0.2	0.2	0.0	0.0	0.0	0.0

Note: n.a. = not applicable (the economy was not included in *Doing Business* for that year). DB2012 rankings reflect changes to the methodology.

Source: *Doing Business* database.

Summary of getting credit indicators based on the Doing Business 2012 findings:

Indicator	Indonesia	East Asia & Pacific	OECD high income
Strength of legal rights index (0-10)	3	7	7
Depth of credit information index (0-6)	4	2	5
Public registry coverage (% of adults)	31.8	10.3	9.5
Private bureau coverage (% of adults)	0.0	18.1	63.9

Strength of legal rights index (0–10)	Index score: 3
Can any business use movable assets as collateral while keeping possession of the assets; and any financial institution accept such assets as collateral?	Yes
Does the law allow businesses to grant a non possessory security right in a single category of movable assets, without requiring a specific description of collateral?	No
Does the law allow businesses to grant a non possessory security right in substantially all of its assets, without requiring a specific description of collateral?	No
May a security right extend to future or after-acquired assets, and may it extend automatically to the products, proceeds or replacements of the original assets?	Yes
Is a general description of debts and obligations permitted in collateral agreements; can all types of debts and obligations be secured between parties; and can the collateral agreement include a maximum amount for which the assets are encumbered?	Yes
Is a collateral registry in operation, that is unified geographically and by asset type, with an electronic database indexed by debtor's names?	No
Are secured creditors paid first (i.e. before general tax claims and employee claims) when a debtor defaults outside an insolvency procedure?	No
Are secured creditors paid first (i.e. before general tax claims and employee claims) when a business is liquidated?	No
Are secured creditors either not subject to an automatic stay or moratorium on enforcement procedures when a debtor enters a court-supervised reorganization procedure, or the law provides secured creditors with grounds for relief from an automatic stay or	No
Does the law allow parties to agree in a collateral agreement that the lender may enforce its security right out of court, at the time a security interest is created?	No

Depth of credit information index (0–6)	Private credit bureau	Public credit registry	Index score: 4
Are data on both firms and individuals distributed?	No	Yes	1
Are both positive and negative data distributed?	No	Yes	1
Does the registry distribute credit information from retailers, trade creditors or utility companies as well as financial institutions?	No	No	0
Are more than 2 years of historical credit information distributed?	No	No	0
Is data on all loans below 1% of income per capita distributed?	No	Yes	1
Is it guaranteed by law that borrowers can inspect their data in the largest credit registry?	No	Yes	1

Note: An economy receives a score of 1 if there is a "yes" to either private bureau or public registry.

Coverage	Private credit bureau	Public credit registry
Number of firms	0	361,610
Number of individuals	0	49,418,940

Source: Doing Business database.

Plans for Future Reform Activities to Improve the Ease of Getting Credit in Indonesia

The Central Bank's (Bank Indonesia) Regulation on the establishment of Private Credit Information Bureau will be enacted before the end of 2012, and the credit information system will be operational in 2013.

4. Enforcing Contracts in Indonesia

4.1 Background

The chart explains the regulatory framework for Enforcing Contracts in Indonesia:

Regulations	Implementing Regulation (National)	Implementing Regulation (Subnational)
Law No. 52 of 1847 as amended by Law No. 63 of 1849 concerning Civil Law Procedures	Chairperson of the Supreme Court of Justice Decree No. 032/SK/IV/2006 concerning Enactment of Book II on the Implementation Guideline for Court Duties and Administration	No local regulation as civil court procedures are managed at the central level by the Supreme Court of Justice
Law No. 48 of 2009 concerning Judicial Authorities	Chairperson of the Supreme Court of Justice Decree No. 026/KMA/SK/II/2012 concerning Standard Service for Court of Justices	
Law No. 49 of 2009 concerning Public Courts		

4.2 Trends

Recent Reform Activities

The Supreme Court of the Republic of Indonesia (*Mahkamah Agung*) has undertaken various reform efforts, details of which can be accessed via the 2012 Executive Summary Annual Report.³⁷

The Ministry of Economic Affairs, in cooperation with the Republic of Korea as the champion economy on Enforcing Contracts, has also conducted numerous capacity building events in order to raise awareness among relevant ministries, agencies and stakeholders on the importance of establishing a small claims court in Indonesia.

The Ministry of Law and Human Rights has established a taskforce to prepare a study to amend the Civil Law. To raise public awareness, comments and suggestions, the Ministry of Law and Human Rights in cooperation with the Republic of Korea will organize a public consultation seminar concerning the amendment of Civil Law and the establishment of small claim courts, which will be conducted at the end of June 2012.

On February 9, 2012, the Supreme Court issued Supreme Court of Justice Decree No. 026/KMA/SK/II/2012 concerning Standard Service for Courts of Justice, requiring all district courts of justice (first instance courts) in Indonesia to develop a standard operating procedure for services to ensure that i) all civil cases are concluded within six months, and ii) the court will issue a copy of the ruling within 14 days of the ruling.

Plans for Future Reform

General reform plans by the Supreme Court can be found on the 2012 Executive Summary Annual Report. Indonesia also plans to include the establishment and procedures of Small Claim Court in the Civil Law Procedures and a draft of Civil Law Procedures in the National Legislation Program (PROGLEGNAS), to be enacted in 2013.

³⁷ See www.pembaruanperadilan.net

5. Trading Across Borders in Indonesia

5.1 Background

The following chart explains the regulatory framework for Trading Across Borders in Indonesia:

Regulations	Implementing Regulation (National)	Implementing Regulation (Subnational)
Law No. 17 of 2006 concerning Customs Law No. 2 of 2009 concerning Export Financing Institution	Presidential Regulation No. 10 of 2008 concerning Utilization of Electronic System Within the Framework of Indonesia National Single Window	No local regulation as import and export procedures are managed at the central level
	Ministry of Finance Regulation No. 118/KMK.04/2004 concerning Procedures for Payment and Depositing Non Tax State Revenue (PNBP) Applying at the Directorate General of Custom and Duty	
	Director General of Custom and Duty Regulation No. P-21/BC/2007 concerning Implementing Guideline on Custom Procedures for Importation at the Main Service Office of Tanjung Priok as amended by Regulation of the Director General of Custom and Duty No. P-25/BC/2007	

The laws governing trade across borders has not been consolidated into a single law on trade, but in the early independence period, commercial law in Indonesia was a single law written and codified in the Book of Commercial Law (KUHD), formed by the Dutch government imposed on the Dutch East Indies in 1948 with the name of *Van Wetboek Voor Koophandel Indonesie*. Commercial code consists of two books, namely Book I: Trade in General, and Book II: Law of the Sea. KUHD is a codified commercial law.

As it dates back to 1847, the KUHD is no longer sufficient to regulate increasingly complex economic development. Economic development and trade have led to the evolution of commercial law into various branches of economic law, i.e. contract law, consumer protection law, intellectual property law, banking law, capital market law, investment law, law of financial institutions, and so forth.

The development of international trade law in the WTO, foreign investment, capital markets, etc. cannot accommodated by the KUHD, necessitating new regulations for the above, which are not codified as a single law, but rather consist of various complimentary, stand-alone regulations.

According to Indonesian Customs Law (Law no 17/2006), importers and exporters may authorize customs brokers to carry out the handling of customs declarations.

Customs-related conventions that have been ratified are as follows:

- International Convention on the Harmonized System
- International Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (Nairobi Convention)
- Convention Establishing the Customs Co-operation Council
- WTO Convention on the Valuation of Goods for Customs Purposes,
- International Convention for Safe Containers
- Convention on International Transport of Goods Under Cover of TIR Carnets

- WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- The Arusha Declaration on Customs Integrity

5.2 Trends

Recent Reform Activities

Since 2009, Doing Business has recognized reforms that have reduced the time to export through the Tanjung Priok Port, Jakarta in the Doing Business 2011 report. The reform was attributed to the continued implementation of the Indonesian National Single Window online system, which allows electronic data interchange between multiple agencies, in ports across Indonesia.

Ease of trading across borders in Indonesia over time by Doing Business report year:

Indicator	DB2006	DB2007	DB2008	DB2009	DB2010	DB2011	DB2012
Rank	..	..	..	..	..	38	39
Documents to export (number)	4	4	4	4	4	4	4
Time to export (days)	22	22	18	18	18	17	17
Cost to export (US\$ per container)	486	486	607	644	644	644	644
Documents to import (number)	7	7	7	7	7	7	7
Time to import (days)	27	27	27	27	27	27	27
Cost to import (US\$ per container)	675	675	623	660	660	660	660

Note: n.a. = not applicable (the economy was not included in *Doing Business* for that year). DB2012 rankings reflect changes to the methodology.

Source: *Doing Business* database.

Summary of the scoring for the trading across borders in Indonesia based on Doing Business 2012 findings

Documents to export
Packing list
Bill of lading
PEB (export declaration form)
Commercial Invoice

Documents to import
Commercial invoice
PIB (IMPORT DECLARATION FORM)
Packing list
Terminal handling receipts
Insurance documentation
Bill of lading
Cargo release order

Indicator	Indonesia	East Asia & Pacific	OECD high income
Documents to export (number)	4	6	4
Time to export (days)	17	22	10
Cost to export (US\$ per container)	644	906	1,032
Documents to import (number)	7	7	5
Time to import (days)	27	23	11
Cost to import (US\$ per container)	660	954	1,085

Procedures to export	Time (days)	Cost (US\$)
Documents preparation	11	150
Customs clearance and technical control	1	169
Ports and terminal handling	2	165
Inland transportation and handling	3	160
Totals	17	644

Procedures to import	Time (days)	Cost (US\$)
Documents preparation	15	210
Customs clearance and technical control	4	125
Ports and terminal handling	6	165
Inland transportation and handling	2	160
Totals	27	660

Plans for Future Reforms

Since 2002, Indonesian Customs has been conducting bureaucratic reforms mainly concerning trade facilitation, law enforcement and integrity. Some of the above-mentioned conventions have been used as model for the reforms.

III. Resource Bibliography

Information	Website
Portal for the Indonesian Government	www.indonesia.go.id
Coordinating Ministry of Economic Affairs	www.ekon.go.id
Indonesian National Single Window (integrated online portal for all import and export approval/licensing process)	www.insw.go.id
Ministry of Trade	www.kemendag.go.id
Ministry of Law and Human Rights	www.kemenkumham.go.id
Directorate General of General Legal Administration	www.djahu.kemenkumham.go.id
Legal Enterprise Management System (SABH)	www.sisminbakum.go.id
Supreme Court of Justice	www.mahkamahagung.go.id
District Court of Central Jakarta	www.pn-jakartapusat.go.id
Bank Indonesia	www.bi.go.id
Ministry of Environmental Affairs	www.menlh.go.id

Information	Website
Ministry of Manpower and Transmigration	www.depnakertrans.go.id
Ministry of Finance	www.depkeu.go.id/Ind
Directorate General of Tax	www.pajak.go.id
Directorate General of Custom and Duty	www.beacukai.go.id
Ministry of Communication and Public Information	www.depkominfo.go.id
National Investment Coordinating Board (BKPM)	www.bkpm.go.id
Ministry of National Development Planning/ National Development Planning Agency (Bappenas)	www.bappenas.go.id
Ministry of Home Affairs	www.depdagri.go.id
Jakarta Provincial Government	www.jakarta.go.id
Directorate General of Tax e-Registration website	ereg.pajak.go.id

Japan

I. General Information

In 2012, Japan was ranked 20 out of 183 economies on the World Bank's Doing Business rankings

Japan recently finalized the "Program for Promoting Japan as an Asian Business Center and Direct Investment into Japan" on 16 December 2011. As mentioned in "The Strategy for Rebirth of Japan," which was endorsed by the Cabinet on 24 December 2011, Japan will promote this program to increase inward direct investment. This program contains institutional reforms and other measures to ensure smooth flows of natural persons, goods and funds with the aim of improving Japan's business environment. Through these measures, Japan aims to enhance its competitiveness as a business location and bring about an increase in employment. In addition, by inviting high value-added sites (such as Asia Regional Headquarters and research and development facilities with high levels of intelligent integration), Japan aims to double both the number of employees of foreign affiliates and inward direct investment by 2020.

The main ministries and agencies responsible for five EoDB priority areas are as follows:

The Ministry of Economy, Trade and Industry (METI) is currently undertaking a variety of measures to promote Japan as an Asian Business Center. METI has established the "Invest Japan Office" in the Regional Bureaus of METI throughout Japan and the Department of Economy, Trade and Industry of the Okinawa General Bureau, to support foreign companies and investors who are interested in local investment by providing necessary information.

The Ministry of Justice (MOJ) not only prescribes legislation but also the judicial framework under which these rules are faithfully observed. In addition, MOJ also oversees the management of a system to help citizens exercise their personal rights, such as the registering of real estate and notarization. Other important duties of MOJ include ensuring that the immigration control is handled in an appropriate manner.

The Ministry of Finance is home to the Customs and Tariff Bureau, which plays a central role in Customs administration in Japan.

The Ministry of Land, Infrastructure, Transport and Tourism (MLIT), as the ministry in charge of building administration, takes various measures to secure the minimum standards for buildings within the framework of relevant laws and regulations such as the Building Standard Law.

The Japan External Trade Organization (JETRO) is a government-related organization promoting trade and investment between Japan and the rest of the world. As one of its activities, JETRO provides foreign investors with abundant information on all aspects of doing business in

Japan, through expert consultation and free temporary office space in major business areas across the country.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Japan

1.1 Background

Company law

The Japanese Companies Act allows a company to adopt variety of organizational structures, including a board structure, in accordance with the size of the company and other factors.

Under the Japanese Companies Act, there are four types of companies: i) joint-stock company; ii) general partnership company; iii) limited partnership company; and iv) limited liability company. Each is formed as a legal person by the registration of the incorporation at the location of its head office.

Joint-stock company

The shareholders of a joint-stock company owe limited liability. A legal person or a natural person may be a shareholder. In general, joint-stock companies are conducted in the following manner depending on the governance structure:

- If the joint-stock company is without a board of directors, each director shall conduct corporate affairs in accordance with decisions made by a majority of the directors. This model is typically adopted by small and closely-held companies.
- If the joint-stock company has a board of directors (but no committees), each of the representative directors and other executive directors designated by the board shall conduct corporate affairs in accordance with the board's decisions. This model is typically adopted by medium-sized or large companies, whether private or public.
- If the joint-stock company has committees, each of the representative officers and other officers shall conduct corporate affairs in accordance with the board's decisions. However, the officers may make decisions (other than those on certain material matters) if the board has delegated such decisions to the officers. This model is typically adopted by medium-sized or large companies, whether private or public.

Partnership Company

Other forms (i.e. general partnership company, limited partnership company and limited liability company; collectively called "partnership companies") are typically adopted by closely-held companies. Membership of a general partnership company is comprised of one or more unlimited liability members. Membership of a limited partnership company is comprised of one or more unlimited liability members as well as one or more limited liability members. Membership of a limited liability company is comprised of one or more limited liability members.

A legal person or a natural person may be a member of a partnership company. In general, each member shall conduct corporate affairs in accordance with decisions made by a majority of the members.

Business registration

The laws and regulations governing business registration in Japan do not necessarily cover all categories of participants in the economy, including various types of companies, sole proprietors, and foreign-owned enterprises. Out of such participants, those who decide to organize a company should complete the registration of incorporation. Those who conduct their business without such registration (i.e. without incorporating the company) must manage their business as an individual. Thus in Japan, there is no “one stop shop” for the registration of sole proprietorships and simple partnerships for the reason that they are not within the business registration system as long as they conduct their business without incorporation.

Commercial registration is designed to ensure the legitimacy of companies and ensure smooth conduct of transactions. The Legal Affairs Bureau prepares and makes publicly available important information regarding companies’ transitional matters such as trade name, location and the name of the company representative.

Public sector support for business start-ups

Japan External Trade Organization (JETRO) is a government-related organization promoting trade and investment between Japan and the rest of the world. As one of its activities, JETRO offers foreign investors with abundant information on all aspects of doing business in Japan, by providing expert consultation and offering free temporary office space in major business areas across the country.

Information availability

In order to create an environment of greater international availability with regard to information about Japan’s laws and legal system, the government has made it a policy to promote the translation of Japanese laws and regulations into foreign languages, establishing the Liaison Conference of the Relevant Ministries and Agencies for Developing a Foundation for Promoting Translation of Japanese Laws and Regulations into Foreign Languages in January of 2005.

Work to promote the translation of Japanese laws and regulations into foreign languages moved forward within the Cabinet Secretariat, and since April of 2009, the Ministry of Justice has assumed this role, releasing the Standard Legal Terms Dictionary (a dictionary of legal terms with entries in Japanese and English that is used as a guideline for translations of the law) and launching a special website with useful search functions for English translations of around 275 Japanese laws (see Resource Bibliography).

Moving into the future, the plan is for the Ministry of Justice to continue making information about Japanese laws more widely available internationally by further updating this website with revised versions of the Standard Legal Terms Dictionary and English translations of laws and regulations.

Electronic transactions

Under the commercial registration system, an electronic certification is issued for electronic transactions. Although there is no general regulation for electronic transactions between the government and the private sector, the Act on Electronic Signatures and Certification Business

provides the presumption of authentic establishment of electromagnetic records, the accreditation system for designated certification businesses and other matters with respect to electronic signatures.

Private sector engagement

The Revised Administrative Procedure Law, which entered into force in April 2006, requires ministries and agencies to publish draft regulations for comments from the public. The revised law stipulates that ministries and agencies must publish draft regulations (including draft cabinet orders or ministerial orders) and receive comments from the public; they must allow, in principle, at least 30 days to receive comments from the date of publication of the draft. The target period for consultation is 30 days, but in practice it is not mandatory. Ministries and agencies are required to consider the comments submitted by the public and must publish these comments, as well as the result of the consideration by the ministries and agencies, and the reason for the result.

Advisory services

The JETRO IBSC (Invest Japan Business Support Center) is a business facility for foreign companies planning to start a business in Japan. IBSC provides information, consultation and other services free of charge, as well as a few paid services. IBSC staff and advisors can provide information about such matters as industrial structures and market shares, Japanese business practices in regard to procurement, product sales, and industrial systems, and advice based on the needs of the foreign company.

1.2 Trends

The Ministry of Justice announced in 2011 the introduction of points-based preferential immigration treatment for highly-skilled foreign professionals expected to contribute to Japan's economic growth, create demand and employment opportunities. Points will be awarded on the basis of categories such as "academic background, professional background and (expected) annual income". Preferential immigration treatment will be awarded to those who have accumulated a certain number of points. This system started in May 2012.

Additionally, a new system of residence management stipulated in the law for partial amendment to the Immigration Control and Refugee Recognition Act (July 15, 2009) is expected to come into force on July 9, 2012. This new system includes the extension of the maximum period of stay from three years to five years, revision of the re-entry permit system, and other measures.

2. Dealing with Permits in Japan

2.1 Background

Sources of legal authority for all licenses required for conducting business

The Building Standard Law (BSL) is the primary law concerning building codes in Japan. Other laws concerning building codes and related fields are shown in the table below.

Building codes items and related fields		Restrictive laws (Requirements are mandatory.)	Promotional laws
Fire safety	Fire extinguishing equipment, etc.	Fire Service Law	
	Fire- resistance, evacuation, etc.	Building Standard Law	
Structural safety			Seismic Retrofitting Law
Hygienic safety			Building Management Law
Accessibility			Barrier-free Law
Energy saving			Energy Saving Law

Major license/permit issuing authorities

1. Building Design

The Kenchikushi Law stipulates that only Kenchikushi (architects and building engineers) may perform building design, except for small buildings. The BSL prohibits construction if plans are made in violation of the Kenchikushi Law.

2. Building Confirmation

Generally, in cases where a certain building is to be constructed, extended, rebuilt or relocated, a building owner must apply for and receive building confirmation from either i) a building official under the Designated Administrative Agency (local governments) in charge of building control in the area; or ii) one of the Designated Confirmation and Inspection Bodies to determine whether building plans conform to regulations (not limited to the BSL).

3. Consent from a chief of a fire station

Before authorizing construction, a building official and a Designated Confirmation and Inspection Body must obtain consent from the chief of the local fire station or the fire inspector (if it is a city, town or village without a fire department, the head). However, this does not apply in such case that the building requiring confirmation is a detached house located outside of Fire Protection Zones or Quasi Fire-Protection Zones.

4. Structural Calculation Review

As mentioned, applications for building confirmation are submitted to a building official under the Designated Administrative Agency or one of the Designated Confirmation and Inspection Bodies.

A building official and a Designated Confirmation and Inspection Body must ask one of the Designated Structural Calculation Review Bodies to perform a calculation review on the building plan before issuing a building confirmation for certain types of building, such as i) wooden buildings or steel buildings measuring 13m or more or with eave heights of 9m or more; ii)

reinforced concrete buildings with measuring 20m or more; and iii) steel structure buildings with four or more stories excluding the basement levels,

Buildings more than 60 m in height such as skyscrapers are exceptions to the Structural Calculation Review and require evaluation by a Designated Evaluation Body and approval by the Minister.

5. Construction Work

The BSL and the Kenchikushi Law stipulate the provisions related to construction administration such that design and construction comply with BSL requirements.

6. Interim inspection

A building owner, when the construction work includes one of the processes below and the process has been completed, must request within four days from the date of completion, on all such occasions, an inspection by a building official under the Designated Administrative Agency in charge of building control in that area; or one of the Designated Confirmation and Inspection Bodies.

- the process of installing steel bars of the floor in the second floor and beams supporting the said floor of apartment buildings with three or more stories.
- processes stipulated by the Designated Administrative Agency (local governments)

7. Final inspection

Once the construction work has been completed, the building owner must submit a notification to a building official under the Designated Administrative Agency in charge of building control in the area or one of the Designated Confirmation and Inspection Bodies within four days from the date of completion. The building must undergo inspection to ascertain whether the building conforms to the related regulations.

8. Occupancy

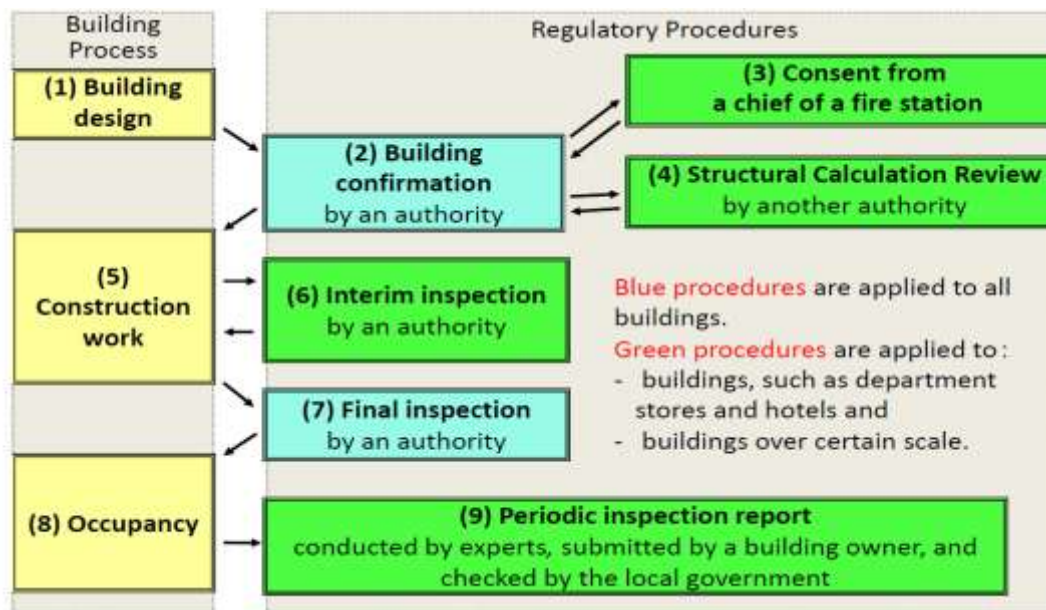
Newly constructed buildings are not to be occupied before obtaining a final inspection certificate. Exceptions include the following:

- Small buildings, such as ordinal wooden detached houses of 2 stories or less.
- Cases in which the Designated Administrative Agency (or a building official after having received an application for a final inspection) has permitted temporary use after determining that there is no objection from the viewpoint of safety, fire prevention, or evacuation.
- Cases in which seven days have elapsed since receipt of the final inspection application.

The owner, custodian or occupant must maintain the building and its site in compliance with legal requirements.

9. Periodic inspection report

The owners of the building must undergo thorough safety checks at regular intervals (ranging from six months to three years) by Kenchikushi or other qualified officials and the results must be reported to the Designated Administrative Agency.



Building design and the Kenchikushi System

Building design involves both the role of architect, such as making architectural drawings and specifications, and the role of building engineer, such as performing structural calculations and mechanical, electrical, and plumbing system design. Kenchikushi have the dual role of architect and building engineer, while many countries have separate licensing systems for architects and building engineers. Kenchikushi are licensed to design buildings and to conduct construction administration. It is a national qualification system linked to building regulations to ensure safety.

Construction administration

Supervision of construction works is done by both an owner's party and a builder's party in Japan. A builder's superintendent is an employee of the builder and is responsible for overseeing building construction on behalf of the builder to ensure good quality. A person who conducts construction administration is responsible for examining building construction on behalf of the building owner, to determine whether or not said construction follows the drawings/specifications made by a Kenchikushi.

In Japan, builders are allowed to construct buildings that they themselves have designed. In fact, many buildings (especially small buildings, such as detached houses) are constructed by the same company that designed the buildings. In almost all of these cases, persons who conduct construction administration administrators are assigned from these companies.

Designated Confirmation and Inspection Body

Designated Confirmation and Inspection Bodies conduct building confirmation and on-site inspection. Both of these are conducted as a fair and impartial private sector activity. The designation is done by the Minister or prefectural governors. Their works are performed by conformity inspectors who have passed the qualifying examination for Qualified Building Regulation Conformity Inspectors. This system was introduced in 1999.

Building officials under Designated Administrative Agencies are also responsible for the above-mentioned activities. The effect of the certificate issued by a Designated Confirmation and Inspection Body is the same as that of a building official under the Designated Administrative Agency.

Designated Administrative Agency and Designated Confirmation and Inspection Body

	No. of Authorities (July 2011)	No. of building confirmations (Fiscal 2010)	
Designated administrative Agencies	444	104,496	(19 %)
Designated confirmation and inspection bodies	123	441,793	(81%)
Total	557	546,289	

Designated Structural Calculation Review Body

A Designated Confirmation and Inspection Body conducts a structural review upon request by a building official or a Designated Confirmation and Inspection Body. The designation is done by the prefectural governors. This system was introduced in 2007, and 64 bodies have been designated as of March 2010.

Designated Evaluation Body

A Designated Evaluation Body conducts an evaluation to determine if the solution meets performance requirements (performance criteria) upon request by a building owner or manufacturer. Evaluation by one of the Designated Evaluation Bodies is required before approval by the Minister. The designation is done by the Minister, and 27 bodies (25 bodies located in Japan and two in foreign countries) have been designated as of 1 November 2011.

Trends

After the falsification of structural calculation of buildings by former architect Hidetsugu Aneha became public knowledge in 2005, many Japanese authorities and private inspection companies have had to spend extra time reviewing structural design documentation. In this context, the amendments to the BSL and other relevant laws and regulations went into effect in June 2007. These amendments aim to prevent falsification of structural calculations by making building confirmation and inspection procedures more stringent.

However these amendments have made the building confirmation procedure more complicated and thus longer. For example, the building confirmation period was extended to 35 days from 21 days.

In response, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) reviewed the building confirmation scheme for the purposes of (i) expediting building confirmation work; (ii) requiring fewer, and more simplified application documents/drawings for building confirmation; and (iii) tightening measures to ensure conformity to the building regulations. For example, MLIT made it possible to undergo the structural calculation review at the same time as the building confirmation examination in June 2010 to enable the authorities to issue the certificates more rapidly. Documents and drawings were also simplified in May 2011 to expedite application process. Moreover, the review of the BSL itself is now underway among academics at the Study Committee on Building-related Legislation as of March 2011.

3. Getting Credit in Japan

3.1 Background

Sources of legal authority for the oversight of banks and other financial institutions, and the legal framework for secured transactions

The Financial Services Agency supervises banks and financial institutions.

The legal framework related to secured transactions includes the Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movable and Claims, and the Electronically Recorded Monetary Claims Act.

Environment of commercial lending, including microcredit and secured transactions

Banks have been positive to issue credit, and firms see the lending environment improving. The diffusion index (DI) of financial institutions' lending attitudes indicates an increase in net accommodative lending to large, small and medium-sized firms.

In this context, banks' outstanding loans, particularly corporate loans, have increased. Behind the increase in corporate loans lies the shift in funding sources by electric power companies from corporate bonds to borrowing and also greater demand for working capital and funds related to mergers and acquisitions. In the disaster areas affected by the Great East Japan Earthquake, bank loans have been growing to meet firms' demand for the working capital they need to continue or resume business.

Furthermore, firms have shown a positive attitude toward mergers and acquisitions involving overseas firms since 2011, partly reflecting the appreciation of the yen. Firms have financed these activities in part through syndicated loans and other types of credit.

In these circumstances, interest rates have been declining due to a decrease in banks' funding costs. In addition, issuing conditions for commercial paper and corporate bonds remain favorable amid monetary easing. Banks' positive lending attitudes amid sluggish borrowing demand of firms and households have reduced interest rates on loans. For example, regional banks have increased lending to large firms in metropolitan areas and expanded their business to neighboring prefectures. Public financial institutions, which set relatively low interest rates on loans, have also increased lending. After the bankruptcy of Lehman Brothers in 2008, these institutions financed low-rated firms whose business conditions had deteriorated and also extended a noticeable share of loans to high-rated firms. Under these circumstances, lending competition intensified particularly in metropolitan areas and interest rates on loans declined, especially for high-rated firms.

Secured transactions

With regard to secured transactions, according to 2010 statistics provided by Bank of Japan, the banking finance in Japan consisted of credit base at 44.8%, credit base at 36.1%, immovable at 16.7%, securities at 0.5%, among others. The relevant legal framework includes the Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movable and Claims; and the Electronically Recorded Monetary Claims Act. This framework enables the creation of quick, inexpensive and simple proprietary security rights without compromising the security of the use of their assets.

Nontraditional financing

In Japan, accounts receivable and various movables such as industrial and agricultural products are used for as collateral, and mortgage of some movables and franchising are provided for by law. For example, the registration of inventories and accounts receivable is codified in the Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims, and it is stipulated in the Mining Act that digging rights can be subject to mortgages and mining lease rights. At this moment, there are no planned amendments to laws related to nontraditional financing.

Credit reporting

In Japan, there are two types of credit information systems: credit bureaus (credit reference agencies and credit reporting agencies) and credit information databases (information sharing systems).

Two Designated Credit Bureaus designated by the Prime Minister based on the Money Lending Business Act collect personal credit information (name, address, loans, etc.) and provide them to creditors. When a creditor makes a loan to an individual consumer, it shall investigate the individual's ability to repay based on the information provided by the Designated Credit Bureaus.

In addition, there are two types of private credit information systems which are not based on laws: credit bureaus and credit information databases. For example, CRD, one of the four credit information databases, collects financial data (balance sheet data and profit and loss statements), non-financial data (e.g. data of establishment and geographical location) and default data indirectly through CRD member institutions anonymously.

Legal framework for the governance of bank and nonbank institutions

The legal frameworks for the governance of banks and nonbanks in Japan are respectively the Banking Act and the Money Lending Business Act.

Collateral

Schemes for perfection requirements for the assignment of claims are currently under consideration. The registration fees for collateral are stipulated in the Ordinance of Registration Fee. These fees vary by type of certificates and by application procedure. Applicants can register their collateral through an online application system on registration and deposit.

3.2 Trends

Since the extension of the SME Financing Facilitation Act in March 2011, it is presumed that the efforts made in accordance with the Act have been effective. On the other hand, an increase in re-modification of loan terms has been observed. In light of this, it is necessary to encourage financial institutions to better exercise the consulting function and to aggressively promote support measures that lead to the improvement of the management of SMEs while ensuring financial discipline. To facilitate this shift, the Financial Services Agency has decided to extend the Act for an additional, final year and to intensively implement support measures for SMEs, including rehabilitation support.

4. Enforcing Contracts in Japan

4.1 Background

Provisions regarding contracts

Provisions on fundamental matters regarding contracts, such as formation of contracts, cancellation, compensation of damages, are provided in the Civil Code as a part of law of obligations in Book III. In addition, the special provisions on the commercial transaction are provided in the Commercial Code.

In the Commercial Code in Japan there is no general provision on electronic transactions, but in 2008 the Electronically Recorded Monetary Claims Act took effect, enabling the Electronic Monetary Claim Recording Institutions to record monetary claims electronically and enabling the obligees of the claims to assign the claims easily like promissory notes. This act is original and is not based on any model laws.

The principle of the freedom of contract, which means that the parties concerned can freely determine the contents of the contract, is considered one of the most fundamental principles of the Civil Code, although there is no provision that clearly declares this principle. Certain restrictions exist, however. For example, a juristic act against public policy is void. Also, if any party to a juristic act manifests any intention inconsistent with public policy, it is void.

Civil action

If a debtor does not voluntarily perform his/her obligations under a contract with a creditor, including the obligations of payment of money and transfer of real rights, the creditor may file a civil action before the court with competent jurisdiction for judgment that orders the debtor to perform his/her obligations under the Code of Civil Procedure.

Moreover, Japanese judicial system is three-tiered: namely, the losing party in the first instance may file an appeal to the second instance court with competent jurisdiction over the case, challenging the judgment of the court in the first instance; and he/she may file a final appeal to the third instance court (in most cases, this is the Supreme Court), in accordance with the Code of Civil Procedure.

Civil execution

If a debtor fails to perform his/her contractual obligations in spite of the final and binding judgment, a creditor may satisfy his/her claim through compulsory execution, a procedure provided in the Civil Execution Act whereby the creditor may request the State to satisfy his/her claim. In this process, the creditor, based upon his/her claim affirmed by a judgment etc., may seize the debtor's property, sell it by auction and distribute the proceeds to satisfy the claim.

Compulsory execution, in principle, is implemented on the basis of an authenticated copy of the title of obligation accompanied by a certificate of execution. The title of obligation is a public document as per the Civil Execution Act that certifies the presence and content of the claim to be performed by compulsory execution, such as the final and binding judgment of the court.

Civil conciliation

Civil conciliation is a system particular to Japan for resolving disputes not by means of a formal court decision but through compromise by the parties concerned with mediation by a judge or an

appointed part-time judicial officer who conducts conciliation proceedings with the authority equivalent that of a judge. Conciliation proceedings may be conducted by a conciliation committee composed of one judge or the part-time judicial officer and two or more appointed conciliation commissioners. Civil conciliation is available to settle all types of civil disputes, including disputes regarding commercial matters. When conciliation is successfully accomplished, the terms of conciliation are entered into record and have the same effect as a final and binding judgment.

Alternative dispute resolution

Disputes with respect to civil matters may be resolved through the ADR mechanism conducted by private businesses. In light of the importance of such mechanisms as a prompt means to resolve disputes, when private businesses which carry out private dispute resolution services apply for certification by the Ministry of Justice, the Ministry of Justice determines whether they have satisfied the statutory criteria and requirements under the Act on Promotion of Use of Alternative Dispute Resolution, and grants certification accordingly.

Arbitration is also used to resolve civil and commercial disputes. Under the Arbitration Act in Japan, an arbitral award same effect as a final and binding judgment irrespective of whether the arbitration takes place in Japan. A creditor is required to file an application seeking an execution order for compulsory execution based on an arbitral award. Once the creditor acquired the execution order, he/she may seek compulsory execution with the arbitral award for which the execution order has become final and binding.

Notary system

Notarization is a system under which a notary—a State agent whose functions are to officially certify legal matters related to the life of a private person such as the conclusion of a contract—certifies matters as prescribed by laws and regulations. The deed prepared by a notary regarding rights and obligations in accordance with Notary Law and other laws is called a notarial deed. Although the involvement of a notary is not mandatory, the parties concerned may request a notary to prepare the notarial deed for a contract. The notarial deed is used not only to clarify juridical acts and private rights but also to prevent civil disputes from arising in the future. A notarial deed for a claim for payment of a certain amount of money etc. that contains a statement that the debtor will immediately accept compulsory execution is called an execution deed and is equivalent to a title of obligation.

Enforcing domestic and foreign judicial judgments and arbitral awards

A final and binding judgment rendered by a foreign court is effective in Japan only if it meets all of the following requirements: (i) the jurisdiction of the foreign court is recognized under laws, regulations, conventions or treaties; (ii) the defeated defendant has received a summons or order for the commencement of the suit, or has appeared without receiving either of these; (iii) the content of the judgment and the court proceedings are not contrary to public policy in Japan; and (iv) a mutual guarantee exists.

When a creditor seeks to execute the judgment of the foreign court in Japan, he/she is required to file an action seeking an execution judgment for a judgment of a foreign court before the court with competent jurisdiction. Once the creditor has acquired the execution judgment, he/she may seek compulsory execution with the judgment of a foreign court for which an execution judgment has become final and binding, which functions as a title of obligation.

4.2 Trends

In view of the response to remarkable changes in the social and economic climate in Japan, the Ministry of Justice has consolidated basic laws on civil matters. One example is the 2003 amendment of the Civil Code and the Civil Execution Act to adapt the security system to social changes and to improve the means of executing rights. These amendments entered into force in April 2004.

On the other hand, since the Civil Code was enacted in 1896, the contents of the law of obligations remain largely intact, with the exception amendments to the guarantee system. However, the social and economic environment in Japan has dramatically changed in various ways due to the globalization of markets and developments in information technology and transportation. In addition, court practice has developed extensive case laws through interpretation and application of the Civil Code since its enactment.

Considering this state of affairs, provisions of law of obligations in the Civil Code should correspond to changes in the social and economic environment. In particular, those provisions governing contracts, which directly relate to people's daily lives and economic activities, must be promptly reformed in order to make them more understandable to the public through clarification based on current case laws.

Accordingly, "Working Group on the Civil Code (Law of Obligations)", which was established by the decision of the Legislative Council of the Ministry of Justice (the council to study and deliberate on basic legal matters upon a request of the Minister of Justice), is currently undertaking a revision of the Civil Code. See the Ministry of Justice website for further details (see Resource Bibliography).

5. Trade Across Borders in Japan

5.1 Background

Customs law, Customs tariff law and temporary tariff measures law are principal laws relevant to trade across borders in Japan. These laws are complemented by Foreign Exchange and Foreign Trade Control laws, as well as laws and regulations related to banned goods and quarantine.

The central customs administration is the Customs and Tariff Bureau, which part of Japan's Ministry of Finance. As for regional customs services, Japan is divided into nine areas; Hakodate, Tokyo, Yokohama, Nagoya, Osaka, Kobe, Moji, Nagasaki, and Okinawa.

Customs has three main roles. The first is to collect duties, consumption, and other taxes on imported goods. These taxes amount to about five trillion yen, or about ten percent of Japan's annual tax revenue. The second is surveillance and control over the movement of goods to prevent entry of harmful items. Customs ensures the safety and security of Japanese society by preventing the smuggling of narcotics, firearms, and other illicit goods. The third role is trade facilitation: promoting the international harmony of trade procedures to expand the world economy and improve lives.

Animal quarantine is implemented worldwide for the purpose of preventing the incursion of animal diseases. Japan conducts both import and export inspections for a variety of animals as

well as products and goods manufactured or derived from animals. Inspections are conducted upon arrival and departure in order to prevent the spread of rabies and leptospirosis.

The plant quarantine service aims at protecting Japanese agriculture from the infiltration of pests from abroad by means of import quarantines at seaports and airports throughout Japan. The service undertakes domestic quarantine to prevent the proliferation and spread of local pests that seriously threaten agricultural crops. It also conducts export quarantine to comply with requirements from overseas.

The food inspection service aims to protect human health. This service is extremely important, as 60 percent of calories consumed in Japan are imported. The Ministry of Health, Labor and Welfare conducts inspections and provides guidance at quarantine stations when importing foods. It also aims to improve the monitoring system of imported food by increasing the number of staff and introducing advanced testing equipment.

Customs works together with customs brokers associations to improve qualification of customs brokers and workers for customs clearance.

Trade-related treaties and conventions

The following is a list of trade-related treaties and conventions ratified by Japan. Please see the Ministry of Foreign Affairs website for additional details (see Resource Bibliography).

- Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership
- Agreement between Japan and the United Mexican States for the Strengthening of the Economic Partnership
- Agreement between Japan and the Republic of Chile for a Strategic Economic Partnership
- Agreement between Japan and the Government of Malaysia for an Economic Partnership
- Agreement between Japan and the Kingdom of Thailand for an Economic Partnership
- Agreement between Japan and the Republic of Indonesia for an Economic Partnership
- Agreement Between Japan and Brunei Darussalam for an Economic Partnership
- Agreement on Comprehensive Economic Partnership among JAPAN and Member States of the Association of Southeast Asian Nations
- Agreement between Japan and the Republic of the Philippines for an Economic Partnership
- Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation
- Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership
- Agreement between Japan and the Republic of India for an Economic Partnership
- Agreement between Japan and the Republic of Peru for an Economic Partnership

5.2 Trends

Export Declaration

According to previous regulations, export declarations were to be made upon arrival at hozei areas (bonded areas) designated by the Director-General of Customs. As of October 1st, 2011,

Japan Customs has revised regulations to enable exporters to make export declarations before arrival while securing proper customs clearance.

Authorized Economic Operator

Japan Customs has implemented an AEO (Authorized Economic Operator) program to secure and facilitate the flow of goods in the international supply chain for operators with a system to ensure cargo security and compliance.

In July 2009, Japan Customs Law was amended so that the Japanese AEO program expanded its scope to manufacturers for AEO exporters, AEO importers, AEO warehouse operators, AEO Customs brokers and AEO logistics operators. Cargo manufactured by AEO manufacturers is subject to a simplified customs export procedure.

Single Window

Customs has been a leading agency of the Single Window in Japan, which enables traders, with single input or data entry on the integrated electronic windows, to lodge import/export declarations, vessel and airplane clearance transaction and some quarantine and immigration procedures. Procedures under the port authority were added to the single window system in October 2009, and airplane arrival/departure notification procedures were added in February 2010.

III. Resource Bibliography

Resource	Website
Ministries and Agencies in Japan	www.kantei.go.jp/foreign/link/org/index.html
Japan Customs	www.customs.go.jp
Ministry of Economy, Trade and Industry (METI)	www.meti.go.jp
Japan External Trade Organization (JETRO)—“How to Set Up Business in Japan” provides an overview of the laws, regulations and procedures related to setting up a business in Japan, as well as an easy-to-follow flowchart outlining the basic steps and a model case showing approximate start-up costs.	www.jetro.go.jp/en/invest/setting_up
Ease of Doing Business in Japan—shows summary World Bank’s Doing Business 2012 data for Japan. The first table lists the overall “Ease of Doing Business” rank (out of 183 economies) and the rankings by each topic. The rest of the tables summarize the key indicators for each topic and benchmark against regional and high-income economy (OECD) averages.	www.doingbusiness.org/data/exploreeconomies/japan/
Ministry of Finance	www.mof.go.jp
Ministry of Foreign Affairs—information on trade-related treaties and conventions	www.mofa.go.jp
Ministry of Justice (MOJ)	www.moj.go.jp
Japanese Law Translation Database System—managed by Ministry of	www.japaneselawtranslation.go.jp

Resource	Website
Justice—provides translations of Japanese laws and regulations	
Ministry of Land, Infrastructure, Transport and Tourism (MLIT)	www.mlit.go.jp

Korea

I. General Information

The following institutions are responsible for the five Ease of Doing Business areas:

- *Starting a Business*: Small and Medium Business Administration
- *Dealing with Permits*: Ministry of Land, Transport, and Maritime Affairs
- *Getting Credit*: Financial Services Commission & Ministry of Justice
- *Enforcing Contracts*: Ministry of Justice
- *Trade Across Borders*: Korea Customs Service

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Korea

1.1 Background: Simplified Start-up Procedures

The procedures of corporation establishment in Korea are as follow:

- Choosing a company name,
- Making a company seal,
- Confirming amount of capital,
- Declaring and paying the corporation registration tax at the district office,
- Entering the new company into the corporate registry,
- Applying for a business registration certificate at the tax office, and
- Enrolling in four major public insurances (National Health Insurance Corporation, the National Pension Service, Korea Workers' Compensation, and Welfare Services)

Regarding simplification of procedures (including the improvement of business start-up procedures), at the Second Presidential Council on National Competitiveness in April 2008, the Small and Medium Business Administration made an effort to resolve the difficulties of the start-up process by preparing an action plan. As a result of these efforts, incorporation procedures have been simplified through amendments to the applicable laws (below), including the elimination of the minimum capital requirement, exemption from mandatory notarial acts of articles of incorporation, etc.

Status of Amended Laws and Regulations for Simplification of Business Foundation Procedures

Item	Description
Elimination of the minimum capital requirement (Article 329, Paragraph 1, Commercial Act)	Possible to establish a corporation with a low capital amount (as of May 28, 2009)
Exemption of mandatory notarial act of articles of incorporation and minutes (Article 292, etc. Commercial Act)	When promoting/establishing a company with a total paid-in-minimum capital of less than KRW 1 billion (US\$0.9million), it is effective with a name and seal or signature of the promoters or directors only (as of May 28, 2009)
Deregulation of the certificate of payment for stock (Article 318, Paragraph 3, Commercial Act)	When promoting/establishing a company with a total paid-in capital of less than KRW 1 billion (US\$0.9million), it is required to submit a balance certificate of the financial institute without any certificate of payment/deposit of stocks to the registry (as of May 28, 2009)
Exemption of the mandatory appointment of an auditor (Article 409, Commercial Act)	When establishing a company with a total paid-in capital of less than KRW 1 billion (US\$0.9 million), appointing an auditor is not required (as of May 28, 2009)
Withdrawal of the similar trade name inhibition system (Article 30, Commercial Registry Act)	A regulation to inhibit registering a similar trade name has been withdrawn when operating the same business type within the same city, metropolitan area, or county (as of May 28, 2009)

In addition, the time required for business start-up has been remarkably reduced through the implementation of the Online Home Business Start-up System, allowing the establishment of a corporation online.

Online business start-up procedures in Korea

Procedure	Period	Procedure	Period
Choosing a company name	1	Trade name search	0
Corporate seal making	1	Corporate seal making	1
Capital confirmation	1	Online Processing	4
Payment of corporation registration tax	1		
Application for business start-up registration	2		
Application for business registration certificate	6		
Enrollment in four public insurances	1		
Declaration of employment rules	1		
8 Steps	14 days	2 Steps	5 days

As the World Bank recognized the Online Home Business Foundation System in Doing Business 2012 (released in 2011), Korea has rapidly increased its rank in the Starting A Business category from 60th (2011) to 24th (2012). Korea's overall ranking in Doing Business has improved by 8 places.

Rank in Doing Business 2012

Year	Total rank	Start-up business rank	By Major Start-up Items			
			Procedures	Costs	Period	Min. Capital
2012	8th	24th	33rd	97th	26th	1st
2011	16th	60th	104th	95th	66th	1st

* In 2009, Korea was ranked 126th. In 2010, Korea's rank had risen to 53rd.

1.2 Trends

1.2.1 Online Home Business Start-up System

The Small and Medium Business Administration has implemented and operated the Online Home Business Start-up System since February 2010 to allow entrepreneurs to consolidate the start-up procedures through an integrated internet registry, the local tax network, the electronic notary act system, national tax system, joint financial networks, four major public insurance linkage systems, etc. to make the process of starting a business easier and more efficient.

Meanwhile, business start-up procedures required 8 steps and 14 days, for trade name search, corporate seal-making, capital confirmation (balance certificate), payment of the corporation registration tax, application for corporation establishment registration, application for business registration certificate, enrollment in four public insurances and declaration of employment regulations. Since the Online Home Business Start-up System has been in operation, business start-up procedures have been reduced to only two steps, including corporate seal-making and online processing, and the processing period has decreased from 14 days to 5.

Accordingly, it is not necessary to visit a financial institution (to obtain the balance certificate), a city/county/district (to pay the corporation registration tax), a registry (to apply for corporation establishment registration), the tax office (to apply for a business registration certificate), the National Health Insurance Corporation, the National Pension Service, Korea Workers' Compensation and Welfare Services, etc., and the judicial scrivener fee required for corporation establishment may be reduced.

Online Home Business Start-up System usage statistics

Month	1	2	3	4	5	6	7	8	9	10	11	12	Total
2010	5	14	106	97	61	89	78	151	108	109	100	87	1,005
2011	143	87	122	102	161	178	187	167	127	121	146	132	1,673
2012	169	198	180	178									725

* 2012 Target: 2,100 business start-ups (about 3.5 percent of the target have enrolled as of April 2012).

1.2.2 Youth Entrepreneurship Program

This program, launched in 2011, aims to increase the successful start-up ratio through comprehensive support combining business start-up preparation and one-on-one mentoring. The Youth Entrepreneurship Program is a start-up accelerator designed to support aspiring entrepreneurs aged 39 and younger who wish to establish technology-intensive new businesses. Specifically, the project offers various support measures throughout the process, from initial planning through commercialization.

The program offers One-Stop support, including R&D funding (up to 100 million KRW per year, equivalent to approximately US\$88,000). Office space equipped with necessary facilities (13m² per company) and one-on-one coaching from full-time professors (20 in total) are provided to prepare the young entrepreneurs to start their own businesses, and up to 70% of the business costs incurred within the first year of business operation, including technology and prototype development as well as marketing, are subsidized. SBC provides practical business education, provision of development/testing equipment, and associated political funds, etc.

The budget for this program was KRW18 billion (US\$15.8 million) in 2011, KRW 15.05 billion (US\$13.3million) in 2012

Status of Trainees (as of the end of 2011) (Unit: person)				Characteristics of Operation
Applicants	Selected (A)	Dismissal (B)	Current (A-B)	
1,292	241*	29	212	Business Capability Evaluation (2 intermediate tests) resulted in the dismissal of 29 trainees deemed unfit for the program.

*Applications are now available for 2012 (646 applications have been received as of March 2, 2012).

Through this program, 550 youth jobs were created, 342 patents were registered, and KRW 14 billion (US\$12.3 million) in sales have been reported as of end 2011.

Indicator	Results	Description
Start-up Rate	98.1%	Existing 51 start-up companies, New 157 start-up companies, 4 preliminary starters
Job Creation	550 jobs	New jobs created: 423; Jobs retained (at existing start-up companies) 127
Intellectual Property	342	Registered 205 patents, 5 utility models, 70 trademarks, 62 programs
Venture Biz Certificates	29 companies	To link technical evaluations by Kibo (Korea Technology Finance Corp)
Sales	KRW 14 billion	Sales volume from 97 companies founded after entering the academy, including KRW 1.6 billion (US\$1.4 million) worth of exports (by 14 companies)
Awards from International Contests	43	Invention and New Product Exposition (INPEX) in Pittsburgh: Gold Prize: 7 winners; Participation Prize: 5; Special Prize: 1 International Trade Fair Exhibition in Germany: Gold Prize: 2 winners; Silver Prize: 1; Bronze Prize: 3; Special Prize: 9 Seoul International Invention Fair: Semi-Great Prize: 2 winners; Gold Prize 4; Silver Prize: 5; Bronze Prize: 2; Special Prize: 2

KRW 6 billion (US\$5.3 million) in investments in the program were made by two companies: Channel Briz and Political Finance Link (10 companies, KRW 2.7 billion or US\$2.4 million).

In 2011, the New Ansan Training Center was opened, followed by an expansion of the Gwangju, Gyeongsan and Changwon Training Centers in 2012. The program expanded operations nationwide in 2012, including three locations in Honam/Youngnam.

Program Facility	2011 Enrollment	2012 Target
Main Training Center (Ansan)	188 (88.7%)	170 (70.8%)
Regional Training Center	24 (11.3%)	70 (29.2%)
Total	212 (100%)	240 (100%)

2. Dealing with Permits in Korea

2.1 Background: Architectural permits

Assuming that a two-storied storage (approximately 1,300 m² worth KRW 700 million, or US\$0.62 million) will be built in Seoul, the following regulations apply.

Existing Procedures for Dealing with Permits in Korea
1. Certificate of Land Ownership issued (registry office)
2. Housing bond purchased (Housing Act, discounted after purchased from a bank)
3. Architectural permit issued (Building Act, cities [si], counties [gun], districts [gu] hereinafter referred to as si/gun/gu)
4. Architects hired (Building Act)
5. Pre-use inspection of electricity (Electricity Business Act, Korea Electrical Safety Corporation)
6. Pre-use inspection of communication (Telecommunications Work Business Act, Korea Telecom)
7. Certificate of Fire Prevention System Installation issued (fire station)
8. Approval of Use issued and final inspection requested (Building Act, si/gun/gu)
9. Site inspections of municipal governments (Building Act, si/gun/gu)
10. Building Registration (Registration of Real Estate Act, registry office)
11. Connection to sewage facilities (si/gun/gu)
12. Telephones connected (Telecommunications Corporation)

As of 2008, through the online Architectural Information System,³⁸ architectural permits are issued via a one-stop service system.

2.2 Trends: Policy implementation

Improvement/integration of procedures pertaining to issuing architectural permits:

Consolidated Procedures for Dealing with Permits in Korea
1. Certificate of Land Ownership issued (registry office)
2. Housing bond purchased (bank)
3. Architectural permits (si/gun/gu)
4. Architects hired (Building Act)
5. Certificate of Fire Prevention System Installation issued (fire station)
6. Approval of Use issued and final inspection requested (si/gun/gu)
7. Site inspection of municipal governments (si/gun/gu)
8. Building Registration (registry office)

³⁸ For more information, see www.eais.go.kr

The improvements in architecture permits are currently underway, and the consolidation will be implemented in 2012.

3. Getting Credit in Korea

3.1 Background

Korea's financial regulatory system is founded on laws such as the Banking Act, the Insurance Business Act, the Financial Investment Services and Capital Markets Act, the Specialized Credit Financial Business Act, and so forth.³⁹ Under these laws, supervisory authorities regulate banks and other financial institutions.

The Korean government does not have any specific arrangement facilitating commercial lending. Instead, the government is responsible for prudential supervision of lending practices conducted by financial institutions. Also, the government has implemented various policies to eradicate illegal lending practices and ensure stability of microcredit in order to better protect financial consumers and the market.

The credit reporting/information system is based on the Use and Protection of Credit Information Act. The centralized credit information collection agency established under this law collects credit information from all financial institutions in a compulsory manner and provides the information to each financial institution. Credit bureaus and credit rating agencies are issued operation licenses according to the law. As a result of the revision of the law on April 1 2009, the subjects for a credit rating assessment were expanded from specific stocks and bonds that satisfy certain conditions to all financial products. With this revision, the government expanded the scope of public information as well as procedures to make information publicly available to ensure quality public information for use by credit information agencies and credit bureaus.

Credit reporting is based on the Use and Protection of Credit Information Act. An individual's or firm's transactional details concerning loans, guarantees, collateral, current accounts (including household transactions), credit cards as well as information determining credit worthiness (such as delinquency, bankruptcy, substitute payments, or acts of disrupting the credit order through falsehoods, fraud, and other unlawful means, etc.) can be accessed by all financial institutions via the centralized credit information collection agency within ten days.

Public information provided by the government includes i) firms' records provided by the Public Procurement Service and ii) list of deceased individuals provided by the Ministry of Public Administration and Security. Such information can be shared with credit bureaus via the centralized credit information collection agency. As a result, credit bureaus have access to abundant credit information.

Leasing and factoring services are permitted in Korea within the limitations specified in the Financial Investment Services and Capital Markets Act and the Specialized Credit Financial Business Act.

The collateral registry system fully enables the creation of secured transactions contracts, including movable assets and bonds. Registering collateral in the form of real estate requires

³⁹ For more information, see www.fsc.go.kr/eng/index

approximately two days. The fee is approximately one percent of the face value of the bond. Collateral can be registered electronically. Korea has recently undertaken reforms in the collateral registry system, such as the Law on the Collateral of Movable Assets and Bonds in 2011.

3.2 Trends

To ensure objectivity and fairness of credit rating agencies, the Financial Supervisory Service (FSS) enacted the Internal Control Standards to be followed by staff and executives of credit rating agencies on January 2, 2010. The Internal Control Standards contain guidelines for establishment of the compliance system, management of conflicts of interest, greater disclosure of credit assessment results, banning of unfair practices, strict management of credit assessment data, stronger codes of ethics for staff and executives, and other measures.

To protect investors and ensure stable development of the capital market, the Financial Services Commission (FSC) enacted measures to upgrade the market for credit ratings agencies, to be implemented in the second half of 2012. The measures include i) making the Internal Control Standards legally binding; ii) eliminating unfair practices, ensuring consistency of information provision by issuers and strengthening disclosure requirements; and iii) enhancing comparative analysis and disclosure of credit assessment results and introducing a registry system for analysts, among other measures.

4. Enforcing Contracts in Korea

4.1 Background

In Korea, Contract Law is part of the Civil Law system. It is part of the Law on Obligation and is separate from Commercial Law.

The law on contracts has not been updated within the past five years, however, the Ministry of Justice is currently preparing the new draft of the law on contracts, scheduled for submission to the National Assembly in 2013, considering the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the International Institute for the Unification of Private Law (UNIDROIT).

The principles of contract law are based on the presumption of freedom of contract. However, laws protecting minors, such as employment law, impose limitations on freedom of contract.

The law does not allow private enforcement of contracts. A public bailiff appointed by the government enforces court judgments. However, private remedies against fraud are permitted. To seek damages for fraud, a civil or criminal case can be filed.

Korea has ratified both the United Nations Convention on Contracts for the International Sale of Goods (2005) and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (1973).

Korea is currently focusing on exporting its e-procurement system to other economies. It was adopted by Costa Rica in 2010.

Korea enacted a Law on Electronic Transactions in 1999, modeled after the United Nations Commission on International Trade Law (UNCITRAL).

The process for enforcing judgment is defined in Korean civil procedure law and civil enforcement law.

Although the use of a notary is not mandatory in Korea, notaries play a role in the authentication of the documents. Prior to 2009, the use of a notary was mandatory for the articles of association for companies, but this requirement has since been eliminated.

Korea's alternative dispute resolution body is the Korean Commercial Arbitration Association.

4.2 Trends: e-Filing System

Korea has introduced an electronic case filing system (ECFS) for increased efficiency, transparency and accessibility in the litigation process.

The ECFS is managed by the Korean judicial body. It enables litigants to file suits and proceed with the case. Litigants may file various documents including complaints and evidence from their home and office, and they will receive litigation papers that are submitted by their opponent through emails and text messages. They will be able to quickly confirm and respond to the opponent and the court. In addition, it will be possible for them to view and print legal records without any delay. They can also check how their case is being proceeded. Furthermore, judges and clerks of court can manage the case through the automated system. This includes case management, procedure management, record reviews, and approval. Also, all of these processes are done automatically by using the computer and the entire litigation procedures are done in the courtroom. Currently, the service is not open to the public unless they are the parties to a specific suit. However, judgment search service on the web site will be available for the public in the future under the condition that the names are anonymous.⁴⁰

5. Trade Across Borders in Korea

5.1 Background

5.1.1 Import and export regulations

In Korea, the Customs Act is the legislation governing import and export procedures. In the case of import and export procedures defined in Special Acts (including the Foreign Trade Act; Food Sanitation Act; Control of Firearms, Swords, Explosives, etc. Act; and Act on the Control of Narcotics, etc.), clearance should be administered in accordance with the relevant regulation. For example, items required to meet certain conditions (including labeling of permit/approval according to the law) must be verified by the Customs Collector (Article 226).

5.1.2 Public sector support

Licensed Customs Brokerage Act. This act is designed to promote Korea's economic development and enhance the efficiency of clearance procedures and taxpayer convenience by establishing a system licensed customs brokers.

