Regulating Foreign Direct Investment in Latin America

Indicators of investment regulations and options for investment climate reforms

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Introduction

Latin America's current economic situation includes both opportunities and challenges facing the region. Relatively high growth rates have been the norm over the past decade, public participation in governance processes is increasing in many countries and, with certain exceptions, the region has achieved a reduction in poverty rates. This economic success can be attributed to a variety of causes, including more than a decade of economic reforms, high global commodity prices that have benefitted traditional exports and generally responsible fiscal policy that has created a favorable macroeconomic environment.[1]

However, there are numerous obstacles and weaknesses that should be addressed if Latin America is to continue its previous success. External engines of growth for the region such as global demand have diminished (de la Torre et al. 2013). The region faces numerous microeconomic and social challenges, including high levels of inequality, precarious employment due to high rates of informality, relatively low value-added in the industrial sector and low penetration of information technology, particularly among small and medium enterprises. Broadly, productivity needs to increase.

Foreign investment plays a central role in Latin America's current and future economic situation. Inflows of foreign direct investment (FDI) in the region have increased significantly and steadily over the past decade, as many developed countries (including those in North America, Europe and Asia) have begun to see Latin America as a key component of their economic growth strategies. This has resulted in an increase of FDI in sectors beyond traditional natural resource extraction, large-scale telecommunications and financial services. New trends indicate that FDI could spur economic dynamism in the region, such as increasing foreign investment in research and development and demand for more innovative consumer products. A potential growth path for the region includes continued inflows of foreign capital as a driver of increased domestic demand (de la Torre et al. 2013), and increased FDI inflows might offer significant productivity-enhancement potential through knowledge spillovers under certain circumstances (Lederman et al. 2013).

Countries in Latin America may therefore want to include FDI as a key component of their growth and productivity-enhancement strategies. Although traditional factors such as market size and growth potential will continue to be drivers of global FDI flows, previous waves of economic reforms did succeed in attracting inflows of FDI, however, and further reforms—in areas such as trade liberalization, infrastructure deepening, and human capital strengthening—will enable economies to attract and benefit from more foreign capital inflows.

One important objective of such reform efforts is the investment climate. Many countries in the region have largely succeeded in removing the most significant regulatory barriers to foreign investment, but further reforms targeting more nuanced regulatory areas may be a key step to stay at the forefront of attracting global FDI. This report focuses on five regulatory areas directly relevant to FDI, comparing regimes across countries and identifying good practices in countries that have succeeded in attracting large volumes of FDI flows. Reforms in these areas are one option for governments to consider if they want to keep attracting FDI that can contribute to productivity enhancement and ultimately continued economic growth in the region

Favorable FDI trends and impacts in Latin America

Inflows of FDI into Latin America have increased significantly in two main waves over the past couple of decades. The first surge occurred in the 1990s (Figure 1). The majority of these investments were in the services sectors, as foreign investors took advantage of opportunities generated by privatization processes and greater openness to foreign participation in the financial, telecommunication and public utilities sectors. Investment also increased at this time in the manufacturing sector, in response to general economic liberalization in economies such as Argentina, Brazil, Costa Rica, Mexico and Venezuela. This relation between FDI flows and economic liberalization still holds today: there is a clear correlation between the openness of Latin American economies to trade and the amount of FDI they receive (Figure 2), although it is difficult to establish a causal relationship between the two factors.

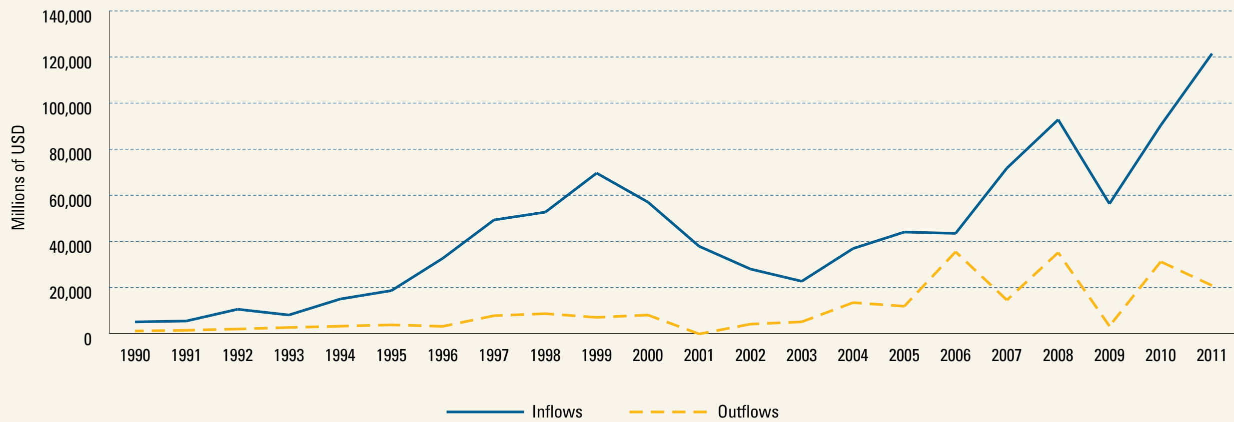
Such inflows of FDI offer significant benefits to the economies of Latin America. One straightforward benefit is the increased availability of capital within the region; as noted above, the significant FDI inflows have increased domestic demand, which has been a driver of growth in the region (de la Torre et al. 2013). But investment by foreign firms offers another potential benefit that may be even more important for growth and development: technology and productivity improvements, such as through knowledge

spillovers. A wide range of research has documented both direct and indirect knowledge transfers that can result from FDI (see for example Javorcik 2004; Javorcik 2010; and Moran et al. 2005). These transfers can arise through foreign firms working to obtain quality inputs from local firms as suppliers. Local firms may emulate technology or management practices, or hire employees that were previously trained by foreign firms.

Although the most powerful impact of FDI on domestic firm growth remains the indirect spillovers, multinational corporations operating in developing countries can also be powerful forces for investments in knowledge assets, such as research and development, software and databases, and other types of intellectual capital.

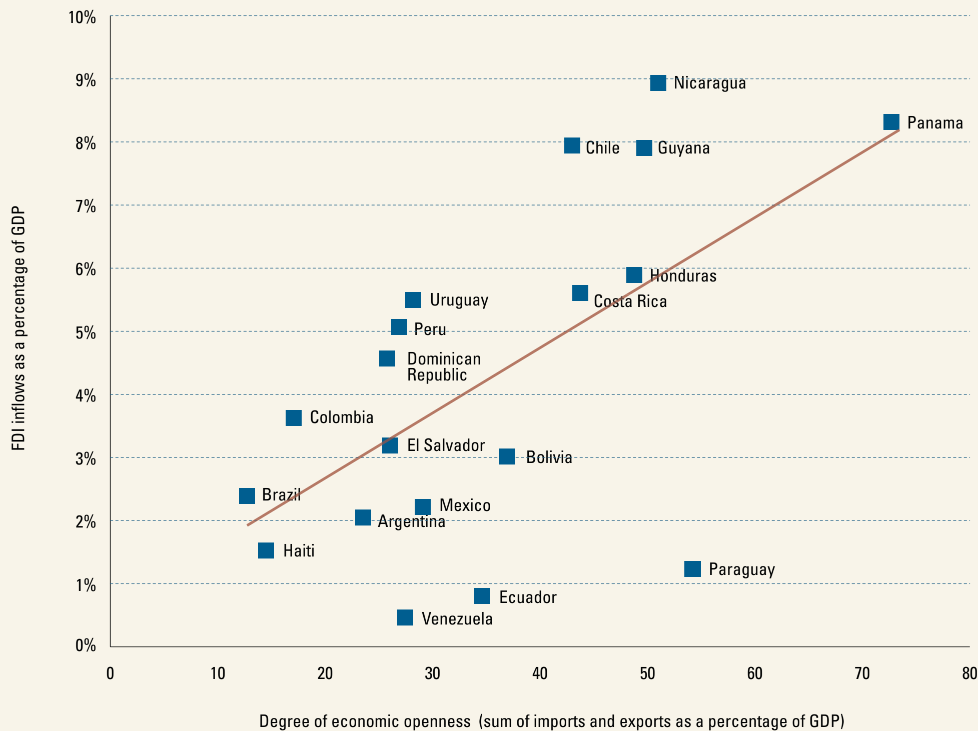
These potential productivity benefits from FDI are confirmed by data from Latin America. Studies in numerous Latin American economies have found that foreign-owned firms have higher labor productivity and employ better management practices than local firms (see Lederman et al. 2013). Foreign-owned

FIGURE 1. Flows of foreign direct investment in Latin America



Source: UNCTADstat 2012, in nominal USD.

FIGURE 2. Relation between flows of FDI and economic openness in Latin American countries



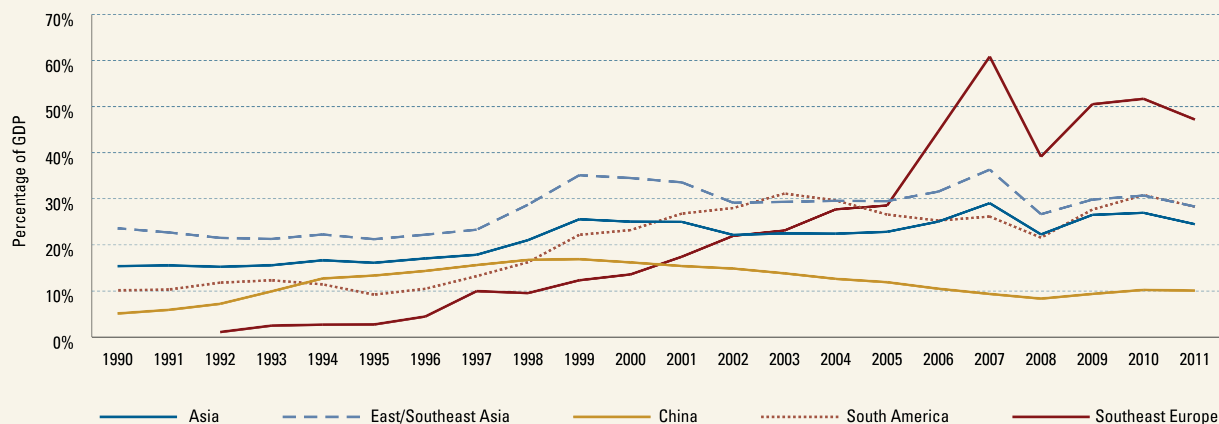
Source: UNCTADstat 2012, in nominal USD.

firms in the region are more likely to introduce new goods to the market, adopt foreign technologies and have international quality certifications.

The characteristics of recent FDI inflows to Latin America—the second wave referenced above, starting in the early 2000s—reflect these productivity benefits:

1. Foreign investment has increasingly targeted innovative product manufacturing. The growth in purchasing power of the emerging middle classes has increased the attractiveness of many internal Latin American markets. To adequately meet this demand, firms have required greater knowledge of new local market trends, which has led to the development of appropriate new production and distribution schemes that cannot be easily imported from more developed markets. This has ultimately resulted in greater investment by the various multinational corporations and a rising proportion of FDI in the manufacturing sector. This broad trend of investing to innovatively meet local demand applies to the service sector as well. After the initial foreign investment in services in the 90s, in response to privatization and liberalization, firms are now investing to meet the evolving demand for services by the growing middle class and even lower-income sectors.
2. Reinvested earnings have become the key source of foreign investment in the region. From 2005 to 2007, reinvested earnings represented about 27 percent of net FDI inflows across Latin America; by the period 2009–2011, this amount nearly doubled to more than 50 percent. On one hand, this shift away from new capital contributions to reinvested earnings may reflect the realities of global capital markets following the financial crisis. But this shift also reflects a perceived decrease in the level of investment risk in Latin America by multinational corporations and an increased willingness by such firms to expand their presence in the region through reinvestment processes.
3. Foreign firms are expanding their research and development (R&D) activities in Latin America. Total investment in R&D in the region is still relatively low, but the private sector's role in conducting research is increasing, as indicated by the decisions of multinational corporations including Siemens, General Electric, Cargill and Proctor & Gamble to open R&D centers in various countries in the region. The private sectors in Brazil, Chile and Mexico are now financing from 40 percent to 50 percent of total R&D investment in the countries. This trend will permit economies in the region to leverage innovation processes and benefit from technological transfers, and also reflects foreign investors' commitment to a long-term presence in the region.
4. Latin America has received an increase in foreign investment from venture capital funds. Investment from such funds is still a small proportion of total FDI, estimated at US$6.5 billion for the region in 2011 (CAF 2013) and mostly concentrated in Brazil and Mexico. But this type of investment is increasing and spreading to other countries, and offers significant potential to identify innovative project opportunities and inject capital into high-potential medium-sized companies.
5. FDI inflows from within the region are increasing. Nearly 10 percent of FDI in the region from 2006–2010 came from multinational firms headquartered in Latin America, referred to as *multilatinas*. This represents a doubling of the proportion of investment from *multilatinas* from 2000–2005. The expansion of these firms reflects productive regional integration, as the *multilatinas* bring successful production and marketing processes to new countries as part of internationalization strategies. This intraregional investment is diversified across a range of sectors, including food and beverages, engineering and construction, steel and metallurgy, transport and petroleum and mining. The large *multilatinas* are drawing medium-sized companies into this regionalization

FIGURE 3. Inward FDI stocks across regions as a percentage of GDP



Note: South America includes Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Uruguay, and Venezuela.
Source: UNCTADstat 2012.

process, either through emulation or by integrating into the supply chains of larger firms. This regional integration and expansion of successful business strategies offers yet another avenue through which FDI can spur regional dynamism and economic growth.

Hence it appears that FDI can offer substantial economic benefits to Latin America through both the indirect spillovers and the direct effects. One study using data on manufacturing firms estimates that doubling the entry of multinational corporations into Latin America would improve aggregate productivity in the region by as much as 3.8 percent (Alfaro and Chen 2012; Lederman et al. 2013).

Despite the recent waves of FDI inflows, there might be room for additional foreign investment. The stock of FDI in the region—the accumulation of all previous annual inflows—is still relatively low compared to other regions. As a percentage of GDP, FDI stocks in South America for example are comparable to stocks in East and Southeast Asia (Figure 3). But the stocks are significantly lower than in Southeast Europe, another region of emerging economies competing for global FDI. This suggests that further efforts may be necessary to ensure that Latin America continues to attract inflows of foreign investment. What can governments in the region do?

Reforms to stimulate further investment

There is a range of reform areas that Latin American governments could consider to attract additional FDI inflows. Before discussing reform possibilities, it is important to note that governments may have limited direct influence over many determinants of FDI (see text box). Domestic market size and growth potential are two primary drivers of FDI flows. Other key factors relate to macroeconomic management and rule of law, such as maintaining low inflation and respect for private property rights. A low risk of nationalization or expropriation in particular is fundamental to attracting FDI inflows.

Numerous structural reforms may also be needed across economies in Latin America. Data from the World Bank Group's Enterprise Surveys indicate that real labor productivity—a key attraction for many foreign investors—has been declining on average in recent years across the Latin America region (Francis et al. 2013). This is especially true for large firms in the large economies of the region. Efforts to improve labor productivity, such as through human capital development, may address this persistent microeconomic weakness. Appropriate sector policy and science and technology policy will be needed to continue attracting investments in R&D and to consolidate the economic and scientific impact of such investment.

BOX 1. Determinants of FDI flows[2]

A large body of research has addressed the question of what determines FDI flows. One framework views FDI as being market-driven (by economy size or location), efficiency-seeking (driven by human capital or infrastructure quality), or resource-seeking (driven by natural resources or other strategic assets). Numerous empirical studies have confirmed the importance of these factors (see Blonigen and Piger 2011 and Hornberger et al. 2011 for an overview). Outside of the extractive industries, foreign investors are strongly attracted by market size and growth potential. A well-educated labor force attracts firms seeking production efficiencies, and strategic infrastructure or trade openness are important for firms looking to access certain markets. Macroeconomic and political stability are also important determinants, as foreign firms benefit from low inflation and respect for property rights. Additional institutional factors, such as efficient regulations and a predictable policy environment, are also found to have a statistically significant impact on FDI flows. Other factors ranging from physical security to historic cultural ties have also been found to influence FDI, reflecting the wide range of FDI determinants.

A study of Brazil identified supply-side difficulties as limiting export competitiveness, such as a lack of integration into global value chains and an unhelpful business environment (Canuto et al. 2013). These and other reform areas may be key parts of a broad reform agenda for the region, but fall outside the scope of this report.

Regulatory reforms represent one important potential component of a reform agenda to keep Latin America at the forefront of attracting FDI. Restrictions on the ability of foreigners to invest in new firms or burdensome processes for resolving commercial disputes or transfer profits are important deterrents to FDI inflows. As noted above, previous liberalization of FDI succeeded in enabling increased inflows of FDI in the 1990s, and Latin America as a region has made significant progress in reducing barriers to business entry broadly (Lederman et al. 2013). But Latin America still lags behind other regions in terms of red-tape regulations, especially with regards to regulations particularly relevant to foreign-owned firms and FDI. Although regulatory barriers may not be the primary constraint to FDI in Latin America, they offer one reform option that governments can consider to improve their overall investment climate for FDI.

A growing body of empirical research has found significant relationships between the business regulatory environment and FDI flows. Additional research in this area will consolidate the quantitative support for this relationship, but examples of the existing evidence include:

- An efficient regime to arbitrate commercial disputes and a low number of procedures to start a foreign subsidiary are strongly associated with high levels of FDI stock (Waglé 2011);

- Institutional and regulatory quality broadly is associated with increased FDI inflows (Daude and Stein 2007);
- In economies with less-burdensome business and labor regulations, FDI inflows have a greater impact on economic growth (Busse and Groizard 2008);
- The quality of the business environment for domestic firms is significantly associated with inward FDI flows (World Bank 2012).
- Corruption is a significant deterrent to FDI inflows, having an effect comparable to the impact of substantial increases in the tax rate on foreign firms (Wei 2000); and excessive regulatory red tape has been associated with high levels of business-related corruption.[3]

Comparative surveys of business executives around the world also indicate that institutional and regulatory reforms may specifically increase Latin America's attractiveness as an FDI destination. Enterprise Surveys data show that nearly half (47.3%) of foreign-owned firms operating in sizeable Latin American economies identify corruption as a major constraint to their business—substantially higher than foreign-owned firms in East Asia (28.4%) or in Europe and Central Asia (34.7%). The burden of sector-specific regulations also varies across regions. Labor regulations offer one example: 24.2 percent of foreign-owned firms in Latin America identified labor regulations as a major constraint, compared to only 7.8 percent in East Asia and 10.3 percent in Europe and Central Asia. These perceptions are fully in line with the observed regional decline in labor productivity in the region mentioned above. Improving the business environment along these lines could make Latin America a more attractive investment destination both in absolute terms and relative to competitor regions.

FDI regulations: An avenue for reform

FDI inflows to Latin America have been increasing substantially, and this foreign investment offers significant potential to enable productivity-enhancing economic growth. But further investment must be attracted, if the region is to continue enjoying the economic benefits, as other regions of the world with large emerging markets will also be competing for global FDI. Regulatory reform has been identified as one mechanism to keep Latin America at the forefront of foreign investment. But what kinds of reforms should governments consider pursuing?

The World Bank Group's FDI Regulations project offers one means of identifying reform possibilities that could be pursued to stimulate further growth in FDI. The project measures and compares regulation of FDI across 105 countries,[4] thereby enabling benchmarking of countries against each other and the identification of good practices. FDI Regulations focuses on legal and regulatory issues affecting foreign investors along five topics:

- *Investing Across Sectors*, measuring foreign equity ownership restrictions across various manufacturing, services and natural resource sectors of the economy;
- *Starting a Foreign Investment*, measuring the regulatory regime and procedural burden that foreign companies face when establishing a subsidiary firm in a new market;
- *Arbitrating and Mediating Disputes*, measuring the legal regime for, and implementation of, alternative dispute resolution for international and domestic commercial disputes;
- *Employing Skilled Expatriates*, measuring the rules and practices for obtaining temporary work permits for foreign directors and specialist staff;
- *Converting and Transferring Currency*, measuring foreign exchange restrictions on the inflow of foreign capital, the repatriation of investment proceeds and other current transactions related to international business.

The data on FDI Regulations are gathered via questionnaires of local legal and regulatory experts in each economy, including private lawyers and accountants working with international firms and government regulators in charge of implementing national law. A case study approach is used in the questionnaires, in which respondents are asked to provide information about the regulatory framework relating to a specified type of standard medium-sized foreign investor, so that data are comparable across economies.[5] For Latin America and the Caribbean, the project gathered regulatory data for 15 economies through its 2012 survey (see Table 1). The data are supplemented by technical review of the specific national laws and regulations governing FDI. The data thus comprise both a *de jure* review of the regulatory framework and a *de facto* perspective on how the laws and regulations are implemented in practice.[6]

Before discussing specific regulations across topics and countries, it is useful to define the specific type of investment flows covered by the analysis. The standard definition of foreign direct investment is an investment in a foreign economy in which the investor has some management control over the newly invested enterprise.[7] Such investment could include new equity capital, reinvested earnings, or intra-company loans. The FDI flows considered in this report are therefore different from portfolio investment abroad or short-term foreign capital flows. The FDI Regulations case study approach focuses the regulatory analysis on one particular type of FDI: wholly foreign-owned subsidiaries of international firms, to measure regulations affecting investments that are long-term and engaged in productive economic activities.

TABLE 1. Latin American and Caribbean economies covered by FDI Regulations

Argentina	Costa Rica	Honduras
Bolivia	Dominican Republic	Mexico
Brazil	Ecuador	Nicaragua
Chile	Guatemala	Peru
Colombia	Haiti*	Venezuela

*In certain cases, data for Haiti is unavailable.

Overview of "Regulating Foreign Direct Investment in Latin America" report

The remainder of this report presents the FDI Regulations data across the five topics for certain economies in Latin America. The overarching goal is to provide policymakers in the region with a tool to enable forward thinking about what kinds of investment climate regulatory reforms may be appropriate to keep the region at the forefront of attracting FDI.

The report focuses on five economies in the region: Brazil, Chile, Colombia, Mexico and Peru. These economies are selected because they have already succeeded in attracting large inflows of FDI.[8] Yet even their regulatory frameworks still leave room for reform that could further strengthen the attractiveness of their investment climate to foreign firms. The analysis in this report will therefore identify regulatory reform areas that are relevant for those five economies and also offer an example for other countries in the region which are planning reform agendas. Comparisons will also be made to economies in other regions, especially to large emerging economies in East Asia and Eastern Europe, with the goal of identifying good practices that could potentially be replicated in Latin America—keeping in mind the context–and country-specificity of such regulatory decisions.

Investing Across Sectors

Topic overview

The openness of sectors to foreign equity ownership is one of the relevant conditions to attracting foreign direct investment. Economies with greater degrees of liberalization currently show higher attraction levels of foreign investment. The benefits of opening up sectors not only implies increased foreign presence, it also implies encouraging entry and welcoming increased competition between foreign and domestic providers alike.[9] Studies have highlighted the link between services sector reforms and the productivity of manufacturing industries relying on services inputs. A research paper focusing on several aspects of services liberalization in the Czech Republic—such as the presence of foreign providers, privatization and the level of competition—shows a positive relationship between services sector reform and the performance of domestic firms in downstream manufacturing sectors. According to the authors, "[a]llowing foreign entry into services industries appears to be the key channel through which services liberalization contributes to improved performance of manufacturing sectors." (Arnold et al. 2011). Another recent paper also attributes the growth of India's manufacturing sector to the country's policy reforms in services (in addition to trade liberalization and more permissive industrial licensing). The report found that banking, telecommunications, insurance and transport reforms all had significant, positive effects on the productivity of manufacturing firms. Services reforms benefited both foreign and locally-owned manufacturing firms, but the effects on foreign firms tended to be stronger (Arnold et al. 2012).

In the current stage of globalization, there are still a number of reasons why countries want or need to protect certain industries, non-renewable resources, the environment, national security, domestic industries and consumers and national interests among others. However, these goals can be reached through other regulatory initiatives that don't involve closing sectors off to foreign equity participation. The point should also be made that liberalization of FDI (that is, the elimination of discriminatory treatment between nationals and foreigners) should not be confused with de-regulation of FDI. States can always retain their regulatory powers to pursue key public policy objectives, such as protecting the environment or the stability of the financial system, and in order to achieve those goals, it is not necessary (or convenient) to discriminate between domestic and foreign investors.

The *Investing Across Sectors* indicators identify legal restrictions on foreign equity holdings in new investment projects or the acquisition of shares in existing enterprises. The ownership restrictions usually specify the permissible maximum of foreign equity participation, ranging from sectors being either completely closed or completely open to foreign ownership.

The indicators measure ownership restrictions on foreign direct investment across 32 sectors, grouped into 12 sector groups (defined below) for presentation and analysis purposes, and report on a scale of 0 to 100 the degree of openness to foreign direct investment (new Greenfield investment) in the respective sectors. The indexes take values from 0 to 100, where 100 denotes the absence of statutory ownership restrictions to FDI, and 0 means that foreign companies are not allowed to own equity in a sector or sector group. The equity restrictions expressed in percentages are converted to index scores linearly. For example, a score of 49 denotes that a foreign company can own up to 49 percent of shares in a business in a particular sector in a particular economy, meaning that it can only be a minority shareholder. Each sector group is given a number that represents the average statutory openness to FDI of the sectors it contains. For example, the "telecom" foreign equity ownership index is an average of the individual restrictions across fixed-line telecommunications infrastructure and services and wireless infrastructure and services. The indicators focus on restrictions captured in countries' statutes, and not on commitments to open sectors to FDI captured in international investment agreements (such as bilateral investment treaties or free trade agreements) or WTO commitments.

To ensure that the data is comparable across countries, respondents were provided with clear definitions of each of the subsectors covered. In addition, the following assumptions were made about the foreign investor and its home country:

- The host country does not enjoy any special economic, trade, or investment relationship with the home country of the foreign investor that would affect the investor's ownership rights (that is, the home country is not part of an economic union or a cooperation block with the home country, such as the EU, GCC, SADC, ASEAN, etc.).
- The host country enjoys normal political relations with the home country of the investor.

- The foreign investor is a private multinational company with no equity interest or management control by the government of its home country.
- The foreign company will not be investing in an export processing zone (EPZ), special economic zone (SEZ), or any other zone governed by a special FDI regime in the host country. The survey examines the host country's general FDI regime.
- The foreign company is not yet incorporated or otherwise established in the host country, and it is interested in undertaking a medium- to large-scale investment project in each of the sectors defined.
- The respective investment project in the host country is not subject to any national security restrictions and has no political affiliations.

Sector groups covered by *Investing Across Sectors*:

1. Agriculture and forestry
2. Mining and oil and gas
3. Manufacturing (food processing, manufacturing of basic chemicals and light manufacturing)
4. Electricity (electric power generation (biomass, solar, wind), transmission and distribution)
5. Waste management and water supply (waste management and recycling and water distribution)
6. Transport (freight rail transport, freight transport by road, internal waterways freight transportation, international passenger air transport, port operation and courier activities)
7. Telecom (fixed-line telecommunications infrastructure and services and wireless/mobile telecommunications infrastructure and services)
8. Media (newspaper publishing and television broadcasting)
9. Financial services (banking, life insurance and health insurance)
10. Education (higher education)
11. Accounting (accounting, bookkeeping and auditing services; tax consultancy)
12. Tourism (accommodation services)

While the coverage of the indicators is not exhaustive, it captures most of the major economic sectors, which in aggregate account for over 80 percent of GDP and FDI flows.[10] The indicators place a particular emphasis on providing detailed measures of the service sectors, given the relative prevalence of FDI restrictions in services in relation to other economic sectors, as well as the growing importance of services in the global economic output and FDI flows. FDI in the services sector rose by 15 percent in 2011, reaching US$570 billion, after falling sharply in 2009 and 2010 (UNCTAD 2004, 2009 and 2012). Coverage of the primary and manufacturing sectors is relatively limited given that past studies have shown—and this report confirms—that most countries do not restrict foreign ownership in these sectors. The coverage of the service sectors, though more extensive, is also not exhaustive. For example, the indicators do not include certain public utilities (such as natural gas distribution) or professional services (such as legal and consulting services). These and other service sectors were not included in the survey questionnaire for one or more of the following reasons: FDI plays a small role in the sector, FDI restrictions (if present) often do not take the form of equity limits, views in the development literature diverge on the appropriate role of foreign capital in the sector, and methodological constraints limited the length of the questionnaire and potential quality of responses. Finally, sectors where countries may have legitimate security, cultural, or religious reasons for prohibiting FDI are omitted from the indicators' coverage. These include weapons, nuclear power, and manufacturing of tobacco products and alcoholic beverages.

