Investment Regulation Around the World

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Preface

This publication provides the reader with current information on non-tax-related restrictions on inflowing direct investment in 74 nations. The following basic format has been used in presenting information for each country:

- Ownership restrictions
  Exchange controls
  Repatriation or remittance restrictions
  Employment restrictions
  Local material content requirements
  Other restrictions

In addition, information on subsidies and other incentives to foreign investment, a particular country's special laws, and other germane policies has been included where appropriate.

This publication is the result of Price Waterhouse's second annual survey and is based on data supplied by Price Waterhouse offices located in the 74 countries covered by the survey, in response to a request made to them by the U.S. firm of Price Waterhouse. The material is up-to-date as of June 30, 1982, with the following two exceptions. Because of major developments in Mexico, its report has been updated to September 30, 1982. And the report of the United States is current to February 28, 1983. (The United States was not included in the original report.)

We have analyzed the country-by-country information in order to determine trends in the international investment climate. The results of this follow.

This report, like the 1981 report, indicates strong non-tax and non-tariff restrictions on foreign investment. Of the 74 countries surveyed, 59 impose ownership restrictions (same as 1981), 53 have exchange controls (52 in 1981), 46 impose restrictions on repatriation or remittances (same as 1981), 72 have employment restrictions (same as 1981), and 30 have local material content requirements (29 in 1981).

Of the 59 countries considered to have ownership restrictions, 33 are considered to have harsh restrictions. These include all those where foreign ownership must be limited to a minority interest or where the list of excluded industries is extensive. If a country excludes only areas that are directly related to national defense, it is not considered to have an ownership restriction. If the only excluded non-defense industries are those such as banking, insurance, and airlines (all of which are closed to foreigners in many countries), the country is not considered to have harsh restrictions.

Exchange controls are more difficult to classify from the survey. Of the 53 countries that have exchange controls, 6 appear to be mild and 14 appear to be harsh from the reports on these items. A more realistic number of harsh exchange countries may be around 35, because that is the number of countries that have restrictive policies on repatriation or remittance of capital and profits—which, of course, are elements of exchange control.

The shift of Mexico from free exchange to tight controls may foretell other countries taking similar action as a result of the continuing worldwide economic slump. (Mexico returned to a free exchange system on December 20, 1982.)

As noted, 35 of the 46 countries that impose restrictions on repatriation and remittance are considered to have harsh restrictions. These include all countries that require capital to be "registered" before either capital or profits can be remitted. A few countries limit profit remittances to a percentage of capital—20 percent is the most common—or to a percentage of the year's profits.

The statistic on employment restrictions reflects that almost all countries require foreigners to have work permits. Only two countries, Hong Kong and Japan, were counted as not having employment restrictions. Hong Kong has restrictions, but they are described as

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being very lax. Japan has no employment restrictions but does have visa requirements that can be time-consuming.

Of the 72 countries having employment restrictions, 25 require work permits, but the survey responses do not indicate that this is used as a harsh exclusionary tool. Thirty-one other countries have restrictive policies that generally will not permit the hiring of a foreigner if a national is available. The remaining 16 also have restrictive policies, but, in addition, impose quotas that limit the percentage of foreign employees a company can have. Quotas also are often stated as a percentage of total salaries.

Morocco, the new entry on the list of countries imposing a local material content requirement, now requires a minimum value of locally manufactured material for automobile manufacture. Six other countries also impose a local material content requirement only in automobile manufacture. They are Chile, Colombia, Malaysia, the Philippines, South Africa, and Zambia. (Zambia has no local material content law, but the government strongly encourages it, especially in automobile manufacture.)

Comparing the 1982 report to that of 1981, the impression is that restrictions on foreign investment are growing. Certainly, they are not being relaxed. As the world recession continues, protectionist pressures mount.

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Alphabetical List of Countries

ARGENTINA
AUSTRALIA
AUSTRIA
BAHRAIN
BARBADOS
BELGIUM
BERMUDA
BRAZIL
CANADA
CAYMAN ISLANDS
CHILE
CHINA
COLOMBIA
COSTA RICA
CYPRUS
DENMARK
DOMINICAN REPUBLIC
ECUADOR
EGYPT
FIJI
FINLAND
FRANCE
GERMANY (WEST)
GREECE
GUATEMALA
HONDURAS
HONG KONG
INDIA
INDONESIA
IRELAND
ITALY
IVORY COAST
JAMAICA
JAPAN
KENYA
KOREA

KUWAIT
LIBERIA
LUXEMBOURG
MALAWI
MALAYSIA
MALTA
MEXICO
MOROCCO
THE NETHERLANDS
NETHERLANDS ANTILLES
NEW ZEALAND
NICARAGUA
NIGERIA
NORWAY
PAKISTAN
PANAMA
PAPUA NEW GUINEA
PARAGUAY
PHILIPPINES
PORTUGAL
PUERTO RICO
QATAR
SAUDI ARABIA
SINGAPORE
SOLOMON ISLANDS
SOUTH AFRICA
SPAIN
SWEDEN
SWITZERLAND
TAIWAN
TRINIDAD AND TOBAGO
UNITED KINGDOM
UNITED STATES OF AMERICA
URUGUAY
VENEZUELA
WESTERN SAMOA
ZAMBIA
ZIMBABWE