Article 329 of the Customs Act. The head of the Customs Clearance Post Office is responsible for submitting a list of postal items to ensure smooth clearance of postal parcels. The head of the

⁴⁰ For more information, see ecfse.scourt.go.kr/ecf/ecfE00/ECFE00.jsp

Korea Customs Logistics Association is responsible for ensuring efficient registration of bonded goods caretakers and bonded carriers.

5.1.3 Treaties and trade agreements

Korea has concluded around 100 trade agreements and trade-related agreements with other countries. The following agreements have been ratified:

- Agreement Between The Government of The Republic of Korea and The Government of Canada for Mutual Assistance Concerning Customs Co-Operation
- Agreement on Mutual Customs Service Assistance Between The Government of The Republic of Korea and The Government of The United States of America
- Agreement Between The Government of The Republic of Korea and The Government of Mongolia for Mutual Assistance Concerning Customs Co-Operation
- Agreement Between The Government of The Republic of Korea and The Government of The Russian Federation Concerning Co-Operation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The People's Republic of China Concerning Cooperation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The Socialist Republic of Vietnam Concerning Cooperation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The State of Israel Concerning Cooperation and Mutual Assistance in Customs Matters
- Agreement Between The Republic of Korea and The European Community on Co-Operation and Mutual Administrative Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The Republic of Poland on Co-Operation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The Republic of Uzbekistan Regarding Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Cabinet of Ministers of Ukraine Concerning Co-Operation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of Japan Regarding Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The Republic of Chile Concerning Co-Operation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The United Mexican States Concerning Cooperation and Mutual Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The Republic of India Concerning Cooperation and Mutual Assistance in Customs Matters
- Agreement Between The Republic of Korea and The Kingdom of The Netherlands on Mutual Administrative Assistance in Customs Matters
- Agreement Between The Government of The Republic of Korea and The Government of The Republic of Turkey on Co-Operation and Mutual Assistance in Customs Matters

Korea Customs Service (KCS) is responsible for Agreements on Cooperation and Mutual Assistance in Customs Matters. When support from other countries is needed (for example in controlling illicit trade or streamlining customs procedures), the counterpart can provide support and cooperation in accordance with the agreement. Currently, KCS has signed Agreements on Cooperation and Mutual Assistance in Customs Matters with 28 countries, which are in good standing.

5.2 Trends

5.2.1 Reforms since 2009: regulations and institutions

2007: Single Window. Korea Customs has adopted an electronic clearance system in which import declarations and import requirements confirmations can be filed. Currently, 34 government agencies use the Single Window, and 93 percent of total import declarations are processed via this system.

By 2011, KRW 140 billion (US\$126.66 million) in logistical costs were saved by shortening the import/export clearance period by one day on average.

2011: Unmanned Electronic Clearance System. This system was introduced to effectively handle rapidly increasing trade volume. A pilot version launched in 2011 is now in full-scale operation. With this system, items declared by trusted businesses are accepted automatically by the system, while those firms that considered a risk go through reinforced inspections.

2011: Client-Oriented Logistics Information System (CLIS). The CLIS is a system that collects and analyzes logistics information such as clearance duration, deviation data and tracking. This enables monitoring and analysis of changes in cargo handling processes for logistics companies, contributing to trade facilitation.

5.2.2 Ongoing efforts and future plan for improvement of clearance administration

E-Submission system. KCS launched an e-Submission system where required documents for import declaration (such as B/L or invoices) can be submitted to Customs electronically. This streamlines the procedures and reduces traders' logistical costs. KRW 30 billion—approximately US\$26 million—in logistics cost savings, including labor, is expected as a result.

III. Resource Bibliography

Resource	Website
Small and Medium Business Administration	eng.smba.go.kr
Ministry of Land, Transport, and Maritime Affairs	english.mltm.go.kr
Financial Services Commission	www.fsc.go.kr/eng
Ministry of Justice	www.moj.go.kr/HP/ENG
Supreme Court of Korea, e-filing system	ecfse.scourt.go.kr/ecf/ecfE00/ECFE00.jsp
Korea Customs Service	english.customs.go.kr

Malaysia

I. General Information

On 7 February 2007, the Government established the Special Taskforce to Facilitate Business (PEMUDAH) with the aims to improve the public service delivery system and national competitiveness through public and private sector partnership. PEMUDAH is comprised of 24 high-level representatives from both the private and public sectors. PEMUDAH reports directly to the Prime Minister. The close working relationship between the public and private sectors is evident with the chairmanship of the Chief Secretary to the Government of Malaysia and Co-Chaired by representative from the private sector. At present, PEMUDAH is chaired by Dato' Sri Ali Hamsa and co-chaired by Tan Sri Datuk Yong Poh Kon, the President of the Federation of Malaysian Manufacturers (FMM).

PEMUDAH provides the impetus for overall enhancement of public service delivery and leads the effort in improving Malaysia's ranking in the annual World Bank's *Doing Business Report*, which includes the five indicators under the APEC Ease of Doing Business Action Plan. As the indicators involve cross-ministerial functions, PEMUDAH has established Focus Groups/Task Forces comprised of relevant ministries and agencies as well as private sector representatives. The lead ministries/agencies for the indicators are as follows:

- Starting a Business—Companies Commission of Malaysia (SSM)
- Dealing with Construction Permits—Ministry of Housing and Local Government (KPKT)
- Getting Credit—Central Bank of Malaysia (BNM)
- Enforcing Contracts—Chief Registrar's Office, Federal Court of Malaysia
- Trading Across Borders—Ministry of International Trade and Industry (MITI).

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Malaysia

1.1 Background

The Companies Commission of Malaysia (*Suruhanjaya Syarikat Malaysia* –SSM) administers the Companies Act 1965 (CA 1965), which regulates companies in relation to the formation, management and dissolution of companies in Malaysia. SSM also administers

- The Registration of Businesses Act 1956 (ROBA 1956) which regulates the registration and termination of businesses in West Malaysia; and
- The Trust Companies Act 1949, Kootu Funds (Prohibition) Act 1971 and Companies Commission of Malaysia Act 2001.

In December 2011, the Limited Liability Partnership Act 2011 was passed in Parliament and is expected to be in force by July 2012. Further information can be found on the SSM website and the Attorney General's Chambers website (see Resource Bibliography).

1.2 Types of Companies

Three types of companies can be incorporated under CA 1965:

- Company limited by shares
- Company limited by guarantee
- Unlimited company

A foreign company is defined under the CA 1965 as follows:

- A company, corporation, society, association or other body incorporated outside Malaysia; or
- An unincorporated society association, or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia.

A foreign company can register a branch in Malaysia under CA 1965 and may establish its place of business and carry out business within Malaysia by registering with SSM. The registering of branch offices of foreign companies is done in compliance with CA 1965.

Incorporation Procedures

To incorporate a company in Malaysia, promoter has an option either to apply over the counter or through the SSM online services such as e-lodgement or MyCoID.

The incorporation process involves the following steps.

- Application using the prescribed form (13A) to ensure the availability of the proposed company name
- Filing of necessary incorporation documents with SSM together the incorporation fees: Memorandum & Articles of Association (cancellation of stamp by SSM), Statutory declaration by promoter or director before appointment; and Declaration of Compliance
- Purchase of company seal, share certificates and statutory books from SSM
- Issuance of certificate of incorporation the same day, provided all documents are submitted no later than 12:00 PM

Electronic Incorporation. SSM encourages the use of electronic transactions. The e-Services available through SSM are as follows:

- **SSM e-Info.** The e-Info service enables online procurement of corporate and business information. Services are accessible via www.ssm.com.my or www.ssm-einfo.com.my.
- **SSM e-Lodgement.** e-Lodgement is offered by SSM to enable the lodgement or filing of company and business statutory documents electronically. The service is a joint-venture between SSM and the Malaysian Administrative Modernisation the Management Planning Unit (MAMPU). It uses the Government's Public Services Portal (PSP) via the website www.gov.my. A person who wishes to use this service shall first become a subscriber to the service by paying the prescribed fee and by complying with the terms and conditions as may be

determined by the Registrar. Only a subscriber to the service may electronically file or lodge documents with SSM.

- **SSM MyCoID.** The Malaysia Corporate Identity Number, or MyCoID, refers to the company incorporation number that is used as a single source of reference for registration and transaction purposes with other government agencies. With MyCoID, the public can use a single number derived from the incorporation number assigned by SSM for registration, reference and transaction purposes with participating government agencies.
- Incorporation of companies and simultaneous registration with the participating government agencies can be made via the electronic MyCoID gateway. This breakthrough initiative enables the starting of a business within one day.

e-Lodgement	MyCoID
<p>Registration online, including application for availability of proposed company name and filing of necessary incorporation documents (see below), together with the incorporation fees via electronic payment (credit card, pre-paid account or direct debit). Necessary documents include:</p> <p>Memorandum & Articles of Association (cancellation of stamp by SSM)</p> <p>Electronic declaration by promoter or director before appointment</p> <p>Electronic Declaration of Compliance</p> <p>Certificate of incorporation is issued electronically the same day.</p>	<p>Registration on-line via MyCoID with SSM as per e-Lodgement instructions (refer to explanation at left), simultaneous registration with tax registry, Employment Provident Fund (EPF), Social Security Organisation, and the Inland Revenue Board.</p> <p>One can also purchase a company seal, share certificates and statutory books from the SSM. Certificate of incorporation is issued electronically the same day.</p>

1.3 Types of Business

Apart from incorporating a local company, business activities can also be carried out by individuals in the form of

- Sole proprietorship: a business wholly owned by a single individual using his/her personal name as per his/her identity card or trade name
- Partnership: a business owned by two or more persons but not exceeding 20.

Sole proprietorship or partnership must be registered under ROBA1956. Under this Act, a business includes every form of trade, commerce, craftsmanship, calling, profession or other activity carried on for the purpose of gain, but does not include any office or employment or any charitable undertaking or any occupation specified in the Schedule of ROBA 1956. Further information can be found on the SSM website (see Resource Bibliography).

To be eligible for the registration of businesses, persons must be Malaysian citizens or permanent residents, and aged 18 and above.

1.4 Institutions that Support Business Start-Ups

In Malaysia, examples of public sector institutions that support business start-ups are as follows:

- Ministry of International Trade and Industry
- Ministry of Domestic Trade, Cooperatives and Consumerism
- Malaysian Investment Development Authority (MIDA)
- SME Corporation Malaysia
- Companies Commission of Malaysia (SSM)

- Cooperatives Commission of Malaysia
- Local authorities/municipalities.

All information on legislations, regulations and procedures are available to the public through

- SSM website;
 - SSM publications such as practice notes, guidelines, compendium, bulletins, and periodicals;
 - Magazines of professional bodies; and
 - Gazette, decree of laws published through Government Gazette.
- All regulations and procedures made available in the national languages (Bahasa Melayu and English).

1.5 Regulatory Approach to Electronic Transactions

In Malaysia, the Electronic Commerce Act and Digital Signature Act provide the general regulatory framework for electronic transactions between the Government and the private sector. However, SSM stipulates specific provisions under the CA 1965 and ROBA 1956 to govern its electronic services, including the use of the protocol for electronic lodgement.

SSM encourages the public to use electronic transactions. SSM has provided various e-Services for the public to conduct business with the registry. The type of electronic signature used for electronic transactions are the user id/password. The e-Services available through SSM are e-Info, e-Lodgement, and MyCoID.

1.6 Public-Private Engagement

SSM encourages public-private engagement on matters pertaining to regulatory reform and development. SSM has continuously engaged its stakeholders when conducting regulatory reform initiatives. In December 2003, it established the Corporate Law Reform Committee (CLRC), an independent committee to review the Companies Act 1965. It is chaired by a retired Court of Appeal judge and consists of representatives from the public and private sector. It has issued 12 Consultative Documents on various issues pertaining to company law to seek the views and recommendations of the public; and in 2008 submitted its Final Report containing 188 recommendations to SSM. The recommendations reviewed by SSM form the basis of the Companies Bill now being drafted by SSM. Further, during the drafting of the Companies Bill, SSM issued a consultative document on the area of law pertaining to Shares and Capital Maintenance.

SSM also issued two consultative documents to seek the views of the public before drafting the Limited Liability Partnership Act and carried out extensive discussions with various stakeholders during the drafting of the Bill.

SSM conducts three dialogues annually and has established the Corporate Practice Consultative Forum which allows discussions with various professional bodies on issues pertaining to Company Law and practices.

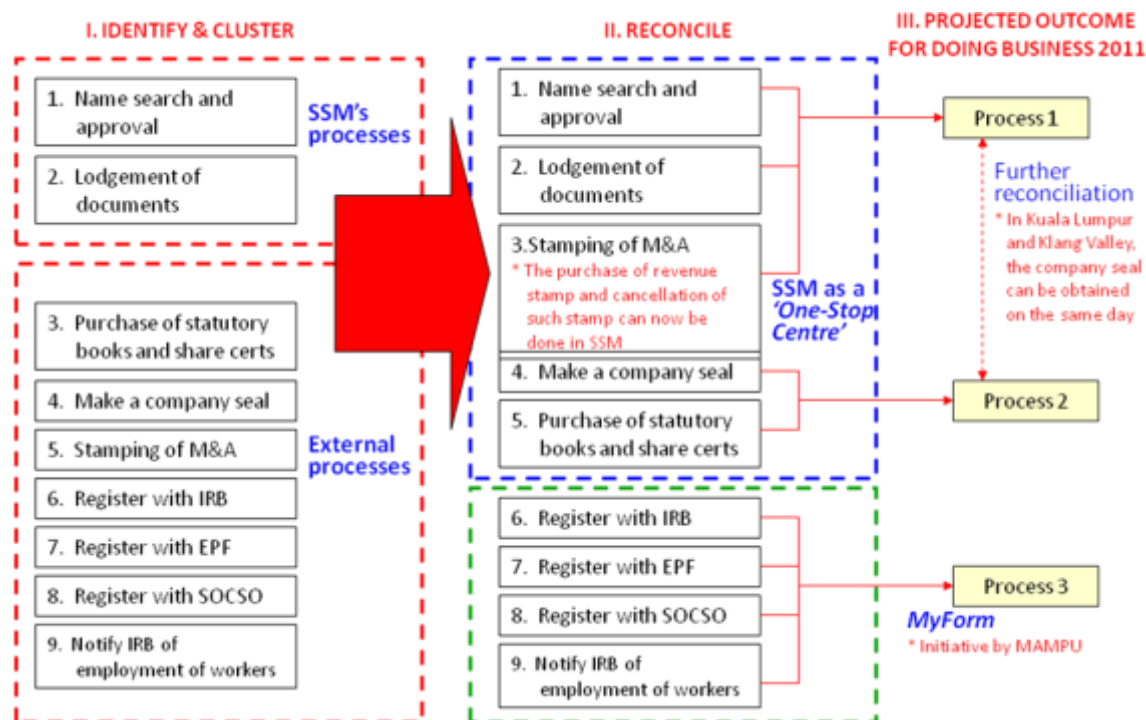
1.7 Reform Initiatives

Beginning 1 July 2009, My Company Identity Number (MyCoID) is the standard identification number of a business entity for use in its interaction with government agencies. It is the main component of the Business Registry System (BRS) under the National Registry System (NRS)

development project introduced by Government; facilitates business-to-government (B2G) and business-to-business (B2B) transactions; and is the SSM registration number for companies.

In 2009, the government also introduced the Business Licensing Electronic Support System (BLESS). BLESS is a portal that provides information and facilities for companies to apply licenses or permits to start operating business in Malaysia. It is a virtual one-stop service centre that assists companies in obtaining business licenses efficiently. It facilitates: (a) selection of relevant licenses; (b) online application; (c) tracking of applications; (d) online communication between licensing agencies and companies in seeking clarifications and justifications on license applications; and (e) covers applications for business licenses for manufacturing, construction and hotel sectors and with manufacturing, construction, and hotel facilities in the Klang Valley.

In the World Bank's 2010 *Doing Business Report*, Malaysia was identified as having 9 procedures taking a total of 11 days to start a business. As a result, SSM and the Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) introduced reform initiatives that resulted in a reduction to 3 days and 3 procedures. The business processing re-engineering is illustrated in the diagram as follows:



In 2011, with the introduction of the MyCoID system, companies were able to incorporate with SSM and simultaneously register with the three agencies identified under the *Doing Business Report*: the Inland Revenue Board (IRB), the Social Security Organisation (SOCSO), and the Employees Provident Fund (EPF). Companies are now also able to register with the SME Corp. and the Human Resources Development Fund (HRDF), thereby reducing the number of days and procedures from 3 days and 3 procedures to 1 day and 1 procedure.

Further improvements under MyCoID phase 3 are in the pipeline to extend simultaneous registration to additional agencies and to increase the number of available services.

Under the Companies Bill currently being drafted, SSM will introduce a legal framework to modernize and streamline doing business in Malaysia in the following areas:

- Simplifying laws and procedures based on private/public distinction

- Removing obstacles to the growth of private companies
- Introduction of single member/director company
- Cost effectiveness
- Introduction of the liberalization of the name approval process to allow companies to incorporate using the company number as the name of the company in instances where the proposed name is not acceptable by the Registrar guaranteed name approval concept.
- Repealing the requirement of having a memorandum and articles of association at the time of incorporation
- Introducing a statement of compliance to replace the statutory declaration by promoters and directors
- Making company seals optional.

2. Dealing with Permits in Malaysia

2.1 Background

The One Stop Center (OSC) was launched on 13 April 2007 to streamline and expedite the development approval process. The OSC committee, which replaces the Planning and Building Plan committee of the local authority, is chaired by the President or Mayor/Deputy Mayor of the Local Council and its members from various departments. With this integrated approach, delays caused by various technical meetings at each agency, red tape, and bureaucracy can be reduced. As of 31 March 2012, 104 OSCs had been established at local authorities in Peninsular Malaysia.

In the past, development proposals involving land matters, planning permission, building plan and engineering plan were submitted to separate agencies. It was time-consuming and inefficient. Therefore, government has taken initiatives to ensure the development processes are fast, efficient, effective and competitive. These include, among others,

- Improvement of the approval process of development proposals through the establishment of OSCs at all Local Authorities of Peninsular Malaysia in 2007
- Replacement of the Certificate of Fitness for Occupation (CFO) System to Certificate of Completion and Compliance (CCC) System in 2007. CCC works on a self-regulated approach versus government-regulated previously. CCC is issued by professionals such as architects, engineers or registered building draughtsman

2.2 Application for the Development Proposals

A development proposal involves four stages that require approval:

- Application for the land matters – (Simultaneous application for conversion and subdivision under Section 124A National Land Code (NLC)⁴¹ or application for Surrender and Re-alienation under Section 204D National Land Code (NLC).
- Application for planning permission
- Application for building plan

⁴¹ Details are available on the Ministry of Housing and Local Government (KPKT) website.

- Application for engineering plans

Each application process is provided for under various legislation:

- National Land Code 1965 (NLC 56)
- Town and Country Planning Act 1976 (Act 172)
- Street, Drainage and Building Act 1974 (Act 133)
- Uniformed Building By-Law 1984 (as per gazetment by each state)

Planning permission, which is issued by the Planning Department of the local authority, authorizes development of the land. The permit is valid for 12 months, within which time construction must begin. The fee charged is determined by the local authorities based on the following legislative provisions:

- The Federal Territory of Kuala Lumpur Building By-Laws of 1985 (for Kuala Lumpur City Hall).

In Kuala Lumpur, the fees for the Planning Approval Application are approximately RM40 – RM50 for every 1,000 square meters for the first 10,000 square meters and RM20 for every additional 1,000 square meters for the next 5,000 square meters.

Building Plan. The processing fee for the application for building plan approval are RM7 per 9 square meters/ RM10 per 10 square meters (for Kuala Lumpur City Hall) or any part thereof (a minimum of RM100) under Uniformed Building By-Law 1984 (as per gazetment of each state) and Federal Territory of Kuala Lumpur Building By-Laws of 1985.

Engineering Plans. The cost of the approval can be ascertained only on submission of the construction drawings. However, as a guide, the department charges RM200 per hectare for earthwork plan approval and RM150 for road and drainage plan approval for Kuala Lumpur City Hall. For other local authorities, the fees vary for earthwork plan approval from RM100 per hectare up to RM250 per hectare and from RM100 to RM500 for road and drainage plan approval depending on localities.

2.3 Processing Time and Procedures

Through the establishment of OSCs, applications for approval can be submitted concurrently versus one after another previously. In Kuala Lumpur City Hall, the processing time for the applications is usually as follows:

- 120 days for large-scale projects (consisting of complicated development plans, buildings of more than five levels, construction involving layout plans for a development area of more than 2 acres, or projects affecting the population density and change of zone area).
- 60 days for midscale projects (requiring construction plans of buildings of fewer than five levels, a temporary change in land/building usage involving a land area of fewer than 5,000 square feet or involving changes/additions/alterations made to the available shops/housing units).
- 45 days for small-scale projects (involving suggested additions/changes/alterations to existing bungalow units, two-story units and terrace units, and new bungalow units built in accordance with approved layout plans only).

The OSC secretariat will submit documents to departments and agencies upon receipt of applications from submitting person/ developer. For planning permit applications, the relevant technical departments and agencies are:

- State Town and Country Planning Department
- State Land and Mines Department/District Land Office
- Public Works Department
- Department of Drainage and Irrigation
- *Tenaga Nasional Berhad* (electricity)
- Department of Environment
- Department of Sewerage Services
- Department of Fire and Rescue Services
- Water Supply Corporation
- Internal technical departments (Landscape Department, Department of Engineering, Department of Health and Building Department)
- Other related technical departments/agencies.

For submission of building plans, the relevant technical departments/agencies are:

- Department of Fire and Rescue Services
- Water Supply Corporation
- Department of Sewerage Services
- *Tenaga Nasional Berhad* (electricity)
- Internal technical departments (Department of Planning, Landscape Department, Department of Engineering, Department of Health)
- Other related technical departments/agencies.

For earthwork plans, the relevant technical department/agencies are:

- Public Works Department
- Land Office
- Department of Drainage and Irrigation
- Planning Department of Local Authority
- Other related technical departments/agencies.

The OSC secretariat then will compile and coordinate all recommendation papers, issue letter of calling for meeting attached with meeting agenda to all members of the OSC Committee, and distribute recommendation papers. The technical departments are given 7 days to deliver their comments to applications located in an area having a local plan and 40 days for applications in areas with no local plans. The OSC will distribute applications to, and monitor the progress of, respective technical departments. Upon receiving the comments from technical departments, OSC officers will prepare reports to the OSC committee and then inform the applicants of the committee's decision.

2.4 Process of Transparency in Government Licensing Authority

The OSC committee ensures transparency and fairness, less interference, and full disclosure to the public on technical and nontechnical requirements through common templates according to MS ISO standards. In case of dispute regarding a decision of the OSC committee, applicants can

appeal through Appeal Board which is a neutral body (independent body or ombudsman) appointed by the State Authority to settle disputes between the appellant who feel aggrieved by OSC committee decisions.

2.5 Reform Initiatives

Since 2007, many improvements have been made by the Government through the Ministry of Housing and Local Government (*Kementerian Perumahan dan Kerajaan Tempatan - KPKT*). The improvements include:

- Common templates and checklists were produced for (1) external technical agencies, (2) internal technical agencies, and (3) OSC procedures, according to MS ISO 9001:2008. The templates were circulated to local authorities, technical agencies, and industry on 28 February 2011. The templates apply to new development applications submitted from 1 April 2011.
- The checklist for building plan approval was reduced from 81 items to 19 items. KPKT issued a letter on 7 July 2011 to industry regarding implementation of the Building Plan approval Simplification initiatives, effective 15 July 2011.
- The time taken to process building plan approval to be reduced from 61 days to 37 days and references to technical agencies to be reduced from 6 agencies to 3 agencies.
- KPKT started the OSC Online at 10 pioneer local authorities (PBTs) on 4 January 2011. This was expanded to another 71 PBTs by end of March 2012. OSC Online is expected to be adopted by all PBTs in 2012. The system allows for direct uploading of development proposal applications to local authorities—at anytime and from anywhere in the world. This initiative surely will enable even quicker and more efficient processing of development proposal applications. The OSC Online template will standardize requirements of the internal technical departments in local authorities (in Peninsular Malaysia).

In its effort to improve its ranking under the indicator of Dealing with Construction Permits, other initiatives have been spearheaded by the Government of Malaysia which included:

- A Task Force headed by Secretary General of the Ministry of Federal Territories and Urban Wellbeing was established in December 2011 to carry out baseline studies and to improve the efficiency of dealing with construction permits in Kuala Lumpur. The Task Force is comprised of all parties that deal with construction permits, including professional bodies, regulatory bodies, and policymakers.
- The introduction of OSC 1 submission in Kuala Lumpur City Hall to accept small scale non residential projects and monitors the procedures before, during and after construction.
- The Task Force has also established a new business model for low-risk projects and i) a reduction from two notifications and one approval to a single notification and approval procedure to enable commencement of construction on site, and ii) a replacement of two procedures (request for inspection and subsequent approval) with one: a completion of road works notification.
- Post-construction, copies of Certificate of Completion and Compliance (CCC) are to be submitted to OSC, thus reducing the procedure from two steps (submitting to OSC and the relevant Regulatory Board) to one.

3. Getting Credit in Malaysia

3.1 Background

Banking and financial institutions in Malaysia are regulated by the Central Bank of Malaysia, a statutory body governed by the Central Banking Act of Malaysia Act 2009 (CBA). The CBA provides for the Bank's mandate and regulatory and supervisory functions over licensed institutions. The CBA also specifies governance arrangements and oversight by the Central Bank's Board of Directors and accountability to the Minister of Finance.

The main legislation governing the commercial banks and investment banks in Malaysia is the Banking and Financial Institution Act 1989 (BAFIA). Investment banks in Malaysia are jointly licensed under the BAFIA and the Capital Market Services Act 2007. Malaysia also operates in parallel an Islamic banking system that provides financial services based on *Shariah* principles. Islamic banking institutions are similarly governed under the Islamic Banking Act 1983 (IBA). There are currently 61 licensed banking institutions in Malaysia: 25 commercial banks, 16 Islamic banks, 5 international Islamic banks and 15 investment banks.

There are also development financial institutions (DFIs) which are specialized financial institutions established by the Government with mandates to develop and promote sectors of strategic importance to the country's socioeconomic development objectives. These sectors include agriculture, small and medium enterprises (SMEs) including micro enterprises, infrastructure, maritime, export-oriented sectors, as well as capital-intensive and high-technology industries. Six DFIs are prescribed and governed by the Development Financial Institutions Act 2002 (DFIA).

Under the Acts, a holder of a banking or Islamic banking license in Malaysia is permitted to accept deposits, pay or collect checks, provide financing, as well as any other business the Central Bank may prescribe with the approval of the Minister. While the laws do not expressly prohibit banks and DFIs from offering non-traditional forms of financing, banking institutions must ensure that they conform to risk requirements and governance requirements with regard to undertaking such business.

Non-banks can also provide factoring and leasing services which are defined as 'scheduled businesses' under BAFIA where such entities are required to register with the Central Bank.

Specific requirements for the granting of secured credit facilities by a licensed institution are governed by section 60 of BAFIA, which prohibits a licensed institution from providing any credit facility without security, unless permitted by the Central Bank under a Gazette order. However, this does not limit banking institutions from offering overdraft and credit card facilities, which are generally unsecured. Section 60 further empowers the Central Bank to prescribe any limitations, restrictions and conditions subject to which a particular property may be provided, accepted or prohibited from being provided as security. In general, a security in respect of a credit facility provided by a licensed institution must consist of a property of a value which is not less than the amount of the credit facility. Further, the value of the security has to be sufficient throughout the currency of the credit facility. In respect of an Islamic banking institution, section 24 of IBA prohibits a licensed Islamic bank from granting unsecured advances, unsecured loans or unsecured credit facilities in excess of RM 10,000 to its related corporation other than an Islamic bank or a licensed bank under the BAFIA.

The forms of security that may be created in Malaysia include a charge, pledge, lien, legal assignment, set-off, hypothecation, guarantee, and indemnity. Generally, banking institutions providing credit may not deprive the person giving the security of the use of his or her assets. However, as the asset has been charged as security for the credit facility, there may be certain limitations applicable, such as the right to transfer the ownership of the asset and actions that may affect the value of the security. Banks are contractually entitled to take recovery actions including foreclosure actions against a borrower on a security in the event a loan has been defaulted.

3.2 Commercial Lending (including Microcredit and Secured Transactions)

The banking and financial system in Malaysia continues to support the financing needs of viable businesses. As at end-2011, total outstanding financing by the banking system stood at RM 1,003.5 billion, of which 37.7% was extended to business enterprises. Larger enterprises can also access the corporate debt securities and *sukuk* markets to obtain their financing needs. As at end-2011, financing through the corporate debt securities and *sukuk* markets accounted for 58.3% of total outstanding corporate financing.

SME financing by financial institutions stood at 165.4 billion to more than 677,000 SME accounts as at end-2011, of which 93% was contributed by the banking system and 7% by DFIs. The share of SME financing out of total business financing through the financial institutions has increased from 27% in 1998 to 39.2% as at end-2011.

As at end-2011, total micro financing outstanding in Malaysia stood at RM3.4 billion, comprising the following:

Micro-credit Provider	Outstanding loans
Amanah Ikhtiar Malaysia (AIM), a micro finance institution that provides group lending to women	RM1.2 billion
TEKUN National, a micro finance institution providing micro financing and advisory services to <i>bumiputera</i> entrepreneurs	RM1.1 billion
Micro financing offered by banks and DFIs (<i>Pembiayaan Mikro</i>)	RM0.9 billion
Various Government Schemes	RM0.3 billion

3.3 Credit Reporting and Information System

The Central Bank has a wide-area network infrastructure to support the efficient sharing of credit information between the public credit registry, private credit reporting agencies, and participating financial institutions in a secured and controlled environment. The credit information infrastructure and landscape in Malaysia aims to enhance the risk management capabilities of lenders, improve access to financing, improve the credit culture, and facilitate supervisory and surveillance activities by the Central Bank. There are two main types of entities in the credit reporting/information landscape—the public credit registry and other private credit reporting agencies—to support consolidated credit information sharing in a regulated environment.

The public credit registry, Central Credit Reference Information System (CCRIS), which is administered by the Central Bank, collates from and disseminates to financial institutions factual credit information to facilitate assessment of the credit-worthiness of borrowers or prospective borrowers.

Complementing this, private credit reporting agencies provide value-added products and services based on additional non-bank data, such as trade credit data of companies and utilities

information. These products and services include credit scoring, fraud management, credit monitoring services, and bankruptcy information.

The CBA further allows for the Central Bank to establish a credit bureau to collect credit information and disclose such information to (1) financial institutions for the purpose of assessing the credit-worthiness of existing and prospective customers, and (2) credit reporting agencies registered with the Registrar of Credit Reporting Agencies established under the Credit Reporting Agencies Act 2010, provided that the consent of the data subject is obtained for such disclosure.

The Credit Reporting Agencies Act 2010 is intended to strike a balance between consumers' rights to privacy and protection, and lenders' rights to information for improvement in credit evaluation and risk management purposes. Under the Act, the consent of the consumer/data subject is required before the disclosure of any credit information to a third party is permitted. The Act is expected to be operationalized in the second half of 2012.

The dissemination and collection of collateral information to and from participating financial institutions is done electronically via CCRIS, the public credit registry administered by the Central Bank. Financial institutions in the public credit registry are required to report the collateral information for any secured financing at the point of approval, and this information is required to be updated to reflect any change in the collateral pledged by borrowers. The collateral reporting system in the public credit registry is currently being reviewed under an initiative to develop a comprehensive statistical architecture for reporting to the Central Bank.

3.4 Reform Initiatives

In Malaysia, continuous enhancements are undertaken to the supporting infrastructure and institutional arrangements to meet the financing and developmental needs of businesses, including SMEs. Recent and ongoing efforts include:

- The establishment of the Credit Guarantee Corporation (CGC) to provide credit guarantees to viable SMEs with inadequate track record and collateral. Since its inception in 1972, CGC has facilitated financing to more than 414,000 SMEs amounting to RM49 billion of financing.
- The establishment of SME funds by the Central Bank with the objective of assisting SMEs to access financing. Since establishment, the five funds have assisted more than 51,000 SMEs with total financing approvals of RM21.4 billion.
- The establishment of Credit Bureau Malaysia in 2008 to address information asymmetries and allow SMEs to build their credit standing from non-bank transactions such as those with suppliers, telecommunication companies, utility firms and government agencies. As at end-2011, Credit Bureau Malaysia has more than 28,000 SME clients and had generated more than 370,000 credit reports.
- The Association of Banks in Malaysia (ABM) launched the “PARTNER” program in 2010, a standard application form and simplified application process for SME financing. To date, 8 out of 14 Member Banks are participants of PARTNER.
- The establishment of the Small Debt Resolution Scheme (SDRS) in 2003 to facilitate viable SMEs repayment difficulties to restructure or reschedule financing. Since its establishment, SDRS has facilitated 774 applications with financing amounting to RM755 million to be rescheduled or restructured.

- Viable SMEs with difficulties in accessing financing can also obtain advisory services from trained SME advisors at SME Association Help Desks, SME special units at financial institutions, the SME Advisory Unit at Bank Negara Malaysia and SME Corporation Malaysia, an agency to promote SME development.
- The establishment of a sustainable microfinance framework by financial institutions (*Pembiayaan Mikro*) in 2006 to provide micro-enterprises with access to uncollateralized business financing in a fast, easy and convenient manner. Currently, there are 9 participating financial institutions providing micro financing products, with more than 2,400 access points nationwide. These financial institutions adopt various sustainable business models such as mass market model which leverages on existing branches, dedicated micro finance branches, co-operative model and partnerships with strategic distributors. A *Pembiayaan Mikro* logo was also created to create awareness on sustainable micro financing and identify the access points providing micro financing.
- For large enterprises Malaysia's first financial guarantee insurer, *Danajamin Nasional Berhad* was established to support access by corporations to the bond market through credit enhancements.

Moving forward, the Financial Sector Blueprint 2011-2020 outlines comprehensive strategies to facilitate more effective and efficient intermediation, in particular to support Malaysia's transformation into a high value-added, high-income economy by 2020. Examples of key recommendations to enhance the financial intermediation process by the financial sector are:

For businesses, including SMEs:

- Enhance the role of financial institutions in developing profit- and risk-sharing financing facilities.
- Promote factoring and leasing by financial institutions to meet needs of SMEs.
- Promote full range of financing by development financial institutions to targeted sectors, including SMEs.
- Promote market-based alternatives, such as a receivables exchange, for more effective access to funding.
- Promote development of expertise to support new growth areas e.g. green technology and sustainable financing practices.
- Promote establishment of funds of funds that invest in the venture capital industry.
- Facilitate establishment of new specialized institutions to provide risk capital financing.
- Establish a pool of experts to strengthen assessment of technology-based proposals.
- Collaborate with Government to set up integrated networking platform for investors and entrepreneurs.
- Strengthen the credit information framework to facilitate more comprehensive financial assessments of borrowers.

For micro enterprises:

- Encourage flexible micro financing products that allow prompt drawdown during times of need and prepayment during good times.

- Promote innovative channels like agent banking to enhance the convenience for micro entrepreneurs to repay their financing.
- Strengthen the financial inclusion role of specialized development financial institutions to enhance micro financing to micro enterprises.
- Encourage structured and cost-effective micro finance training for professionals from financial institutions, cooperatives, microfinance institutions and non-governmental organisations (NGOs).

4. Enforcing Contracts in Malaysia

4.1 Background

The Malaysia civil legal system is based on the English common law and adversarial system. The early law applicable to contracts was English Law. The legal remedies stemming from the common law are primarily monetary and the most common is the remedy of damages and these common law remedies are found in the Contracts Act 1950. Equitable remedies are usually specific and are available only at the discretion of the court and when the remedy at law is inadequate. The equitable remedies are provided in the Specific Relief Act 1950 such as specific performance and injunction. The Contracts Act 1950 has not been updated since 1980.

Besides the common law and equity, legislation provides for statutory remedies that can be comprehensively drafted to suit the needs of any particular field. The Sale of Goods Act 1957, for example, has codified some of common law remedies. A more recent example of statutory remedies is the Consumer Protection Act 1999 which provides for rights of consumers against suppliers and against manufacturers.

Under the common law, the right of an innocent party to terminate the contract and to treat the contract as discharged arises when there is a repudiation or a fundamental breach. In Malaysia, the general provisions on breach of contract are found in Section 40 of the Contracts Act 1950. Section 3 of the Civil Law Act 1956 provides that English Law is applicable unless there are provisions made by any written law in Malaysia and so far as the circumstances in Malaysia and its inhabitants permit and subject to such qualifications as local circumstances render necessary. In Malaysia, common law and rules of equity as administered in England on April 7, 1956, apply. After the cut-off date, English Law does not bind but is of persuasive authority only.

Section 5 allows reception of English Law unless there are provisions made under any written law. Thus the importation of English Law and principles of equity and statutes of general application into Malaysian law must be read in light of the provisions found in the Contracts Act 1950 and the Specific Relief Act 1950 and any other relevant local statutes.

Subject to a few exceptions, the court is inclined to enforce a contract against a party as long as the contract that was entered into, satisfy the basic requirement of validity. These requirements according to the Contract Act 1950 include offer and acceptance, consideration, intention to create legal relation and capacity.

The factors that would vitiate consent and thus enable the court to intervene include coercion, undue influence, fraud and misrepresentation. Unconscionable bargains do indeed vitiate consent and hence invalidate a contract but a transaction will be unconscionably only if the party

seeking to enforce the transaction has taken unfair advantage of his superior bargaining power, or of the position of disadvantage in which the other party was placed.

The law allows private enforcement of contracts following a court order. However there is no such provision on private remedies against fraud under the Malaysian law.

4.2 Commercial Courts, Arbitration, and Mediation Tribunals

Dedicated specialized courts hearing commercial cases (the Commercial Division) were established at the High Court Kuala Lumpur in 1979. The Division hears among others, admiralty, bankruptcy, insurance, matters under the Companies Act 1965, agency, banking, intellectual property, *muamalat* (Islamic banking), maritime law, marine insurance and sale of goods. The Commercial Division was reorganized in September 2009 with the inception of the New Commercial Courts (NCC), set up specifically to handle new cases registered in a 3 months cycle and to completely dispose the three months caseload within 9 months from the date of case registration.

The Kuala Lumpur Regional Centre for Arbitration (KLRCA) was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO). KLRCA adopts the UNCITRAL Arbitration Rules with modifications, that is, the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration (KLRCA Rules).

Mediation has been practiced informally by the Sessions Courts in Kota Bharu, Kuala Lumpur and Shah Alam since March 2009 for road accident claims. The High Courts in Kuala Lumpur also started referring cases for mediation beginning March 2010. A Practice Direction was later issued on 16 August 2010 directing all Judges of the High Courts and the Deputy Registrars, Sessions Court Judges and Magistrates to give direction during pre-trial case management to parties to attempt settlement by way of mediation. Mediation Centres have been set up by the Judiciary at Kuala Lumpur and Johor Bharu courts which provides for free mediation sessions and judges acting as mediators.

4.3 System for Enforcing Domestic and Foreign Judicial Judgments and Arbitral Awards

The process for enforcing judgment is defined in the Rules of High Court 1980 and Subordinate Court Rules 1980. There are several methods for enforcing a domestic judicial judgment:

- The writ of seizure and sale is provided for under Order 47 of the Rule of High Court 1980. The writ in Form 88 authorizes the court to seize and sell the property of the judgment debtor to satisfy the judgment sum.
- The second method is through garnishee proceeding which is stated in Order 49 rule 1(1) of the RHC 1980.
- Equitable execution is stipulated in Order 51 of the RHC 1980 which provides that an application is made for the appointment of a receiver by way of equitable execution. The court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and the probable cost of his appointment.
- Charging order stated in Order 50 of the RHC 1980 is another type of enforcing judgment which is by way of an ex parte summons supported by an affidavit.

- The writ of possession is applicable where the judgment or order is for giving possession of immovable property. Order 45 Rule 3(2) of the RHC 1980 stated, a writ of possession shall not be issued without leave of the court except where the judgment or order was given or made in charge action.

As for enforcing foreign judicial judgment and arbitral award, Reciprocal Enforcement of Judgments Acts 1958 applied. Judgment is defined in the Reciprocal Enforcement of Judgments Acts 1958 as a judgment or order given or made by a court in any civil proceeding, or a judgment or order given or made by the court in any criminal proceedings for payment of a sum of money in respect of compensation or damages to an injured party.

In respect of a country which is a member of the Commonwealth, it includes an award in proceedings in an arbitration if the award has, pursuant to the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place. This provision does not extend to an award made in a country not being a member of the Commonwealth.

Section 51 of the Arbitration Act 2005 provides for the enforcement of foreign awards. Order 69 of the Rules of the High Court provides for arbitration proceedings under Arbitration Act 2005.

Malaysia has not ratified the United Nations convention on Contracts for the Sale of Goods. However, Malaysia has ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Award.

In the present financial structure, the Malaysian Judiciary has little say in the allocation of its funding. In the case of operating budget, the Controlling Officer of the Judiciary's budget is the Chief Secretary to the Federal Government. Similarly, the planning, management and funding of the courts' development expenditure are handled directly by officers of the Legal Affairs Division of the Prime Minister's Department. In view of the emerging thinking regarding the role of a judicial budget in ensuring and enhancing institutional independence, which includes the proper funding and budgeting of the judiciary in order to promote its effective governance and management, a number of short and long term reforms have been considered by the Judiciary to be proposed to the Government. One of the proposed areas of reform is for the entire operating budget of the Judiciary to be charged on the Federal Consolidated Fund with full freedom be accorded to the Chief Registrar to re-appropriate moneys, within the budget and with the approval of the Chief Justice after consultation with a committee of judges. The Office of the Chief Registrar can then conduct procurement through the Government Procurement Information System" or (GPIS) and MyProcurement portal which was launched in 2010 to boost transparency and to prevent any corrupt practices in the awarding of projects and procurement.

The Electronic Commerce Act 2006 and the Digital Signature Act 1997, provides for legal recognition of electronic messages in commercial transactions, the use of the electronic messages to fulfill legal requirements and to enable and facilitate commercial transaction conducted through electronic means including commercial transaction. It is modeled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce 1996.

In Malaysia, the powers of notaries public are governed by the Notaries Public Act 1959. Section 4 of the Act says:

A Malaysian notary public has the same powers and functions as a notary public in England;

A notary public may administer oaths and affirmations for affidavits and statutory declarations:

- For proving the due execution of any document;
- For matters pertaining to a sea vessel; and
- For the purpose of being used in any place or court outside Malaysia.

On the other hand, such powers do not extend to administering or affirming any affidavits or statutory declaration which is executed for the purpose of being used in any court or place in Malaysia.

4.4. Reform Initiatives

The World Bank's *Doing Business Report 2009* reported that it took 30 procedures, 600 days, and costs at the rate of 27.5% of claim to enforce a contract in Malaysia; based on those indicators, Malaysia was ranked at 60th position on the ease of enforcing contract topic.

The Malaysian Judiciary as the institution constituted to resolve disputes has embarked on multiple initiatives to address continuous call for a more expeditious system of delivery of justice and increasing public demand for judicial accountability, apart from the need to improve the enforcing contract ranking.

The reform programs undertaken in 2009 focused on reducing case backlog by way of strengthening the judicial delivery system and close monitoring of judges' productivity. Some of the initiatives carried out to improve service delivery include:

- **Reorganization of File Rooms and Registries.** The file room spring cleaning began at the Court of Appeal Registry and it took months to complete the exercise. Each individual file was checked and counted. The result of the operation was many files which were recorded still active have in fact been closed and others not included in the statistics were discovered. The success of the overhaul of the Court of Appeal file room resulted in the process being replicated in the file rooms throughout court registries in Malaysia. All Courts throughout the country have put their file rooms in order to ensure efficiency in file searches.

Show-cause exercises were also carried out to eliminate inactive cases for rapid closure or further processing. These operations have contributed to an improved and more expeditious administration of justice, as well as achieving a significant reduction in the incidence of missing files.

- **Tracking System.** One of the measures undertaken to reduce the backlog of cases is the introduction of a Tracking System. Before the introduction of this system, the individual High Court judges were in charge of their own registries and were thus responsible for the management of all cases registered in their individual courts until final disposal. It was found that a considerable amount of valuable judicial time of the judge was expended on this process when it could equally well be undertaken by the Registrars. More importantly it was found that the judge was left with very little time to hear cases which had been fixed for trial.

The Tracking System was first introduced as a pilot project in the Commercial and the Civil Division of the High Court in Kuala Lumpur on 1 February 2009. With the implementation of the Tracking System, all cases are registered in a single registry and before they are distributed for hearing in the various courts, the pre-trial case management of these cases are conducted by deputy registrars and senior assistant registrars under the supervision of a

Managing Judge. Several judges from the Federal Court and the Court of Appeal are appointed as Managing Judges of specific courts.

With the Tracking System in place, trial judges have had more time to devote to hearing and adjudicating matters fixed for trials, rather than expending their time on case management. The Commercial and Civil Divisions of the High Court in Kuala Lumpur are divided into two categories, namely Trial Track (T-Track) Courts, and Affidavit track (A-Track) Courts. Judges conducting 'T-Track' cases only hear trials (*viva voce*) whereas Judges conducting the; A-Track' cases hear interlocutory applications and matters involving affidavit evidence.

After 12 months of implementation, the statistics disclose a significant rise in the number of cases disposed. In the High Court of Kuala Lumpur (Commercial Division) for example, as at December 2009, there is an increase of 682% in the total number of T-Track cases disposed by way of full trial. In the year 2009, 596 cases were disposed by way of full trial as compared to only 87 cases in 2008.

Targets are also set for the disposal of older cases and no adjournments are granted unless strictly necessary. With the cooperation of the Malaysian Bar, requests for adjournments have been reduced drastically.

These initiatives have resulted in a marked change in the culture of the legal fraternity, and all stakeholders in the system recognize that court hearing dates are essentially inviolable. Thus, overall administration of Civil Court processes has improved significantly. This system had been expanded to the other Courts in peninsular Malaysia, with emphasis on the West Coast, as these centers have a large number of cases.

The overall data show that the total number of cases filed in 2009 or earlier still being processed in the High, Sessions and Magistrates Courts (country-wide) had dropped from 192,569 in December 2009 to 15,497 in May 2011. As of the latter date, among the country's 429 sessions and magistrates' courts, 120 were completely current – processing only cases filed in 2010 and 2011. Due to the reduction of cases, 9 High Courts, 4 Sessions Courts and 23 Magistrates Courts were closed. The closure of these courts and the reduction in the number of pending cases are clear testimony of the success of the strategies adopted by the Judiciary.

Reform Initiatives in 2010

Introduction of Timelines and Performance Indicators to Improve Judicial Performance

The reforms carried out in 2009 have been successful in reducing case backlog. To ensure that case backlog is eliminated, all courts have to continuously achieve a greater rate of case disposal than registration. To improve judicial performance, timelines have been implemented to measure the time taken for the disposal of a matter from the date of filing to its completion. A few specialized courts have been set up and are entrusted with a few performance indicators to achieve complete disposal over a shorter, fixed period of time.

New Commercial Courts. The New Commercial Courts (NCC) are specifically set up within the Commercial Division of the High Court in Kuala Lumpur to improve the delivery system in respect of commercial cases. Initially two NCC Courts (NCC1 and NCC 2) were established on 1 September 2009. Judges appointed to these courts were from the Bar and possess wide experience in commercial cases. They were assigned to handle and dispose cases received in the

months of September until December 2009 within 9 months from the date of case registration. To ensure that the NCC Courts meet their targets, close monitoring and management were carried out on the progress of each case.

It is interesting to note that when the courts take charge of management of cases immediately after filing, a substantial number of cases received by NCC Courts are disposed of within the first three months by way of judgment in defaults, settlements or striking out. Those that are left after four months are the problematic cases. Only ten percent of those filed actually go for trial with witnesses. The statistics for the September-December 2009 caseload show that NCC1 and NCC2 have reached a 97% or 99% clearance rate within 9 months from the date of filing.

With the success of NCC1 and NCC2 achieving clearance rate within 9 months, 4 other courts (NCC3, NCC4, NCC5 and NCC 6) were established in 2010 to ensure commercial cases are disposed within 9 months from the date of registration. The other original commercial courts which exercised the tracking system were gradually closed when they ran out of work upon completion of disposal of old cases.

The NCC formula in the Commercial Division was then expanded and practiced in the High Court (Civil Division) as well as the Sessions and Magistrates Courts (Civil Division) in Kuala Lumpur, and known as the New Civil Courts (NCvCs). The other courts in other major towns also follow suit upon completion of their case backlog reduction exercise.

The Judiciary now tracks and produces reports and tables to check whether each court is meeting its target of processing all its allotment within nine months of the cut-off date. Since their inception the NCCs and NCvCs have been reducing their caseloads at a fully adequate pace and in fact are ahead of the schedule.

Specialized Courts. Apart from the NCC courts, other specialized courts such as Islamic Banking (Muamalat) Court and Intellectual Property Court which have been established before 2009 are reorganized to meet disposal timeline within 9 months. The Admiralty Court, established on 1 October 2010 is set up to facilitate the efficient adjudication of all admiralty and maritime claims in one centralized court, and to dispose all claims filed in this Court within 9 months from the date of filing save for admiralty in rem claims where the clearance target is within 9 months from the date of service of the writ of summons.

E-Court Project

The Judiciary was able to effect substantive changes to the workplace when the computerization of the courts began in 2009 with the introduction of the e-Court System, which continues through 2010. With the e-Court in place, the Courts have been able to improve their delivery system to the public. Initiatives and efforts continue to be implemented to allow for an optimum utilization of the system.

The e-Court System comprises the Case Management System (CMS), Queue Management System (QMS), Court Recording and Transcription System (CRT) and e-Filing System (EFS). Due to budget constraints, the CMS, QMS, and e-Filing System are available at only six court locations at Kuala Lumpur, Shah Alam, Penang, Ipoh, Putrajaya, and Johor Bharu. However, the CRT is available to 418 court rooms in all States throughout Peninsular Malaysia.

Case Management System. The CMS is the main component of the e-Court System. CMS provides an integrated system for the management of cases and creates a detailed record of a

case, thus doing away with the manual process. Through the CMS, the Courts are able to electronically manage common diaries, centralize the assignment of cases, endorse and retrieve case minutes, publish cause lists and produce statistics. The cause lists are accessible to the lawyers and public.

Queue Management System. The QMS is designed to manage the scheduling and waiting time for cases which are fixed for hearing before the registrars at the case management area each day. Previously, lawyers and members of the public had to wait for their cases to be called out by staff members of the Court. With the QMS, lawyers record their attendance using the kiosk provided in the Court premises. The kiosk will provide confirmation of whether the case is listed and whether the opposing party is present. The lawyers also have the option to register for a short messaging system (SMS) alert, which means they will be informed via SMS when their case is ready to be called.

Court Recording and Transcription System. The CRT System provides visual and auditory recordings of proceedings in Court with the use of video and sound recording systems. This obviates the need for judges to laboriously record proceedings by hand. The video recording can then be converted into various forms, such as CDR and DVD. Lawyers can apply for a copy of the recording at the end of the day. Transcription of the proceedings may be done either simultaneously or post-trial. The Criminal Procedure Code, which previously provided only for the taking of notes of proceedings by hand, has been amended to enable this mode of recording.

Mediation

Mediation has been practiced informally by the Sessions Courts in Kota Bharu, Kuala Lumpur and Shah Alam since March 2009 for road accident claims. The High Courts in Kuala Lumpur also started referring cases for mediation beginning March 2010. A Practice Direction was later issued on 16 August 2010 directing all Judges of the High Courts and the Deputy Registrars, Sessions Court Judges and Magistrates to give direction during pre-trial case management to parties to attempt settlement by way of mediation. In practice, a particular judge will seek to mediate, and if unsuccessful, will transfer the case to another judge (by consensus) to be heard and adjudicated upon. A series of mediation courses were conducted throughout 2010 for Judges and judicial officers to improve their mediation skills.

This procedure has shown considerable success with more than half the cases referred to mediation, being settled. In order to encourage dispute resolution through mediation, the civil procedure rules will be amended to allow the Courts to refer appropriate cases to mediation, with provision of these cases to return to the court list in the event mediation fails.

Special Panels at Court of Appeal

In 2010, a special panel was created to dispose of appeals from the NCC and NCvC Courts. These appeals are heard and dealt with within three months of the appeals being registered.

Judicial Professional and Skills Training—Continuing Legal Education for Judges and Judicial Officers

The primary objective of a program of continuing legal education for judges is to enhance judicial competence. Throughout 2009 and 2010 members of the Judiciary attended a diverse range of seminars that addressed training in judicial skills and knowledge in new and current legal areas in the domestic as well as international arena.

Reform Initiatives in 2011

Improving Court Processes—Amendment of Civil Procedure Rules

The continuing effort to minimize the waiting time for the adjudication and disposal of civil cases includes substantive amendments to the civil procedure rules and modes of conducting trials. Radical changes are being proposed to the civil procedure rules with the objective of simplifying and expediting civil litigation. These reforms are at the final stage of being drafted by a Rules Committee headed by the Right Honorable Chief Justice of Malaysia, Tan Sri Ariffin bin Zakaria. The present civil procedure rules in the High Court and the Subordinate Courts are to be replaced with a single and different set of rules. The principal changes include:

- One mode of commencing process for all matters.
- One type/mode of making applications in interlocutory matters.
- The removal of the leave stage in judicial review proceedings.
- Time periods will be stipulated for compliance throughout the conduct of the matter. Parties will be constrained to comply with these time-fames, which will be enforced strictly although allowance will be made for extensions of time by consent. In short, the Courts will adjudicate strictly on the failure to prosecute and defend matters expeditiously.
- The current system of management of cases, with Managing Judges taking on responsibility of managing and tracking cases to ensure that matters are not unduly delayed, will continue.
- Alternative dispute resolution methods are encouraged and will be incorporated into the adjudication system.
- To include procedures relating to electronic filing.

Increased Jurisdiction of Subordinate Courts

Amendments have been passed in Parliament substantively increasing the jurisdiction of the Sessions and Magistrates Courts. It will take effect upon gazetting. This will have the effect of drastically reducing the number of cases at the High Court level, while increasing the case load of the Subordinate Courts. In order to meet this increased load, the number of Sessions Courts will be increased. Such increase in the existing number of Subordinate Courts, coupled with the other dispositive and diversionary measures sought to be introduced as part of the judicial reform strategy, will assist in the disposal of cases in this manner.

Implementation of e-Filing System

The e-Filing System (EFS) was developed in 2010 and was first implemented at the Kuala Lumpur Courts in March 2011 for civil cases. The EFS enables a lawyer to do registration, payment of fees and lodgment of originating process and court documents into Court at one go from his office over the internet. The online submission is then immediately received by the Court clerk who processes the documents electronically and escalates them to the Registrars for authorization. Once the Registrar affixes the digital Court seal, the case is moved seamlessly into the Court's Case Management System (CMS). The CMS immediately stores the electronic data, automatically generates cause list and scheduling and within minutes, the case can be accessed concurrently by clerks, Registrars, and Judges in the Court complex. At the same time, the lawyer is able to retrieve electronically the stamped court documents from his office via the internet.

The implementation of EFS has significantly improved the efficiency of the Courts Registry by eliminating the printing, scanning, duplicate data entry, and costly paper handling and storage that typically results from paper-based filing. It also saves a lot of time since the clerks are no longer required to review, unstaple, scan, stamp, barcode, and index each document received and thereafter record data into several books and diaries.

The EFS benefits filers as well because the system is convenient, flexible and responsive. Filers who are registered online users with EFS are able to file court documents 24 hours a day, 7 days a week from any location with internet access to the participating e-filing Courts. They also receive digitally stamped court documents immediately via internet upon the registrar's acceptance. The EFS also provides standard format for court documents and automatic calculation of court fees which basically standardized the previously different practices among the Courts registries.

After its successful implementation in Kuala Lumpur, the EFS has been extended to other participating e-filing Courts in Shah Alam, Georgetown (Penang), Johor Bahru, and Palace of Justice (Putrajaya). To assist filers and lawyers during the transition from paper-based to electronic filing, Service Bureaus are set up by the judiciary in the participating Courts to do scanning and data entry for the filers. Filers who are not registered online users with EFS can retrieve their documents online via EFS Portal at efiling.kehakiman.gov.my. Service Bureaus are also set up in Kota Bharu, Kuala Terengganu, Kuantan, Temerloh, Seremban, Melaka, Muar, Ipoh and Alor Setar to enable filers in those states to send their documents to the e-filing Courts.

As at 31 March 2012, 577 legal firms have become registered online users with EFS and have filed online about 2,000 sets of court documents on a daily basis. After one year of implementation since March 2011, EFS had received 356,193 documents through online submission. In Kuala Lumpur, e-filing statistics show that 60% of total documents filed through EFS are done by lawyers via online submission.

Reform Initiatives in 2012

Introduction of Clients' Charter

There are 379 courtrooms spread out in 95 locations throughout Peninsular Malaysia. Over the years, lawyers and public have to put up with practices adopted by the Court registries which sometimes differ from one town or state to another.

The judiciary therefore initiated another program to improve its delivery system by developing a standard Client's Charter as a tool of information to the public regarding court processes. The main purpose of the Charter is to standardize timelines for processing court documents and scheduling cases. The Charter defines what the service should be and the standard that should be expected. It sets out clearly the timeline for most court processes and the waiting period expected for court proceedings.

The judiciary is working with the Malaysia Productivity Corporation (MPC) to develop this Charter. The first draft was prepared by the Kuala Lumpur Court and has been circulated to other states for sharing standard practices and timelines. The Client's Charter will be published by end of 2012 and its implementation nationwide will be closely monitored.

Publication of Court's Guide Book for the Public

Publication of Court's Guide Book is another collaboration project with MPC. The main objective is to educate the public and to provide a quick reference for information on litigation process at the Courts and the Court's systems.

Reform of Execution Process

In Malaysia, judgments and orders are enforceable by further Court procedures within 6 years from the date the Court awarded such judgments and orders. The creditor must initiate the enforcement action. Standard means of enforcement include seizure and sale of defendant's property through auction, judgment debtor summons, bankruptcy proceedings and company winding up proceedings. More often than not, execution process becomes another round of contested litigation before the successful plaintiff can exercise the remedies granted by the Court. A special task force has been set up to develop reform strategies to improve and simplify execution process.

Plans for Future Reform Initiatives

The administration of justice is dynamic and constantly evolving. The last three years heralded a comprehensive list of reforms to the judiciary that has enabled the courts to work with increased efficiency and productivity. The successful reforms have helped to improve Malaysia's ranking for enforcing contract from 60th place in 2009 to the 31st position in the *Doing Business Report 2012*.

Formulating in principle, a holistic plan of judicial reform to be implemented over time, allows the judiciary to benefit from a prescribed course of reform. The Malaysian Judiciary has recognized that it is necessary to focus on joint aspects of reform in order to achieve its objective, rather than focusing on any singular aspect.

This integrated systems approach is reflected by the establishment of a judicial reform committee that is tasked with setting the "blueprint" for the judiciary over the next two decades. This will encompass measures aimed at the strengthening of judicial systems and procedures including efforts to address court management systems, procedural rules, jurisdictional limits of the courts and the implementation of dispute resolution mechanisms. Focus will be concentrated on institutional reforms so as to improve access to justice for all levels of society, coupled with speed and impartiality. Such institutional reforms will have the effect of improving public trust and confidence in the institution as a whole.

To achieve this objective consideration will continue to be accorded to minimizing delays in the disposal of cases, budget deficiencies, seeking increased judicial autonomy, enhancing human resource development, identifying and eradicating inefficient administrative structures, improving public access to information and procedures of the court system, addressing perceived corruption in the judiciary as well as the perceived lack of access to justice for the poor.

5. Trading Across Borders in Malaysia

5.1 Background

Ministries and Agencies

In Malaysia, the ministries/ agencies that are related to trade are as follows:

Ministry of International Trade and Industry. Ministry of International Trade and Industry's (MITI) main objectives are to promote and strategize Malaysia's global competitiveness in international trade by producing high value-added goods and services. This is done by planning, formulating and implementing policies on industrial development, international trade and investment.