The absence of foreign ownership restrictions as measured by the *Investing Across Sectors* indicators is an important but insufficient condition for attracting FDI. Aside from openness to foreign ownership, other determinants of FDI include market size, infrastructure quality, cost factors, political stability, and economic growth, actual and potential. Restrictions on foreign ownership limit and in some cases prohibit FDI in certain sectors. But abolishing foreign ownership restrictions and having a completely open economy do not guarantee success in attracting more FDI.

The main goal of the *Investing Across Sectors* indicators is to help economies benchmark their policies against those of their peers and to use these comparisons to inform their policy decisions.

Latin America regional overview

On average, when looking at overall equity restrictions across the 32 sectors covered by the indicators, the Latin America and the Caribbean (LAC) region as a whole is slightly more closed than Eastern Europe and Central Asia, the high-income OECD economies and Sub-Saharan Africa, where fewer restrictions exist on FDI ownership. However, it is more open than South Asia, Middle East and North Africa and the East Asia and the Pacific region (Figure 4).

Most of the 15 economies covered by the FDI Regulations project in the Latin American and Caribbean region have no restrictions on foreign ownership in any of the covered sectors (Figure 5). For instance, Guatemala is completely open to foreign equity participation in all 32 sectors covered by this indicator. Chile, Colombia, Honduras, Bolivia, Haiti and Peru have restricted only one of the 32 sectors.[11] On the other hand, in the region, Mexico, Venezuela and Costa Rica impose the most restrictions.

As a general trend, the following sectors are completely open to foreign equity participation in all 15 Latin American economies covered:

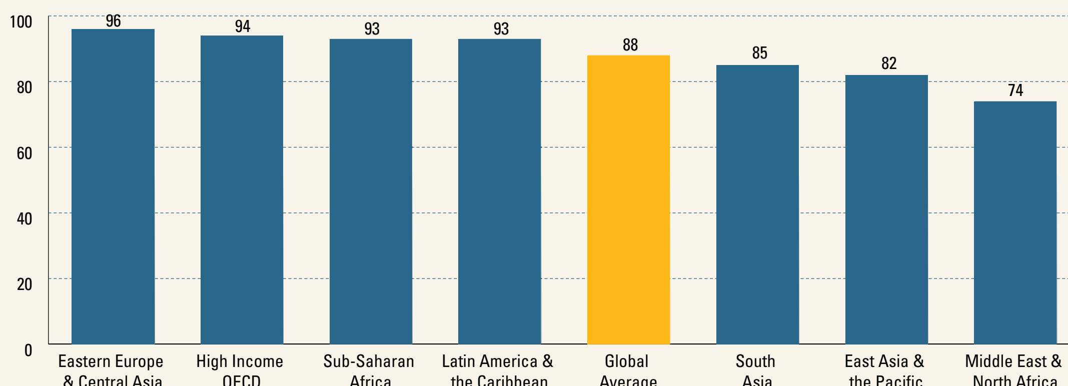
- Food processing
- Light manufacturing
- Courier activities
- Accommodation services and
- Accounting

The sectors where foreign equity participation is limited include:

- Electric power transmission and distribution
- Newspaper publishing
- Television broadcasting

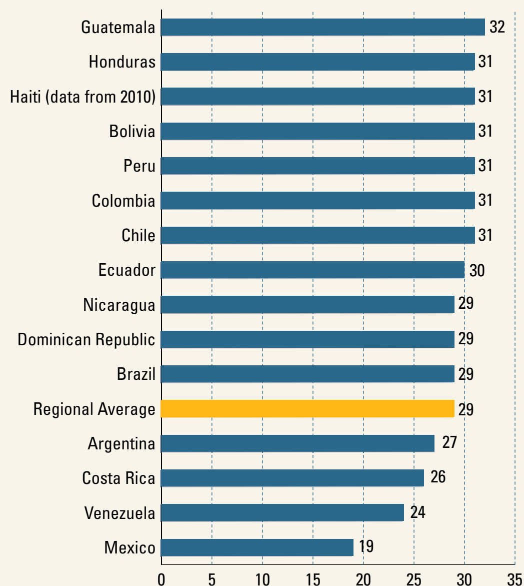
Overall, almost all economies of the Latin America and the Caribbean region score above the global average (Figure 6 related to Figure 4). Moreover, the most restricted sector in LAC is electricity. Foreign ownership in electricity generation (for biomass, solar, wind) is less restricted than electricity transmission and distribution. Electricity transmission is completely closed to foreign equity in Mexico, Costa Rica, the Dominican Republic, Honduras, Nicaragua and Venezuela. Mexico, Costa Rica and Venezuela prohibit any foreign investment in the electricity distribution sector.

FIGURE 4. Average equity restrictions on FDI ownership by region



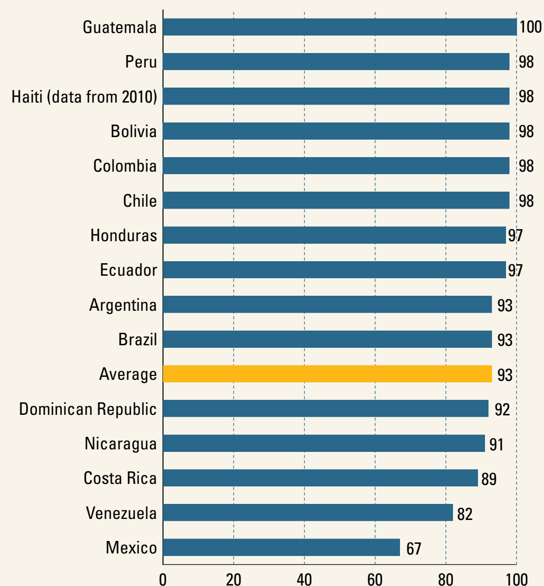
Note: 100 = full foreign ownership allowed.
Source: FDI Regulations database, 2012.

FIGURE 5. Number of fully open sectors by country in Latin America (of 32 covered sectors)



Source: FDI Regulations database, 2012.

FIGURE 6. Average equity restrictions across LAC countries



Note: 100 = full foreign ownership allowed.
Source: FDI Regulations database, 2012.

In addition, Ecuador capped at 49 percent the foreign ownership of companies in these two sectors. In Mexico, the electricity generation sector for biomass, solar and wind is completely closed, whereas Costa Rica and Venezuela impose caps on foreign equity ownership in the three sectors at 65 percent and 40 percent, respectively.

The second most restricted sector in the Latin America region is media. Almost two-thirds of the countries impose restrictions on foreign ownership in the newspaper publishing sector (Brazil, Mexico, Argentina, the Dominican Republic and Venezuela) and in the television broadcasting sector (Brazil, Colombia, Mexico, Argentina and Venezuela). Table 2 summarizes the restrictions on foreign equity ownership across sectors and regions in LAC, as compared to other countries measured.

TABLE 2. Restrictions on foreign equity ownership across sectors in LAC and overall

Sector Group	Latin America & Caribbean (15 economies)	Sector average (104 economies)
Agriculture and forestry	96	90
Mining and oil & gas	92	92
Manufacturing	100	98
Electricity	80	87
Waste management and water supply	93	92
Transport	95	84
Telecom	98	90
Media	77	68
Financial services	98	93
Education	100	93
Accounting	100	91
Tourism	100	99

Note: Foreign equity ownership index (100= full foreign ownership allowed). (A score of 0 denotes that a sector or industry cluster is completely closed for foreign investment whereas a score of 100 indicates a fully open sector. Each sector group is given a number that represents the average statutory openness to FDI of the sectors it contains.)
Source: FDI Regulations database, 2012.

Investing across sectors in Brazil, Chile, Colombia, Mexico and Peru

Chile, Colombia and Peru are among the world's most open economies, with almost no restrictions on foreign ownership in the 32 sectors covered by the FDI Regulations indicators (Table 3). Chile caps foreign equity ownership of companies at 49 percent only in the internal waterways freight transportation sector;[12] Colombia caps foreign equity ownership of companies at 40 percent in the television broadcasting sector[13] and Peru in the international passenger air transport at 49 percent. However, the cap on voting shares is only 49 percent at the time of incorporation. After 6 months, the limit on foreign ownership is raised to 70 percent of voting shares.[14]

TABLE 3. Restricted sectors in Chile, Colombia and Peru

	Countries		
	Chile	Colombia	Peru
Restricted sector	Internal waterways freight transportation (49%)	Television broadcasting (40%)	International passenger air transport (49% then 70%)

Source: FDI Regulations database, 2012.

Moreover, Colombia and Peru are implementing effective policies to attract foreign investment into their countries. Colombia has been granting 10-, 15- and 30-year income-tax exemptions for investment in the forestry, electric generation power (biomass, solar and wind) and construction sectors, respectively. The Colombian Government is also preparing a bill that will permit private and foreign investment in both public and private institutions in higher education. Similarly, Peru has been softening its only restrictions, in the international air passenger sector, by gradually raising the initial percentage allowance for foreign investor from no more than 49 percent of voting shares at the time of incorporation to 70 percent of voting shares after 6 months of incorporation. However, Peru, which is considered to be the second most open economy in the region, is introducing a new bill for a suspension of forestry concessions within the next 2 years.

In contrast, both Brazil and Mexico impose more rigorous restrictions, with Mexico being the most restricted economy of all those covered in the region. For instance, while none of the other economies prohibit foreign ownership altogether, Mexico prohibits foreign ownership in eight sectors, including oil and gas, electricity generation (biomass, solar and wind), electric power transmission and distribution, and television broadcasting.

However, in Brazil, of the 32 sectors measured, foreign equity ownership restrictions exist in only three sectors, namely television broadcasting, newspaper publishing and aviation.[15] In addition, Brazil recently revoked the restriction on foreign participation in cable television companies and is currently discussing opening up other sectors, including civil aviation, where an increase of the limit for foreign investment from 20 percent to 49 percent is under consideration, which is perceived by the market as a requirement for developing the sector. Another area which is currently under discussion is the review of existing restrictions on the acquisition or leasing of rural property by foreign individuals or entities, a restriction that is having an impact on the development of agribusiness in Brazil.

Across the five countries, foreign ownership of television broadcasting is the most restricted sector: a 30 percent limit is imposed in Brazil, a 40 percent limit in Colombia and the sector is completely closed in Mexico. This sector is the most restricted across

all the economies covered by the FDI Regulations project, with 49 economies imposing restrictions on it.

The second most restricted sector is transportation. In particular, internal waterways freight transportation and international passenger air transport are somewhat restricted in two of the five focus countries. The internal waterways freight transportation is limited to 49 percent in Chile and Mexico and international passenger air transport is limited to 20 percent in Brazil and 49 percent—with a possibility of going up to 70 percent—in Peru. Interestingly, Mexico permits full foreign ownership in the international passenger air transport sector.

In contrast, the following sectors have no limits on foreign equity ownership within the five economies: mining, food processing, manufacturing of basic chemicals, light manufacturing, waste management and recycling, water distribution, courier activities, accommodation services, banking and accounting, bookkeeping and auditing and tax consultancy.

Foreign ownership is largely unrestricted in the primary sector, with mining the least restricted industry. Brazil, Chile, Colombia and Peru are fully open in this area, while Mexico imposes foreign ownership restrictions in agriculture and forestry, capped at 49 percent and prohibits full ownership in the oil and gas sector.

Despite Mexico's relatively open economy compared to other countries, a number of key sectors in Mexico continue to be characterized by a high degree of market concentration. For example, a limited number of private and public companies dominate the telecommunications, electricity, television broadcasting and oil and gas market, thus effectively restricting competition in these sectors.

Although monopolies are explicitly prohibited in Mexico by Article 28 of the Political Constitution of the United Mexican States, the law also provides that certain activities are reserved exclusively for the state. These are not considered monopolies but rather sectors where private participation is currently not allowed. Thus, although *Petróleos Mexicanos* (PEMEX), the Mexican state-owned petroleum company, is the only actor in the oil and gas sector, it is not considered a monopoly under Mexican law. That said, since activities related to transport, storage and distribution of gas other than liquefied petroleum gas are not exclusive to the Mexican State, foreign investment is therefore allowed. In addition, in the building of pipelines for transportation of oil and petroleum products, as well as oil and gas well drilling, foreign investment is also allowed, but capped at 49 percent of the capital stock, with the possibility of increasing the cap through a permit by the National Commission on Foreign Investment.[16]

Mexican law imposes some restrictions on foreign equity in certain sectors, such as freight rail transport, internal waterways freight transportation, port operations, wireless/mobile telecommunications, infrastructure and services, life and health insurance and higher education. However, if the foreign investment meets certain requirements, it may be exempt from some of those restrictions.

The scheme of restrictions in Mexico allows for a higher percentage of investment in certain activities. However, in exchange for that higher participation it limits certain corporate rights, such as voting in ordinary shareholders meetings; and requires special permits and authorizations if the foreign ownership is going to exceed the stipulated minimum.[17]

Mexico also allows foreign ownership of companies or shares in sectors that are theoretically closed or restricted. For instance, in the electric power generation sector (biomass, solar and wind), foreign and domestic private owners may obtain permits from the Ministry of Energy, but only with respect to (a) generation of electric energy for self-supply, co-generation, or small-scale production; (b) generation of electric energy carried out by independent producers for sale to the Federal Electricity Commission; (c) generation of electric energy for export, derived from cogeneration, independent production and small scale production; (d) importation of electric energy by individuals or legal entities intended exclusively for self-supply; and (e) generation of electric energy intended for use in emergencies caused by interruptions in the public supply of electric energy.[18] Under the North American Free Trade Agreement, in the freight transport by road sector, 100 percent of foreign investment (from the United States or Canada) is permitted for trucking companies dealing only with international and not domestic cargo. Finally, in the life insurance sector, financial entities from economies with whom Mexico has entered into agreements for the establishment of affiliates are allowed to establish affiliates in Mexico, and these may be 100 percent owned by the foreign financial entity.

During recent years, the Mexican state has been trying to move governmental policy towards opening several sectors to foreign investment, in some cases capping foreign investment to specific percentages. This trend indicates that the current caps in sectors presently reserved for Mexican nationals and/or the government will likely be reduced and opened to foreign investment. And while the government has opened energy sectors to foreign investment, existing monopolies in the telecommunications, energy and oil sectors make it difficult for new companies (national and foreign) to invest in those industries. However, antitrust and telecommunications regulations—including recently approved amendments to the Competition Law that provides for greater sanctions on monopolies—have lessened the restrictiveness (*The Economist* 2013).

Similarly, while Chile, Colombia and Peru do not impose restrictions in most of the sectors covered by the FDI Regulations database, the current market structure of the oil and gas, telecom and television broadcasting sectors in these countries could be characterized as monopolies. In addition, all three countries also have regional monopolies in sectors such as water distribution. Likewise, in Brazil, while the government does not restrict foreign capital participation in the oil and gas sector, the Federal Constitution (through the semi-public *Petróleo Brasileiro S.A.*, Petrobras) reserves a monopoly on the prospecting and

exploitation of deposits of oil and gas and other fluid hydrocarbons, as well as nuclear minerals.

Table 4 summarizes the equity restrictions across sectors in the five countries surveyed.

TABLE 4. Foreign ownership equity restrictions across sectors in Brazil, Chile, Colombia, Mexico and Peru

Sectors	Brazil	Chile	Colombia	Mexico	Peru
1. Agriculture	100%	100%	100%	49%	100%
2. Forestry	100%	100%	100%	49%	100%
3. Mining	100%	100%	100%	100%	100%
4. Oil and gas	100%	100%	100%	0%	100%
5. Food processing	100%	100%	100%	100%	100%
6. Manufacturing of basic chemicals	100%	100%	100%	100%	100%
7. Light manufacturing	100%	100%	100%	100%	100%
8. Electric power generation – biomass	100%	100%	100%	0%	100%
9. Electric power generation – solar	100%	100%	100%	0%	100%
10. Electric power generation – wind	100%	100%	100%	0%	100%
11. Electric power transmission	100%	100%	100%	0%	100%
12. Electric power distribution	100%	100%	100%	0%	100%
13. Waste management and recycling	100%	100%	100%	100%	100%
14. Water distribution	100%	100%	100%	100%	100%
15. Freight rail transport	100%	100%	100%	49% up to 100%	100%
16. Freight transport by road	100%	100%	100%	0%	100%
17. Internal waterways freight transportation	100%	49%	100%	49% up to 100%	100%
18. International passenger air transport	20%	100%	100%	100%	49% and then 70%
19. Port operation	100%	100%	100%	49% up to 100%	100%
20. Courier activities	100%	100%	100%	100%	100%
21. Accommodation services	100%	100%	100%	100%	100%
22. Newspaper publishing	30%	100%	100%	49%	100%
23. Television broadcasting	30%	100%	40%	0%	100%
24. Fixed-line telecommunications infrastructure	100%	100%	100%	49%	100%
25. Fixed-line telecommunications services	100%	100%	100%	49%	100%
26. Wireless/mobile telecommunications infrastructure	100%	100%	100%	49% up to 100%	100%
27. Wireless/mobile telecommunications services	100%	100%	100%	49% up to 100%	100%
28. Banking	100%	100%	100%	100%	100%
29. Life insurance	100%	100%	100%	49% up to 100%	100%
30. Health insurance	100%	100%	100%	49% up to 100%	100%
31. Accounting, bookkeeping and auditing services; tax consultancy	100%	100%	100%	100%	100%
32. Higher education	100%	100%	100%	49% up to 100%	100%

Note: 100 = full foreign ownership allowed.
Source: *FDI Regulations* database, 2012.

Within the five economies, even when no restrictions on foreign ownership are imposed by the government, foreign firms are still not currently operating or have little participation in several sectors. For instance, Colombia and Peru, both considered to be among the most open economies worldwide, still have no foreign firms operating in certain sectors, such as television broadcasting.[19] Moreover, often the obstacles facing investors are not equity restrictions, but those related to obtaining licenses, concessions or authorizations necessary to operate in particular sectors.[20] A recent database created by the Development Research Group at the World Bank provides information on services trade policies and shows their importance for investment flows and access to services. In particular, "restrictions on foreign acquisitions, discrimination in licensing, restrictions on the repatriation of earnings and lack of legal recourse all have a significant and sizable negative effect." (Borchert et al. 2012).

Conclusion

Overall, the openness of sectors to foreign equity ownership is a necessary but insufficient condition for attracting FDI. Having a relatively closed economy (as Mexico) restricts and, in some cases, prohibits FDI in certain sectors. On the other hand, having an economy completely or almost open to foreign ownership (as Guatemala, Chile, Colombia and Peru) does not guarantee success in attracting more FDI. However, it is relevant to mention that larger economies such as Mexico and Brazil can rely more on the pull of their large markets to attract investment. Economies with smaller populations and markets (such as Guatemala and Honduras) have tended to liberalize more, perhaps in order to compensate for the lack of market size. Larger economies, such as Mexico and Brazil, tend to impose more restrictions in strategic sectors such as media, transport, electricity and telecom, since these countries remain a principal destination for foreign investments, due to their strong economies and huge population.

This reinforces our initial observation that several factors are involved in determining a country's attractiveness to FDI, notably market size, infrastructure quality, political stability and economic growth potential (UNCTAD 2012).

In summary, the analysis of the data highlights the fact that restrictions on foreign equity ownership are still more prominent in service sectors than in manufacturing and other export-oriented industries. In particular, many sectors considered of strategic importance to the government, such as media, transportation, electricity, telecom and oil and gas, still show a relatively high level of restrictiveness or have shown little or no foreign participation. Through liberalization of FDI in strategic sectors, regional economies could become more efficient and competitive. In particular, Latin America in general and the focus economies in particular may wish to consider reforms to liberalize sectors such as petrochemicals, telecommunications, electricity, media, and transport. This being said, as this chapter shows, the main problem affecting entry of private investments in Latin America does not necessarily reside in the public barriers since most sectors are fairly open, but rather in the private barriers (non-competitive practices from incumbents and market concentration). An important area of reform, outside the present study, resides in finding concrete ways to improve and enforce competition policy laws in the region. Entry barriers are important but enforcement of effective competition principles—an area that goes beyond the scope of this current paper—should be the focus of more attention (Lederman et al. 2013).

Starting a Foreign Investment

Topic overview

Companies deciding where to establish subsidiaries are influenced by large markets, natural resources, and low input prices. Beyond these factors however, the regulatory framework can also greatly affect the investment process. There is little a government can do about its economy's size or natural resource endowment. But a country can create a legal and regulatory environment that makes it more attractive to foreign direct investment. Governments can make positive changes to ease business start-up, thus helping foreign companies avoid excessive administrative hurdles when setting up business. A study measuring restrictions on FDI in the service sector finds that the difficulty of navigating the various requirements involved in starting a foreign investment can have a critical impact on companies' investment decisions (Golub and Ling 2006). Another study published by the World Bank's Development Research Group (De Mel et al. 2012) found that burdensome registration procedures are one of the principal reasons why firms choose to operate in the informal sector, even when they are offered financial incentives to formalize their business. Cross-country data on the regulation of entry finds a correlation between the number of days to start a business and public perceptions of corruption (Svensson 2005 and Kaufmann et al. 2007). In almost every economy observed, establishing a local subsidiary of a foreign company takes longer and requires more steps than establishing a domestic enterprise.

The ease of accessing industrial land can also affect a company's decision to invest. The World Bank's Enterprise Surveys have found that some firms still consider access to land the biggest obstacle to operating and expanding their businesses around the world. Problematic access to land can be a severe obstacle to FDI. Factors such as mistrust and discrimination, a weak legal framework for land and lack of information are some of the reasons why land can be difficult to access.

The data collected by the FDI Regulations Indicators complements the *Doing Business* data which focuses on domestic small and medium enterprises (SMEs). The FDI Regulations' *Starting a Foreign Investment* topic looks specifically at the process of establishing a wholly foreign-owned business. It partially builds on the data from *Doing Business* on starting a business, which measures the process of starting a domestic business (Box 2). The topic is based on case study assumptions and presents indicators on economies' laws, regulations and practices in three thematic areas:

1. The *Starting a Foreign Business* indicators look at the time and procedures required to establish a wholly foreign-owned subsidiary in an economy. In addition, the indicators evaluate the characteristics of the regulatory and administrative regimes for business start-up, such as foreign investment approval requirements—nature of investment approval requirement, possibility of appeal, minimum required amount of investment, period of validity, etc.—and the availability of online services—online laws, regulations, documents and registration.
2. A new pilot section on *Special economic zones* (SEZ) has been added to the survey.[21] This section looks at the existence of a legal framework for SEZs, the different types of zones, associated incentive regimes available to foreign companies and the establishment procedures inside these zones.
3. The *Accessing industrial land* indicators quantify various aspects of industrial land administration regimes. They identify the types of land holding available to foreign companies, the security of legal rights attached to the lease of industrial land—whether the land can be subleased, subdivided, mortgaged, or used as collateral, etc.—and access to land-related information. They do not cover availability and cost of land, or security of land titles.

BOX 2. Starting a foreign investment case study

To gather comparable data across countries, the Starting a Foreign Investment questionnaire is based on a case study of a hypothetical foreign company planning a capital investment of US$10 million to establish a wholly foreign-owned subsidiary in the form of a limited liability company (LLC) in the host country. The hypothetical company is established in the country's most populous city, manufactures basic consumer products and is involved in international trade. The firm does not benefit from any special incentives granted through multilateral treaties between economies.

Latin America and the Caribbean regional overview

Legal and administrative requirements for establishing foreign-owned subsidiaries in LAC vary in scope and stringency.

Starting a foreign-owned company requires two types of procedural steps: those required of both foreign and domestic companies and those required only of foreign companies, on the assumption that they are involved in cross-border trade.[22] Both matter to foreign companies seeking a new location for their investment. In fact, foreign companies are equally concerned not only about onerous and unpredictable entry barriers, but also about differences in the way they are treated in comparison with domestic companies. Policy reforms which improve the business startup process for domestic investors benefit foreign companies equally by reducing entry barriers. The distinguishing value of the FDI Regulations data is that it is specific to foreign investors. The data not only showcase the gradual establishment process in the countries measured, but also highlight the requirements that apply exclusively to foreign companies.

When looking at the overall establishment process, Latin America and the Caribbean is the region where it takes longest and requires the most procedures to establish a foreign-owned subsidiary (70 days and 13 procedures respectively, Figures 7 and 8).

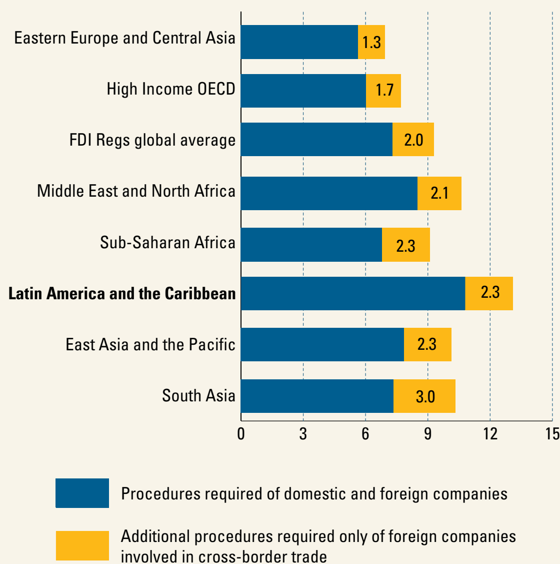
However, when looking more closely at the level of each economy, we notice a great variation among the different players in the region, with establishment processes ranging from 10 days in Chile to 325 days in Venezuela. In Venezuela, a foreign company will have to go through 19 different procedural steps in order to complete the establishment process. Argentina and Bolivia are not very different with 17 procedural steps, followed by Brazil and Ecuador with 16 steps (Figure 9). At the other end of the spectrum, only 7 procedures on average are required in the countries of Eastern Europe and Central Asia.

In a large majority of the 104 economies observed worldwide, the additional steps for creating a foreign-owned company do not add more than 4 days to the establishment process for domestically-owned companies. However, in two-thirds of the LAC economies, creating a foreign-owned company adds at least 5 days to the procedures required of domestic companies. In comparison, of the 17 high-income OECD economies observed, only in Spain did it take more than 4 days to go through the procedures required only of foreign companies (Figure 10).

Three OECD economies, Australia, Ireland and the Netherlands, show no difference in treatment between domestic and foreign-owned companies. Singapore is one of the best performing countries with only 1 additional day for 1 additional procedure (Figure 11).

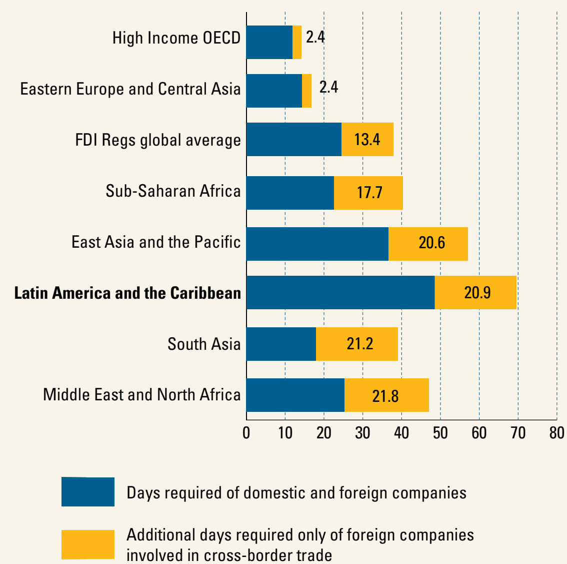
Although a genuine effort has been made by economies to treat both domestic and foreign companies alike, we still note the need to further streamline and simplify startup requirements.

FIGURE 7. Procedures required to establish a foreign-owned company



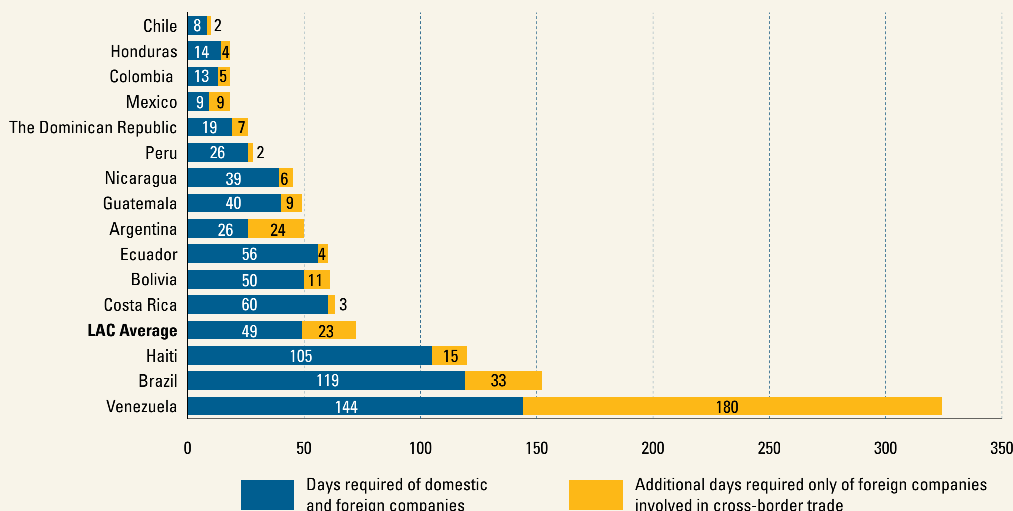
Source: FDI Regulations database, 2012.