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Argentina

Except for certain periods, Argentina has traditionally welcomed foreign capital and expertise, which are considered essential to the country's development. During recent years the government established and maintained conditions attractive to foreign investors. The Foreign Investment Law, which establishes the rights and obligations of foreign investors, and the technology law were amended to simplify and accelerate the related procedures. The trend in the past few years had been to ease exchange controls. However, in view of the extremely difficult situation in the country's foreign exchange reserves, strict exchange controls were imposed as of April 1982. Locally owned businesses are given priority in competition for government contracts in the construction and consulting fields. There is no discriminatory treatment against foreign investment from any particular country.

OWNERSHIP RESTRICTIONS

Although foreign investors are not prevented from investing in any particular sector, prior government approval is required to avoid penalties of being legally null and void when:

- Investments are made in restricted sectors, i.e., national defense and security; certain public utilities and services; radio and tele-

vision; newspapers, magazines and publishing; energy; education; financial entities and insurance; mining; and others.

They exceed US$5 million.

The investor is a foreign state or government institution.

The investment is made in the form of acquisition of capital participations or underlying assets owned by local investors. Special requirements are set out when a transfer of majority ownership to foreign investors takes place.

EXCHANGE CONTROLS

Operations in foreign currency may be effected only through financial entities authorized by the Central Bank to deal in exchange. Currently, as a result of the difficult foreign exchange reserve situation, Central Bank approval is required on practically every remittance abroad and various incentives are being offered to refinance existing foreign currency obligations. Although exchange transfers are not prohibited, at present the use of External Dollar Bonds is the only method approved by the Central Bank for remitting profits, dividends, royalties, and technical assistance. They are also used to cancel financial and commercial debts, if it is so agreed by the foreign creditor.

These Bonds are U.S. dollar denominated, and interest is payable biannually at LIBOR rates for deposit at 180 days. They are quoted in the Stock Exchange, enjoy free exit from and entrance to the country, and are repayable over 10 years. Payments of interest and principal may be collected in cash or through transfers to New York, London, Frankfurt, or Zurich, at the beneficiaries' option.

A "commercial" market rate, which is set daily by the Central Bank, applies to imports and exports, while a "financial" rate, which floats in accordance with supply and demand, applies to all other exchange transactions, including freight and insurance on imports and exports. Payments of most import liabilities are currently deferred 180 days.

Terms and interest payable on foreign loans can be freely agreed to by the parties.

Future exchange contracts may be entered into for financial loans in accordance with specific Central Bank regulations.

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REPATRIATION OR REMITTANCE RESTRICTIONS

Only foreign investors registered under the Foreign Investment Law are allowed to remit profits and to repatriate capital under present exchange control limitations.

Registered investors' remittance of profits is not limited, but amounts remitted in excess of 12 percent of the registered capital in foreign currency are subject to a special remittance tax. The same applies to the repatriation of capital in excess of the registered amount. Registered capital cannot be repatriated until three years have elapsed.

Transitory investments for the execution of contracts for less than a five-year period can be registered under the terms of the foreign investment regulations or be treated in accordance with prevailing exchange controls, if any.

EMPLOYMENT RESTRICTIONS

Entry visas and work permits are required for foreign personnel hired on a temporary basis.

LOCAL MATERIAL CONTENT REQUIREMENTS

It is mandatory for state agencies and government or quasi-government companies to purchase only goods of national origin at a fair and reasonable price as compared with imported goods, notwithstanding the foreign ownership of the local supplier company.

OTHER RESTRICTIONS

Transactions between a foreign company and its local subsidiary or branch are valid, if agreed upon on an arm's length basis. However, intercompany loans are subject to Central Bank control, and prior government approval is required for intercompany technology contracts. Non-compliance with these requirements implies discriminatory tax treatment only.

SUBSIDIES AND OTHER INCENTIVES TO FOREIGN INVESTMENT

In general terms foreign investors are ensured rights and obligations equal to those granted by Argentine laws to national investors, subject to the provisions of foreign investment regulations and other provisions established under special or promotional regimes.

However, exemptions or allowances, such as those granted for industrial or mining promotion, will not be applicable to the extent that they represent a benefit to a foreign treasury.

Australia

The Australian government's aim is to weigh the net economic benefits to the Australian community of long-term investment against the costs to the national interest of too high a level of foreign ownership and control.

Government policy on foreign investment is to provide maximum opportunities for local participation in the ownership and control of industries and resources in Australia and to make use of foreign capital, especially if accompanied by technology and expertise, to further Australia's economic and social development. However, the government seeks to avoid the costly "buy-back" of foreign companies already established in Australia and to restrict foreign investment in certain basic economic sectors. Special objectives are set in certain key areas of the economy.