MITI is also responsible for encouraging foreign and domestic investment as well as enhancing national productivity and competitiveness in the manufacturing and services sectors. For this, MITI promotes Malaysia's exports of manufacturing products and services by strengthening bilateral, multilateral and regional trade relations and cooperation.

Royal Malaysian Customs. Royal Malaysian Customs (RMC), an agency under the Ministry of Finance (MPF), facilitates trade. It is mainly responsible for customs enforcement and collection of direct taxes such as sales tax, petroleum sales tax, service tax, excise duty, and windfall profit levy.

Other Permit Issuance Agencies

Other than the ministries and agencies that are related to trade, there are Permit Issuance Agencies (PIAs) that are responsible for licenses for specific cases. These include:

Malaysian Quarantine and Inspection Services. The Malaysian Quarantine and Inspection Services (MAQIS), established under the Ministry of Agriculture and Agro-Based Industry, provides quarantine inspection and enforcement for the import and export of plants, animals, carcasses, fish, agricultural products, soils and microorganisms, including inspection and enforcement of food-related regulations.

MAQIS issues permits, licenses and certificates for the import and export of goods and provides advisory services for compliance purposes. The aims of MAQIS are to:

- Ensure industry compliance with health and safety regulations to prevent pests, diseases, and contamination affecting plants, animals and fish;
- Assist exporters with issues pertaining to market access and compliance with importing country regulations; and
- Improve service through more efficient and integrated procedures.

Department of Environment. The DOE is an agency that enforces the Environmental Quality Act of 1974. The Department's primary role is to prevent, control and abate pollution through the enforcement and issuance of licenses regarding hazardous substances.

Construction Industry Development Board. The CIDB represents the construction community. The role of CIDB is to promote, stimulate and assist in the export of services related to the construction industry. CIDB is responsible for the accreditation and registration of contractors and also the cancellation, suspension or reinstatement of contractors if necessary.

5.2 Consultation Mechanism

Regular consultations between the public and private sectors are carried out through the following means:

Trade Facilitation Action Council. TFAC members include representatives from ministries and agencies involved in import/export process, including the Ministry of Finance, Royal Malaysian Customs, and Ministry of Transport. Private sector members include manufacturers and chambers of commerce, the Federation of Malaysian Manufacturers, the Malaysia International Chamber of Commerce and Industry, logistics and transport players (including shipping agents and haulers), port operators, and port authorities.

The goal of the TFAC is to improve the country's import/export process by reducing associated times, costs, and documentation. This will help enhance Malaysia's national competitiveness and improve its ranking as a trading nation. The TFAC focuses on setting directions and developing strategies for trade facilitation, particularly in streamlining and improving import/export processes. The TFAC also works to analyze and resolve process bottlenecks.

Focus Group on Trading Across Borders. The Focus Group on Trading Across Borders (FGTAB) looks at operational issues affecting import/export process flow at ports and entry points. Its planned initiatives (see 5.5 below) are based on the three subindicators of World Bank EoDB survey on Trading Across Borders: time taken to import/export, number of documents required for import/export, and the cost for import/export.

5.3 Laws Governing Trade Across Borders

Legal basis for trade in Malaysia is based on the Customs Act 1967, Strategic Trade Act 2010, Competition Act 2010 and other acts/regulations enforced by different Permit Issuing Agency (PIA).

The laws that govern the aspects of trade and industry in the country can be found at the websites of the governing bodies, in English and Malay. Some agencies are updating regulations under their purview:

- RMC is revising the Customs Act. A specific Business Process Reengineering (BPR) unit has also been established to focus on reforms for the betterment of RMC services.
- Malaysia Productivity Corporation (MPC) is undertaking a regulatory review exercise, Modernizing Business Licensing (MBL) initiative, which aims to reduce unnecessary regulatory compliance burden and improve the effectiveness of business licenses to deliver productivity benefits and real measurable savings to the business community.

There is no specific government body dedicated to trade facilitation and reform of trade institutions. However, there are units/divisions in the Government sector that oversee trade facilitation matters in MITI and Customs. These units oversee trade facilitation matters covering their own separate jurisdictions.

5.4 Trade-Related Treaties and Conventions

Trade-related treaties and conventions ratified by Malaysia are those defined by the bilateral, multilateral and regional trade relations and cooperation being negotiated. Enforcement mechanisms for trade-related conventions/treaties are implemented by the respective Ministries and Agencies relevant to the issues. A list can be found at the International Trade Centre website.

5.5 Reform Initiatives

The Focus Group on Cross-Border Trade (FGTAB), chaired by the Ministry of International Trade and Industry (MITI), is undertaking initiatives to improve Malaysia's trade environment, especially with respect to Trading Across Borders. The initiatives are as follows:

Streamlining import and export process flows. FG TAB streamlined 18 import and export process flows for nine types of trade activities, ranging from Full Container Load, Lesser Container Load, transshipment, etc. These 18 processes are based on best practices at Port Klang and are published at the MITI portal and other stakeholders' websites in order to provide clear and comprehensive import guidelines.

Standardization of import and export process flows. Following the successful initiative mapping out and streamlining import and export business process flows for nine types of trade activities, an initiative is being undertaken to develop a standard import/export process flow at major ports in Malaysia. This is intended to expedite the import-export process. The initiative is targeted for completion by end 2012.

Combining of Documents for export: invoice and packing list. In order to reduce the number of required documents for export, an initiative to combine invoices and packing lists was undertaken in order to reduce paperwork and to simplify and expedite the export process through integrated data management.

Trade Facilitation Initiatives Project. MITI and its sub-agency the Malaysia Productivity Corporation (MPC) have undertaken a process improvement project using six-sigma tools to improve trade facilitation in Malaysia. The objectives of this project are to expedite, reduce number of required documents and identify best practices for import-export activity. The project was completed on 13 March 2012, and improvements will be carried out based on the recommendations and findings of the project.

Consultative Committee on Ancillary Charges. To provide oversight for fees and charges, an ad-hoc consultative body co-chaired by MITI and Ministry of Transport (MOT) was formed in early 2012. In addition, an existing committee at working group level, comprised of members of relevant ministries/agencies, will examine issues related to ancillary charges raised and identify recommendations for consideration of the ad-hoc consultative body.

Establishment of Strategic Trade Secretariat. A Strategic Trade Secretariat (STS) was established on 1 August 2010 to coordinate the implementation of the Strategic Trade Act (STA) of 2010. This legislation regulates exports, transshipment, transit and brokering of strategic items and technology, including arms and related material, as well as activities that may facilitate the design, development, production and delivery of weapons of mass destruction. STA 2010 was published in the Government Gazette on 10 June 2010 and came into force on January 2011.

III. Resource Bibliography

Resource	Website
Attorney General's Chambers	www.agc.gov.my
BPH One Stop Center*	bph.gov.my
Central Bank of Malaysia (BNM)	www.bnm.gov.my
Cooperatives Commission of Malaysia*	www.skm.gov.my

Resource	Website
Companies Commission of Malaysia (SSM)	www.ssm.com.my
Employment Provident Fund	www.kwsp.gov.my
Federal Court of Malaysia*	www.kehakiman.gov.my
Federation of Malaysian Manufacturers (FMM)	www.fmm.org.my
Malaysia Government Portal	www.malaysia.gov.my
Malaysia Productivity Corporation (MPC)	www.mpc.gov.my
Malaysian Investment Development Authority (MIDA)	www.mida.gov.my
Ministry of Domestic Trade, Cooperatives & Consumerism*	www.kpdnkk.gov.my
Ministry of Housing and Local Government (KPKT)	www.kpkt.gov.my
Ministry of International Trade and Industry (MITI)	www.miti.gov.my
SME Corporation Malaysia	www.smecorp.gov.my
Special Taskforce to Facilitate Business (PEMUDAH)	www.pemudah.gov.my

* Site in Bahasa Melayu

Mexico

I. General Information

The Federal Regulatory Improvement Commission (COFEMER) is an oversight body of the process creation of regulation and regulatory reform policy, with technical autonomy, but within the administrative bodies in the field of the Ministry of economy. The goal of COFEMER is to strengthen transparency in the development and implementation of regulations, promote market efficiency, prevent and eliminate damages to health and welfare of the population, the environment, natural resources and the economy.

The Federal Competition Commission (Commission or CFC for its acronym in Spanish), has sole responsibility for protecting the process of competition and free access to markets. Its mandate is to promote efficiency in the marketplace.

The CFC is a decentralized public entity under the Ministry of Economy. It has technical and operational autonomy and is responsible for preventing, investigating and fighting monopolies, monopolistic practices and mergers, pursuant to the Federal Law of Economic Competition.

The Under Secretary of Competitiveness and Regulation must efficiently protect domestic industry from unfair international trade practices, promote foreign investor confidence and promote economic growth by developing and implementing clear and effective regulations.

The Tax Administration Service functions are the determination, assessment and collection of taxes and other contributions as well as monitoring compliance with tax obligations. It also ensures the proper implementation of fiscal and customs legislation in a fair and transparent manner.

The General Direction for Foreign Trade designs, operates and evaluates specific programs to support exports and production, manage import and export quotas, issue resolutions of previous restricted goods traded on international agreements, participate in the development of standards for the resolution of previous permissions, attend the services of foreign trade information and establish tariff policy of non-tariff regulations by updating the General Import and Export Tax Law.

The National Banking and Securities Commission (CNBV) regulates and supervises entities and persons authorized to provide financial services to the general public. It requires international collaboration in the field of competition, by implementing different mechanisms of international cooperation, as the efforts of participate and monitor international forums and organizations that are organized in accordance with the agreements that have been achieved in the international community. Worldwide Organizations are developing standards and best practices in all matters that the authorities themselves must meet to perform their functions.

The Ministry of Public Service (Secretaría de la Función Pública) ensures that federal public officials adhere to the law, punishes those who fail to do so, promotes effective legal practices in the federal government, and guides and determines national procurement policy. It is also responsible for the coordination of audits of federal expenditure, coordinates administrative development procedures, operates and leads the Professional Civil Service, inspects the work of internal control bodies in each federal agency and evaluates the management of companies, also at the federal level.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Mexico

The main law that provides rules for incorporating a company in Mexico is the Companies General Law (*Ley General de Sociedades Mercantiles*). The main laws and regulations that govern business registration and incorporating processes are the General Companies Law (*Ley General de Sociedades Mercantiles*), Securities Market Law (*Ley del Mercado de Valores*), Federal Code of Commerce (*Código de Comercio*), Foreign Investment Law (*Ley de Inversión Extranjera*), Credit Institutions Law (*Ley de Instituciones de Crédito*), General Cooperative Law (*Ley General de Sociedades Cooperativas*), Federal Financial Institutions Law (*Ley Federal de Instituciones de Fianzas*), and Insurance Companies and Institutions General Law (*Ley General de Instituciones y Sociedades Mutualistas y de Seguros*).

The business registry in Mexico is Public Registry of Commerce. The Ministry of Tax and Public Credit is the Government agency dedicated to the informal economy. Public sector institutions that support business startups include the Ministry of Economy and the Ministry of Tax and Public Credit.

In 2009, the Ministry of Economy created and improved an electronic “one stop shop” for starting a business, entitled “*Portal tuempresa.gob.mx*,” through which entrepreneurs can find resources for the processes of incorporation and registration of new companies. In addition, COFEMER is a public authority empowered to facilitate governmental procedures, including those necessary for incorporating a company.

The Companies General Law states that there are seven legal types of companies in Mexico:

- General partnership (*Sociedad en nombre colectivo*)
- Limited partnership (*Sociedad en comandita simple*)
- Limited liability company (*Sociedad de responsabilidad limitada*)
- S.A. (*Sociedad anónima*)
- Limited partnership with share capital (*Sociedad en comandita por acciones*)
- Cooperative (*Sociedad cooperativa*)

Article 2 of the General Companies General Law states that companies not registered at the Public Registry of Commerce are irregular companies, in which partnerships shall be considered sole proprietorships.

The legal framework for forming agricultural cooperatives, including rules regarding protection of members, and deregistration, includes the Cooperative Companies Law (*Ley General de*

Sociedades Cooperativas) and the Federal Law for Improving Microindustries and Artisanal Activities (*Ley Federal para el Fomento de la Microindustria y la Actividad Artesanal*).

The Tax Administration Service (*Servicio de Administración Tributaria*) has implemented the Advanced Electronic Signature (FIEL). This electronic signature provides security for electronic transactions of taxpayers and according to the reforms to the Federal Tax Code (*Código Fiscal de la Federación*), published in the Official Gazette (*Diario Oficial de la Federación*) on June 28 and December 27, 2006, all taxpayers are required to process it. In addition, the Tax Administration Service (*Servicio de Administración Tributaria*) will gradually release the procedures and services where the use of the Advanced Electronic Signature is mandatory. The legal framework for Advanced Electronic Signatures is provided in the Federal Tax Code (*Código Fiscal de la Federación*), Federal Code of Commerce (*Código de Comercio*) and Miscellaneous Tax Resolution (*Resolución Miscelánea Fiscal*).

Public consultation process

The legal mandate of COFEMER is to ensure transparency in the formulation of federal regulations, as well as to promote the development of cost-effective regulations that generate the highest net benefit to society.⁴² Once COFEMER receives a draft regulatory instrument from a regulator, it is immediately displayed in COFEMER's website, thus allowing public consultation.⁴³ Comments on the aforementioned draft project and/or its respective regulatory impact assessment (RIA) may be submitted by interested parties. The analysis and comments received by COFEMER during the public consultation contribute significantly to improving the proposed regulatory instrument.

Based on the Manual of the Regulatory Impact Assessment,⁴⁴ as a rule, COFEMER is required to make public the draft regulations and RIAs received, including issued assessments, authorizations and exemptions granted in terms of Article 69-K of the Federal Law of Administrative Procedures (LFPA). Furthermore, Article 69-J of the LFPA provides in the second paragraph that COFEMER's assessment will consider the comments from public consultation and will include, *inter alia*, an opinion concerning whether the proposed actions are justified in the draft regulation.

The public consultation begins when COFEMER receives a draft regulation through its website and continues during the regulatory improvement process. The comments made on the draft project will be included in an electronic file online and will be accessible to public.

However, Article 69-K of the LFPA provides two exceptions to the publicity of draft projects:

- If the agency responsible for the draft project requests COFEMER not to publish it, and the latter determines that such public access could jeopardize the goal of the regulation; and,
- As determined by the Legal Counsel of the President, with prior opinion from COFEMER on the draft regulation intended to be submitted for the President's approval.

⁴² Federal Law of Administrative Procedure, published in the Official Gazette, August 4, 1994. www.diputados.gob.mx/LeyesBiblio/pdf/112.pdf

⁴³ www.cofemer.gob.mx/BuscadorAnteproyectos/busqueda.aspx?estatus=2&texto=

⁴⁴ COFEMER, Regulatory Impact Assessment Manual, published in the Official Gazette, July 26, 2010. www.cofemermir.gob.mx/mir/documentos/manual.doc

Thus, if the regulator (the department or agency responsible for that draft regulation) concludes that public access could jeopardize the goal of the regulation, the regulator may request that the draft regulation not be publicly accessible and specify the reasons justifying that request.⁴⁵

Article 10 of the Federal Law of Transparency requires that agencies of the Federal Government publish their draft regulations at least 20 days in advance of the date they are intended to be published or sent for the President's approval.

For this purpose, Article 10 of the transparency law and Article 25 of its regulation allow compliance with this obligation by posting the draft regulation on the COFEMER website. These articles compel COFEMER to issue a notice of publicity, establishing the fulfillment of this obligation. The draft regulations that are submitted to the legal counsel for approval of the president must be submitted along with the constancy of advertising issued by COFEMER, among other documents.

Therefore, if the regulator requires COFEMER to issue the relevant notice of publicity, it must indicate in the RIA format by clicking "yes" to the question designated for that purpose.

Public Consultation on the Regulatory Improvement Program 2011-2012

At the 14th Ordinary Session of the Federal Council for Regulatory Improvement held on July 14, 2011, the "Strategy to boost Productivity and accelerate Growth PMR⁴⁶ 2011-2012" was announced. This strategy incorporates best international practices to reduce the costs of federal regulation and is based on the following principles: (1) focus on most costly procedures; (2) high economic impact; and (3) ease of administrative implementation. This strategy was implemented through the PMR 2011-2012, prepared by the Federal Government regulatory agencies, subject to the LFPA.

LFPA's Article 69-D states that regulatory agencies should develop a PMR at least every two years regarding the relevant regulations and procedures.

To lead this strategy, COFEMER published the Agreement that establishes the timetable and guidelines for the PMR 2011-2012 presentation, as well as periodic progress reports of the agencies and decentralized bodies of APF (the Agreement) on July 15, 2011. This instrument provides the basic principles to incorporate international best practices that focus on the effective reduction of costs generated by federal regulations.

The Agreement also states that COFEMER will carry out a public consultation to gather proposals in order to improve competitiveness and accelerate growth in the sectors concerned.

To spread the public consultation of the PMR and achieve greater public participation, an advertising campaign was conducted through the three major national newspapers' web portals: *El Financiero* (30 days), *El Universal* (10 days) and *Reforma* (10 days).

COFEMER carried out the public consultation from July 18 to September 13, 2011. As a result, 1,028 regulatory reform proposals were received and submitted by representatives of diverse

⁴⁵ COFEMER, Regulatory Impact Assessment Manual, p. 4, published in the Official Gazette, July 26, 2010.

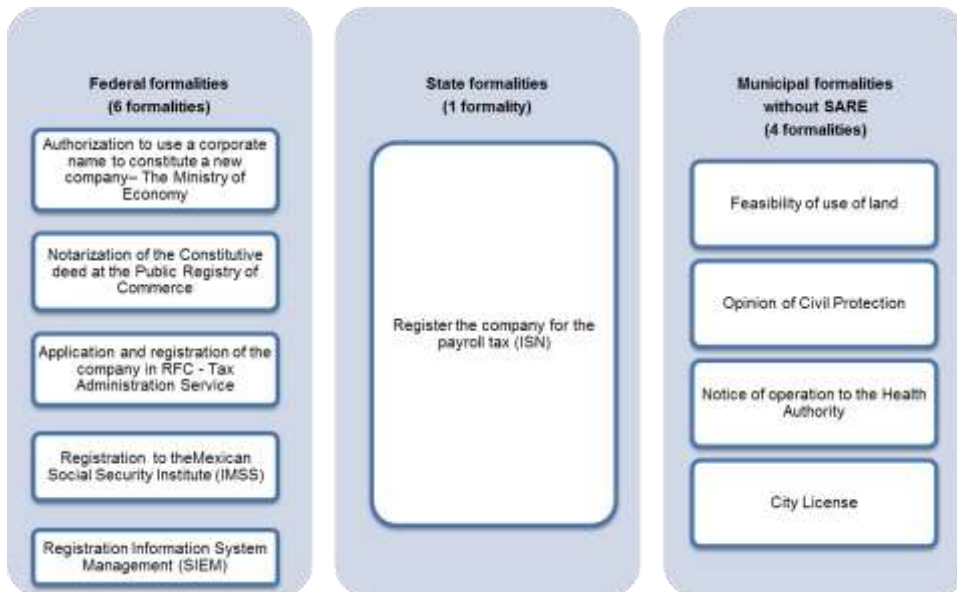
⁴⁶ PMR: Regulatory Improvement Program.

sectors of society. The agencies receiving the largest number of proposals were SEMARNAT –Environment and Natural Resources – (139), SCT – Communications and Transport (105), COFEPRIS – Protection against Health Risks (93), SHCP – Treasury (76) and SE – Economy (69). The regulatory reform proposals were sent by COFEMER to federal agencies, in order to be analyzed and, if deemed appropriate, included in their PMR.

Overall process of starting a business in Mexico

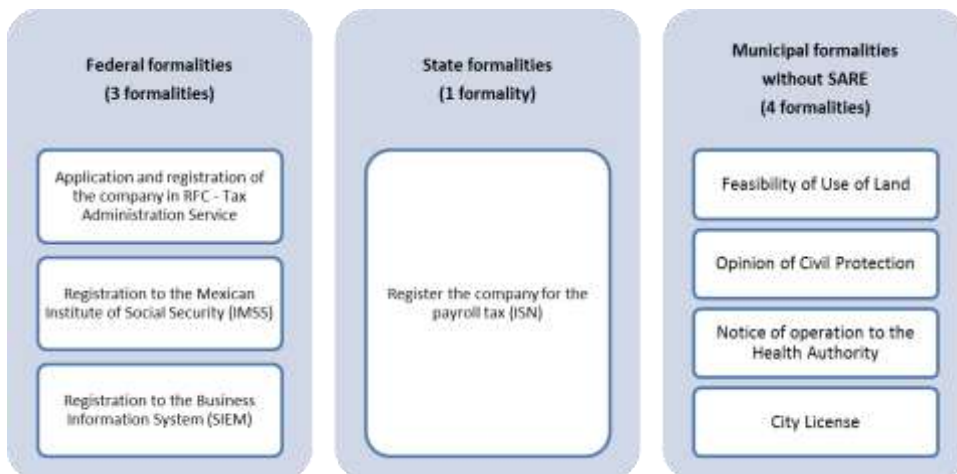
In Mexico, the process of starting a business takes place at the municipal, state and federal levels of government. Individuals and firms are recognized as legal entities with different registration and start-up processes and requirements (see Figures 1 and 2).

Figure 1. Process of Starting a Business for a Business Entity in Mexico



Source: Prepared by COFEMER.

Figure 2. Starting a business process for an individual in Mexico



Source: Prepared by COFEMER.

Federal procedures

In Mexico, a corporation is subject to seven federal procedures. The Ministry of Economy (SE) must perform two steps: “authorization to use corporate name”⁴⁷ which ensures that there are no companies with the same name, and the “notice of use of name.”⁴⁸ Up to June 16 of 2012, the Ministry of Foreign Affairs (SRE) was in charge of these procedures. However, these have been reassigned to the SE by the Reforms of the Companies General Law (*Ley General de Sociedades Mercantiles*), published on the 15th of December of 2011. To attend this new responsibility, SE is developing a new software solution so these procedures can be done online through the one stop shop “*Portal tuempresa.gob.mx*”. These improvements to *Tuempresa* are being developed based on international best practices. The knowledge of these practices was acquired from several papers on single sign-on practices elaborated by the OECD and the World Bank on request by the SE, as well as from several conferences done between officials of the Ministry and officials from other countries where similar systems have been developed.⁴⁹ In this sense, as well as including an automatic mechanism for doing the procedures of “authorization to use corporate name” and “notice of use of name”, the new version of *Tuempresa* will also include user-directed contents on legal issues regarding the life cycle of businesses.

Additionally, as part of the Federal procedures a corporation must comply, it must hire a notary to attest the company’s charter and then it must register in the Public Registry of Commerce of the corresponding State.

In the Tax Administration Service, the corporation must apply to enter in the Federal Taxpayers Registry.⁵⁰ Another registration must be done in the Mexican Institute of Social Security (IMSS) in order to ensure social security to workers; this procedure is also called “activation of employers and enrollment in the work risk insurance to a corporation.”⁵¹

Likewise, those who wish to establish a company as a corporation must go to the chamber of commerce for registration in the Mexican Business Information System (SIEM),⁵² which aims to provide timely and reliable information on the characteristics and location of establishments, and productive activities related to commerce, services, tourism and industry in rural areas, serving as a reference for identifying business opportunities for any local or foreign individual.

Regarding federal procedures, the Mexican Government created the *Tuempresa* website as an option to expedite these procedures, and comply with federal procedures necessary to create and

⁴⁷ SE-09-041, Autorización de uso de denominación o razón social para la constitución de sociedades; See 207.248.177.30/tramites/FichaTramite.aspx?val=22094

⁴⁸ SRE-02-008-A, Aviso de uso de permiso para constituir sociedades; See 207.248.177.30/rfts/formulario/tramite.asp?coNodes=1550478&num_modalidad=1&epe=0&nv=0

⁴⁹ Belgium (Crossroads Bank for Social Security), Spain (Plataforma de intermediación de datos para el intercambio de información entre las distintas administraciones), Netherlands (Walvis-Sub) and Norway (ALTINN), amongst others.

⁵⁰ Inscripción al Registro Federal de Contribuyentes por parte personas físicas y morales. See www.sat.gob.mx

⁵¹ IMSS-02-001-C, Alta patronal e inscripción en el seguro de riesgos de trabajo, para persona moral. 207.248.177.30/rfts/formulario/tramite.asp?coNodes=1606939&num_modalidad=3&epe=0&nv=0

⁵² Inscripción al Sistema de Información Empresarial (SIEM) www.siem.gob.mx/siem/portal/circunscripcion/donde_registro.asp

register a company (either a variable capital corporation or a limited liability, variable capital company) online.⁵³

State procedures

Each state has its own procedure for registering a company's payroll tax.⁵⁴

Municipal procedures

- The procedures for starting a business are regulated at the municipal level. An analysis by COFEMER concluded that there are four types of procedures commonly required:
- Use of land Feasibility Assessment: Determines whether the type of business or use of land is feasible to develop in a specific property.
- Civil Protection Assessment: Review of the location on which the company will be installed in order to verify the security measures (signage, emergency exits, fire extinguishers, etc.) and to prevent risks.
- Notice of operation to the health authority: Notice to the Health Authority about the existence of an establishment, its activities and products handled. At the state level, this procedure is mainly required for food and beverages establishments.
- City License: Refers to the document that authorizes the operation of any business established in the municipality.

SARE One-Stop Shop

In Mexico, improving the business environment involves regulatory reform at the three levels of government, so it is essential to coordinate and implement actions to adapt and improve state and local regulatory frameworks in accordance with national and international best practices.

An important part of the regulation for starting a business is issued by the states and municipalities where businesses start up, invest and create jobs. In the municipal context, a wide range of standards, procedures and requirements are needed to regulate the opening and operation of businesses, so it is imperative to coordinate efforts to streamline and minimize the corresponding steps.

Since 2002, COFEMER has technically advised state and local governments in order to install the Rapid Business Start-Up System (SARE), which consists of a simplification, reengineering and modernization of municipal administrative procedures involved in the establishment and start-up of a low risk company. SARE has the following features:

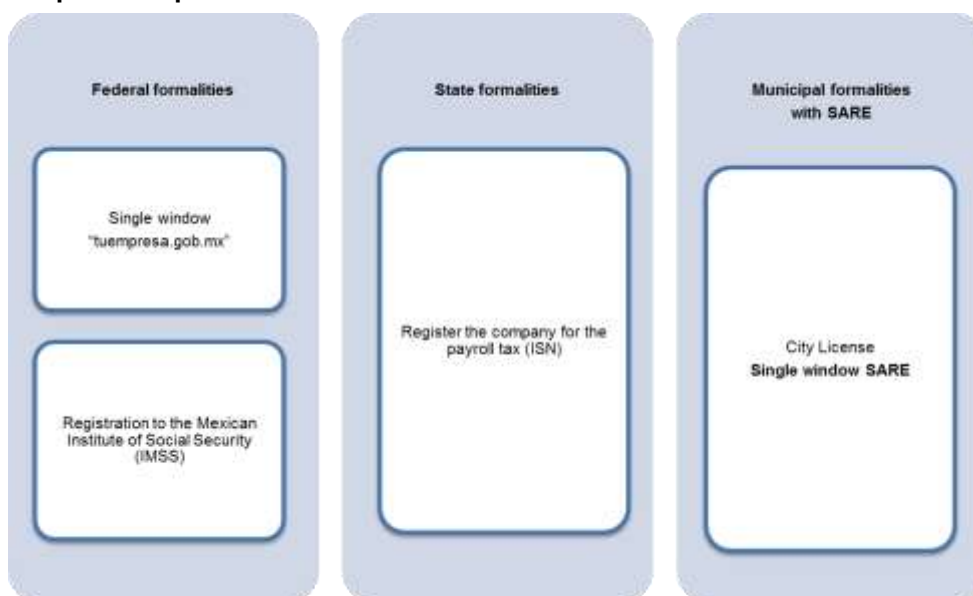
- The establishment of a one-stop shop
- Identifying levels of risk by economic activity, deregulating as much as possible activities with little or no risk
- Development and implementation of a single application form, where the procedures required are subject to a cost-benefit analysis

⁵³ See tuempresa.gob.mx

⁵⁴ Inscripción al Registro de Impuesto sobre nómina en el Distrito Federal www.finanzas.df.gob.mx/requerimiento/nomina_rfc.php

- Maximum resolution time of 72 hours
- Adjustments to the municipal regulations and procedures for the formal establishment of SARE
- Verification after the company begins operations.

Figure 3. Process of Starting a Business for a Corporation in Mexico using One-stop shops: Tuempresa and SARE



Source: Prepared by COFEMER.

Advisory services are provided by different public agencies, such as the Ministry of Economy, COFEMER, *Pro México*, *México Emprende*, and local agencies. The advisory services are provided not only for registration processes but also for the complete incorporating and starting a business processes.

Trends

In 2009 the Ministry of Economy created and improved an electronic one-stop shop for starting a business named "*Portal Tuempresa*," through which entrepreneurs can find resources in the processes of incorporating and registration of new companies. *Tuempresa* currently connects more than 42,000 online users 10 Federal Agencies with 12 federal procedures and two Local Agencies; more than one thousand public and commercial notaries; and various public offices in 30 states. For the continuous improvement, the web site is expanding in order to connect local and municipal procedures.

In accordance with the OECD's Standard Cost Model methodology, *Tuempresa* reduces transactions costs related to starting business processes by 65 percent. As of April 30, 2012:

- 47,476 registered users
- 1,166 registered Notaries at Law and Public Brokers
- 47,903 business name licenses requested
- 5,239 companies registered before the Public Registry of Commerce
- More than 74,443 interactions with legal effects between citizens and public officers, with estimated savings over Ps 1.4 billion

Additionally, it is expected that with the recent transfer of the procedures to obtain the “permission to use corporate name,” and the “notice of use of name”, from the Ministry of Foreign Affairs (SRE) to the Ministry of Economy (SE), as well with the new software developments to perform these procedures online, the interactions with legal effects of *Tuempresa* will raise to the levels of 300,000 to 500,000 per year.

Moreover, from the establishment of the first SARE in the state of Puebla in May 2002 to December 31 2011, COFEMER implemented 207 SAREs in as many municipalities, encouraging the creation of 292,321 new companies, 778,286 jobs and generating an investment of Ps 53,090 million.

SARE has reduced municipal procedures from four to one. The procedures for opening a business in the municipalities without SARE can take an average of 27 days, whereas in those municipalities with SARE, it is reduced to a maximum of 72 hours, a time savings of 89 percent.

2. Dealing with Permits in Mexico

Background

COFEMER, through the Federal Registry of Procedures and Services (RFTS) publishes federal procedures concerning licenses and permits required for companies to begin operations.

The RFTS is an online registry managed by COFEMER, containing all the federal procedures and forms, increasing transparency and legitimacy for individuals. The RFTS website can be found in the Resource Bibliography. The RFTS has its legal basis in the Federal Law of Administrative Procedure, Article 69-E, M, N, O, P and Q. To date, RFTS contains 2,913 federal procedures, of which 71 pertain to licenses or identity cards and 191 to permits.

COFEMER Regulatory Simplification

In Mexico there have been a wide range of regulatory improvement efforts, among them those made through the Regulatory Reform Programs (PMR) provided by the LFPA, to engage decentralized departments and agencies in developing, at least every two years, their programs to review regulations and reduce unnecessary or obsolete regulatory burdens. It has recently been implemented in such programs the Regulatory Governance Cycle, as shown in Figure 4.

Figure 4. Regulatory Governance Cycle in PMR Strategy 2011-2012



Source: Prepared by COFEMER.

The primary objective of the PMR 2011-2012 is to produce effective regulation through targeting and easy implementation. According to the above, it is expected that implementation of this platform in the PMR provides greater strength to the program and assists in the implementation of more efficient regulations.

Trends

By the end of 2012, the period referred to in the PMRs will take out a full assessment of the procedures, it is estimated to reduce regulatory costs by 25 percent, equivalent to 1.2 percent of GDP for an estimated impact of 2.2 percent in the rate of economic growth. This reduction in regulatory costs will result in incentives for the establishment of companies in Mexico, job creation and economic development.

3. Getting Credit in Mexico

Background

The National Banking and Securities Commission (CNBV) is responsible for banking supervision in accordance with Credit Institutions Law and ensuring the stability and solvency of the banking system.

Also, the Protection and Defense of Users of Financial Services Law and the Credit Institutions Law grant powers to the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF) to oversee banks in matters regarding transparency and consumer protection.

Other financial institutions as brokerage firms, money exchange and other lending entities are supervised by CNBV and CONDUSEF as well, in accordance with Credit Institutions Law, Securities Market Law and General Organizations and Auxiliary Credit Activities Law.

The legal framework for secured transactions is provided mainly in the Federal Commerce Code and in the General Law of Titles and Credit Transactions. In 2010 the Ministry of Economy created the Unified Registry of Movable Property Collateral (RUG). The most important legal reforms in this regard were approved by the Mexican Congress in 2000, 2003 and 2009.

As a consequence of the Reforms approved by the Mexican Congress in 2009, the Ministry of Economy created the RUG in order to encourage the use of movable property as security interest in order to increase SMEs' access to credit. (99 percent of the 5.2 million Mexican economic entities are SMEs). RUG is a 24/7 online registry where all security interests and liens over movable property are publicly registered to gain legal effects before third parties. It also improves the terms and conditions of credit and reduces the risks of providing credit.

Before the RUG, in 2000 and 2003 reforms were approved by the Mexican Congress through which the pledge and trust in guarantee are introduced, allowing debtors stay in possession of the assets and introducing judicial and extrajudicial enforcement processes. Prior to these reforms, creditors faced legal obstacles to offering credit, and enforcement mechanisms were avoided out of mistrust.

RUG has made secured transactions more efficient and less expensive.

The law allows for several forms of nontraditional financing, including franchising, leasing and factoring, future crops, agricultural equipment, inventory, and accounts receivable. In addition, the law leaves room for new, as yet unanticipated, forms of nontraditional financing, in that “any special privilege” is mentioned in the list of types collateral that can be registered in RUG.

The credit information system in Mexico is managed by credit information societies (Credit Bureaus), whose objective is to collect, manage and deliver or send credit information and similar operations that natural persons and legal entities have maintained with financial institutions or businesses. Credit Bureaus require a license from the Ministry of Finance to operate and are regulated by the Credit Information Societies Law. At present, there are three credit bureaus: Trans Union de México, Dun & Bradstreet, and *Círculo de Crédito*.

The legal framework for credit reporting is the Credit Information Societies Law. There are two types of credit reports: the Credit Report, which withholds the identity of the creditor, and Special Credit Report, which expressly states the name of the creditor. Potential creditors may only have access to Credit Reports, with the prior consent of the potential debtor.

The information contained in credit reports is related to credit and other similar operations that natural persons and legal entities have maintained with financial institutions, businesses or other non-bank lenders, such as date of activation, credit limit, amount due, defaults in payment, and fraudulent lending.

This information may be provided only to financial institutions, business enterprises or other non-bank lenders that are considered users according to the Credit Information Societies Law. Prior consent by signature from the client (natural person and legal entity) is required, under penalty of punishment in accordance with the Law.

The governance of banks is established in the Credit Institutions Law. This law states that a board of directors and a CEO are entrusted with managing the bank.

The Board of Directors’ primary responsibility is to provide effective governance of the company’s affairs for the benefit of its stockholders, and provide strategic vision. The Board has the authority under the bylaws to set the number of directors, which should be between 5 and 15, of which 25 percent should be independent. An independent director is a person unrelated to the management of the bank and must comply with the conditions determined by CNBV.

The meetings of the Board of Directors should be at minimum every three months and should be convened by the chairman of the board or by 25 percent of the directors. The board may meet with 51 percent of its members and at least one of the independent directors present.

The board of directors should have an auditing committee as a consultative body regulated by the CNBV.

The CEO must have credit eligibility and honorability, must reside in Mexico, and have five years experience in senior positions in the financial sector.

Besides the banks should have an oversight body that is integrated by one commissary appointed by the shareholders who hold “O” shares and, as applicable, another one appointed by the shareholders that hold “L” shares.

The governance of nonbank institutions is regulated by different laws depending on the entity in question.

The governance of brokerage firms, in accordance with Securities Market Law, is very similar to the governance of banks; they have a board of directors and a CEO as well. Their constitution and operation are established in the aforementioned law.

Financial warehouses, money exchange and some other lending entities are regulated by General Organizations and Auxiliary Credit Activities Law which contains the provisions regarding their corporate governance.

The governance of all mentioned entities (banks and nonbanks) is also regulated by the General Companies Law.

In 2008, the Credit Information Societies Law was amended to include the ability of credit bureaus to issue consolidated credit reports, which include the information of the other credit bureaus, in order to reduce the risks to lenders, increase the opportunity for the general population to obtain financing in competitive terms, and promote competition in the generation of value-added services.

In addition, the reforms incorporated the regime of corporate governance of credit bureaus, establishing rules for the integration of the board directors, adding independent directors. Also, the reform established various measures to clarify the contents of records and avoid duplication of information. In the same way the reforms provided a mechanism for deleting negative information, under certain criteria, and a process to provide continuity to information when credits are transferred to another creditor.

The collateral registry fully enables the creation and security of secured transactions contracts. Registering collateral is free of charge, and can be done in minutes online, where creditors can register collateral in real time, with an electronic signature and digital time stamp.

Trends

Because of the legal reforms in years 2000, 2003 and 2009 (described above), and specifically due to the improvement of the RUG, credit is now offered on improved terms. Between October 2010 and May 2012, 66,901 collaterals have been registered and 117,068 total transactions have taken place at the RUG.

RUG will be continuously upgraded according to creditors' needs, as well as international best practices. The legal framework of secured transactions shall also be reformed with precise improvements.

4. Enforcing Contracts in Mexico

Background

Commercial Law is a field of federal competence and the primary source of contract law is the Commercial Code: Mexico is a federal republic and follows the civil law tradition. The Constitution assigns specific powers to the federal government and adds a "savings clause" that

reserves for the states all remaining powers that are not specifically assigned to the federal government.⁵⁵

Article 73-X of the Constitution grants the Federal Congress the power to legislate in the field of commerce, therefore the Constitution establishes Mercantile and/or Commercial Law as a federal competence (Civil Law is a separate field reserved for state legislatures).

Litigation

Though commercial law is a federal matter, commercial litigation is a matter of concurrent jurisdiction and either state or federal courts are competent to hear disputes that arise from commercial contracts. The plaintiff can choose which judge, whether state or federal, to whom he or she will submit the case. In fact, the vast majority of commercial cases are heard by local courts. When local courts hear commercial cases, they must follow federal procedural law and apply the Commercial Code procedural rules and the Federal Civil Procedure Code.⁵⁶

Applicable law and rules

The law on contracts is a part of a larger commercial code. Though the Commercial Code contains many provisions regarding commercial contracts, the Federal Civil Code serves a supplementary code for all the rules not included in the Commercial Code.

Alternative dispute resolution (ADR)

ADR is not only permitted by the Constitution (article 17) but is also mandatory, according to said article, that the laws of the country contain ADR mechanisms. The rules of arbitration in Mexico come directly from the 1985 UNCITRAL Model Law on Commercial Arbitration. The Commercial Code contains a special chapter that establishes the arbitration procedural rules: Title IV Book V. It covers both domestic and international arbitration. Enforcement of an arbitration award must be ordered by a judge.

Commercial courts and arbitration/mediation tribunals

The system for enforcing both domestic and foreign judicial judgments and arbitral awards consists of a single hearing, after which the judge either issues an order recognizing the award or rejects the award due to one of the exceptions of enforcement listed in article 1462 of the Commercial Code. Since Mexico is a contracting state of the UNCITRAL 1958 New York Convention, Mexican courts are required to enforce foreign arbitral awards issued in other countries.

The law on contracts has been updated several times in the past five years. The main areas of reform are the following:

- **1. Securitization:** An important reform was made to the Commercial Code on August 27, 2009. This reform created a registry called the RUG (*Registro Único de Garantías Mobiliarias*). This registry allows online registration of collateral property, including movable goods. This reform has resulted in cost and time savings for creditors' recovery.

⁵⁵ Zamora, Stephen et al. *Mexican Law*, Oxford University, New York, 2005.

⁵⁶ *Ibid.*

- **2.** Another important reform was made to the Commercial Code on June 8, 2009. Article 1350 of the Commercial Code now states that trials are no longer interrupted when attending certain diligences (considered incidental or related aspects of the trial), allowing for faster procedures.
- **3. Oral proceedings:** As of January 2012, Mexico's Commercial Code allows for oral proceeding for commercial disputes involving less than Ps 500,000. This will result in increased efficiency.

Freedom of contract is the basic premise of contract law in Mexico. Generally speaking, freedom of contract applies unless parties intend to go against what in Mexico is called "Public Order Rules" (*Orden público*). Only certain rules are considered relevant to matters of public order and stability. The law may expressly state that a particular rule or article is rendered a public law matter, being a regular law otherwise. Freedom of contract is the general rule and public order rules are the exception when entering into a contract.

The law does not allow private enforcement of contracts following a court order or private remedies against fraud.

Mexico ratified the United Nations Convention on Contracts for the International Sale of Goods in 1988. CISG applies automatically to a contract for the sale of goods between a contracting party with its place of business in Mexico and another party with its place of business in another contracting state. Also, according to CISG it is applicable when the rules of private international law lead to the application of the law of Mexico as a contracting state (even if the other party's place of business is not a signatory to the CISG). In those cases, the parties may exclude the application of the Convention (otherwise CISG would apply automatically).

Mexico enacted CISG in its entirety, without declarations to any of its articles, therefore no reservations or exclusions were made to the CISG text when ratified and adopted.

Mexico is a signatory of the New York Convention in Recognition and Enforcement of Foreign Arbitral Awards.

The Law of Acquisitions, Leases and Services of the Public Sector and the Public Works Act and related services have been updated recently to increase transparency among other important aspects to create a better legal framework. Additionally, enacted in January 2012, Mexico's new Public and Private Associations Law allow the public and private sectors to associate by means of agreements to render services to the public sector.⁵⁷

Mexico adopted the UNCITRAL Model Law on Electronic Commerce as well as the UNCITRAL Model Law on Electronic Signatures. In general terms, these model laws are replicated in the Commercial Code but they also positively influenced other statutes such as the Federal Consumers Law, Federal Civil Code, Federal Civil Procedures Law, etc.

The Federal Civil Procedures Code establishes in a clear and concise manner all the applicable requirements and procedures for enforcing judgments.

Notaries play an important role in many legal transactions. For instance, they assist private parties in creating companies and their intervention is also required for certain types of contracts. Also,

⁵⁷ www.diputados.gob.mx/LeyesBiblio/pdf/LAPP.pdf

notaries serve as an authenticator of certain legal acts, collects taxes in legal transactions and performs other important roles. In commercial transactions it is possible also to use a *corredor público* (a public commercial broker). Both notaries and public commercial brokers require governmental authorization to operate.

The use of notaries is required by law only in certain cases, for example the conveyance of real state, making of wills, issuance of proxies, creation of business entities, purchase or sales of ships or aircraft all require the intervention of a notary or a public commercial broker.

The Mexican government created the public commercial brokers to alleviate the backlog of business transactions held up in the notary process. They can also authenticate contracts, agreements, and incorporate organizations and are expert appraisers valuating property. Public commercial brokers are also entitled to act in the recording of contracts, agreements, legal acts, events of commercial nature and also act as arbitrators in commercial disputes.⁵⁸

Mexico is constantly creating ADR centers and institutions, for example those created by the Federal Judicial Branch in recent years. Additionally, local courts are also creating their own centers, for example, the Alternative Justice Center of the Superior Court of Justice of the Federal District (*Centro de Justicia Alternativa del Tribunal Superior de Justicia del Distrito Federal*, CJA) was created in 2003 to administrate ADR cases held in the tribunal.⁵⁹ In 2008, the Alternative Justice Act of the High Court of Justice of the Federal District (*Ley de Justicia Alternativa del Tribunal Superior de Justicia para el Distrito Federal*) was enacted.

Trends

Please highlight recent (since 2009) reform activity in the area of Enforcing Contracts, with special attention to regulatory and institutional developments. Describe, in detail, present and ongoing efforts to ease the process of enforcement of contracts, and plans for future reform activities.

As previously mentioned, we can highlight the following reforms:

- **Securitization.** An important reform was made to the Commercial Code on August 27, 2009. This reform created a registry called the RUG (Registro Único de Garantías Mobiliarias). This registry allows online registration of collateral property, including movable goods. This reform has resulted in cost and time savings for creditors' recovery.
- Another important reform was made to the Commercial Code on June 8, 2009. Article 1350 of the Commercial Code now states that trials are no longer interrupted when attending certain diligences (considered incidental or related aspects of the trial), allowing for faster procedures.
- **Oral proceedings.** As of January 2012, Mexico's Commercial Code allows for oral proceeding for commercial disputes involving less than Ps 500,000. This will result in increased efficiency.

⁵⁸ Zamora, Stephen et al. *Mexican Law*, Oxford University, New York, 2005.

⁵⁹ See www.poderjudicialdf.gob.mx/en/PJDF/Centro_de_Justicia_Alternativa_Organos

5. Trade Across Borders in Mexico

5.1 Background

In Mexico, the foreign trade regulatory framework is determined mainly by the Customs Law, the Foreign Trade Law and the General Taxation of Import and Export Law, and also by the secretarial arrangements that establish regulatory actions and non-tariff restrictions.

The Ministry of Economy regularly reviews policy instruments in order to simplify them as much as possible and to comply with the provisions of the Regulatory Reform Program. One of the results is that with the implementation of the Digital Display of Mexican Foreign Trade, Mexico could move up to 32nd place from 59th in the trade facilitation index according to the Doing Business Survey.

There is no specific law to regulate trade in services. The regulatory framework consists of several laws and regulations at the federal and sub-federal level that are consistent with Mexico's international commitments.

The institution responsible of the promotion of foreign trade is the Ministry of Economy, whose faculties are established within its Internal Regulations.⁶⁰ Moreover, Mexico has a regulatory commission of foreign trade: the Foreign Trade Commission (COCEX). This Commission is based in article 6 of the Foreign trade Law and is a mandatory consultative body of the agencies of the Federal Public Administration related to the subjects determined by the fractions I to V of article 4 of the Foreign Trade Law. This Commission is responsible for reviewing and discussing foreign trade matters (measures of tariff and non-tariff regulation).⁶¹

Currently, Congress is drafting an amendment to the Foreign Trade Act, including measures to improve the operative capacity of the Mexican system against unfair practices in foreign trade and of the Foreign Trade Commission.

The Sub-secretary of Industry and Commerce has developed a program of commerce facilitation focused on (1) tariff simplification and the restatement of exception schemes (sectoral promotion programs and eighth rule); (2) customs and foreign trade facilitation; and (3) the institutional strengthening of the Foreign Trade Commission.

The Digital Single Window of Mexican Foreign Trade (*Ventanilla Unica Mexicana de Comercio Exterior*) will simplify foreign trade operations by allowing many procedures (including the fees payment and the non-tariff enforcement of regulations) to be done electronically, reducing delays, preparation costs and paperwork.

COCEX is responsible for reviewing the creation, increase, decrease or elimination of tariffs; establishment of non-tariff regulations; establishment, modification or elimination of rules of origin; enforcement of official Mexican standards by custom authorities; establishment of safeguard measures; drafting final resolutions on unfair trade practices investigations; and determination of antidumping duties. COCEX also reviews current regulatory measures and restrictions on foreign trade, such as ex-ante permissions, maximum quotas, marked by country of origin certificates, antidumping duties, compensatory quotas and other trade instruments.

⁶⁰ See www.cofemer.gob.mx/documentos/marcojuridico/reglamentos/rise.pdf

⁶¹ See www.diputados.gob.mx/LeyesBiblio/pdf/28.pdf

Moreover, the Federal Competition Commission (CFC) participates as a member of COCEX. The involvement of the CFC in COCEX is to ensure that decisions taken and policies adopted take into account competition principles.

Recently, the Commission proposed to COCEX the adoption of general guidelines aimed at enhancing efficiency and competition in the allocation process of import and export quotas. The CFC has recommended pro-competitive criteria to allocate import and export quotas. This criteria considers the use of open tender processes for the allocation of import/export quotas that provide equal opportunities to all participants; the use of a direct allocation scheme only when the estimated demand for the quota is clearly inferior to the supply; and that the import quotas should exceed the estimated domestic demand when the domestic production is less than the domestic consumption.

The administrative unit responsible for carrying out investigations procedures against international unfair trade practices is the Unit of International Trade Practices (UPCI) of the Ministry of Economy. In this sense, the Commission is not empowered to conduct antidumping investigations.

Nevertheless, in COCEX, the Commission reviews UPCI's decisions and their feedback has led to the elimination of undue restrictions to foreign trade.

In addition, the Commission has issued recommendations for the simplification of customs procedures and tariff structures. These recommendations led to an ambitious program of tariff reduction by the Ministry of Economy in December 2008. The proposals on Customs have been partially adopted by the Mexican Treasury.

Trends

As of 2011, Mexico is a party to several export control regimes (Wassenaar Agreement, Australia Group, Nuclear Suppliers Group) in order to control the flow of materials that could potentially be used to build weapons of mass destruction. At the same time, these regimes will allow Mexico to access technology and investment in sectors such as aerospace, electronics and technology. As of January 2012, Mexico is a party to the Wassenaar Agreement. Soon Mexico will join the Nuclear Suppliers Group and likely the Australia Group.

The Ministry of Economy is currently modifying the simplified procedure for compliance with Mexican Official Standards (NOMs) applied at national borders to allow access to consumer goods in the same conditions as in neighboring countries.

Nontariff regulations are also under review for simplification.

Since 2010, Mexico participates with the U.S. in the High Level Regulatory Cooperation Council (HLRCC), a bilateral initiative instructed by the leadership of the Presidents from both countries. The Council has the objective of bringing regulatory processes from both countries closer together, in order to reduce the costs of trade and promote investments across the border.

The publication of its Terms of Reference took place in March 2011. This document lead the way for a public consultation process in which both countries gathered proposals on regulatory cooperation activities between them. On the U.S. consultation process there were a total of 48 proposals, while on the Mexican consultation process there were a total of 252 proposals received.

Derived from the consultation process in both countries, the Council's first Biannual Work Plan was developed, being finally published in February 2012. This document includes activities for seven topics of regulatory cooperation, in which the relevant agencies from each country participate:

- Fulfillment of the U.S.' Food Safety Modernization Act by the Mexican industry.
- Development of an electronic certificate system for the exportation and importation of plants and plant products between Mexico and the U.S.
- Harmonization of safety standards and procedures for Federal Motor Carrier Vehicles between Mexico and the U.S.
- Alignment of approaches to the development and application of regulations regarding nanotechnology between Mexico and the U.S.
- Development of an electronic health registry system between Mexico and the U.S.'
- Harmonization of safety standards for hydrocarbons off shore exploration and exploitation activities between Mexico and the U.S.
- Accreditation of Conformity Assessment Bodies in Mexico by U.S.' authorities.

III. Resource Bibliography

Resource	Website
Federal Regulatory Improvement Commission (COFEMER)	www.cofemer.gob.mx
Ministry of Economy	www.economia.gob.mx
Ministry of Foreign Affairs	www.sre.gob.mx
National Banking and Securities Commission	www.cnbv.gob.mx
Tax Administration Service	www.sat.gob.mx
Federal Registry of Procedures and Services (RFTS)	www.cofemer.gob.mx/rfts
tuempresa (Ministry of Economy)	www.tuempresa.gob.mx

New Zealand

I. General Background

New Zealand offers an excellent environment for doing business. The World Bank rates New Zealand as the easiest economy in the OECD and the third easiest in APEC to conduct business in. The information presented in this survey gives an indication of the range of measures that support this environment in the APEC Ease of Doing Business priority areas. This information is not exhaustive and further information is available at the websites listed in the resource bibliography.

The World Bank Ease of Doing Business Report rates New Zealand as the easiest economy in the world to start a business in. Registering a business is simple, makes use of an online system, and is low cost. Sole traders and partnerships can start trading without having to register. Assistance is available for those wish to start a business.

The World Bank ranks New Zealand as the second easiest economy in the world for dealing with construction permits. The main pieces of regulation in this area include the Resource Management Act and the Building Act. Both of these are administered by local councils, creating a 'one stop shop' for business construction permit needs.

Access to credit in New Zealand is supported by user-friendly systems for the registration of security interests and credit reporting. These systems use online platforms to allow registration and access to information at a low cost. New Zealand is ranked first in the world for protecting investors', and fourth for 'getting credit' by the World Bank.

A wide range of effective options are open to businesses in New Zealand for enforcing contracts. These include access to the courts, disputes tribunals, arbitration and mediation. New Zealand is also a signatory to the Convention on the International Sale of Goods, allowing for more certainty when buying or selling goods overseas with other CISG countries.

As an economy that engages heavily in trade, ease of trading across borders is a priority for New Zealand. Government agencies are well integrated to ensure minimal barriers to cross border trade. New Zealand has actively pursued a range of high-quality free trade agreements and high-quality regulatory quality to facilitate market access.

Agencies responsible for overseeing the APEC priority areas include the following organisations:

- The Ministry of Economic Development broadly oversees the ease of starting a business, and is the main agency tasked with developing policy in this area. Its Companies Office is responsible for the registration of businesses.
- The Ministry for the Environment oversees the Resource Management Act, which is the main piece of legislation governing permits in New Zealand. The Department of Building and Housing also provide policy specifically on construction and building permits. In practice,

however, these policies are administered by local councils and territorial authorities. Similarly, the Department of Labour oversees policy development for Occupational Safety and Health.

- The District Court and High Court are the lead bodies charged with enforcing contracts in New Zealand.
- The Ministry of Economic Development are also involved in policy development regarding getting credit. As with starting a business, however, security and collateral is administered by the Companies Office, or LandOnline in the case of interests in land. The Reserve Bank of New Zealand oversees the governance of bank institutions.
- The Ministry of Foreign Affairs and Trade leads New Zealand government efforts to ensure ease of trading across borders, including the negotiation of WTO and free trade agreements, while New Zealand Trade and Enterprise helps businesses export from New Zealand. Administratively, the New Zealand Customs Service plays a major role in the maintenance and enforcement of tariffs and biosecurity.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in New Zealand

Business structures in New Zealand

In New Zealand, a person is considered to be in business if they charge others for the goods/services they provide, they supply goods/services on a regular basis, and they intend to make a profit from doing so.

If so, a person then needs to decide which form of business structure to operate best suits their needs. The most common forms include the following:

- Sole Traders, which do not require formal registration. A person conducting business without having registered is considered a sole trader by default. Sole traders need to pick a trading name that does not conflict with the name or brand of an existing business brand, or that is not confusingly close to an existing name or brand.
- Partnerships, which are also not generally caught by legislation requiring formal registration or legal processes before commencing business. Similar to sole traders, persons conducting business together without having registered are considered to be in a partnership by default. If no formal partnership agreement is agreed, the provisions of the Partnerships Act 1908 will apply.
- Registered companies, under the Companies Act 1996, which have a separate legal identity and require formal registration. If the person or persons decide to form a company or other legal entity, the separate legal entity must have a non-individual tax number. The total fees associated with registration are NZ\$163.50.

Other common forms of business include the following:

- Limited Partnerships, under the Limited Partnerships Act 2008, which enables the registration of Limited Partnerships and Overseas Limited Partnerships. An online register of Limited Partnerships and Overseas Limited Partnerships is available.
 - The fee to register a limited partnership is NZ\$276. Registration is completed within three working days of receiving a completed application.

- Application for registration of an Overseas Limited Partnership is by completing the application form requiring certain details and attaching the evidence of formation in its home jurisdiction. The name of the Overseas Limited Partnership must be identical to the name of the Limited Partnership registered in its home jurisdiction and must not be offensive. The fee to register an overseas limited partnership is NZ\$276.
- Overseas Companies, if intending to carry on business in New Zealand, must register within ten working days of commencing to carry on business. An overseas company is defined in the Companies Act 1993 as 'a body corporate that is incorporated outside New Zealand'. The total fees associated with registration are NZ\$163.50.
 - Australian Overseas Companies are only required to provide details that are specific to New Zealand. These are the date the business commenced, the financial reporting month, the annual return filing month and the company address details. There is a fee.
 - An overseas company can operate in New Zealand as a subsidiary, a branch or by becoming a New Zealand company. An application from an overseas company needs to contain the company address details, the date business commenced, the annual return filing month, the financial reporting month, the certificate of incorporation in the country of origin, details of directors and the constitution.
- Co-operative companies can register under the Co-operative Companies Act 1996. Cooperatives can register either at the time of their incorporation as a new company or after incorporation on an application from an existing company. The total fees associated with registration are NZ\$163.50.
 - Co-operatives are a popular model for agri-business in New Zealand. Registered co-operatives cover primary production in the horticulture and agriculture (meat and dairy) sectors, support industries such as irrigation, fertilizers, agri-nutrients and livestock improvement to value-added sectors based on primary production such as lanolin, deer velvet and wool.
 - The Co-operative Companies Act 1996 reaffirms the value of the co-operative company as a means of facilitating its shareholders carrying on business on a mutual basis; provides for the registration of co-operative companies and regulates the relationship between co-operative companies and their shareholders; modifies the application of the Companies Act 1993 to co-operative companies.

Registration in New Zealand is a simple process for companies

It is generally an offence to commence business as an entity requiring registration under legislation without the registration having occurred; in other words, one cannot claim they are a company if they have not registered as one.

To register, the registrant will go to the Companies Office website to either carry out on-line registration or to find out the requirements for registration. The Companies Office has been an online company registration service since 1996. If all the correct information is on hand, a promoter can register a business in 15 minutes. Responsibility for data entry is with the client who can correct details at any time.

The Companies Office operates several online, searchable Registries. The Registrar often has an obligation, set out in legislation, to take all reasonable steps to ensure that the information contained in a register is available to members of the public at all reasonable times. The

registries include the register of companies, building societies, charitable trusts, contributory mortgage brokers, co-operative organizations, the Farmers Mutual Group, friendly societies and credit unions, incorporated societies, industrial and provident societies, limited partnerships and overseas limited partnerships, the New Zealand Law Society and the New Zealand Society of Conveyancers, overseas issuers, participatory securities, retirement villages, superannuation schemes and unit trusts.

To register with the Companies Office the registrant firsts need to have a log on access code and password with igovt first. The igovt logon service allows a person to use the same logon to access various government online services. The igovt logon service is secure and maintains privacy plus helping to verify identity to government service providers securely via the Internet.

The Companies Act 1993 and most other statutes relevant to business registries enable the use of electronic registries and electronic reporting of required disclosure documentation by business. Reporting obligations and other documents can also be filed on-line in many cases.

To be incorporated under the Companies Act 1993, a company must have a name that has been reserved by the Registrar of Companies, at least one share, at least one shareholder, at least one director, a registered office and an address for service. A company is not legally required to have a constitution. There are no capital requirements; however, there is a fee for reserving a name of NZ\$10.22 and the fee for incorporating a company is NZ\$153.33. The tax numbers of all New Zealand resident individual shareholders and each New Zealand resident director is required. Signed director and shareholder consents then need to be uploaded. Entities wishing to register as unlimited companies must provide a constitution detailing their unlimited liability status.

Many other structures can be registered as well

New Zealand law also allows a number of other business structures, to enable different organizations to meet their different needs. Each of these has its own registry, as noted above.