FIGURE 8. Days required to establish a foreign-owned company



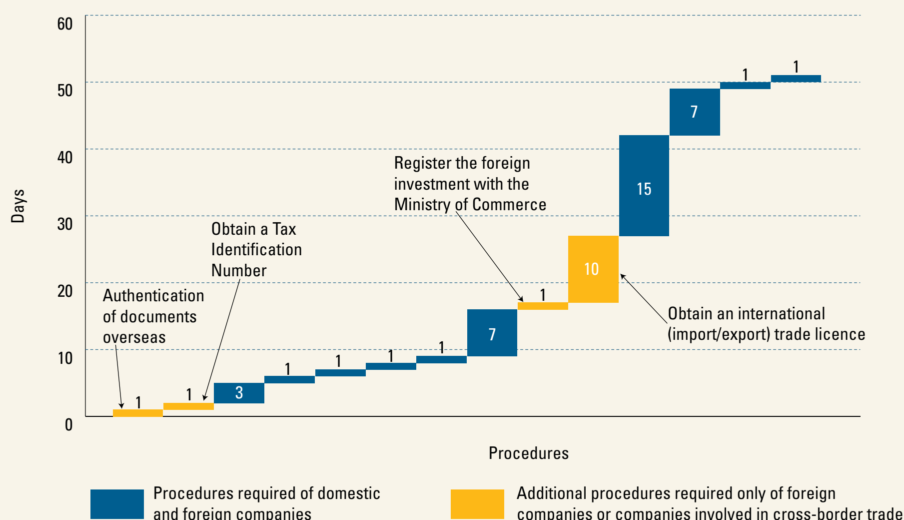
Source: FDI Regulations database, 2012.

FIGURE 9. Number of days required to start a foreign business in LAC



Source: FDI Regulations database, 2012.

FIGURE 10. Starting a foreign business in Spain



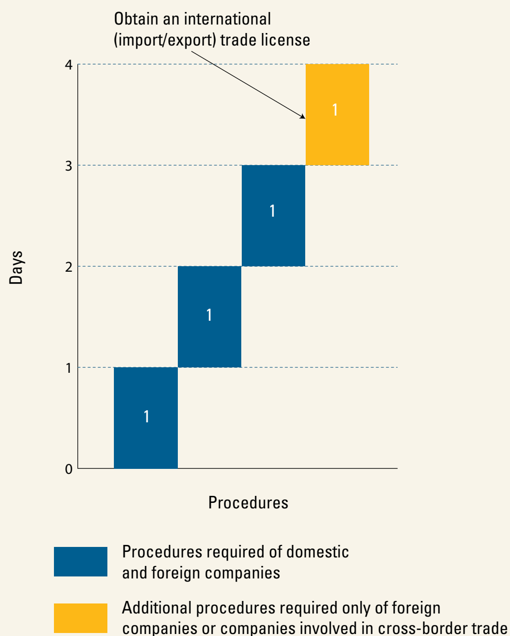
Source: FDI Regulations database, 2012.

Globally, the lengthiest procedure is the foreign investment approval. In East Asia and the Pacific (EAP), this procedure, when required, takes an average of 28 days. In LAC however, only Mexico and Peru require such a procedure, which adds only 1 day to the overall process. In these 2 economies, this takes place as a registration with a public agency, rather than an actual prior authorization. Out of 104 global economies, 36 require some form of foreign investment approval or notification; only 15 of these require an actual approval, while the remaining 21 impose only a preliminary or *posteriori* registration. The longest procedure in LAC is obtaining an international trade license. This is required of all companies—foreign or domestic—engaged in cross border trade. It takes on average 8 days and is required in 10 of the 15 Latin American economies, including Bolivia (10 days), Argentina (20 days) and Brazil (30 days). Worldwide, 39 percent of the economies observed require an international trade license for foreign-owned entities involved in trade. LAC and South Asia are the only regions where all economies measured (15) require some sort of authentication of parent company documentation overseas. This step can entail several interactions with public agencies in the parent company's country of origin as well as in the host country.

There has been a recent trend to reduce the total number of procedures required to establish a foreign-owned business, including those required of both foreign and domestic companies.

In LAC, most economies have shortened the time needed for the establishment of foreign-owned companies (see Figure 12). In 2012, Chile stood out by having a process almost three times faster than in 2010.

FIGURE 11. Starting a foreign business in Singapore



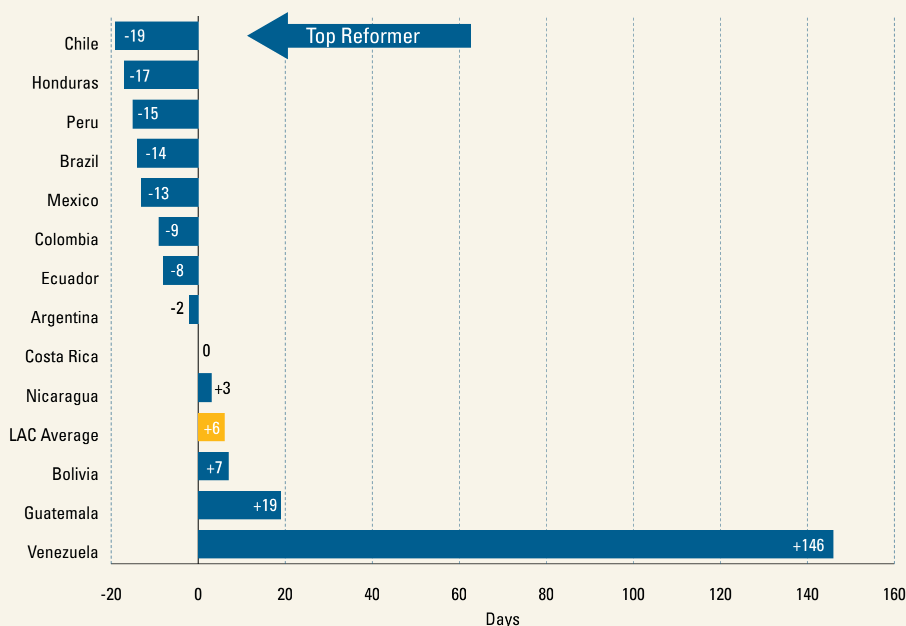
Source: FDI Regulations database, 2012.

Special economic zones

Special economic zones (SEZ) have long been seen as an important tool for developing countries to get around many of their policy constraints on economic growth. In fact, in certain countries, most of the FDI enters through SEZs. These zones allow policymakers to address critical issues in investment and overall competitiveness on a manageable scale (Figure 13).

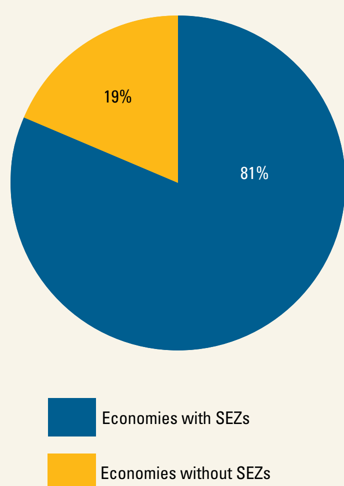
Many developing countries attract significant FDI into their special economic zones,[23] and recently, a large share of industrial FDI has entered new markets through SEZ channels. In the last four decades, the number of special zones has increased globally from virtually none to more than 2,300. These zones have generated millions of jobs, over 30 million in China alone. Despite the controversy around their existence, SEZs can serve as a catalyst for reforms across an entire economy. The mechanism of the SEZ has pushed countries globally to develop more zones that can provide solutions tailored to foreign investors' needs. In some countries, the establishment of preferential treatment via the SEZ scheme has served as a temporary and transitional haven to attract FDI in a difficult investment environment and/or as a pilot test for economic reform. Based on their particular needs, countries have established various types of zones, such as high-tech industrial development (HIDZs), free trade (FTZs) and export-processing (EPZs), among others. Usually, in order to enhance the FDI environments, countries will then extend the same regime (or a version of it) to the rest of the country.

FIGURE 12. Changes in overall time required to start a foreign company between 2010 and 2012



Source: FDI Regulations database, 2012.

FIGURE 13. World presence of SEZs: Percentage of economies with or without SEZs



Source: FDI Regulations database, 2012.

For the purpose of our analysis, the principles incorporated in the basic concept of an SEZ include:

- Single management/administration
- Eligibility for benefits based upon physical location within the zone
- Separate customs area (duty-free benefits) and streamlined procedures
- Possibly geographically delimited area, often physically secured (fenced-in)

When looking at the geographical presence of SEZs, we note that 86 of the 104 economies measured have set up an SEZ, or a similar zone and have enacted a dedicated legal framework.

In all 86 economies, these zones offer incentives to foreign companies setting up business within them, ranging from simple custom tariff reductions to much broader benefits, such as expedited visa requirements, VAT and tariff exemptions.

In the LAC region, the situation is similar. To enhance FDI inflows, all 15 economies surveyed created advantageous zones for start-ups. They all provide incentives for companies incorporated within these zones, such as tax exemptions or reductions. However, in 10 of the 15 LAC economies, most foreign-owned businesses are still incorporated outside the SEZs. The primary reason for the lack of success is geographic isolation: SEZs are often inconveniently situated, a problem which has led foreign investors to give greater priority to the location of their subsidiary than to the incentives offered in restricted areas.

While there are many examples of highly successful SEZs and preferential zones, about half of those established have failed or yielded mixed results. While they offer a preferential regime, they have often been disappointing in terms of attracting FDI. In some of the regions, more investments are made outside SEZs than inside. In Eastern Europe and Central Asia, all 21 economies have developed some form of special zones within their territory, but in 20 of these economies, foreign investments are largely established outside these zones. The restrictive location of SEZs sometimes explains the reason why investors do not establish subsidiaries in these preferential zones. It is worth noting that four of the 18 countries that do not offer SEZs are OECD economies (e.g., New Zealand). In fact, the rationale for the development of SEZs differs between developing and developed economies. For the former, these zones have traditionally been characterized by policy and infrastructure orienting them for use as part of an overall economic growth strategy to enhance industry competitiveness and attract FDI. For more industrialized economies, enhancing trade efficiency and manufacturing competitiveness remains the principal motivation behind SEZs programs. In fact, many companies choose their zone location based on the incentives provided and the advantage of operating in a flexible environment.

Accessing industrial land

Improving access to industrial land and ensuring its security yields significant benefits for foreign investors, governments and other stakeholders. Effective, efficient, secure land administration is one of the drivers of foreign investment. There is wide variation around the world in the way foreign companies prefer to hold land. Typically, this preference depends on local legal options. Given that investors commonly prefer the maximum security, investors in countries which allow full private ownership of land tend to prefer to lease or buy private land rights, as opposed to public land rights. It is worth noting that in the majority of economies surveyed, legal provisions for access to land apply to all locally incorporated companies, irrespective of whether they are domestically or foreign owned.

In the LAC region, foreign companies typically buy privately owned land and all the countries surveyed allow private land ownership. Land leases are, therefore, less common. Thus, the use of leased land for collateral and other purposes is not typical and varies across the region. Most economies surveyed in the region do not allow leased land to be used as collateral.

Globally, and, depending on the region, public[24] or private land can be available for purchase and/or lease by foreign-owned entities. Both public and private land is available for purchase in all high-income OECD economies. Except in Bolivia[25] and Costa Rica, where private ownership of public land is prohibited, all 15 LAC economies surveyed allow ownership of private and public land by foreign companies. This is still better than most regions in terms of availability of land. Land ownership is most restricted in East Asia and the Pacific region, where only 31 percent of economies surveyed allow purchase of private land and 15 percent allow

purchase of public land. In this region, land is the property of the state and is generally only leased (Figure 14).

Of the 79 observed economies that allow the purchase of private land, only eight restrict the total area of land that a foreign-owned company can purchase. This limit can be as high as 5,000 hectares (e.g., Bolivia) or as low as 50 acres (e.g., Sri Lanka). In fact, Bolivia is the only LAC economy that restricts the size of land that can be purchased by a foreign company. In addition, only a few economies require a foreign company to enter into a partnership with a national when purchasing land. Algeria, Cambodia, the Kyrgyz Republic, the Philippines, the Solomon Islands and Tanzania are some examples noticed in the sample of surveyed economies where a foreign company cannot fully own industrial land.

However, leasing private and public land is almost always possible. Maximum lease duration differs highly between regions. Out of 17 high-income OECD economies observed, only Italy has a statutory maximum lease duration of 30 years.

In the LAC region, this restriction is far more common and, on average, the statutory maximum lease duration is 25 years. In fact, six of the 15 economies in the region have a maximum of 20 years or less for the lease of industrial land, thus discouraging foreign companies from investing in these countries.

Access to land-related information is also important to foreign investors. When it comes to the ease of access and availability and quality of public land information available to private parties through public institutions and in the effectiveness of those systems, we find significant variation across economies. In fact, most economies surveyed globally perform relatively poorly, as public land management institutions are not well coordinated and in many countries not very effective.

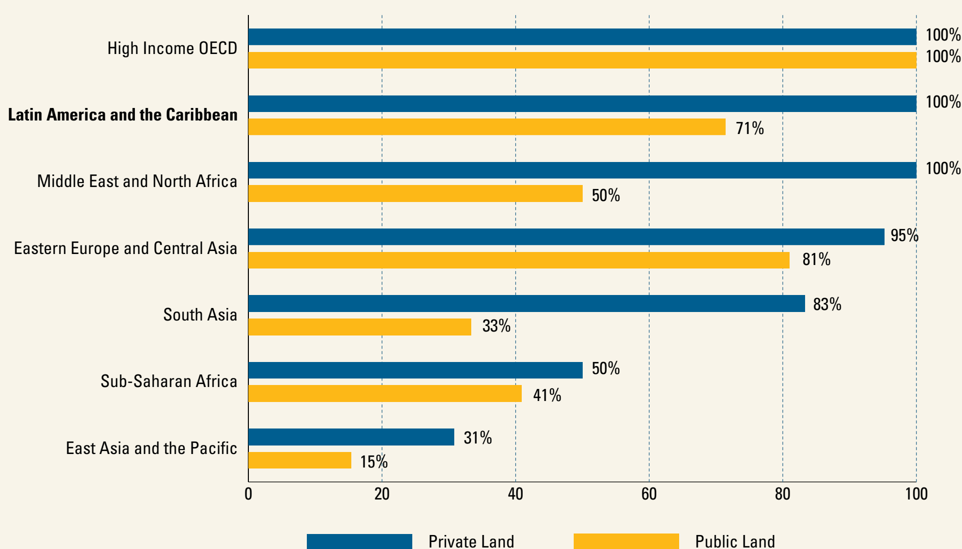
Eighty-four percent of the economies observed worldwide have a land registry held at the national level. After the OECD, LAC is the region with the most number of countries having a national land registry (76% and 64% respectively). The level of development of land information agencies fluctuates from one country to another.

Although countries like Argentina, Bolivia and Ecuador have both a land registry and a cadastre, they do not offer extensive land information, such as an inventory of available public and private plots, or even information on the physical structures erected on these lands.

In contrast, in Nicaragua, the extent of information available at the cadastral offices differs from one city to another. Some are equipped with more developed technology, allowing users to obtain electronic views of maps showing both the land and the buildings situated on that land.

In the Dominican Republic, the land registry operates with the Torrens title system and is in the process of being digitized since 2005. All new transactions are completed digitally, but all titles created before 2005 are not computerized yet. The registry has consultation room units (*Sala de Consultas*) where the registry's electronic database is available. In Guatemala there is no public inventory of lands or buildings and the land registry and cadastre are not linked to make the sharing of data possible. In contrast, Costa Rica has a publicly accessible land information system which has not only centralized land registration data for the entire country, but also city and municipal level registries.

FIGURE 14. Share of economies which allow public and private land to be purchased



Source: FDI Regulations database, 2012.

Starting a foreign investment in Brazil, Chile, Colombia, Mexico and Peru

Four of the five economies observed offer a faster startup than the rest of the LAC region. They share similar characteristics, but also similar shortcomings. To assess these economies, they will be compared with Malaysia, Singapore and Turkey. In this section, we review the establishment of a foreign-owned company and the additional procedures and requirements relevant for foreign-owned companies.

The legal vehicle most widely used by foreign companies to establish a subsidiary in Latin America and the Caribbean is the *sociedad anónima* (SA), equivalent to the corporation, followed by LLCs (or its equivalent). A common trait across all five economies covered—as well as others in the region, such as Argentina—is the requirement for LLCs to have at least two shareholders. The capital of the company must be held by at least two partners regardless of the respective share of equity interests in the established subsidiary. Although this requirement might seem an additional hurdle for foreign investors, in reality, it is easily overcome by foreign companies, which appoint one of their officers or local counsel as a minority shareholder, with one nominal share. Given that the restriction places unnecessary constraint with no added value to the company, many high-income and developed countries (such as Malaysia, Singapore, the United Kingdom and the United States) now allow sole proprietorship of LLCs.

Another common denominator across the countries measured in the region is the requirement for foreign companies establishing a subsidiary to use a local intermediary (e.g., locally contracted legal counsel, notary public, etc.). In Brazil, for example, the incorporation documents of the Brazilian subsidiary must be signed by a Brazilian attorney; copies of underlying documentation and signatures must be certified by a local notary public; documents issued in foreign language must be translated into Portuguese by a certified Brazilian translator. In Chile, organizational documents of the company must be drafted by a Chilean lawyer as a requirement for notarization, and the constitution of the legal entity must be attested to by a notary public. The same is applicable in Colombia, Mexico and Peru where all incorporation deeds shall be granted by a notary public in order to be registered before the corresponding Public Registry of Commerce. In Malaysia and Singapore, foreign companies can easily register the company online without having to involve a local intermediary.

All five economies analyzed require foreign-owned companies to go through at least 2 procedures that are not required of locally owned businesses. The four most common types of additional procedures usually required only of foreign companies are:

- The legalization of the foreign parent's incorporation document abroad; this process has been made easier with the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (the Apostille Convention). Half of the countries surveyed globally are party to the Convention, two-thirds of which joined after 2000;
- The approval of the investment project as a whole;
- The declaration of incoming foreign capital; this step is generally a mere declaration or registration with a public authority or central bank, not an actual prior authorization;
- Obtaining an international trade license; trade licenses generally require a registration rather than an authorization; it is the second most common procedure requested by economies for foreign-owned companies.

Authentication of parent company documentation overseas

The most common procedure required exclusively of foreign companies is the legalization of the foreign parent's incorporation document abroad. It is found in 84 of the 104 economies surveyed. All 15 LAC economies require some sort of authentication of the parent company's documents abroad. In the countries that are not party to the 1961 Hague Apostille Convention,[26] the process consists of multiple authentications by various authorities.[27] Those countries not party to the Convention impose a burdensome and lengthy process for the recognition of foreign public documentation in their territory, from civil registry to the Ministry of Justice, to the Ministry of Foreign Affairs and then to the relevant Consulate in the country of production, etc. In addition, in the case where there is no diplomatic representation in the country of origin, the party interested in authenticating the public documents must identify the nearest consulate that has jurisdiction over the country where the documents are intended to be used. The Apostille Convention facilitates the legalization requirements of foreign public documents between states which are party to the Convention. The legalization process is meant to satisfy a foreign court or person that the document is, indeed, what it is claimed to be. The Convention has replaced the cumbersome formalities of this lengthy process with the issuance, by a single government entity, of an Apostille certificate that authenticates the origin of the public document.

Nine of the 15 economies observed in LAC ratified the convention, three of which are analyzed in this report: Colombia, Peru and Mexico. Brazil and Chile are not party to the convention, making the authentication process much longer and burdensome for foreign investors. In Chile, for example, in order for any documents coming from abroad to be valid, they must be either original documents issued by the competent authority or authenticated by a competent notary public and then legalized by the competent Chilean Consulate; only thereafter can they be legalized in Chile by the Ministry of Foreign Affairs.

The most recent economies in the region to sign the convention were Costa Rica in 2011 and Nicaragua in 2012 (entry into force planned for June 2013). The best alternative remains, however,

the non-requirement of any authentication, which is the case in Singapore, which has not ratified the Convention, but does not require any type of document legalization.

It is worth noting that Colombia, Mexico and Peru have recently adopted the e-Register component of the electronic Apostille Pilot Program (e-App).

Certificate of capital importation

Another procedure required by three of the five economies is the authorization/declaration of incoming foreign capital. In most cases, this step consists of a mere declaration or registration with a public authority (usually the central bank) and not an actual prior authorization. This requirement is also present in Argentina, Ecuador and Venezuela which impose a similar step. In Brazil, all foreign remittances must be registered with the Brazilian Central Bank, a procedure which takes 2 days. Chile offers an alternative to notification of its central bank. For investments above US$5,000,000, the investor may choose a different procedure, one which usually offers more guarantees for the inflow of capital. This procedure, however, requires an actual approval by the Foreign Investment Committee of Chile. Despite this requirement, the Committee reports that 56.5 percent of foreign capital has been moved by means of this option between 1974 and 2011. In Colombia, registration by the Central Bank (*Banco de la Republica*) is required according to Article 10 Decree 2080 of 2000. A quick one-day procedure, this registration offers the foreign company rights, such as capital repatriation in freely convertible currencies and reinvestment of profits and even the right to keep payable undistributed profits in a surplus account. The registration procedure for foreign investments is simple and can be conducted either directly with the Colombian Central Bank, through an authorized market intermediary, or a current compensation account. Mexico and Peru do not impose such a requirement, nor do any of the three comparator countries, Malaysia, Singapore, or Turkey. Yet another screening of the investment project itself takes place in Mexico, Peru and Turkey. This screening is called foreign investment approval.

Foreign investment approval

The lengthiest additional procedure required of foreign companies is the foreign investment approval. When required, the foreign investment approval can take up to 122 days to complete. In other cases, the requirement involves only an *a posteriori* declaration or notification to the appropriate authority. In this case, the approval is automatic, consisting of only 1 step, taking usually only 1 day to complete. The notification requirement is usually for statistical purposes and does not hinder the establishment process or operation, as is the case in Croatia and France, where the declaration of the initial foreign investment must be submitted for statistical purposes within 30 days of incorporation.

In the LAC economies observed in this report, Mexico and Peru are the only countries requiring a foreign company to notify or register with a foreign investment national registry/commission. Across the countries measured, it appears that where a declaration of incoming foreign capital is not required, a foreign investment declaration is imposed instead. Singapore and Malaysia, on the other hand, do not require any form of screening. In Malaysia, the previous requirement of having to obtain the Foreign Investment Committee's approval was abolished on 30 June 2009, leaving the task of regulating foreign investments in Malaysian companies in the hands of specific sector regulators.

One variation of this requirement is in situations where a country has a foreign investment approval requirement only in cases where the investor wishes to benefit from investment incentives. In Bangladesh, Belarus, Greece and others, the foreign investment approval is a mandatory prerequisite for the sole purpose of benefiting from investment incentives, such as tax holidays. A more relaxed requirement has been noticed, particularly in developed countries which have enacted laws and policies regulating foreign investment, often to address national security concerns, maintain public order, or to protect strategic sectors. Strategic sectors need to be clearly specified in the laws/regulations for transparency purposes. In Japan, for example, submission of prior notification is required only for limited sectors explicitly listed in the regulation. We have also seen some protection of infant industries—for example, in Bangladesh's ready-made garment industry—by the imposition of a preregistration foreign investment approval requirement for these sectors only. Finally, in certain cases, the foreign investment approval requirement is subject to government review only when the said investment reaches a certain threshold amount. That is the case in Australia, where the threshold varies depending on the sector.

International trade license and other customs-related procedures

The case study assumes that the foreign company is interested in importing and exporting goods. This assumption is included because of the nature of the sector in which the foreign company will be operating—manufacture of household appliances—likely implying the import of raw materials and the export of manufactured goods. Obtaining an international trade license takes on average 8 days and is required in 40 of the 104 economies measured. Eleven of the 15 economies in the LAC region have some form of trade or customs-related procedure. Although the trade license generally requires a simple registration, rather than an authorization and can often be done online, the procedure can still add up to 30 days to the overall establishment process. The LAC region is a telling example of the differences in time required to complete this step. In Brazil, registration with the Brazilian Customs Intervening Tracking System (RADAR) can take as long as 30 days, whereas in Colombia, the registration request as a Colombian exporter is made to the Ministry of Commerce, Industry and Tourism by the National Registry of Exporters of Goods and Services (Form 001) and only takes 3 days to complete. Mexico is somewhere in the

middle with registration at the General Importer's Registry *(Padrón General de Importadores)* adding 7 days to the overall process.

Minimum paid-in capital requirement

The minimum capital requirement is defined as the minimum amount of capital required to be paid up front before a company registration is granted. Between 2009 and 2012, 31 countries globally abolished their minimum capital requirement, thus simplifying the ease of establishment of domestic and foreign companies alike. Today, it is widely admitted that the minimum capital requirement provides no guarantee or protection of creditor or investor rights, regardless of the legal form of incorporation of the company or the form of the legal system, whether civil or common law. In fact, no creditor or investor relies on the initial capital invested in the company for protection. They look instead for a variety of other more efficient legal instruments, usually available in laws and regulations or in contractual agreements, which are much more sophisticated and adapted to the current business reality.

The minimum capital requirement is viewed as imposing unnecessary regulatory costs, which serve as a deterrent to new business formation. The ineffectiveness of the minimum capital requirement is largely attributed to the following:

- The minimum paid-in capital requirement has no relationship to the specific economic activities or risks undertaken by the firm;
- Operational developments from the moment of incorporation which lead to losses are not affected by the minimum capital requirement;
- The minimum capital requirement does not protect against mismanagement and bad faith on the part of opportunistic shareholders and managers who may divert firm assets.

Although minimum paid-in capital requirements generally constitute a larger obstacle for small and medium enterprises than they do for large foreign investors, high paid-in capital requirements may still discourage companies from investing in a host economy. Fifty-five percent of economies impose minimum capital requirements for foreign-owned limited liability companies (LLC), 16 percent of which impose different requirements on foreign and domestic companies. Economies that discriminate between the latter two usually levy higher minimums for foreign-owned companies. In some countries, such as Ghana, Papua New Guinea and Thailand, foreign companies are subject to minimum capital requirements, while domestic ones are not. Table 5 illustrates some examples.

Eight of the 15 countries measured in the region impose a paid-in capital requirement. Mexico is the only one of the five economies studied in this paper to require a minimum paid-in requirement. Whether foreign or domestically-owned, new companies in Mexico have a minimum paid-in capital requirement of P$3,000 (approximately US$235) for an LLC and P$50,000 (approximately US$4,000) for a SA.

TABLE 5. Comparative minimum capital requirements in the LAC region

Argentina	Although there is no legal minimum capital requirement for an LLC (*Sociedad de Responsibilidad Limitada-SRL*), in practice the Office of Corporations (*Inspección General de Justicia*) requires at least that the minimum capital requirement that applies to a corporation (SA) be also paid in the case of an SRL. Such legal requirement amounts to US$3,000. If the capital is paid in cash, Both SAs and SRLs must pay 25% of the capital of the company at the time of subscription for the quotas. The remaining 75% must be integrated in the following 2 years.
Bolivia	No requirement.
Brazil	No requirement.
Chile	No requirement.
Colombia	The subscribed capital of a limited liability company has to be paid upon incorporation, whereas the capital of a corporation (SAS) can be paid over a two year period.
Costa Rica	No requirement.
Dominican Republic	The minimum paid-in capital requirement for an LLC is RD$100,000 (approximately US$2,330); For simplified corporations (SAS), the minimum authorized capital is RD$3,000,000 (approximately US$70,000), 10% of which must be paid-in capital (RD$300,000). For corporations (SA), there is a minimum authorized capital of RD$30,000,000 (approximately US$700,000), 10% of which should be paid-in. The same requirement applies to both domestic and foreign companies.
Ecuador	The minimum paid-in capital in Ecuador is US$400 for an LLC, US$800 for a corporation, and US$2,000 for a branch. The same requirement applies to both domestic and foreign companies.
Guatemala	The minimum paid-in capital for an LLC is Q$5,000 (approximately US$625), and for branches Q$50,000 (approximately US$6,270). The same requirement applies to both domestic and foreign companies.
Haiti*	No requirement for wholly foreign-owned companies. If the company has at least one Haitian shareholder the minimum capital requirement is HTG 100,000 (approximately US$2,300) for industrial companies or HTG 25,000 (approximately US$575) for a commercial company.
Honduras	The minimum paid in capital for an LLC is HNL 5000 (approximately $264) and for a corporation (SA) HNL 25,000 (approximately $1,314). This requirement applies to both domestic and foreign companies.
Mexico	An LLC requires a minimum paid-in capital of P$3,000 (approximately US$235) and an SA requires a minimum fixed paid-in capital of P$50,000 (approximately US$4,000).
Nicaragua	No requirement.
Peru	No requirement.
Venezuela, RB	No requirement.