The Foreign Investment Review Board advises the government on foreign investment matters and deals with applications for foreign investments where these constitute "examinable proposals" as explained below. Even if a foreign investment proposal is not examinable, in most cases it will require exchange control approval.

Portfolio investment by foreign investors in equities listed on stock exchanges is not restricted, but exchange control approval is required. Australian stock- and sharebrokers have special permission from the Reserve Bank to buy and sell shares on behalf of non-residents. Portfolio investment may not breach the limitations imposed by the For-

eign Takeovers Act, and special restrictions relate to uranium companies.

OWNERSHIP RESTRICTIONS

Private enterprise generally is excluded from the operation of electricity generation; postal, telephone, and telegraph services; international airlines; railways; and the major urban passenger transportation systems.

Foreign investment in the media (broadcasting, television, and newspapers) and domestic airlines is restricted.

It has been long-standing policy not to grant foreign interests authority to carry on a banking business in Australia. However, recommendations of a government-appointed committee, the Campbell Committee Inquiry into the Financial System, to allow foreign banks to carry on banking in Australia are generally believed to be acceptable to the federal government. As of July 1982 there had been no statement on when and how restrictions against foreign banks will be relaxed.

The finance sector (referred to as non-bank financial intermediaries) and insurance companies are subject to an in-principle requirement that foreign acquisitions or new investment proposals are unlikely to be approved unless Australian equity is at least 50 percent in the enterprise.

Foreign investment outside the prohibited sectors may be examinable by the Foreign Investment Review Board. The following are examinable proposals:

- Proposals falling within the scope of the Foreign Takeovers Act, including proposals by a single or associated foreign interest to acquire or increase a holding of 15 percent or more in an Australian business, even where the proposal does not involve a change in control of the business.

  All proposals to establish a new business or project, irrespective of size, in industries subject to special restrictions: that is, finance, insurance, the media, civil aviation, uranium, and activities relating to uranium.

  Direct investments by foreign governments or their agencies (ex-

cluding portfolio investments or investments related to their official representation.

Other proposals to establish new businesses, where the total amount of the investment is A$5 million or more (including diversification into activities not previously undertaken directly in Australia and new projects in mining or other natural resource industries).

Proposals to acquire real estate valued at A$350,000 or more.

The criteria used in examining these proposals is the net economic benefits which may flow to Australia in relation to:

- ☐ Competition, price levels, and efficiency.
- Introduction of technology or managerial or work force skills new to Australia.
- Improvement of the industrial or commercial structure of the economy or the quality and variety or goods and services available in Australia.
- Development of, or access to, new export markets.

Additional criteria may become relevant if a proposal appears unsatisfactory in relation to the foregoing.

In sectors of the economy designated as key areas, more specific objectives are pursued. The key areas are onshore and offshore production and development of oil, natural gas, and all minerals including uranium; agricultural and pastoral projects; and forestry and fishing projects. In these areas a new business or project involving investment by foreign interests of A$5 million or more which otherwise is not against the national interest will only be allowed to proceed if it has a minimum of 50 percent Australian equity and control, or 75 percent in the case of new uranium mining projects. Individual foreign portfolio shareholdings of less than 10 percent in an Australian uranium company are likely to be disregarded in calculating the 75 percent equity test. For minerals, the equity and control is not imposed at the exploration stage but rather at the development phase.

In the case of real estate, the government is particularly concerned about preventing speculative purchases by foreign investors and will not approve such purchases. Examinable transactions are proposals

to acquire real estate valued at A$350,000 or more, other than acquisitions of interests in land by life insurance companies investing Australian statutory funds and Australian pension funds of foreign employers for the benefit of Australian fund members. Other foreign- or overseas-controlled companies may acquire residences for use of employees in Australia and foreigners on temporary assignment in Australia for their own use, provided the properties, when no longer needed, are sold to Australian or other eligible purchasers. Real estate acquisitions would not be examined in isolation if they are part of a proposal otherwise examinable.

FOREIGN TAKEOVERS ACT

The 1975 Foreign Takeovers Act provides for the examination of defined acquisitions and arrangements which would result in foreign persons being in a position to exercise effective control over an Australian business. The Commonwealth Treasurer may prohibit a proposed takeover if it would lead to a change in the control of the business concerned where the resultant control would be foreign and would be against the national interest. Proposals to be examined under the Act are:

1. A proposed acquisition of shares under which a single foreign person, alone or with associates, or two or more foreign persons, alone or with associates, would acquire or increase a shareholding of 15 percent or 40 percent, respectively, in the ownership or voting power of a corporation which is:
   a. Incorporated in Australia and which, directly or through subsidiaries, carries on an Australian business; or
   b. Incorporated overseas and which, directly or through subsidiaries, either:
      i. Carries on an Australian business whose assets are valued at more than A$3 million; or
      ii. Carries on an Australian business whose total assets are equal in value to 50 percent or more of the value of the corporation's consolidated total assests.
2. A proposed acquisition by a foreign person or associates of any interest in the assets of an Australian business.

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