Business Structure	Legal Basis	Requirements?	Fee?
Building Societies	Building Societies Act 1965	In order to commence business, a building society must obtain a certificate of incorporation from the Registrar of Building Societies. The applicant needs to file a prescribed application, a copy of compliant rules signed by not fewer than 20 members and the intended secretary or other officer. Registration can be done online. A building society will usually be incorporated within 24 hours of receipt of the completed application.	NZ\$0
Charitable Trusts	Charitable Trusts Act 1957	There is no online registration service and there are different filing requirements depending on whether the application is for incorporation of trustees as a board or incorporation of a society as a board. Submission of an application for registration, a statutory declaration and the trust deed is required.	NZ\$0
Friendly Societies	Friendly Societies and Credit Unions Act 1982	An application consists of a form signed by seven adult members and the secretary, a copy of the rules of the society (signed by the applicants) and a list of committee members, officers and trustees. Registration can be done online.	NZ\$408.89
Credit	Friendly	An application form and submission of the rules is	NZ\$408.89

Business Structure	Legal Basis	Requirements?	Fee?
Unions	Societies and Credit Unions Act 1982	required. Registration can be done online	
Incorporated Societies	Incorporated Societies Act 1908	An application to incorporate a society under the Incorporated Societies Act 1908 is made by submitting an application form (signed by 15 members, with signatures witnessed) and a certified copy of the society's rules	NZ\$102.22
Industrial and Provident Societies	Industrial and Provident Societies Act 1908	There must be special reasons why the entity should be registered as a society should rather than as a company. Registration can be done online	NZ \$0

Several advisory services are available for businesses

There are a number of advisory resources freely available to business when using registration services via the New Zealand Companies Office website. Most of the websites of the organisations listed below are linked to each other (see Resource Bibliography for details).

- The government website *business.govt.nz* has been designed to help small and medium businesses, and contains a lot of information and online training.
 - The information and tools on this site are designed specifically for small and medium-sized businesses, and the people who advise and support them. *Business.govt.nz* provides free access to a wide range of resources. It acts as a gateway to government and private sector business information, news and services. On the site there are practical resources and links to information to help business owners and managers start, manage, grow or exit their businesses, and deal with the day-to-day challenges they face. There is a 'biz Adviser' referral service.
 - *Business.govt.nz* also covers a wide range of Government rules and regulations affecting businesses in New Zealand in information on how businesses can meet their compliance requirements. There are links to New Zealand Trade and Enterprise, Inland Revenue Department, the Department of Labour, the Intellectual Property Office, and the Accident Compensation Corporation.
 - Both *business.govt.nz* and the Companies Office website extensively use technology and social media to engage with clients. For example, the Companies Office has a blog and RSS feeds, a Facebook page and Twitter stream for up to date news and information. The public can call via Skype. Companies Office Mobile enables register viewing from internet enabled mobile phones or personal digital assistants. The Business website also has a YouTube channel and is in on LinkedIn.
- Inland Revenue has advice and information on tax issues and you can also apply online to arrange a visit from a business tax information officer.
- The Intellectual Property Office website allows a number of functions to be done online.
- Advice for breaking into the export market or export issues is found on the New Zealand Trade and Enterprise website.
- Information related to business levies for Accident Compensation Corporation cover is found on the ACC Online Services website.

- Information about employment or health and safety issues is found on the Department of Labour's website.
- The Ministry of Economic Development hosts a regulatory information portal that provides information about legislation and regulations that apply to businesses, products and services that are sold or offered in New Zealand. It was developed to help businesses, exporters, importers, intermediaries and local producers understand the regulatory environment governing a range of products and services.

Government agencies work with the private sector on reform

Reforming regulation to create a growth-friendly environment for business is a key focus of the Ministry of Economic Development. Jointly with the Treasury, government is advised on the development and implementation of the government's regulatory reform program: "better regulation, less regulation."

The Ministry of Economic Development has a significant role in the design and implementation of regulation in key sectors and markets across the economy. The focus is on working to achieve significant improvements in the 'growth-friendliness' of regulatory regimes. Specifically, there is open consultation with business via a website link on improving business regulations where business can outline rules that are getting in the way of business.

Trends and changes regarding starting a business include the following:

- Co-ordination between the Companies Office website and the Inland Revenue Department so that a start-up can apply for a company tax number and register to collect and claim for goods and services tax when the entity is incorporated online.
- Combining of the Companies Office and Business.govt websites so they have a similar look and feel and have information and transactional functions available at one online source.
- A reduction in the corporate income tax rate from 30 percent to 28 percent from 1 April 2011.
- A program on-going development of annual (or as required) omnibus legislation to reduce the compliance burden on business and to remove regulation that is no longer needed.⁶²
- A proposal to amend The Companies Act 1993 to enable electronic voting for shareholders meetings and electronic service of company documents, in order to enable participation by shareholders.
- Proposals for reforms (following a review of New Zealand's financial reporting framework) that will change the reporting requirements of small and medium-sized businesses and registered charities, and a number of smaller changes will affect a range of different entities.⁶³

⁶² Currently, the Regulatory Reform Bill 2011 amends 13 Acts and is designed to reduce compliance costs and the regulatory burden on business. This bill was reported back by the Commerce Select Committee on 26 July 2011 and is expected to come into effect during 2012.

⁶³ Companies (including overseas companies) that do not meet the definition of large (annual revenue of more than NZ\$30 million, or assets of NZ\$60 million or more) will be asked to prepare targeted reports for tax purposes, rather than financial statements under the Companies Act. The changes will reduce the number of companies required to prepare general purpose financial reporting from 460,000 to less than 10,000, and is expected to cut business compliance costs by \$90 million a year. Issuers and large companies will still be required to prepare general purpose financial reports.

- A proposal from the Ministry of Economic Development and the Inland Revenue Department to design of a system that would allocate every business a single number that would also be recognized in Australia. The aim is to reduce significantly compliance and reporting costs by simplifying interaction between companies and government and private sector agencies. Currently, businesses registered with the Companies Office may also have details registered with ACC, IRD, Statistics, and other public or private sector organizations with no linkages between them. These numbers could not only help connect business to existing government systems, but can provide benefits that flow on to businesses and the wider community.

The Government also recently set targets for the public sector over the next three to five years of having a one-stop online shop for government advice and support and another is improving interactions so New Zealanders can complete their transactions with the government easily in a digital environment. Work on this will be on-going and include the formation of a Ministry of Business, Innovation and Employment. The new Ministry will assist the Government drive forward its business growth agenda and make it easier for businesses to engage with the Government and to access innovative ideas, markets, capital, skilled workers, resources and the supporting public infrastructure.

2. Dealing with Permits in New Zealand

Resource Management Act Governing Permits in NZ

The Resource Management Act 1991 (RMA) is the primary law for the management of New Zealand's natural and physical resources, including urban and rural planning. The RMA focuses on regulating the environmental effects of activities rather than the activities themselves, removing the need for decision-makers to develop complex input-based regulation. Instead, the RMA devolves most decisions to local government with a clear view that unless environmental effects will be unacceptable, resource users should be free to identify and adopt the most efficient production technology available.

Day to day decision making is devolved to regional and territorial local authorities. Territorial authorities manage

- The effects of land use and development of land;
- Subdivision of land as a precursor to change of ownership
- Noise; and
- The effects of activities on the surface of lakes and rivers.

Regional authorities manage

- The taking, use, damming, and diversion of surface, ground, and geothermal water;
- The discharge of contaminants to land/air/water;
- The effects of activities in the coastal marine area;
- Indigenous biodiversity; and
- The effects of land use on soil conservation, aquatic ecosystems, water quality and quantity.

Policy decisions are made by Central Government

Although most decision making and day-to-day management is devolved to a local level, National Policy Statements (NPSs) can and are developed by central government to set out policy and principles for matters of national importance. NPSs provide guidance to local authorities when

they need to balance local and national interests. Regional and district plans prepared at the local government level must give effect to NPSs to ensure policy consistency at all levels of government. Regional authorities can also develop regional policy statements to set out policy principles for managing issues within their own jurisdiction.

National Environmental Standards (NESs) are developed by central government and can prescriptive minimum or maximum standards, or specific measures to manage specific environmental issues. The purpose of NESs is to ensure consistent environmental standards, terms, conditions or approaches across all jurisdictions in cases where there is a net benefit from national consistency. NESs can be drafted to function either as an absolute standard or as a bottom line in cases where a certain general level of environmental quality is desirable but stricter controls may be justified in certain areas.

Administration and application of the RMA and other regulation is done by local government

In addition to the RMA, the Local Government Act 2002, the Land Transport Management Act 2008, and the Building Act govern construction in New Zealand. The Local Government Act and Land Transport Management Act are concerned with how local government divides and zones land, while the Building Act controls the building of houses and other buildings in New Zealand. It applies to the construction of new buildings as well as the alteration and demolition of existing buildings.

The use of natural or physical resources and activities that affect the environment are governed by Regional, District and City plans. These are the responsibilities of local bodies. Regional Councils are required to identify the significant environmental issues for their regions and develop a policy response to manage those issues (which include those relating to the strategic integration of land use and infrastructure) through regional policy statements. Territorial authorities must create district or city plans, and regional councils may create regional plans, that explain how they will manage the environment for which they are responsible. Plans set out the objectives, policies and rules to address resource management issues in the area. Plans also indicate whether applications for resource consent are required in particular circumstances, and what information should be submitted for such an application. Councils must consult their citizens when preparing or changing a plan, and citizens can appeal decisions on plans to the Environment Court.

A permit, known as a resource consent, is required to use a natural or physical resource and/or carry out an activity that affects the environment in such way that contravenes plan provisions. A local authority will grant consent of the resource consent application if they are satisfied that the application is considered to be consistent with the principle of sustainable management. Conditions may be attached to a consent requiring the consent-holder to avoid, remedy or mitigate certain adverse effects. Conditions can also set out how long the consent will be valid for., and consents can be transferred between different users if permitted by the relevant local plan. Public input into consenting processes is determined by scale of the anticipated environmental effects or rules in a local authority plan. Consent applications may be notified (either publicly, or in a more limited fashion with notices only being served on affected parties) or non-notified. 96 percent of consents were non-notified in 2010/11.

Areas of land can be designated for use by certain authorities such as network utility operators or those conducting public works. This means that works can be carried out without the subsequent

need to comply with district plan rules. The process for designating land is similar to a resource consent application.

Local authorities can impose charges to recover reasonable costs incurred in processing applications for plan changes and resource consents provided they undertake public consultation on a schedule or scale of such charges.

Help is readily available for those who want more information

The Ministry for the Environment's website provides comprehensive information about the RMA, with information modules targeted at businesses, property owners, and the general public. The Department of Building and Housing website (see Resource Bibliography) is also informative and useful.

The number of agencies that businesses work with is relatively small

Of the agencies listed in the APEC survey, the following play a role in the issuance of construction/development permits:

- Regional and local planning authorities;
- The economy-wide environmental authority (only in special cases where the proposal is 'called in' or involve coastal marine resource);
- Authorities dealing with water use (only in the use of some coastal marine resources); and
- Fire authorities (only in one-off design cases of commercial/public buildings).

Local government has the primary decision making powers with respect to individual land use and construction permits. The other agencies noted above focus primarily on wider policy and standard setting frameworks. In essence, the local government/councils are a 'one-stop shop' for complying with all construction licensing authorities.

Local governments set their own fees on a cost recovery basis in principle within regulations set by Central Government. In terms of transparency, Councils operate their own internal disputes/review processes. In addition, there are Central-Government-specific subject-related processes for planning and building standard disputes and more general review and dispute processes available (e.g. application to specialist Court or to High Court for judicial review).

Furthermore, there is no general health and safety permitting requirement for New Zealand businesses to meet. Instead, the Health and Safety in Employment Act 1992 (the HSE Act) imposes various duties on employers, the self-employed, principals and others to maintain workplace health and safety, and these are enforced by a health and safety inspectorate. This is as for most other jurisdictions.

Regulations made under the HSE Act require businesses dealing with certain hazards, such as asbestos removal, petroleum extraction, high pressure pipelines and pressure vessels, cranes and passenger ropeways, and adventure tourism activities, to meet competency requirements or have their hazard management processes approved in advance by the Department of Labour. Persons who perform certain hazardous work, such as scaffolding or operating cranes, may also have to meet competency requirements under regulations. This is consistent with other jurisdictions.

The Hazardous Substances and New Organisms (HSNO) Act 1996 requires specific controls on hazardous substances, and this may involve some form of permitting to import, manufacture,

store or handle hazardous substances. Approvals to import, manufacture or supply hazardous substances under the HSNO Act are issued by the Environmental Protection Agency, which also oversees the approval or “test certification” of certain storage or other facilities and the issue of “approved handler” qualifications for the users or distributors of hazardous substances. The Department of Labour enforces the HSNO Act in workplaces.

There is an Ombudsperson’s office, which is mandated to investigate complaints about the actions and decisions of central and local government agencies.

Reform is taking place to make dealing with permits even easier

The Department of Building and Housing has recently undertaken the following reforms:

- A review of urban land use and planning legislation.
- Initiatives to reduce the time and cost of building consents.
- Improving the consistency and performance of Building Consent Authorities.
- A review of consenting processes and amendment of Building Act.
- Supporting the Productivity Partnership initiatives to improve skills, procurement process, innovation and technology uptake and research.

Similarly, the RMA has been simplified to improve

- Mechanisms for managing frivolous and vexatious objections and appeals, or those based on trade competition.
- Plan development and change processes.
- Resource consent processes.
- The efficiency and effectiveness of national instruments.
- The effectiveness of enforcement and compliance mechanisms.
- Decision making.

In addition, the reforms provided better processes for proposals of national significance, such as significant infrastructure proposals, or those that assist the Crown in fulfilling its public health, welfare, security or safety obligations or functions.

These proposals built on existing provisions of the RMA that enable the Minister for the Environment to make a direction that a matter is of national significance and refer it to a board of inquiry or direct to the Environment Court for a decision. The Act established the Environmental Protection Authority to receive and process resource consent and plan change applications, and notices of requirement for proposals of national significance and to support the boards of inquiry (or Environment Court) that will be making decisions on these proposals. A decision is then required within nine months of the date of notification. There is no merits-based appeal to the Environment Court on the decision, although parties can appeal to the High Court on points of law only.

3. Getting Credit in New Zealand

Securing transactions in New Zealand is largely dealt with by the PPSA

The Personal Property Securities Act 1999 ("the PPSA") provides for one set of rules for security in all finance transactions, except those involving real estate. A large part of the PPSA is the creation of the Personal Properties Security Register (PPSR), which is a publicly available record of securities transactions.

Fees for registration on the PPSR are very low. Online service fees include

- Registering a financing statement or renew a financing statement (NZ\$3.07)
- PPSR search (NZ\$1.02)
- Mobile phone search (NZ\$1.00)

Manual service fees include

- Sending a verification statement by postal mail (NZ\$10.22)
- Provide a certified copy of information held on the register (NZ\$25.55 per document)

The PPSA applies to when a secured party holds a security interest in personal property with the consent of the debtor. The term security interest is intended to be very wide and is defined as an interest in personal property, created or provided for by a transaction that, in substance, secures payment or performance of an obligation, without regard to the form of the transaction and without regard to the person who has title to the collateral. Any written agreement creating or evidencing a security interest is referred to in the PPSA as a security agreement. The formalities for enforceability will usually, but not always, require a security agreement to be in writing. The actual security agreement is not registered online.

The PPSA specifically mentions various types of transactions as examples of that create a security interest, including fixed charges, floating charges, chattel mortgages, conditional sale agreements (including an agreement to sell subject to retention of title), hire purchase agreements, leases, assignments and flawed asset arrangements. These transactions will create security interests so long as they create an interest in personal property that secures payment or performance of an obligation. In addition, certain transactions that may not secure payment or performance of an obligation will still be regarded as security interests. These are a transfer of an account receivable or chattel paper, a lease for a term of more than one year or a commercial consignment.

The lender registers a "financing statement" which includes information concerning the loan, the borrower's name and the security details in order to 'perfect' the security interest. The Personal Property Securities Register ("the PPSR") provides a publicly available record of transactions (see Resource Bibliography). Registration is carried out online. It is the responsibility of the secured party to keep the information up to date if they learn that any of the details have changed. Financing statements are registered immediately and are valid for a maximum period of five years unless renewed.

For an agreement to be enforceable against third parties (such as other creditors), the secured party must either take possession of the collateral or have the debtor sign or assent to a security agreement. The priority of perfected securities is generally based on the time of registration with earlier registrations having priority over later registrations. However, perfected 'purchase money security interests' (PMSIs) where the money required to purchase the item is what is secured, have priority over prior registered security interests.

Land issues are dealt with by the land registry system

Landonline is the online service for surveyors, lawyers and other land professionals, providing access to New Zealand's only authoritative database for land title and survey information (excluding land that falls within the jurisdiction of the Māori Land Court). It enables land professionals to search, and to lodge title dealings and survey data digitally.

Landonline is not designed for public access or use. Its survey and title lodgment and registration functions can only be accessed by authenticated, registered users to ensure the integrity of the titles register and digital cadastre is maintained at all times. There is 100 percent electronic lodgment of all land title and survey plans. Only documents or records which are too fragile or large to convert to digital records, or which are too infrequently accessed are unavailable in Landonline. Landonline's digital records are updated in real time.

Landonline provides access to services under three main areas: e-search, e-survey and e-dealing. In addition to this, Landonline also offers a service specific to territorial authorities, which allows them to certify survey plans online. Landonline gives secure online access to

Instruments registered with respect to or affecting the same estate or interest are given priority according to the date of registration and not according to the date of each instrument itself.

Until a folium of the register has been duly constituted or entered for land any transaction is provisionally registered.

Fees for registration of land title instrument are generally NZ\$176 for a manual lodgments (plus NZ\$20 counter fee and only appropriate or permissible in rare circumstances) and NZ\$80 for electronic lodgment.

Nontraditional financing is allowed

There are no rules in New Zealand which prevent parties from entering into commercial agreements concerning non-traditional forms of financing (e.g., franchising, leasing and factoring, future crops, agricultural equipment, inventory, accounts receivable). The law in New Zealand therefore leaves room for new, as yet unanticipated, forms of non-traditional financing.

New Zealand's credit reporting system is extensive and useful for businesses

The Privacy Act 1993 gives the Privacy Commissioner the power to issue codes of practice that become part of the law. These codes modify the operation of the Act for specific industries, agencies, activities or types of personal information.

The Credit Reporting Privacy Code 2004 addresses how credit information is collected, held, used, and disclosed by credit reporting agencies. The Code lists the types of personal information considered 'credit information.' Some examples of credit information include the following:

- Personal identification information (e.g., full name, sex, date of birth)
- Supplementary identification information (e.g., occupation, employer, driver license)
- Information reported by a credit provider about an application for credit by an individual (e.g., type and amount of credit sought, date of application)

- Information reported by a credit provider about a credit account held by an individual (e.g., type of credit account, amount of credit extended, status of account as open or closed, repayment history information in relation to the account)
- Information relating to a credit default, serious credit infringement, summary installment orders or judgments for monies owed that have been entered against an individual, insolvency
- Information sourced from a specified public register.

The Code limits the disclosure of credit information. Credit reporting agencies may disclose the information in accordance with a subscriber agreement that complies with Schedule 3 if the credit reporter believes on reasonable grounds (examples)

- That the disclosure of the information is to a debt collector for the purpose of enforcement of a debt owed by the individual concerned;
- That the disclosure is authorized by the individual concerned and is made to specified parties named in the code for a particular purpose (e.g., credit provider, a prospective landlord, a prospective employer, a prospective insurer);
- That disclosure is necessary for specified enforcement and legal reasons (e.g., avoid prejudice to the maintenance of the law); or
- That the information is used in a way which doesn't identify the individual concerned or for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned.

A clear system of governance exists for bank and nonbank institutions

The Reserve Bank is the prudential regulator and supervisor of banks and insurers and the prudential regulator of NBDTs.

Legislative powers provide the Bank with the means to support a well-governed, sound, and efficient financial sector, and in the Bank's view, this helps to foster financial intermediation. Under the Reserve Bank of New Zealand Act 1989, the Reserve Bank is responsible for promoting the maintenance of a sound and efficient financial system, and avoiding significant damage to the financial system that could result from the failure of a registered bank or non-bank deposit taker (NBDT). Under the Insurance (Prudential Supervision) Act 2010 the Reserve Bank's purpose is to promote the maintenance of a sound and efficient insurance sector and to promote public confidence in the insurance sector. Banks, insurers and NBDTs are subject to governance requirements designed to support the achievement of these objectives.

Furthermore, the Reserve Bank has both an oversight and operational role in the payment system in New Zealand. The operational activities include the provision of currency and a range of payment and settlement services. Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, the Reserve Bank is one of three supervisors tasked with ensuring firms comply with new obligations designed to help deter and detect money laundering and terrorist financing.

The Ministry of Consumer Affairs deals with issues of consumer rights and protection. Competition issues in New Zealand are dealt with by the Commerce Commission, while the Financial Markets Authority deals with matters of market conduct. However, the Reserve Bank does have a role in supporting financial system efficiency.

Reforms have been made to improve the credit system

Areas of reform for 'getting credit' include changes to the collateral registry system and to the Credit Reporting Privacy Code.

In the collateral registry system

The Personal Property Securities Amendment Act 2011 (not yet in force) will authorize Court Registrars to register financing change statements for secured property that has been sold by the court.

Credit Reporting Privacy Code

Recent amendments to the Code move New Zealand from a system that is principally focused on a narrow range of "negative data" that shows where an individual has failed to meet obligations, into one that also includes information showing the range of an individual's credit accounts and how they are being managed. These amendments took effect on April 1, 2012.

Banks will not be the only agencies adding the new information to the system. A broad range of credit providers, including utility companies, are expected to contribute information. The New Zealand system already captures negative information from a broader range of businesses than some other countries. Accordingly, the comprehensive system New Zealand is moving to will be broad as well as deep.

The Code notes which rules were introduced as part of the recent amendments. Some of the notable changes include the following:

- The Code now allows reporting of the type of credit account, credit limit, credit provider and status of account as open or closed; and
- The Code now allows repayment history information to be collected and reported monthly. Repayment history information is information about whether or not an individual has met their obligations to make periodic payments on credit accounts.

4. Enforcing Contracts in New Zealand

New Zealand's contract law is based in the common law and equity with some important modifications contained in a number of key statutes.

NZ's contract law is largely based in common law and equity, following the English common law tradition. However, in addition to the common law, there are also some key statutes that govern contract law in New Zealand, including the following legislation:

- Sale of Goods Act, 1908, which governs the law relating to the sale of goods.
- Illegal Contracts Act 1970, which states that illegal contracts have no effect.
- Contractual Mistakes Act 1977, which codifies the law governing the circumstances in which relief may be granted on the grounds of mistake (of fact or law) in relation to a contract.
- Contractual Remedies Act 1979, which governs the law relating to remedies for misrepresentation and breach of contract.
- Consumer Guarantees Act 1993, which imposes a number of guarantees on contracts for the supply of goods or services to a consumer.

- Fair Trading Act 1986, which prohibits misleading conduct and false representations in certain circumstances.
- Contracts (Privity) Act 1982, which has significantly modified the law of privity, allowing the intended beneficiary of a contract to enforce it, even if not a party to the contract.

Other statutes deal with particular aspects of contract law, such as consumer law, advertising law, credit contracts and consumer finance, construction, and land law.

New Zealand's contract law system largely presumes freedom of contract

New Zealand law starts with the presumption of freedom of contract. There are some exceptions relating to illegal contracts, misrepresentation and reliance, duress and undue influence, minors, mentally incapacitated persons, contractual frustration, and (in some cases) contractual mistake.

Electronic transactions are covered by the Electronic Transactions Act 2002

Electronic transactions in New Zealand are governed by the Electronic Transactions Act 2002, which ensures that electronic technology can be used in the formation and recording of contracts. The Act's purpose is to facilitate the use of electronic technology by reducing uncertainty regarding the legal effect of information in electronic form or communicated electronically. The end goal of this is that certain paper-based legal requirements may be met with electronic technology that is functionally equivalent to legal requirements.

Section 6 of the Electronic Transactions Act gives courts the power to make reference to the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law on 16 December 1996, and to any document that relates to the Model Law that originates from the United Nations Commission on International Trade Law, when interpreting the principal Act.

Contracts can be enforced through the courts

New Zealand allows enforcement of contracts following a court order. This is set out in the District Court Rules and High Court Rules.

Several international conventions are part of domestic law

New Zealand has ratified the United Nations Convention on Contracts for the International Sale of Goods. This is incorporated into New Zealand domestic legislation by the Sale of Goods (United Nations Convention) Act 1994. Similarly, the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards is included in Schedule 3 of the Arbitration Act 1996.

Alternative dispute resolution is encouraged

Having several methods for resolving contractual disputes encourages parties to solve problems outside of the courts. Common modes of alternative dispute resolution in New Zealand include mediation and arbitration and the Disputes Tribunal. The Tribunal is established by statute and allows various types of civil claims, including contractual claims, for up to a maximum of \$15,000 (or \$20,000 if both parties agree) to be resolved in a quick, inexpensive and private way to help resolve a wide range of civil disputes, including contractual disputes. Compared to the courts, the Disputes Tribunal is relatively informal. Disputes are determined by a specially trained

referee who is empowered to make binding rulings and do not involve lawyers or judges. Decisions made at Disputes Tribunals are enforceable in the Courts.

The rules for arbitration in New Zealand are covered by the Arbitration Act 1996. The regime is based on the Model Law on International Commercial Arbitration. It includes the ability to enforce foreign arbitral awards in New Zealand through the New Zealand Courts.

Mediation in New Zealand is largely self-regulated to allow flexibility, and follows the basic offer-acceptance principles of contractual law. Mediation is highly encouraged as an alternate form of dispute resolution.

Two main organizations have grown in the economy to support and facilitate alternate dispute resolution in New Zealand: the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) and LEADR (which has its Australasian Headquarters in Australia).

5. Trading Across Borders in New Zealand

There is a coherent system governing cross-border trade in New Zealand. As an economy that engages heavily in trade, ease of trade across borders is a priority for New Zealand. Consequently, trading across borders is very easy both for exporters wishing to trade abroad and for importers wishing to trade in New Zealand.

Although New Zealand's law governing trade across borders has not been consolidated under a single law on trade, legislation is cross-referenced and easy to follow. Furthermore, the Customs and Excise Act 1996 is the main piece of legislation governing cross-border trade. contains all relevant Customs requirements and is cross-referenced to other appropriate legislation (eg the Tariff Act). There is legislation that governs imports and exports which is contained in other relevant acts, for example, the Biosecurity Act 1993 includes provisions on import clearance for goods for biosecurity purposes. The Customs and Excise Act has been amended on a regular basis since 1996 to meet changing demands and new business processes. Amendments are currently being progressed to allow for the implementation of Trade Single Window, and the Joint Border Management System with the Ministry of Primary Industries. Ministers have also asked that Customs officials commence scoping the work needed to update Customs legislation, in consultation with other agencies.

Other major sources of legal authority for conducting trade across borders in New Zealand include the following legislation:

- Tariff Act 1988, which provides for the imposition, removal or alteration of import tariffs (customs duties).
- Dumping and Countervailing Duties Act 1988, which provides for the investigation of dumping and subsidization and the imposition of anti-dumping and countervailing duties.
- Temporary Safeguard Authorities Act 1987, which provides for inquiries into injurious imports.
- Import Control (Tyres) Conditional Prohibition Order 1996, which provides conditional prohibition on the importation of certain tires.
- Customs and Excise Act 1996 and associated regulations, which govern imports, exports and cross-border activities.
- Food Act 1981, which governs clearance standards and processes for high-risk foods.

Under the Acts and Regulations Publication Act 1989, all New Zealand legislation must be published and on sale at a reasonable price. Legislation can be purchased from selected retail outlets, or viewed online and downloaded free of charge. All legislation is available in English.

Trade-related agencies

The main agency dealing with trade policy formulation and implementation is the Ministry of Foreign Affairs and Trade (MFAT) in close cooperation with other key ministries. The MFAT is responsible for protecting and promoting New Zealand's security and economic interests overseas. Reporting to the Minister of Trade, the ministry is the Government's lead source of advice on foreign trade policy and provider of legal advice on international trade and economic issues.

The Ministry of Economic Development (MED) implements policy in areas such as tariffs, trade remedies, standards and conformance, competition policy, intellectual property rights (IPRs), corporate governance, and financial sector policy.

The Ministry for Primary Industries (MPI) works with the MFAT to ensure market access for New Zealand's agricultural exports. MPI also regulates the importation of all goods into New Zealand in regard to biosecurity clearance. Ministry inspectors make decisions about whether to give biosecurity clearance based on the relevant 'import health standard' for risk goods and whether all imported goods are free from diseases and pests. Inspectors have powers to deal with both cargo and passengers.

The New Zealand Customs Service administers the Customs and Excise Act, which includes controls over all imports and exports. Other agencies with regulatory powers over the movement of goods across the border include the Ministry of Primary Industries (for biosecurity and food safety purposes), and Transport agencies (for aviation and maritime security purposes). Other legislation administered by Customs on behalf of other agencies includes relevant parts of Tariff Act 1998 and the GST Act 1985.

New Zealand has signed up to a wide array of trade-related conventions

As a country dependant on trade, New Zealand supports clear trade rules that are applicable to all. New Zealand has a longstanding commitment to multilateralism and is a member of the WTO agreements. New Zealand is an active member of the WTO since it was created in 1995 and was a founding member of the GATT.

In addition, New Zealand is an active member of trade-related conventions and a party to a number of free trade agreements including the following:

- New Zealand-Hong Kong, China Closer Economic Partnership
- New Zealand-Malaysia Free Trade Agreement
- ASEAN-Australia-New Zealand Free Trade Agreement;
- New Zealand-China Free Trade Agreement
- Trans-Pacific Strategic Economic Partnership
- New Zealand-Thailand Closer Economic Partnership
- New Zealand-Singapore Closer Economic Partnership
- Australia-New Zealand Closer Economic Relationship.

Trade conventions/treaties are enforceable by New Zealand's courts to the extent that they have been incorporated into domestic legislation.

Customs and biosecurity legislation

There are no regulations that govern the actions of customs brokers and freight forwarders specifically. The Customs and Excise Act 1996 requires importers and exporters (or their agents, eg brokers) to complete declarations and provide information to Customs as required under the Act and associated regulations. All declarations are completed electronically by a registered user, and those users must be trained before they can be registered.

Import controls ensuring the safety and suitability of food and food-related products are additional to biosecurity clearance. A new Food Bill is currently in progress to enhance New Zealand's imported food program.

In regard to exports of animal products, plant products and food, MPI seeks to establish and implement export certification systems that are consistent with OIE, Codex and IPPC standards and guidelines. Outcomes/requirements for market access (country by product) are able to be reflected in equivalent New Zealand arrangements, including verification arrangements. MPI manages some 14 export certification systems to support New Zealand's official assurances and has invested significantly in electronic certification. The legislation, which governs requirements for New Zealand's main primary products (dairy, meat, seafood) is the Animal Products Act 1999. Wine exports come under the Wine Act 2003 and, in some circumstances, food can be exported under the Food Act 1981. MPI continues to strive for system effectiveness and efficiency in support of primary sector trade and market access.

Recent measures to ease trading across borders

Recent changes to make trade across borders easier include the following:

- New Zealand has entered into several preferential trade agreements in recent years that will reduce and eliminate tariffs for goods originating in PTA partner countries. See the list of trade related conventions and free trade agreements above for more information.
- Amendments were made to the Trade Marks Act in 2011 to facilitate New Zealand ratifying the Singapore Treaty on the Law of Trademarks (the Singapore Treaty) and joining Protocol Relating to the Madrid Agreement concerning the International Registration of Marks (the Madrid Protocol) and the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of Registration of Marks (Nice Agreement).
- In 2011, New Zealand passed the Copyright (Infringing File Sharing) Amendment Act to deal with illegal peer-to-peer file sharing.
- On 1 July 2012, the functions of four agencies involved in regulating trade will be consolidated into the new Ministry of Business, Innovation and Employment.
- Customs and the Ministry for Primary Industries are developing a single computer system called the Joint Border Management System. Industry will benefit because the system will
 - Enable industry to access and electronically submit border clearance documents once, rather than to multiple agencies;
 - Collate separate agency fees for one consignment to enable a single fee payment;
 - Provide more certainty, earlier, about the clearance status of border transactions;
 - Result in faster, more transparent and more efficient movement of goods through the supply chain; and

— Support participation in international trade facilitation initiatives.

The New Zealand Customs Service and the Ministry for Primary Industries are also currently examining a number of cargo clearance functions with the aim of increasing efficiencies for traders. This work will provide a scoping report for Government in mid 2012.

III. Resource Bibliography

Resource	Website	Notes
New Zealand Legislation	legislation.govt.nz	All legislation can be downloaded free of charge.
Department of Internal Affairs	dia.govt.nz	Although there is not a direct translation service, the Department of Internal Affairs provides a general translation service. Furthermore, larger local authorities with significant immigrant populations provide guidance in other languages than English (e.g., Chinese, Korean, Samoan).
STARTING A BUSINESS		
Business Support	business.govt.nz	This government website has been designed to help small and medium businesses, and contains a lot of information and online training. This is also the home of the Companies Office and where one can find information about other registries.
Inland Revenue	ird.govt.nz	Inland Revenue has advice and information on tax issues and you can also apply online to arrange a visit from a business tax information officer.
Intellectual Property Office	iponz.govt.nz	The Intellectual Property Office website allows a number of functions to be done online.
Department of Labour	dol.govt.nz	Information about employment or health and safety issues is found on the Department of Labour's website.
Accident Compensation Corporation	online.acc.co.nz	Information related to business levies for Accident Compensation Corporation cover is found here.
Ministry of Economic Development	med.govt.nz	The Ministry of Economic Development hosts a regulatory information portal that provides information about legislation and regulations that apply to businesses, products and services that are sold or offered in New Zealand. It was developed to help businesses, exporters, importers, intermediaries and local producers understand the regulatory environment governing a range of products and services. It has a significant role in the design and implementation of regulation in key sectors and markets across the economy. The focus is on working to achieve significant improvements in the 'growth-friendliness' of regulatory regimes. Specifically, there is open consultation with business via a website link on improving business regulations where business can outline rules that are getting in the way of business.
DEALING WITH PERMITS		
Ministry for the Environment	mfe.govt.nz	The Ministry for the Environment website provides information about the RMA, including a section on what RMA planning and consent processes mean for individuals and businesses.
Department of Building and Housing	dbh.govt.nz	The Department of Building and Housing website provides information on building consents.

Resource	Website	Notes
Occupational Safety and Health	osh.dol.govt.nz	Information about Occupational Safety and Health is available on the OSH website.
ENFORCING CONTRACTS		
Ministry of Justice	justice.govt.nz	The Ministry of Justice provides information about disputes tribunals in New Zealand.
LEADR Association of Dispute Resolvers	leadr.co.nz	AMINZ and LEADR provide information about alternative methods of dispute resolution.
Arbitrators and Mediators Institute of New Zealand	aminz.org.nz	
GETTING CREDIT		
Personal Properties and Securities Register	ppsr.govt.nz	The Companies Office operates the Personal Properties and Securities Register. It provides information about what the Personal Properties and Securities Act is and how it works. There is a section on "Why use the PPSR" and "How else can the PPSR protect my business?"
Land Online	landonline.govt.nz	Land Online maintains a similar register for land transactions.
Privacy Commission	privacy.org.nz	Credit reporting info is available from the Privacy Commission's website.
TRADE ACROSS BORDERS		
Ministry of Foreign Affairs and Trade:	mfat.govt.nz	The Ministry of Foreign Affairs and Trade's website overviews Free Trade Agreements.
New Zealand Customs Service	customs.govt.nz	The New Zealand Customs Service maintains a helpful website with information for both importers and exporters. Both sections contain detail on the processes and fees required to bring goods into or send goods out of New Zealand.
New Zealand Trade and Enterprise	nzte.govt.nz	Advice for breaking into the export market or export issues is found on the New Zealand Trade and Enterprise website.

Peru

I. General Information

Peru has recently made many notable strides in improving its business enabling environment. Among these positive developments are:

- In Starting a Business, Peru eased the start-up process by simplifying the requirements for operating licenses and creating an online one-stop shop for business registration.
- In Dealing with Construction Permits, Peru streamlined the permit process by implementing administrative reforms.
- In Trading Across Borders, Peru made trading easier by implementing a new web-based electronic data interchange system, risk-based inspections and payment deferrals.

The following chart explains the relevant institutions for five areas of doing business in Peru:

Institution	Function
STARTING A BUSINESS	
Notary Public	Processes articles of association Transfers the notarized documents to SUNARP
National Superintendence of Public Records (SUNARP)	Records and reserves company names Registers companies in the legal entities registry
National Superintendence of Tax Administration (SUNAT)	Registers the company in the tax registry and assigns a Tax Identification Number (RUC)
Municipalities	Grants Operation Licenses
DEALING WITH PERMITS	
Ministry of Housing, Construction and Sanitation (<i>Ministerio de Vivienda, Construcción y Saneamiento</i>)	Governing entity of Housing and Urban Planning Policy
SUNARP	Issues Property Certificates. Registers the Planning Notice (<i>Declaratoria de Fábrica</i>) for properties
Public service utility companies (power, water, telephone)	Issues utility service feasibility report. Connects properties to utility services
Provincial Municipalities	Issues Road Impact Reports Authorizes road closures for construction Approves zoning and use compatibility
District Municipalities	Authorizes household connections
National Culture Institute (<i>Instituto Nacional de Cultura</i>)	Appoints Technical Commission delegates (for 5 to 10 storey residential buildings)
National Institute of Civil Defense (INDECI)	Appoints delegates in Technical Commissions

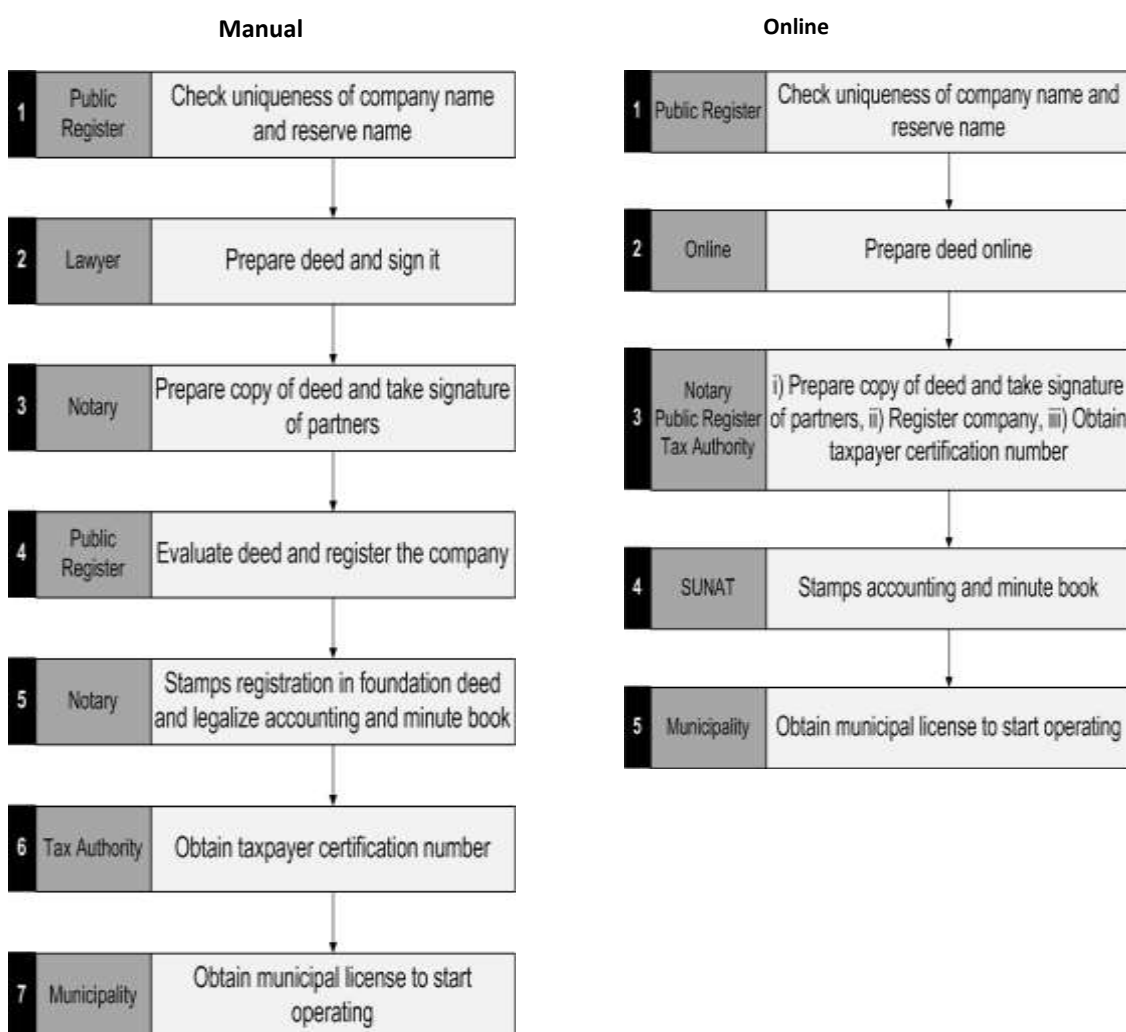
Institution	Function
Peruvian Brigade of Volunteer Firemen (Cuerpo General de Bomberos Voluntarios del Perú)	Appoints Technical Commission delegates (for residential buildings over 10 stories)
Peruvian Engineering and Architecture Association (<i>Colegio de Ingenieros y Arquitectos del Perú</i>)	Professional Associations that appoint Technical Commission delegates (for project revisions)
GETTING CREDIT	
Superintendence of Banking and Insurance (<i>Superintendencia de Banca y Seguros</i>)	Supervises financial services companies
SUNARP	Registers the incorporation of security warranties
ENFORCING CONTRACTS	
The Judiciary Branch	Branch of the State responsible for administration of justice
TRADE ACROSS BORDERS	
SUNAT	Implements, supervises and controls customs policy, applying, overseeing, sanctioning and collecting taxes and tariffs on behalf of the central government, determined by customs legislation and international treaties and agreements Facilitates customs activities
Ministry of Foreign Trade and Tourism (MINCETUR)	Defines, directs, executes, coordinates and supervises foreign trade and tourism policies Responsible for the promotion of exports and international trade negotiations Administers the one-stop-shop for foreign trade

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Peru

The most common form of business in Peru is the corporation or joint stock company (*Sociedad Anónima* or SA). Several other business organizations are permitted under Peruvian law, including the limited liability company (*Sociedad de Responsabilidad Limitada* or SRL), the individual proprietorship (*Empresa Individual de Responsabilidad Limitada* or EIRL), and the branch of a larger company.

Company registration steps include:



Company Law

Peru’s General Corporations Act⁶⁴ governs all companies and corporations, which consist of at least two individuals or legal entities. The following laws and regulations govern business registration for all categories of business, including sole proprietors, simple partnerships, foreign-owned businesses, and any other category enumerated by law or regulation.

Regulation	Purpose	Characteristics
General Corporations Act	Regulations governing all corporations	Types of business: Corporation, Open Corporation, Closed Corporation, Collective Corporation, Limited Partnership, Private Limited Corporation, Non-traded Companies. Regulates Branches and Association Contracts (Consortium).
Limited Liability Sole Proprietorship (EIRL) ⁶⁵	Regulates companies incorporated by a single individual	Establishes that an individual can own one or more Limited Liability Sole Proprietorships
Micro and Small	Promotes	States the strengthening of the Companies

⁶⁴ Ley General de Sociedades N° 26887, enacted on December 9, 1997

⁶⁵ Decree Law N°21621, enacted on September 15, 1976

Regulation	Purpose	Characteristics
Enterprise Law ⁶⁶ and its Regulation ⁶⁷	competitiveness, formalization, and development of micro and small-sized enterprises	Incorporation Service in 72 hours. Eliminates the mandatory nature of the lawyer's signature in the preliminary notarial instrument for the incorporation of the company.
Supreme Decree modifying the Regulation of the MYPE ⁶⁸ (Medium and Small-sized Enterprises) Law	Facilitates the application of article 9 of the MSME Law	Establishes formalities so that no minimum amount of the capital stock is required to be paid in a bank or financial entity upon incorporation of MYPE.

Business registry (or registries if they are different for different types of entity):

- Incorporated companies in Peru are registered in the Legal Entities Registry of the National Superintendence of Public Records, housed within the Ministry of Justice (*Ministerio de Justicia*).

Government agencies dedicated to the informal economy:

- Ministry of Production (*Ministerio de la Producción*) through business formalization programs through Department *Mi Empresa*⁶⁹
- Financial Development Corporation, by facilitating the incorporation of companies in the the Financial Development Corporation's *Centro COFIDE*⁷⁰

Public sector institutions that support business startups include:

- Ministry of Production (through *Mi Empresa*)⁷¹
- Financial Development Corporation (through *Centro COFIDE*)⁷²
- National Office for Electronic Government (through the Companies Incorporation Service, which incorporates new companies within 72 hours)⁷³
- National Superintendence of Public Records (through its company registration facilities)

Important developments since 2009

Improvement of the Online Companies Incorporation Service: Users can now register corporate and accounting books online, and have access to a new online calculator for SUNARP incorporation costs. Technological upgrades were implemented to allow tracking of the incorporation process.

⁶⁶ Supreme Decree N°007-2008-TR, enacted on September 30, 2008

⁶⁷ Supreme Decree N°008-2008-TR, enacted on September 30, 2008

⁶⁸ Supreme Decree N°001-2011-PRODUCE, enacted on January 23, 2011

⁶⁹ Ministry of Production website

⁷⁰ Centro COFIDE website

⁷¹ Ministry of Production website

⁷² Centro COFIDE website

⁷³ Service to Citizens and Businesses website

Law N° 29566: The paid-in minimum capital requirement was eliminated. Capital contributions made to a newly formed company can be registered/accounted (accredited) by the sworn statement of the manager.⁷⁴

Resolution of the National Superintendence of Public Records N° 320-2010-SUNARP/SN: States that SUNARP shall incorporate new companies within 24 hours.⁷⁵

Supreme Decree N° 001-2011-PRODUCE: modified article 5 of the MSME Regulation Law, such that the paid-in minimum capital requirement was eliminated.⁷⁶

Supreme Decree N° 001-2012-JUS: reduced the SUNARP registration rate for the incorporation of companies.⁷⁷

Measures to make information on laws, regulations, and procedures available to the public:

- In the first quarter of 2011, technological upgrades were implemented in the Online Companies Incorporation Service to allow tracking of the incorporation process..
- Official letters were issued to notify various stakeholders of regulatory changes facilitating the registration of companies.

These benefits are applied similarly to both national and foreign companies

Regulation	Classification
General Corporations Act	Capital stock can be divided into stocks or shares: Stocks: Corporation, Open Corporation, Closed Corporation. Shares: Limited Partnership, Private Limited Corporation, Non-trading Companies.
Limited liability sole proprietorship	For companies incorporated by a single individual
MSME Law	Micro enterprise: Between 1 and 10 workers with a maximum annual revenue of PEN 547,500 Small enterprise: Between 1 and 100 workers with a maximum annual revenue of PEN 6,205,000
Tax regulations (three regimes):	Single Simplified Regime (RUS): Sole proprietor with a maximum annual revenue of under PEN 360,000; a sole establishment; and asset value (excluding property and vehicles) under PEN 70,000 Special Income Tax System (RER): Individual or legal entity with annual revenue and purchases under PEN 525,000; asset value (excluding property and vehicles) under PEN 126,000, and not more than 10 workers per labor shift. General Income Tax System: Individual or legal entities not participating in either of the above systems.

⁷⁴ Law modifying various provisions to improve the investment environment and facilitate tax compliance, enacted on July 28, 2010

⁷⁵ It establishes the preferred attention of national registration services On-line Name Reserve, Certified Publicity and simple publicity, enacted on October 14, 2010

⁷⁶ January 23, 2011

⁷⁷ Reduces various registration rates pertaining to Property Registration and Registration of Legal Entities, January 19, 2012

Legal framework for forming agricultural cooperatives. By Supreme Decree N° 074-90-TR, “the promotion and protection of cooperatives as an efficient system to contribute to economic development, the strengthening of democracy and execution of social justice is declared of national need and public usefulness (art.1).”⁷⁸

Cooperatives are legal entities (companies) registered in SUNARP, with no official need of prior administrative resolution.

The **Peruvian Law of Digital Certificates and Signatures**⁷⁹ and its Regulation⁸⁰ comprise the regulatory framework for electronic transactions. It is already in use by certain public sector agencies in their interactions with citizens and private companies.

The Online Company Incorporation Service allows for the online incorporation of any company with the characteristics of a MSME (which represent a large proportion of companies in Peru).

The Ministry of Production’s *Dirección Mi Empresa* and *Centros COFIDE* service centers provide **free advisory services** to entrepreneurs interested in starting a company.

Furthermore, *Dirección Mi Empresa* service centers provide the free preliminary notary services. Notary public services are also offered for a modest fee through government programs.

1.2 Trends in Peru

Reforms in the area of Starting a Business since 2009 include the following.

Law N° 29566: A law modifying several provisions in order to enhance the investment environment and facilitate tax compliance, enacted on July 28, 2010. It eliminated the paid-in minimum capital requirement, and capital contributions made to a newly formed company can be registered/accounted (accredited) by the sworn statement of the manager.

National Superintendent of Public Records N° 320-2010-SUNARP/SN: It establishes the preferred attention of national registration services Online Name Reserve, Certified Publicity and simple publicity, enacted on October 14, 2010. It states that SUNARP shall qualify nationwide the requests to incorporate companies in a term of 24 hours from its presentation.

Supreme Decree N° 001-2011-PRODUCE: Supreme Decree modifying the Single Ordered Text of the Law of Promotion of Competitiveness, Formalization and MSME Development and Access to Decent Employment – Regulation of MSME Law, enacted on January 23, 2011, It modified article 5 of the MSME Law Regulation and allowed for the execution of the provision of article 9 of the MSME Law eliminating the paid-in minimum capital requirement for MSMEs.

⁷⁸ This Decree approved the Single Ordered Text of the General Corporations Act enacted on January 7, 1991

⁷⁹ Law N° 27269, enacted on May 28, 2000

⁸⁰ Supreme Decree N° 052-2008-PCM, enacted on July 19, 2008

Supreme Decree N° 001-2012-JUS: This decree reduces registration fees in several fields corresponding to the Registration of Properties and the Registration of Legal Entities, enacted on January 19, 2012. It reduced SUNARP's registration fees for the incorporation of companies.

Improvements of the Online Companies Incorporation Service

- Extension of the online service to 3 regions of the country
- Users can now legalize register corporate and accounting books online
- A registration calculator was included for estimating the SUNARP registration cost
- Technological upgrades were implemented to allow tracking of the incorporation process.

Future plans include improving the electronic platform of the Companies Incorporation Service to be more user-friendly, and a reduction in the time required (currently 15 days) for issuance of the Operation License.

2. Dealing with Permits in Peru

Sources of legal authority for all licenses required for conducting business

Political Constitution of 1993

Article 194 of the Political Constitution of 1993 states that the provincial and district municipalities are local government organizations with political, economic and administrative autonomy in local matters. The Constitution also states that the competencies of the Municipalities include, among others:

- Urban and rural development planning in their respective districts, including zoning and land ownership.
- Developing and regulating activities and/or services in the fields of education, health, housing, sanitation, environment, natural resources sustainability, public transportation, traffic and transit, tourism, conservation of archaeological and historical monuments, culture, recreation and sports, pursuant to law.

Law N° 27972, Organic Law of Municipalities

Law N° 27972, Organic Law of Municipalities indicates that Municipalities are empowered to regulate and confer authorizations, rights and licenses, and supervise urban development, planning notices, and the construction, remodeling or demolition of real estate.

Law N° 29090, Law of regulation of urban development and buildings

Finally, Law N° 29090, which regulates of urban development and buildings, states that district municipalities (within the scope of their jurisdiction), provincial municipalities and the Metropolitan Municipality of Lima (within Lima District), are authorized to approve building and urban development projects.

The municipalities are responsible for supervising real estate projects.

The Ministry of Housing, Construction and Sanitation is empowered to design, regulate and execute national policy regarding housing, as well as to promote building and development activity.

Major license/permit issuing authorities

Building License

Building licenses are issued by the Municipality of the District where the building is being constructed. This document authorizes an investor or constructor to begin construction in the District. There are four types of Building License codified in Law N° 29090 that differ according to size and type of construction:

Modality A: Automatic approval with professional's signature

This modality applies to:

- a) Construction of a single-family house of up to 120 m², provided that it is the only building in the lot
- b) Extension of a single-family house, which has an original construction license or planning notice, provided that the total constructed area does not exceed 200 m²
- c) Remodeling of a single-family house provided that no structural modifications, change in use, or additions are involved
- d) Construction of fences over 20m long provided that the real estate is not on shared property
- e) Total demolition of buildings under five stories provided that no use of explosives is required
- f) Additions or extensions considered minor works according to the provisions of the National Building Regulation
- g) Armed Forces, Peruvian Police Force, and prison construction must be executed under the Urban Development and Territory Arrangement Plans
- h) Buildings that are part of the Cultural Heritage of the Nation designated by the National Institute of Culture (INC) are not included in this modality.

This modality does not include buildings indicated in a., b., c., d. and f. requiring the construction of basements or semi-basements or an excavation depth over 1.50m adjacent to existing buildings. In this case, the building license must be processed under Modality B.

Important: Documentation provided to the Municipality constitutes the license. Upon payment of the corresponding fee, construction may begin immediately.

Modality A license request requirements:

- a) Single form (three copies) signed by the applicant and, if appropriate, by the responsible professionals.
- b) If the license applicant is not the owner of the property, he or she must prove that he or she represents the owner.
- c) In case of legal entities, the validity of the corresponding power is attached.
- d) Technical information including location drawings, blueprints, structures, sanitation facilities and electrical installations; or standard project documents can be acquired from the bank of project templates of the municipality. Originals of this documentation must be submitted together with one copy.

- e) In the case of buildings, extensions, modifications, and minor works, only the architecture and location drawing are required; or a project can be acquired from the bank of projects of the respective municipality. The original documents must be submitted together with one copy.
- f) Demolition of buildings (provided that they are not part of the cultural heritage of the Nation and that the use of explosives is required) requires that a work responsibility letter be submitted and signed by a civil engineer together with the professional authorization receipt.
- g) Building license
- h) Work budget calculated based on the chart of Official Building Unit Values

In the cases of Armed Forces, Peruvian Police Force, and prison construction, which must be executed under the Urban Development and Territory Arrangement Plans, only the requirements indicated in items a, b and f, as well as the location drawing and descriptive report are required.

Modality B: With signature of responsible professionals

In order to obtain the licenses regulated by this Law through the procedure with the signature of responsible professionals, the Single Form together with the requirements established in this Law must be submitted to the municipality

The entry certificate constitutes a provisional license allowing preliminary works to commence

Term for issuing the license include the following. The municipality requires up to 15 business days for the administrative verification of the file in the building assumptions and to verify that the project complies with the relevant regulations. The final license authorizing the continuation of the execution of building works is conferred after verification

This modality applies to:

- a) Single-family, multi-family buildings or single-family, multi-family condominiums with less than five stories, under 3000 m² tall
 - b) Extension or remodeling of an existing building, increase in constructed area or change of use, or partial demolitions
 - c) Construction of fences for real estate containing both exclusive and common property sections
- Buildings designated as part of the Cultural Heritage of the Nation by INC (National Institute of Culture) are not included in this modality

Modality B license request requirements:

- a) Single form (three copies) signed by the applicant and, if appropriate, by the responsible professionals
- b) If the license applicant is not the owner of the property, he or she must prove that he or she represents the owner
- c) In case of legal entities, the validity of the corresponding power is attached.
- d) Feasibility certificate of services for new work of multi-family residence or purposes other than housing
- e) Technical information including placement and location drawings according to the prescribed format, architecture drawings, structures, electrical installations, sanitation facilities, and other documentation that must be signed and sealed, if appropriate, by the professional responsible

for the project and by the owner. The following must be submitted as part of the structure project drawings, as appropriate: excavation support drawing according to the provisions of article 33 of Standard E 050 of the National Buildings Regulation, together with a descriptive report indicating the characteristics of the same, as well as the adjacent buildings indicating the number of floors and basements, with photos. Other documents that must be submitted include the soil mechanics study according to the characteristics of the works and the cases established by the Regulation. The original of this documentation must be submitted together with one printed copy.

The following documents are also required: CAR (Comprehensive Contractor Risk Insurance or *Seguro de todo Riesgo de Contratista*) Policy or accident insurance policy against third parties according to the characteristics of the work to be executed pursuant to the Regulation, with coverage of material and personal damages to third parties, as a complement to the Complementary Insurance of Risky Work according to Law No. 26790, Law of Health Social Security Modernization.

The policy must be in force throughout the execution of the works and is required by the municipality the day before the start of the works. The building declaration will be required in the cases of remodeling, extension or partial demolitions.

f) Receipt of the building license

g) The work budget calculated based on the chart of Official Building Unit Values

Modality C: Approval with prior project evaluation by Urban Inspectors or Technical Commissions

In order to obtain the licenses regulated by this Law through the approval procedure with prior project evaluation, the requirements established by this Law must be submitted to the competent municipality. Other requirements can be established in the Regulation.

If the interested party selects Urban Inspectors, the income certification constitutes the respective license. Upon payment of the required fee, the works may begin immediately.

If the interested party selects the Technical Commission, the competent municipality will call on the Technical Commission within five business days. The Commission will complete the evaluation within twenty business days for buildings and forty business days for urban developments. If this term expires with no notice, positive silence procedure (authorization is granted) will be applied pursuant to Law No. 29060, Law of Silence Procedure.

The Technical Commission cannot make new observations not observed in the initial evaluation. The respective regulation indicates the corresponding exceptions.

This modality applies to:

- a) Residential buildings, multi-family buildings, residential housing developments or condominiums including multi-family residences over five stories and/or more than 3,000 m² of constructed area.
- b) Buildings with purposes other than residential except for those provided in Modality D.
- c) Mixed-use buildings that include housing
- d) Interventions in previously declared real estate cultural goods

- e) Commercial, cultural buildings, amusement centers and show rooms with a maximum of 30,000 m² of constructed area, individually or collectively
- f) Market buildings with a maximum of 15,000 m² of constructed area
- g) Premises for sporting events for an audience of up to 20,000 people
- h) All other buildings not included in Modalities A, B or D

Modality D: Approval with prior evaluation of Technical Commission

In order to obtain the licenses regulated by this Law through the approval procedure with prior project evaluation, the requirements established in this Law must be submitted to the competent municipality. Other requirements can be established in the Regulation.

The competent municipality calls on the Technical Commission within five business days. The Commission will complete the evaluation within twenty business days for buildings and forty business days for urban developments, If this term expires with no notice, positive silence procedure (authorization is granted) will be applied.

The Technical Commission cannot make new observations not observed in the initial evaluation. The respective regulation indicates the corresponding exceptions.

The following modality must be applied:

- a. Buildings for industry purposes
- b. Commercial, cultural buildings, amusement centers and show rooms with a maximum of 30,000 m² of constructed area
- c. Market buildings with more than 15,000 m² of constructed area
- d. Premises for sport spectacles for an audience of up to 20,000 people
- e. Buildings for education, health, accommodation, fuel station and transport terminal purposes

Requirements for obtaining licenses under Modalities C and D:

- a) Single Form (three copies) duly signed by the requesting party and the responsible professionals.
- b) If the property owner is not requesting the license, the representative of the holder must accredit him or herself.
- c) In the case of legal entity, the validity of the corresponding power is enclosed.
- d) Service feasibility certificate for new multi-family house work or purposes other than housing.
- e) Technical information including architecture drawings, structures, sanitation facilities, electrical installations, and others, if appropriate. The following must be submitted as part of the structure project drawings, as appropriate: excavation support drawing according to the provisions of article 33 of Standard E 050 of the National Buildings Regulation, together with the descriptive report indicating the characteristics of the same, as well as the adjacent buildings indicating the number of floors and basements, with photos. Soil mechanics documentation is also required. The safety and evacuation drawing must be submitted as part of the architecture project when the intervention of the National Institute of Civil Defense

(INDECI) ad hoc representatives or fire department is required. The original of this documentation must be submitted together with one printed copy.

The following documents are also required: CAR (Comprehensive Contractor Risk Insurance or *Seguro de todo Riesgo de Contratista*) Policy according to the characteristics of the work to be executed, with coverage of material and personal damages to third parties, as a complement to the Complementary Insurance of Risky Work according to Law No. 26790, Law of Health Social Security Modernization. The policy must be in force throughout the execution of the works; and is required by the municipality the day before the start of the works.