* Haiti data collected in 2010.
Source: FDI Regulations database, 2012.

Online services

The convenience and efficiency of access to online information is important to all businesses, but especially to foreign investors, who are not physically present in the country. For this reason, it is helpful if information on laws and regulations are available online. Better yet is the availability of registration forms and other related documents for download and the possibility for e-registration and monitoring.

Only three of the 87 countries measured in 2010, Ethiopia, Ghana and Liberia, did not yet have their commercial laws and regulations publicly available online. Today, Ethiopia has improved and now offers this online service to foreign companies, leaving Ghana and Liberia lagging behind. In addition, across all 104 countries measured in 2012, Italy is the only country that offers e-filing of establishment procedures, including company registration with the commercial registry, registration with the tax authorities, registration for social security and obtaining an international trade license. For the remaining economies, the procedure that is most often available online is company registration with the commercial registry. The OECD region leads the way with 16 out of 17 economies making company registration documentation downloadable online. Singapore is one of the top performing countries giving access to the whole registration process online. Other regions, such as Sub-Saharan Africa still lag behind when it comes to offering electronic registration services. In LAC, availability and access to online services varies among the various countries measured. In Colombia, companies can only download the registration documentation online, but they cannot submit the request or monitor the registration process online. In Brazil, on the other hand, although filing cannot be completed online, foreign companies are able to monitor the status of their application. The same situation applies in Chile, where online registration is available only for registration with the tax authorities and it requires the IRS ID number of the founding partners and representatives.

TABLE 6. Examples of economies offering complete online registration services

Region	Economies
Sub-Saharan Africa	Rwanda
East Asia and the Pacific	Brunei Darussalam, Malaysia, Singapore, Taiwan, Thailand
Eastern Europe and Central Asia	Armenia, Bulgaria, Macedonia FYR
Latin America and the Caribbean	-
Middle East and North Africa	-
High Income OECD	Australia, Canada, Italy, Japan, the Republic of Korea, New Zealand, the Slovak Republic
South Asia	Bangladesh, India, Pakistan

Note: Includes downloading and submitting documentation, receiving confirmation of registration.
Source: FDI Regulations database, 2012.

Special economic zones across the 5 economies measured

Whether they are industrial parks, export processing zones or free trade areas, special economic zones (SEZs) are present in a majority of the economies surveyed globally.

Across the economies analyzed, the zones vary widely in their performance and speed of growth, but they have all more or less succeeded. That is not always the case with economic development zones in developing economies.

The importance of the location for a company varies greatly, depending on the activity. For example, although Brazil has a dedicated, detailed legal framework for the regulation of SEZs, offering a number of incentives to foreign companies, most operate outside of these zones, because of the disadvantageous distance of the SEZs from their consumers. Brazilian SEZs are located in the remote northern region, distant from the main economic areas, which are located largely in the southern and southeastern regions. In addition, the process of setting up a wholly foreign-owned subsidiary inside the zones is slower and requires more procedures than are required outside the zones. Similarly, in Chile, where, despite the fact that the country offers several export processing zones and free economic zones, and several laws regulating SEZs were enacted, most foreign investment projects are still established outside of the zones. The process for setting up a subsidiary is the same inside as outside the zones, regardless of whether the company is domestic or foreign-owned. Zofri is the main SEZ located in Iquique.

Colombia has also developed a legal framework for the regulation of SEZs, which offers several incentives, such as import and export tax exemptions and VAT exemptions. Even though most local or foreign companies are incorporated outside of these zones and the company establishment process inside the zones takes longer to complete, the demand for these zones has grown substantially in recent years. In Peru, there are several SEZs, with the main one located in Tacna; others exist throughout the country, except in Lima. As in Chile, the establishment process for setting up a subsidiary is the same inside as outside the zones, regardless of whether the company is domestic or foreign-owned. A foreign-owned company setting up a subsidiary inside an SEZ is allowed to either purchase or lease land. Incentives offered include exemption from custom duties, exemption from income tax and VAT, and do not require specific approvals.

Only in Costa Rica, the Dominican Republic and Honduras have SEZs been popular and the incentives interesting enough to attract a majority of foreign-owned subsidiaries.

Few economies have opted for an alternative to the SEZ, instead giving SEZ-type incentives to companies situated outside special zones. This is the case in Nicaragua, Guatemala and, most importantly, Mexico. The Mexican *maquiladora* system lifts the restriction on location. Instead of limiting the application of incentives

to a specific geographic zone, Mexico grants an advantageous status to companies who apply for it (*maquila* permit), regardless of the location of the companies. To access these incentives, a company must register and obtain a *maquila* license and import permit—made easy with the 1989 Maquiladore Decree instituting a sole procedure, carried out on the authority of the Ministry of Commerce and Industrial Development (SECOFI).

Whereas Malaysia and Turkey follow the more traditional SEZ approach, Singapore grants incentives on an entity-specific basis, rather than to a business operating in a geographically distinct SEZ.

Accessing industrial land investment in Brazil, Chile, Colombia, Mexico, and Peru

Ease of accessing land

Four types of industrial land holding were measured in the survey: leasing or purchasing private land and leasing or purchasing public land. Of the four options, leasing private land is the most common and purchasing public land is the least available. As stated above, public land is inaccessible for purchase in 39 economies, two of which, Bolivia and Costa Rica, are in the LAC region. Public land is available for both lease and purchase in Brazil, Chile, Mexico and Peru.

Foreign companies typically buy private land in the LAC region and, except for Brazil, foreign ownership of private land is allowed without any restrictions in the five economies covered in this report.

In Brazil, the use of rural land is restricted to agriculture, cattle husbandry, industrial uses, or colonization projects, all of which require the approval of the Ministry of Agricultural Development or the Ministry of Trade. Moreover, the total area of rural land owned by foreign companies or foreign-owned Brazilian companies cannot exceed 25 percent of each municipality, of which no more than 40 percent can be owned by individuals or entities from one single nationality. Publicly held land may be leased only if such land is not designated for public use or services. Other options for foreign companies seeking to access land in Brazil include leasing privately held land and buying private or public land. Brazilian companies controlled by foreign companies or individuals must observe restrictions imposed by Federal Law 5,709/71 related to the ownership of rural land. A locally established subsidiary of a wholly foreign-owned company will be considered domestic for the purpose of leasing land in urban areas. However, in order to lease or acquire rural lands, it will be considered foreign. Locally owned firms are not limited regarding their location in rural areas.

Whereas acquisition of industrial land is not prohibited for foreigners in the five countries measured, the legal vehicle used for completing such acquisition may differ. In Chile, foreign companies may lease or purchase private land, but public land may be either leased or purchased only by public auction. In Colombia, on the other hand, although access to public land is not prohibited, it is not common and the purchase of land owned by the government must be made through a public auction or an invitation to tender. The same holds true in Peru, where the lease or purchase of public land must be made by public auction and where a direct lease is allowed only in exceptional cases. In Mexico, the purchase of public land by a private entity is usually regulated by the corresponding state in which the land is located and is subject to a "disincorporation of public property" procedure. All acquisitions of public assets must be made through a private or a public auction process.

Most of the countries measured restrict the acquisition by foreigners of land plots situated within specific zones in the countries. For example, Colombian law restricts ownership of land by foreign owned companies in two categories: a) vacant lots located in border zones; and b) border security zones (*zonas de seguridad fronteriza*). In Mexico, if land is located in a restricted zone (within 100 km of a border or 50 km from the ocean), a foreign company must file a notice with the Foreign Affairs Ministry. According to article 71 of the Peruvian Political Constitution, acquisition by foreigners of land within 50 km of the border of Peru is prohibited.

Strength of lease rights

The indicators also reveal that land lease rights vary in stringency across the countries in the LAC region. For example, Mexico and Peru limit maximum lease duration to 20 and 10 years, respectively, whereas Brazil, Chile and Colombia do not set such limits. Peru also differentiates between public and private land, by setting a maximum limit of 6 years to the lease of public land. When the lease terms are too short, foreign companies may be limited in their ability to plan long term. Malaysia, Singapore and Turkey do not impose a legal limit on the maximum duration of the lease of private land. In Turkey, the maximum lease duration of publicly owned lands is 10 years. However, land used for the purpose of tourism, energy production, energy distribution, natural gas distribution and storage facilities may be leased for longer periods.

When asked about how leased land can be used for business activities and whether or not leased land may be used as collateral or mortgaged by the lessee, all respondents indicated that such an option was not available in their countries. In fact, none of the 15 countries measured in the region give such rights to a lessee. A lease is considered a contractual right (a right to use the land) and not a property right (a right to dispose of the land). Consequently, since the lessee does not have the right to dispose of the land, it cannot be used as collateral. Although this is also the case in Turkey and other countries measured globally, the land laws in Malaysia and Singapore stipulate otherwise and refer such matter to the terms of the lease agreement. The right to dispose of land (by mortgage or collateral) is subject to the consent of the lessor, i.e., the landowner. In Malaysia, the foreign company may

either lease land from the state and from individuals and private companies and the question of whether land may be mortgaged, subdivided or sublet depends largely on the terms of its state/private lease.

There are different situations regarding the question of whether or not foreign companies can sublet or subdivide leased land and the limitations may be less restrictive, as determined by the terms of the lease agreement. In the LAC region in general and the five countries measured in particular, as long as the stipulations of the contract do not expressly prohibit these rights, the lessee can contract a sublet or subdivide leased land.

Access to land information

Once a foreign company has decided to invest in a country, it begins the process of looking for a suitable investment location. This typically involves identifying the relevant government authorities regulating land, hiring a local real estate agency or consultancy to look for a plot of land and beginning due diligence online and in person.

There are as many different types of institutions that house land-related information as there are different legal and cultural traditions that govern land use around the world. Typically, a country has some form of land or property registry or cadastre. However, very few countries offer a modern or coordinated land-management system. Land-related information can be found in the land registry and cadastre, which are located in different agencies and are not necessarily linked or coordinated to share information.

Brazil, Colombia, Mexico and Peru all have land registries and/or cadastres that provide information about land to foreign companies. In Chile, there is no cadastre, land information system, or geographic information system in Santiago. The land registry is organized by geographical zones carried by real estate registries. In Colombia, the land information system is much more developed. Land registries are established locally and each city or municipality has its own office of registration, all of them controlled and supervised by the Superintendence of Notary and Registry. Through this entity, it is possible to obtain information regarding most of the properties in the country. A public entity known as Geographic Institute Agustin Codazzi is responsible for the mapping system in Colombia. In addition, there is a searchable government operated electronic database for land-related information for Bogotá (SINU POT).

In Mexico, the situation is similar. Since Mexico is a federation, its land registry is organized at the local level. Generally, all consultations and investigations have to be made in person at the registry or through a Notary Public. Some states are developing electronic means to facilitate consultation and research but these are not yet fully operational across the country. In Turkey, the investment promotion agency is electronically linked to the national real property directorate for public as well as industrial land.

Even when land registries and cadastres are operating in a country, land information might still be difficult to obtain. Moreover, the quality and amount of information available from such agencies varies widely. Some countries make it particularly difficult to find specific land-related information, as it is not always publicly available to interested third parties.

The land registry and cadastral mapping system in Peru are the only ones across all five countries measured which provide an inventory of public and private land plots available for foreign investors. The cadastre in Brazil is the only one that registers information on both land plots and also physical structures and buildings situated on the land.

Conclusions and reform implications

In summary, the key common denominator for all the LAC economies measured is the need for strong and efficient institutions in the areas of business startup and land access which can help foster foreign direct investment. However, in all these countries, the quality of the institutions and the number of people with institutional memory varies greatly.

Even though legal frameworks and their implementation may not be the main drivers of FDI, they can be deal breakers for foreign investors when deciding on the location of their next investment. Following are some of the main reforms for governments to consider implementing in order to improve their investment climate in the areas measured above:

1. On the process required for foreign companies to create a subsidiary, consolidate the establishment procedures and abolish unnecessary ones. Provide for fast-track alternatives to traditional registration, even if this entails higher fees. Limit the foreign investment approval requirement to investments made in strategic/sensitive sectors or above a certain threshold amount. Create a one-stop shop in order to simplify the establishment process and optimize its duration.
2. Ratify the 1961 Hague Apostille Convention to expedite the authentication of parent company documentation.
3. Allow online registration. Make as many establishment-related services available online as possible.
4. Repeal minimum paid-in capital requirements for start-ups.
5. SEZs should not be viewed as a substitute for a country's larger trade and investment reform efforts. The economic benefits of SEZ development are multiplied when accompanied by country-wide economic policy and structural reforms.
6. In the short term, countries could improve the SEZ regime by streamlining procedures for business registration and removing screening or approval requirements (other than for strategic/sensitive industries).

7. Formulate and implement clear laws which provide fair and equal treatment for foreign and domestic companies. Laws should provide sufficient security to investors, both foreign and domestic, so that they feel comfortable operating and expanding their businesses, without limiting their ability to develop, renew, transfer, mortgage, or sublet land. Laws and regulations should also take into account the interests of all stakeholders related to land use, including investors, governments and communities.
8. Provide accessible land information. Land records should be up to date, centralized, integrated (linked across relevant government agencies), easily accessible (preferably with online access) and provide information useful to investors and the general public.

Arbitrating and Mediating Disputes

Topic overview

Alternative Dispute Resolution (ADR) refers to specific procedures for settling disputes by means other than court litigation and includes arbitration, mediation and conciliation. Through arbitration, the parties agree to submit their dispute to an independent and impartial arbitrator or arbitral tribunal—appointed by mutual consent or statutory provision—in order to issue a final and binding arbitral award. Mediation is a structured and interest-focused process which enables the parties, with the facilitation of one or more mediators, to agree on the resolution of their dispute through a mediation agreement. Finally, conciliation is a process where the parties are assisted in their attempt to reach an amicable settlement of their dispute.

ADR provides tailored dispute resolution mechanisms that are reliable and flexible, qualities particularly needed for complex commercial transactions. Commercial arbitration in particular offers parties considerable autonomy to create systems tailored to their disputes. It assures the parties confidentiality—to protect both their commercial secrets and their reputation—flexible procedures and easy enforcement of arbitral awards. Commercial arbitration also allows the parties to select the arbitrators, who are generally experienced professionals with expertise relevant to the particular dispute. These characteristics cater to the concerns of businesses involved in dispute resolution.

ADR is of particular interest for foreign investors, who often prefer that alternative to court litigation. Indeed, domestic litigation can be slow and ineffective, or perceived as such. And even if domestic courts treat foreign companies fairly, domestic firms have an advantage over foreign investors, as they are more familiar with court procedures and can use their own lawyers and speak in their own language. Foreign investors view a well established, predictable arbitration regime as mitigating risk by providing them legal security, including the assurance of contract enforcement rights, due process and access to justice. In fact, our analysis shows that economies that score better on the *Arbitrating and Mediating Disputes* indicators tend to receive more FDI inflows. A strong and positive correlation was found between the indicators and actual FDI inflows.[28] These correlations clearly indicate that there is a relationship between ADR regimes and FDI. However, the correlations do not imply causation. For example, the high correlation between the indicators and FDI inflows per capita may be partially capturing the effects of a higher stage of development (as reflected in a higher income per capita) on the overall quality of a country's legal framework. More robust quantitative research will be needed to better understand the relationship between alternative dispute resolution mechanisms and global FDI flows.

ADR contributes indirectly to the rule of law. Particularly attractive for foreign investors, a robust ADR framework usually guarantees better access to the legal system, given that the foreign audience is more likely to motivate countries to make these laws accessible in English and online. It also contributes to the training of judges and lawyers—usually offered by private ADR institutions—as arbitrators and mediators, who are sometimes requested to be certified and to honor their obligations of impartiality and independence.

Last but not least, ADR and particularly commercial arbitration, is not a parallel system to the country's judicial institutions. On the contrary, it requires strong judicial support during arbitration proceedings and when the time comes for recognition and enforcement of arbitral awards. Hence, indirectly, it contributes to a better implementation of international law and international treaties, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Indeed, the New York Convention requires national courts not only to recognize and enforce foreign arbitral awards, but also to become more aware of the validity of arbitration agreements. It also requires national courts to refer parties to arbitration when they have entered into a valid agreement to arbitrate that is subject to the Convention.

Arbitrating and mediating disputes in Latin America and the Caribbean

The LAC region has witnessed the rapid growth of international commercial arbitration as a preferred way to resolve disputes (Gonzalez et al. 2003; Zuleta 2012).

Parties from the region have made considerable use of international commercial arbitration, notably under the Rules of the International Chamber of Commerce (ICC). Since 1996, about 7.7 percent of ICC arbitration cases have been held in LAC and the percentage of parties from the region has constantly grown (Hamilton and Roche 2010). From 2009 to 2010, there was a rise of 23 percent in the number of disputes involving a party from the region, from 241 in 2009 to 297 in 2010 (ICC 2011). However, in 2011, this number decreased to 247 (ICC 2012). This drop affects mainly Mexico, Jamaica, Venezuela and the Cayman

Islands. In addition, in 2011, Brazil continued to be the nation most represented in the region's arbitrations, recording a total of 81 disputes involving a Brazilian party, nearly three times more than the second most important nationality, Mexico, with 28 cases. It was also in 2011 that the ICC recorded cases involving parties from Bolivia and Guyana (ICC 2012) for the first time.

However, while the use of international arbitration services is on the rise in the region, no LAC country figures among the world's favorite seats of arbitration, such as London, Paris, Geneva, or Singapore. In 2011, only 14.3 percent of the total number of parties involved in ICC arbitration cases selected the LAC region as the seat of arbitration. This raises the question whether, in the future, LAC countries could be an option for parties seeking a reliable venue to resolve their disputes. This is crucial, as the "seat" of arbitration is the location of the arbitration forum, thus determining the legal framework for the arbitration and the jurisdiction of the domestic courts supervising and providing support to the arbitration and having a significant impact on the arbitration.[29] The seat of arbitration is not necessarily the place where arbitral hearings are held, but often it can be. This is also crucial for the country, in the sense that being able to establish itself as an attractive seat of arbitration is a way to gain credibility in the international arena and attract foreign investors.

In that respect, Brazil, Costa Rica and Panama are more dynamic than other countries when it comes to attracting international arbitration cases. Brazil, with São Paulo the capital of the country's most populous state, appeared as one of the 10 top forums for international arbitration, with 12 cases seated there during 2011 (ICC 2012). Brazil is also the preferred nationality from the region for arbitrators appointed in ICC arbitration cases: in 2011, one of the top nationalities among arbitrators appointed in ICC cases was Brazil, with 36 appointments representing 2.76 percent of the total number of appointments of arbitrators, who came from 78 different countries (ICC 2012). Some authors have noted that Panama and Costa Rica, among other countries, are trying to establish themselves as credible seats for arbitration, offering legal security, active international arbitration institutions and an impressive number of lawyers and arbitrators trained and experienced in international arbitration, such that they are perceived as convenient locations with well developed infrastructures for organizing arbitral hearings (Prager 2011).

Legal framework

All LAC countries have ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the latest being Nicaragua in 2003.

All LAC countries, except Argentina, have specific consolidated laws governing commercial arbitration.[30] All LAC countries, except Argentina and Ecuador, have to some extent incorporated in their domestic legislations the UNCITRAL Model Law on International Commercial, which was adopted by the United Nations Commission on International Trade Law in 1985 and amended in 2006 and which aims to harmonize national laws on international commercial arbitration. All countries, except Argentina, Brazil and Venezuela have laws that make a distinction between domestic and international commercial arbitration. This is important, as it is often the case that laws on international arbitration offer much more flexibility for the parties than laws on domestic arbitration. Indeed, the distinction between international and domestic arbitration is key, in that it shows the extent to which a country is willing to recognize the specificity of an international commercial relationship and to offer the parties a specific regime that is both flexible and also answers their specific needs. However, only six countries rely on an economic definition of international arbitration—where international arbitration is defined broadly as an arbitration dispute where international trade interests are at stake.[31] For most of the countries, the traditional criteria for considering an arbitration to be international are, among others: a) the fact that a party is registered in a foreign country—criterion recognized in eleven countries;[32] or b) the foreign ownership of a party, a criterion not recognized in any country in the region.

In terms of reform trends, the reformers for 2011 and 2012 are Bolivia, Colombia, Mexico and Costa Rica, countries that have adopted new laws or provisions on commercial international arbitration. Recently, in July 2012, Colombia enacted a statute unifying previously scattered arbitration laws and relevant court decisions.[33] In 2011, Costa Rica passed a Law on International Commercial Arbitration to complement the Law on Alternative Dispute Resolution and the Promotion of Social Peace of 1998, applicable to domestic arbitration.[34] This Law is based on the UNCITRAL Model Law and was enacted 2 months after Costa Rica adhered to the Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents of 1961. As a result, many commentators have noted the desire of Costa Rica to present the country as an attractive seat of arbitration for foreign investors involved in an international arbitration (Prager 2011; Yuditskaya and Mellske 2011). Finally, Bolivia and Mexico reformed certain procedural aspects related to commercial arbitration.[35]

All countries in the region have arbitration institutions and most of them are very active and recognized. In 40 percent of the countries in the region, arbitration institutions offer arbitration services with specific features, such as fast-track arbitration, enabling the parties to a commercial arbitration to have time- bound proceedings or online arbitration services. Fast-track arbitration services are available in Brazil, Colombia, Mexico, Nicaragua and Venezuela. Online arbitration services are only available in Chile and Mexico. These numbers reflect the situation worldwide, as 39 of the countries surveyed offer fast-track arbitration services and only 18 countries offer online arbitration.

Hence, the legal framework on arbitration is not only quite homogenous, but the laws are accessible online almost everywhere. Indeed, all the countries in the region have a) government-supported websites on arbitration and on mediation and conciliation,

b) a website for the main arbitration institution, and c) other sources of information available online, including private initiatives. Only Brazil and Venezuela do not have a government-supported website on mediation and conciliation.

Arbitration proceedings

In all LAC countries except in Argentina, the parties are allowed to conclude an arbitration agreement by email. However, only three countries, Dominican Republic, Honduras and Peru allow the parties to enter into an arbitration agreement by conduct; none of the countries in the region allow the parties to conclude it exclusively orally.

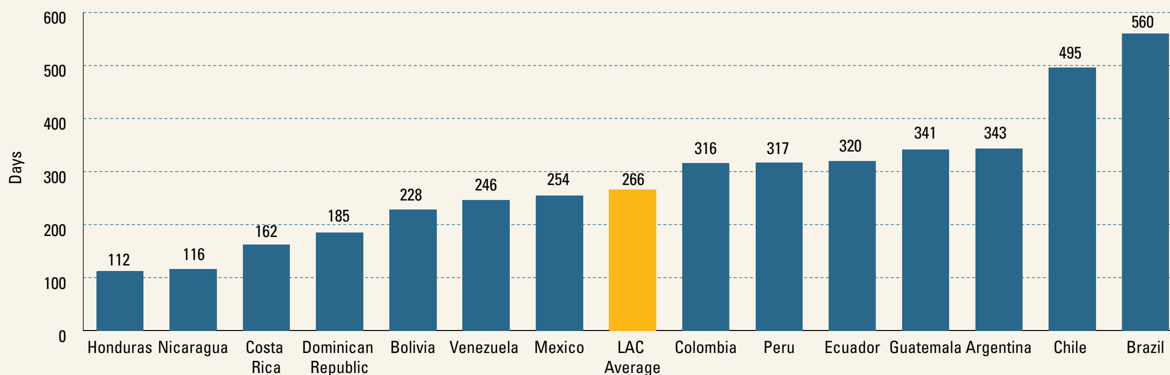
Some LAC countries limit more than others what can be submitted to arbitration. Tax and customs disputes are arbitrable only in Honduras and disputes related to insolvency, bankruptcy or liquidation can only be subject to arbitration in Colombia, Costa Rica, Ecuador, Honduras and Venezuela. This said, more than half the countries covered by the FDI Regulations project do not recognize tax, customs and insolvency as arbitrable and this is a fairly common limitation worldwide. The following disputes are widely recognized as arbitrable in LAC: finance and banking activities (in all countries), intra-corporate disputes (in all countries), patent law or other intellectual property (IP) disputes (all countries except Mexico) (Figure 15).

In 2012, it takes an average of 266 days to conduct arbitration proceedings in Latin America and the Caribbean. LAC countries where it takes less time than the average are Bolivia, Costa Rica, Dominican Republic, Honduras, Mexico, Nicaragua and Venezuela. However, arbitration proceedings can be very long in Brazil and Chile where they take up to 560 and 495 days, respectively (Figure 16).

FIGURE 15. Type of arbitrable disputes in LAC, index

Source: FDI Regulations database, 2012.

FIGURE 16. Length of arbitration proceedings in LAC in days



Source: FDI Regulations database, 2012.

Once an arbitral award is rendered, it must be enforced. In most cases, the parties voluntarily comply with the award and no further action is necessary. However, if the losing party refuses to pay, the winning party may bring enforcement proceedings to a local court.

In that respect, the *Arbitrating and Mediating Disputes* indicators particularly look at the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As explained above, the New York Convention is a powerful instrument, widely subscribed to by all the LAC countries surveyed.

The New York Convention applies to arbitrations which are not considered to be domestic awards in the state where recognition and enforcement is sought. Recognition is the process by which domestic courts of a country give validity to a foreign arbitral award. Given the extent of cross-border transactions in today's world, as well as the numerous locations for holding assets, the recognition and enforcement of foreign arbitral awards can be a very important stage of the arbitration process.

It is particularly important that the legal system of the country recognize and enforce arbitral awards that are *"made in the territory of a State other than the State where the recognition and enforcement of such awards are sought,"* meaning foreign arbitral awards according to the definition in Article 1 of the New York Convention.

In five of the LAC countries (Bolivia, Ecuador, Guatemala, Honduras and Nicaragua), it takes less than a year to recognize and enforce foreign arbitral awards. In Ecuador, Guatemala, Mexico and Venezuela, parties are not required to have foreign awards recognized prior to their enforcement before the competent court, making the process faster and less burdensome (Figure 17).

Mediation and conciliation

Regarding mediation and conciliation proceedings, Argentina has recently enacted ad hoc laws in separate statutes on commercial mediation. Only Brazil, Chile, Guatemala, Haiti, Mexico, Peru and Venezuela do not have an official statute governing commercial mediation. All LAC countries except Peru have institutions administering conciliation and mediation disputes.

Arbitrating and mediating disputes in Brazil, Chile, Colombia, Mexico and Peru

Legal framework

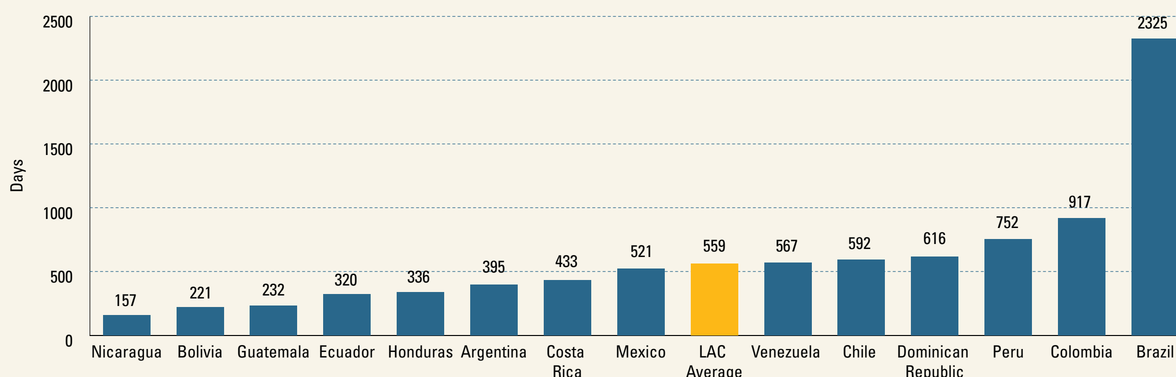
The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, was ratified by Brazil in 2002, Chile in 1979, Colombia in 1979, Mexico in 1971 and Peru in 1988.

Most of the countries surveyed have distinct legal regimes for domestic and international arbitration proceedings.

Chile has two distinct arbitration regimes. Law No.19, 971 on International Commercial Arbitration of 2004 follows the UNCITRAL Model Law (excluding the latest amendments of 2006). Domestic arbitration is governed by provisions of both the Code of Civil Procedure of 1893 (third book, title VIII) and the Organic Courts Procedure Code of 1943 (title IX).

Colombia has most recently reformed its laws on commercial arbitration. The National and International Arbitration Statute of Colombia (Law 1563/2012) enacted on July 12, 2012, is mainly based on the UNCITRAL Model law and governs both domestic and international arbitration. Although the new Colombian law excludes UNCITRAL Model Law's provision—namely, that arbitration is "international" when the place of arbitration is situated outside the State in which the parties have their places of business[36]—it defines it more broadly, by stating that parties can agree on an international arbitration if the dispute referred to arbitration affects the interests of international commerce.[37] This last definition incorporates the economic criterion of internationality, recognizing arbitration as international when international trade interests are at stake; thus, it follows in that sense a few other countries which have adopted the same broad definition of international

FIGURE 17. Length of proceedings for the recognition and enforcement of foreign arbitral awards in LAC, in days



Source: FDI Regulations database, 2012.

arbitration, such as France, in its Article 1504 of the New Code of Civil procedure.