- a. Environmental and road impact study where required in accordance with the National Building Regulation
- b. Positive technical report of Urban Inspectors for Modality C or decision of the Technical Commission for Modalities C and D, as appropriate
- c. Receipt of the building license
- d. Budget calculated based on the chart of Official Building Unit Values

The original documents and one copy must be submitted except for the cases in which a different number of copies has been indicated.

Authorizations for domestic connections of drinking water, power and sanitation

Potable Water and Sewerage Service of Lima (SEDAPAL) supplies water and sanitation services in Metropolitan Lima.

Water connection requests are submitted to SEDAPAL, which then conducts a feasibility study, after which the service contract form and the connection cost estimate are submitted.

The requesting party must obtain two municipal authorizations before signing the contract: i) the District Municipality authorization for domestic connections for works in the public way, and; ii) the Provincial Municipality authorization for roadway interruption.

Road Impact Study

The Provincial Municipality (for metropolitan roads) or District Municipality (for local roads) conducts a road impact study for licenses C and D.

Public sector support for the private sector in licensing/permitting

Technical Commission

The Technical Commission, supported by a Professional Association, is responsible for binding decisions granting urban development and building authorizations or licenses. Its sessions are held at the Municipalities.

The following people are involved in granting building licenses: One municipality representative (the president); two representatives of the Association of Architects of Peru; and three representatives of the Engineering Association of Peru (specializing in civil, sanitation and electrical or electrical-mechanical engineering).

The decisions supervise that the requirements, conditions and parameters of the respective projects are complied. The decisions are approved by simple majority.

Each professional association (engineering and architecture) will select its delegates by internal prequalification and will support their qualifications before the corresponding Technical Commission with documentation issued by the branches indicating their status (qualifying officer, holder or acting officer), specialty and the length of his or her term in the position.

Institutions with specific functions (INDECI and Fire Department) will appoint their ad hoc representative before the Technical Commission.

Urban Inspectors

Urban Inspectors are registered professionals authorized to verify that building and/or urban development projects under Modality C for the granting of licenses, compliance with the building and/or urban provisions of the Territory Arrangement and/or Urban Development, National Building Regulation, and other pertinent rules. They also issue a technical report according to their specialty for the obtaining of the respective arrangement or building license.

Every Urban Inspector has autonomy in the performance of his or her duties and responsibilities pursuant to this Law. An inspector cannot issue a Technical Report for a specialty other than his or her own, or regarding projects in which he or she participates directly or indirectly, whether through family, labor or contract bonds.

Urban Inspectors must register in the Registry of Urban Inspectors of each province, implemented by the provincial municipality.

Urban Inspectors must obtain a certification of professional competence issued by the respective professional association. An Urban Inspector can be registered in more than one province in accordance with the conditions set forth in the Regulation of Urban Inspectors.

Ad hoc representatives

Institutions with specific functions for the qualification of urban development and building projects can appoint, before the Technical Commission, ad hoc representatives before the Urban Inspectors or before the competent municipal entity. The institutions with specific functions authorize Ad hoc representatives in the following cases:

- National Institute of Culture (INC), for building and/or urban real estate development projects included in the list of archaeological and monumental cultural heritage sites
- National Institute of Civil Defense (INDECI), for residential building projects between five and ten stories, and for urban developments located near dangerous areas
- Peruvian Brigade of Volunteer Firemen (CGBVP), for residential buildings projects over ten stories and buildings established in modalities C and D for use other than residential and for large audiences.

Government regulations regarding fees

Law N° 29090, Law of Regulation of Buildings and Urban Development, indicates that the process fees cannot exceed the process cost. Pursuant to Peruvian legislation, fees are approved by each Municipality according to the service costs. The cost is determined based on a cost structure taking into account direct and indirect costs incurred by the Municipality to grant a building license. The Peruvian laws set forth that the process fees cannot exceed 1 Tax Unit (S/. 3600.00), which currently amounts to PEN 3,500.

Transparency in the issuing of licenses

Peruvian legislation states that all public documents are available to the public upon request, unless they concern the privacy of individuals, public safety, national defense, or tax information.

Rules have been established so that the Municipalities publish in their electronic portals relevant information for the application process, such as the legislation in force and the zoning drawings and use compatibility, as well as urban and building parameters.⁸¹

Planned Reforms

- The National Competitiveness Council plans to improve the efficiency Building license procedures.
- There is currently no one-stop-shop for processing a Building License. However, there are plans to implement a single and centralized electronic system depending on the Ministry of Housing, Construction and Sanitation, in order to generate the documents to be submitted to the Municipalities. This system will later become an online operation license processing system.
- A one-stop-shop is being implemented for drinking water service connection through the drinking water company responsible for making the processes and authorizations at the Municipal level. A pilot program is currently underway in five municipalities.
- An agreement has been made with the National Superintendence of Public Records (SUNARP) to provide the Municipalities with direct access to real estate records, making the process easier and eliminating costs for obtaining the Building License for the requesting parties.
- The urban inspectors' mechanism is being implemented under Law N° 29090; however, no effective results have been achieved to date.

Conflict Resolution Mechanisms

If the Municipality's decision is not approved (i.e., the submitted building project is rejected), the party requesting the license can appeal to the District Municipality. An Ombudsman's Office is recognized by the Constitution, but for the specific case of building licenses, there is no special office for resolving and hearing the complaints of individuals or investors.

3. Getting Credit in Peru

3.1 Background

In accordance with article Number 87 of the Political Constitution of the State, the Superintendence of Banking and Insurance (SBS) and Private Pension Fund Administration Companies are responsible for regulating commercial banks, insurance companies, Private Pension Fund Administration Companies, other companies receiving public deposits, and other companies engaged in related or similar operations determined by law.

⁸¹ An example can be found at: www.miraflores.gob.pe

SBS is exclusively responsible for the supervision and regulation of financial institutions. Such companies are governed by the General Law of the Financial and Insurance System and Organic Law of the Superintendence of Banking and Insurance, approved by Law N° 26702 and its amendments (Law N° 26702) containing the provisions establishing the powers and objectives of the regulatory and supervisory entity.

Law N° 26702 states that SBS is responsible for defending the public interest, supporting the economic and financial wellbeing of individuals and legal entities under its control, and ensuring compliance with legal, regulatory and statutory rules. Furthermore, SBS is empowered with regulatory, inspection and control faculties, as well as the authority to sanction.

In its regulatory capacity, SBS has issued, among others, rules related to the entering and exiting of the market; credit risk management; operational, liquidity and market rules; credit ratings according to international standards; accounting rules; credit concentration limits; consolidated, internal, and external audits, among others.

SBS has also issued the Integral Risk Management Regulation, establishing the Board's responsibility for integrated risk management; the business enabling environment; general policies guiding business activities; evaluating and approving business plans according to the related risks awareness of risk; and establishing, when possible, adequate levels of tolerance and appetite for risk.

With regard to property guarantees, in 2006, through Law N° 28677, Law of Property Guarantee, Peru adopted a new legal framework for credit through property and goods guarantees. The aim of this law is to facilitate the use of guarantees over such goods to increase access to financing, particularly by small business.

The objectives of Law N° 28677 are:

- To unify rules for the use of properties as securities;
- To facilitate property guarantee agreements;
- To extend the range of taxable goods (consideration is given to the possibility of future real estate as a property guarantee, the right to obtain products from any good, every kind of machinery or equipment maintaining its property nature and, in general, all personal property that can be given in property guarantee); and
- To incorporate new mechanisms to expedite the implementation of safeguards, permit the award by the creditor of the collateral, among others.

Commercial lending, including microcredit and secured transactions

The characteristics of the environment for commercial lending are as follows.

- Pursuant to Law N° 26702, financial institutions can freely set interest rates, commissions and expenses for active and passive operations and services. Nevertheless, the respective limits on the setting of interest rates indicated by the Central Bank shall be observed, according to the provisions of the Organic Law (the Central Bank has not used such faculty to date).
- Positive and stable macroeconomic environment
- A Risk Center with complete information (positive and negative information on all debtors) is available to financial institutions

- A financial network including the Deposit Insurance Fund and the Central Bank as lenders of last resort
- There are no restrictions on the issuance of microcredit. Financial institutions are free to allocate resources from their portfolios within the limitations set forth in Law N° 26702: risk diversification criteria must be observed at all times.
- The Government does not participate in the financial system except for its investments at COFIDE (Development Finance Corporation), *Banco de la Nación*, *Agrobanco* and *Fondo MiVivienda*.
- The legal framework establishes that the general provisions set forth by the Central Bank or the Superintendence in execution of their powers cannot give preferential treatment to i) companies of the same nature; ii) companies of different nature related to one same operation; iii) companies established domestically with respect to their branches abroad, and; iv) resident foreign individuals/legal entities and domestic individuals/legal entities with regard to access to credit.
- There is a legal framework of protection of financial consumers.

With regard to the microcredit, the regulatory framework does not distinguish between types of businesses. The regulatory framework is flexible due to the highly informal nature of the borrowers involved. The regulations adjust to market innovations and new products. Without compromising flexibility, regulation is prudent regarding capital requirements and specific provisions for micro-credit. The regulation also includes international best practices (Basel Accords, International Financial Reporting Standards, etc.).

With regard to the conferring of guarantees, according to the CEAL Foundation's (Economic Analysis Center for Laws) report "Peru: Diagnosis and improvement recommendations for the property guarantee system," (March 2009), it was determined that the total economic benefit foreseen in Law N° 28677 could be improved. In response, in July 2011, the Executive Branch sent the Congress the Bill 4906/2010-PE, which is currently archived, and which proposes the following:

- To modify the operation of the current Property Guarantee system to become a noticing system providing priority and enforceability.
- To eliminate the responsibility of SUNARP to review the legality of property guarantees, transferring this responsibility to the guarantee beneficiary or creditor.
- To modify the information contained in the notice of the property guarantee so that the existence of such is notified and the registration date is set (priority).
- To allow several authorized operators (notary publics, chambers of commerce, financial and banking companies, among others) to remotely enter notices into the database
- To ensure free online access for users to revise recorded property guarantees.

The credit reporting/information system

In accordance with provisions of Law N° 26702, SBS is responsible for an integrated system of consolidated and classified credit information called the Commercial Risk Center (*Centro de Riesgos Comerciales*). The corresponding information is available for the insurance and financial institutions, the Central Bank, commercial businesses, and other interested parties.

The credit reporting system operates through the delivery, by all financial institutions supervised by SBS, of an Annex of Accounting Manual called Annex N° 6 or Debtors Credit Report (CRD). The CRD must be delivered every month containing the details of credit operations (type of credit, modality of credit, debt balance, client classification, days past due, constituted provisions, etc.), as well as comprehensive identification data on each client.

The CRD issued by each company is validated and consolidated by SBS. After the information is consolidated, SBS delivers it to its supervised entities to comply with the rules regarding debtor classification and provisions constitution, as well as to produce statistics on data quality control and macroeconomic policy.

SBS receives credit information only from supervised financial entities, which does not include other forms of credit obligation from non-financial institutions.

Private Risk Centers not subject to supervision by SBS are regulated by Law N° 27489, which regulates private risk information centers and consumer protection, and Law N° 29571, Code of Consumer's Protection and Defense. In such Private Risk Centers, commercial operations information is included in addition to information on credit operations in the financial system.

4. Enforcing Contracts in Peru

4.1 Background

Most commercial disputes in Peru are resolved in one of two ways: either by lawsuit (through civil, commercial or judicial review); or by contract submission or by arbitration that was agreed to by contract, constitutionally acknowledged as an exception to the ordinary jurisdiction (Art. 139; paragraph 1).

Both commercial and civil lawsuits are mostly governed by the Code of Civil Procedure (Legislative Decree N° 768, Single Revised Text approved by Ministerial Resolution N° 010-93-JUS), which governs specific matters such as General Corporation Law, Securities Act, Personal Property Guarantee Act, etc.

While controversial issues related to consumers' rights, anticompetitive commercial behavior, restructuring and/or business liquidation processes and insolvency proceedings are commercial issues and provided for separately by law. They are first processed in an administrative facility before Peru's National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), and subsequently before a subspecialty (civil law) court, through a "contentious administrative process"⁸² governed by special legislation (Law N° 27584; Law of Contentious Administrative Process).⁸³

Finally, arbitration is regulated in Peru by Legislative Decree N° 1071, which is applicable to all arbitrations within Peruvian territory, whether it is a national or international arbitration. The

⁸² In this type of contentious administrative process, what is in discussion is the proper application of regulations by the administration, as well as the due respect to the fundamental rights of citizens to a due process in accordance with laws and regulations; being also able to make amendments to any substantial weakness or to procedures and recognizing or deciding the main issue.

⁸³ Processes that arise as a consequence of the issuance of administrative enforcements related to the issues will be subject to appeal in accordance with provisions of the mentioned law.

arbitration court is free to settle the procedural regulations as it may consider appropriate, respecting the basic guidelines of such regulation.

Commercial courts and arbitration/mediation tribunals

The Organic Law of the Judicial Power, in its transitory and final twentieth-seventh provision,⁸⁴ stipulates the existence of a Specialized Court for commercial issues in the Superior Court of Justice in Lima as of 1994.⁸⁵

Administrative Resolution N° 006-2004-SP-CS dated September 30, 2004, enacted on October 10, 2004, creates the commercial subspecialty in the Court of Lima, describing the issues to be discussed, mainly economic issues related to the Securities Act,⁸⁶ General Corporations Law,⁸⁷ Law of Individual Limited Liability Companies, Law of the Financial and Insurance Systems and Organic Law of the Superintendence of Banking and Insurance, Securities Law, all of which regulate commercial contracts;⁸⁸ land, sea, river, lake and air transport of general goods, Law of General Arbitration,⁸⁹ and in the second instance the appeals submitted to the magistrates' court for commercial issues.

Today there are two implemented Sub-specialized Superior Courts and seventeen Sub-specialized Commercial Courts. Historically implementation began in 2005, enabling seven Courts and one Commercial Sub-specialized Court and then increased to five courts in 2006; and five more commercial courts and another Superior Court in 2009. There are five more courts to be implemented (a total of twenty-two were created), which might be done according to the increasing demand of justice services in the commercial area of the Superior Court of Justice of Lima. It should be emphasized that there is a commercial judiciary council within the country, but with less demand.

Additionally, there are Arbitration and Conciliation Centers responsible for carrying out arbitral procedures in an institutionalized manner, and where disputes related to numerous commercial activities are submitted (insurance, commercial contracts, etc.), whether they are institutionalized or ad hoc. The Chamber of Commerce of Lima, the College of Engineers of Peru and Pontifical Catholic University of Peru are some of the institutionalized arbitration centers that are highly recognized, to mention just a few.

⁸⁴ TUO approved by Supreme Decree N° 017-93 dated 28/05/1993, published the following day.

⁸⁵ The Second paragraph of the Administrative Resolution N° 006-2004-SP-CS dated September 30th of 2004 and published in the Official Newspaper El Peruano on October 2nd of 2004.

⁸⁶ In Law N° 27287 appears collection action, cause action (Art. 94), unjust enrichment (Art. 20), inefficacy of security (Art. 102), replacement of security due to deterioration or destruction, inefficacy of nominative and non transferable securities (Art. 102 and the following).

⁸⁷ Law 26887 outlines, among other pretensions, compensation for damages and injuries caused to the society by partners or administrators (Art. 12 and 18), nullity of corporate agreements (Art. 38 and art. 150), cautionary measures over actions (art. 110), judicial calls to board of directors (art. 117 and art. 119), appeal of agreements (art. 139 and art. 143), exclusion of shareholders (art. 276), dissolution of the corporation (art. 409 and art. 410).

⁸⁸ Contracts of: commercial commission, commercial pledge, factoring, franchising, Know How license, edition contracts, distribution contracts, commercial grant contracts, sponsorship, joint ventures, agency contract, brokering contract and conflicts derived from foreign trade operations.

⁸⁹ Legislative Decree N°, range of evidence, grant and enforcement of cautionary measures and enforcement of arbitral awards.

Enforcing domestic and foreign judicial judgments and arbitral awards

Judicial processes in Peru are governed by the principle of plurality of instances, which means that as a general principle all disputes before jurisdictional courts are subject to appeal, allowing the submission of the dispute to a superior court or a review (by the court issuing the first decision). Finally, according to some regulations (Art. 386 of the Code of Civil Procedure), it is possible that the dispute be submitted to the Supreme Court of the Republic, which is called “extraordinary cassation resource.”

Furthermore, arbitral procedures according to their current regulations (Legislative Decree N° 1071) are carried out in only one instance, and in that sense the judgment given becomes definitive. There is always the possibility of a judicial review of that arbitral judgment in a judicial court or before a superior court. In the case of the Court of Lima, it will be before the Sub-specialized Commercial Court.

For the acknowledgement of foreign judicial judgments, it is necessary to follow the procedure called “Exequatur” before national courts. That procedure is regulated by the Civil Code (Legislative Decree N° 295, Book X, Title IV, Art. 2102 and the following), which after being approved, grants the foreign judgment the same effect of a national judgment. Similarly, the acknowledgment of Foreign Awards requires a procedure regulated by Legislative Decree N° 1071 (Art. 74 and the following).

Peruvian contract law is a mixed regime: there is a Code of Commerce (1852) that states the general regulation of commercial contracts (bid, acceptance, formalities, ways of contracts approval, etc.). However, as this code does not consider many current situations (excessively burdensome consideration, unfair terms), the general regulation is also used for contracts related to the Civil Code. As regards typical contracts, it is more disorganized since there are contracts regulated by the Code of Commerce (commercial checking accounts), by the Civil Code (supply), and many other special laws: leasing, trust, bank checking account, etc.

There have been reforms that do not refer specifically to freedom of contract but are relevant to it, such as in the case of the Consumer Code, which considers situations that affect commercial contracts: unfair clauses, termination of contract, etc. Law N° 29571 of September, 2010.

Contract law is part of a Law on Obligations. The law on contracts/obligations starts with the presumption of freedom of contract, but in some areas there is more protection for what is considered a weak party in the agreement, for example consumer law. There is a generic restriction established in Article V of the Preliminary Title in the Civil Code, with regard to public order and good customs.

The law allows private enforcement of contracts following a court order. This is procedurally called “legal agreement post-judgment” and is regulated by the article 339 of the Code of Civil Procedure. It allows regulation or modification of compliance of judgment. The Property Guarantee Act allows private enforcement, which is generally agreed upon in almost all contracts. In case of arbitration, enforcement mechanisms in hands of arbitrators can also be agreed upon, but this happens very infrequently.

Peru permits very few private remedies against fraud. Allowable private remedies include confiscation in the case of property guarantee (which must be legally authorized), seizure of funds, or compensation from banks over checking accounts’ balances.

Peru has ratified both the United Nations Convention on Contracts for the International Sale of Goods and the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

Procurement reforms are being undertaken to improve the legal sale of goods.

As for laws governing electronic transactions, a Law of Electronic Commerce itself has not yet been issued in Peru to fully regulate all related aspects. However, there is a regulation about signatures and digital certificates, and about data messages and digital signatures (Law N° 27291; and Law N° 27310 which modifies Law N° 27269). There is an effort underway by the Andean Community of Nations to standardize regulation on this issue.

Enforcing judgments

Exclusive Enforcement Procedure is intended to regulate fulfillment of judicial judgments. At present, there are many proposals for its improvement. The procedure is comprised of a short cognitive phase (suit and response). After that, a final resolution is issued with the option to appeal to a superior court; and in some cases an extraordinary cassation resource can be granted.

Notaries

The use of Notary services is mandatory for compliance with a formal procedure, for example a Public Deed that can only be issued by a Notary. In general the need for Notaries has been largely eliminated. However, most of the important agreements are formalized through Public Deeds, although this is rarely necessary.

Alternative dispute resolution

There are numerous conciliation centers and also Arbitration Centers (Chamber of Commerce in Lima, Pontifical Catholic University, Peruvian American Chamber of Commerce, etc.).

4.2 Trends

There are many proposed reforms intended to improve not only the legal framework but also the type of tools used. Peru's judges have proposed many improvements in the judicial enforcement process, which can be combined with extra judicial enforcement. Technological advancements must be made, and greater transparency is needed in several areas, including notice, auction and electronic seizure.

A proposal for modification of the Law of Contentious Administrative Process: As mentioned previously, some commercial matters are processed through a contentious administrative process. For this reason, a modification has been proposed for Art. 11 of the Law N° 27584, modified by the Legislative Decree N° 1067, which grants functional competence to the Superior Commercial Court and the Commercial Court, when it refers to decisions issued by the administrative courts of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI).

A proposal for modification of the Code of Civil Procedure is intended to expedite the enforcement process, simplifying and concentrating the different procedure stages held in Art. 690, Art. 720, Art. 737, Art. 728, Art. 730, Art. 731, Art. 732, Art. 393, Art. 691, (competence, simplification of judicial appraisal, gathering of calls and advertising, simplification of appeal resources, grantee's right assurance, etc.). It is also intended to limit the resource of cassation,

modifying Art. 387 of the Code of Civil Procedure to limit resort to cassation (which is annulment of a judgment by a higher court) to higher monetary awards. These projects are included in a commission in the Open Court of the Supreme Court of Justice of the Republic, a certified entity with legislative initiative.

A proposal for an implementation of a new urban ratio in the Court of Lima will allow the reduction of terms for judicial notices. To this end, mini-centers for notices and free judicial mailboxes are to be created, as well promoting the use of electronic notices in commercial matters, as judicial resolutions issued by notification for informative purposes to the electronic mailboxes and it is impossible to guarantee their delivery through appropriate certifications.

A proposal for an interconnection with the National Superintendence of Public Registry is intended to reduce the execution time of a court order which stipulates the transmission of a certificate of the Registry Public of Property and Commerce (seizure notice as a withdrawal) by using electronic communication among the judges and the public registrars. A pilot program is being implemented in the commercial courts of Lima. Thus, an electronic presentation of the court's decision is available almost immediately, keeping the registry priority and avoiding the risk that the debtor makes a transfer of assets due to information leakage and the time needed for physical transfer of documents.

Proposal for outsourcing of judicial actions and electronic seizure services: Due to the current situation in which judicial auction of processed debtor's good is carried out by a public auctioneer, it is proposed that an electronic system be implemented to allow de-personalization of that auction and real participation of any interested party, and direct deposit into an Judicial Power's bank account, especially if there is a regulatory framework allowing electronic communications in Peru.⁹⁰ This issue is being reviewed together with *Proinversión* and the Ministry of Economy and Finance (MEF) in order to explore the possibility of allowing private companies to participate in the design and implementation of this initiative.

5. Trade Across Borders in Peru

5.1 Background

Suggested text:

Peru continues its strong push toward integration with the global economy. Implementation of the U.S. Peru Trade Promotion Agreement (commonly referred to as the Free Trade Agreement, or FTA) in February 2009 has been followed by a series of negotiations in which the Peruvian Government has concluded or is seeking to conclude trade agreements with its other major trading partners, including China, the European Union and Japan. Peru was also a participant in efforts begun in early 2010 to negotiate a regional trade agreement under the Trans-Pacific Partnership, which also includes the United States and others.

⁹⁰ Legislative Decree N° 681, which approves the process of modernization of public entities to improve public management, expanded by the Legislative Decree N° 827. (May, 1996). Law N° 27269, Law of Signatures and Digital Certificates, (May, 2000) modified by Law N° 27310 (June, 2000). Supreme Decree N° 052-2008-PCM, Law Regulation N° 27269 of signatures and digital certificates. Administrative Resolution N° 256-2010-CE-PJ for application of notice to electronic mailbox for contentious administrative processes in every type of civil and mixed courts and their corresponding Superior Courts of every Judicial District in the country.

Peru's customs practices are codified in the General Law on Customs, enacted by Legislative Decree 1053, enacted on November 27, 2008 and its Regulations, enacted by Supreme Decree 010-2009-EF, enacted on January 16, 2009.

There are additional regulations governing specific aspects of foreign trade, such as the Law on International Trade Promotion of Services (Law 29646); Law on International Trade Facilitation (Law 28977), which created the International Trade Single Window (ITSW); Law on the National Ports System (Law 27943) among others.

The new General Law on Customs was enacted for the purpose of facilitating the implementation of Trade Agreements signed by Peru, specifically after the signing of the United States-Peru Trade Promotion Agreement (US-Peru TPA), to improve economic competitiveness, and promote trade facilitation in Peru.

The General Law on Customs calls for the implementation of new provisions, including:

- Certified Customs Users
- Shipment of goods within 48 hours of unloading
- Pick-up of goods at the point of arrival
- Independent and expedited procedure for Overnight Shipments
- Implementation of comprehensive and targeted guarantees
- Advanced Decisions related to tariff classification; customs valuation criteria; tax returns; tariff suspension and exemptions; duty-free reimportation of the goods, subjected to repairs, alterations or modifications; and tariff classification of goods.

Although customs regulations are not available in English, information related to importation, exportation, tariff classification, fees and guarantees, express shipment, temporary importation, trade agreement, migration incentives, donations, restricted goods, and traveler's information are available in English at the SUNAT website.

The following Free Trade Agreements are in force:

- United States - Peru Trade Promotion Agreement (US-Peru TPA)
- Peru-Singapore Free Trade Agreement
- Canada-Peru Free Trade Agreement
- China-Peru Free Trade Agreement
- Peru-Chile Free Trade Agreement
- Peru- EFTA Free Trade Agreements
- Peru-Korea Free Trade Agreement
- Peru-Thailand Protocol
- Peru-Mexico Free Trade Agreement
- Peru-Japan Economic Partnership Agreement
- Peru-Panama Free Trade Agreement

The following agreements have been signed but are pending entry into force:

- Peru – Guatemala Free Trade Agreement
- Peru – Costa Rica Free Trade Agreement
- Peru – Venezuela Partial Extent Agreement on Commercial Affairs
- Peru – European Union Trade Agreement

Furthermore, although Peru has not acceded to the Kyoto Convention, Peru and the other members of the Andean Community—by Decision 618 enacted on July 25, 2005 in the Official

Gazette of the Andean Community—have made a commitment to the progressive adherence to the General Annex of the Kyoto Convention regarding the common rules of Customs harmonization as proposed by the Andean Community General Secretariat. It is worth mentioning that the new General Customs Law, Legislative Decree N° 1053, is based on the aforementioned Decision 618.

Enforcement mechanisms for trade-related conventions and treaties

The agency responsible for negotiating trade agreements on behalf of Peru is the Ministry of Foreign Trade and Tourism (MINCETUR), which, in coordination with other agencies, negotiates, executes, and enacts the abovementioned trade agreements.

After completing the trade agreement negotiation process, MINCETUR executes the agreement on behalf of the State. Subsequently, all public agencies participating in the negotiations are asked to review the negotiated text. Recommendations are forwarded to the Ministry of Foreign Affairs which shall review them and determine the best method of implementation. If the negotiated agreement requires the amendment of any law, the agreement must be passed by the Congress of Peru and enacted by the Executive Branch. On the other hand, if the negotiated trade agreement conforms to the present legal framework, the agreement may be ratified by Supreme Decree issued by MINCETUR and entered into force by Supreme Decree issued by the Ministry of Foreign Affairs.

By virtue of Legislative Decree 1092 enacted on June 28, 2008 and its Regulations, enacted by Supreme Decree 003-2009-EF, enacted on January 13, 2009, Customs enforces measures ordering the seizure of alleged forged, pirated or confusingly similar products, pursuant to the laws on copyright, intellectual property, and the like. These border protection measures are applicable to the importation of goods for consumption, final export, temporary export for reimportation in its current condition, and customs traffic.

Law 29646 establishes the legal framework for international trade in services promotion. The Ministry of Economy and Finance (MEF) and MINCETUR are the agencies responsible for international trade in service promotion policies. The National Tax Administration is the agency responsible for overseeing and passing any administrative decision related to service export modalities.

MINCETUR was created by Law 27779 and designated as the governing body for International Trade and Tourism. It is called upon to delimit, conduct, perform, coordinate, and oversee foreign trade and tourism policies. It is responsible for promoting exports and for conducting international trade negotiations, in coordination with the Ministries of Foreign Affairs and Economy and Finance, as well as with other government agencies, within the scope of their respective jurisdictions. Moreover, it is responsible for regulating international trade. The Minister of MINCETUR is vested with the power to conduct international trade negotiations on behalf of the State and is authorized to execute agreements concerning matters under his or her authority.

The Ministry of Economy and Finance is charged with proposing, performing, and examining tariff, customs, and competition guidelines and policies to allow efficient allocation of resources and continuous enhanced productivity, as well as guiding economic integration processes through consistent economic policies.

The enactment of the General Law on Customs and its regulations has not only brought about improvements to the law, thus facilitating trade, but has also achieved upgrades in the information systems and processes at the National Customs and Tax Administration (SUNAT). Moreover, these enhancements have reduced time and have simplified administration costs. Since the enactment of the General Law on Customs, and its Regulations, continuous improvements have been observed.

In this sense, SUNAT is presently upgrading the existing customs information platform (SIGAD). In the short term, SUNAT aims to implement the NPDA into a New Customs Management Integrated System (NSIGAD). When this is completed, Peruvian Customs will once again be at the forefront of technology and customs processes in the region—ahead of many of its peers.

Moreover, SUNAT has been promoting the implementation of the Certified Customs Users (*Usuario Aduanero Anticipado*), (similar to the Certified Economic Operator, or *Operador Económico Autorizado*), achieving greater security throughout the international trade logistics chain.

In 2007, the regulations for the implementation of an International Trade Single Window (ITSW) were approved by Supreme Decree 010-2007 (MINCETUR). This is an internet-based management system processing certifications, licenses, and other permits required by competent authorities in connection with export and import transactions. As of 2011, a total of 82 administrative proceedings have been implemented under the restricted goods component with six agencies. Peru expects to expand this effort to the Origin and Port Single Windows within the next two years, as set out in the 2012-2013 Competitiveness Agenda.

MINCETUR chairs the International Trade Single Window Commission (ITSW). ITSW is the trade facilitation mechanism enabling concerned parties in international trade and transportation to lodge standardized information and documents at a single location to conduct all import, export and in-transit operations. As this information is lodged electronically, it only needs to be sent once.

SUNAT is the agency charged with administering, collecting, controlling, and overseeing the international trade of goods, means of transportation, and individuals within its customs territory. In addition, SUNAT provides services aimed at facilitating international trade. In turn, MEF is responsible for determining and examining tariff, customs, and competition guidelines and policies. Further, MEF chairs the Competitiveness National Council (*Consejo Nacional de la Competitividad*), whose mission is to develop and implement a National Competitiveness Plan and supplementary activities to improve Peru's capacity to compete in the international market. Among its policies are to guide business facilitation in Peru.

5.2 Trends

Regarding customs, a number of diverse measures have been developed and implemented to facilitate international trade, as follows:

Trade Facilitation	Status in 2009	Major Achievements incl. Significant Progress after the Mid-term Stocktake and Example of Best Practices
Consistency with APEC Principles on	Most of the Customs Facilitation measures have been followed, except for the IATA Convention and the Istanbul Convention, to which Peru is not a signing party.	The Peruvian government is working toward the implementation of ebXML

Trade Facilitation	Status in 2009	Major Achievements incl. Significant Progress after the Mid-term Stocktake and Example of Best Practices
Trade Facilitation	Regarding the Kyoto Convention, Peru has not acceded, however the domestic Customs law takes recommendations for Customs procedures into account.	as an electronic framework for any electronic government information exchange procedures.
Implementation of Trade Facilitation Action and Measures.	<p>SUNAT publishes draft customs procedures on its website, allowing interested parties an opportunity to comment. Customs declarations are submitted electronically and electronic forms for Customs procedures have been established. Cargo manifest data is sent electronically before cargo arrival.</p> <p>As of September 21, 2009 it is possible to electronically regularize export customs declarations.</p> <p>The Ministry of Foreign Trade and Customs Authority are working together on the Foreign Trade Single Window.</p> <p>On April 1, 2007 the new Tariff Book entered into force, including the Fourth Amendment of the Harmonized System and Decision 653 of the Andean Community.</p> <p>Peruvian Customs Law provides an advance clearance system, which allows clearance of goods before, during or after arrival.</p> <p>Modeling of “Risk Module” of NPDA Project (New Customs Clearance Process), with three main components: SAM (Model Manager System), SAC (Catalogue Administrator System) and FMV (Multi Variable Filters).</p> <p>Risk Management System in export process facilitation resulting in random selection of shipments for presentation of physical documents. Until September 2009, 100% of export declarations were subject to physical document verification.</p> <p>The Ruling of Special Customs Regime of Express Delivery Consignments – Supreme Decree N° 011-2009-EF was enacted on January 16, 2009 and entered into force on January 1, 2010.</p> <p>The Ethics Code was approved by National Superintendence Resolution 161-2009/SUNAT on July 30, 2009.</p>	According to Peruvian Customs Act (Article 167), Customs clearance time will not exceed 48 hours under regular conditions. Express Delivery Consignments will not exceed six hours.

III. Resource Bibliography

Resource	Website
Development Finance Corporation (COFIDE)	www.cofide.com.pe
Ministry of Housing, Construction and Sanitation	www.vivienda.gob.pe
Ministry of Justice and Human Rights	www.minjus.gob.pe
Ministry of Production	www.crecemype.pe
National Superintendence of Tax Administration (SUNAT)	www.sunat.gob.pe
Service to Citizens and Businesses	www.empresas.gob.pe
Ministry of Foreign Trade and Tourism	www.mincetur.gob.pe

Singapore

I. General Information

1. General Business Enabling Environment Structure

While rules and regulations are necessary to ensure that markets function in an orderly manner, excessive regulations could stifle the entrepreneurial spirit and business growth. A host of ministries and agencies are responsible for the different areas under the five Ease of Doing Business focus areas, and the Singapore public sector works closely together to ensure our businesses spend less time, effort and money in complying with rules and regulations. The following table provides an overview of the agencies involved and their roles.

Agency	Role
(A) STARTING A BUSINESS	
Accounting and Corporate Regulatory Authority (ACRA)	Regulates business entities and public accountants in Singapore
Inland Revenue Authority of Singapore (IRAS)	Administers, assesses, collects and enforces payment of taxes
Singapore Government Network Information Centre (SGNIC)	Administers the registration of .SG domain names
Standards, Productivity and Innovation Board (SPRING Singapore)	Helps enterprises in financing, capability and management development, technology and innovation, and access to markets. SPRING is also the national standards and accreditation body
Ministry of Trade and Industry – Pro-Enterprise Panel (MTI-PEP)	Seeks and works on suggestions on how government rules and regulations can be improved
Trade associations and chambers	Liaise with companies to provide capacity building and aggregate industry concerns
(B) DEALING WITH PERMITS	
Building and Construction Authority (BCA)	Develops and regulates Singapore’s building and construction industry
Ministry of National Development (MND)	Plans for national land use and development
Urban Redevelopment Authority (URA)	Plans for national land use and conservation
JTC Corporation (JTC)	Develops national industrial structure
Land Transport Authority (LTA)	Plans the long-term transport needs of Singapore
Ministry of Environment & Water Resources (MEWR)	Ensures a clean, sustainable environment and water supply for Singapore
National Environmental Agency (NEA)	Sets and enforces environmental standards
Public Utilities Board (PUB)	Collects, produces, distributes and reclaims water in Singapore

Agency	Role
Ministry of Manpower (MOM) – Commissioner of Workplace Safety and Health	Oversees occupational safety and health
Singapore Civil Defence Force (SCDF) – Fire Safety & Shelter Department (FSSD)	Regulates fire safety
(c) Getting credit	
Monetary Authority of Singapore (MAS)	Regulates the financial sector
Credit Bureau Singapore (CBS), DP Credit Bureau	Collects and shares credit information; gazetted by MAS
DP Information Network, Dun & Bradstreet Singapore (D&B Singapore)	Commercial credit bureau
(D) ENFORCING CONTRACTS	
Ministry of Law (MinLaw)	Ensures sound legal infrastructure, intellectual property infrastructure and insolvency regime
Attorney-General's Chamber (AGC)	Advises the Government on all aspects of public administration, criminal law, international law, legislation and law reform
Subordinate Court	Hears civil claims up to \$250,000
High Court	Hears civil claims beyond \$250,000
Supreme Court	Superintends the administration of justice
Singapore Mediation Centre (SMC)	Promotes amicable and efficient settlement of disputes
Infocomms Development Authority of Singapore (IDA)	Oversees IT standards
(E) TRADING ACROSS BORDERS*	
Ministry of Trade and Industry (MTI)	Formulates and implements trade policies
Singapore Customs	Implements customs and trade enforcement measures

* For a more detailed list of the agencies involved, please refer to the priority area write-up.

2. Resource Bibliography

To ensure that businesses can access information readily, a range of web resources is available. Some of these websites integrate the services of multiple ministries and agencies, providing one-stop access.

Resource	Website	Description
(A) STARTING A BUSINESS		
EnterpriseOne	www.enterpriseone.gov.sg	Provides information about business and licensing
Online Business Licensing System (OBLS)	https://licences.business.gov.sg	Serves as a one-stop licensing portal for 80 licenses from 17 Government agencies
ACRA	www.acra.gov.sg	Contains information on various types of business entities, and provides links to e-services for businesses
Bizfile	www.bizfile.gov.sg	Serves as an online filing and information retrieval system, and a one-stop facilitator for businesses. Offers close to 300 e-services
(B) DEALING WITH PERMITS		

Resource	Website	Description
BCA	www.bca.gov.sg	Contains information on applying for building plan approval, as well as details for the various aspects of dealing with construction permits
CORENET	www.corenet.gov.sg	Serves as a one-stop shop for construction licensing procedures
NEA	app2.nea.gov.sg/circular_19981031.aspx	Contains information on appeal mechanism for disputes between Qualified Professionals (QPs) and NEA departments
MOM	www.mom.gov.sg/workplace-safety-health/wsh-regulatory-framework/Pages/workplace-safety-health-act.aspx	Contains information on the Workplace Safety and Health Act
FSSD	www.scdf.gov.sg	Contains information on fire safety standards and regulations
(C) GETTING CREDIT		
MAS	www.mas.gov.sg	Contains information on the various Acts and regulations that govern the financial services sector
CBS	www.creditbureau.com.sg	Provides access to credit reports
(D) ENFORCING CONTRACTS		
Legislation Database	https://agcvldb.agc.gov.sg/aol/home.w3p	Contains revised editions of Acts and subsidiary legislation
SingaporeLaw	www.singaporelaw.sg	Provides write-ups on the laws of Singapore relevant to business and dispute resolution
Subordinate Courts	app.subcourts.gov.sg/civil/page.aspx?pageid=10939	Contains information on the enforcement of judgments and orders
Supreme Court	app.supremecourt.gov.sg/default.aspx?pgID=92	Contains information on enforcement proceedings
SMC	www.mediation.com.sg	Contains information on the alternative dispute resolution services and facilities offered
Singapore Parliament Reports	www.parliament.gov.sg/publications-singapore-parliament-reports	Sets out the speeches and debates in Parliament during the introduction of Bills (for new Acts and amendments to existing Acts)
IDA	www.ida.gov.sg/Policies%20and%20Regulation/20060420164343.aspx	Contains information on the Electronic Transactions Act (ETA)
(E) TRADING ACROSS BORDERS		
TradeNet	www.tradenet.gov.sg	Provides a one-stop e-platform for trade declaration
TradeXchange	www.tradexchange.gov.sg	Serves as a secure trade platform that facilitates the exchange of information within the trade and logistics community
Singapore Customs	www.customs.gov.sg	Contains information on various procedures and regulations on traders
Competition Commission of Singapore (CCS)	www.ccs.gov.sg/content/ccs/en/Legislation/CCS-Guidelines.html	Provides guidelines on how the provisions under the Competition Act will be administered and enforced.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Singapore

Background

The legal forms of business structure in Singapore are: sole proprietorship, general partnership, companies, limited liability partnership and limited partnership.

a) Procedures on setting up a business

(i) Setting up a business

To set up a business in Singapore, applicants need to go through the Accounting and Corporate Regulatory Authority (ACRA), which administers the registration of businesses in Singapore. All applications to register a new business are submitted online, and businesses are usually registered in 15 minutes, upon payment of the registration fee, which ranges from S\$50 to S\$300 depending on the type of business entity, and the name approval fee of S\$15.

As part of its pro-enterprise and pro-business philosophy, ACRA provides a one-stop-shop by integrating the services of multiple agencies such as the Inland Revenue Authority of Singapore (IRAS), Singapore Customs, Singapore Government Network Information Centre (SGNIC), Standards, Productivity and Innovation Board (SPRING Singapore) as well as banks. ACRA's online filing and information retrieval system, Bizfile, allows one to file a whole suite of applications and lodgements, such as conversion between types of business entities, filing of annual declaration, and submission of required annual reports online, once the business entity is successfully registered.

(ii) Applying for relevant licences

To apply for the relevant licenses, businesses can use the Online Business Licensing Service (OBLs), a one-stop licensing portal for 80 licenses from 17 Government agencies. The OBLs has created a pro-enterprise environment in Singapore, particularly for would-be entrepreneurs who might lack the resources and expertise to navigate disparate licensing systems.

Through the OBLs, businesses can easily search for required licenses by specifying keywords in the search engine or by navigating through industries/business activities or government agencies' tabs to retrieve a full list of licenses that may be applicable. To avoid duplicative forms for different licenses, the OBLs dynamically generates integrated online license forms based on the licenses selected. A consolidated payment system allows businesses to pay for multiple license applications and renewals via a single transaction, with options in payment modes. Businesses are kept updated of changes in application status through email and SMS alerts.

b) Accessing information on laws, regulations and procedures

ACRA makes available information on the Accountants Act, Business Registration Act, Companies Act, Limited Liability Partnerships Act and Limited Partnerships Act on its website. For certain complex matters, circulars and Practice Directions are issued in order to explain clearly the intent behind the legislation and to explain how the legislation has been operationalised. These assist the professional firms (lawyers, public accountants and chartered

secretaries) in complying with the requirements of the legislations with respect to starting a business, which are under the purview of ACRA.

Information on how a business person can comply with these laws, regulations and procedures are also shared during public seminars, forums, conferences and talks. Some of the events organised by ACRA are the Start Up Conference, Essentials for Business seminars and the Public Accountants Conference. When key changes are made to any of the laws administered by ACRA, ACRA would conduct briefings to the professional firms and the business community to keep them updated of the legislative changes and to explain the impact of these changes.

In addition, ACRA has launched 2 publications – A “Regulatory and Business Guide for Start-Ups” and a Guidebook for Directors entitled “ACRA & I: Being an Effective Director”. Both these publications also serve to educate the business community on the regulations and procedures under the various legislation and the duties and responsibilities of company directors. Information on business registration, including the agency in charge, procedures involved, and the time and cost required, could also be found on the EnterpriseOne website, which is managed by SPRING Singapore. If there are further queries on any of the starting business procedures, there is an EnterpriseOne hotline that the individual can call to seek help from.

To improve the accessibility of information, the materials are in English. Additionally, the EnterpriseOne website is also available in Chinese.

Other than ACRA, business chambers and organisations such as the Singapore Business Federation (SBF), Action Community for Entrepreneurship (ACE), Singapore Chinese Chamber of Commerce and Industry (SCCCI) and Association of Small and Medium Enterprises (ASME) also conduct workshops and seminars and public awareness programmes on the Singapore Companies Act & Regulations.

c) Regulatory framework

Every business in Singapore must be registered with the ACRA and they are bound by the following legal framework, depending on the type of entity:

(i) Legal framework for different types of business entities

Business Entity	Statutory Act	Details on the Entity
Sole proprietorship	Business Registration Act	A business owned by one person or one company. The sole proprietor has complete say in the running of the business.
General partnership		A business firm formed by two to twenty partners.
Companies	Companies Act	<p>A company may be a private company limited by shares, a public company limited by shares or guarantee, or a branch of a foreign company. It has limited liability and perpetual succession. It can hold property and can sue or be sued in its own name.</p> <p>The shareholders own the company whilst the directors run and manage the company. A company can be incorporated with 1 director and 1 shareholder. There is no requirement to have a minimum paid-up capital.</p> <p>Companies may be incorporated with limited or unlimited liability. A company may be limited by shares or guarantee. A company with a share capital may be incorporated as a private company if its memorandum or articles restrict the right to transfer shares and that it limits the number of members to not</p>

Business Entity	Statutory Act	Details on the Entity
		more than 50.
Limited liability partnership (LLP)	Limited Liability Partnerships Act	LLP gives owners the flexibility of operating as a partner while having a separate legal identity like a private limited company. The LLP is seen as a corporate body, and has a legal personality separate from its partners. The LLP has perpetual succession, which means any change in the partners of a LLP will not affect its existence, rights or liabilities.
Limited partnership (LP)	Limited Partnerships Act	A LP is a partnership consisting of a minimum of two partners, with at least one general partner and at least one limited partner. It does not have a separate legal entity from the partners, i.e. it cannot sue or be sued or own property in its own name. A general partner is responsible for the actions of an LP and liable for all debts and obligations of the LP. A limited partner is not liable for debts and obligations of the LP beyond his agreed contribution, provided he does not take part in the management of the LP.

Persons conducting business without having registered are not considered sole proprietorships. In order to be incorporated as a company to carry on business, the Companies Act requires that there be at least one director and one shareholder. If a group of individuals decide to carry on business but did not incorporate a company, then they would have to register as a sole proprietorship or partnership under the Business Registration Act. However, they could alternatively register as a LP under the Limited Partnership Act or as a LLP under the Limited Liability Partnership Act.

(iii) Regulatory approach to electronic transactions

A new Electronic Transactions Act (ETA) was enacted in 2010 to provide a legal foundation for e-commerce and for electronic signatures and give certainty to contracts formed electronically (see the section on Enforcing Contracts for more details.)

(iv) Private sector engagement for regulatory reform and development

Public consultations are commonly rolled out for the private sector to give feedback on regulation reforms and development. Where appropriate, focus groups made up of private sector representatives are also formed for feedback sessions with relevant authorities.

Trends

Singapore continues to make it easy for new businesses to start and do business by merging business registration with other value-added services via a one-stop-shop hosted by ACRA. We started introducing such initiatives in 2009 and by end 2011, all new business registrants could sign up for the following value-added services immediately after registration of their new business:

- Register for Goods and Services Tax Registration with the IRAS;
- Reserve their domain name with the SGNIC;
- Activate their customs account with Singapore Customs (for engaging in import, export and transshipment activities in Singapore);
- Subscribe to the free EnterpriseOne Newsletter and

- Open a bank account with a local bank.

The online filing and information retrieval system is being revamped. The new system is targeted to be launched by 30 Jun 2014. The new system will contain more user friendly features and will cater to the needs of the different customer segments which use the online system.

The law on the formalities relating to the execution of documents is currently under review. One of the proposals is to specify that a company need not have a common seal and to set out how a company may execute a document without a common seal.

The Companies Act and the Business Registration Act are also currently being reviewed with the intention to update them and make them more relevant to meet the changing needs of the business community and to make it easier for the business community to start and do business in Singapore.

2. Dealing with Permits in Singapore

2.1 Background

In Singapore, a number of government agencies are involved in the issuance of construction or development permits, as different agencies are responsible for overseeing different aspects of the construction/development standards. Despite so, the procedures are simple for businesses as the Construction and Real Estate Network (CORENET), which is administered by the Building and Construction Authority (BCA), serves as a centralised portal for businesses to submit most of their applications, or to seek further information.

a) Government agencies, companies involved in the issuance of construction and development permits

Besides government agencies, the process of applying for construction/development permits also includes private companies, particularly utilities and telecommunication companies.

Role	Agency
Economy-wide planning	Ministry of National Development (MND), Urban Redevelopment Authority (URA), JTC Corporation (JTC)
Economy-wide environmental standards	National Environmental Agency (NEA)
Water use	Water Reclamation Network Department (WRN) of the Public Utilities Board (PUB) for audit inspection of the sewer connection works
Fire safety	Fire Safety & Shelter Department (FSSD) of the Singapore Civil Defence Force (SCDF) for obtaining technical clearance
Construction standards	Building and Construction Authority (BCA)
Occupational safety and health	Commissioner of Workplace Safety and Health from the Ministry of Manpower (MOM)
Infrastructure	Land Transport Authority (LTA) for road plans and parking facility clearance
Utilities and communications	Singapore Power Ltd. for electrical power Singtel Ltd. for telephone access
Post-license inspections	Inspections of the completed warehouse would be done by BCA together with the architects, consultants and builders

b) Government agencies and companies involved in resolving license- and permit-related disputes

In case of dispute, government agencies provide transparent platforms where businesses can raise the issues.

Agency	Dispute resolution
BCA	BCA provides walk-in consultation or hotline which the public could use to clarify their queries or problems. BCA also chairs the Inter-Agency Coordinating Committee, which provides a platform for convening meetings among project parties and agencies to resolve problems and conflicts for the project.
LTA	LTA relies on the Inter-Agency Coordinating Committee to resolve disputes.
URA	At the onset of development applications, URA discusses potential downstream issues with the business operators upfront, and collaborates with them to work out a mutually agreed arrangement using a set of performance-based criteria to address amenity concerns. As such, business operators can calibrate their measures to suit the context and address the potential amenity problems more effectively.
MOM	In cases of license-related disputes, the applicant can appeal to the Minister for Manpower for a final decision.
NEA	The appeal committee, comprising members from the technical agencies and industry (Singapore Institute of Architects, Institution of Engineers Singapore and Association of Consulting Engineers Singapore), would consider and approve applications from developers for deviations from the set requirements.
FSSD	The Fire Safety Appeal Advisory Board would handle appeals against decisions made by the Commissioner of SCDF. The Service Excellence Department and Quality Service Managers would also take the role of ombudspersons in mediating disputes.

c) One-stop e-service for construction licensing procedures

CORENET e-Submission System (eSS) is a one-stop e-service allowing industry professionals to submit project-related electronic plans and documents to regulatory authorities for approval within a secured environment. The eSS handles project-related documents for whole project life cycle covering processing of plans and documents related to the issuance of planning approvals, building plans approvals, structural plans approvals, temporary occupation permits, fire safety certificates and certificates of statutory completion.

CORENET e-Information System provides one-stop access to building and construction related information. It is a central repository for building codes, regulations and circulars published by building and construction regulatory agencies in Singapore, including BCA, IDA, JTC, LTA, MOM, NEA, National Parks (NParks), PowerGas Ltd, PUB, SPRING Singapore, SCDF and URA. Additionally, it also broadcasts events organised for the building and construction industry, such as courses for green building codes.

The electronic National Productivity and Quality Specifications website under CORENET provides access to templates for the preparation of building project specifications. CORENET also eases the downstream construction processes by hosting an e-catalogue, which provides one-stop access to consolidated company and product information.

d) Transparency in government licensing authorities

While internal decision processes and workings are not public information, public consultations informs the public of the intent of regulation change and provides opportunities to question and clarify the changes proposed by the government licensing authorities.

2.2 Trends

(a) Time

BCA continued to make the process of applying for permits easier for businesses by reducing the time needed for obtaining permits. Starting from 2010, the final inspection could be combined with the step to obtain certificate of statutory completion. In 2011, the approval time for obtaining the structural plan and building commencement permit was shortened from 14 days to 10 working days.

Moving in tandem with the advancement of the computer-aided design (CAD) technology, CORENET was enabled to accept output from the new generation of CAD technology, known as Building Information Modelling (BIM). The BIM software allows building professionals to create three-dimensional digital representation of physical and functional characteristics of a building. This allows potential conflicts at design stages to be resolved so that costly reworks at the construction stage could be avoided. BIM users can directly submit BIM models through CORENET without having to first convert them into two-dimensional CAD drawings.

(b) Frameworks

Besides shortening the time needed for approvals, government agencies have also made reforms that are more structural in nature, by rethinking their processes. For example, in 2009, URA revised its procedure to introduce a “Business Zone”. In the business zone, inter-changeability of uses is allowed without the need for rezoning based on their impact on the surrounding lands. Previously, uses like Business Park, Light Industry, General Industry, and Warehouse, were segregated into four distinct land use zones and changing one use to another required a change in zoning which took time to process.

Other than URA, MOM is another agency that has strengthened and reformed its procedures. Under the former factory registration system, all factories were required to register with MOM before they could commence operations. Each registration was valid for up to two years and cost \$250 annually. The system did not differentiate lower risk factories from the rest. In the revised registration regime, MOM made the registration requirements to be commensurate with the level of risks of factory operation. The risk-based registration framework was extended to all factories in 2009.

Additionally, LTA published in 2009 a code of practice to guide engineers in the design and supervision of engineering works, such as the protection of road structures, bridges, underpasses from any potential damages by development and engineering works adjacent to these structures.

3. Getting Credit in Singapore

3.1 Background

The Monetary Authority of Singapore (MAS), the regulating authority of financial services in Singapore, supervises the issuance of licenses for banks, finance offices, financial advisors, fund

managers, and insurance companies. While the MAS Act outlines the functions of the MAS, MAS derives its powers from the Banking Act and the Banking (Clearing House) Regulations. Banking is covered by several Acts: the Banking Act, the Currency Act and the Finance Companies Act.

a) Legal framework

(i) Commercial banks

The Banking Act governs the licensing and operation of commercial banks (local and foreign) in Singapore. The Banking Act and its accompanying regulations prescribe the minimum capital and liquidity requirements as well as prudential limits on credit and investments. In light of recent developments in the international financial system, MAS is taking steps to strengthen the risk-based capital requirements for Singapore-incorporated banks and promote a more resilient banking sector.

Commercial banks in Singapore may undertake universal banking, which besides deposit taking, cheque services and lending, includes any other business regulated or authorised by MAS, including financial advisory services, insurance broking and capital market services. Commercial banks operate as full banks, wholesale banks, or offshore banks.

Full banks are granted the widest range of permissible banking activities, while wholesale and offshore cannot carry out Singapore dollar domestic retail operations. Offshore banks cannot accept interest-bearing deposits from resident non-bank customers and can extend them credit facilities up to S\$500 million. Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks.

(ii) Financial institutions

Financial institutions may also operate as finance companies and merchant banks, as approved under the MAS Act.⁹¹ Finance companies, licensed under and governed by the Finance Companies Act, focus on providing small-scale financing (e.g. installment credit for motor vehicles and consumer durables, and mortgage loans for housing) but cannot offer current deposit accounts.

Merchant banks approved under the MAS Act, are governed by the Merchant Bank Notices, Directives, Guidelines and Circulars, and operate subject to the Banking Act. The typical activities of merchant banks include corporate finance, underwriting of share and bond issues, mergers and acquisitions, portfolio investment management, management consultancy, and other fee-based activities.

(b) Extension of credit to businesses

To facilitate a business-friendly environment, the MAS as a regulator does not interfere with the financial institutions' extension of credit to businesses. Instead, rules on credit extension to businesses and related collateral are decided by the financial institutions' own assessment processes.

⁹¹ The approval is equivalent to a licence.

The legal framework does allow for quick, inexpensive and simple creation of a proprietary security right without depriving the individual of the use of his or her assets. The law does allow for the following forms of non-traditional financing – franchising, leasing and factoring, inventory and accounts receivable. While collateral information is currently not collected from members of the credit bureaus, Credit Bureau Singapore (CBS) has planned for educational initiatives for the second half of 2012 as part of establishing a secured property registry.

(c) Credit information

Commercial credit bureaus, i.e., DP Information Network (DPIN) and D&B Singapore, exist but are not gazetted by the MAS. However, there are two consumer credit bureaus, i.e., DP Credit Bureau and Credit Bureau Singapore (CBS), gazetted by the MAS to collect and share credit information on individuals, although not on businesses. As the most comprehensive consumer credit bureau in Singapore, CBS is bound by the following Acts:

- ***Banking Act.*** Since 2002, the Banking Act has allowed members of the credit bureaus to disclose and obtain credit-related information to mitigate consumer credit risk through information pooling from CBS.
- ***Casino Control Act.*** The Casino Regulatory Authority of Singapore (CRA) requires applicant of its special employee license to authorise CRA to have access to, inspect and obtain copies of their credit reports.
- ***Personal Data Protection Act.*** Both personal and non-personal information collected is safeguarded with high privacy and data protection standards, and all personal data collected has to be used and processed fairly and lawfully in their possession or custody.

To effectively disseminate credit information, CBS publishes industry statistics, print materials and online information, organises public education seminars, automates monitoring services for consumers and members, introduces third-party outposts for consumers to obtain their credit reports as well as facilitates business-to-business connectivity for financial institutions to access real-time seamless flow of credit risk information to their loan origination systems. Additionally, CBS also generates the scoring of risk profiles in tandem with the internal processes and risk guidelines of the financial institutions so as to improve the speed of granting approvals.

3.2 Trends

As the first consumer credit bureau to be gazetted by the MAS in 2002, CBS frequently undertakes improvements to make credit information more accessible. Recent reforms would include:

- ***Introducing the SME blended score.*** This score is constructed using FICO's extensive credit scoring development expertise to make use of consumer and commercial information to produce a SME rating score. By combining both the credit profiles of the owner and of the company itself to provide a more complete credit risk picture, this score offers a quick and consistent assessment of all SMEs in Singapore, and would generate cost savings by reducing the time and effort for manual credit appraisal.
- ***Displaying the debt repayment scheme information in consumer credit reports.*** CBS collects information on debt repayment scheme from the Insolvency & Public Trustee's Office (IPTO) to be displayed in the consumer credit report. This gives fuller information on the credit risk of individuals.

- **Introducing the basic individual search (BIS) report.** This report collates information from ACRA, Dun & Bradstreet (Singapore), Crimsonlogic and the Government Gazette to reveal the past ownership and shareholding activities undertaken by the individual, as well as the latest litigation and bankruptcy searches. This allows CBS members to fully appreciate the extent of business holdings of their loan applicants or customers.

In future, to facilitate the dissemination of credit information and to provide more comprehensive credit information, CBS intends to:

- **Establish a national credit bureau (NCB).** Singapore does not have a central credit information repository for non-MAS regulated credit grantors (known as other credit grantors), even though they have significant market penetration. To provide a platform for these other credit grantors to share credit information, CBS intends to establish a second repository, the NCB, as a subsidiary or related entity of CBS. The NCB would provide comprehensive coverage on credit information for other credit grantors; make possible cross-sharing of information if there is expressed interest from the consumer and if there is no regulatory impediment; and consolidate individual credit information and other relevant assessment data.
- **Develop a SME financial toolkit.** In collaboration, the Association of Banks in Singapore (ABS) is developing a SME financial toolkit to enhance the knowledge and capabilities of SMEs in financial management. The toolkit will also help SMEs to assess the financial health of their businesses, as well as ascertain the funding requirements of the business.
- **Make available consumer credit score to all consumers.** The credit score, which indicates to lenders the individual's risk as a credit applicant, would encourage better credit decisions.
- **Develop an iPhone application.** This application will allow credit card holders to better manage their credit card debts as they would be able to track past card debt and payment behaviour.

4. Enforcing Contracts in Singapore

4.1 Background

(a) Common law system

Singapore's legal system is based on the common law system, an established legal system which is characterised by the doctrine of binding judicial precedent (judge-made law/rules). While the common law is constantly developing, it is based on the principle that similar cases should be decided according to consistent legal principled rules so that they will reach similar results, thus ensuring stability in the law and predictability of the legal position for investors.

Contract law in Singapore operates within this system, and is largely based on the common law of contract in England. While there is no codified law of contract, the common law position has been modified by specific statutes in some areas. Singapore does not have a general (statutory) "commercial code", but Singapore's law of contract operates within the larger context of our commercial laws. For example, domestic sales of goods are generally governed by the Sale of Goods Act, while international sales of goods may be governed by the Sale of Goods (United Nations Convention) Act, which implements the UN Convention on Contracts for the International Sale of Goods that has been ratified by Singapore. The law on contracts is regularly updated to keep pace with business needs and economic development.

While the law on obligations is an element of the civil law system, the common law system also recognises that individuals may owe legal obligations to each other arising out of a special personal relationship that exists between them; for example, under contract law, tort law or the law of restitution.

(b) Freedom of contract

The starting point of the law on contracts is that parties have the freedom to form contracts. However, there are certain restrictions on the freedom of contract. For example, parties to a contract must have the requisite capacity to enter into the contract, i.e., in terms of their age and mental capacity. Additionally, the Unfair Contract Terms Act limits the extent to which civil liability for breach of contract can be avoided by means of contract terms. As such, unfair contract terms are not enforceable. Under the common law, contracts or clauses which are illegal or against the public policy (e.g. contracts which are unreasonably in restraint of trade or penalty clauses) are void.

(c) Private enforcement of contracts

Subsequent to or following the Court Order, parties remain at liberty to enter into mutually agreed settlement terms to enforce their respective rights under the contract or the Court Order. For judgments or orders for payment of money, parties have the option of using either the court enforcement officers or private bailiffs authorised by the Court to execute the writ of execution filed by the enforcing party.⁹²

Using the court machinery, a judgment or Court Order may be enforced by issuing a writ of execution, garnishee proceedings, appointment of a receiver, examination of the judgment debtor and committal proceedings. The Rules of Court, which apply to civil proceedings in both the Supreme Court and Subordinate Courts, sets out the process for doing so.

As for private remedies against fraud, under the common law relating to contracts, private parties may take civil proceedings to seek damages for fraudulent misrepresentation that induces a contract. Where the misrepresentation is not fraudulent, but is negligent, damages may be sought under the Misrepresentation Act, and also under the common law relating to torts, e.g., the tort of fraudulent misrepresentation.

(d) Alternative dispute resolution

The use of alternative dispute resolution (ADR) is encouraged in Singapore,⁹³ for the amicable and efficient settlement of disputes. To promote and develop the arbitration and mediation sectors, Singapore set up the Singapore International Arbitration Centre (SIAC), the Singapore Mediation Centre (SMC), the Singapore Chamber of Maritime Arbitration (SCMA), the Financial Industry Disputes Resolution Centre (FIDReC) and Maxwell Chambers in 1991, 1997, 2004, 2005 and 2010 respectively.

SIAC. A premier international arbitration institutions.

⁹² For more information, please refer to sections 15, 15A and 16 of the Subordinate Courts Act and sections 63 to 65A of the Supreme Court of Judicature Act.

⁹³ Singapore has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

SMC. Provides a range of alternative dispute resolution (ADR) services besides mediation. These include adjudication and neutral evaluation, focusing on high value commercial disputes. Neutral evaluation will be introduced in 2012.

SCMA. A dedicated maritime arbitration centre for the maritime sectors in Singapore and in Asia Pacific nations to resolve their contractual disputes through arbitration.

FIDReC. Initiated by the financial sector, and specialises in the resolution of disputes between financial institutions and consumers.

Maxwell Chambers. Established as the world's first integrated dispute resolution complex housing both best-of-class hearing facilities and top international ADR institutions.

By the second half of 2012, the Presumption of ADR will be introduced in the Subordinate Courts for all cases that proceed to the summons for directions stage, unless the parties opt out of ADR with a satisfactory reason. The ADR sessions will be conducted by Settlement Judges in the Primary Dispute Resolution Centre ("PDRC") of the Subordinate Courts.

Additionally, the Subordinate Courts have, on 1 March 2012, launched the Subordinate Courts – Singapore Mediation Centre Premier Mediation Scheme as an additional ADR option. The PDRC will collaborate with the SMC on the pilot 3-month programme to explore the feasibility of introducing a paid mediation scheme for higher value civil claims commenced in the Subordinate Courts. Mediations under the scheme will be carried out by the SMC and conducted by a very select group of mediators jointly chosen by the Subordinate Courts and the SMC based on their excellent track record and standing in local mediation circles.

(e) Government procurement

Procurement is generally carried out by individual ministries, agencies and statutory boards although some centralised purchasing is carried out by the Ministry of Finance and other lead agencies. The legislative framework for government procurement is the Government Procurement Act and its subsidiary legislation. Government procurements must be in compliance with the Government Procurement Act, which was enacted to give effect to the WTO Agreement on Government Procurement and other international obligations of Singapore relating to procurements by the Government and public authorities. The relevant Government Instruction Manuals (which contain internal rules applicable to the Government and public authorities) are also regularly revised to strengthen the procurement process.

(f) Law on electronic transactions

The Electronic Transactions Act (ETA) was first enacted in 1998 to provide a legal foundation for electronic signatures, and to give predictability to contracts formed electronically. In 2010, the ETA was repealed and re-enacted to provide for the continuing security and use of electronic transactions. The ETA closely follows the United Nations Convention on the Use of Electronic Communications in International Contracts, adopted by the General Assembly of the UN on 23 November 2005.

(g) Role of notaries

In Singapore's context, under the common law system, the role of notaries is performed by lawyers, who generally have the authority to advise on legal matters, as well as to represent their clients in court. It is generally not mandatory for a party to engage a lawyer to advise them on

legal matters or to represent them in court as the parties may choose to act in person. Lawyers are regulated under the Legal Profession Act.

As for notaries public, they attest and certify/verify documents and other instruments to be used outside Singapore (e.g. for business or in foreign litigation). They are regulated by the Senate of the Singapore Academy of Law, under the Notaries Public Act.

4.2 Trends

(a) Cost of enforcing contracts

To lower the cost of proceedings, the Subordinate Courts Act was amended with effect from 1 January 2011 to broaden the jurisdiction and powers of the District Court and Magistrate's Court. Previously, certain cases (including commercial matters), though falling within the monetary limit of the District Court or Magistrate's Court, had to be filed in the High Court or District Court instead, due to the lower court's lack of subject matter jurisdiction or power to grant the reliefs sought. With the increased jurisdiction and powers, such cases may now be filed in the lower courts. This would result in significant savings in court fees for the parties concerned.

Additionally, companies, limited liability partnerships and unincorporated associations no longer have to be represented by solicitors in court proceedings. Instead, with effect from 3 May 2011, they could be represented by individuals with authorisation (such as the directors of the companies). By helping companies avoid incurring lawyers' fees, and thus lower the cost of proceedings, this reform assists smaller or impecunious companies to seek justice before the courts.

A review on the fees payable by the parties in filling their court documents electronically was completed in the first quarter of 2012. The review aimed to ensure that the total filing fees payable will be lower on the whole with the implementation of the Integrated Electronic Litigation System, which is targeted to be rolled out in phases from late 2012 onwards.

(b) Time

Since 2011, the Civil Justice Division of the Subordinate Courts is piloting the use of witness conferencing in cases where there is likely to be conflicting experts' testimonies, such as construction disputes. Unlike the conventional approach in trial of hearing each witness separately, this process allows witnesses to respond to each other's evidence, and is especially beneficial for disputes involving complex technical evidence. The reform reduces the time and expense spent on such trials by both the parties and the court.

With effect from 1 September 2011, the Subordinate Courts have implemented the hearing of urgent applications for interim injunctions or interim preservation of subject matter of proceedings, evidence and assets to satisfy judgment on weekends and public holidays. This is to cater to occasions when such urgent applications must be heard with utmost despatch during weekends or public holidays. The applicant may contact a Duty Judicial Officer on a dedicated mobile phone during the operating hours of 1 p.m. to 6 p.m. on Saturdays and 8.30 a.m. to 6 p.m. on Sundays and public holidays, to request for an urgent hearing.

(c) Updates to the law on contracts

The Civil Law Act was amended in 2009 to lower the age of full contractual capacity from 21 years to 18 years, so that contracts made by minors who have reached the age of 18 years are

binding and enforceable by and against them for specified matters. To facilitate minors who reach 18 years of age to carry out business, other miscellaneous legislation was also amended, e.g., the Companies Act, the Conveyancing and Law of Property Act and the Settled Estates Act.

Another area of reform was the Consumer Protection (Fair Trading) Act, which was amended in 2008 (with the amendments taking effect in 2009), to cover financial products and services, regulate timeshare products, and extend the legislation of the Small Claims Tribunals (among other amendments). The Act was amended again in 2012 to extend consumer protection laws to provide remedies against goods with latent defects or defective goods that fail to meet standards of quality and performance.⁹⁴

5. Trading Across Borders in Singapore

5.1 Background

The multilateral framework of the WTO remains the bedrock of Singapore's trade policy. Our trade policy goals are to:

- Expand the international economic space for Singapore-based companies;
- Seek a fair and predictable international trading environment; and,
- Minimise impediments to the flow of goods and services.

(a) Agencies involved

Responsibility for trade policy formulation and implementation in Singapore is vested in the Ministry of Trade and Industry (MTI). MTI deals with Singapore's foreign economic policy, including Singapore's participation in the WTO, the Association of Southeast Asian Nations (ASEAN), Asia Pacific Economic Co-operation (APEC) and the G20, and its bilateral relations. However, other agencies are involved in various aspects of trade policy as detailed below.

Ministerial responsibility for trade-related issues

Ministry/statutory agency	Role
Ministry of Trade and Industry (MTI)	Formulates and implements trade policy. Also PEP seeks suggestions on how government rules and regulations can be improved
International Enterprise Singapore (IE Singapore)	Promotes trade and overseas investment
Economic Development Board (EDB)	Promotes investment
SPRING Singapore	Helps enterprises in financing, capability and management development, technology and innovation and access to markets. Also the national standards and accreditation body
Competition Commission of Singapore (CCS)	Enforces competition law
Energy Market Authority (EMA)	Formulates energy policy

⁹⁴ Besides legislative changes, the Singapore Courts have also undertaken decisions on the formation of contract, construction, mistake, discharge by breach and damages. For further details, please refer to the article on "Singapore Contract Law: Themes from 2006 to 2010" by Professor Michael Furmston, and "Developments in Singapore Law between 2006 and 2011" by the Singapore Academy of Law.

Ministry/statutory agency	Role
Singapore Tourism Board (STB)	Promotes tourism
Contact Singapore (EDB and Ministry of Manpower)	Facilitates entry of potential individual investors into Singapore
Ministry of National Development (MND)	National land use and development planning
Urban Redevelopment Authority (URA)	National land use planning
JTC Corporation (JTC)	National developer of industrial infrastructure
Agri-Food and Veterinary Authority (AVA)	Agriculture and fishing, sanitary and phytosanitary standards
Singapore Customs (SC)	Implements customs and trade enforcement measures
Monetary Authority of Singapore (MAS)	Regulates the financial sector
Ministry of Law (MinLaw)	Ensures sound legal infrastructure, intellectual property infrastructure and insolvency regime
Attorney-General's Chamber (AGC)	Advises the Government in all aspects of public administration, criminal law, international law, legislation and law reform
Intellectual Property Office of Singapore (IPOS)	Advises on and administers intellectual property laws
Ministry of Information, Communications and the Arts (MICA)	Promotes arts, design, media and infocomm technology sectors
Info-Comm Development Authority of Singapore (IDA)	Promotes infocomm sectors and oversees IT standards
Ministry of Transport (MOT)	Formulates transport policies
Land Transport Authority (LTA)	Land transport development
Maritime and Port Authority of Singapore (MPA)	Sea transport development
Civil Aviation Authority of Singapore (CAAS)	Air transport development

MTI also consults regularly with the business community, primarily through meetings with various chambers of commerce and trade associations in Singapore, such as the Singapore Business Federation (SBF), Singapore Logistics Association (SLA), Singapore Shipping Association (SSA), and the Singapore Aircargo Agents Association (SAAA). Regular consultations are also held with the tripartite National Wages Council, the National Trades Union Congress, and the Consumers Association of Singapore. National committees may be formed on an ad hoc basis to examine specific issues. Public consultations are conducted through various channels including Ministries' websites. REACH (reaching everyone for active citizenry at home) is an additional platform where public consultations are undertaken and announcements made. .

(b) Legal framework and procedures

The main Acts that govern the import, export and other cross-border activities are:

Customs Act. Provisions relating to the imposition of customs and excise duties as well as provisions relating to the import of goods.

Regulations of Import and Export Act (RIEA). Provisions relating to the regulation, registration and control of imports and exports and to make provisions for matters connected therewith.

Strategic Goods Control Act (SGCA). Provisions to conduct the export, transshipment and transit of strategic goods and related software and technology capable of causing mass destruction.

The above acts are administered by Singapore Customs (SC). SC ensures that the export and import of goods follows trade-related conventions and trade sanctions passed by the UN Security Council Resolutions.

Companies have to obtain a valid permit approved by SC prior to export strategic goods. Any party that violates the Strategic Goods (Control) Act is liable to penalties ranging from composition fines for technical offences to imprisonment.

(c) Trade-related treaties and conventions ratified

Singapore is a party to trade-related conventions such as:

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- United Nations Convention on Contracts for the International Sale of Goods
- Convention on International Interests in Mobile Equipment
- Protocol to the Convention on International Interests in Mobile Equipment Matters Specific to Aircraft Equipment
- United Nations Convention on the Use of Electronic Communications in International Contracts

(d) Customs procedures

Customs processing takes place online through SC's TradeNet facility. This is a single electronic window through which registered traders (importers, exporters and trans-shippers) are required to submit import permit applications, import licensing applications (if applicable) and the required import documentation online. The TradeNet system is linked to all of the Governmental agencies from which authorisations are required; it operates 24 hours a day, 7 days a week. Customs duties (where applicable), the Goods and Services Tax (GST) and other fees are automatically calculated and deducted from the traders' bank account.

With the exception of goods which remain in free trade zones (FTZs) for transshipment to another country, import permits are required for each import consignment. They must be obtained prior to the goods' importation (there is no stipulated advance timeframe). Approval time for import permit applications through TradeNet is usually given within 10 minutes.

5.2 Trends

Singapore is engaged in a number of activities to facilitate trade. In addition, SC periodically reviews its processes and procedures to create a more business friendly environment.

(a) *IT-related reforms*

(i) *TradeNet*

TradeNet is a single platform for Singapore's trade and logistics community. It allows various parties from both the public and private sectors to exchange structured trade message and information electronically and securely. The TradeNet system has integrated the import, export and transshipment documentation processing procedures, thereby reducing the cost and turnaround time for the preparation, submission and processing of trade and shipping documents and expedites the clearance of cargo. Although TradeNet was first introduced in 1989, it receives regular updates to further ease the trading process for businesses. In the latest version released in January 2012, the ASEAN harmonised tariff nomenclature 2012 was adopted, and TradeNet's rules and processes were further relaxed. For example, permits could now be cancelled within the same day of approval.

(ii) *TradeXchange*

Launched in 2007, in partnership with the private sector, TradeXchange is an online platform designed to facilitate the exchange of information within the trade and logistics community. It offers a variety of business-to-government and business-to-business services, designed to facilitate the efficient exchange of documents and information through industry accepted standardised formats (i.e., a single electronic window), and thereby minimising the need for multiple data entries. In addition to these IT-related reforms, new modules such as trade permit preparation and trade finance (factoring) applications were introduced to TradeXchange to further ease the trading process.

(b) *Frameworks*

(i) *Trade facilitation and integrated risk-based system (TradeFIRST)*

To enhance Singapore's trade facilitation process, Trade Facilitation & Integrated Risk-based System (TradeFIRST) was launched by SC in January 2011. This is a trade facilitation framework that integrates the regulatory metrics of all of SC's schemes to enable a single account-based management of traders. As a one-stop assessment framework, TradeFIRST assesses companies holistically based on a single set of assessment criteria applied across all schemes. Companies are placed into one of the five bands, which determines the schemes and facilitation that they could enjoy. With TradeFIRST, SC proactively partners traders to improve their systems and processes so that they could move up the bands and enjoy greater facilitation. This partnership with the traders, coupled with taking an integrated risk-management approach, will also raise the compliance and supply chain security standards of companies.

The broad categories for the assessment criteria under the TradeFIRST framework include:

- Company profile – Financials and general background of the company;
- Inventory management and controls – Records of inventories and transactions, and the company's capability in managing inventories;
- Compliance – The company's compliance records;
- Procedures and processes – The company's procedures and processes on the handling and storage of cargo-related incidents;

- Security – Measures to secure premises and access control, measures to prevent the tampering of goods, policies relating to business partner screening, crisis management and business continuity planning.

(ii) Unique entity number

In 2009, the unique entity number (UEN) was introduced to streamline interactions with government agencies. Importers and exporters first register with the ACRA to obtain a UEN, and subsequently activate the UEN with SC. Instead of using multiple identity numbers for different government agencies, the UEN allows companies to conveniently interact with various government agencies using just one identification number, which enhances the ease of doing business.

(c) Tax-related reforms

To further ease the import goods and service tax (GST) cash flow for importers, the import GST deferment scheme (IGDS) was introduced in 2010 to allow importers to defer their import GST payments until their monthly GST return due dates, which would allow importers to enjoy a credit period of 1-2 months.

Additionally, in 2009, GST and duty suspension was introduced for the temporary removal of good from zero GST or licensed warehouse for auctions and exhibitions. GST relief for importation of all clinical trial materials was also introduced in 2011.

(d) Authorised economic operators (AEO)

Singapore has introduced its own Authorised Economic Operator (AEO) programme known as the Secure Trade Partnership (STP), consistent with the World Customs Organisation (WCO) SAFE Framework of Standards to secure and facilitate global trade. The STP programme is a voluntary certification programme that encourages companies to adopt robust security measures in their trading operations, thereby contributing to the improvement in the security of the global supply chain. Through Mutual Recognition Arrangements (MRAs) with overseas customs administrations, our STP+ companies are recognized as trusted partners and benefit from expedited cargo clearance and fewer inspections. Singapore has signed MRAs with Japan, Korea and Canada, thus far. These mutual recognition arrangements for supply chain security help to facilitate smooth and efficient flow of goods across borders of the countries concerned while ensuring that the supply chains are safe and secure.

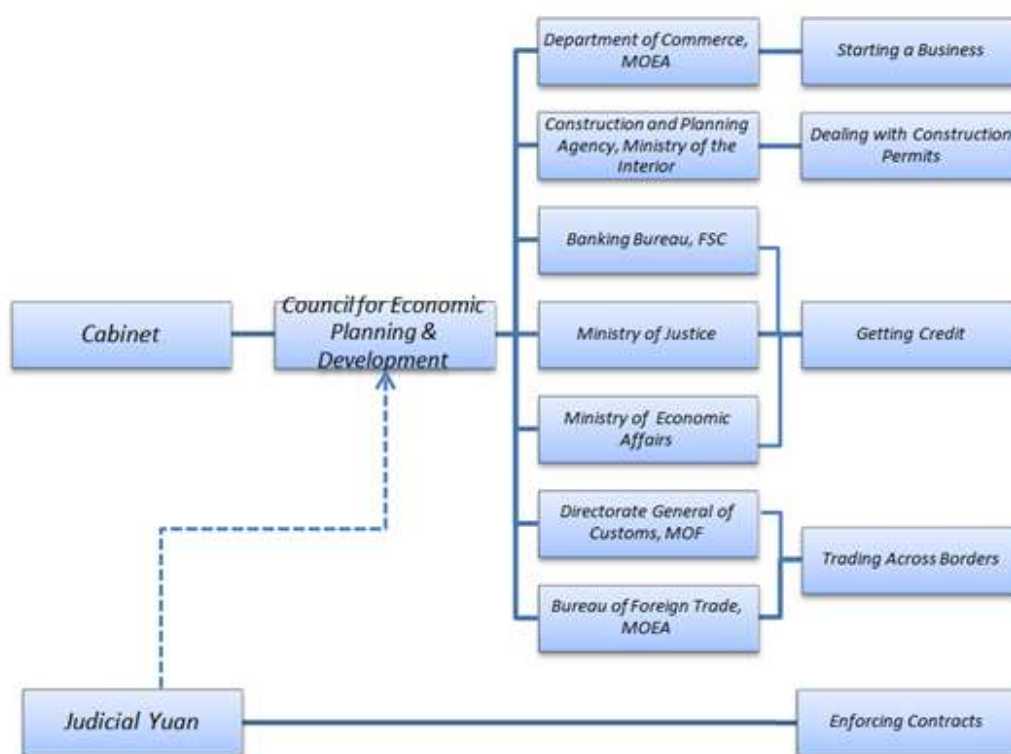
(e) Competitive framework

The Acts in the regulatory frameworks for individual service areas are implemented by the respective agencies involved. The Competition Commission of Singapore (CCS), an independent and transparent investigative body, was established in 2005 to maintain competitive markets across sectors. These include services areas, which were previously unregulated, and have now been included in our Competition Act. Singapore previously only had regulatory bodies that ensured competition in sectors which tended to have natural monopolies (e.g. telecoms, rail transport, etc.). An example of CCS's work in maintaining fair competition is the recent \$1.69 million fine on 16 coach operators and association for price-fixing in 2009. Besides this, CCS also issued a new set of guidelines on "Competition Impact Assessment for Government Agencies" in 2010, bringing the current total number of guidelines to 13. These guidelines provide advice for businesses and contribute to a fairer and more competitive business climate for enterprises.

Chinese Taipei

I. General Information

Business environment reform in Chinese Taipei is supervised by the highest level of its executive branch. Regular supervision, evaluation, staff work and explanation of reforms to the World Bank is undertaken by the Cabinet's Council for Economic Planning and Development (CEPD). The respective competent authorities are responsible for drawing up and executing the work plans for each of the indicators. The structure of responsibility is depicted in the chart below:



II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Chinese Taipei

1.1 Background

The main types of business organization in Chinese Taipei are sole proprietorships and partnerships for profit registered in accordance with the Business Registration Act, and unlimited companies, limited companies, unlimited companies with limited liability

shareholders, and companies limited by shares, as registered in accordance with the Company Act. Chinese Taipei currently has around 780,000 registered businesses and around 600,000 registered companies. It also has around 300,000 business entities that have completed tax registration but have not carried out business or company registration.

In the Starting a Business indicator of the Doing Business 2009 report released by the World Bank in September 2008, Chinese Taipei was ranked 119th out of 181 economies. The survey found that starting a business in Chinese Taipei needed 8 procedures, took 42 days, cost 4.1 percent of income per capita, and required minimum capital of 177.4 percent of income per capita. However, after a 3-year reform program launched in October 2008, Chinese Taipei's ranking for this indicator climbed to 16th out of 183 economies surveyed in the Doing Business 2012 report released in October 2011, which found that business startup needed 3 procedures, took 10 days, cost 2.5 percent of income per capita, and had no minimum capital requirement.

The most important of the relevant reforms carried out by Chinese Taipei in recent years include: (a) Abolition of the minimum capital requirement for starting a business, by amendment of the Company Act in April 2009; (b) discarding of the uniform certification system for profit-seeking enterprises in May 2009, so that businesses could start operation immediately after completing establishment and tax registration; and (c) the establishment of a one-stop website for online company startup applications in May 2011, which enabled all related procedures to be conducted online at a single website.

The main purposes of Chinese Taipei's reforms for starting a business are to enhance the efficiency of government administration, make it more convenient for people to start businesses, and create more job opportunities. In addition, the great simplification of application procedures can encourage formal organization and registration by business entities that were not previously registered as businesses or companies, and thereby facilitate their management by administrative authorities.

Measures to Make Information on Laws, Regulations, and Procedures Available to the Public

The laws and regulations related to the reform of starting a business will be published together on a website designated by the government (see National Laws and Regulations database in Resource Bibliography) to make it easy for people to peruse them. In addition, the streamlining of relevant procedures will be announced on the websites of each agency concerned, including flowcharts of the application procedures and related application rules.

Translations of regulations and institutional procedures, as well as other measures designed to make registering a business easier, faster, and cheaper for foreign companies.

Foreign nationals who wish to start a business in Chinese Taipei must follow the provisions of the Act for Investment by Foreign Nationals. English translations of the relevant regulations and procedures are available at the website of the Investment Commission under the Ministry of Economic Affairs (see Resource Bibliography).

Business Entity Types

The types of business organization in Chinese Taipei, as regulated respectively by the Business Registration Act and the Company Act:

- Under Article 3 of the Business Registration Act, the term “business” as used in this Act means an enterprise managed in the manner of sole proprietorship or partnership for profit.
- Under Article 2 of the Company Act, companies are of four classes as set forth in the following:
 1. Unlimited Company: which term denotes a company organized by two or more shareholders who bear unlimited joint and several liabilities for discharge of the obligations of the company.
 2. Limited Company: which term denotes a company organized by one or more shareholders, with each shareholder being liable for the company in an amount limited to the amount contributed by the individual.
 3. Unlimited Company with Limited Liability Shareholders: which term denotes a company organized by one or more shareholders of unlimited liability and one or more shareholders of limited liability; among them the shareholder(s) with unlimited liability shall bear unlimited joint liability for the obligations of the company, while each of the shareholders with limited liability shall be held liable for the obligations of the company only in respect of the amount of capital contributed by the individual.
 4. Company Limited by Shares: which term denotes a company organized by two or more or one government or corporate shareholder, with the total capital of the company being divided into shares and each shareholder being liable for the company in an amount equal to the total value of shares subscribed by the individual.

Regulations According to Business Type

The main regulations applicable to each type of business organization include:

- General Partnerships: The Enforcement Rules of the Business Registration Act, the Regulations Governing the Application of Business Registration, and the Regulations Governing Collection of Business Registration Fees.
- Closely held companies with limited liability: The Company Act, the Regulations Governing Company Registration and Recognition, the Regulations Governing Certification of Capital upon Registration Applications of Companies, the Regulations Governing Review of Applications for Reservation of Corporate Names and Business Scopes, and the Regulations Governing Collection of Company Registration Fees.
- Joint stock companies that may be widely held and/or publicly traded: The Company Act, the Securities and Exchange Act, the Securities and Exchange Act Enforcement Rules, the Regulations Governing the Acquisition and Disposal of Assets by Public Companies, the Regulations Governing Board of Directors Meetings of Public Companies, the Regulations Governing the Preparation of Financial Reports by Securities Issuers, the Regulations Governing Information to be Published in Annual Reports of Public Companies, the Regulations Governing Loaning of Funds and Making of Endorsements/Guarantees by Public Companies, the Regulations Governing the Publication of Financial Forecasts of Public Companies, and the Regulations Governing Establishment of Internal Control Systems by Public Companies.

The main types of business organization in Chinese Taipei are regulated by the Business Registration Act and the Company Act. Business entities that have not registered as businesses or companies under these acts fall under the relevant obligation provisions of the Civil Code, and are deemed to be sole proprietorships or partnerships.

Agricultural Cooperatives

Under Article 1 of the Cooperatives Act in Chinese Taipei, the term “cooperatives” as used in this Act refers to the associations organized based on the principle of equality and mutual aid, and with a view to improving the economic benefit and living standard of the members by means of joint operating. The number of members and the total amount of capital stocks of a cooperative is variable. Article 3 of the Act stipulates the classes and business scope of cooperatives, including the establishment of cooperative farms engaging in agricultural production, marketing, supply, and utility services. The Act also stipulates that cooperatives may have one of three types of liability: limited, guaranteed, or unlimited.

The Cooperative Act sets out Chinese Taipei’s legal framework for cooperatives in 9 chapters and 77 articles covering, inter alia, the establishment of cooperatives, the share ownership of members and distribution of operating surplus, the responsibilities of important members (directors, supervisors and other personnel), the convening of meetings, and disbanding and liquidation.

Electronic Transactions

To promote the widespread use of electronic transactions, ensure e-transaction security, and promote the development of e-government and e-commerce, Chinese Taipei passed the Electronic Signatures Act into law in November 2001. Regulations concerning transactions between the government and the private sector are set out in the Government Procurement Act. Article 93-1 of this act makes provision for government entities to conduct procurement electronically, and the rules governing e-transactions between the government and the private sector are set out in procedural regulations made pursuant to this article.

The Regulations for Electronic Procurement consist of 4 chapters and 25 articles covering, inter alia, definition of terms, invitations to tender and awarding of contracts, and methods of payment for procurement by government entities. In addition, to promote transactions between the government and the private sector, Chinese Taipei has set up a Government e-Procurement System website (see Resource Bibliography).

Under Article 152 of the Administrative Procedure Act in Chinese Taipei, a legal order may be established on the basis of either a draft formulated by the administrative authority itself or a proposal submitted by the people or a civilian body. A proposal submitted pursuant to the preceding paragraph shall be made in writing, stating therein the purposes, legal basis and reasons for the establishment of the legal order, accompanied by relevant materials. Under Article 155 of the Administrative Procedure Act, the administrative authority may hold ex officio hearings for the purpose of establishment of a legal order.

In Chinese Taipei, at least seven days’ advance notice of draft legal orders must be given, counted from the date of publication in the government gazette; and public announcement of draft legal orders is also made on a unified website designated by the government (see National Laws and Regulations database in the Resources Bibliography).

In addition, to widely collect input from all quarters of society, with a view to gradually loosening financial and economic regulation, Chinese Taipei has set up a website portal for the submission of deregulatory suggestions by private individuals and bodies (see Council for Economic Planning and Development website in the Resources Bibliography).

One-stop Shop

To keep in line with the international trend of reform for starting a business, and raise the competitiveness of the business environment, the government of Chinese Taipei in May 2010 completed the establishment of a One-Stop website (see Resources Bibliography) which members of the public can conveniently conduct all application procedures related to business startup, including search and approval of business name, company or business registration, tax registration, establishment the group insurance applicants of labor and national health insurance for employees, and filing of work rules.

By connecting data from related agencies and integrating administrative procedures, this website saves the applicant from needing to visit each agency to conduct applications at the counter. The website can also be used to check the progress of applications. It thus serves both to make it easy, convenient and faster for members of the public to set up a business (including a sole proprietorship or partnership), and to raise the service efficiency of governmental administration.

Business Advisory Services

To provide the public with convenient business advisory services, Chinese Taipei has set up a commercial and industrial administration customer service system (Commerce Industrial Services Portal website) and also provides advisory services via a telephone hotline (886-2-412-1166). These services are provided free of charge.

The customer service system can be used for online checking of the progress of company registration, and the telephone service can be used for making inquiries about company and business regulations or posing questions about business operation.

1.2 Trends

Chinese Taipei launched a drive to reform its business environment under guidance of the World Bank's Doing Business report in October 2008. The main reforms and results that it has achieved in the ensuing three years from 2009 to 2011 are as follows:

Main Reforms and Results in 2009

Amendment of Articles 100 and 156 of the Company Act in April 2009, to abolish the minimum capital requirement of NT\$500,000 for a limited company and NT\$1 million for a company limited by shares. As a result, Chinese Taipei is an economy with no minimum capital requirement for starting a business.

In May 2009, Chinese Taipei abolished its uniform certification system for profit-seeking enterprises, which had been in effect for more than 40 years. As a result, newly formed businesses no longer need to obtain a profit-seeking enterprise permit before commencing operation, but can start to operate immediately after completion of company (or business) registration, which greatly simplifies the procedure for starting a business.

In the Doing Business 2010 report released by the World Bank in September 2009, Chinese Taipei's global ranking for starting a business was raised from 119th to 29th, with the number of procedures reduced from 8 to 6, the time for completion shortened from 42 to 23 days, and the minimum capital requirement cut from 177.4 percent of income per capita to zero.

Main Reforms and Results in 2010

In January 2010, the government revised Article 3 of the Directions for Review of Work Rules and drew up Sample Work Rules for reference by business enterprises, simplifying and speeding up the administrative review process for work rules drafted in concordance with the sample.

In June 2010, the government amended Article 28 of the Enforcement Rules of the National Health Insurance Act, to provide for health insurance for the employees of a newly established enterprise to complete all required filing procedures on the day when the application form is mailed or presented to the Bureau of National Health Insurance.

In the Doing Business 2011 report released by the World Bank in November 2010, Chinese Taipei's global ranking for starting a business was raised from 29th to 24th, with the time needed for completion shortened from 23 to 15 days.

Main Reforms and Results in 2011

In May 2011, Chinese Taipei set up a one-stop website for company or business startup applications (One Stop website). Applicants can use this website for conducting all requisite procedures and paying all related fees, including those for search and approval of company or business name, incorporation and tax registration, establishment the group insurance applicants of labor and national health insurance, labor pension contributions for employees, and registration of work rules.

In the Doing Business 2012 report released by the World Bank in October 2011, Chinese Taipei's global ranking for starting a business was raised from 24th to 16th, with the number of procedures reduced from 6 to 3 and the time needed for completion shortened from 15 to 10 days.

Main Reforms and Results in 2012

In 2012, Chinese Taipei has launched its second 3-year reform plan for starting a business. The core targets of this plan are to enhance the functions of the one-stop website for online startup applications, and to implement paperless online startup procedures. The major points of reform are as follows:

- Enhancing the functions of the one-stop website for online startup applications:
 - An online platform for transmission of capital audit certification by CPAs has been added to the one-stop website, to make it easy for a CPA to use this online facility to transmit the audit report to the registering authority immediately after completing the audit.
 - The use of electronic signature has been adopted for the online transmission of documents (e-documents) for applying to start a company or business. (The legal basis for this is Article 2 of the Regulations Governing Company Registration and Recognition).
 - The system software of the one-stop application website has been renewed to add a function whereby, once the applicant has completed a single online data entry or transmission of e-documents, these can be simultaneously shared with other authorities (so that the other authorities do not need to again request the applicant to submit the same data or documents).

- To complement the renewal of the one-stop application website system software, and make it easy for applicants to append e-signatures for online transmission of e-documents, the following revisions of pertinent laws will be completed before the end of May 2012:
 - Article 16 of the Regulations Governing Company Registration and Recognition will be amended to delete the provisions in Paragraphs 4 and 5 requiring an applicant for company registration to submit original documents and to replace it with provision for the submission of photographic copies to enable the online transmission of e-documents.
 - An addition to Article 5 Paragraph 3 of the Regulations Governing Business Registration will exempt a company or business operator from submitting company/business registration documents when applying for tax registration via the one-stop application website.
 - An amendment of Article 28 Paragraph 4 of the Enforcement Rules of the National Health Insurance Act will exempt a company or business from submitting registration documents when applying for establishment of group insurance via the one-stop application website.
 - An amendment of Article 13 Paragraph 1 of the Enforcement Rules of the Labor Insurance Act will exempt an applicant entity from submitting company registration documents when using a government-provided online application system to conduct insurance coverage procedures.
 - An amendment of Article 3 Paragraph 1 of the Enforcement Rules of the Labor Insurance Act will exempt a business entity from submitting company registration documents when using a government-provided online application system to conduct the opening of an account for payment of pension contributions.
- On January 4, 2012, Articles 7 and 10 of the Company Act were amended to change the time at which a CPA capital audit report for starting a company must be submitted. Under the revised provisions, it is required to be submitted either at the time of applying to start a company or within 30 days of the company's registration.

With the institution of the reforms and introduction of paperless procedures as described above, the number of procedures required for starting a business in Chinese Taipei will be reduced from 3 to 1, and the time for completion will be shortened from 10 to 7 days.

2. Dealing with Permits in Chinese Taipei

2.1 Background

Sources of Legal Authority for Licenses Required for Conducting Business

As per the Building Act, the Ministry of the Interior (MOI) is the responsible agency for construction. The Act also mandates that builders are to apply to direct-controlled municipality, city and county governments (henceforth “local governments”) for permits and licenses for the construction and tear-down of buildings. Regulations for planning, design, and construction are covered by the Building Technical Regulations issued by the responsible agency. Local governments are permitted to set their own construction regulations to reflect local conditions.

Since 2009, the MOI has worked with the capital city government (Taipei City Government) on establishing a single-service window for building and use permits to achieve greater

transparency and efficiency. Excellent results have already been seen in work to simplify the application procedure to construct fire and sewerage systems and divide the responsibility for said applications among different levels of government.

Divided Responsibilities

In March 2010, the Taipei City Government eliminated the requirement that applicants attach certificates of compliance for water, power, and telecommunications diagrams to applications for buildings under a certain size.

In December 2010, the Taipei City Government issued the Taipei Municipal Self-government Ordinance for Construction Management, which addresses buildings under a certain size. Applicants may now apply directly for a usage permit once the constructor and inspector have conducted their own compliance inspection, ameliorating the need for further inspection at higher levels.

One-stop Center for Warehouse Building Permits

On March 1, 2011, the One-stop Center for Warehouse Building Permits began to accept applications for permits to build warehouses of two stories or fewer and conduct inspections of finished warehouses. The center will handle applications concerning water and power connections and property rights. All falling within the scope of affairs handled by the office need only submit their application (including all statutorily required documentation) by mail to the center for processing. The center will handle all of the related work previously done across units of the Taipei City Government and can handle applications by both public- and private-sector applicants. It is also working to revise implementation rules and simplify application procedures so as to shorten the review period. The center carries out all mandated checks before groundbreaking and after construction is completed, issues usage permits, maintains a property rights registry, and handles water and power connections. The processing time for construction permits is now an estimated 56 working days.

On March 1, 2012, the center began accepting applications for all buildings under five stories, as well as for factories/warehouses/office buildings meeting certain criteria.

Reducing Paperwork

Between December 31, 2011 and February 11, 2010, the MOI sent written notification four times to the relevant local government departments concerning the requisite documents needed to issue compliance certificates and construction permits for water, power, telecommunications diagrams not connected to new construction. The Taipei City Government had done the same beginning March 23, 2010.

Starting February 2, 2010, the Taipei City Government eliminated the requirement that cadastral survey certificates be attached to applications. Construction agency personnel will instead check for relevant information on their own networks, cadastres, other electronic sources, and local government cadastres.

Major License/Permit Issuing Authorities

The Building Act mandates that builders are to apply to direct-controlled municipality, city and county governments (henceforth “local governments”) for permits and licenses for the construction and tear-down of buildings. Permit issuance is thus the responsibility of local governments.

Government and Quasi-governmental Agencies/Institutions That Support the private Sector in Licensing/Permitting

The Building Act mandates that, when applying for a construction permit, the constructor may provide building diagrams and required fees to the relevant local government agency for a preview. In August 2008, the Taipei City Government invited the Taipei Architects Association to help in the work of reviewing applications. Architects and representatives of the Taipei Architects Association as well as relevant government agencies instituted a multi-level review of applications, and simplified license application procedures. Builders can tap into Taipei Architects Association's broad experience in reviewing applications as they prepare their applications, and can also connect with relevant government agencies.

Public Information

The Building Act and related laws and explanations, as well as local governments' self-government regulations for construction management and their explanations (drafts and finalized regulations) can be viewed at the Laws & Regulations Database of The Republic of China, Construction and Planning Agency Ministry of The Interior website, and a quick search for construction management regulations in the Taipei City Construction Management Office website (see Resource Bibliography).

English translations and information concerning the Building Act and local governments' self-government regulations for construction management are available at the aforementioned websites or via direct inquires to local governments.

Via the one-stop service center established on March 1, 2011, the Taipei City Government is able to process, review and register applications covered by the aforementioned regulations within 56 working days of receipt of application. The building can be used once a building permit is obtained.

For constructions that cannot be processed at the one-stop service center, the relevant authorities include:

- Before construction:
 - Issuance of the building line indicating (specifying) diagram, Department of Urban Development, Taipei City Government
 - Issuance of the Land revision survey result diagram, building survey result diagram, Department of Land, Taipei City Government
 - Building license review, Construction Management Office, Taipei City Government
 - Sanitary sewer pipelines/location of escape canals/movement of street lights and trees, Public Works Department, Taipei City Government
 - Fire protection review, Fire Department, Taipei City Government
 - Payment of first-phase air pollution fees and waste disposal plan review, Department of Environmental Protection, Taipei City Government
 - Water supply pre-review, Taipei Water Department
- After construction:
 - Application review of construction completion, Construction Management Department, Taipei City Government

- Application review of construction completion, Sanitary Sewer Office, Public Works Department, Taipei City Government
- Application review of construction completion, Fire Department, Taipei City Government
- Payment of last-phase air pollution fees and waste disposal plan review, Department of Environmental Protection, Taipei City Government

Water connection, Taipei Water Department Permit costs and Responsible Agencies

A variety of license-related fees have been legally mandated, such as:

- Building line indicating fee: As per the Taipei City Regulations for Indicating for a Building Line, where the pile tolerance is two, the fee will be NT\$450. Where it is greater, the additional fee is NT\$100 per pile.
- License fee: As per the Building Act, the fee is 1/1000 of the valuation of the building.
- Pollution fee: As per the Regulations Concerning the Air Pollution Prevention Fee, the builder is to submit its calculation for the appropriate fee based on the type of construction, building area, construction period, and construction budget to the relevant local government agency. Once this calculation is approved, the fee is to be submitted within the required time.
- Usage license fee: As per the Building Act, a nominal fee is required (the Taipei City Government fee is NT\$100).

Transparency in Government Licensing Authorities

Applicants may visit the Taipei City Construction Management Office's website⁹⁵ or call to find out how far their application is in the process.

"One-stop-shop" for Construction Licensing Procedures

On March 1, 2011, Chinese Taipei established the One-Stop Counter for Warehouse Building Permit, whose responsibilities are described above.

Resolving License/Permit Disputes

Where an applicant wishes to dispute a decision by a local government concerning a license application, the applicant may seek redress as per the Administrative Appeal Act. Following the appeals process, further action may be taken under the Administrative Litigation Act.

Ombudsperson's Office

On July 20, 2011, Chinese Taipei established the Agency Against Corruption (AAC) under its Ministry of Justice to deal with and prevent instances of corruption. Government agencies also have ethics departments, and in cases where there is evidence of corruption, investigations may be conducted by these ethics departments or the AAC.

Chinese Taipei also has a Control Yuan (the nation's ombudsman). Where citizens believe that a government organization or public official has committed a wrongdoing, they may submit a petition and supporting evidence by mail, fax, via the Yuan's website or in person. Control Yuan personnel will then begin the process of investigating the claim.

⁹⁵ qservice.dba.tcg.gov.tw/ofc/ofcnew.asp?kind=01

2.2 Trends

Chinese Taipei fully understands that making administrative process more expedient and transparent will make for a “cleaner” government, which will benefit the economy as a whole. In March 2011, the Taipei City Government opened a single-service window for licensing. In March 2012, it expanded the services provided. In the future, Chinese Taipei will promote the establishment of single-service windows in its other cities and counties to simplify administrative processes in cooperation with the Architects Associations.

3. Getting Credit in Chinese Taipei

3.1 Background

To build a financial environment that is sound, fair, efficient and internationally minded, Chinese Taipei established the Financial Supervisory Commission (FSC) in 2004. The FSC oversees banks, brokerage houses, and insurance firms and is tasked with protecting consumers and investors while also helping to develop the industry, stabilize the nation’s finances, and promote domestic financial firms’ global deployment. These efforts will improve the financial industry’s international competitiveness. To date, Chinese Taipei can boast the following accomplishments:

Developing a Host of Financial Tools

Chinese Taipei has worked within its legal system to create financial tools to help small and medium-size enterprises more easily obtain operating capital and support the stable growth of microbusinesses in the growing service, culture, and creative industries. Among issues addressed as part of this process are real property, personal property, creditor’s rights, copyrights, and trademarks. Thanks to this, intellectual property rights may now be used as collateral. The type of collateral involved determines which law applies, but can include the Civil Code, Personal Property Secured Transactions Act, Copyright Act, Trademark Act, Patent Act and the Creative Industries Development Act.

Measures to Create a Healthy Lending Environment

Snapshot of Financial Institutions. As of the end of 2011, 37 domestic banks, 28 foreign banks, 25 credit cooperatives, 277 credit departments of farmer’s associations, 25 credit departments of fishermen’s associations, eight bills finance companies, and the Postal Savings System were operating in Chinese Taipei. With 3,359 financial organization branches in operation, the financial industry employed 160,000 people. Aggregate assets totaled NT\$45 trillion. Deposits amounted to NT\$31 trillion, while loans were NT\$21 trillion. Non-performing loans accounted for 0.42 percent of all loans.

Encouraging Financial Institutions to Make Loans. To stimulate the establishment of long-term relationships between financial institutions and small and medium-sized enterprises (SMEs), and create a financial climate friendly to such businesses, the FSC has launched the Program to Encourage Lending by Domestic Banks to Small and Medium Enterprises since July 2005. As of the end of December 2011, domestic banks had lent NT\$4.07 trillion to SMEs, which is 46.90 percent of all loans and 51.46 percent of loans made to private business. This is NT\$1.71 trillion, or 72.21 percent, more than was lent to SMEs before the program was initiated and is an historic high both in terms of dollar value and percentage of loans.

Providing Multiple Channels to Finance. Financial institution statistics from the end of 2011 show that 65 percent of all loans were collateralized with “personal property,” “real property,” “securities,” or “other collateral.” Uncollateralized loans, then, accounted for 35 percent of all loans. Both asset-backed bonds and credit guarantees exist:

- Asset-backed bonds. These include real property, personal property, accounts receivable, securities and other collateralizable assets.
- Credit guarantee. The Small and Medium Enterprise Credit Guarantee Fund of Taiwan (Taiwan SMEG), founded with contributions from the government and financial institutions, provides credit guarantees for small and medium-sized enterprises otherwise lacking sufficient collateral to qualify for loans. Taiwan SMEG is a government authorized credit agency under Article 12 of the Banking Act. It has proven convenient and effective for SMEs to utilize the Taiwan SMEG.

Establishing the Joint Credit Information Center to Manage Credit Information. The Joint Credit Information Center is the only credit reporting agency that collects credit data from financial institutions in Chinese Taipei. It is the first in Asia to collect individual and corporate credit data. In the 2004 “Credit Reporting System Project” by the World Bank Group, JCIC was named the top public credit registry among 68 of its peers.

Responding to demand by financial institutions, the JCIC set up a wide-ranging database, and offers credit information online 24 hours a day. Banks are required as per the Banking Act to submit reports to the JCIC and may submit credit inquiries with the assent of the person in question.

Legal Framework for Secured Transactions. Chinese Taipei recognizes many forms of collateral, including real property, personal property, and creditor’s rights as well as intellectual property rights including copyrights and trademarks. The type of collateral involved determines applicable laws, which include the Civil Code, Personal Property Secured Transactions Act, Copyright Act, Trademark Act, Patent Act and the Creative Industries Development Act.

Nontraditional Financing. Financing based on personal property and/or rights, such as consumer goods, agricultural goods, stores, equipment, documents of title, bills, accounts receivable, financial leasing, trademarks, patents and other intangible property rights, is allowed in Chinese Taipei.

Taking intellectual property rights as an example of new forms of nontraditional financing, relevant central government agencies are working in line with Articles 2 and 15 of the Creative Industries Development Act to help enterprises value their intangible property. This is accomplished through a panel of representatives from industry, government, and academia, who set benchmarking standards and maintain a price information database. The panel also trains estimators, and holds activities to promote evaluations. A mechanism to provide guidance on using intellectual property to obtain financing has also been drawn up.

Legal Framework for Credit Reporting. The Banking Act and Personal Information Protection Act provide the legal framework for credit reporting. Financial institutions must submit information concerning credit and credit cards, in accordance with the law. The credit applicant’s consent is required for financial institutions to access credit information.

Legal Framework for Governance of Bank and Nonbank Institutions. To encourage financial institutions to operate honestly and abide by principles of corporate social responsibility, the FSC

has overseen the drafting by the Banking Association and the Bills Finance Association of the “Corporate Governance Best-practice Principles for Banks,” “Corporate Governance Best-practice Principles for Financial Holding Companies,” and the “Corporate Governance Best-practice Principles for Bills Finance Companies.” It has also mandated compliance with relevant laws and strengthened internal controls, greater protection the rights of shareholders and interested parties, stronger corporate boards, better oversight, and greater transparency.

In 2009 and 2010, following the 2008 financial crisis, the FSC revised the corporate governance rules and remuneration policies of financial institutions, including the following developments:

- The performance evaluation and remuneration standards for managers and associates as well as remuneration policy for directors and supervisors shall take the personal performance adjusted according to future risks as well as the long-term and overall profits of the company into consideration;
- The role and function of board of directors in risk management are stipulated;
- There should be internal rules approved by the board of directors regarding all donations, and donations to political parties, interested parties and non-profit organizations are required to be disclosed in particular. Furthermore, the FSC amended the “Regulations Governing Information to be Published in the Annual Reports of Banks”, the “Regulations Governing Information to be Published in Annual Reports of Financial Holding Companies” and the “Regulations Governing Information to be Published in Annual Reports of Bills Finance Companies” in 2009 in furtherance of transparency regarding the remuneration of directors, supervisors and presidents

Dissemination of Credit Information. In Chinese Taipei there are three methods of checking credit information: via the Internet, by accessing a server, or by sending encoded files containing said information. The JCIC also provides tailored service, making it more convenient, and more in line with financial institutions’ credit policies, for said institutions to find the information they are seeking.

Information Security. Laws currently in force require that information contained in contracts be kept secure:

- Article 8 of the Personal Property Secured Transactions Act calls for registered organizations to publish online the names of persons involved, an explanation of the contract’s aims, the value of the secured claim, the date of the contract, the date the contract is to be fulfilled, and other pertinent information. Other information contained within contracts is not permitted to be published.
- Access to the collateral registry limited to a handful of technicians entering in official documents, creating case files, and maintaining registry information. Meanwhile, a firewall protects the registry. The only information recorded concerning users is time of access and number of times accessed.

Fees and Times Associated with Registering Collateral. Time needed to register: Article 13 of the Enforcement Rules of the Personal Property Secured Transactions Act states that the registration process must be completed within three working days of receipt of an application. An original and a copy of the registration are given to both creditors and debtors. Financial issues such as right to income from use may be handled at a registration counter, a process that takes less than two hours.

Fees. As per Article 17 of the Enforcement Rules of the Personal Property Secured Transactions Act:

- Registration fee (including fee for a certificate): NT\$900.
- Fee to change a registration (including fee for a certificate): NT\$450.
- Registration cancellation fee: free of charge
- Research fee (including fee for copy/photocopy): NT\$120.
- Fee for another copy of the certificate: NT\$120.
- Search fee (500 results limit): NT\$3,000. Above 500 results, NT\$2 per result.

Fees 1 through 5 will be reduced by half when collateral value is under NT\$90,000.

Electronic Collateral Registering. At present, application forms can be downloaded from the Internet, while files may be saved and certificates issued electronically. Applications may not be accepted electronically at present, but this is something being considered for future action.

Reforms in the Collateral Registry System. Reforms undertaken to the present include updating the system to reflect the merging and upgrading of cities and counties, transferring personal-property collateral work to local governments to make it easier for citizens to apply; offering wireless Internet service; utilizing text messages to inform clients that their application has been processed; and speeding up work to allow clients applying in person to receive their certificates within two hours of application.

3.2 Trends

To give small and medium-sized enterprises more channels through which to access credit, make the financing process more flexible, and create a more convenient financing environment, Chinese Taipei is continuing to work to shape laws and systems and considering various reforms, including:

Systemic Aspect. In 2012, the government continued to implement elements of the Program to Encourage Lending by Domestic Banks to Small and Medium Enterprises, including:

- Increasing financing to SMEs an anticipated NT\$220 billion (financing to SMEs amounted to NT\$200 billion in 2011)
- Encouraging banks to increase SME loans as a percentage of their total loan portfolio and open an SME consultation service window to make financing to SMEs more efficient.

Legal Aspect. The collateral law is being reviewed. Representatives of industry, government, and academia have been brought together over the last three years at several symposia to take a look at collateral law in Chinese Taipei. The content of the “Legal Rights Index,” a World Bank survey on credit was analyzed, and information from the United Nations’ “Legislative Guide on Secured Transactions” was collected. Reforms to the legal systems and actual practices used in advanced nations such as Singapore, Japan, and South Korea were considered. Keeping in mind feasibility, it is hoped that the results of this research may be used as reference when reforms of the legal system are considered.

Suggestion: review of the reasonableness of the World Bank Methodology based on Chinese Taipei experience

One major factor behind Chinese Taipei's economic growth is the smooth and successful operation of local banking system. Through the local banking system, funds have been allocated efficiently and effectively for economic development.

In Chinese Taipei, financial institutions provide multiple financing channels and a variety of loans secured by personal credit or collaterals, including but not limited to immovable and movable property, account receivable, inventory, securities and intellectual property. Efforts undertaken in Chinese Taipei to help people to get credit can be displayed in two ways:

- First, in terms of financial depth (i.e. ratio of loan to GDP), 10 year average ratio of Chinese Taipei is around 120 percent. The percentage is higher than most developed economies in the Asia-Pacific region.
- Second, in Chinese Taipei, under the stellar performance of Small and Medium Enterprise Credit Guarantee Fund of Taiwan (SMEG), a government sponsored credit guarantee fund, the loans extended to SMEs by local banks amount to US\$135 billion, which accounts for 51.46 percent of total loans extended to private enterprises as of the end of 2011. The preceding figures stand as unequivocal testimony to the fact that getting credit is not difficult in Chinese Taipei.

However, under the World Bank Methodology, the strength of Chinese Taipei is underestimated in terms of legal rights index, which only takes into account the strength of laws governing movable property secured transactions and debt clearance when assessing the ease of getting credit in each jurisdiction. The huge discrepancy between the rating and actual getting credit environment of Chinese Taipei posed a question to the reasonableness of the World Bank Methodology. In Many Asian countries, including Chinese Taipei, official credit guarantee institutions play an important role in facilitating SME financing by providing credit enhancement for SMEs and did make great success. Disregarding of other factors facilitating SME financing, it is questionable whether the World Bank Methodology may reflect the reality of ease of getting credit in each assessed jurisdiction. To enhance the reasonableness of the World Bank Methodology, it is suggested to take into consideration other SME financing mechanisms, such as the SMEG in Chinese Taipei, as well as effectiveness indicators, such as financial depth.

4. Enforcing Contracts in Chinese Taipei

4.1 Background

The mechanisms of the judicial system in Chinese Taipei for resolving civil disputes between private parties can be divided into procedures for determining private rights and procedures for realizing private rights. The former refers to the civil litigation process and other dispute resolution mechanisms; the latter refers to the compulsory enforcement procedure for enforcing an obligor's performance obligations through public authority in accordance with the determination of private right relationships.

Civil Litigation System and Functions of Tiers of Adjudication

Civil litigation is a legal procedure to protect a party's private legal rights by requesting a state judicial authority to determine a right-obligation relationship. Since its emphasis is on resolving civil disputes between parties, it respects the parties' procedural autonomy rights in accordance with the principles of self-government with private law. Hence, the commencement, progression and conclusion of proceedings are led by the parties, who are also responsible for asserting and

submitting facts and evidential material. The judge plays the role of an impartial third party in delivering a just judgment. The main source of the procedural rules for civil litigation is the Code of Civil Procedure.

While civil lawsuits generally use ordinary litigation procedure, summary and small-claim proceedings have been established to meet the needs of economy and speedy verdict. Summary proceedings are available for three types of case: 1) claims in respect of property rights where the amount or value of the claim is between NT\$100,000(NT\$100,000 is not included) and NT\$500,000; 2) matters that are stipulated by law to be dealt with by summary proceedings; and 3) cases to which ordinary litigation procedure applies but where both parties agree to the use of summary proceedings. Where the claim is for money, other fungible goods or negotiable securities under NT\$100,000 in amount or value, small-claim proceedings are available to deal with it in a simple and speedy manner, provided both parties agree to use such proceedings.

As a general rule, civil litigation follows a three-level, three-instance system. Ordinary lawsuits, as a rule, are within the jurisdiction of district courts at first instance, the high court or its branches at second instance, and the Supreme Court at third instance. Hearings at the first and second instance are adjudications of fact, and at the third instance are adjudications of law. To attain the goal of concentrating deliberation on the matters in issue, the parties are required to state their evidence at the appropriate times, and in principle are not allowed to present a new form of plaint or defense at second instance. Since hearings at third instance are adjudications of law, the only ground of appeal to the court of third instance is that the original judgment is in contravention of the law (and in cases concerning property rights, an appeal to third instance can be made only where an interest of at least NT\$1.5 million is at stake). The scope of deliberation at third instance is limited to the application of the law, and no party is allowed to present new facts or new evidence. In the case of summary and small-claim proceedings, determination at first instance is made by a summary division of the district court, and an appeal from the decision at a summary hearing is adjudicated by a council of district court judges. In summary proceedings where certain conditions stipulated by law are met, an appeal to third instance can be made; but small-claim proceedings are limited to two instances of adjudication.

Other Mechanisms for Resolution of Civil Disputes

For the resolution of civil disputes, as an alternative to pursuing civil litigation as described above to assert their rights and interests, parties may utilize the “Mediation Proceeding” provisions set out in Part 2 Chapter 2 of Chinese Taipei’s Code of Civil Procedure, which offers a fast and convenient mode of dispute resolution. Also, for certain types of claim, mediation is a mandatory requirement before the filing of suit, to achieve the rapid resolution of disputes whenever possible. Additionally, Chinese Taipei has set up local (city, town and township) mediation mechanisms, as well as arbitration mechanisms, for non-litigation dispute resolution.

Establishment of Specialized Courts

Although Chinese Taipei has not yet set up a specialized commercial court or any court division that is a “commercial court” in name, it has set up several specialized courts and court divisions to deal with various intellectual property and business related cases, such as the Intellectual Property Court and special court divisions for cases concerning international trade and marine commerce, intellectual property rights, securities and futures transactions, and fair trade.

Procedures for Realizing Private Rights

Obligors are bound to perform obligations in accordance with particular private right relationships. When an obligor declines to perform such an obligation, the obligee may, under the relevant provisions of the compulsory enforcement law, apply to the Civil Execution Department of the district court to assert the authority of the state in forcing the obligor to perform an already defined obligation. But the right of compulsory enforcement belongs to the state alone. The obligee only has the right to request the state to institute compulsory enforcement, and is not allowed to act alone to force the obligor to perform his obligations.

Contract Law

The legal system in Chinese Taipei is based on the integration of civil and commercial matters, with contract law as well as other civil and commercial law in principle all regulated by the Civil Code. However, there are some areas of business-related activity, such as insurance contracts, contracts for carriage of goods by sea, trust deeds, trademark use, and patent grants that are governed by special statutes such as the Insurance Act, the Maritime Commerce Act, the Trust Act, the Trademark Act, and the Patent Act.

Contract is one of the causes for the occurrence of a legal relationship. The obligation section in Part II of the Civil Code lays down the regulations in respect of the formation, entry into effect, performance and non-performance effects, assignment, amendment and termination, and common forms of contracts.

The provisions concerning contracts in the obligations section of the Civil Code have not been revised in the past five years. However, on May 26, 2010, amendments were made to the provisions concerning the *beneficium ordinis* (privilege of order) of guarantors in respect of guarantee contracts, and the discharge from guarantee obligations of company directors and supervisors after their replacement on the company board.

Freedom of contract is one of the basic principles of the formulation of Chinese Taipei's Civil Code. As a general rule, the parties can freely decide whether to enter into contracts, the counterparts and forms of contracts, and the content of contracts, provided that the contract terms do not violate prohibitions of the law and do not adversely affect public order or good social customs.

Restrictions on the Freedom of Contract

A contract is one kind of juristic act, and under Article 71 of Chinese Taipei's Civil Code, a juristic act that violates an imperative or prohibitive provision of the law is in principle void. So-called imperative provisions are those that, under certain conditions, limit whether a party has the freedom to make a contract, or limit the form or content of the contract, such as a public utility's obligation to make contracts with utility users. So-called prohibitive provisions are those that prohibit contracts that go against public order or social customs. Different kinds of contracts are subject to differing imperative and prohibitive conditions, which are too extensive and complex for listing in case-by-case detail here.

Private Enforcement of Contracts

No. Article 1 of Chinese Taipei's Compulsory Enforcement Act stipulates that compulsory enforcement of civil cases is conducted by the Civil Execution Department of district courts and their branches. The personnel who carry this out are judges, judicial affairs officials, clerks of the court, or process-servers, and when necessary they may request assistance from police and

related agencies. At present, there is no provision whereby courts may order the compulsory performance of a contract to be placed in private hands.

Private Remedies Against Fraud

The Civil Code prescribes that the right of revocation may be exercised in respect of juristic acts procured by fraud. In addition, the perpetrator of the fraud shall be liable to compensate the defrauded party for any loss or damage suffered in consequence of the fraud.

United Nations Convention on Contracts for the International Sale of Goods

Chinese Taipei is not a signatory to the United Nations Convention on Contracts for the International Sales of Goods. Therefore, the governing law of international sales contracts is decided in accordance with the written agreement of both parties or the application of private international law.