In Mexico, arbitration is governed by Chapter 4 of the Federal Commerce Code, which is largely based on the UNCITRAL Model Law. In 2011, the Commerce Code was amended to incorporate the provisions of the Model Law as amended in 2006, with minor modifications. In particular, Chapter 4 of the Federal Commerce Code provides for specific judicial assistance to arbitration proceedings—appointment of arbitrators, provisional measures, taking of evidence and calculation of the tribunal's fees—and for special procedures for recognition and enforcement of awards and interim measures.

Similarly, the Peruvian Arbitration Decree was enacted in 2008 and, with some exceptions, is largely based on the UNCITRAL Model Law.

It is worth noting that Brazil's Arbitration Law (Federal Law No. 9.307/96) is largely based on the UNCITRAL Model Law, but applies to any arbitral award rendered in Brazil, even if foreign arbitration rules have been selected by the parties. Indeed, Article 34 of the Arbitration Law is interpreted as stating that foreign arbitral awards are those made outside of the national territory and, thus, that all arbitral awards rendered within Brazil are domestic awards.[38]

Arbitration proceedings

In Brazil, arbitration is becoming increasingly popular. All types of commercial disputes are arbitrable and, in particular, the use of arbitration to resolve shareholder disputes is common. However, there are a few limitations to arbitration in Brazil. Arbitration of disputes related to public private partnerships and concession of public services must be held in Portuguese and parties may only be represented by lawyers licensed in Brazil. In addition, arbitrators are not legally required to preserve the confidentiality of the proceedings.

In Chile, the parties are free to determine the arbitrators, irrespective of gender. However, in domestic arbitrations, it should be mentioned that only lawyers who are Chilean nationals meet the requirements to be nominated as arbitrators and that they must speak Spanish, as only documents issued in Spanish are accepted. The freedom to choose a non-Chilean lawyer exists only in *ex aequo et bono* (equity) arbitrations. In general, all cases that involve public policies and public trusts, such as taxes or employment rights, may not be submitted to arbitration in Chile.

In Colombia, the parties are free to select arbitrators irrespective of their gender or ability to speak Spanish, with the caveat that, as far as domestic arbitration is concerned, arbitrators must be current citizens of Colombia and meet at least the same legal qualifications required of magistrates of the High Court of Judicial District, notwithstanding any additional requirements that might be imposed by a given arbitration center. As shown in Figure 18, Colombian courts provide the least assistance to parties and arbitrators before and during arbitration proceedings. This has been measured through an index, which takes into consideration eight different aspects of judicial assistance to arbitration:

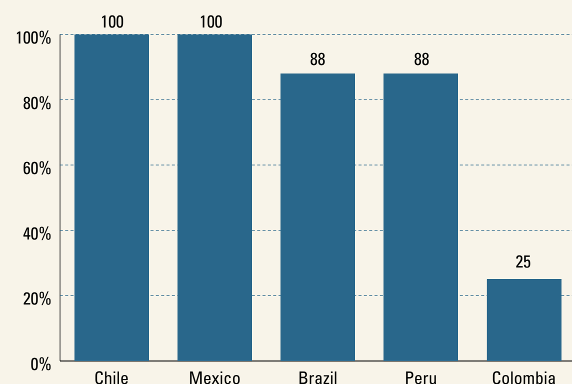
1. In the appointment of arbitrators when a party is defaulting
2. In the production of documents
3. In the appearance of witnesses
4. In the appearance of experts
5. By issuing injunctions
6. By ordering interim measures before the tribunal is constituted
7. By ordering interim measures once the tribunal is constituted
8. By enforcing interim awards.

Contributors for Colombia mentioned that their domestic courts were usually supportive of arbitration proceedings only when it comes to the appointment of arbitrator(s) and the enforcement of interim arbitral awards.

In Mexico, domestic courts have exclusive competence to resolve disputes over land and water within Mexican territory. Hence, disputes involving immovable property matters, such as rights *in rem,* the use and exploitation of concession rights and lease agreements over such assets may not be submitted to arbitration. Parties are free to choose any arbitrators and the language of their proceedings in both domestic and international arbitrations. Parties may also choose foreign lawyers to represent them in arbitrations in Mexico. The court is entitled to grant preliminary or interim relief in proceedings subject to arbitration.

In Peru, all commercial matters are arbitrable as long as they are "free disposition," which excludes matters related to marriage and familiar laws, criminal acts and fundamental rights. The law distinguishes between arbitration at law and arbitration at equity, the difference between them being that in arbitration at law, the

FIGURE 18. Court assistance before and during arbitration proceedings



Source: FDI Regulations database, 2012.

arbitrators must be attorneys, unless the parties agree otherwise. Interestingly, the law expressly provides that arbitrators have the duty to preserve the confidentiality of the arbitration proceedings. The person appointed as an arbitrator must disclose all circumstances that may cast doubt on his/her independence and fairness. This duty to disclose extends to all arbitration proceedings, in case new circumstances that affect independence and objectivity should arise.

Arbitration proceedings last on average 254 days in Mexico, 316 days in Colombia, 317 days in Peru, 496 days in Chile and 560 days in Brazil. However, the new Colombian Law 1563/2012 sets a limit to the maximum length of arbitral proceedings at 6 months, subject only to an extension of a maximum of 12 months, on grounds of the suspension of proceedings. It is of interest to note that Peruvian law establishes strict time frames for conducting arbitration proceedings, particularly as regards to the appointment of arbitrators.

Enforcement of foreign arbitral awards

Brazil is one of the slowest countries in the region when it comes to the enforcement of foreign arbitral awards: more than 6 years on average.

In Chile, enforcement proceedings for foreign arbitral awards also take a long time and last an average of 20 months, including 6 additional months if a motion of appeal is filed before a judicial court.

According to practitioners in Colombia, it takes 2.5 years on average to enforce a foreign arbitral award. Decisions on enforcement are appealable before the Higher Court (Civil Chamber) of the Judicial District where the award was rendered—involving an extra 12 months—and ultimately before the Constitutional Court, 1 additional month. Obtaining a writ of execution issued by the Civil Circuit Courts takes from 1 to 6 additional months.

Mexican courts have stated a pro-arbitration policy in multiple decisions and it takes 17 months on average to enforce a foreign arbitral award in court.

In Peru, it takes 2 years on average to enforce a foreign arbitration award in a commercial court of first instance. Practitioners consider that the Peruvian Arbitration Decree establishes a favorable framework leading to the enforcement of the foreign arbitral awards and that courts rarely refuse to enforce foreign arbitral awards.

Arbitrations and mediation institutions

Brazil hosts a wide range of private institutions offering arbitration services at all levels, both professional and state. The most commonly used institution is the Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce.

Chile also hosts several arbitration institutions, the most popular being the Arbitration and Mediation Centre of the Commerce Chamber of Santiago, with its roster of 198 domestic arbitrators and 10 mediators. In addition, the Center of National Arbitration, with an online roster of 210 arbitrators and mediators, is also offering fast-track arbitration services, whose proceedings are limited to 60 days in length. Online ADR services are provided by the National Customer's Service and Telecommunications Department for customer-related issues.

In Colombia, the Mediation and Arbitration Center of the Bogotá Chamber of Commerce is the core institution, which began operating in 1983. It provides for fast-track arbitration for small and medium-sized enterprises and also offers online filing of conciliation and arbitration actions, as well as of other documents and consultation relevant to the current status of the proceedings. There is a wide range of other private arbitration institutions in Colombia. It is interesting to note that the National Agency for the Legal Defense of the State was created in 2011 and is expected to have a supporting role in issues related to foreign investors.

In Mexico, the most commonly used institution in commercial arbitration is the Mexican National Chamber of Commerce. There are many other arbitration institutions, including the Federal Consumer Protection Institute, which has an online arbitration center, dedicated solely to cases between consumers and registered companies.

The most commonly used institution in Peru is the Lima Chamber of Commerce. There are also several other arbitration institutions.

Mediation and/or conciliation

In Brazil, mediation settlements are not subject to specific enforcement procedures and have only a contractual character, as opposed to arbitral awards, which involve an enforceable title.

In Chile, mediation for commercial matters is virtually nonexistent. However, Article 262 of the Chilean Civil Code of Procedure refers the parties to conciliation.

Colombia has a number of provisions on mediation and conciliation contained in different laws which do not follow the UNCITRAL Model Law. In commercial, family and administrative law cases, conciliation is a prerequisite for litigation. According to practice, mediation proceedings take approximately 1 to 2 months from the time of referral of the case to the mediation institution to the settlement of the case.

In Mexico, the 27 States have approved an Alternative Dispute Resolution Law regarding criminal and civil law cases.[39] Mediation in Mexico is widely used through court-annexed mediation and the Centers of Alternative Justice. Among them, the Centre of Alternative Justice of the Superior Court of Justice of the Federal District is a commonly used mediation institution and trains and certifies individuals acting as mediators.

Finally, mediation and conciliation are not commonly used ADR techniques in Peru.

Comparisons with economies in other regions: South Korea, Indonesia, Poland, Singapore and Taiwan

These economies provide interesting examples of ways to allow foreign counsel to represent parties in arbitration proceedings and to implement online and fast track arbitration. Also, these countries have developed a healthy relationship between courts and the arbitral tribunals. In general, these courts are supportive of the arbitral proceedings.

In South Korea, online ADR is currently available through the Cyber Mediation Center of the e-Commerce Mediation Committee, which offers online methods for resolution of domain name and internet address disputes. In addition, the parties are free to select arbitrators irrespective of their gender, nationality, or ability to speak the local official language, Korean. Finally, in accordance with the Foreign Legal Consultant Act, foreign attorneys who are not licensed to practice law in Korea are qualified to provide representation services in international arbitration, if the applicable law is either the law of a foreign country or international public law and the venue of arbitration is Korea.

In Indonesia, the application for recognition and enforcement is made simultaneously, not sequentially. Hence, the time frames for the two applications run concurrently, significantly expediting the proceedings.

In Poland, arbitral tribunals are empowered to order appropriate conservatory measures, in order to prevent any further damage to a party, notably by attaching property or ordering the action or inaction of a party. Courts in Poland will assist arbitral tribunals in granting interim measures, in the production of documents, the appearance of witnesses and experts and in appointing arbitrators when the parties have not done so themselves. Also, bringing an action to court does not prevent the arbitral tribunal from proceeding with the case.

In Singapore, international arbitration is regulated by the International Arbitration Act of 1994 (IAA) and is frequently amended to make it more user-friendly. The Singapore courts are well known for being supportive of all aspects of the arbitration process, including recognizing and enforcing foreign arbitral awards (Box 3). The IAA even allows courts to continue legal proceedings while arbitration proceedings are pending. Also, parties can apply to the Singapore courts for assistance in taking evidence from non-parties. In addition, the International Arbitration Act allows courts to continue legal proceedings while arbitration proceedings are pending. Finally, there is no prescription regarding the application to enforce an award, which can be made at any time. Foreign arbitral awards made in a country signatory to the New York Convention may be enforced in the same manner as an arbitral award rendered in Singapore.

In Taiwan, fast-track arbitration is provided by any of the most important arbitration institutions established in Taiwan. The Arbitration Association of the Republic of China (CAA), the Taiwan Construction Arbitration Association, the Chinese Construction Industry Arbitration Association and the Labor Dispute Arbitration Association of the Republic of China, the most important arbitral institutions in the country, offer fast-track arbitration, commonly known as summary arbitration in that country. The use of foreign counsels is allowed. Another good practice in Taiwan is that parties are free to retain foreign legal counsel or even non-legal representatives to represent them in arbitration proceedings.

BOX 3. Singapore as a seat of arbitration case study

In Singapore, international arbitration is regulated by the International Arbitration Act of 1994, which is frequently amended to make it more user-friendly and to gain prominence as a seat for international arbitration (Wallace and Rosen 2012).

The last amendment was passed on April 9, 2012 (International Arbitration Amendment Act 2012, No. 12 of 2012) to further increase the attractiveness of the city as a place of arbitration. Among others, the legal reforms include a wider definition of an arbitration agreement, clarify the courts' power to award interest and provide more support for emergency arbitrators and interim orders (Choo 2012).

In the last ten years, the Singapore International Arbitration Centre has gone from being a mere facilitator of arbitrations to administering disputes, a fact that was crucial in improving the infrastructures and facilities that offered alternative dispute resolution services. Also, the clean, safe environment, the political and social stability of the region and the strong tradition in favor of the rule of law, together with the highly capable judicial system, all help attract international cases (ABL 2011).

In 2010 and 2011, Singapore ranked as the fifth most commonly chosen seat of arbitration out of 98 cities. In both years, Singapore held 24 cases, following Paris, London, Geneva and Zurich, respectively (ICC 2012).

Source: FDI Regulations database 2012.

Conclusion: Reform agenda

Providing a substantive legal framework on ADR

Given that the arbitration process is usually governed by the law of the country where it is conducted, it is important that countries recognize ADR mechanisms and provide for laws or other legislative instruments on ADR. When it comes to mediation and conciliation in LAC, only a few countries have a consolidated law encompassing substantially all aspects of commercial mediation and/or conciliation.

As technology continues to develop, the ease and speed of access to information is becoming paramount, not only for foreign investors, but also for the general development of a country's business climate. Improvements in access to information will

also encourage economic change. It is recommended that a government-supported website make these provisions available online, in order to facilitate access to information.

A viable legal framework and private institutions that can offer ADR services, such as chambers of commerce are essential for ADR. The existence of a functional ADR institution in a country is an indication of solid arbitration practice and a useful channel for improving resources, raising public awareness and educating the community about ADR. In LAC, most surveyed countries have at least several active arbitration institutions, but some reform work could be explored to make them even more effective.

Facilitating arbitration and mediation proceedings

During arbitration proceedings, domestic courts may be required to support arbitral tribunals, notably in relation to third parties over whom arbitral tribunals have no authority. For example, if a party refuses to produce key witnesses or certain documents as evidence, the other party can seek an order from domestic courts forcing their production. Similarly, if interim measures are required, such as freezing assets, making interim payments, or seizing property, the domestic courts must be approached by the respective party seeking the order or by the arbitrators. It is therefore important that domestic laws contain explicit provisions for court assistance with the production of evidence and with provisional measures.

Technological advances are encouraged as well, particularly online arbitration, which can significantly cut down on cost and logistical entanglements. Online arbitration can be especially effective for small commercial disputes or domestic disputes, which can be simpler and less administratively intense than international ones. Such disputes are much more easily arbitrated online, to save cost and time.

Improving the recognition and enforcement processes of foreign arbitral awards

Domestic courts that have sufficient expertise to deal with arbitral awards will ensure an efficient enforcement process. Given the technical nature of arbitral awards, high level or specially designated courts, rather than lower-level courts of first instance are more appropriate for dealing capably and consistently with commercial arbitral awards.

It is critically important that the legal system of the country recognize and enforce arbitral awards that are *"made in the territory of a State other than the State where the recognition and enforcement of such awards are sought,"* meaning foreign arbitral awards according to the definition in Article 1 of the New York Convention.

The time required to recognize and enforce foreign arbitral awards is another important consideration for the winning party. Indeed, in most countries, enforcement of foreign arbitral awards takes more time than domestic awards, due to long recognition proceedings and the additional documentation required.

Employing Skilled Expatriates

Topic overview

Global competition for labor is intensifying, notably for top talent and highly qualified individuals. At present, countries are increasingly experiencing a number of important global trends which require them to undertake action with regard to creating an attractive skilled immigration regime.

On the one hand, developed economies are facing demographic shock: by 2020, for every five retiring workers, only four young people will enter the labor force in most OECD countries. Organizations and companies will soon be unable to find enough employees in their home markets to sustain profitability and growth.

On the other hand, developing countries, which have population growth but low employability of graduates, are also facing a skills gap problem. A skills gap is a misalignment between an organization's needs for skills and the capabilities of its workforce, which in turn results in talent shortages. To solve the skills gap problem, countries need not only to invest in the education and increase the employability of their own work force, but also to attract highly skilled migrants. The competition over talent is compounded by emerging economies, including those in the Latin American region, which are in need of highly qualified individuals to spur economic growth, innovate, create jobs and be a driving force to escape the middle-income trap.

Attracting and retaining skilled immigrants benefits the host country in many other ways: their skills spill over to locals and they constitute a source of extra government income through income taxation. In addition, studies have shown that immigrant entrepreneurship is not only responsible for job growth in innovative sectors, but is also a driver in integrating economies into the global supply chain and global business in general.

Whereas the development of immigration policies to attract those with high skills should be a priority, some countries are torn between the economic benefits of skilled migration and the political need to address concerns of the general public and give prevalence to the employment of nationals. This report does not take a specific position on an ideal skilled immigration model for the surveyed countries. Each country is unique and there is no "global all-inclusive best practices model" which can or should be implemented. Improved skilled migration policies must be tailored to the needs of each country. In this chapter, we focus on a number of issues that are common to most of the skilled immigration regimes, without taking a position on whether reforms at this stage would be advisable or how reforms should be sequenced.

Nevertheless, there is general agreement on a number of issues that can contribute to streamlining a temporary work application regime, making it more accessible, user-friendly, flexible and faster. These issues, highlighted below, include the possibility to complete a temporary work permit application online; the presence of a one-stop shop and availability of a fast-track option with regard to temporary work permit (TWP) applications; the portability of a TWP; availability of an appeal procedure; and the possibility to obtain a permanent residency and/or citizenship and the existence of a Spousal Work Permit. FDI Regulations data also shows that the indicators on *Employing Skilled Expatriates* are positively correlated with inflows of FDI per capita (economies more open to skilled foreign workers receive more inward FDI flows per capita on average).[40] This being said, there is no causality implied here and there are obviously many other factors at play in determining flows of FDI.

Employing skilled expatriates: LAC regional overview

Figure 19 illustrates how the average TWP application processing time (in calendar weeks) in the LAC region compares with other regions and with the global average.

The information and data collected in this section are based on a case study and a proxy applicant. The Information Technology (IT) Specialist is a 35 year old male with a Bachelor's degree in Computer Science and a Master's degree of Science in Information Security Management, and 10 years of relevant work experience, during which he received a number of global IT certifications (Microsoft). The foreign IT Specialist does not hold an executive or managerial position. Countries may have differences in dealing with work permits for highly skilled expatriates in different specializations, but in general, the procedures and timelines described below can be illustrative of other categories of skilled expatriates. The case study highlights a specific situation where a company is trying to recruit a specific individual and does not cover an attempt from an expatriate to enter the labor market in a country. By focusing on an IT specialist with an international certification, the case study also does not cover the

often needed requirements of professional associations for many professional practices.

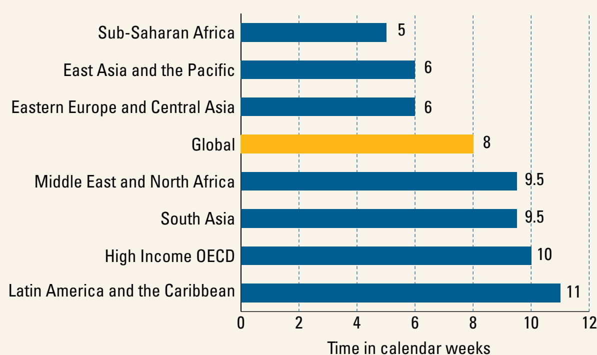
Employing skilled expatriates in Brazil, Colombia, Chile, Peru and Mexico

Figure 20 sets out the average processing time and number of procedural steps that are required before an applicant may legally begin working in the countries named. The number of procedural steps is either 4 or 5, in line with the LAC average of 5. While the variation in the number of procedural steps is limited, processing times differ substantially. Within the group of countries that is the focus of this report, Colombia (4 weeks) is the fastest, followed by Mexico (6 weeks) and Peru (7 weeks). Brazil and Chile are the outliers with 9 and 12 weeks, respectively, even though they are close to the LAC average of 11 weeks.

Currently none of the countries allows the completion of a TWP application online, although no additional tangible documents are required to be physically filed. Best practice countries such as Singapore and South Korea (described later in this section) do have such systems in place. Table 7 illustrates the extent to which the online application systems of the different countries have been developed.

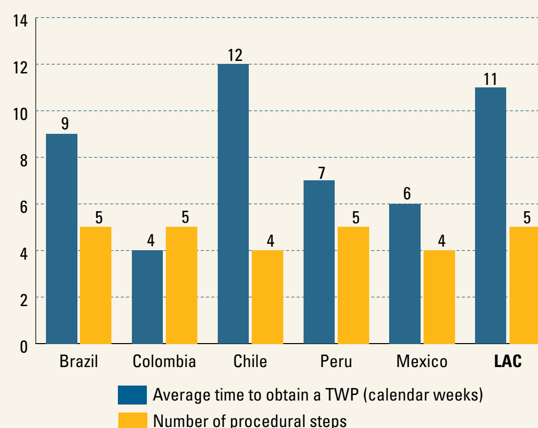
None of the LAC countries has a one-stop shop or fast-track option for TWP applications and none has a Spousal Work Permit regime (Table 8). This means that if the spouse of the working spouse wants to work in that specific country, she/he needs to obtain a TWP independently from the working spouse. If not, in most cases a "dependant visa" is available which forbids the spouse to work. With the exception of Brazil, all the countries do allow the portability of the TWP, which allows a working expat to switch to another employer without having to submit another application. Except in Colombia, all countries require a written denial, should an application be denied and administrative and judicial review is available. All countries allow the expatriate, subject to the fulfillment of certain conditions, to obtain permanent residency and citizenship.

FIGURE 19. Average TWP application processing time across regions, in calendar days



Note: The number of economies covered by the indicators per region are as follows: East Asia and the Pacific (12 economies); Eastern Europe and Central Asia (21 economies); Latin America and the Caribbean (14 economies); Middle East and North Africa (8 economies); economies in the Organisation for Economic Cooperation and Development (17 economies); the South Asia region (6 economies).
Source: FDI Regulations database, 2012.

FIGURE 20. Average processing time and number of steps required in five countries before an applicant may legally start working



Source: FDI Regulations database, 2012.

TABLE 7. TWP online application systems in five LAC countries

	Online completion	Application form downloadable	Documents may be submitted online	Process may be monitored online (check status)	Notifications received online	Confirmation of documentation received online
Brazil	No	Yes	No	Yes	Yes	No
Colombia	No	Yes	No	No	No	No
Chile	No	Yes	No	Yes	No	No
Peru	No	No	No	Yes	No	No
Mexico	No	Yes	No	Yes	Yes	No

TABLE 8. Characteristics of TWP conditions in five LAC countries

	One-stop shop	Fast-track	Portability of TWP	Administrative/ judicial review	Written denial	Permanent residency	Citizenship	Spousal work permit
Brazil	No	No	No	Yes	Yes	Yes	Yes	No
Colombia	No	No	Yes	No	No	Yes	Yes	No
Chile	No	No	Yes	Yes	Yes	Yes	Yes	No
Peru	No	No	Yes	Yes	Yes	Yes	Yes	No
Mexico	No	No	Yes	Yes	Yes	Yes	Yes	No

Country details

Employing skilled expatriates in Brazil

In Brazil, it takes on average 9 weeks to obtain a TWP for an IT specialist. The applicable laws and regulations are available, but cannot be completed online. However, it is possible to download the application form, receive an online notification of the submission of application documents and monitor the application process online. A one-stop shop or fast-track procedure is not available. In Brazil, the labor market test is limited to proving that no locals can be hired for the foreigner's position.

The maximum duration of the initial TWP for a foreign IT specialist is 2 years. The TWP can be renewed only once for a maximum of 2 years. The TWP is linked to a single employer (not portable) and job, but not to an industry or geographic area.

The ability to hire a foreign IT specialist is not conditioned upon a minimum amount of capital investment or capital contribution. However, if the company intends to hire an expatriate CFO, then such company must receive either a direct foreign investment of at least R$60,000,000 from any of its foreign shareholders, or R$15,000,000 along with a commitment to generate ten jobs for Brazilians within the next 3 years. Brazil uses a quota system through which the number of expatriates in a company cannot exceed two-thirds of the total number of employees registered on a company's payroll at any time.

Upon denial of the TWP, a written explanation is provided. Administrative review precedes judicial review and the application for administrative review must be submitted to the General Department of Immigration of the Ministry of Labor and Employment within 15 working days from the denial of the TWP. The administrative authority has discretionary power to decide the case and is required to award its final decision within 30 days from the date of appeal. The authority for judicial review is vested in the Federal Courts and the application for judicial review must be made within 120 days. Judicial review is rare and officers in charge of the immigration procedures have discretionary power to deny any application.

Permanent residency status and citizenship can be acquired on the basis of employment. A foreign CFO is required by Brazilian laws to apply and obtain a permanent work visa/permanent residency visa. For a foreign IT specialist, a minimum of 4 years of legal residence as a temporary resident in Brazil is required to request permanent residency status. The approximate time needed to obtain permanent residency is 1 year. Both the foreign CFO and IT specialist may obtain Brazilian citizenship by applying for naturalization, after residing in the country as legal permanent residents for a minimum of 5 years. There is no spousal work permit; the spouse must independently obtain a TWP.

Employing skilled expatriates in Colombia

In Colombia it takes on average 4 weeks to obtain a TWP for an IT specialist. The main applicable laws with regard to the TWP or *Visa Temporal Trabajador* are available online. Application forms can be downloaded, but the TWP application process cannot be completed online. There is no concept of labor market test in Colombia and a one-stop shop or fast-track procedure is not available.

The maximum duration of the initial temporary work permit is 2 years for both the CFO and IT specialist. It is possible to apply for renewals and there are no restrictions on the number of renewals permitted. The temporary work permit is linked to a single employer, job and industry, but not to a geographic area. The TWP is portable, i.e., the foreign expatriate may change his employer, but must request the migratory authority to modify his TWP to reflect the name of his new employer. The new employer is required to inform the migratory authority within 15 days of the time when the foreign expatriate joins the workforce.

The ability to hire expatriates is not conditioned upon a minimum amount of capital investment or capital contribution. The only restriction imposed on the Board of Directors is that they must be at least 18 years old. There are no applicable quotas with regard to hiring foreign skilled expats.

In Colombia, a visa is generally not denied, unless the applicant fails to meet the application requirements. Upon denial of the temporary work permit, the migratory authority must indicate why

the application was denied. However, there is no written explanation of denial. The applicant will be provided an opportunity to provide the missing information or remedy the defect and present it once again before the consular officer. No appeals can be made with regard to the denial.

Permanent residency status and citizenship can be acquired on the basis of employment. In order to obtain a permanent resident visa, the foreign citizen must hold a valid TWP and must have completed a minimum of 5 years of continuous residency in Colombia without interruptions of more than 180 days. Foreign residents, who have completed 5 years of continuous legal residency in Colombia after having obtained the permanent residency, may obtain Colombian citizenship by applying for naturalization. There is no spousal work permit; the spouse must independently obtain a TWP.

Employing skilled expatriates in Chile

In Chile it takes an average of 12 weeks to obtain a TWP for an IT specialist or CFO. The main applicable laws with regard to the application of a TWP, which is called *Visa Sujeta a Contrato,* are available online. Although the application forms can be downloaded and the application status monitored online, the TWP application process cannot be completed online. There is no concept of labor market test. A one-stop shop or fast-track procedure is not available.

The maximum duration of the initial TWP is 1 year for both the CFO and IT specialist. The TWP can be renewed and there are no restrictions on the number of renewals permitted. However, each renewal is limited to a maximum of 1 year. The TWP is linked to a single employer but not to a job, industry or geographic area. The TWP is portable.

The ability to hire expatriates is not conditioned upon a minimum amount of capital investment or capital contribution. Quotas do exist: the number of expatriates in a company cannot exceed 15 percent of the total number of employees registered on a company's payroll. This quota restriction is not applicable to employers who hire fewer than 25 employees.

Upon denial of the TWP, a written explanation is provided. Only administrative review is available and the application for administrative review must be submitted to the Department of Foreign Affairs and Immigration under the Ministry of Interior within 3 days from the denial of the TWP. The administrative authority has discretionary power to decide the case. However, should the immigration authority order the expulsion of a foreigner, such administrative decision is, if requested, subject to review by the Chilean Supreme Court. Moreover, it should be considered that as a general rule, acts from the administrative authority, such as the denial of a work permit, are subject to an extraordinary review that can be triggered either by requesting the intervention of the General Comptroller, an administrative oversight authority, or through a constitutional action known as *Recurso de Protección,* i.e., a review by the Chilean Superior Court. These courses of action are extraordinary and their success is subject to the administrative act not complying with the applicable legal and constitutional rules.