New York Convention on Recognition and Enforcement of Foreign Arbitral Awards

Chinese Taipei is not a signatory to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Article 49 Paragraph 2 of Chinese Taipei's Arbitration Act stipulates that Chinese Taipei's courts may dismiss an application for recognition of a foreign arbitral award if the country where the arbitral award is made or whose laws govern the arbitral award does not recognize Chinese Taipei's arbitral awards. Hence, based on the principle of reciprocity, Chinese Taipei's courts will recognize and enforce a foreign arbitral award if the country where the arbitral award is made or whose laws govern the arbitral award recognizes Chinese Taipei's arbitral awards.

Recent Procurement Reforms

Chinese Taipei promulgated an amendment of the Government Procurement Act on January 26, 2011. The main content of the amendment is as follows:

- Expanding the establishment of a price database for construction works, and making provision for the establishment of a price database for goods and services, to provide all government agencies with a source of reference for allocating procurement budgets and setting base prices.
- Inserting provision that, where the value of a procurement passes the threshold for public announcement (NT\$1 million), and the subject of procurement is a professional service, technical service or information service, the contract may be awarded to the most advantageous tender without the setting of a base price. This amendment is aimed at encouraging government agencies to use the most advantageous tender procedure rather than simply awarding contracts to the lowest bidder with the potential impact thereof on performance quality.
- Clearly stipulating that all procurement contracts should as a general principle use the model contracts drawn up by the governing authorities, so as to elevate the government procurement environment to fairer and more reasonable standards.

Electronic Transaction Law

Chinese Taipei currently does not have any special law to regulate electronic transactions. All it has is an executive order for matters that must be included in and excluded from standardized contracts for online transactions of retail businesses, which was drawn up pursuant to the Consumer Protection Act and targeted at Internet transactions.

Enforcing Judgments

Compulsory enforcement is categorized into various types for, respectively, personal property, real property, ships, aircraft, other property rights, property of public corporations, claims concerning delivery of goods, claims in respect of acts and the forbearance of acts, and provisional attachment or provisional injunction. All conditions, procedures and methods of enforcement are clearly stipulated in the Compulsory Enforcement Act.

Notary Regulatory Framework

As stipulated in Chinese Taipei's Public Notarization Act, notarial acts are performed by courts or by notaries in private practice. The fact of juristic acts and other private rights can be attested by a notary in a notarial certificate or upon a private document. A notary can also certify originals of public documents bearing on the fact of private rights (limited to indication for use outside the country), and certify transcripts or photographic copies of official and private documents.

When a contract contains agreement on any of the matters described below, a notarial certificate has been executed according to law, and it is recorded on the certificate that the contract should be subject to compulsory enforcement, then if the obligor delays performance of the contract, the obligee may use the notarial certificate to apply to the court for compulsory enforcement of the contract.

- The contract is for the payment of a certain amount of money or other fungible goods or marketable securities.
- The contract is for the delivery of particular personal property.
- The contract is for leasing or borrowing a building or other erection, for a limited period, and to be returned to the owner at the termination of that period.
- The contract is for leasing or borrowing land, with agreement that it is not provided for the purpose of cultivation or building, and is to be returned at the termination of a limited period.

Based on the principle of freedom of contract, the use of the public notarization system is, as a general principle, not mandatory, and public notarization is not a condition for the making or validity of a contract. There are exceptions, such as the stipulation in Article 166-1 Paragraph 1 of the Civil Code, whereby a contract for the purpose of assuming an obligation to transfer, create or alter a real property right requires the making of a notarial certificate by a notary public, but this provision has not yet come into effect.

Alternative Dispute Resolution

Chinese Taipei's Township, Town and City Mediation Act and Arbitration Act, for example, provide for the setting up of mediation committees and arbitration mechanisms to provide dispute resolution apparatus outside the judicial system. But the provision of such arrangements for speedy handling of disputes is not limited by these laws (an example of another such arrangement is the mechanism for dealing with financial consumer disputes established under the Financial Consumer Protection Act).

4.2 Trends

Reform measures planned or implemented by the Judicial Yuan in recent years

Chinese Taipei has been continuously conducting reform of civil litigation procedures, eliminating case delays, and making civil litigation more transparent, convenient and accessible, with the aim of putting the judicial system truly at the service of the people.

In 2011, the Judicial Yuan set up the Judicial Energy-Saving Task Force, to comprehensively examine all relevant aspects of substantive law, procedural law, administrative oversight of the judiciary, and so on, with a view to identifying the main causes of case hold-ups, eliminating chokepoints, reducing waste of judicial resources, and ensuring that judges focus their energies on adjudicating cases with due speed. In the same year, the Judicial Yuan set up the Committee to Assess the Results of Civil Procedure Reform, to assess the results of reforms already instituted and assist the determination of subsequent directions of reform.

In the sphere of contract law, focuses of reform will include the implementation of a centralized trial system, mapping out plans for expansion of mandatory lawyer representation, and increasing the establishment of specialized court divisions. Also, particular attention will be paid to raising the quality of mediators, and to assigning expert judges and mediators to jointly conduct mediation procedures in cases requiring specialized knowledge, to promote the establishment of mediation.

Further, with respect to accessibility of litigation in the civil justice system, the Judicial Yuan has enhanced the existing trial progress inquiry service to enable parties to litigation to find out the latest progress of proceedings at any time, and reduce waiting time before the commencement of trial. Toward this end, on July 1, 2011 Chinese Taipei launched a case progress inquiry system, covering cases being heard by ordinary courts of first and second instance and by the High Administrative Court, by which parties to a case, their legal representatives, agents *ad litem*, defenders and other relevant persons can inquire online about the status of cases, and by which applicants can be kept proactively informed by email of the latest progress in the conduct of cases.

5. Trade Across Borders in Chinese Taipei

5.1 Background

Chinese Taipei established the Foreign Trade Act on February 5, 1993, as the basic law for regulating import and export trading activities and related matters. In addition, Chinese Taipei's subsidiary laws for the regulation of trade include the Regulations Governing Registration of Exporters and Importers, the Regulations Governing Import and Export of Goods by the Military Authorities, the Regulations Governing Export and Import of Strategic High-tech Commodities, and the Regulations on Import and Export of Endangered Species of Wild Fauna, Flora and Related Products. Goods imported from mainland China are regulated by the Regulations Governing Permission of Trade between the Taiwan Area and the Mainland Area; and import and export of optical disc manufacturing equipment is regulated by the Regulations Governing Import and Export of Optical Disc Manufacturing Equipment. Laws regarding customs matters are set out in the Customs Act, the Customs Anti-smuggling Act, and executive orders drawn up under authorization thereof.

Institutions with Trade Authority

The agencies concerned are the Directorate General of Customs (under the Ministry of Finance), the Bureau of Foreign Trade and the Office of Trade Negotiations (both under the Ministry of

Economic Affairs), and the Bureau of Animal and Plant Health Inspection and Quarantine (under the Cabinet's Council of Agriculture).

Public Sector Support

All Customs Offices regularly invite local associations for customs brokers, warehousing and storage providers, commercial carriers, freight forwarders, and other relevant service providers to attend customs workshops for reviewing or giving guidance on customs laws and regulations or the simplification of customs procedures, and arrange lectures and training for private sector personnel who conduct customs-related procedures, with a view to enhancing the participants' understanding of regulations for the customs clearance of imports and exports.

Air freight forwarders in Chinese Taipei must be licensed by the Ministry of Transportation and Communications. Currently, in accordance with Chinese Taipei's WTO commitments on trade in services, this sector is not subject to any restrictions on foreign or overseas Chinese investment ratios. Air freight forwarders must run their operations in accordance with the provisions of the Civil Aviation Act, and must accept supervision and inspection by the Civil Aeronautics Administration under the Ministry of Transportation and Communications.

For shipping administration, Chinese Taipei's current main laws are the Shipping Act, the Regulations for the Administration of Shipping Carriers and Ship Chartering Operators, and the Regulations for the Administration of Sea Freight Forwarders. In addition, the Act for the Establishment and Management of Free Trade Zones provides the legal basis for the conduct of matters related to free trade zones.

Consolidated Trade Laws

Regulations in respect of import tariffs and import-export goods classification have been compiled into the Customs Import Tariff and Import and Export Commodity Classification of Chinese Taipei, for reference by the businesses concerned. Customs declaration procedures for imports and exports are stipulated in the Customs Act and its Enforcement Rules. Trade of goods across borders is uniformly governed in a single law by the provisions of the Foreign Trade Act.

Trade Law Updates

The trade and customs authorities will frequently review the suitability of current laws and regulations, and if they find any law or regulation to be inappropriate, will take steps to amend it by the following set procedures:

- In the case of statutory laws such as the Foreign Trade Act, a draft amendment will be drawn up by the Ministry of Economic Affairs and submitted to the national legislature (the Legislative Yuan) for review. Amendments passed by the Legislative Yuan will go into effect after promulgation by the President.
- Regulations and executive orders, such as the Regulations Governing the Implementation of Automated Cargo Clearance Procedures and the Regulations Governing Customs Clearance Procedures for Express Consignments, are made and revised by the Ministry of Finance.

Chinese Taipei applied to join the General Agreement on Tariffs and Trade (GATT) under the title of the Customs Territory of Taiwan, Penghu, Kinmen and Matsu in January 1990, and promulgated the Foreign Trade Act in 1993. In 2010, the Foreign Trade Act was revised to insert provisions laying down the legal basis for the issuance of processing certificates; in July

2010, the Regulations Governing Certificates of Origin and Certificates of Processing were amended to insert provision on the issuance of certificates of origin for goods transported from a third country direct to the importing country; in June 2010, the Regulations Governing Registration of Exporters and Importers were amended to insert provision for firms to use electronic data transmission to submit documents when applying for pre-check of English name and registration as importer/exporter; and in September 2009, the Regulations on Trade Promotion Subsidies were revised to broaden the eligibility for and items covered by the subsidies.

The Foreign Trade Act and other important customs laws and regulations have been translated into English and posted on websites for convenience of reference by the general public, on the websites of the Department of Customs Administration, Directorate General of Customs, Bureau of Foreign Trade, and Laws & Regulations Database (see Resource Bibliography).

Trade-related Treaties and Conventions

A useful list can be found on the International Trade Centre website (see Resource Bibliography). Because it is not a member of the WCO, Chinese Taipei cannot sign related treaties and conventions formulated by the WCO.

WTO-related Agreements

Having joined the WTO on January 1, 2002, WTO agreements to which Chinese Taipei has bound itself include:

- The multilateral and plurilateral trade agreements and associated legal instruments made at the conclusion of the Uruguay Round negotiations in 1994, as set out in Annexes 1 to 4 of the Agreement Establishing the WTO and brought within the scope of the WTO by Article II of the Agreement (see WTO website). These consist of:
 - The Multilateral Agreements on Trade in Goods listed in Annex 1A, the General Agreement on Trade in Services and Annexes set out in Annex 1B, and the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C.
 - The Understanding on Rules and Procedures Governing the Settlement of Disputes set out in Annex 2.
 - The Trade Policy Review Mechanism set out in Annex 3, which requires each member country to prepare a report on its overall trade measures every two, four or six years (depending on its share of global trade), and submit this to the WTO for open discussion and analysis by all members, so that the member under review can receive comments and suggestions to serve as a reference for improvement measures.
 - The Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, and other plurilateral trade agreements listed in Annex 4.
- The multilateral trade agreements included in Annexes 1 to 3 are binding on all members, while the plurilateral trade agreements included in Annex 4 are binding only on members that have accepted them. The full list of agreements under the jurisdiction of the WTO is as follows:
 - Annex 1
 - Annex 1A: Multilateral Agreements on Trade in Goods
 - General Agreement on Tariffs and Trade 1994
 - Agreement on Agriculture

- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing (expired in January 1, 2005)
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Antidumping
- Agreement on Customs Valuation
- Agreement on Pre-shipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards
- Annex 1B: General Agreement on Trade in Services and Annexes
- Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights
- Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes
- Annex 3: Trade Policy Review Mechanism
- Annex 4: Plurilateral Trade Agreements
 - Agreement on Trade in Civil Aircraft
 - Agreement on Government Procurement (Chinese Taipei formally became a contracting party to the Government Procurement Agreement on July 15, 2009.)
 - Information Technology Agreement (Chinese Taipei formally became a contracting party to the Information Technology Agreement on July 1, 1997.)
 - International Dairy Agreement (expired in May 1998)
 - International Bovine Meat Agreement (expired in May 1998)
- Bilateral agreements
 - Cross-strait Economic Cooperation Framework Agreement (ECFA), which was signed by the Straits Exchange Foundation (SEF) and the Association for Relations Across the Taiwan Strait (ARATS) on June 29, 2010 at the fifth round of “Chiang-Chen Talks”, and came into effect on September 12 of the same year.
 - Free Trade Agreement between Chinese Taipei and Panama (which came into effect on January 1, 2004).
 - Free Trade Agreement between Chinese Taipei and Guatemala (which came into effect on July 1, 2006).
 - Free Trade Agreement between Chinese Taipei and Nicaragua (which came into effect on January 1, 2008).
 - Free Trade Agreement between Chinese Taipei and El Salvador and Honduras (which came into effect on March 1, 2008 between Chinese Taipei and El Salvador, and on July 15, 2008 between Chinese Taipei and Honduras).

Enforcement Mechanisms for Trade-related Conventions/Treaties

Chinese Taipei uses the risk management mechanism as detailed in the Revised Kyoto Convention to carry out border enforcement, and negotiates treaties and agreements with other countries in accordance with the Regulations Governing the Processing of Treaties and Agreements as prescribed by the Ministry of Foreign Affairs. In case of conflict between international treaties and general domestic laws, according to the “respect treaties” provision of

in Article 141 of the Constitution the validity of treaties supersedes that of general domestic laws

Customs and Border Protection

Customs enforces border controls in accordance with the Customs Anti-Smuggling Act and other relevant laws. The risk management mechanism rules prescribed in the Revised Kyoto Convention are used and spot checks are carried out of high-risk companies, customs brokers, shippers, warehousing companies, express delivery firms, and travelers; and of drugs, firearms, and high-tariff goods, controlled goods, protected species, and goods which infringe intellectual property rights.

When the Foreign Trade Law was revised in 1993, Articles 13 and 27 were added to provide a legal basis for control of the export and import of strategic high-tech commodities (SHTC). An Export Control List was set up in July of 1995, requiring prior export application for goods on the list. In November of 1998, control lists announced by the Australia Group (AG), Nuclear Suppliers Group (NSG), and Missile Technology Control Regime (MTCR) were taken into the SHTC control system. Catch-all export controls were implemented in January of 2004, strengthening checks on end use and end users in order to prevent the transport of strategic commodities with the potential for development into armaments.

Trade in Services

Regulations governing Chinese Taipei's trade in services are established by the competent authorities for the different service industries. There is no one law that regulates all services.

Institutional Framework for Trade

The Ministry of Economic Affairs is the primary agency responsible for the formulation of trade policy in Chinese Taipei, with other ministries and commissions also participating jointly in the formulation and execution of trade policy. The Bureau of Foreign Trade is responsible for handling export/import management, WTO, OECD, APEC, and other international and bilateral trade-related matters. The International Economic and Trade Strategic Alliance Arrangement Task Force was set up in 2004 to serve as a high-level platform for inter-ministerial coordination, and an Office of Trade Negotiations was established in 2007 to take charge of Chinese Taipei's multilateral and bilateral trade and economic negotiations.

Reforms to Trade-related Institutions in Recent Years

The Customs Administration is carrying out five subplans of the Superior Economic and Trade Plan from 2009 through 2014 to promote trade facilitation and assure supply-chain security: AEO Certification and Management Mechanism Plan, CMT Single Window Plan, Advanced Cargo Information Plan, Cargo Movement Security Plan, and Modernization of Detection Equipment Plan. In addition, an MOEA Office of Trade Negotiations was established in March of 2007 and an Intellectual Property Court in July of 2008.

Government Trade Facilitation and Reform

The Customs Administration and the MOEA's Bureau of Foreign Trade are in charge of trade facilitation and trade system reform. In response to international trade facilitation and the trend toward innovative services, the MOEA's Bureau of Foreign Trade has worked to implement a Trade Facilitation Plan and, pursuant to its commitment as an APEC member to complete preparations for "paperless trade" and simplify external trade licensing procedures,

documentation, and related regulations by providing a single-window trade facilitation e-net platform that handles one-stop licensing, inspection application, and customs clearance operations.

5.2 Trends

Customs reforms:

- Tariff reductions under ECFA strengthen the export competitiveness of Taiwan's industries.
- The relaxation of bonded-area regulations promotes economic development.
- Regulations governing the resorting of import goods in bonded warehouses have been relaxed.
- The delivery of express mail packages on holidays has been opened up.
- Export customs procedures for strategic high-tech commodities have been simplified.
- Travelers' baggage on "three mini links" routes has been exempted from customs seal fees, lightening the cost burden on operators.
- Advance valuation ruling has been implemented, speeding up customs clearance.
- RFID e-seal escort of goods has been adopted, protecting the security of container movement.
- The use of X-ray container inspection equipment speeds up customs clearance and reduces time and cost needed for manual inspection.
- Expansion of the scope of AEO certification makes customs clearance both quick and secure.
- Customs procedures for transshipped marine containers (commodities) (T2) have been simplified.
- Regulations for the Transshipment in Kinmen, Matsu, or Penghu of Import/Export Commodities that Clear Customs in Taiwan have been instituted.
- Shippers who import containers for their own use are exempt from making customs clearance deposits.
- Advance ruling on customs valuation has been implemented.

International Trade

The Trade Law was revised in January of 2010, adding a provision for the issuance of certificates of processing. The Regulations Governing Certificates of Origin and Certificates of Processing were revised in July of 2010 to add a provision for the issuance of certificates of origin for goods shipped directly from a third country to the importing country. The Regulations Governing Registration of Exporters and Importers were revised in June of 2010 to provide for the electronic transmission of data as a means for companies to use in applying for English name pre-check and sending application data for the registration of export/import companies. The Regulations for Trade Promotion Subsidies were revised in September of 2009 to expand subsidy targets and items.

The issuance of SHTC export permits was shifted to electronic issuance in May of 2008; companies now need only to fill in the export permit number on the export declaration and then, after verification at the Bureau of Foreign Trade's information center during customs clearance shows no nonconformity, the goods can be released. The Regulations Governing Export and Import of Strategic High-tech Commodities were revised in 2011 to allow goods to be exported

in batches, and to extend the validity of permits for SHTC exports to member countries of the Export Control Organization to two years.

III. Resource Bibliography

Resources	Website	Notes
Council for Economic Planning & Development	www.cepd.gov.tw	The Report on Chinese Taipei's 2011 Ease of Doing Business Reforms can be found here, as can relevant laws and regulations
Department of Commerce, Ministry of Economic Affairs	gcis.nat.gov.tw	
One-stop website for company or business startup applications	onestop.nat.gov.tw	
Construction and Planning Agency, Ministry of the Interior	www.cpami.gov.tw	
Taipei City Government	www.dbaweb.tcg.gov.tw	One stop center for warehouse building permits can be found here
Commerce Industrial Services Portal	gcis.nat.gov.tw	
Banking Bureau, Financial Supervisory Commission	www.banking.gov.tw/en	
Joint Credit Information Center	www.jcic.org.tw/english	
Directorate General of Customs	eweb.customs.gov.tw	
Bureau of Foreign Trade, Ministry of Economic Affairs	www.trade.gov.tw/English	
Judicial Yuan	www.judicial.gov.tw/en	
National Laws and Regulations database	law.moj.gov.tw/Eng/	
Ministry of Economic Affairs	www.moeaic.gov.tw	
Government e-Procurement System	web.pcc.gov.tw	
International Trade Centre	www.intracen.org	
Department of Customs Administration	doca.mof.gov.tw	
Directorate General of Customs	eweb.customs.gov.tw	

Thailand

I. General Information

The World Bank has released the results of its research on the Ease of Doing Business in various countries throughout the world. Thailand has been included in the rankings since 2005. The report is measured by time indicators: concerning length of time, number of steps in the process of starting a business, dealing with construction permits, paying tax and cross border trading and legal indicators: concerns receiving credit, protecting investors, enforcing contracts and closing a business. The World Bank's *Doing Business* report is consistent with Thailand's public sector reform. The Thai government has striven to continuously improve the quality of public services regarding both system processes and government personnel. Civil servants are encouraged to be innovative and professional. Public services have been developed to create trust and improve the image of the bureaucratic system. Many important steps can be taken to gear towards public service development as follows:

The Office of the Public Sector Development Commission, the Office of National Economic and Social Development Board, Ministry of Finance and Ministry of Commerce are the chief agencies responsible for coordinating with relevant agencies to leverage public service capacity. In 2006, Public Service Improvement commissions were established to manage nine different key performance indicators in each category. Each commission designates the public sector as the provider and the private sector as the customer. The private sector is key to implementation in various areas, for example, the Department Of Business Development is responsible for starting a business, Bangkok Metropolitan Authority is responsible for building permit requests, the Fiscal Policy Office is responsible for getting credit, the Customs Department is responsible for trading across borders and the Legal Executive Department is responsible for enforcing contracts. The committees are responsible for investigating, providing suggestions and guidelines for public service improvement and monitoring progress.

Studying the best practices of the first-ranked country is encouraged as a guideline for Thai public service improvement. Relevant agencies are encouraged to improve their performance continuously, for example through studying the feasibility of tax rates or fees reduction and the use of information technology, etc. Monitoring and evaluation are conducted to measure performance and implementation. Relevant agencies involved in each area continually report their progress to the Cabinet.

Many crucial areas of doing business in Thailand have been improved; through for example the implementation of a project entitled 'e-Starting Business,' an integrated system providing information for starting a business in Thailand. The aim of the project is to improve the processes of incorporation. Entrepreneurs can not only acquire information, but can also request a taxpayer identification number and an employer account number simultaneously at the Department of Business Development using a single form. The Customs Department has established the

National Single Window system to create a paperless information network. The government is continually improving public services with sustainable results, convenience and ease of accessibility by placing emphasis on legal and regulatory reform. Improving the business environment does not only result in increasing the confidence of investors making an investment in Thailand and public service improvement, but also has a lasting and positive effect on the business environment and economic growth.

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in Thailand

1.1 Background

In Thailand, businesses can be incorporated in many types, depending on business nature, capital, and business capacity. There are three main categories.

Business types	Law
Limited and unlimited partnerships	Thai Civil and Commercial Code
Company limited	Thai Civil and Commercial Code
Public company limited	The "Public Limited Company" Act B.E.2535

Business registration is the responsibility of the Department of Business Development (DBD), Ministry of Commerce. DBD has completed more than 550,000 business registrations throughout Thailand (as of March 2012), with approximately 50,000 new businesses registered each year.

Non-juristic persons established by an individual owner (sole proprietorship) or ordinary partnership and conducting 13 business types such as sales businesses with an income of more than 20 Baht per day, CD, VDO, DVD or digital VDO for entertainment, e-Commerce and internet cafés shall be processed according to the Commercial Registration Act B.E.2499.

As of January 1st 2011, DBD decentralized the commercial registration process to 7,776 municipalities throughout the country. They have full authority to process applications for commercial registration. This decentralization is advantageous to business operators in terms of the reduction of time and travel costs. However, Commercial Registration Act B.E.2499 is still centrally regulated by DBD.

Registration of Foreign Companies

A foreign majority business can be registered without any special license or approval in categories of businesses that are not restricted to Thai nationals. However, the Foreign Business Act B.E.2542, with three lists, governs some business categories. List one covers businesses that foreigners are not permitted to operate among the 13 types of businesses, such as newspapers, rice farming, animal farming, and forestry. List Two covers businesses that require permission from the Minister and the approval of the Cabinet to operate. List three covers businesses that need permission from the Director-General of the Department of Business Development, and the approval of the Foreign Business Committee in order to operate. The Foreign Business Committee is responsible for to the approval process in accordance with Section 5 of the

Foreign Business Act B.E.2542, for example the advantages and disadvantages regarding economic and social development, technology transfer, etc.

Support to Start-ups

DBD is committed to providing professional public service. To this end, all information regarding business registration is provided online on the DBD website (see Resource Bibliography) both in Thai and English. DBD also provides a call center (Hotline 1570) that allows businesses to contact DBD consultants, facilitating businesses to register their company more easily.

Apart from delivering public services for business registration and a business database, DBD is making an effort to strengthen businesses capacity at all levels, in particular among SMEs, driving them to improve quality standards, develop business networks, build corporate governance, and prepare for the ASEAN Economic Community (AEC).

DBD has encouraged the development Thai businesses by providing training, business consulting services and quality standards. Priority areas include franchises, logistics, services, wholesale, retail, and e-Commerce. Additionally, DBD is working to strengthen trade institutions and associations to draft business development strategies in order to promote trade institutes as a focal point representing their members.

Business Registration Development

According to *Doing Business 2011*, it used to take 7 procedures and 32 days to start a business in Thailand, and required dealing with four government agencies as follows:

- Business registration at the Department of Business Development
- Apply for taxpayer identification number at the Revenue Department
- Apply for employer account number at the Social Security Office
- Submit work regulations to the Department of Labor Protection and Welfare

In early 2010, in order to promote the “easier-faster-cheaper” process for establishing limited companies in Thailand, the Department of Business Development, together with the Revenue Department and the Social Security Office initiated the “4S Concept:” Single Point, Single Form, Single Document, and Single Number.

The result of the 4S concept is reflected in the *Doing Business 2012* report. Thailand’s ranking in the Starting a Business category rose from 97 to 78, taking only five procedures and twenty-one days. The Department of Business Development is now the single point for business registration, using a single form and single set of documents to complete the business registration process, enabling the business to start up immediately. In addition, the data of business registration will be transferred to the Revenue Department and the Social Security Office for data record management. This is a significant contribution to the e-Government initiative with a One Stop Services (OSS) integrating functions of three government agencies.

In 2012, DBD launched a single number, combining all three numbers (Business registration number, Taxpayer identification number, and Employer account number) assigned to a business. Furthermore, DBD expanded the 4S concept to cover the work of the Department of Labor Protection and Welfare. As a result, business can now start up within 60 minutes.

Legal and Regulatory Reform

Commitment from the Ministry of Finance, Ministry of Labor, the Department of Business Development and the Revenue Department has led to reform of laws and regulations to facilitate the Single Point service as follows:

- Order of the Ministry of Finance to transfer authority of the Revenue Department officer to the Department of Business Development officer
- Order of the Ministry of Labor to transfer authority of the Social Security Office officer to the Department of Business Development officer
- Order of the Ministry of Labor to transfer authority of the Department of Labor Protection and Welfare officer to the Department of Business Development officer
- The regulation of the Central Business Registration Division regarding the registration of partnership and company B.E. 2549, as amended (No. 2), dated June 30, 2010 using the new single form used by the Department of Business Development
- Notification from the Director General of the Revenue Department (No. 2), dated July 1, 2010 instructing the Revenue Department to use the new single form used by the Department of Business Development
- Notification of the Social Security Office, dated June 29, 2010 for Social Security Office to use the new single form used by the Department of Business Development.

Improvements in Starting a Business in Thailand

Comparison of Starting a Business Competitiveness before and after Improvement of Starting a Business Service Based on World Bank Research

Processing Steps	Before Improvement		e-Starting Business after Improvement (2010-2011)		e-Doing Business after Improvement (2011-2012)		Responsible Agency
	Length	Cost (Baht)	Length	Cost (Baht)	Length	Cost (Baht)	
1. Booking a name of a legal entity	2 days	-	20 mins	-	20 mins	-	Department of Business Development
2. Payment of the capital via a bank	1 day	-	60 mins	-	60 mins		Private Bodies
3. Making corporate stamp	4 days	300-500	90 mins	300-500	90 mins	300-500	Private Bodies
4. Registration of a memorandum of association and registration of incorporation	1 day	5,900	60 mins	5,900	60 mins	5,900	Department of Business Development Revenue Department Social Security Office Department of Labour Protection and Welfare
5. Application for a tax personal identification number	2 days	-					
6. Application for an employers' list number	1 day	-					
7. Publication of working regulations	21 days	-	7 days	-			
Total	32 days	6,400	7 days, 3 hrs, 50 min.	6,400	3 hrs, 50 mins	6,400	

1.2 Trends

Regarding the Department of Business Development's strategy 2012-2015, DBD is committed to modernizing business registration services with accuracy, efficiency and transparency through the use of technology for business registration. The Electronic Transaction Act B.E. 2544 (2001) aims to enact the use of electronic transactions equivalent to transactions made by traditional means. Thus, in 2012, DBD will enact significant business registration developments, including the following:

Online Corporate Name Reservation. At present, corporate name reservation can be accomplished through two channels:

- Businesses may visit the office in person. This process takes 1 hour and costs 20 Baht.
- Businesses may reserve a name through the online system. This process takes 24 hours.

In practical terms, Thai law does not require corporate name reservation. Businesses can reserve a corporate name during business registration. By the end of 2012, DBD will launch a new electronic system on corporate name reservation that provides results in real time.

e-Registration. In 2012, DBD began studying approaches to e-Registration development. This service will be operational by 2014 to provide businesses with an easier, faster, and cheaper way to start a business.

2. Dealing with Permits in Thailand

2.1 Background

Sources of Legal Authority for Licenses Required for Conducting Business

The construction permit process in Thailand is codified under the Building Control Act, B.E. 1979, Thailand's primary construction legislation. The regulation is concerned with construction building controls stability, safety, fire protection, landscape, use of land, environmental impact, all the details about evidence to be submitted and application fees that the construction permits. In addition, the act also mentioned the penalty and responsible government agencies. For utilities installation, the procedure will depend upon the regulation of each sector.

Major License/Permit Issuing Authorities

Thailand has a decentralized Construction Permit system. In the Bangkok Metropolitan Area, for buildings measuring five stories and/or more than 1,500 meters in height, applications are submitted to the Public Works Department, Bangkok Metropolitan Administration (BMA). For buildings under four stories, applications are submitted to the District Services Office. Outside of the Bangkok Metropolitan Area, applications are submitted to Municipality or Sub district Administrative Organization

Government and Quasi-governmental Agencies and Institutions that Support the Private Sector in Licensing and Permitting

Utilities Installation such as requesting and connecting a telephone, water and electricity are performed by government-owned corporations and the private sector as follows:

Electricity Installation

Bangkok Metropolitan Area: applications submitted to the Metropolitan Electricity Authority

Provincial areas: applications submitted to the Provincial Electricity Authority

Waterworks Authority

Bangkok Metropolitan Area: applications submitted to the Metropolitan Waterworks Authority

Provincial areas: applications submitted to the Provincial Waterworks Authority

TOT Public Company Limited and private sector

All areas submit applications to TOT Public Company Limited, or to a private sector company (such as True Corporation).

Public Information

Applicants can access information on laws, regulations, procedures and also can download forms from various authorities' websites, for example: the Department of Public Works and Town & Country Planning, Bangkok Metropolitan Administration, Metropolitan Electricity Authority, Metropolitan Waterworks Authority, and TOT Public Company Limited.

In 1992, Thailand reformed laws concerning construction permits to simplify the process. Section 39 of the Building Control Act of 1979 (No. 2 Act 1992) Section 39 (2), allows an applicant to alter, or remove a building procedures to forgo the procedures stipulated under Section 21 (construction permit approval for generalized cases) given that the applicant presents the necessary engineering/architecture professional certifications through the provision of a detailed report in accordance with all ministerial regulations.

By this law, the applicant can begin construction in one day. In the event that an error is found, construction must cease and the error must be corrected within seven days. This option is an alternative method designed to streamline the process for qualified entrepreneurs.

Agencies Responsible for Construction Permits

- The Bangkok Metropolitan Administration is responsible for the issuing of permits and construction follow-up in the Bangkok Metropolitan Area. Municipality and Subdistrict Administrative Organizations are responsible for issuing permits in provincial areas.
- Department of Public Works and Town and Country Planning, Ministry of Interior are responsible for construction permit legislation. The Department of Local Administration within the Ministry of Interior is responsible for construction policy.
- The Office of Natural Resources and Environmental Policy and Planning, Ministry of Natural Resources and Environment is responsible for Environmental Impact Assessment reports.
- Metropolitan Electricity Authority is responsible for electricity installation in metropolitan areas, and the Provincial Electricity Authority is responsible for electricity installation in provincial areas.
- The Metropolitan Waterworks Authority is responsible for waterworks installation in provincial areas.
- TOT Public Company Limited is responsible for telephone installation in all areas.

Permit Fees

Construction permit fees are specified in 1995 Ministerial regulations, Building Act. Utilities Installation Fees are payable upon request by the relevant agency.

Transparency

According to Section 21 of the Building Act, the approval process should be completed within 45 days. According to Section 39, Construction Permits Certifications should be completed within 120 days.

The Bangkok Metropolitan Administration has a system of appeals to enhance transparency and fairness. If an applicant has a conflict with the agency, the applicant can appeal to the Board of Directors. If the applicant is dissatisfied with the decision of the Board of Directors, a second appeal may be submitted to the Administrative Court.

Thailand does not yet have a One Stop service for the construction permit process. However, there are plans to reform the process, and Thailand is participating in the Ease of Doing Business Phase 2 construction permits workshop, led by Singapore. This workshop should enable Thailand to set up a One Stop Service.

License and Permit related Disputes

The Public Works Department of the Bangkok Metropolitan Administration is the agency responsible for initiating and ensuring that the construction process follows the approved plan and for conducting building inspections.

2.1 Trends

Thailand is engaged in efforts to ease permit and licensing processes, and plans for future reform activities are as follows. First, BMA has designed a master plan for information and communication technology for construction security management. It is developing a prototype of e-construction permits using a GIS system to facilitate monitoring the location of the building, compliance with local and national planning and zoning laws, property boundaries and construction sites. BMA has developed a building information management system accessible to relevant government agencies that integrates building construction information.

3. Getting Credit in Thailand

3.1 Background

Sources of Legal Authority for Oversight of Banks and Other Financial Institutions and Legal Framework for Secured Transactions

Financial Institution Act B.E. 2551 (2008). The regulation of commercial banks, finance companies, and credit finance companies falls under the Financial Institution Act B.E. 2551 (2008). The Ministry of Finance is responsible for the enforcement of the Act. All financial institutions must be licensed by the Ministry of Finance. The Bank of Thailand is responsible for the supervision and regulation of these financial institutions and has the power to stipulate rules and criteria accordingly. The rules and criteria announced by the Bank of Thailand aim for the strength and stability of each institution and the system as a whole, as well as the protection of depositors, creditors and consumers. Such rules include capital funds maintenance requirements,

rules on corporate structure and governance, rules on banking operations and credit granting, provisioning requirements, maintenance of liquid assets, and rules on interest rates and fees.

National Executive Committee Announcement No. 58. The regulation of non-banks falls under the authority of National Executive Committee Announcement No. 58. The Ministry of Finance has issued ministerial notifications on the regulation of non-bank activities such as credit card businesses and non-secured personal loans businesses. The Ministry of Finance has authorized the Bank of Thailand to regulate these two types of credit by non-banks in the same manner as commercial banks.

Laws Regulating Government-owned Special Financial Institutions. The Ministry of Finance is responsible for the regulation of Special Financial Institutions, which also grant credit to private consumers, and have their own individual rules and regulations.

Draft Security Interest Bill B.E. The objective of this Act is to extend security interest to cover any asset with economic value. Under this draft Act, a security interest is a secure payment of the debt without delivery of the asset. The security interest is created by contract, and it must be in writing and registered. The Minister of Finance will be responsible for the enforcement of this Act.

Commercial Lending Environment

The majority of businesses seek financing from financial institutions. To provide financing, financial institutions must take into account the value of collateral. At present, many limitations exist for a creditor to grant a collateral loan. However, a draft security interest bill seeks to reduce those limitations by introducing new types of assets as legitimate securities. In summary, the draft law contains the following provisions:

- A natural person or a company may give collateral under this Act.
- Only a financial institution or other bodies as specified under the ministerial notification may receive collateral.
- Assets that may be used as collateral include businesses, future receivables, inventories, and immovable properties of persons who conduct real estate business and other assets as specified under the ministerial notification.
- A debtor may retain possession of the asset as specified in the land deed. This must be registered in the securities interest contract.

The Department of Business Development will act as registry, monitoring the registration of collateral, the registration of securities interest contract, any cancellation or changes to the prior registrations, and public access to registration materials or information regarding holder of licenses, which is intended to promote a sound registry as a whole to prospective users.

Credit Reporting/Information System

In early 1999, two credit bureaus were set up in Thailand under the Financial System Master Plan: Thai Credit Bureau Co., Ltd and the Central Credit Information System. After operating separately for a few years, the two credit bureaus merged in 2005, forming a single credit bureau operated by the private sector (namely the National Credit Bureau Company Limited or NCB). This credit bureau operates under The Credit Information Business Act 2002 (B.E.2545). The Act went into effect in 2003 and the Credit Information Protection Committee (CIPC) was set up to supervise business credit information.

The Credit Information Business Act, B.E. 2545 (2002), the Credit Information Business Act (No. 2), B.E. 2549 (2006), and the Credit Information Business Act (No. 3), B.E. 2551 (2008) comprise the legal framework for the regulation of the credit information system in Thailand. The Ministry of Finance is responsible for the enforcement of the Act. The Credit Information Protection Committee, comprised of the Governor of the Bank of Thailand, high-ranking officials from related ministries and external experts, supervises the credit information industry. All credit information companies must be licensed by the Ministry of Finance.

Under this Act, “Credit Information” includes i) information identifying the individual applying for credit facilities such as name, address, date of birth, marital status, occupation, official identification card number, corporate registration number, or tax payer number; and ii) records of credit application and approval and payments history, including credit card usage. “Prohibited information” refers to an individual’s information that is irrelevant to the request for credit or may endanger the rights and freedoms of the individual. Such prohibited information includes physical handicaps, genetic traits, ongoing criminal investigations or criminal proceedings, and other information as determined by the CIPC.

Credit information companies shall disclose, with the consent of the individual, credit information to the member or the recipient of service for the purpose of analyzing credit and for credit approval.

The credit information company shall disclose credit information, without written consent from the individual, to i) court orders; ii) the police for the purpose of investigation of criminal offences in relation to financial business; iii) the Ministry of Finance, the Bank of Thailand, the Securities and Exchange Commission and the Securities Exchange of Thailand, for the purpose of controlling or inspecting Financial Institution under the relevant laws, and under the Committee’s approval; iv) secondary mortgage corporations or special purpose vehicles for securitization under the Securitization Law for the purpose of asset valuation; and v) asset management companies under the Asset Management Company law for the purpose of asset valuation. Under these circumstances, the credit information company must inform the individual in writing within 30 days of the date of disclosure or provision of information.

Currently, Thailand has one credit information provider, the National Credit Bureau (NCB). Credit histories for the past 3 years exist for each individual, and 5 years for each juristic person. The NCB database also includes credit scoring data, information on bankrupt persons (as announced by the Law Enforcement Department), and an Early Warning System, e.g. data on accounts more than 90 days in arrears.

NCB collects both consumer and commercial data. The consumer credit reporting system uses TransUnion Software and the commercial credit reporting system uses Dun & Bradstreet software. NCB gathers information from and discloses it to financial institution members as prescribed by section 3⁹⁶ of the Act, such as commercial banks, credit card companies, juristic persons who grant credit in the ordinary course of business, etc. As of March 2012, there are 78

⁹⁶ “Financial Institution” means a juristic person granted with the License to carry on the following businesses within the Kingdom of Thailand: (1) Commercial bank,(2) Finance company,(3) Securities company,(4) Asia Credit Foncier Co. Ltd,(5) An accidental insurance company,(6) Life insurance company,(7) Juristic person who provides Credit Card service,(8) Juristic person established under specific legislation to operate financial activities and services,(9) Juristic person who grants credit in the ordinary course of business as prescribed by the Committee.

institutions that provide credit information to the NCB. The account history is distributed as factual information (both positive and negative) and retained by the system for 3 years from the date of reporting. The credit report is divided to 2 categories: i) information identifying clients applying for credit, and ii) a record of credit applications, approvals and payment histories (including credit card payments).

Members are required to send all information on all credit accounts including granting of loans or credit, amount of loans, securities lending, hire-purchase, leasing, guarantees, bills of exchange, acceptance of bills of exchange, purchases, purchases on discount or rediscount of bills, becoming a creditor by virtue of payment or ordering the payment in favor of a customer, becoming a creditor by virtue of payment pursuant to letters of credit or other obligations, becoming a customer for the purpose of securities dealing, factoring (with recourse) and any other transactions as prescribed by the CIPC. Members must send the credit information listed above on a monthly basis until a debt has been settled, except in the case of exceptions as prescribed by the CIPC. The credit bureau requires consent from the individual before disclosure of credit information to financial institutions for the propose of credit analysis, issuance of credit cards, credit review, re-contract and risk management as specified by the Bank of Thailand. By law, an individual may consent in written form or via facsimile, website, ATM or IVR. Credit information companies are also permitted by law to collect information from four other reliable sources for certain types of information:

- Individual's name, address, date of birth, marital status and tax ID number from the Ministry of Interior;
- Individual's name, address and tax ID number from the Ministry of Finance;
- Information of bankrupt individuals from the Legal Execution Department, Ministry of Justice;
- Information of juristic person's name, location, registration number of juristic person incorporation, registration date from the Ministry of Commerce.

Moreover, under the Act, the owner of information has the right to:

- Know what information pertaining to him or her is kept by the credit information company;
- Check his or her information;
- Object and request correction of incorrect information and be informed of corrections within a specified timeframe;
- Know causes of refusal of the application for credit or services from the financial institution in the event that the institution uses information from the credit information company as reason for refusal; and
- Appeal to the Committee.

To check or request credit reports, individuals can submit a request via NCB branches or kiosks at Skytrain stations, some bank branches, ATMs, mobile banking and Internet banking. NCB is in the process of expanding to provide additional channels for checking or requesting credit information.

There have been two recent developments concerning the Credit Information Business Act 2002. In 2006, the Act amended the definition of credit, financial institutions, conditions for notification of data submission, conditions for obtaining consent, and reduction of penalties. In 2008, the Act amended the definition of information, information processing, and credit information business,

and allowed credit information businesses to provide credit scores and statistical reports. As of 2009, the CIPC has ruled that a factoring firm is a financial institution and factoring transactions are a form of credit, set account status, condition information processing by credit information business and information submitted by members and data retention period.

The National Credit Bureau Act 2002 encourages lending by financial institutions by providing sufficient and accurate information regarding past and present financial records of consumers. Such information is to be used to mitigate risks and to keep nonperforming loans to a minimum. On the consumer side, consumers will be provided with loans that accurately reflect his or her ability to repay. Overall, the Act will contribute to the stability of the financial system and the economic conditions of the country as a whole.

3.2 Trends

Since 2011, NCB has attempted to assist individuals by expanding channels to check or request credit information more easily by using electronic channels via ATMs, mobile banking or Internet banking. As of 2012, NCB is making an effort to expand credit information checking options through additional branches and channels. NCB is also investigating the possibility of expanding the scope of credit to include trade credit or student loans and the definition of financial institutions to include co-operatives or student loan funds in the database. Moreover, NCB has developed a credit score for consumers and commercial systems in accordance with the Financial System Master Plan II and is currently under review by the CIPC to announce the guidelines for the credit score service.

4. Enforcing Contracts in Thailand

4.1 Background

Indicators on enforcing contracts measure the efficiency of the judicial system in resolving a commercial dispute. The law on contracts is part of the Thai Civil and Commercial Code. The process of enforcing judgments is defined in the Thai Civil Procedure Code. Contract law is not a part of the Law on Obligations; however, both are contained in the Thai Civil and Commercial Code. In Thailand, sources of legal authority for judicial enforcement of contracts as well as for alternative dispute resolution include:

- Civil Court, Bangkok Southern Civil Court and Thonburi Civil Court
- The Legal Execution Department, Ministry of Justice.
- Office of the Judiciary, Board of Trade of Thailand, Institutional Arbitration.

Thailand has created and supported special institutions dedicated to alternative dispute resolution. There are two types of **arbitration** in Thailand: court-annexed arbitration and out-of-court arbitration. Whilst the former is governed by the Thai Civil Procedure Code 1934, the rules relating to out-of-court arbitration have been subsumed by the Arbitration Act 2002. Mediation and conciliation are regulated by the Civil Procedure Code of Thailand and the Regulations of the Judicial Administration Commission on Mediation. Mediation in Thailand can be both court-annexed and out-of-court. Commercial courts and arbitration/mediation tribunals include

- Office of the Judiciary, Board of Trade of Thailand, Institutional Arbitration
- Thai Arbitration Institute, Court of Justice
- Thai Arbitration Committee, Board of Trade of Thailand
- Office of Arbitration, Department of Insurance

- Securities and Exchange Commission
- Department of Intellectual Property
- The Thai Mediation Centre (TMC)

The system for enforcing both domestic and foreign judicial judgments and arbitral awards includes the following guidelines:

- Parties must file claims against the defendant in court and obtain a court enforcement order.
- Parties that wish to conduct seizure of property must submit a petition at the Legal Execution Department, Ministry of Justice.
- The seized property is to be sold through public auction.
- The enforcement of arbitral awards shall be enforced upon request of relevant parties, and the court shall have the power to enforce the arbitral awards according to section 41 of the Arbitration Act. B.E.2545 (2002).
- There is no process for the enforcement of foreign judicial judgments of civil lawsuits.

The law on contracts/obligations is in accordance with presumption of freedom of contract. The restriction imposed on the freedom of contract under the Civil and Commercial Code is in section 150, which indicates that an act is void if its object is expressly prohibited by law or is impossible, or is contrary to public order or good morals, supported by section 151, which indicates that any outside of the law is not void if it is not against public order or good morals.

The law does not allow **private enforcement** of contracts following a court order. A judicial officer in accordance with section 278 of the Thai Civil Procedure Code shall execute the enforcement upon court order.

Apart from commencing lawsuits in criminal cases for **fraud** offenses, parties can seek compensation by filing a lawsuit as per section 420 of the Civil and Commercial Code.

Thailand has not ratified the United Nations Convention on Contracts for the International Sale of Goods, but did ratify the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards on 21 December 1959.

Recent procurement reforms in Thailand include: i) the Ministerial Regulation on Public Auction B.E.2554 (2011); ii) research on the duration of civil case enforcement; and iii) advanced ICT systems to process civil enforcement cases.

Thailand has a law governing **electronic transactions**: the Electronics Transaction Act B.E.2544 (2001).

The use of **notaries** is not mandatory in Thailand. Notaries may be used to validate identities and signatures.

4.2 Trends

Ministerial Regulation on Public Auction B.E.2554 (2011). The purpose of this regulation is to enact Thai Civil Procedure Code Section 308, which states that public auctions must comply with Thai Civil and Commercial Code and ministerial regulations, and to ensure that the rights of stakeholders are sufficiently protected.

Research on Duration of Enforcement. The aim of this research is to gather information on the duration of civil case enforcement and related case statistics. This research will be used as benchmark for the Legal Execution Department's development of civil case enforcement.

Adoption of Advanced IT Systems for the Enforcement Process. The Legal Execution Department intends to adopt more advanced ICT systems to improve case management, in order to identify asset location and make the payment process more convenient for creditors.

5. Trade Across Borders in Thailand

5.1 Background

In Thailand, import-export activity and all international customs procedures are governed by the Customs Act and Customs Tariff Act. The Customs Department is authorized to ensure that import-export activity complies with all laws contained in Section 40 - 45.

The Customs Department assigns a rating to import-export companies. Companies designated as Customs Brokers and "Gold Card Level" companies are granted an expedited tax declaration process. There are many laws that pertain to trading across borders beyond customs law. Many of these laws and regulations are published on various agency websites and most are available in English.

Thailand's legal system is a dualistic system, so any treaties must be integrated into domestic law before the authorized government agencies can implement The Trade Convention, pursuant to the Constitution of the Kingdom of Thailand B.E. 20007, section 190.

The Thai government has instituted several reforms of customs laws over the past several years to conform more closely to international customs standards and to enhance trade facilitation, for example to comply with customs procedures specified in the revised Kyoto Convention (International Convention on the Simplification and Harmonization of Customs procedures).

5.2 Trends

In 1998, the Customs Department instituted the National Single Window (NSW) For International Trade Activities, using an electronic data interchange system.

The primary aim of the NSW system to provide a one stop services center, reducing errors and allowing importers and exporters to send data without redundancy. The user can also share information with all relevant agencies, both governments and businesses.

As mandated by the Cabinet on December 6, 2005, the Customs Department has been tasked with hosting the NSW system for the establishment of the ASEAN Single Window for 6 ASEAN Countries. The rest are to join in 2012. The Thailand NSW system was established to link not only ASEAN member countries, but all countries around the world.

III. Resource Bibliography

Resource	Website
Bangkok Metropolitan Authority	www.bangkok.go.th
Bank of Thailand	www.bot.or.th
Customs Department	www.customs.go.th
Department Of Business Development	www.dbd.go.th
Metropolitan Electricity Authority	www.mea.or.th
Metropolitan Waterworks Authority	www.mwa.co.th
Ministry of Commerce	www.moc.go.th
Ministry of Finance	www2.mof.go.th
Ministry of Interior	www.moi.go.th
Ministry of Labor	www.mol.go.th
Ministry of Natural Resources and Environment	www.mnre.go.th
National Credit Bureau	www.ncb.co.th
Office of the Public Sector Development Commission	www.opdc.go.th
Office of National Economic and Social Development Board	www.nesdb.go.th
Provincial Electricity Authority	www.pea.co.th
Provincial Waterworks Authority	en.pwa.co.th
TOT Public Company Limited	www.tot.co.th
Legal Execution Department	www.led.go.th
Department of Public Works and Town & Country Planning	www.dpt.go.th
Office of the council of state	www.krisdika.go.th

United States

I. General Information

The United States is a free and open environment in which to conduct business. The United States continue to pursue improvements in each of the five APEC priority areas: starting a business, dealing with permits, gaining credit, contract enforcement, and cross border transactions. The World Bank ranked the United States the fourth-easiest economy in both the world and APEC to do business in.

Local regulations on everything from construction permits to many categories of business licensing dictate many ways of doing business. And while the details vary, all strive to build sound frameworks that allow business to thrive. Local authority on access to credit, contract enforcement, and dealing with construction permits ensures that each business has equal access to financing, an arbitration framework exists for contract enforcement, and customer friendly ways of incorporation (e.g. Obtaining Business Licenses and Permits guide) and start up assistance are available. Among APEC economies the United States is ranked second for gaining access to credit, construction permits, and contract enforcement by the World Bank.

To ensure that individuals have access to information about doing business, individual states, cities, and municipalities make information about laws and regulations available through the internet and other public sources. Laws and regulations, and access to this information make starting a business in the US more accessible to businesses of all sizes. The US is rated the fourth best APEC economy in which to start a business by the World Bank.

Although state governments regulate doing business in their individual states, the US Commerce Act of 1926 provided a federal framework for regulating companies that operate across state lines. This allows the federal government to step in if there is a dispute between parties that operate in different states.

International trade is also an important component of conducting business in the US as it provides business owners access to international markets. Facilitating cross border commerce is vitally important to the United States. And the international border is one area where the Federal Government has direct regulatory jurisdiction. US trade agencies generate broader market access for businesses through global, regional, and bilateral initiatives.

Agencies responsible for overseeing the APEC priority areas are:

- The Small Business Administration provides the public with information regarding starting a business, obtaining licenses and permits, and gaining credit/financial assistance.
- The Office of the U.S. Trade Representative is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and oversees negotiations with other countries for trading across borders.

Additionally, the U.S. Department of Commerce Commercial Service helps businesses to get started in exporting or to increase sales to new global markets while the U.S. Customs and Border Protection is responsible for securing and facilitating trade and travel to the United States and enforcing U.S. regulations, including immigration and drug laws. II. APEC Ease of Doing Business Action Plan Priorities

II. APEC Ease of Doing Business Action Plan Priorities

1. Starting a Business in the United States

Business Structures in the United States

An individual is considered to be in business if the individual engages in commerce, manufacturing, or a service for profit. There are several types of business structures that exist in the United States. The most common business structures that are recognized at the federal and local levels are:

- ***Cooperative:*** A business or organization that is owned by and operated for the benefit of those using its services. Profits and earnings that are generated by the cooperative are distributed among all members.
- ***Corporation:*** An independent legal entity owned by shareholders. This means that the corporation itself, not the shareholders that own it, is held legally liable for the actions and debts incurred by the business.
- ***Sole Proprietorship:*** A business that is owned and operated by one individual. This means that there is no legal distinction between the owners and the business. All profits go to the owner, and the owner is liable for the actions and debts incurred by the business.
- ***Partnership:*** A single business where two or more people share ownership. When two or more people decide to join together to carry on a trade or business, their relationship is considered to be a partnership.
- ***Limited Liability Company (LLC):*** A hybrid-type of legal structure that provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership.
- ***S Corporation:*** A special type of corporation created through an IRS tax election. An eligible domestic corporation can avoid double taxation (once to the corporation and again to the shareholders) by electing to be treated this way.

Process for Starting a Business in the United States

Starting a business in the United States varies by individual states. The basic Company Law, or the law of Business Organization, provides a framework for business regulations and laws at the state, city, and municipal level.

The U.S. Small Business Administration (SBA) provides a step-by-step guide on how to start a business on its website. The SBA website is specifically designed for small and medium sizes businesses, and federal and state requirements for registering are available on the website. In addition, SBA offers a variety of programs and support services to assist business owners in

navigating the issues that may come up in their initial applications, and resources to help them after they open their business.

Regulatory Approach to Electronic Transactions

To make conducting business transactions easier, most states have adopted the Uniform Electronic Transactions Act (UETA). The UETA was developed by the National Conference of Commissioners on Uniform State Laws to provide a legal framework for the use of electronic signatures and records in government or business transactions. UETA makes electronic records and signatures as legal as paper and manually signed signatures. Three states, Illinois, New York and Washington, have not adopted the uniform act, but have statutes pertaining to electronic transactions. More information about the UETA can be found at the National Conference of State Legislatures website (see Resource Bibliography).

Trends

The federal government and state governments continue to reform business regulations and laws to ensure that businesses of all sizes thrive in the US.

2. Dealing With Permits in the United States

Obtaining Licenses and Permits in the United States

Every business in the United States needs to be licensed to legally operate (sole proprietorships are an exception to this rule). Business licenses and permits differ depending on the state in which the business is incorporated. The U.S. Small Business Administration takes substantial effort to make information regarding licenses and permits available to the public. Individual states, cities and municipalities also typically make information available on the internet and through other sources. Information about obtaining federal and state permits is available at the SBA website.

“One-stop-shop” for Complying with Construction Licensing Procedures

Construction is regulated solely at the State and local levels. Many localities have begun to institute comprehensive planning and construction services websites. A good example can be found at www.duluthmn.gov/onestop/.

Resolving License/Permit Related Disputes

Resolving license and permit disputes are regulated at the local level. Many towns and cities are instituting mediation as a resolution mechanism for disputes over construction and what is or is not permitted.⁹⁷

Trends

State governments continue to reform the process for dealing with permit to make acquiring licenses and permits more convenient.

⁹⁷ An example can be found at www.ci.bellevue.wa.us/dispute_resolution.htm

3. Getting Credit in the United States

Secured transactions are governed at the state level. Each state has legislation designed to oversee and facilitate the registration and enforcement of interests in assets collateralizing lending. In the vast majority of cases, the state law is a wholesale adoption of the Article 9 of the Uniform Commercial Code, a privately developed model law that is designed to bring harmonization of the law to the 50 States.

Trends

Ongoing reforms are taking place at the state and local levels to improve the credit system.

4. Enforcing Contracts in the United States

Law and enforcement of contracts is also overseen by individual states. The law of contracts is governed by the Uniform Commercial Code (UCC), as enacted in each state, Article 2 (sales of goods), and Article 2a (leases). Contracts for services and issues that are outside the scope of the UCC are typically governed by principles established under the common law. While domestic contract law is a matter of state authority, contracts between parties in different states, so long as the amount disputed reaches a certain threshold, parties to a suit may find themselves in a federal court that will then decide which state law will apply.

Commercial courts and arbitration/mediation tribunals

Commercial arbitration is a method for settling contract disputes. There is virtually full freedom for parties to contractually choose both forum and law, as well as to derogate from provisions of commercial law.

Trends

Ongoing reforms are taking place at the state level to improve contract enforcement.

5. Trade Across Borders in the United States

The Office of the U.S. Trade Representative (USTR) is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries. The head of USTR is the U.S. Trade Representative, a Cabinet member who serves as the president's principal trade advisor, negotiator, and spokesperson on trade issues. The U.S. Trade Representative has primary responsibility, with the advice of the interagency trade policy organization, for developing and coordinating the implementation of U.S. trade policy. Under the Trade Expansion Act of 1962, Congress established an interagency trade policy mechanism to assist with the implementation of these responsibilities. The mechanism has three tiers: the National Economic Council located in the White House, the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC) - both chaired by USTR.

USTR consults with other government agencies on trade policy matters through the TPRG and the Trade Policy Staff Committee (TPSC). These groups, administered and chaired by USTR and composed of 19 Federal agencies and offices, make up the subcabinet level mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The TPSC is the primary operating group, with representation at the senior civil service level. Supporting the TPSC are more than 90 subcommittees responsible for specialized areas and several task forces that work on particular issues. If agreement is not reached in the TPSC, or if significant policy questions are being considered, then issues are taken up by the TPRG (Deputy USTR/Under Secretary level).

The Office of Policy Coordination is responsible for convening the twenty agencies that make up the Trade Policy Review Group and the Trade Policy Staff Committee to review policy papers and negotiating documents. The Office advises the USTR on how to resolve policy differences among the agencies, since all decisions require consensus. On average, the office negotiates agreement on 285 policy papers and negotiating documents annually, and chairs 54 TPSC and TPRG meetings. The Office is also responsible for eliciting advice from the public on policy decisions and negotiations through public hearings and Federal Register notices.

Other major responsibilities of the Office of Policy Coordination include: editing and production of USTR's major reports; administration of Freedom of Information Act requests; management of all Government Accountability Office investigations involving USTR, and coordinating USTR's clearance on all pending legislation and testimony before Congress.

USTR coordinates the Administration's activities in identifying, monitoring, enforcing, and resolving the full range of international trade issues to assure that American workers, farmers, ranchers, and businesses receive the maximum benefit under U.S. international trade agreements. Those agreements include broad, multilateral agreements such as those adopted at the creation of the World Trade Organization (WTO), regional agreements such as the North American Free Trade Agreement (NAFTA), and bilateral agreements such as the various free trade agreements (FTAs).

U.S. rights under trade agreements include protection of intellectual property and basic international labor standards, implementation of environmental agreements, recourse when necessary to trade remedies, and the ability to address a wide array of market access barriers to U.S. goods and services.

In addition, trade agreements reduce, and in some cases eliminate, tariffs on goods from partner nations. This provides small- and medium-sized businesses with an opportunity to have broader market access. Two U.S. free trade agreements recently entered into force: the U.S.-Korea Free Trade Agreement (KORUS) and U.S.-Colombia Trade Promotion Agreement.⁹⁸

⁹⁸ To see a more detailed list of U.S. free trade agreements entered into by the United States since 1984 see Annex III of the 2012 Trade Policy Agenda and 2011 Annual Report: www.ustr.gov/sites/default/files/Annex%20III.pdf.