Permanent residency status and citizenship can be acquired on the basis of employment. As a general rule, a minimum of 2 years of legal residence is required for a person with a TWP to obtain permanent residency. If the applicant has a family connection to a Chilean citizen, the period is reduced to 1 year. It takes about 6 months to obtain permanent residency. Foreign citizens may obtain Chilean citizenship by applying for naturalization after having resided in the country as a legal permanent resident for a minimum of 5 years. The approximate time taken to obtain citizenship ranges from 1 to 2 years. There is no spousal work permit; the spouse must independently obtain a TWP.

Employing skilled expatriates in Peru

In Peru it takes on average 7 weeks to obtain a TWP for an IT specialist or CFO. The main applicable laws with regard to the TWP or *Visa de Trabajo temporal* are available online. Although the TWP application process cannot be completed online, the progress of the application process can be monitored online. There currently exist special initiatives to attract highly skilled expatriates in Peru. There is no concept of labor market test in Peru. There is no one-stop shop or fast-track procedure.

The maximum duration of the initial TWP is 3 years for both the CFO and IT specialist. There are no restrictions on the number of renewals permitted. However, the maximum duration of each renewal cannot exceed 3 years. The temporary work permit is linked to a single employer but not to a job, industry or geographic area. The TWP is portable and the employee can switch as long as the work visa is valid.

The ability to hire expatriates is not conditioned upon a minimum amount of capital investment or capital contribution. In general, there are no restrictions on the Board of Directors. Quotas exist: the number of expatriates in any company cannot exceed 20 percent of the total employees registered on the company's payroll at any given time. When the expatriates are skilled, companies may request the Labor Ministry for an exemption from the quotas, which is valid for a maximum of 3 years, but which can be renewed. Furthermore, the maximum salary of all the foreign workers should not exceed 30 percent of the total payroll of the company.

Upon denial of the TWP, a written explanation is provided. Administrative review precedes judicial review and the application for administrative review must be submitted to the Director of Immigration and Naturalization within 15 days from the denial of

the TWP. The maximum duration for deciding the case is 30 days in both the first and second instance. The authority for judicial review is vested in the administrative courts for contentious issues in Peru and applications must be made within 1 year from the administrative appeal decision.

Permanent residency status and citizenship can be acquired on the basis of employment. In order to obtain a permanent residence permit, the foreign citizen must hold a valid TWP and must have completed a minimum of 2 years of residence in Peru, of which 6 months must immediately precede the application for the permanent residence permit. The entire process is typically completed within 6 to 8 weeks. Foreign citizens, who have completed 2 years of continuous legal residency in Peru and obtained permanent residency, may then obtain Peruvian citizenship by applying for naturalization. The process for obtaining citizenship generally takes 8 to 12 months. There is no spousal work permit; the spouse must independently obtain a TWP.

Employing skilled expatriates in Mexico

In Mexico it takes an IT specialist an average of 6 weeks to obtain a TWP (Non Immigrant Visa—formerly "FM3"). The relevant laws pertaining to the application for a TWP are available online. Although the form cannot be completed online, the applicant must fill it in online and since March 2012 may also receive online notification of the submission of the application and monitor its progress. A one-stop shop or fast-track procedure is not available. There is no concept of labor market test in Mexico.

The maximum duration of the initial TWP is 1 year for the IT specialist, but it may be renewed, each time for a maximum of 1 year, with the number of renewals limited to four. After completing all four renewals, a new TWP may be obtained or the foreign applicant may request immigrant status (formerly "FM2"). The TWP is linked to a specific job but not to an employer, industry or geographic area. The TWP is portable.

The ability to hire foreign national employees is not conditioned upon a minimum amount of capital investment or capital contribution. In general there are no restrictions imposed on the Board of Directors. Nevertheless, there is an applicable quota: the number of non-Mexican employees in a company may not exceed 10 percent of the total number of employees on a company's payroll. However, this quota restriction is not applicable to company directors, administrators or general managers.

Upon denial of the temporary work visa a written and official resolution is provided by the National Migration Institute. Administrative review precedes judicial review and the application for administrative review must be submitted to the National Migration Institute within 15 business days from the denial of the TWP. The administrative authority has discretionary power to decide the case and is required to make its decision within 90 days from the date of the appeal. The authority for judicial review is concurrently vested in the District Judge for Administrative matters and the Federal Court of Fiscal and Administrative Justice under different laws. The applications must be made within 15 and 45 days respectively.

Permanent residency status and citizenship may be acquired on the basis of employment. As a general rule, a minimum of 5 years of residence in Mexico as an immigrant is required to request permanent residency status. As a general rule, the request for permanent residency may be made simultaneously with the work permit renewal process. This process takes about 8 weeks to complete.

Foreign citizens may obtain Mexican citizenship by applying for naturalization after having resided in the country as a legal immigrant for a minimum of 5 years. This process takes about 16 weeks to complete. There is no spousal work permit, the spouse having to independently obtain a TWP.

Comparisons with countries in other regions: Singapore, South Korea, Indonesia and India

In Singapore the TWP application process may be completed online and within a short time frame, on average 10 days. The Ministry of Manpower serves as a one-stop shop. The Singaporean skilled immigration model is interesting in that it aims to attract only the very highly skilled: the Personalized Employment Pass[41] is applicable to foreign professionals with a monthly overseas salary of at least S$8,000.[42] There are no quotas or labor market tests. The only restriction on the Board of Directors is the mandatory residency of one of the directors. The TWP is not tied to an employer, industry, job, or geographic area and is fully portable. Permanent residency and citizenship can be obtained and the government assesses the applicant's merits via a points system.

South Korea and Singapore process a TWP the fastest—on average, in only 10 days—even though South Korea does not have a one-stop shop; Singapore is also at the forefront of automating the TWP application system and the entire process can be completed online. South Korea also has a specific program for skilled expatriates. There are no quotas, labor market tests and no legal restrictions on the composition of the Board of Directors. The validity of the TWP is linked to a single employer, job function, and specific industry but the work permit is portable. Permanent residency status cannot be acquired, but citizenship may be obtained after 5 years of residence.[43]

Indonesia is at a different development stage than Singapore and South Korea, but nevertheless manages to process the TWP at a relatively fast pace. Even though the TWP application process is entirely manual and the skilled immigration regime is not as developed in comparison with Singapore and South Korea, it takes

only 4.5 weeks to obtain a TWP in Indonesia; the global average TWP processing time is 8 weeks. The validity of a TWP is linked to a specific job/position and geographic area, but the work permit is portable. The skilled expatriate is eligible to apply to convert his/her Limited Stay Permit (KITAS) to a Permanent Stay Permit, on condition that the individual has not left the territory of the Republic of Indonesia for 2 consecutive years.[44] Indonesian citizenship may be acquired based on permanent residency.[45] There is no spousal work permit. Hence, in terms of processing time, Indonesia is an example of a country at a different development stage, but which still manages to hold its TWP processing time to an acceptable level.

In India, the skilled immigration regime provides an interesting example of a country on the road to reform. The duration of the TWP application varies depending on the applicant's nationality. It can be as fast as 2 days if the applicant is Austrian, but might take at least 6 weeks if the applicant is from Pakistan. On average, it takes 3 weeks to obtain a TWP. Whereas in the majority of the countries in which India has an embassy, the TWP process is done manually, in a number of countries (e.g., the United States) the TWP application process has been outsourced to a private company (Travisa), which decreases the total processing time. The final decision is still made by the Indian embassy, but the remainder of the administrative process is dealt with by Travisa, which also updates applicants on the status of their application online or via SMS messaging. In general, there are no quotas for hiring skilled expatriates.[46] Even though there is no portability of the TWP, the government has recently relaxed the norms for changing employers.[47]

Conclusion

The importance of skilled immigration reform cannot be underestimated and is an essential building block for the sustained global competitiveness of any economy. The ease of hiring skilled expatriates is one of the factors that are taken into consideration by multinationals in deciding where to locate. When the required expertise cannot be sourced in the hosting country, skilled immigrants are necessary to start new subsidiaries and train workers. Overly restrictive or cumbersome skilled immigration regimes may result in lengthy work permit processing times, which have the potential to stall productivity or mean the loss of strategic or first-mover advantage for companies. Other restrictions, such as quotas may affect the viability of new ventures and may lead companies to invest in economies with less restrictive skilled immigration policies.

This chapter has highlighted the main characteristics of the current skilled immigration regimes of Brazil, Chile, Colombia, Mexico and Peru. The characteristics of each of these countries in this regard are different and improvement in one or more aspects is recommended. The comparator examples of Singapore, South Korea, India and Indonesia illustrate how certain other countries have chosen to deal with skilled immigration. While each country is unique, some uncontested issues might well be considered as potential improvements to the skilled immigration regimes of these five Latin American economies. These issues include the introduction of a complete online system for TWP, one-stop shops and fast-track options, all of which would reduce total processing times. In addition, it is recommended that a Spousal Work Permit be introduced to increase the attractiveness of a country to skilled expatriates. All countries, including those with shorter TWP processing times, could benefit from upgrading their current skilled immigration system in this regard. However, in order to have a real impact, these countries will need to engage in much more far-reaching reform, involving the identification of the major bottlenecks in their current skilled immigration regime. This broader reform can exert an influence in many areas, such as the justification for immigration quotas; recognition of degrees by local professional organizations; inconsistent application of laws resulting in additional application documents slowing down the application process; unclear laws or the absence of laws regulating specific categories of skilled immigrants; and administrative requirements that are necessary in the local economy, but which are not granted to foreigners, making the skilled immigration regime unattractive or burdensome for the applicant or the company seeking to invest in Brazil, Chile, Colombia, Mexico or Peru.

Converting and Transferring Currency

Topic overview

The foreign exchange regime that regulates converting and transferring currency abroad is a crucial component of a country's investment climate for FDI. The ability to bring in foreign capital, freely convert local currency and foreign exchange and repatriate investment returns back home are fundamental aspects of foreign investment. Access to foreign exchange is also necessary to pay for imports and being able to use export proceeds freely is an incentive for firms to engage in international business.

Perceptions of global business leaders confirm the importance of converting and transferring currency. In response to a recent survey by the Multilateral Investment Guarantee Agency, 22 percent of senior executives from multinational firms investing in developing economies identified political risk—including currency convertibility—as the greatest constraint to cross-border investment in the next 3 years.[48] Forty percent of executives called transfer and convertibility restrictions the political risk that concerned them the most. Nearly 30 percent of companies report having actually withdrawn or cancelled planned investments because of such restrictions in the previous 12 months.

The FDI Regulations Converting and Transferring Currency (CTC) topic measures foreign exchange restrictions across countries, with the goal of identifying regulatory reforms that could improve this aspect of the investment climate for foreign investors. CTC considers both the legal regime governing foreign exchange transactions and the experience of lawyers, bankers and accountants from the private and public sectors, regarding how the laws and regulations are implemented in practice. The topic focuses on regulations affecting four types of transactions:

- *Receiving investment inflows,* including whether controls exist on receiving inflows of foreign equity or foreign loans;
- *Repatriating investments and income,* covering whether there are controls on repatriating liquidated investments or restrictions on making dividend payments or loan repayments abroad;
- *Making payments abroad,* including whether there are restrictions on paying for imported goods; paying for imported services; paying for international travel; and making personal payments/transferring wages abroad; and
- *Holding foreign exchange,* identifying whether export proceeds must be repatriated and surrendered and whether a firm can hold forex bank accounts at home and abroad.

Regional overview of Latin America

Latin America as a region imposes relatively few foreign exchange restrictions.[49] It is similarly open to Eastern Europe and Central Asia, the Middle East and North Africa at the regional level and places fewer restrictions than are found in East Asia and the Pacific, Sub-Saharan Africa and South Asia. Latin America is relatively more restrictive than the OECD economies, which maintain almost completely open regimes related to converting and transferring currency. Regional averages can, of course, be skewed by outlier economies; Latin America's average level of restrictiveness is, indeed, affected by heavily restrictive foreign exchange regimes in a few economies.

The five economies of focus in this report: Brazil, Chile, Colombia, Mexico and Peru, maintain generally open regimes for converting and transferring currency. No policies create space for government discretion in approving or rejecting specific transactions associated with FDI. Chile, Mexico and Peru in particular, have effectively no substantive restrictions on converting or transferring currency, beyond reporting requirements associated with anti-money-laundering policies, or for statistical purposes.

Brazil and Colombia do maintain some restrictions and require some procedures to conduct foreign exchange transactions. Brazil requires that firms establish a "foreign exchange contract" with authorized agents (financial institutions and other institutions) to convert and transfer currency; documentation is required to support transactions over US$3,000. Colombia requires that certain transactions be conducted through a regulated exchange market, as opposed to the open free market. Most firms domiciled in both countries are not allowed to hold foreign exchange bank accounts domestically. These restrictions are administrative in nature, as opposed to outright controls. Still, compliance with such procedural requirements can represent a cost to business, as well as create a risk that procedural delays will significantly hold up real transactions. This perception is reflected by CTC respondents, who report that restrictions on converting and transferring currency represent minor to moderate obstacles to foreign investors in Brazil and Colombia. The foreign exchange regime is, thus, not a severe obstacle inhibiting FDI in these economies, but does impose

some administrative requirements that could be reformed to keep the investment climate as attractive as possible.

Broader policy considerations related to converting and transferring currency

Before discussing specific regulatory requirements and reform possibilities, it is important to note the need for a cautious approach when undertaking reforms related to converting and transferring currency. There is general policy consensus that payments for current transactions, such as paying for imports or making interest payments on a foreign loan should be allowed freely.[50] For example, all International Monetary Fund (IMF) members that accept the obligations of the IMF's Article VIII—which Brazil, Chile, Colombia, Mexico and Peru have all done—commit to allowing full convertibility of their currency for current account transactions.[51]

However, liberalization of the capital account, covering capital flows such as foreign loans or portfolio investment, is less straightforward. This is mainly due to linkages between capital flows and macroeconomic and financial sector stability. The IMF highlights the importance of appropriately sequencing the removal of capital controls with other macroeconomic and financial sector developments (Ishii et al. 2002). Recent analysis of countries' experiences during the global financial crisis identifies certain circumstances in which temporary controls on some short-term capital flows may be appropriate and in fact desirable (IMF 2012). Although flows of long-term foreign direct investment tend not to have the same potential for destabilization as short-term capital flows, even a partial liberalization of one type of flow can erode the effectiveness of other capital controls.

The volatility of capital flows in Latin America before and after the global financial crisis reflects these macroeconomic justifications for some types of capital controls. Capital inflows to the region had been growing in the mid-2000s, fell during the global downturn and have been increasing rapidly since 2009. This has created significant volatility in financial markets, including substantial appreciation pressures on currencies in the region since 2009 (Suttle et al. 2011). In response, countries have implemented various policies for prudential purposes. Brazil increased the rate of a tax on financial operations (the *Imposto Sobre Operações Financeiras*, or IOF) on short-term capital flows. Colombia imposed an unremunerated reserve requirement (URR) on certain external borrowings. Alternative approaches were also taken by Chile and other countries in the region, such as intervention in foreign exchange markets with the goal of counteracting appreciation pressures.

This report does not address the macroeconomic justifications of such controls. FDI Regulations focuses on what regulatory controls and restrictions imply for the investment climate, while acknowledging that other policy goals may need to be considered as well. However, *Converting and Transferring Currency* focuses on controls and restrictions related to long-term foreign direct investment and current international business payments; these types of transactions fall outside the scope of controls implemented to manage potentially volatile short-term capital flows. Additionally, other countries that have faced similar macroeconomic pressures, such as Indonesia and Turkey, have few foreign exchange restrictions related to FDI and current payments. The following overview of restrictions across countries is thus grounded in what they represent in terms of administrative hurdles and associated risks to foreign-owned businesses and should be considered along with potential macroeconomic justifications for such controls.

Converting and transferring currency in Brazil

Brazil maintains administrative and procedural requirements with which firms must comply in order to convert and transfer currency for FDI-related cross-border transactions.

Receiving investment inflows

No government approval is required to bring equity capital into Brazil for direct investments, but registration and documentation are required. The foreign investment must be registered with the *Banco Central do Brasil* (BCB) through the *Registro Declaratório Eletrônico – Investimento Estrangeiro Direto* (RDE-IED), part of the central bank's information system (SISBACEN). The initial enrollment must be made in person or by a representative, so that corporate documents may be submitted and a password issued. This registration through SISBACEN will result in the issuance of a RDE-IED identification number for the foreign investment. Foreign investors must also enroll with the National Register of Legal Entities (*Cadastro Nacional da Pessoa Jurídica*) for tax purposes.

Foreign currency purchase and sale contract operations are performed only through agents authorized by BCB. This contract will enable the bank to receive the foreign exchange from abroad and convert it into local currency for local use, since foreign exchange bank accounts are not allowed within Brazil for most firms.[52] Documentation of the capital transaction must be provided to the authorized agent to enable it to verify the legality of the transaction.

As with equity inflows, no government approval is required to receive a long-term foreign loan. However, prior to receiving the loan inflow, a foreign-owned firm must register the loan with BCB through SISBACEN's *Registro de Operações Financeiras* (ROF), providing the key terms and conditions of the foreign loan, such as the principal amount, interest rate and term of payment. If the terms of the loan are not in line with general international market rates, additional documentation may be requested by the BCB.

Once the registration is complete, the foreign company can perform foreign exchange operations to receive the loan inflow. This must be completed within 60 days, or a new registration

must be made. Documentation of the transaction will be required by the authorized agent to verify the legality of the operation. After the inflow of the funds, the payment schedule is automatically registered with BCB.

Repatriating investments and income

Converting and Transferring Currency gathered data related to three types of foreign, capital-related outflows: repatriating liquidated equity investment, transferring dividend payments abroad and making payments on a foreign loan. All three outflows may be conducted without any government authorization in Brazil, but the initial investment or loan must have been duly registered with the BCB.

Making these transfers and payments abroad requires contracting foreign exchange operations with authorized agents, as with the initial investment inflow. Transactions related to foreign capital registered with BCB are recorded at the RDE. The foreign company will then need to provide documentation to the authorized agent to demonstrate the legality of the operation. Respondents note that commercial banks have significant leeway in determining what documentation may be required, which reportedly creates substantial variability and uncertainty regarding what documentation will be demanded to support any given foreign exchange transaction.

Given these varying documentation requirements, the amount of time required to convert and transfer currency to make a dividend payment abroad can vary substantially. Respondents report that making a dividend payment abroad takes only 3 business days on average, but that this can sometimes be as long as 15 to 20 days, especially for initial dividend payments, when documentation is reviewed by agents for the first time. Independent analysis by Ernst & Young indicates that required audits of liquidated investments by tax authorities may also take a long time to be finalized (Ernst & Young Terco 2011).

Making payments abroad

Converting and transferring currency to pay for imported goods or services requires documentation and registration. The payments must be registered with the online foreign trade system (SISCOMEX); if the payment schedule for the imports exceeds 360 days, a firm must also register the payment with the RDE-ROF. The payment must be made via a foreign exchange contract with an authorized agent, which will require documentation of the foreign company's status as a registered importer and other evidence of the validity of the transfer, such as the commercial invoice.

Other current payments abroad, such as for international travel, or to convert and transfer expatriate wages abroad, will require documentation of the underlying transaction.

Holding foreign exchange

Firms as well as individuals are allowed to open bank accounts in foreign currency abroad. Residents in Brazil with more than US$100,000 in accounts abroad are subject to annual declaration to BCB. There are no requirements to repatriate export proceeds earned abroad back to Brazil; firms may hold such foreign exchange in offshore accounts freely.

However, most firms domiciled in Brazil are not allowed to maintain foreign exchange bank accounts domestically. Exceptions are allowed only for firms in certain sectors such as tourism, energy and insurance. Other types of firms may only hold local bank accounts in the domestic currency and so would have to convert foreign exchange export proceeds transferred back to Brazil into reais.

Additional issues and reform considerations

Perceptions of private-sector firms in Brazil support the broad claim that regulatory and administrative issues related to cross-border transactions are an impediment to business in Brazil. According to data gathered by the World Bank Group's Enterprise Surveys project, 68.8 percent of foreign-owned firms in Brazil identify customs and trade regulations as a major constraint to their business. Senior managers of foreign-owned firms report spending 42.7 percent of their time dealing with government regulations. 66.8 percent identify access to finance as a major constraint, well above Latin America's regional averages of 20 to 25 percent—although such access issues certainly result to some extent from non-regulatory issues that fall outside the scope of this report.

One particular regulatory issue to be noted that is not explicitly addressed by *Converting and Transferring Currency* is tax administration in Brazil. As noted above, Brazil imposes an IOF financial transactions tax; the standard rate on exchange transactions was 0.38 percent at the time of data gathering, but higher or lower rates may be applied to other specific types of transactions. But even beyond specific tax rates, Enterprise Surveys data indicate that 76.7 percent of foreign-owned firms identify tax administration as a major constraint. External analysis also identifies tax bureaucracy and complexity as a reality faced by foreign investors in Brazil (Ernst & Young Terco 2011).

CTC respondents do note that recent reforms have simplified the process of conducting foreign exchange transactions. But they also still cite converting and transferring currency as a minor or moderate obstacle to foreign investors in Brazil, given the administrative procedures and requirements outlined above. Respondents suggest decreasing the bureaucratic steps necessary to register foreign investments and decreasing the discretion of commercial bank compliance officers regarding documentation requirements.[53]

Converting and transferring currency in Colombia

Colombia maintains administrative and procedural requirements related to converting and transferring currency abroad, but does not impose substantive controls on FDI-related cross-border transactions. Most administrative requirements have to do with the dual foreign exchange market system in Colombia.

The regulated exchange market for cross-border transactions

The Colombian foreign exchange market has two systems:

- The Exchange Market is regulated and requires that transactions be made through an authorized Colombian foreign exchange dealer or a "compensation account," a foreign bank account that is registered with the central bank. Transactions made through this regulated market require that declaration forms be completed and sent to the central bank for notification;
- Other transactions may be made through the free market, which is not regulated.

Most transactions having to do with foreign investments must be conducted through the Exchange Market. Foreign equity capital inflows must be received through this regulated market and registered with the central bank, guaranteeing that subsequent capital repatriation and dividend payments may be made freely, as long as they are also conducted through the Exchange Market. Foreign loans must similarly be transferred and registered, after which loan repayments through the Exchange Market may be made freely. Payments for imported goods must be made through the Exchange Market, but other payments abroad, such as for service imports or personal payments, may be made via the free market without any restriction. However, respondents note that in practice, many firms make such payments through the formal Exchange Market as well and comply with the associated declaration requirements.

Holding foreign exchange

Bank accounts in foreign exchange within Colombia are not allowed, so all accounts must be in Colombian pesos. Thus, any international transaction into or out of an account in Colombia entails both a conversion and a transfer of currency.

Colombian firms are allowed to hold bank accounts in foreign exchange abroad and may open them without approval. If such offshore accounts are to be used for transactions that must be conducted through the Exchange Market, including capital flows, foreign debt payments and imports/exports, then they must be registered as a "compensation account" with the central bank and monthly/quarterly statements must be provided to the central bank and the tax authorities. Offshore bank accounts that will not be used for regulated transactions may be opened and used without restriction.

Export proceeds must be repatriated into the Colombian financial system within 6 months of shipment of the goods. However, depositing the proceeds in a registered compensation account abroad and declaring them to the central bank complies with this repatriation requirement. If the goods are repatriated to a bank account in Colombia, they must be converted into local currency, but they may be kept in foreign currency in a compensation account abroad.

Additional issues and reform considerations

Colombia implements some taxes related to foreign exchange transactions. There is a tax on financial transactions of 0.4 percent levied on every withdrawal of funds from a bank account in Colombia. However, this is applied regardless of the nature of the transaction or the nationality of the parties involved. The central bank also maintains the ability to require a percentage mandatory deposit on incoming foreign loans, which will be subsequently returned after a six-month period; but at the time of data gathering, this deposit rate is 0 percent.

As noted above, Colombia's foreign exchange restrictions as relevant for FDI consist of administrative and procedural requirements, as opposed to substantive controls. There have been some recent liberalizing reforms to the foreign exchange regime. For example, foreign lenders previously had to obtain an identification code from the Colombian central bank before disbursing a loan to a Colombian firm, but this requirement was relaxed in October 2011, enabling Colombian firms to receive foreign loans more freely. Additionally, survey respondents noted that complying with the notification requirements associated with the formal Exchange Market does not represent a burden to foreign-owned firms.

However, most CTC respondents still cite the regime for converting and transferring currency as a minor obstacle to foreign investors in Colombia. The key area suggested for reform consideration is the regime of sanctions imposed for violating the foreign exchange regulations. Potential reform options recommended by respondents include:

- Implement clearer positive incentives for following the foreign exchange regulations, which would better encourage intended behavior than the current regime of sanctions and fines;
- If fines are to be imposed, there should be clearer standards as to what fines will be imposed when, to increase transparency and reduce discretion;
- Minimize the frequency of modifications to the foreign exchange regime, in order to potentially further simplify the process required to complete exchange declaration forms.

Converting and transferring currency in Chile, Mexico, Peru and comparison economies

Overview of Chile, Mexico and Peru

Chile, Mexico and Peru maintain effectively fully liberal foreign exchange regimes. There are no controls on the inflow of foreign equity capital or outflow of repatriated capital or investment income payments. Firms may freely open bank accounts in foreign exchange domestically or abroad. In contrast to Brazil and Colombia, there are also few to no administrative or procedural requirements associated with converting and transferring currency related to FDI. Registration or notification may be required for some foreign exchange transactions, but only post-facto, such as notification to the central bank after a capital transfer for statistical purposes in all three countries.

A few exceptions do exist: for example, Peru limits the allowable interest rate on foreign loans to 3 percent above the prevailing market rate in the country in which the loan originates and applies a financial transaction tax of 0.005 percent on almost every transaction conducted through a local bank account, although the tax is applied regardless of the parties or currencies involved in the transaction. Mexico's Monetary Law requires that payment obligations in foreign exchange be made in local currency and converted at the exchange rate established by the Bank of Mexico that day. However, all respondents in Peru and Mexico report that converting and transferring currency is no obstacle to foreign investment, reflecting the overall open nature of the foreign exchange regime in these economies.

Many other Latin American economies maintain similarly fully open foreign exchange regimes. Of the countries covered by the FDI Regulations project, Bolivia, Costa Rica, the Dominican Republic, Ecuador, Guatemala and Nicaragua all impose no substantive restrictions on any foreign exchange transactions relevant for FDI.

Examples of Indonesia, Taiwan (China) and Turkey

Economies outside of the region also provide examples of foreign exchange regimes and practices that may be a useful comparison for Latin American economies. Indonesia, Taiwan (China) and Turkey are large emerging markets or newly industrialized economies that maintain generally unrestricted processes for converting and transferring currency, while having faced volatile capital flows and currency appreciation pressures similar to those faced by Brazil, Colombia and other Latin American economies since the global financial crisis.

Taiwan (China) and Indonesia offer interesting examples of using risk-based mechanisms implemented by the private financial sector to regulate foreign exchange transactions. Such mechanisms are identified as global best practices for cross-border transaction monitoring, for example, by the Financial Action Task Force for purposes of combating money laundering or the financing of terrorism.[54]

Regulations in Taiwan (China) allow for the free cross-border transfer of funds, but the purchase or sale of foreign exchange is monitored. Purchases or sales of foreign exchange less than 500,000 New Taiwan Dollars (approximately US$17,000) may be made freely. Foreign exchange transactions greater than TWD500,000 that have to do with direct investment, portfolio investment, or futures trading, or any exchange transactions exceeding US$1,000,000 require the commercial bank to review documentation of the underlying transaction; any other foreign exchange purchase or sale only requires a declaration statement. Firms that exchange more than US$50 million of foreign exchange in 1 year then require approval of the central bank for further purchase or sale. Taiwan (China) imposes almost no other requirement related to cross-border transactions and has no restrictions on foreign exchange bank accounts or export proceeds earned abroad.

Indonesia implements a similar risk-based approach to monitoring foreign exchange transactions. As in Taiwan (China), the cross-border transfer of funds is allowed freely, but firms purchasing more than US$100,000 of foreign exchange in a month must show documentation of underlying transactions to justify the purchase. There are also simple requirements for firms to declare the amount and purpose of any cross-border payment exceeding US$10,000. Indonesia imposes other administrative requirements, such as, that all export proceeds must be repatriated to an Indonesian bank; respondents perceive that some regulatory inconsistencies make converting and transferring currency a minor obstacle to foreign investors in Indonesia. But the use of a risk-based documentation requirement implemented by commercial banks may be a facilitating aspect of the country's foreign exchange policy regime.

Turkey illustrates another emerging market that has implemented a liberalized foreign exchange regime. Turkey does require that firms provide documentation for all transactions such as capital outflows, dividend and loan payments and payments for imported services exceeding US$5,000, below the risk threshold established for anti-money laundering purposes. But the Turkish foreign exchange regime for FDI is otherwise fully liberalized: there are no restrictions or procedural requirements related to FDI capital inflows and foreign exchange bank accounts may be held freely domestically or abroad. As a result, respondents in Turkey perceive the foreign exchange regime to be no obstacle to foreign investors in their country. Turkey has completed its implementation of this liberal regime for converting and transferring currency in recent years, in the midst of managing the impacts of the global financial crisis, as elaborated in Box 4.

BOX 4. Turkey's foreign exchange liberalization case study

Turkey's process of liberalizing its foreign exchange regime began in the 1980s, when encouraging foreign investment was established as a key policy component of broader economic reform and export promotion. A first reform was to decriminalize the possession of foreign exchange without official government authorization, as penalties for non-compliance were reduced to administrative fines. Broader use of foreign exchange was gradually allowed, culminating in the passage of Decree 32 in 1989, which fully liberalized exchange regulations by removing all restrictions on the purchase or possession of foreign exchange. Decree 32 also laid out reforms to the capital account and in 1990 strict controls on capital movement were removed, allowing residents to borrow in foreign exchange or Turkish lira from international financial markets. Throughout this process, Turkey created government institutions focused on enabling the private sector, in order to support the implementation of effective domestic policies and regulatory frameworks relevant for an open foreign exchange regime.

Further liberalizing reforms have continued in recent years, even as Turkey has focused on developing sound macro-prudential policies to manage the impacts of the global financial crisis. In 2009, amidst efforts to prevent excessive external borrowing, Turkey removed a restriction that allowed only firms with foreign exchange earnings to borrow in foreign currency from within the Turkish financial sector. This reform enabled any firm interested in taking out a large foreign currency loan (greater than US$5 million) with a term of more than 1 year to access such finance domestically, thereby maintaining access to foreign exchange financing while decreasing the need to borrow from abroad. In February 2008, Turkey abolished the requirement to repatriate export proceeds back to Turkey. Due to fears of increased dollarization in the economy in the middle of the global financial crisis, these liberalizing reforms faced political opposition, with strong pressure to revert back to more restrictive exchange policies. Turkish policymakers maintained the commitment to a liberal exchange policy and the free flow of capital, along with sound macro-prudential policies. The Turkish financial sector ultimately emerged from the global crisis with relatively good performance.

Conclusion

Four points emerge from this review and comparison of converting and transferring currency across economies in Latin America.

1. The ability to freely convert and transfer currency is an important aspect of the investment climate for foreign investors. In general, Latin American economies maintain open foreign exchange regimes for FDI-related cross-border transactions. But some restrictions do exist in various economies and moving towards an appropriately liberal foreign exchange regime is one way to keep Latin America ahead of competitor regions as a destination for global FDI flows.
2. One main regulatory issue identified in several large economies in the region has to do with administrative and procedural requirements related to converting and transferring currency. Although such requirements do not represent substantive controls, they may increase firms' cost of doing business and can significantly delay cross-border transactions. Survey respondents indeed identify such administrative requirements as an obstacle to foreign investors.
3. Risk-based mechanisms to monitor foreign exchange transactions that are implemented by commercial banks represent one policy option that may streamline the process of converting and transferring currency while maintaining safeguard measures. Taiwan (China) and Indonesia in particular offer examples of using thresholds for administrative requirements related to foreign exchange transactions that enable efficient cross-border transactions.
4. Some economies in Latin America do impose more substantive controls and approval requirements related to foreign exchange transactions. Such restrictions may represent serious obstacles to multinational firms interested in direct investment in the region. The five economies covered in this report, along with the comparison economies from Eastern Europe and Central Asia as well as East Asia and the Pacific, offer examples of how foreign exchange regimes can be structured to successfully attract FDI inflows, while still maintaining broader financial sector and macroeconomic stability.

Conclusion

Foreign direct investment continues to offer significant potential to spur innovation and contribute to broad-based growth in Latin America. Privatization processes and general economic liberalization in the 1990s led to a surge of foreign investment in both the services and manufacturing sectors. A second wave of FDI inflows began in the early 2000s, with several traits suggesting that the investment could further enhance productivity in the region. FDI has increasingly targeted innovative product manufacturing in response to the rising purchasing power of the emerging middle class. Foreign firms are expanding their R&D activities in the region and FDI inflows from multinational firms headquartered in Latin America are increasing.

However, further efforts are needed if Latin America is to see the full potential benefit of these FDI flows. Although inflows to the region have been increasing, Latin America significantly lags behind Southeast Europe in terms of accumulated FDI stock, suggesting that additional inflows can be attracted. Investment inflows with the favorable characteristics mentioned above are still incipient. Firm-level data indicate that real labor productivity has declined and that corruption and regulation are viewed as investment constraints in the region. Further improvements to the investment climate are necessary for Latin America to stay in the forefront of attracting FDI.

This report has used the FDI Regulations database to identify potential investment climate reforms that policymakers in Latin American can consider. Regulatory environments are analyzed in five economies that have largely succeeded at attracting FDI inflows. These cases highlight many good practices that other economies in the region could implement; they also identify many regulatory constraints that could be reformed to further attract foreign investment. Foreign investment regulations in competitor regions such as East and Southeast Asia and Eastern Europe are also considered, with a view to identifying additional good regulatory practices. Following are the main results across the five topics covered by FDI Regulations:

1. Economies around the world which are open to foreign firms *Investing Across Sectors* tend to attract more FDI inflows. Many economies in Latin America maintain few restrictions on foreign equity ownership, especially those with smaller populations that need to compensate for a smaller market size. Larger economies such as Mexico and Brazil tend to impose more restrictions, especially in services and strategic sectors. To increase their attractiveness to foreign investors, Latin American policymakers could consider decreasing equity ownership restrictions in sectors such as telecommunications, electricity, petrochemicals and transportation; reforming corporate governance of state-owned enterprises to better separate the state's roles as regulator and market participant; and promote investment in sectors where actual foreign participation is lacking.
2. An appropriate legal framework and efficient institutions for *Starting a Foreign Investment* could be a deciding factor for a foreign investor choosing between two otherwise comparable economies. The FDI Regulations data shows that the laws and practices for business registration and access to industrial land vary significantly across Latin America. Policymakers could consider consolidating establishment procedures and abolishing unnecessary ones. One-stop shops or fast-track alternatives to traditional registration could be provided, even if higher fees are required. Foreign investment approval requirements could be limited to strategic sectors or to investments above a certain threshold. Minimum paid-in capital requirements could be abolished. Procedures for business registration within SEZs could be streamlined, as long as improvements to SEZs do not substitute for national investment reform efforts. Broadly, business laws should be clear and provide for fair and equal treatment for foreign and domestic companies.
3. A strong regime for *Arbitrating and Mediating Disputes* provides security that foreign investors will be able to resolve commercial disputes reliably and effectively. Most Latin American economies covered by FDI Regulations have legal frameworks in place for commercial arbitration, but only a few have a consolidated law encompassing commercial mediation and conciliation. A foreign investor considering going to arbitration will easily find an arbitration institution to administer an arbitration case in LAC, but will find fast-track or online arbitration services in a relatively small number of economies. Online arbitration mechanisms are one way that technological advances can be used to significantly reduce arbitration costs and logistics challenges. In addition, domestic courts often play important roles in arbitration proceedings, and LAC policymakers could ensure that domestic laws contain explicit provisions for court assistance, such as for the production of evidence. Decreasing the length of enforcement of foreign

arbitral awards is an important practical step that can be taken to improve the ADR regime.

4. Ease of *Employing Skilled Expatriates* is a key aspect of a favorable foreign investment climate, especially if Latin America seeks to continue attracting FDI in innovative sectors, such as research and development. The skilled immigration regimes vary substantially across Latin American economies and, although the context in each country also varies, several general reforms could be considered to increase the attractiveness of the skilled immigration regime. Full online systems for temporary work permits could be introduced. One-stop shops or fast-track options are other means of reducing the time required to process work permit requests. Granting spousal work permits is yet another option for attracting FDI relying on skilled expatriate workers. In economies that impose quotas on skilled expatriates, policymakers may want to consider that such quotas could present a potential obstacle to multinational firms looking to invest in the region.

5. Restrictions on *Converting and Transferring Currency* deter FDI by limiting the ability of foreign firms to repatriate investment proceeds and engage in international business. The 5 economies measured in this report all maintain generally unrestricted foreign exchange regimes for FDI-related transactions. Some administrative and procedural requirements were identified, especially in Brazil and Colombia. Such requirements do not represent substantive controls, but may increase costs for firms doing business; policymakers could consider replacing such requirements with risk-based mechanisms to monitor cross-border transactions. Other economies in Latin America do impose more substantive controls and approval requirements related to foreign exchange transactions, which may represent serious obstacles to multinational firms interested in direct investment in the region.

Specific reform needs and prioritization will depend on the particular economic and regulatory context of any given economy. Hopefully, the reform possibilities identified here provide policymakers in Latin America with a tool to enable forward thinking about a new wave of targeted and nuanced investment regulation reforms, with the ultimate result of securing continued beneficial FDI flows into the region.

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Annex 1: FDI Regulations Database country coverage

TABLE 9. Economies covered by the FDI Regulations database

East Asia and the Pacific	Latin America and the Caribbean	Middle East and North Africa
Brunei Darussalam	Argentina	Algeria
Cambodia	Bolivia, Plurinational State of	Egypt, Arab Rep.
China	Brazil	Iraq
Hong Kong, China	Chile	Jordan
Indonesia	Colombia	Morocco
Malaysia	Costa Rica	Saudi Arabia
Papua New Guinea	Dominican Republic	Syrian Arab Republic
Philippines	Ecuador	Tunisia
Singapore	Guatemala	Yemen, Rep.
Solomon Islands	Haiti	**South Asia**
Taiwan, China	Honduras	Afghanistan
Thailand	Mexico	Bangladesh
Vietnam	Nicaragua	India
Sub-Saharan Africa	Peru	Nepal
Angola	Venezuela, R.B.	Pakistan
Burkina Faso	**Eastern Europe and Central Asia**	Sri Lanka
Burundi	Albania	**OECD**
Cameroon	Armenia	Australia
Chad	Azerbaijan	Austria
Congo, Dem. Rep.	Belarus	Canada
Côte d'Ivoire	Bosnia and Herzegovina	Czech Republic
Ethiopia	Bulgaria	France
Ghana	Croatia	Germany
Kenya	Cyprus	Greece
Liberia	Georgia	Ireland
Madagascar	Kazakhstan	Italy
Mali	Kosovo	Japan
Mauritius	Kyrgyz Republic	Korea, Rep.
Mozambique	Macedonia, FYR	Netherlands
Nigeria	Moldova	New Zealand
Rwanda	Montenegro	Slovak Republic
Senegal	Poland	Spain
Sierra Leone	Romania	United Kingdom
South Africa	Russian Federation	United States
Sudan	Serbia	
Tanzania	Turkey	
Uganda	Ukraine	
Zambia		

Annex 2: Investing Across Sectors country details

TABLE 10. Investing across sectors in Brazil

Investing Across Sectors in Brazil	Maximum percentage permissible share of foreign ownership of a company	Foreign firms operating?	Can the current market structure be characterized as a monopoly?
1. Agriculture	100%	Yes	No
2. Forestry	100%	Yes	No
3. Mining	100%	Yes	No
4. Oil and gas	100%	Yes	Yes
5. Food processing	100%	Yes	No
6. Manufacturing of basic chemicals	100%	Yes	No
7. Light manufacturing	100%	Yes	No
8. Electric power generation - biomass	100%	Yes	No
9. Electric power generation - solar	100%	Yes	No
10. Electric power generation - wind	100%	Yes	No
11. Electric power transmission	100%	Yes	No
12. Electric power distribution	100%	Yes	No
13. Waste management and recycling	100%	Yes	No
14. Water distribution	100%	Yes	No
15. Freight rail transport	100%	Yes	No
16. Freight transport by road	100%	Yes	No
17. Internal waterways freight transportation	100%	Yes	No
18. International passenger air transport	20%	Yes	No
19. Port operation	100%	Yes	No
20. Courier activities	100%	Yes	No
21. Accommodation services	100%	Yes	No
22. Newspaper publishing	30%	Yes	No
23. Television broadcasting	30%	Yes	No
24. Fixed-line telecommunications infrastructure	100%	Yes	No
25. Fixed-line telecommunications services	100%	Yes	No
26. Wireless/mobile telecommunications infrastructure	100%	Yes	No
27. Wireless/mobile telecommunications services	100%	Yes	No
28. Banking	100%	Yes	No
29. Life insurance	100%	Yes	No
30. Health insurance	100%	Yes	No
31. Accounting, bookkeeping and auditing services; tax consultancy	100%	Yes	No
32. Higher education	100%	Yes	No

Note: 0% maximum percentage permissible share indicates that foreign ownership of a company is not allowed; 49% indicates that foreigners can hold only a minority position; 100% indicates that full foreign ownership of companies is allowed.

TABLE 11. Investing across sectors in Chile

Investing Across Sectors in Chile	Maximum percentage permissible share of foreign ownership of a company	Foreign firms operating?	Can the current market structure be characterized as a monopoly?
1. Agriculture	100%	Yes	No
2. Forestry	100%	Yes	No
3. Mining	100%	Yes	No
4. Oil and gas	100%	Yes	Yes
5. Food processing	100%	Yes	No
6. Manufacturing of basic chemicals	100%	Yes	No
7. Light manufacturing	100%	Yes	No
8. Electric power generation - biomass	100%	Yes	No
9. Electric power generation - solar	100%	Yes	No
10. Electric power generation - wind	100%	Yes	No
11. Electric power transmission	100%	Yes	Yes
12. Electric power distribution	100%	Yes	Yes
13. Waste management and recycling	100%	Yes	No
14. Water distribution	100%	Yes	Yes
15. Freight rail transport	100%	Yes	Yes
16. Freight transport by road	100%	Yes	No
17. Internal waterways freight transportation	49%	Yes	No
18. International passenger air transport	100%	Yes	No
19. Port operation	100%	Yes	No
20. Courier activities	100%	Yes	No
21. Accommodation services	100%	Yes	No
22. Newspaper publishing	100%	Yes	No
23. Television broadcasting	100%	Yes	No
24. Fixed-line telecommunications infrastructure	100%	Yes	No
25. Fixed-line telecommunications services	100%	Yes	No
26. Wireless/mobile telecommunications infrastructure	100%	Yes	No
27. Wireless/mobile telecommunications services	100%	Yes	No
28. Banking	100%	Yes	No
29. Life insurance	100%	Yes	No
30. Health insurance	100%	Yes	No
31. Accounting, bookkeeping and auditing services; tax consultancy	100%	Yes	No
32. Higher education	100%	Yes	No

Note: 0% maximum percentage permissible share indicates that foreign ownership of a company is not allowed; 49% indicates that foreigners can hold only a minority position; 100% indicates that full foreign ownership of companies is allowed.

TABLE 12. Investing across sectors in Colombia

Investing Across Sectors in Colombia	Maximum percentage permissible share of foreign ownership of a company	Foreign firms operating?	Can the current market structure be characterized as a monopoly?
1. Agriculture	100%	Yes	No
2. Forestry	100%	Yes	No
3. Mining	100%	Yes	No
4. Oil and gas	100%	Yes	No
5. Food processing	100%	Yes	No
6. Manufacturing of basic chemicals	100%	Yes	No
7. Light manufacturing	100%	Yes	No
8. Electric power generation - biomass	100%	No	No
9. Electric power generation - solar	100%	Yes	No
10. Electric power generation - wind	100%	No	No
11. Electric power transmission	100%	Yes	Yes
12. Electric power distribution	100%	Yes	Yes
13. Waste management and recycling	100%	Yes	No
14. Water distribution	100%	Yes	Yes
15. Freight rail transport	100%	Yes	No
16. Freight transport by road	100%	Yes	No
17. Internal waterways freight transportation	100%	Yes	No
18. International passenger air transport	100%	Yes	No
19. Port operation	100%	Yes	No
20. Courier activities	100%	Yes	No
21. Accommodation services	100%	Yes	No
22. Newspaper publishing	100%	Yes	No
23. Television broadcasting	40%	No	Yes
24. Fixed-line telecommunications infrastructure	100%	Yes	No
25. Fixed-line telecommunications services	100%	Yes	No
26. Wireless/mobile telecommunications infrastructure	100%	Yes	No
27. Wireless/mobile telecommunications services	100%	Yes	No
28. Banking	100%	Yes	No
29. Life insurance	100%	Yes	No
30. Health insurance	100%	Yes	No
31. Accounting, bookkeeping and auditing services; tax consultancy	100%	Yes	No
32. Higher education	100%	Yes	No

Note: 0% maximum percentage permissible share indicates that foreign ownership of a company is not allowed; 49% indicates that foreigners can hold only a minority position; 100% indicates that full foreign ownership of companies is allowed.

TABLE 13. Investing across sectors in Mexico

Investing Across Sectors in Mexico	Maximum percentage permissible share of foreign ownership of a company	Foreign firms operating?	Can the current market structure be characterized as a monopoly?
1. Agriculture[55]	49%	Yes	No
2. Forestry[56]	49%	Yes	No
3. Mining[57]	100%	Yes	No
4. Oil and gas[58]	0%	No	Yes
5. Food processing	100%	Yes	No
6. Manufacturing of basic chemicals[59]	100%	Yes	No
7. Light manufacturing	100%	Yes	No
8. Electric power generation - biomass[60]	0%	Yes	No
9. Electric power generation - solar[61]	0%	Yes	No
10. Electric power generation - wind[62]	0%	Yes	No
11. Electric power transmission[63]	0%	No	Yes
12. Electric power distribution[64]	0%	No	Yes
13. Waste management and recycling	100%	Yes	No
14. Water distribution	100%	Yes	No
15. Freight rail transport [65]	49% up to 100%	No	No
16. Freight transport by road[66]	100%	No	No
17. Internal waterways freight transportation[67]	49% up to 100%	Yes	No
18. International passenger air transport[68]	100%	Yes	No
19. Port operation[69]	49% up to 100%	Yes	No
20. Courier activities	100%	Yes	No
21. Accommodation services	100%	Yes	No
22. Newspaper publishing[70]	49%	Yes	No
23. Television broadcasting[71]	0%	No	No
24. Fixed-line telecommunications infrastructure	49%	Yes	Yes
25. Fixed-line telecommunications services	49%	Yes	Yes
26. Wireless/mobile telecommunications infrastructure[72]	49% up to 100%	Yes	No
27. Wireless/mobile telecommunications services[73]	49% up to 100%	Yes	No
28. Banking[74]	100%	Yes	No
29. Life insurance[75]	49% up to 100%	Yes	No
30. Health insurance[76]	49% up to 100%	Yes	No
31. Accounting, bookkeeping and auditing services; tax consultancy[77]	100%	Yes	No
32. Higher education[78]	49% up to 100%	Yes	No

Note: 0% maximum percentage permissible share indicates that foreign ownership of a company is not allowed; 49% indicates that foreigners can hold only a minority position; 100% indicates that full foreign ownership of companies is allowed.

TABLE 14. Investing across sectors in Peru

Investing Across Sectors in Peru	Maximum percentage permissible share of foreign ownership of a company	Foreign firms operating?	Can the current market structure be characterized as a monopoly?
1. Agriculture	100%	Yes	No
2. Forestry	100%	Yes	No
3. Mining	100%	Yes	No
4. Oil and gas	100%	Yes	No
5. Food processing	100%	Yes	No
6. Manufacturing of basic chemicals	100%	Yes	No
7. Light manufacturing	100%	Yes	No
8. Electric power generation - biomass	100%	Yes	No
9. Electric power generation - solar	100%	Yes	No
10. Electric power generation - wind	100%	Yes	No
11. Electric power transmission	100%	Yes	No
12. Electric power distribution	100%	Yes	No
13. Waste management and recycling	100%	Yes	No
14. Water distribution	100%	Yes	Yes
15. Freight rail transport	100%	No	No
16. Freight transport by road	100%	Yes	No
17. Internal waterways freight transportation	100%	Yes	No
18. International passenger air transport	49% and then 70%	Yes	No
19. Port operation	100%	Yes	No
20. Courier activities	100%	Yes	No
21. Accommodation services	100%	Yes	No
22. Newspaper publishing	100%	Yes	No
23. Television broadcasting	100%	No	No
24. Fixed-line telecommunications infrastructure	100%	Yes	No
25. Fixed-line telecommunications services	100%	Yes	Yes
26. Wireless/mobile telecommunications infrastructure	100%	Yes	No
27. Wireless/mobile telecommunications services	100%	Yes	No
28. Banking	100%	Yes	No
29. Life insurance	100%	Yes	No
30. Health insurance	100%	Yes	No
31. Accounting, bookkeeping and auditing services; tax consultancy	100%	Yes	No
32. Higher education	100%	Yes	No

Note: 0% maximum percentage permissible share indicates that foreign ownership of a company is not allowed; 49% indicates that foreigners can hold only a minority position; 100% indicates that full foreign ownership of companies is allowed.

Annex 3: Starting a Foreign Investment country details

TABLE 15. Starting a foreign business in Brazil

Procedure	Procedure name	Details	Agency involved	Time	Required of domestic company?
1	Authentication of parent company documentation	The parent company must grant a Power of Attorney to a legal representative in Brazil; its articles of association/by-laws and certificate of incorporation and all documents must be translated into Portuguese and registered with the Registry of Deeds and Documents; Authentication of articles of incorporation and bylaws	Brazilian consular authorities; Registry of Titles and Deeds; Public Notary; State Board of Trade	1 day	No
2	Check company name with State Commercial Registry Office			1 day	Yes
3	Pay registration fees			1 day	Yes
4	Register with the commercial board of the state where the main office is located and obtain identification number (NIRE)			1 day	Yes
5	Register for federal and state tax (*Secretaria da Receita Federal do Ministério da Fazenda*, SRF/MF); obtain the CNPJ number, which also registers employees with the National Institute of Social Security (*Instituto Nacional da Seguridade Social*, INSS)			About 22 days (including inspection visit)	Yes
6	Receive state tax inspection			1 day (simultaneous with previous procedure)	Yes
7	Register with the Municipal Taxpayers' Registry (*Secretaria Municipal de Finanças*) of the City of São Paulo			5 days (simultaneous with previous procedure)	Yes
8	Pay TFE to the Municipal Taxpayers' Registry			1 day (simultaneous with previous procedure)	Yes
9	Apply and obtain digital certification (token) for the use of e-invoice			2 days	Yes
10	Apply to the municipality for an operations permit (*auto de licença de funcionamento*)			90 days, simultaneous with previous procedure	Yes
11	Register the employees in the social integration program (*Programa de Integração Social*, PIS)			1 day, simultaneous with Procedure 10	Yes
12	Open a special fund for unemployment (FGTS) account in bank			1 day, simultaneous with Procedure 10	Yes
13	Notify the Ministry of Labor (*Cadastro Geral de empregados e desempregados*, CAGED)			1 day, simultaneous with Procedure 10	Yes
14	Registration with the Patronal Union and with the Employees Union			5 days, simultaneous with Procedure 10	Yes
15	International trade license	The company must be registered with the Brazilian Custom Intervening Tracking System (RADAR)	Federal Revenue and Customs Administration Brazilian Central Bank Foreign Trade Secretariat	30 days	No
16	Authorization of imported capital	All foreign remittances must be registered with the Brazilian Central Bank	Brazilian Central Bank	2 days	No
TOTAL				**152 days**	

TABLE 16. Starting a foreign business in Chile

Procedure	Procedure name	Details	Agency involved	Time	Required of domestic company?
1	Authentication of parent company documentation	Legalization of by-laws, Certificate of Good Standing and power of attorney	Public Notary	1 day	No
2	Notarize articles of incorporation; record them in a public deed and send an excerpt of the public deed to the Offical Gazette and to the Commercial Registry			1–2 days	Yes
3	Request online the registration of the company and obtain a registration certificate			2 days	Yes
4	Obtain tax registration number (*Rol Unico Tributario*) and give notice of initiation to Internal Revenue Service			1 day	Yes
5	Authorization of imported capital: Registration with the Central Bank of Chile	Decree Law 600 and Chapter XIV of the Compendium of Foreign Exchange Regulations: Authorization of Foreign Investment Committee/ Notification to Central Bank of Chile: 2 alternatives under Chilean law to convey an investment from overseas to Chile. The fastest regime is the procedure established under Chapter XIV of the Foreign Exchange Regulations of the Chilean Central Bank. This regulation requires only a notification to the Chilean Central Bank by the relevant domestic bank intervening in the conversion of foreign currency to Chilean pesos when the investment exceeds US$10,000. The second alternative is to sign a foreign investment agreement with the State of Chile in accordance to Decree Law number 600. This scheme is slower than the Chapter XIV procedure, since in addition to the signing of the foreign investment agreement, it requires authentication of the organizational documents of the entity making the investment before the Chilean Consulate and foreign investment approval by the Chilean Foreign Investment Committee. This second alternative confers the advantage of certain benefits for the investor not provided by the Chapter XIV regime, such as: (i) invariability of the tax regime; (ii) guaranteed access to the foreign exchange market (banks and other financial institutions incorporated in Chile) in order to convert foreign currency into Chilean currency and acquire foreign currency in order to send same overseas for equity and/or profit distribution; (iii) the investor is entitled to send capital overseas upon the first anniversary of the investment without payment of any tax, levy or contribution up to the amount of the investment; and (iv) a special action granted by Decree Law number 600 eliminating any difference in treatment of domestic and foreign investors.	Foreign Investment Committee / Central Bank of Chile	1 day	No
6	Print receipts/invoices by an authorized printing company			1 day	Yes
7	Seal accounting books, invoices and other documents at the IRS			1 day	Yes
8	Obtain a *patente municipal* working license from the competent municipality			1 day (simultaneous with previous procedure)	Yes
9	Register for labor-related accident insurance (*Seguro Social contra Riesgos de Accidentes del Trabajo y Enfermedades Profesionales*) at the *Mutuales de Seguridad*			1 day (simultaneous with previous procedure)	Yes
TOTAL				**10 days**	

TABLE 17. Starting a foreign business in Colombia

Procedure	Procedure name	Details	Agency involved	Time	Required of domestic company?
1	Authentication of parent company documentation	Depending on whether the country of the foreign investor is party to the Apostille Hague Convention or not, documents must be apostilled (legalized) before the Foreign Affairs Ministry or the designated authority in the country of origin and then stamped before Colombian Foreign Affairs Ministry. In addition, the Apostilled Power of Attorney must be officially translated into Spanish. A certificate of incorporation and good standing of the parent company is required for the incorporation of the subsidiary.	Ministry of Foreign Affairs	1 day	No
2	Registration of investment before Colombian Central Bank	Registration before Colombian Central Bank (*Banco de la Republica*). According to article 10 Decree 2080 of 2000, it offers the following rights: (i) to reinvest profits or keep payable undistributed profits in a surplus account; (ii) to capitalize payable profits; and (iii) to send sums abroad, in freely convertible currencies, derived from the sale of the foreign investment or from the liquidation of the business or portfolio. Foreign investments must be registered before the Central Bank, either automatically on upon entry of currency into the country, or upon filing of relevant documents. The registration procedure for foreign investments is simple and can be conducted either directly with the Central Bank through an authorized market intermediary or a current compensation account. The periods and conditions for registering foreign investments differ, depending on whether the same is made directly or via portfolio and on the method by which it is made. The general rule establishes that the registration of foreign investments occurs automatically by means of filing the international investment exchange declaration (Form No.4 of the Central Bank).	Central Bank	1 day	No
3	Register with the Registry of Commerce and with the National Tax Office (DIAN) at the Chamber of Commerce			2 days	Yes
4	International trade license	Registration request as a Colombian exporter is made to the Ministry of Commerce, Industry and Tourism by the National Registry of Exporters of Goods and Services (Form 001), established by Decree 2681 of 1999. The National Register of Exporters is an instrument created for the design of export support, which keeps updated information on exporting companies, the competitiveness of Colombian goods abroad and market performance among others; it also provides benefits to exporters. Additionally, if the FOB value of imported goods is over US$1,000, the company must hire a customs broker to import goods. Moreover, if the FOB value of exported goods is over US$10,000, the company must hire a customs broker to export goods. An Importation license is only needed if imported goods are refurbished or if they are imported as a non-refundable import. In some cases, depending on the nature of imported inputs, prior authorization from the Superintendence of Industry and Trade and/or the Ministry of Environment may be needed. The investor must register for import via the special filing window for foreign trade, known as VUCE. See www.vuce.gov.co. VUCE is not a license. VUCE consolidates all government procedures related to foreign trade operations. It has three independent sections: Imports, Exports and the Single Foreign Trade Form ("FUCE"), which allows online transactions such as electronic payment, aimed at speeding up the procedures.	DIAN and Ministry of Trade, Industry and Tourism	3 days	No
5	Open a bank account and deposit the nominal capital			1 day	Yes
6	Register company with the Family Compensation Fund (*Caja de Compensación Familiar*), the Governmental Learning Service (*Servicio Nacional de Aprendizaje*, SENA) and the Colombian Family Institute (*Instituto Colombiano de Bienestar Familiar*, ICBF)			10 days	Yes