Starting a Business	Dealing with Permits	Access to Credit	Contract Enforcement	Trading Across Borders
FEDERAL LEVEL				
<p>The Small Business Administration (SBA) provides information on how to start a business in the U.S. Their guide to starting a business and other resources can be found on the SBA website.</p>	<p>Federal licenses may be required for businesses coming under the specific authority of a federal government agency. A partial list of the agencies is available at the SBA website.</p>	<p>The SBA provides information on how business owners can secure financial assistance to start a business. Lender information is available at the SBA website.</p>	<p>The American Arbitration Association (AAA) is the largest contract dispute settlement organization in the U.S. See the AAA website (www.adr.org) for more information about AAA services.</p>	<p>The following are links to various U.S. laws that are relevant to trading across borders:</p> <ul style="list-style-type: none"> 19 U.S.C. - Customs Duties 22 U.S.C. - Foreign Relations and Intercourse 18 U.S.C., Chapter 27 - Customs Crimes 15 U.S.C. §§ 61-66 - Promotion of Export Trade by the FTC 15 U.S.C. § 46(h) - Webb-Pomerene Act - Investigation of Foreign Trade Conditions by the FTC 12 U.S.C., Chapter 40 - International Bank Lending 12 U.S.C., Chapter 32 - Foreign Banks in Domestic Markets 12 U.S.C., Chapter 6A - Export/Import Bank of the United States 12 U.S.C., Chapter 6 - Foreign Banking
STATE LEVEL				
<p>Information on how to start a business in Washington State is available at access.wa.gov/business/start.aspx</p>	<p>To apply for business licenses and permits, individuals can go to their local government's website to obtain the appropriate application forms. For example, Washington, DC residents can go to the website dcra.dc.gov to apply for a business license or permit.</p>	<p>Individual states oversee secured transactions. Most states have adopted the Uniform Commercial Code (UCC) Article 9 to govern the laws of secured transactions. Information about UCC Article 9 in New York State is available at codes.lp.findlaw.com/nycode/UCC/9</p>	<p>Most states have adopted UCC Article 2 to govern the law of contracts. More information about the UCC is available at www.law.duke.edu/lib/researchguides/ucc</p>	<p>Information about exporting from the state in which a business is incorporated is available at export.gov.</p>

III. Resource Bibliography

Resource	Website
National Conference of State Legislatures	www.ncsl.org
Office of the United States Trade Representative	www.ustr.gov
United States Small Business Administration	www.sba.gov

Viet Nam

I. General Information

The following ministries and agencies are responsible for the ease of doing business in Vietnam:

- **Starting a Business:** the Ministry of Planning and Investment (MPI), Provincial Departments of Planning and Investment (DPI), and District Division of Planning and Investment are responsible for issuance of Certificates of business registration; and the tax office at the same level is responsible for issuing enterprise code numbers (ECNs). Provincial People's Committees (PPCs) or the Management Boards of industrial zone, export processing zone, high-tech zone and economic zone are responsible for issuing investment certificates.
- **Dealing with Permits:** Line ministries at the central level and respective provincial departments or PPC at the local level oversee granting licenses in the areas under their authority. A license may be required from both central and local authorities.
- **Getting Credit** is under the purview of the State (Central) Bank of Vietnam (SBV).
- **Enforcing Contracts** is under supervision of Ministry of Justice (MOJ) and Supreme People's Court.
- **Trading Across Borders:** Key ministries overseeing this activity are Ministry of Industry and Trade (MOIT) and Ministry of Finance (MOF). Relevant line ministries and are responsible for areas under their supervision.

II. APEC Ease of Doing Business Action Plan Priority Areas

1. Starting a Business in Vietnam

1.1. Background

1.1.1. Legal Framework

The legal bases for starting a business in Vietnam include the Enterprise Law (EL), the Investment Law (IL), and the Cooperative Law. While all laws stipulate overall principles and provide broad directions, detailed guidance on implementation rests on by-laws (government decrees, ministerial circulars and others).

The Enterprise Law was passed in 2005 and took effect on July 1, 2006.⁹⁹ The law stipulates the procedure for starting a business and corporate governance with regard to limited liability

⁹⁹ This is the third EL. The first was passed in 1991 and the second in 1999.

companies, share holding companies, joint ventures and private enterprises of all types of ownership, below referred to as enterprises.

The Investment Law was passed in 2005 and took effect on July 1, 2007.¹⁰⁰ The law governs commercial investment activities, rights and obligation of investors, ensuring their lawful rights and interests, encouraging investment and providing investment incentives; stipulates state management over investment activities in Vietnam and investments in Vietnam from abroad.

The Cooperative Law was passed in 2003 and took effect on July 1, 2004.¹⁰¹ The law stipulates the establishment procedure and governance of cooperatives in all sectors and areas of the economy.

Registration of a business entity is the first step of starting a business. This process is governed by EL and its implementation regulations. For instance, Decree No 102/2010/ND-CP of the Government on “Detailed Guidelines of a Number of Articles of EL” (below referred to as Decree 102) provides detailed guidelines on establishment, governance, restructure and dissolution of enterprises. Decree No 43/2010/ND-CP of the Government on “Business Registration” (below referred to as Decree 43) provides details on documentation requirement and procedure for business registration applicable to enterprises and business households. Business registry and government agencies responsible for business registration are also subject to Decree 43. Circular No 14/2010/TT-BKH of the MPI (below referred to as Circular 14) provides guidelines on documentation requirement and procedures for business registration in accordance with Decree 43.

All of these legal documents are in Vietnamese, and in most cases English versions can be easily obtained from Official Gazette and/or the websites of ministries, of the government of Vietnam, of the National Assembly and other legal databases. According to the 2008 Law on Promulgation of Legal Documents, all legal documents are required to be published in the Official Gazette in order for it to be legally enforced.

Promulgation of Decree 43 and Circular 14 is considered a new development in an effort to make business registration easier and faster. According to these legal documents, the time for registering a business has legally been shortened to no longer than five working days.¹⁰² In addition, as of 2010 procedures for registering business and tax codes have been consolidated into a single so-called “business registration” procedure.¹⁰³

1.1.2. *Types of Business Entities*

According to EL, a business is required to operate under one of the following types of business entities.

- **Household:** This is the most popular form of business entity in Vietnam. An individual, group of individuals or family may register as a business household. However, a household that

¹⁰⁰ The 2006 IL replaces the 1996 Law on Foreign Investment in Vietnam, the 2000 Law Amending and Supplementing a Number of Articles of the Law on Foreign Investment in Vietnam, and the 1998 Domestic Investment Promotion Law.

¹⁰¹ This is the second Cooperative Law. The first one was passed in 1996.

¹⁰² This time limit is much shorter than that of 15 working days regulated by EL.

¹⁰³ In some documents, this type of business is often translated as “private enterprise”.

employs more than 10 employees will be required to register as a company that is either a sole proprietorship, partnership, limited liability company or shareholding company.

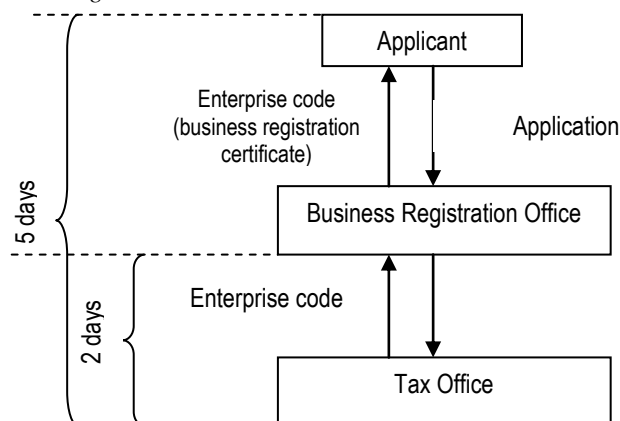
- ***Sole Proprietorship***:¹⁰⁴ A sole proprietorship is a company owned by an individual who is liable for company debts with his or her own assets. A sole proprietorship is only permitted to be operated by a single individual. As such, a sole proprietorship is not permitted to issue shares. Sole proprietors will act as company legal representative.
- ***Partnership***: A partnership is a company in which there are at least two individual joint owners. Such joint owners are called general partners. General partners are financially and jointly liable for all the debts and other liabilities of the company with all of their assets. A partnership may also have limited partners, who are financially liable for the debts of the partnership to the extent of the capital they contribute. A partnership is not permitted to issue shares.
- ***Limited Liability Company***: A limited liability company can be categorized as a sole-member company or as a company with more than one member. The distinction between these two types of company is the organizational structure and some restrictions on sole company members. For example, a sole company member may be deprived of his or her limited liability if he or she fails to pay capital investment fully. Common characteristics of limited liability companies are: (i) a legal entity that maintains a legal existence separate from the shareholders; (ii) not entitled to issue shares to the public; (iii) maximum number of company members is less than fifty; and (iv) members are responsible for debts and other liabilities of the enterprise within the amount of capital that they committed to contribute to the enterprise, with some exceptions for sole-member companies.
- ***Shareholding Company***: A shareholding company and limited liability company share certain characteristics; for example they are both independent legal entities with limited liability of shareholders. Significant distinction are: (i) a shareholding company is entitled to issue shares to the public to mobilize capital; (ii) shareholders can transfer and sell their shares freely at any time (with some exceptions, such as transfer of shares owned by founding shareholders); and (iii) the minimum number of shareholders is three, but there are no limits on the total number of shareholders of this type of company.
- ***Foreign-Invested Company and State-Owned Company***: Foreign investors wishing to invest and set up a company in Vietnam are required to comply with both EL and IL. Foreign investors may invest under a form of partnership, limited liability or shareholding company.

Like foreign-invested companies, state-owned companies are no longer a distinct form of business as they were before July 1, 2006. All state-owned companies were required to convert into either a limited liability company or a shareholding company no later than July 1, 2010 as stipulated by EL.

1.1.3. Business Start-up Procedures

The business start-up process is comprised of two procedures: business registration (Figure 1), and corporate seal making.

¹⁰⁴ In some documents, this type of business is often translated as “private enterprise”.

Figure 1*Business Registration Procedure**Application*

Depending on the type of business organization, documents required by the Business Registration Office (BRO) may be different in terms of content but similar in terms of quantity. For example, documents required to set up a limited liability company, shareholding company or partnership are as follows: (i) application form; (ii) company charter; (iii) a list of members, partners or founding shareholders; (iv) certification of legal capital if business activities are capital-conditioned businesses; and (v) valid copies of professional certificates for business activities requiring certified practitioners.

Significant improvements made by Decree 43 over previous regulations include an online registration system and a unique Enterprise Code Number (ECN) issued for each enterprise instead of the old Business Registration Code and Tax Code. The applicant can register the business online and print out the certificate of business registration.

Business Registration Office

BROs operate at provincial and district levels. One BRO is set up within each provincial Department for Planning and Investment with exception of Ho Chi Minh City and Hanoi, where more than one BRO may be set up depending on demand for business registration. A new BRO is allowed to set up on the condition that the number of business households and cooperatives registered annually is 500 or more during the previous two years. There is currently no BRO at district level.

A tax office at the same level as the BRO is responsible for issuing the ECN and then submitting it to the BRO for issuance of the certificate of business registration.

According to the EL, the time limit for completing business registration is 15 working days. Recently however, this time limit has been shortened significantly to five working days, which include the two days required for the tax office to generate the ECN. In fact, the actual time required for registering a business may be even shorter in some small provinces where the number of new business registrations is not significant.

According to the EL, the business registration fee is determined based on the number of registered business activities. However, business registration fee is defined as VND 200,000 for a shareholding company and VND 150,000 for other types, regardless of their number of registered business activities.

Business Registration in Pursuant to the Investment Law

As mentioned above, foreign investors investing in Vietnam will either follow business registration procedure under EL or investment registration procedure under IL. However, first-time foreign investors must comply with both laws. The certificate of investment is construed as certificate of business registration. An enterprise with more than 49 percent of charter capital owned by foreign investors wishing to register a new enterprise is required to have an investment project and comply with investment registration procedure.

The investment registration procedure is seen as more time-consuming and complicated than business registration under EL. Investment registration procedure is divided into two procedures (investment registration and investment appraisal) depending on the size and the scope of the investment project. Application for setting up a company pursuant to investment procedure requires both the application for business registration and the investment registration. Applications for business registration must comply with EL.

Unlike business registration, a number of competent authorities are involved the investment registration process. Provincial Departments of Planning and Investment are where the applicant will submit the application and receive the investment certificate. The Respective People's Committee is responsible for issuing the investment certificate.

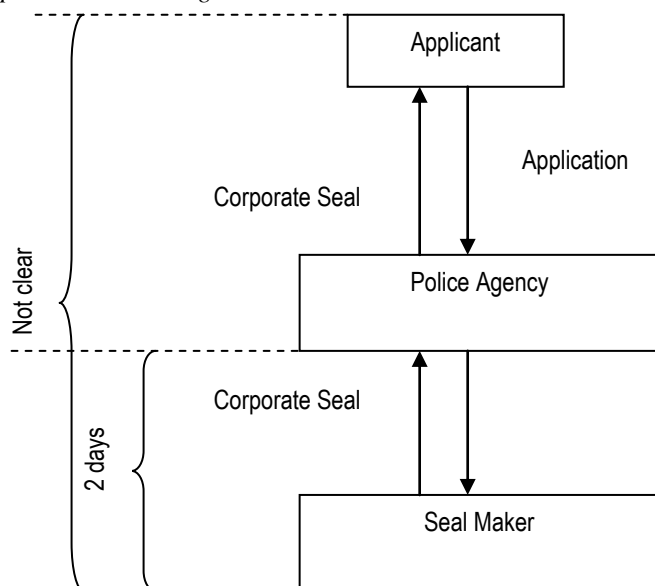
The Management Board of industrial zone, export processing zone, high-tech zone and economic zone will be responsible for both receiving the application and issuing the investment certificate for investment projects within those zones.

The Prime Minister approves investment policy in regard to investment projects in eight sectors, regardless of their scale.¹⁰⁵

An Investment Certificate must be issued within 15 working days from the date the application was received. If the investment appraisal procedure is applied, the time limit for issuing the investment certificate will not exceed 30 working days from the date the investment application was received. This time limit may be extended up to 45 working days if necessary for further appraisal.

Figure 2 describes the procedure for making the corporate seal, which varies by location. BRO may make the corporate seal on behalf of the applicant. Alternatively, BRO may send a seal-making application to the Policy Agency as soon as business registration certificate is issued. The applicant can obtain the corporate seal at the Policy Agency several days after acquiring business registration certificate. The applicant may also go to the Policy Agency for the corporate seal after acquiring the business registration certificate.

¹⁰⁵ These sectors are air transport; national sea transport; natural resource exploration and mining; broadcasting; casino; cigarettes manufacture; tertiary training; industrial, export processing, high-tech and economic zones.

Figure 2*Corporate Seal Making Process*

An application for corporate seal-making consists of a copy of the business registration certificate and tax code. Two institutions are involved in this process: the Specialized Police Agency at the provincial level, where a corporate seal is received; and a seal-maker (a business) where the corporate seal is produced.

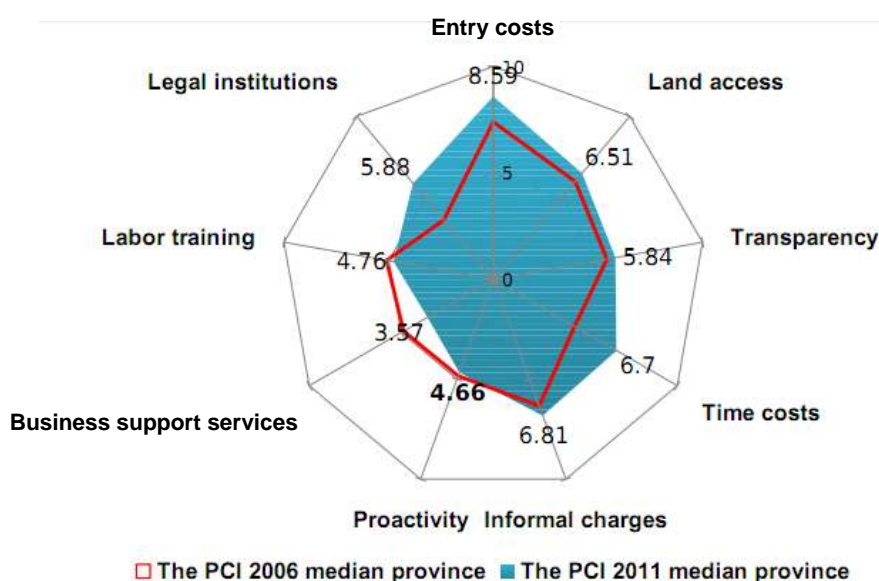
The total time limit for making corporate seal is not clearly defined in the regulations. However, in practice the time it takes to make the seal is relatively short. A company may have its seal within two or three days after having the business registration certificate. Two kinds of seal-making fees are paid by the applicant: VND 20,000 is the fee payable to the Police Agency, and from the seal itself costs between VND 200,000 and VND 300,000 depending on material used to make the seal.

1.2. Trends

Business registration has been an intensive reform area in Vietnam with a lot of success since 2000. The time and cost for registering a business has been reduced significantly. High appreciation of business community in relation to ease of business registration has been evidenced by Vietnam's Provincial Competitiveness index (PCI).¹⁰⁶

In addition, a proposal on revising IL and EL in 2013 is considered significant to the ongoing efforts of the Government in further simplifying the business start-up process. However, process of revising EL has just begun and details of reform in relation to business registration are not yet clear. Meanwhile, the Agency for Business Registration (under MPI) has been carrying out a large-scale project aimed at modernizing business registration procedures by facilitating online business registration.

¹⁰⁶ PCI is designed to measure and assess the standards of economic governance in Vietnam's 63 provinces from the perspective of the private sector. For more information visit www.pcivietnam.org.

Figure 3*Vietnam's Provincial Competitiveness Index 2006 and 2011*

Source: 2011 Report on Vietnam's Provincial Competitiveness Index (available at www.pcivietnam.org).

2. Dealing with Permits in Vietnam

2.1. Background

2.1.1. Institutions Governing Business Registration¹⁰⁷

Business licenses¹⁰⁸ are regulated by various legal documents ranging from laws to ministerial decisions and lower-level regulations. It is not clear how many business licenses and corresponding regulations are currently in effect. The Central Institute for Economic Management (CIEM) jointly with the German Agency for International Cooperation (GTZ) conducted a comprehensive review on existing licenses in 2007 (CIEM and GTZ 2007), which found 289 licenses governed by over 400 legal documents.

In general, each license is regulated by three types of documents: (i) laws; (ii) ordinances and decrees; and (iii) circulars or decisions from ministerial-level agencies. Some licenses are regulated by up to ten different legal documents. The licensing authorities are relevant ministries at the central level and respective provincial departments or People's Committee at the local level. A license may be required from both the central and local authorities. Normally, time limit for issuing licenses is explicitly regulated by regulations, ranging from seven to ten, 15, 30 or even 60 days.

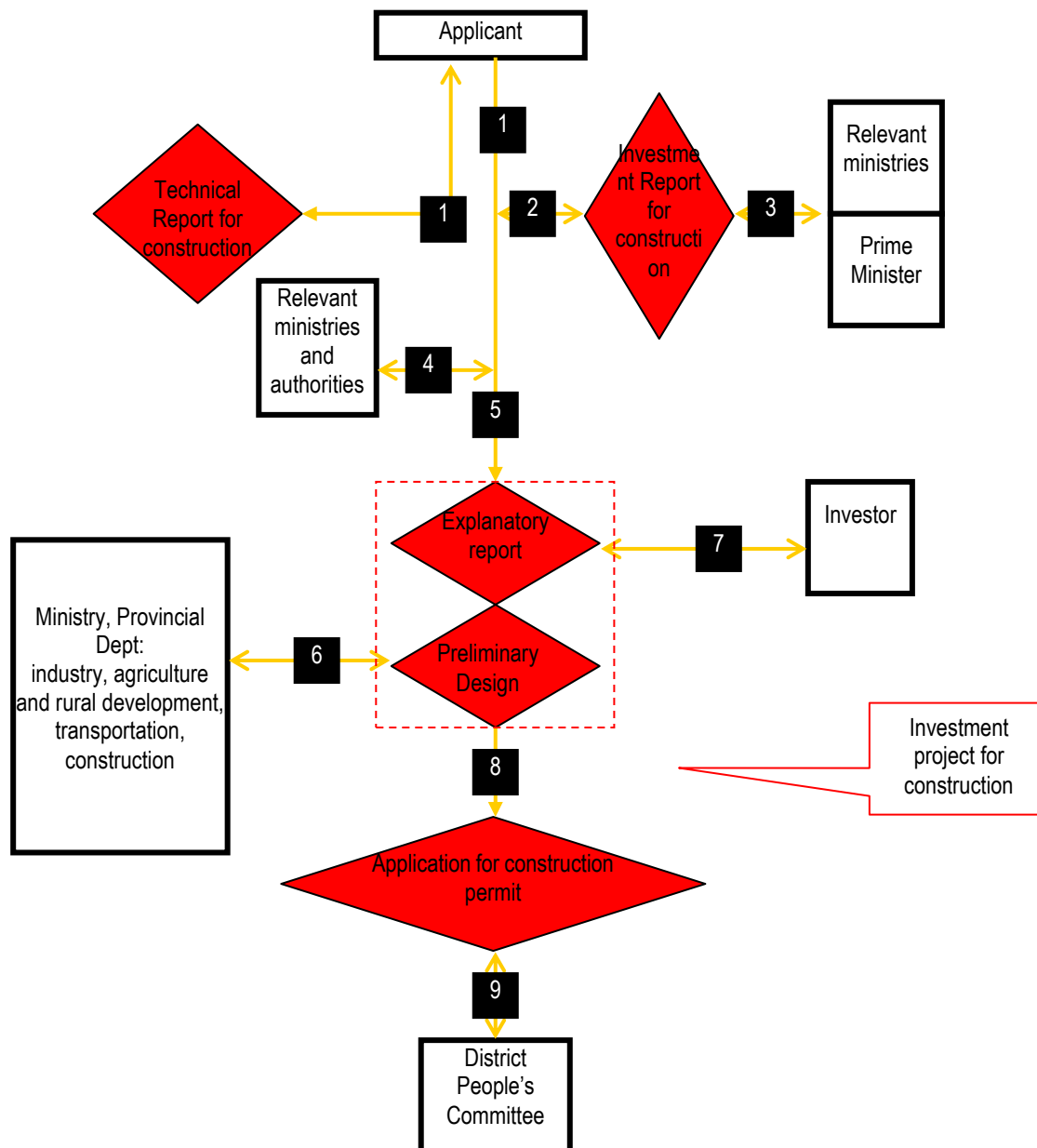
¹⁰⁷ This section draws upon the most comprehensive review report of 289 licences in Vietnam conducted by CIEM jointly with GTZ in 2007 (CIEM and GTZ 2007). However, its findings are still relevant today.

¹⁰⁸ Business licenses in Vietnam exist under different names. The most common names are "license" and "certificate." Other names include registration, professional certificate, approval, certificate, certified document, card, decision, confirmation, etc. In this respect, "license" is construed as any form of approval or agreement by competent authorities. These unclear and diverse names make it more difficult to identify some licenses.

2.1.2. Construction License

The application procedure for construction projects is governed by the 2003 Law on Construction and its regulations (Figure 4).

Figure 4
Application Procedure for Construction Projects



Source: CIEM and GTZ (2007).

Step 1: Preparing a technical report on construction. An investment project for construction is categorized into three classes: A, B and C. In addition, there are projects of national importance, the decision to invest in which is approved by the National Assembly. A technical report on construction is applicable for projects such as religious construction works, private houses or renovations, repair or upgrading works with a cost below VND 15 billion.

Steps 2 and 3: For projects not included in the approved sectoral planning, investors are required to report to the relevant ministry, local authorities, or the Prime Minister for a decision on supplementing the approved sectoral planning.

Step 4: For projects not included in any construction planning, the location and size of that project must be approved in writing by the Provincial People's Committee (in relation to A-class projects) or the relevant planning agency (in relation to B- and C-class projects).

Step 5: Preparing investment projects for construction. An investment project for construction is comprised of two sections: an explanatory report and preliminary design. Only licensed individuals or organizations are allowed to make investment projects for construction.

Step 6: Approval of preliminary design. Preliminary design must be approved by the ministry responsible for specialized construction works for projects of national importance and A-class projects; or provincial-level department responsible for specialized construction works for B- and C-class projects.

Step 7: Appraisal of investment project for construction. Private investors are responsible for making decisions regarding their investment project for construction.

Steps 8 and 9: Obtaining a construction permit. Before construction can begin, investors must apply for a construction permit (with some exceptions, such as individual houses in remote areas outside urban centers or concentrated residential areas).

Depending on the nature of the construction project, investors may be required to prepare and submit several dossiers at different stages.

An eco-technical report on the construction is required in following circumstances:

- Construction works for religious purposes
- Construction, renovation, repair or upgrading works with a total cost under VND 15 billion (excluding land-use levies) in compliance with socio-economic development, branch or construction planning; unless investors require the formulation of investment projects.

In this case, investors are not required to complete steps 2 to 7 and therefore are not required to prepare a dossier. A dossier for a construction project submitted by the investor includes a project evaluation report, the project (an explanatory section and basic design), and relevant legal documents.

The content of the application for construction permit varies depending on the location. For example, an application in urban areas includes:

- An application for construction permit. For temporary construction permits, the application must also contain the applicant's commitment to dismantle the work upon clearance by the State
- A copy of any land use rights-related documentation as prescribed by law
- A full design of the project (not required for rural housing)

A number of state authorities may be involved in the licensing process, depending on funding sources and the scale of the project in question. The National Assembly is responsible for the approval of national projects of special importance. The Prime Minister and/or relevant ministries and local authorities responsible for planning management are involved in adjusting the planning with regard to construction projects not included in the approved planning.

Appraisal of the construction projects funded by the state budget is delegated to all lower levels of the government, depending on the project's size and importance. The Prime Minister is responsible for appraising projects specified by law and other projects when necessary. Each level (Ministries, PPCs, District or Commune People's Committees) is responsible for project appraisal under their mandate.

State management agencies are responsible for appraising preliminary project designs, ministries supervising specialized construction works are responsible for projects of national importance and A-class projects, and provincial-level units are responsible for supervising specialized construction works - of B- and C-class projects.

Decision-making for construction projects funded by the state is also decentralized. The Prime Minister makes decisions regarding investment projects of national importance and other important projects under the National Assembly's resolutions. Ministers and PPC chairmen are responsible for all projects, and may delegate approval of B- and C-class projects to their lower levels. Investors in projects with non-state funding sources make decisions independently regarding investment and take responsibility for their projects.

Responsibility for the issuance of construction permits is delegated in a similar manner.

The time required is only defined clearly by regulations for some of the steps. For instance, the time limit for steps 2 and 3 is defined as no longer than 15 working days. The time limit for steps 5 and 6 ranges from maximum of 40 working days for an A-class project to no longer than 20 working days for a C-class project.

The time limit for issuing a construction permit is 20 working days. In the case of individual houses, the time limit is 15 working days. Fees for issuing construction license are regulated as follows: VND 10,000 for licenses issued by district authorities and VND 100,000 for licenses issued by provincial authorities.

2.2. Trends

There has been no major reform activity in the area of Dealing with Permits since 2009.

3. Getting Credit in Vietnam

3.1. Background

3.1.1. Sources of Legal Authority for the Oversight of Banks and Other Financial Institutions, and the Legal Framework for Secured Transactions

The Law on Credit Institutions (LCI) was first introduced and promulgated in 1997. It governs the organization and operation of credit institutions and banking activities of other financial institutions in Vietnam. In response to the development and evolution of the banking and financial market, the 1997 LCI was amended and augmented in 2004.

The new LCI, which was approved in 2010 (taking effect January 1, 2011), stipulated the establishment, organization, governance, operation, special control, re-organization and

dissolving of credit institutions;¹⁰⁹ and the establishment, organization, and operation of branches of foreign banks, representatives of foreign credit institutions, and other foreign institutions engaged in banking activities.

The State Bank of Vietnam (SBV)¹¹⁰ is the main legal authority overseeing the commercial credit activities and operation of banks and financial institutions. The National Financial Supervisory Commission was established in 2008 with the mandates of coordinating and supervising the overall financial market (including banking, securities and insurance).

A number of bylaws have been issued to guide implementation of various aspects of the law. Furthermore, from time to time the Government and SBV have circulated or revised legal documents (decrees, directives, circulars, decisions) to deal with emerging issues such as post-inspection and post-supervision measures for credit institutions and foreign banks; ceiling deposit and lending interest rates for domestic and foreign currency, gold mobilization and lending by credit institutions; compulsory reserve requirements for foreign currency, etc.

Legal framework for secured transactions

The overall legal framework for all types of secured transactions was first established in the 1995 Civil Code and its implementation-guiding regulations. A new Civil Code, promulgated in 2005, revised and detailed further the concept of secured transactions into registered and non-registered, as well as types of securities and the way they are used and treated, and the rights and obligations of the parties in secured transactions.

Secured transactions carried out by credit institutions are also regulated by LCI and its bylaws. The legislation focuses on implementation of secured transactions and the treatment of secured assets, the principles and the procedures for registration and provision of information on secured transaction, risk provision for lending by credit institutions, and other issues.

3.1.2. The Environment of Commercial Lending, Including Microcredit and Secured Transactions

The environment of commercial lending is fairly competitive, and access to credit has become easier, especially since Vietnam joined WTO in 2007. This is evidenced by a rapidly increasing number of commercial banks, from 80 in 2006 to 101 in 2011, with the largest increase of foreign-owned banks and branches. Except in extraordinary circumstances, lending interest rates are negotiable between credit institutions and borrowers. To get credit, borrowers have to meet certain requirements by law such as providing a financially viable plan for using the credit, financial ability, and security measures. Credit reporting has been improved significantly since 2010.¹¹¹

The current legislation allows several forms of non-traditional financing such as leasing, agriculture equipment, future crops and accounts receivable. The law leaves room for new, yet unanticipated forms of non-traditional financing, with the approval of SBV.

¹⁰⁹ Credit institutions according to the law include banks, non-bank credit institutions, micro-finance institutions and people's credit funds.

¹¹⁰ A new Law on the State Bank of Vietnam was promulgated in 2010 and has been effective since 1st January 2012.

¹¹¹ See Sub-Section 3.1.3 for more details.

With regard to microcredit, regulations consist of Decree 28/2005/ND-CP in 2005 and its amendment by Decree 165/2007/ND-CP in 2007. The Decrees, for the first time, have clarified the definition of microfinance activities. They also stipulate the licensing requirements and procedures, organization, governance and activities of microfinance institutions. However, as of end-April 2012, only two microfinancial institutions have been licensed. This may be a reason why SBV has not undertaken considerable supervision and inspection of microfinance institutions. On the other hand, microcredit, often at concessional interest rates provided under various poverty-reduction projects and programs, has been very popular within selected networks such as the Women Union and the Farmers' Association.

The environment of secured transactions has been improved gradually. The National Registration Agency for Secured Transactions was established in 2001 under the MOJ, which is responsible for state management over the national registration system of secured transactions and financial leasing assets nationwide, registration and provision of information on secured transactions. In general, most of the regulations are transparent and easy to implement. The fee for registering secured transactions or obtaining related information and being a permanent client of the National Registration Agency for Secured Transactions has been clearly defined by the legislation. The current fee for registering a secured transaction is VND 80,000 per application (with some waivers); the fee for providing information on a secured transaction is VND 30,000 per request, while the annual fee for being a regular client is VND 300,000. These fees are moderate, and the procedure is simple and efficient, which creates a proprietary security right without depriving the person giving the security of the use of his or her assets.

The online registry of secured transactions has been operational since March 2012. Under this scheme, each bank and credit institution can be registered as a permanent client of the system and is provided with an identification number and password for accessing information on secured transactions. This is a significant improvement whereby the information can be obtained instantly without any difficulty.

3.1.3. Credit Reporting and Information System

SBV is responsible for the state management over the credit information system. The overall regulatory framework for the credit information system is subject to a number of legal documents that have been adjusted and added over time. This framework stipulates state management over the activity, rights and obligations of stakeholders, dispute settlement and sanctions for violation.

The first agency responsible for credit information is the Credit Information Center under SBV as of 1998. In its early stages, the CIC was the sole institution that received, stored, processed, analyzed and forecasted credit information. All credit institutions and other financial institutions are required to report credit information to CIC. Types of information include legal dossiers of customers (both individuals and institutions), outstanding loans, collaterals, guarantees, loans on consumption, outstanding credit card debt, and selected information on customers with total outstanding loans exceeding 15 percent equity of the credit institution in question. This information is provided to SBV's leaders and its units, other credit institutions with banking activities, and other institutions and individuals using credit information upon request.

The products and services provided by the CIC have played an important role in the management of SVB and have assured the efficiency and effectiveness of the credit system. The activities of CIC later extended to advising the SBV governor on plans, programs, projects and policies on

credit information, as well as guiding their implementation, monitoring, supervising, evaluation and reporting to SBV.

Since 2010, the credit information system has been broadened significantly by Decree 10/2010/ND-CP and its guiding regulations. For the first time, credit information companies (IC) are allowed to operate, provided that they meet certain requirements. The decree stipulates the rights and obligations of stakeholders (CIC, IC, credit providers, borrowers and other related organizations and individuals), required conditions to become an IC as well as dispute settlement and violation sanctions. After the issuance of the Decree, the first private credit information center was established in 2010 with the support of the IFC and Mekong Private Sector Development Facility (MPDF).

Types of credit information that ICs collect from borrowers include:

- Information on the borrowers and their relatives (spouse, parents, children);
- Information on past credit activities, asset leasing and other conditional transactions associated with interest or rental payment and term;
- Information on the past credit repayment, due and non-due loans and due time, as well as his/her credit ceiling;
- Information on the security of credibility; and
- Other related information that does not infringe on borrowers' rights, and does not concern his/her deposits or State secrets.

Upon request, this information should be provided to:

- Credit providers that report credit information to the CIC to evaluate customers' applications for credit and other legitimate purposes;
- Borrowers whose information has been recorded in the database of the IC for checking his/her personal information or documentation for their application for credit;
- Other ICs for their services; and
- Authorized state agencies.

The credit reporting requirement has also been imposed on CIs under the statistical reporting system applicable to all CIs, SBV branches and branches of foreign banks. Among other things, CIs (except for microfinance institutions) must report all outstanding loans to SBV with a specified frequency. This information serves as an input for state monitoring and supervision over monetary policy and banking activities and is accessed by SBV departments and agencies only.

3.2. Trends

Vietnam has recently made great progress in the area of Getting Credit. Compared to other countries, Vietnam's performance in this area is fairly good (ranked 24 out of 183 in 2011), and is the best score among all indicators for the country.

The area of Getting Credit in Vietnam has undergone reform in recent years. The most prominent is the promulgation of a new LCI in 2010, with the following significant changes:

- In general, the law contains more specific regulations and expands the scope of regulation on the establishment, organization governance and operation of credit institutions, especially Chapter 3 on "Organization and Governance." Nevertheless, several changes are not consistent

with the existing regulations such as the Enterprise Law, Investment Law, Stock Exchange Law, Competition Law, Law on Cooperatives, and Bankruptcy Law. This has great influence on the efficiency and effectiveness of SBV's management of credit institutions.

- The law explicitly prohibits banking activities by non-credit institutions.
- The distinction between banks and non-bank financial institutions is regulated more clearly. Accordingly, non-bank financial institutions are not permitted to take deposits from consumers, and are not eligible to provide payment services through customer accounts. This regulation is more consistent with the general rule applied in most countries and reduces the risk to the banking system. On the other hand, it allows non-bank financial institutions to expand the supply of banking services under low-level prudential regulations.
- The law stipulates the prudential ratios of each type of financial institution toward stricter control over commercial banks and more relaxed regulation with respect to financial and leasing companies. The amendment of the law has taken into account some safety regulations in the operation of banks and credit institutions, such as the application of common practices in scope of main activities and safety regulations to limit excessive risk for credit institutions.

Since 2010, the legal framework for credit reporting has progressed to the point where credit information is no longer collected and provided solely by the government CIC, but also by private sector ICs.¹¹²

In the context of the 2008 global financial crisis and the boom of the banking sector around Vietnam's accession to WTO, SBV has supervised CIs more closely, and policies toward them have been more flexible and more efficient. For instance, deposit and lending interest rates have been regulated more frequently to respond to emerging issues in the economy.

The recent rapid development of the banking sector in Vietnam, which has not been commensurate with the supervision capacity of the sector, has resulted in a number of weaknesses. The government has responded to this situation with "The Proposal of Restructuring the System of Credit Institutions during the Period 2011-2015." With the purpose of strengthening the financial status and enhancing the operational capacity of credit institutions, improving the prudence and efficiency of credit institutions, enhancing the soundness and principles in the banking sector, the Proposal has set out an overall target of having at least one or two commercial banks with scale and scope similar to other banks in the region. The Proposal also proposes measures to restructure all credit institutions. Following this decision, SBV has issued an Action Plan for the implementation of Proposal of Restructuring the Credit Institutions System During the Period 2011-2015. The action plan details reform tasks and policy measures, namely (i) restructuring the state-owned commercial banks; (ii) policy options for joint-stock commercial banks, financial companies, and leasing companies short on liquidity; (iii) policy options for weak joint-stock commercial banks, financial companies, and leasing companies; (iv) restructuring the financial status, operational mechanisms and management of credit institutions; (v) policy options for strengthening and improving the operation of people's credit funds and microfinance institutions; (vi) policy options for restructuring foreign credit institutions; and (vii) supporting policy for restructuring the credit institutions. In parallel with these policy options, SBV has also set out a clear roadmap for the development of a legal regulatory framework for the financial and banking sector and guiding legal documents.

¹¹² See Sub-Section 3.1.3 for more details.

4. Enforcing Contracts in Vietnam

4.1. Background

4.1.1. Sources of Legal Authority for Judicial Enforcement of Contracts as well as for Alternative Dispute Resolution

Judicial enforcement of contracts and alternative dispute resolution are governed by several laws. Two laws that govern enforcement of all types of contracts are the Commercial Law and Civil Code. The 2005 Commercial Law (in effect since 2006) provides judicial enforcement of contracts related to commercial activities. The 2005 Civil Code (effective as of 2006) regulates not only “civil relations” but also commercial, business and labor relations. Those articles regulating contracts in the 2005 Civil Code start with the presumption of freedom of contract, provided that it is not contrary to law and social ethics.

Other laws stipulate enforcement mechanisms of contracts in the areas that each regulates. For instance, the 2005 Investment Law (in effect since 2006) regulates contract enforcement concerning investment activities for business purposes. The 2005 Enterprise law (in effect since 2006) governs enforcement of contracts signed between enterprises and others. None of these four laws have been updated in the past five years.

The current Law on Organisation of People’s Courts was promulgated in 1992, with revisions and augmentations in 1994 and 1995. The 2010 Law on Commercial Arbitration (in effect since 2011) provides competence of commercial arbitration issues, competence of courts with regards to arbitration activities, organization and operation of the foreign arbitrations in Vietnam, and enforcement of arbitral awards. The 2006 Notarization Law (in effect since 2007) stipulates all notary regulatory framework and other related issues. Vietnam promulgated a Law on Electronic Transactions in 2005.

Vietnam has promulgated a Law on Signatory, Joining and Implementation of International Treaties in 2005, which specifies that when there is any difference between Vietnamese laws and signed international treaties, the latter prevails. Vietnam ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards in 1995. This Convention has been incorporated into Vietnamese Law. Vietnam has not ratified the United Nations Convention on Contracts for the International Sale of Goods, as Vietnam is not its official member.

Notarized contracts and related documents are among the conditions for contract validity and facilitation of the dispute settlement. Furthermore, registration for secured transactions often requires notarized supporting documents.

Vietnam promulgated a Notarization Law in 2006 (in effect since 2007). This law stipulates the scope of notaries, notary agencies, notary procedures, and state control and management of notaries.

Notarized documents are legally binding; if the obligor does not perform its obligations, the other party may request that the court settle in accordance with the law, unless the contract parties have another agreement.

4.1.2. Commercial Courts and Arbitration/Mediation Tribunals

Dispute resolution in Vietnam may involve arbitration or courts. Economic courts in Vietnam are the body responsible for dispute resolution for economic and commercial contracts, while civil courts are responsible for dispute resolution for contracts subject to Civil Law. Both courts are under the People's Courts. Economic courts are available at national and provincial levels (under Provincial People's Courts).

Commercial arbitration is responsible for dispute resolution for commercial contracts or those disputes that the laws require to be solved by commercial arbitration. A commercial arbitration center is a joint establishment of at least five arbitrators. There are several arbitration centers in Vietnam: Pacific International Arbitration Centre; Hanoi Commercial Arbitration Centre; Ho Chi Minh City Commercial Arbitration Centre; Can Tho Commercial Arbitration Centre; Vien Dong Arbitration Centre; Asia Arbitration Centre; Vietnam International Arbitration Centre (VIAC). Most of them are located in Ho Chi Minh or Hanoi. Among them, the VIAC is the most well-known centre in Vietnam.

4.1.3. The System for Enforcing both Domestic and Foreign Judicial Judgments and Arbitral Awards

The system for enforcing civil judicial judgments and arbitral awards is specified in the 2008 Law on Enforcement of Civil Judgments (in effect since 2009). The system of civil judgment enforcement agencies consists of civil judgment enforcement management agencies at the central level, including: (i) the civil judgment enforcement management agency of the MOJ; and (ii) the civil judgment enforcement management agency of the Ministry of Defense. At the local level, the system under MOJ operates at the provincial level and district level, while that of the Ministry of Defense operates at the zone level.

The process for enforcing judgments is defined in the Law on Enforcement of Civil Judgments. While the State encourages involved parties to execute a court order voluntarily, the law does not permit private remedies against fraud. The party requesting the enforcement of a judgment may request or authorize another person to file or send a written request by post to the civil judgment enforcement agency. Heads of civil judgment enforcement agencies issue judgment enforcement decisions. The time limit for issuing judgment enforcement decisions is five working days. Within two working days after issuing a decision, an enforcer is assigned to organize the implementation of these decisions. The time limit for voluntary execution of a judgment is 15 days after the judgment debtor receives or is properly notified of, the judgment enforcement decision. Upon the expiration of this time limit, those who fail to voluntarily comply with the judgment are coerced to do so. Before conducting coercive judgment enforcement, enforcers shall work out plans thereon, except for cases subject to immediate coercive enforcement.

Formally, Vietnam has not created a special institution dedicated to alternative dispute resolution.

4.2. Trends

All the current laws governing contracts have been promulgated before 2007. These laws are still in effect and there have not been further developments or reforms recently.

5. Trade Across Borders in Vietnam

5.1. Background

Sources of Legal Authority for Conducting Import, Export, and Other Cross-Border Activities

The most important legal document governing all cross-border activities is the 2005 Trade Law.¹¹³ In addition, foreign trade activities are subject of a number of laws, such as the 1992 and 2005 Law on Import Duty and Export Duty, the 2001 Customs Law and its amendments and supplements. Several laws (the 2005 Railway Law, the 2005 Maritime Law, the 2010 Law on Food Safety, the 2005 Law on Environment Protection, the 2008 Law on Special Consumption Tax, the 2008 Law on Value Added Tax, etc.), among other things, regulate selected aspects of cross-border activities. Most of these laws have been replaced by a new law or revised to improve the business environment, to simplify administrative formalities for doing business.

The Government has also periodically approved national strategies (normally for a 10-year period) to guide the development of a specific industry or area relevant to cross-border activities, for instance Strategies on Merchandise Trade, on Transport Development, on Tax System Reform, on Customs Development, on Development of the Service Sector, as well as various master plans, e.g. on Seaport Groups and on development of various types of transport.

Furthermore, Vietnam has also committed to trade facilitation agreements under multilateral as well as bilateral arrangements. As a member of ASEAN, in the last decade, Vietnam has implemented various cooperation agreements in the ASEAN framework such as the CEPT, ASEAN Trade in Goods Agreement (ATIGA), the ASEAN Strategic Plan of Customs Development for 2005-2010, the ASEAN Customs Declaration Document and ASEAN Cargo Processing Model, the ASEAN Single Window (ASW) and the ASEAN roadmap for Integration of Logistics Services. Multilateral commitments include WTO commitments (Article V - Freedom of transit; Article VIII - Export-Import costs and procedures; Article X - Release management and trade regulations); APEC commitments (focusing on reducing transaction costs in business and enhancing information share and freedom of trade, implemented through CAP and IAP); ASEM and WCO. Vietnam also participated in FTAs between ASEAN and other countries (namely ACFTA, AKFTA, AANZFTA, AIFTA and ASEAN-Japan Comprehensive Economic Partnership - AJCEP). The most important bilateral agreements are BTA with the US and VJEPA.

All legal documents are officially published in Vietnamese. However, English versions are also available at websites of ministries and government agencies or legal service providers.

Since 2004, Vietnam has made an enormous effort in introducing a large number of new laws and legal regulations and adjusting the existing ones, aiming at not only improving regulatory frameworks to conform to all international integration commitments, but also enhancing the investment and trade environment, including facilitating cross-border trade. Specifically, the Government promulgated a Law on Signatory, Joining and Implementation of International Treaties in 2005 to legalize enforcement of international treaties to which Vietnam has committed. Vietnam has harmonized its regulations on customs procedures with international

¹¹³ The 2005 Trade Law also regulates trade activities in the domestic market.

practices and standards compatible with the Kyoto Convention on Simplification and Harmonization of Custom Procedures, of which Vietnam is a signatory.

The largest improvements with regard to cross-border activities have occurred in:

- Simplifying administrative and customs procedures. In 1998 a reform of the customs administration was initiated. In 2001 the first Customs Law was passed and was revised in 2005 to meet the requirements of a modern customs system. Since 2001, the entire customs procedure has taken place in a single location. Non-border customs checkpoints were introduced to facilitate border crossing and supplement the border checkpoints. Risk-management techniques have been applied to shipment examination since 2002. Post-clearance examination has also been implemented. Furthermore, one declaration can be made for a whole contract rather than for each shipment to be delivered or received. Since 2005, E-customs procedures were piloted at some local customs departments. In 2006 the first E-Transaction Law came into effect, which is the foundation for further development of electronic declarations. In the same year, the first master plan on E-commerce was implemented for 2005-2010. The savings due to modernizing from a paper-based system to a paperless one have been estimated to range from 1.5 to 15 percent of the cargo value, depending on the type of transport and type of goods. The outcome of the reforms has reduced the number of trade documents to be submitted for import-export shipment by half. However, E-declaration and registration processes are still at an early stage of development.
- Reducing taxes and tariffs, which have been regularly updated in various decisions of the MOF
- Improving conditions for capital accessibility and payment associated with cross-border trade, provided by various regulations of SBV and MOF.
- Encouraging trade-related supporting services specified in legal documents and strategies.
- Improving infrastructure and transport systems, which are the subject of various transport-related policies and regulations.

5.1.2. Institutions with Critical Authority over Trade

In Vietnam, the two most important agencies that have critical authority over trade are the Ministry of Industry and Trade (MOIT) and Ministry of Finance (MOF). Among other tasks and functions, MOIT is responsible for state management of domestic trade, import and export, trade promotion, E-commerce, trade services, economic integration, and competition. MOF is responsible for state management of customs; prices; taxes, fees and tariffs; and financial services. The General Department of Customs (which is under the MOF) is responsible for implementation of regulations concerning import-export duties, taxes and fees and supervision of cross-border activities. Trade facilitation is shared among the mandates of the General Customs Office (under the MOF), Ministry of Transport (MOT), and MOIT.

Relevant line ministries and agencies such as MOT, the Ministry of Agriculture and Rural Development (MARD), the Ministry of Health, the Ministry of Natural Resources and Environment, the Ministry of Culture-Sports and Tourism, SBV, the Ministry of Police, the Ministry of Defence, the Ministry of Information and Telecommunication, the Ministry of Science and Technology are responsible for cross-border activities associated with those products and issues under their supervision.

For instance, currently some 65 licenses and certificates are issued for merchandise trade such as export or license for a particular product, certificate of origin, sanitary and phyto-sanitary

certificates, and food safety certificates. Most of these licenses and certificates are issued by MOIT, MARD and MOT (18, 16 and 12 licenses and certificates, respectively). For some specific items, importers and exporters must obtain approval from relevant line ministries. For example, importing drugs and medicines requires certificates and licenses issued by the Ministry of Health, and approval from Ministry of Natural Resources and Environment is required to export natural resources or import technology that may affect the environment.

5.1.3. Environment for Public Sector Support of, and Regulatory Framework for Trade-Related Service Organizations

An increasing awareness of the importance of specialized supporting organizations for trade activities during the course of deepening integration has resulted in an improved environment for the emergence and development of trade-related supporting organizations and logistics industries. In terms of legal status, a variety of trade intermediary activities, such as customs brokers, freight forwarders, commercial brokerage, logistics services, are recognized by Vietnamese laws. A relatively comprehensive legal framework for the operation of these activities has been developed in the Trade Law, the Customs Law and its amendments and supplements, as well as their by-laws. Transportation services via various modes are regulated by the 2005 Law on Maritime, the 2006 Law on Civil Aviation, the 2005 Law on Railroad, the 2004 Law on Inland Waterway Navigation, the 2008 Law on Road Transport, as well as various decrees on multimodal transport.

As a result of the participation by Vietnam in various trade-related agreements, Vietnam's market for trade-related services has been gradually opened to foreign logistics providers, bringing both opportunities and challenges to local companies and the sector as a whole. In late 2010 and 2011, foreign third party logistics providers and joint-ventures in logistics services began to operate in Vietnam. Currently, Vietnam has more than 1,000 forwarding companies, of which about 18 percent are state-owned, more than 80 percent are limited liability, and 2 percent are foreign-invested; many of them are also members of the International Federation of Freight Forwarders Associations (FIATA). However, the logistics industry in Vietnam is still dominated by several large state-owned corporations such as Vietrans, Viconship, and Vinatrans; while the remainder consists of small- and medium-size companies.

There are associations of trade-related service providers that aim to protect rights and assist their members, namely Vietnam Freight Forwarder Association (VIFFAS), Vietnam Aviation Business Associations (VABA), Vietnam Ship-owners Association (VSA) and Vietnam Ship Agents and Brokers Association (VISABA), etc. Many vocational schools, institutes, universities and colleges (for instance Foreign Trade University, Logistics Institute of VIFFAS, University of Commerce) have been taking part in training in logistics, customs, and supply chain management. An increasing number of specialized magazines and conferences both in Vietnam and abroad help to disseminate and update knowledge of logistics and supply chains.

As a result, the overall environment has significantly changed toward more widespread application of IT in administrative procedures, improved infrastructure and telecommunication. A roadmap for the implementation of E-customs has been set up, and currently about 20 customs departments have implemented E-customs. Vietnam Logistics service providers tend to upgrade themselves with skills and perceptions of logistics and supply chain management, some have invested in warehousing, equipments, transportation vehicles or communication technology. There has been large investment in logistics centers, vendor managed inventories, distribution centers, deepwater seaports (Cai Mep, Ba Ria-Vung Tau, and Hai Phong, among others) as well as upgrading of transportation networks (roads and highways, airports and air cargo terminals),

implementing multimodal transportation and reducing congestion in trading. More importantly, a value chain between Vietnamese logistics service businesses and shippers has been established within the industry.

However, there is much room for improvement in the overall environment for trade supporting organizations. Specifically:

- Vietnam has not had specific laws on the logistics industry, which currently is regulated by many related authorities, such as transportation, customs, inspection, etc. That fact makes Vietnam's legal framework on trade supporting institutions insufficient due to vague articles, lack of guiding implementation, overlapping or inconsistent regulations, etc. Tax regulations for forwarding and shipping services are often unclear and complicated due to lack of common understanding and interpretation of the content among stakeholders.
- Technology, including IT application in Vietnam has yet to be developed: E-customs is still at the pilot stage, and Vietnam's National Single Window is in preparation.
- The overall infrastructure is incomplete and still suffers from many weaknesses: few well-equipped seaports, deadweight, daylight pilot services, slow cargo handling rate, expensive port costs, long turn-around; ICD, CFS and warehouses have not been equipped with modern cargo handling and storage facilities; railway networks are mainly used for passenger transport; while road transport carries most traded freight, road conditions are inadequate; weak bridges; lack of safe load restrictions. Inland waterways are poorly maintained and thoroughly dredged due to lack of funds and are used mainly for domestic cargo and lack of national sea and air transport means to cover the transport of foreign trade cargo.
- There is no formal training system for freight forwarders and logistics providers in Vietnam.

5.2. Trends

Vietnam has undertaken a number of initiatives to facilitate trade. The reform process has been driven and accelerated by both internal needs and international commitments such as those under WTO, APEC and ASEAN. The reforms include improvement of the legal framework, IT applications, improvement of transport infrastructure and logistics facilities. The most important reform activities are listed below.

5.2.1. Customs Modernization

Vietnam has focused its trade facilitation activities on customs procedure reform with three underlying principles: simplification, transparency and modernization.¹¹⁴ The objective of the reform is to develop a simple, clear, and standardized customs procedure that will contribute to the development of international trade and reduce corruption and smuggling. One target of the reform is a reduction of the average customs clearance time from upwards of four days to four hours.

Cooperation in the form of consulting seminars or meetings between governmental agencies with business community has been held more frequently in order to deliver more timely adjustments.

¹¹⁴ All legal documents are published on the website in Vietnamese and English. Every customs checkpoint is equipped with a phone line and email address to which traders can send criticism and suggestions about customs procedures and the behaviour of customs officers in order to discourage bribery practices.

Since 2009, General Department of Vietnam Customs has been implementing the Modernization Project, aiming at improving the effectiveness, efficiency, accountability and transparency of the GDVC by: (i) introducing modern customs systems and procedures based on internationally agreed standards and best practices; (ii) improving the organizational structure and strengthening the human, financial and physical resource capacity; and (iii) introducing appropriate information and communications technology to improve effectiveness, increase transparency and lower transaction costs. The General Department of Vietnam Customs has also proposed targets for customs modernization for 2015 to 2020, ranging from improving legal frameworks and customs procedures to organizational structure and adopting ICT.

In order to facilitate export activities and to reform customs procedure, two-phase pilot E-customs procedures have been implemented. Phase One took place from October 2005 to November 2009 at the Customs Departments of ten key provinces. At the end of Phase One, the implementation of E-customs procedures had by and large achieved its objectives, such as shortening customs clearance time, and reducing both the number of paper documents and costs to businesses. In Phase Two, which began in November 2009, the pilot has been expanded to a larger number of customs departments, while the E-customs practice has been widened to every enterprise and a wider range of exported and imported goods. Currently, E-customs procedures have been implemented at 20 customs departments, at which the proportion of E-declaration is about 80 percent.

Despite the encouraging results, the pilot implementation of E-customs procedures in this phase did not meet the requirements due to some drawbacks, including: (i) incomplete automation of electronic customs data processing; (ii) lack of harmonized system connection among customs departments and between customs authorities and other relevant government agencies; (iii) absence of the paperless system outside the customs departments (e.g. certificate of origin, payment vouchers of the Treasury, certificate of quality control); (iv) the small number of enterprises adopting the E-customs procedure; and (v) few licensed E-customs software providers, and high cost of installing the software. Future reform measures will aim to address these deficiencies.

5.2.2. Implementation of National Single Window

On August 31, 2011, the Prime Minister issued Decision No 48/2011/QĐ-TTg on the pilot implementation of customs mechanism of single national window. The main objectives of the VNSW are: (i) to simplify and harmonize procedures for goods; (ii) to shorten time and reduce cost involved in customs clearance; (iii) to improve quality and accuracy of information and documents submitted by the business community and economic agents; (iv) to improve quality, accuracy, timeliness and effectiveness of public services; (v) to ensure the openness and transparency and to enhance the predictability of policies; (vi) to enhance regulatory capacity of government agencies and management capacity of economic agents; (vii) to build legal infrastructure and technical standards appropriate for the Vietnam National Single Window; and (viii) to build sufficient technological infrastructure in support for transactions in VNSW.

To ensure the implementation of VNSW, the Government has established a National Steering Committee (NSC), chaired by the Minister of Finance and its working groups, including senior government officers and representatives from private sector. To provide line ministries and all stakeholders with directions and guidance for the implementation of VNSW, the Government has also authorized the NSC to issue the master plan for the establishment and implementation of VNSW in 2008-2012.

The Government has divided the implementation of VNSW into three main stages to meet the 2012 timeline. The first stage will be implemented with the involvement of the Customs Administration, MOIT and MOT. The second stage will involve three more agencies, including the Ministry of Health, MARD and Ministry of Natural Resources and Environment. The last stage will include the remaining agencies involved in VNSW. The implementation of the first two stages would resolve more than 80 percent workload of line ministries related to international trade and transportation.

The Master Plan also indicated six essential components for the complete implementation of VNSW as follows: (i) standardization and harmonization of administrative procedures; (ii) standardization and harmonization of data and documentary requirements; (iii) development of ICT application and technological infrastructure; (iv) development of legal framework and operational mechanisms; (v) training and communicating with stakeholders; and (vi) measurement of the effectiveness and success of VNSW by applying cost-benefit analysis methodology.

5.2.3. Implementation of Electronic Certificate of Origin System

Since 2006, Ministry of Trade (now is MOIT) has actively rolled out the establishment of the electronic certificate of origin (C/O) system (eCoSys) as one of the first electronic public services in the trade sector. ECoSys mainly focuses on the management of C/O data by C/O issuing organizations across the country. As for C/O issued by the Offices of Export – Import Administration, the Offices can update data online on the eCoSys website, which has been collecting information on several million C/O forms issued throughout the country. Electronic C/O is applicable for preferential forms issued by the Ministry of Industry and Trade including forms A, D, E, S and AK.

5.2.4. Infrastructure Improvement

Inadequate infrastructure is considered one of main bottlenecks to trade facilitation in Vietnam. Thus, infrastructure improvement is among the first priorities of the Vietnamese Government and is considered to be an area with the potential to bring about an economic breakthrough. The government will mobilize maximum resources at home and abroad as well as contributions from the private sector to meet this demand. The model of public-private partnership (PPP) will be an important factor promoting the development of infrastructure.

In accordance with national strategies and master plans on developing transport, a number of critical projects are either underway or planned, aiming at strengthening infrastructure for trade activities. By 2015, transport infrastructure in Vietnam will have undergone significant changes with a large number of transportation projects completed, improving road transport systems between important economic areas, and enhancing capacity of seaports and airports.

Important developments in the logistics industry have also been witnessed recently. Logistics parks have been established in the north and the south to serve the needs of container transport through international container ports and international airports, as well as intermediate goods for industrial zones. Vietnam UPS invested in two logistics centers in Hanoi and Ho Chi Minh City in 2011, and has continued to expand its business to other provinces.

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Website of the Ministry of Justice. Various legal documents as well as drafts of legal documents are downloadable in the website.	moj.gov.vn/en/Pages/home.aspx
Website of the National Registration Agency for Secured Transaction	nrast.moj.gov.vn/CDKBD/render.userLayoutRootNode.uP
Website of Vietnam Chamber of Commerce and Industry. News, information and statistics on business activities (including trade) are available online in this website. "Vietnam Exporter Directory" is posted, updating the list of manufacturers and exporters in Vietnam and providing an online sourcing guide for international buyers.	vccinews.com/
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Website of Vietnam Logistics Review Online. Latest information on logistics industry is updated. Vietnam Logistics Review magazine, owned by Vietnam Freight Forwarder Association, is also available on this website.	vlr.vn/vn/
Website of General Department of Customs. The site contains information and statistics on import-export activities, tariff, procedures and customs services. Latest legal documents related to trade activities are also posted here.	www.customs.gov.vn/default.aspx
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Website of annual reports on Vietnam's Provincial Competitiveness Index (PCI). The PCI was developed in 2005 by the Vietnamese Chamber of Commerce and	www.pcivietnam.org

Description	Website
<p>Industry (VCCI) and the U.S. Agency for International Development-supported Vietnam Competitiveness Initiative (USAID/VNCI). This is considered as one of the largest and most comprehensive social surveys in Vietnam which is seen as a critical tool for measuring and assessing the standards of economic governance in Vietnam's 63 provinces from the perspective of private businesses, covering business-critical issues of entry costs, compliance costs, land access, informal charges and governance qualities on pro-activity, transparency, labour development and legal institutions. The PCI also includes an index assessing quality of provinces' infrastructure as one of the most critical barriers to investment and growth in the country.</p>	
<p>Website of SBV. There are variety of legal and regulatory documents related to banking, credit and financial sector available on that website.</p>	<p>www.sbv.gov.vn/wps/portal/vn</p>