TABLE 17. Starting a foreign business in Colombia *(continued)*

Procedure	Procedure name	Details	Agency involved	Time	Required of domestic company?
7	Register company with the Administrator of Professional Risks (ARP)			1 day (simultaneous with previous procedure)	Yes
8	Register employer and employees for pension with the Social Security System – ISS			1–3 day (simultaneous with previous procedure)	Yes
9	Register employees with a private pension fund			1 day (simultaneous with previous procedure)	Yes
10	Register employees for health coverage (public)			6 days (simultaneous with previous procedure)	Yes
11	Register employees with a severance fund			1 day (simultaneous with previous procedure)	Yes
TOTAL				**18 days**	

TABLE 18. Starting a foreign business in Mexico

Procedure	Procedure name	Details	Agency involved	Time	Required of domestic company?
1	Authentication of parent company documentation	In order for documents issued abroad to be valid in Mexico, they must be legalized before a Mexican consulate or embassy; alternatively, in case of countries which have signed the Hague Convention, ratification by local notary public and attachment of the appostille will be sufficient. Evidence of the company's incorporation and authorities of its representative, duly Apostilled.	Mexican consulate or embassy or local notary public. Depends on the country of origin	1 day	No
2	Obtain the authorization of using the company name online and file the draft deed of incorporation with the notary online			1–2 days	Yes
3	Foreign investment registration	Registration of the investment with the Foreign Investment National Registry.	Foreign Investment National Registry	1 day	No
4	Sign the deed of incorporation before a notary public, obtain Tax Registry Number (RFC) and file online the deed of incorporation with the Public Register of Commerce			2–3 days	Yes
5	International trade license	Registration at the General Importer's Registry (*Padrón General de Importadores*). There is no license required, but rather a registration before the Importers Registry.	The General Customs Administration Office (*Administración General de Aduanas*) of the Ministry of Finance	7 days	No
6	Register with the Mexican Social Security Institute (IMSS)			2–5 days	Yes
7	Notify the local government (*Delegación*) online of the opening of a mercantile establishment			1 day	Yes
8	Register with the National Business Information Registry (*Sistema de Information Empresarial*, SIEM)			1 day	Yes
TOTAL				**18 days**	

TABLE 19. Starting a foreign business in Peru

Procedure	Procedure name	Details	Agency involved	Time	Required of domestic company?
1	Authentication of parent company documentation	The documentation should be notarized and certified by the competent authorities abroad (i.e., Public Registry, Secretary of State, etc).	Competent authorities of the parent company country of origin; Foreign Affairs Ministry of Peru.	1 day	No
2	Check the uniqueness of company name and reserve it online			1 day	Yes
3	Prepare the draft deed of incorporation with the notary online			1 day	Yes
4	Sign the deed of incorporation before a notary public, file online the deed of incorporation with the Public Register of Commerce and obtain Certificate of Registration and obtain taxpayer identification number (*Registro Unico del Contribuyente*, RUC)			8 days	Yes
5	The notary stamps the accounting book and the minute book			1 day	Yes
6	Obtain municipal license from the City Council			15 days	Yes
7	Foreign Investment registration	The registry of foreign investment guarantees the possibility to repatriate funds and convert local to foreign currency as a preferential rate. Currently there are no restrictions or limitations to the inflow and outflow of foreign currency to/from Peru and all foreign exchange transactions are carried out at market rates. According to art. 3 of Legislative Decree No. 662, foreign investments are automatically approved. Once carried out, they must be registered before competent governmental agency.	The Foreign Investment Commission	1 day	No
TOTAL				**28 days**	

Annex 4: Arbitrating and Mediating Disputes country details

TABLE 20. Arbitrating and mediating disputes in Brazil

Legal framework	Brazil's Arbitration Law No. 9.307 (1996) is largely based on the UNCITRAL Model Law, except that all arbitral awards made in Brazil are considered domestic. Other legislative provisions governing procedural aspects of commercial arbitration are: Code of Civil Procedure; Brazilian Consumer's Protection Code; Federal Act No. 11.079; Federal Act No. 8.987/95; Federal Act No.9.472/97; Federal Act No. 9.478/97; Federal Act No. 10.433/2002; Federal Act No. 1.518/51 and the Decree No. 1.312/74. Brazil ratified the New York Convention in 2002.
Arbitration proceedings	Arbitration is becoming increasingly popular in Brazil and all types of commercial disputes are arbitrable. The use of arbitration to resolve shareholder disputes has become common. Pursuant to the Brazilian Arbitration Law, the arbitration clause is separable from the main contract. Thus, the validity and enforceability of the agreement to arbitrate must be analyzed separately from the validity and enforceability of the main contract. In other words, the invalidity of the main contract will not automatically entail the invalidity arbitration clause. In Brazil, some arbitration cases must be held in Portuguese and parties can only be represented by lawyers licensed in Brazil. Arbitrators are not legally required to preserve the confidentiality of the proceedings. The principle of *kompetenz-kompetenz* is recognized under Article 8 of the Brazilian Arbitration Law, which means that the arbitral tribunal (and not a domestic court) is competent to decide over its own jurisdiction and on issues related to the existence, validity and effectiveness of the arbitration agreement, as well as of the contract containing the arbitration clause. The law provides for courts' assistance with orders for interim measures and evidence taking. Under Brazilian Law and case-law, both interim measures and preliminary injunctions shall be requested to and granted by the arbitral tribunal. However, only State courts have the power to enforce such decisions. According to practice, arbitration proceedings last an average of 560 days.
Arbitration institutions	The most commonly used institution in Brazil is the Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce (*Centro de Arbitragem e Mediação da Câmara de Comércio Brasil-Canadá*). Other institutions used in Brazil are the Brazilian Arbitration Committee (*Comitê Brasileiro de Arbitragem*), a nonprofit organization which purpose is to study and promote arbitration and ADR, the National Council of the Arbitration and Mediation Institutions (*Conselho Nacional das Instituições de Mediação e Arbitragem*), the National Justice Council (*Conselho Nacional de Justiça*), the Brazilian Bar Association (*Ordem dos Advogados do Brasil*), the Center of the Industries of the State of São Paulo (*Centro das Indústrias do Estado de São Paulo*) and various other profesionnal and States institutions.
Foreign arbitral awards	Brazil is one of the slowest countries in the region when it comes to the enforcement of foreign arbitral awards (2,325 days on average). The Brazilian Arbitration Law incorporates all grounds for refusal of recognition set out in the New York Convention. An award that has been set aside by the courts in the seat of arbitration cannot be enforced in Brazil, in light of the rules on recognition and enforcement of foreign judgments set forth in the Brazilian Arbitration Act.
Mediation and conciliation	In Brazil, mediation settlements are not subject to specific enforcement under the law and have a contractual nature which can result in damages (which differs from an arbitral award that constitutes an enforceable title).

TABLE 21. Arbitrating and mediating disputes in Chile

Legal framework	Chile has 2 distinct arbitration regimes: Law No.19, 971 on International Commercial Arbitration of 2004, which follows UNCITRAL Model Law (excluding the latest amendments of 2006). Domestic arbitration provisions are governed by provisions of both the Code of Civil Procedure of 1893 (third book, title VIII) and the Organic Courts Procedure Code of 1943 (title IX). In 1979, Chile has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
Arbitration proceedings	In Chile, arbitration agreements shall be made either in writing, in any form of electronic communication, in an exchange of claim and defense statements, or through incorporation by reference. Conversely, those made orally or by conduct shall be deemed invalid. The parties are free to determine the arbitrators irrespective of their gender. However, in domestic arbitrations, it has to be mentioned that only Chilean lawyers nationals meet the requirements to be nominated as arbitrators and they shall be able to speak Spanish as only documents issued in Spanish are accepted. Freedom to choose a non-Chilean lawyer exists only in an *ex aequo et bono* (equity) arbitrations. In general, all cases that involve public policies and public trusts cannot be submitted to arbitration in Chile (such as taxes or employment rights). In September 2012, the Supreme Court of Chile has confirmed the jurisdiction of arbitral tribunals over maritime disputes, as per Article 1203 of the Commercial Code (on mandatory arbitration for shipping disputes), which was challenged a few times in the past by parties who tried to file suit directly before the Chilean ordinary courts. According to practice, arbitration proceedings last on average 496 days.
Arbitration institutions	In Chile, the most popular arbitration institution is the Arbitration and Mediation Centre of the Commerce Chamber of Santiago (CAM Santiago) with a roster of 198 domestic arbitrators and 10 mediators. Another institution worth mentioning is the Center of National Arbitration (CAN) with an online roster of 210 arbitrators and mediators. As for the latter, it is also currently offering fast-track arbitration services (proceedings length being limited to 60 days). Online ADR services are provided by the National Customer's Service and Telecommunications Department for customer-related issues. In addition, a wealth of organizations are involved in either promoting and/or providing ADR solutions, such as the Chilean Bar, the Chilean Committee of the ICC, the Center of Arbitration and Mediation of the 5th Region, the Center of Arbitration and Mediation of the Chamber of Production and Commerce of Concepción (CPCC) and the Chilean-North American Chamber of Commerce.
Foreign arbitral awards	Enforcement proceedings for foreign arbitral awards are not very time efficient and can take on average 592 days (including 6 more additional months if a motion of appeal is filed before judicial courts). The Supreme Court is competent for the recognition of the arbitral award and civil courts are competent for its enforcement. According to the Civil Procedure Code (Article 246), the authenticity of foreign arbitral awards shall be validated by an ordinary superior court of the country where the award was rendered in order to ensure their enforceability.
Mediation and conciliation	In Chile, mediation for commercial matters virtually does not exist. However, in order for mediation agreement to be awarded a status similar to that of a court decision and along those lines to be enforceable, it has to be signed by a Public Notary. All the civil and commercial cases must follow the provisions set out in the Chilean Civil Code of Procedure. Under its Article 262, the parties shall submit their dispute to conciliation. Failure to do so may result in termination of proceedings. As set out in Article 264 (2) of the Code, if the parties fail or are unable to settle their dispute by means of conciliation, the issue will be still pending before the court. Although conciliation is mandatory, it only consists of a hearing where the judge asks the parties whether conciliation is possible.

TABLE 22. Arbitrating and mediating disputes in Colombia

Legal framework	The National and International Arbitration Statute of Colombia (Law 1563/2012) enacted on July 12, 2012, is mainly based on UNCITRAL Model law and governs both domestic and international arbitration. However, the Statute excludes Article 1(3)(b)(i) of UNCITRAL Model Law, which states that an arbitration is "international" when the place of arbitration determined in or according to the arbitration agreement is located to that of the places of business of the parties. By contrast, Article 62 of Law 1563/2012 establishes that parties can only agree on an international arbitration if (i) they have their domiciles in different states at the time of agreeing; or (ii) the place of performance of the substantial part of the obligations relating directly to the subject matter of the litigation is outside the states where the parties have their main domiciles; or (iii) the dispute referred to arbitration affects the interests of international commerce. This last circumstance incorporates the objective economic criterion of internationality, recognizing arbitration as international when international trade interests are at stake (in that respect, it uses wording based on Article 1504 of the French New Code of Civil Procedure). The 2012 Statute further distinguishes between ad-hoc and institutional arbitration. In addition, the Code of Civil Procedure (Decree 1400/70), as amended, is applicable to procedural aspects of arbitration. The ability of local courts to assist the arbitral process by enforcing interim measures has also been granted under Law 1563/12. Decree 1818/98 regulates technical arbitration whereas Law 510/99 mortgage credits' arbitration. Finally, the Code of Administrative Procedure (Law 1437/2011) regulates investor-state arbitration. In 1979, Colombia has adhered to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
Arbitration proceedings	In Colombia, arbitration agreements may be made either by conduct, in writing, by any form of electronic communication, by any exchange of statements of claim and defense, or by reference in a contract to a document containing an arbitration clause. According to Law 1563/2102, the parties are free to select arbitrators irrespective of their gender or ability to speak the local language, i.e., Spanish (Article 73) with the caveat that, as far as domestic arbitration is concerned, arbitrators shall be current citizens of Colombia and meet at least the same legal qualifications required for magistrates of the High Court of Judicial District, notwithstanding any additional requirements that might be imposed by a given arbitration center (Article 7). For international arbitration, the number of arbitrators shall be odd (Article 72). According to practice prior to the enactment of the new Act, arbitration proceedings could last on average 316 days. However, Law 1563/2102 sets forth that the maximum length of arbitral proceedings shall be 6 months, only subject to an extension of maximum 12 months on the ground of a suspension of proceedings (Article 10).
Arbitration institutions	The Mediation and Arbitration Center of the Bogotá Chamber of Commerce is the core institution of its kind in Colombia, which started its operation in 1983 and provides for fast-track arbitration for small and medium-sized enterprises. It also offers online filing of conciliation and arbitration actions, as well as of other documents and consultation of current status of the proceedings. In addition, any non-for-profit individual subject to prior authorization of the Ministry of the Interior, may create a conciliation or arbitration center. There are centers of this type administered by professional and private associations, such as the National Federation of Merchants, the National Center for Conciliation and Arbitration on Transportation, the National Center of Conciliation and Arbitration, Projusticia and the Colombia Bar Association. Public entities, such as the Superintendence of Companies or the chambers of commerce of the different cities, also offer this type of services to citizens. According to the Ministry of Justice, there are 338 active conciliation and 125 authorized arbitration centers throughout the country.
Foreign arbitral awards	According to practice, it takes 917 days on average to enforce an arbitral award. Decisions on enforcement are appealable before the Higher Court (Civil Chamber) of the Judicial District where the award was rendered (12 extra months) and ultimately before the Constitutional Court (1 extra month). Article 111 of the Law 1563/12 establishes that any international award granted by a tribunal sitting in Colombia is treated as a national award, therefore not requiring recognition for enforcement. International awards granted outside Colombia require a petition before the Civil Appeals section of the Supreme Court of Justice. Obtaining a writ of execution issued by the Civil Circuit Courts takes 1-6 additional month/s.
Mediation and conciliation	Mediation and conciliation provisions are contained in a number of different laws which do not follow the UNCITRAL Model Law, such as a) the National and International Arbitration Statute of Colombia (Law 1563/2012); b) the Decree 2651 of 1991; (c) the Law 446 of 1998; d) Law 640/01. Law 1563/2012 provides for a preliminary hearing where the parties to a dispute may endeavor to settle it by way of conciliation (Article 24). In particular in commercial cases, family and administrative law cases conciliation is a prerequisite for litigation. If during the arbitral proceedings, the parties are able to reach a settlement by way of conciliation or mediation, the arbitral tribunal will conclude the arbitral proceedings (Article 103). A plural number of conciliators is not allowed in Colombia (only one conciliator is permitted). Furthermore, according to Law 640/2001, no conciliation should last more than 3 months. Nonetheless, according to practice, mediation proceedings approximately take from roughly 1 to 2 months from the referral of the case to the mediation institution to the settlement of the case.

TABLE 23. Arbitrating and mediating disputes in Mexico

Legal framework	In Mexico, arbitration is governed by Chapter 4 of the Federal Commerce Code (Articles 1415 to 1480), which is largely based on the UNCITRAL Model Law. In 2011 the Commerce Code was amended to incorporate the provisions of the Model Law, as amended in 2006, with minor modifications. The Chapter 4 of the Federal Commerce Code allows parties to request a referral to arbitration in the first motion on the merits of the case. It also provide for specific judicial assistance to arbitration proceedings (appointment of arbitrators, provisional measures, taking of evidence and calculation of tribunal's fees) and special procedure for recognition and enforcement of awards and interim measures. Mexico ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1971.
Arbitration proceedings	Mexican courts have exclusive competence to resolve disputes over land and water within Mexican territory. Hence, dispute involving immovable property matters such as rights *in rem*, the use and exploitation of concession rights and the lease agreements over such assets cannot be resolved through arbitration. Parties are free to choose any arbitrators and the language of their proceedings in both domestic and international arbitrations. The law requires arbitrators to disclose any circumstances likely to give rise to justifiable doubts regarding their impartiality or independence (Article 1428 of the Federal Commerce Code). Parties can choose foreign lawyers to represent them in arbitrations in Mexico. The court is entitled to grant preliminary or interim relief in proceedings subject to arbitration. Parties have the choice to request preliminary or interim measures before either the arbitral tribunal or a domestic court, before or during the arbitration proceedings (Article 1425 of the Federal Commerce Code). The request for such a measure to a court does not affect the jurisdiction of the arbitration tribunal, since relief sought may not be considered as a waiver to the arbitration agreement. According to practice, arbitration proceedings could last on average 254 days.
Arbitration institutions	The most commonly used institution in commercial arbitration is the Mexican National Chamber of Commerce. Other institutions are: the International Chamber of Commerce Chapter México, the Centre of Arbitration of México (*Centro de Arbitraje de México*), the Center of Arbitration of the Construction Industry, the *Cámara Mexicana de la Industria de la Construcción*, the Federal Consumer Protection Institute (PROFECO) which deals with disputes of commercial nature between consumers and suppliers and the Commission for the Protection and Defense of the Users of Financial Services (CONDUSEF) which deals with disputes of financial nature between the users of financial services and financial institutions, including insurance companies. Both PROFECO and CONDUSEF are official institutions. In particular, PROFECO has an online arbitration center, solely dedicated to cases between consumers and registered companies.
Foreign arbitral awards	Mexican courts have stated a pro-arbitration policy in multiple decisions. The decision enforcing the award, however, may be challenged by a constitutional trial *Amparo Indirecto*. This is a two-stage constitutional procedure that includes federal proceedings and a federal appeal that is filed before a federal district court and before a collegiate circuit court respectively. It could take from 521 days on average to enforce an arbitral award in court.
Mediation and conciliation	At present, 27 States of Mexico have approved an Alternative Dispute Resolution Law regarding criminal and civil law cases in conformity with the 2008 reform of Article 17 of the Mexican Constitution. Mediation in Mexico is widely used through court-annexed mediation and the Centers of Alternative Justice (*Centros de Justicia Alternativa*). Among them, the Centre of Alternative Justice of the Superior Court of Justice of the Federal District (*Centro de Justicia Alternativa del Tribunal Superior de Justicia del Distrito Federal*) is a commonly used mediation institution. This mediation center was created by the superior Tribunal of Justice of the Federal District, which trains and certifies individuals acting as mediators. The Law on Alternative Justice of the Superior Tribunal of Justice of the Federal District is not a federal law, but a local law for the Federal District and only provides for mediation as alternative dispute resolution in civil, commercial, criminal and family disputes at the local level (only apply in Mexico D.F.).

TABLE 24. Arbitrating and mediating disputes in Peru

Legal framework	Peruvian Arbitration Decree was enacted in 2008 (Legislative Decree No. 1071) and is largely based on the UNCITRAL Model Law with some exceptions. The basis for setting aside arbitration awards under Peruvian law is more restrictive than the UNCITRAL Model Law, for example: to be admissible the ground for setting aside an arbitral award, it has to be requested and dismissed during the arbitration proceedings (Article 63 (2) of the Legislative Decree No. 1071). Peruvian law allows foreign parties to renounce to set aside an arbitral award (Article 63 (8) of the Legislative Decree No. 1071). Peru ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1988.
Arbitration proceedings	In Peru, most commercial matters are arbitrable. Exceptions are disputes relating to insolvency, bankruptcy or liquidation, tax and customs disputes and antitrust or unfair competition disputes. The law distinguishes between arbitration at law and arbitration at equity and the difference between both is that in arbitration at law, the arbitrators must be attorneys, unless parties agree otherwise. Arbitrators can be challenged on grounds concerning their impartiality and/or independency and have the duty to preserve the confidentiality of arbitration proceedings (Articles 28 and 51 of the Legislative Decree No. 1071). The person appointed as an arbitrator has to reveal all circumstances that may arise justified doubts about its independence and fairness. This duty to reveal extends to all the arbitration proceeding, in case new circumstances that affect its independence and objectivity may arise (Article 28 (1) of the Legislative Decree No. 1071). Peruvian law establishes strict time frames for conducting arbitration proceedings, notably for the period from the filing of the request to the constitution of the arbitration tribunal which cannot exceed 40 business days. According to practice, arbitration proceedings could last 317 days on average. The Decree requires courts to assist arbitrators in the taking of evidence and ordering provisional measures. However, courts are only competent to grant interim relief before the arbitral tribunal is constituted. Once the tribunal is constituted, it is of the arbitral tribunal´s competition to grant interim measures and relief. By Official Letter 005-2005-P-CS-PJ of July 4, 2005, the Supreme Court of Peru urges lower courts to respect arbitration as an alternative method of dispute resolution, agreed by the parties on free will and based on its own principles and rules.
Arbitration institutions	The most commonly used institution is the Lima Chamber of Commerce (*Centro de Conciliación y Arbitraje Nacional e Internacional de la Cámara de Comercio de Lima*). Other arbitration institutions are the Arbitration Centre of the American Chamber of Commerce ("AmCham"), the Centre for Analysis and Resolution of Disputes of the *Pontificia Universidad Católica del Perú*, the Arbitration Centre of the Departamental Council of the Board of Engineers of Peru, the Arbitation Centre of the Office for Supervision of State Contracting (for arbitrations involving the state entities' contracting for the purchase of goods and services), the Arbitration Centre of the *Círculo Peruano de Arbitraje*, the Arbitration Centre of the *Club Español de Arbitraje* and also the Peruvian Institute of Arbitration (a private non-profit created in order to promote the domestic and international arbitration in Peru through academic activities, international conferences, seminars, conferences, breakfast meetings, publications, newsletters).
Foreign arbitral awards	For the recognition of foreign arbitral awards, the competent court is the Civil Chamber or the Civil Chamber sub-specialized in commercial matters of the Superior Court of either the place of domicile of the respondent or (if the respondent has no Peruvian domicile) the place where the respondent's assets are located. A statement of recognition of the award must first be obtained in order to proceed with the enforcement stage. Once the enforcement proceeding is initiated, the rules and the procedure set forth in Article 68 of the Decree shall apply. Practitioners consider that the Decree establishes a favorable framework leading to the enforcement of the foreign arbitral awards and that courts rarely refuse to enforce foreign arbitral awards. It could take 752 days in average to enforce an arbitration award in a commercial court of first instance.
Mediation and conciliation	Mediation and conciliation are not commonly used ADR in Peru. The Law No. 26872 regulates mandatory extrajudicial conciliation which is a conciliation process that takes place before the initiation of judicial proceedings and that, when applicable, is a mandatory requirement for admitting the claim.

Annex 5: Employing Skilled Expatriates country details

TABLE 25. Employing skilled expatriates in Brazil

APPLICATION PROCESS AND TIMELINE FOR OBTAINING A TEMPORARY WORK PERMIT IN BRAZIL				
Order	**Pre or Post**	**Procedural Step**	**Average completion time in practice**	**Average completion time by law**
1.	Pre	Before filing the TWP application, the hiring company must pre-register the visa application online with the Ministry of Labor.	Within minutes	N/A
2.	Pre	The hiring company must submit an application on behalf of the foreign IT specialist to the General Department of Immigration, Ministry of Labor and Employment, along with the following documents: a. TWP application form; b. Copy of the hiring company's Articles of Association, duly registered with the commercial board or public civil registry in Brazil; c. Copy of the National Legal Entity Registration Card (CNPJ); d. Affidavit evidencing that the hiring company shall be responsible for all the medical expenses incurred by the foreigner and his/her dependants during their stay in Brazil; e. Affidavit evidencing that the hiring company shall be responsible for the repatriation of the expat and his/her dependants at the end of their stay in Brazil; f. Individual immigration tax payment receipt; g. Photocopy of expat's valid passport; h. Employee's education and qualification certificates authenticated by a Brazilian diplomatic department and translated by an authorized translator in Brazil; i. The employment contract.	4–5 weeks	30 days
3.	Pre	The Ministry of Labor and Employment reviews the application and, upon approval publishes an approval notification in the Official Gazette and notifies the corresponding Brazilian Consulate or Embassy of its decision.	5 days	30 days
4.	Pre	The expatriate must obtain an appointment for an interview with the local consulate or embassy.	N/A	30 days
5.	Pre	On the date of the interview, the expatriate must appear in person before the Brazilian embassy or consulate along with the required documents to get the TWP stamped in his or her passport. Upon arrival in Brazil, the foreign expat is allowed to start working legally.	2 weeks	4 weeks
6.	Post	Within 30 days of arrival in Brazil, the expat must register him/herself at the Brazilian Federal Police to obtain his/her foreigner identification number (RNE number). *Note*: Upon registration, the expat will receive a confirmation receipt that he/she must carry with him or her until they obtain their RNE number. The RNE is typically issued within 6 months from the day of application.	1 day	N/A
7.	Post	The foreigner must apply to an agency at the post office to obtain the individual tax payer number (the *Cadastro de Pessoas Físicas* or CPF number).	3–4 days	N/A
8.	Post	The expat must apply before the regional office of the Ministry of Labor in Brazil to obtain the Work and Social Security Card (the *Carteira de Trabalho e Previdência Social*).	7 days	N/A

TABLE 26. Employing skilled expatriates in Chile

APPLICATION PROCESS AND TIMELINE FOR OBTAINING A TEMPORARY WORK PERMIT IN CHILE				
Order	**Pre or Post**	**Procedural Step**	**Average completion time in practice**	**Average completion time by law**
1.	Pre	The expat must submit an application to the Department of Foreign Affairs and Immigration under the Ministry of Interior (DFAI), along with the following documents: a. Copy of a valid employment contract legalized and notarized by a notary public. (**Important**: *This contract must contain specific covenants that address the employer's obligation to pay repatriation expenses to the employee*); b. Copy of ID page of valid passport; c. Copy of passport page where the last entry was stamped; d. Copy of tourist visa; e. Four passport-size photos.	1 day	N/A
2.	Pre	DFAI performs a preliminary examination of the application and the documents provided. Should the application and the documents provided meet the basic requirements established by the governmental authority, the applicant shall be notified that the case is under analysis. Upon this notice applicant could also be granted a temporary work permit while the final decision is pending.	3–6 weeks	N/A
3.	Pre	The immigration authority performs an in-depth analysis of the applicant's case and based on that could request further documentation or make a decision based on the information provided. If a decision is made, the expatriate will be notified and summoned to the relevant local Chilean authority (an embassy, consulate, local government office or the DFAI office in Santiago).	5–10 weeks	
4.	Pre	The expatriate appears before the Chilean embassy or consulate to get the TWP stamped in the applicant's passport. Once the visa stamp is obtained in the passport, the expat is legally allowed to work in Chile.	1 day	N/A
5.	Post	Within 30 days of arrival in Chile, the expat must do the following: a. Register at the INTERPOL office; b. Obtain the identification card (*Cédula de Identidad Extranjeros*) from the Civil Registry office.	1 day	Within 30 days

TABLE 27. Employing skilled expatriates in Colombia

APPLICATION PROCESS AND TIMELINE FOR OBTAINING A TEMPORARY WORK PERMIT IN COLOMBIA				
Order	**Pre or Post**	**Procedural Step**	**Average completion time in practice**	**Average completion time by law**
1.	Pre	Procurement and legalization of the foreign skilled expats documents (Bachelor Degree Certificate / Diploma, among others).	1–2 weeks	N/A
2.	Pre	The legal representative of the hiring company submits an application on behalf of the foreign national to the relevant Professional Council, along with the required documents. The Professional Council studies the case and if approved the TWP can be requested at the Consulate with a signed letter by the Professional Council.	10 days	2 weeks
3.	Pre	Once the foreign IT specialist obtains the temporary work permit, he/she should apply before his/her local Consulate to obtain the TWP.	5 days	1 week
4.	Pre	Once the foreign IT specialist enters Colombia, he/she must register him/herself before the Colombian Migration Office to obtain the Alien ID card.	Once filed the registration takes 2 hours. The Colombian Migration Office takes 6-8 months to issue the Alien ID Card.	Requirement to register within 2 weeks after entry.
5.	Pre	Legal representative of the hiring company must notify the Colombian Migration Office that the company has hired the foreign national and indicate his/her job position in the company.	1 week	2 weeks

TABLE 28. Employing skilled expatriates in Mexico

APPLICATION PROCESS AND TIMELINE FOR OBTAINING A TEMPORARY WORK PERMIT IN MEXICO				
Order	**Pre or Post**	**Procedural Step**	**Average completion time in practice**	**Average completion time by law**
1.	Pre	a. Complete the relevant application form online upon which a registration number is issued. b. The hiring company or the applicant must submit an application to the National Migration Institute, along with the following documents: 1. Photocopy of applicant's original academic degree, apostilled or legalized; 2. Photocopy of the applicant's valid passport; 3. The hiring company's public deed of incorporation and company's last tax return; 4. Employment contract or job offer letter; 5. Copy of the relevant application form completed online, duly signed by applicant; 6. A proxy letter signed by the hiring company's legal representative and 2 witnesses, in favor of the person who will handle the process (*to be included only if the hiring company is applying on behalf of the applicant*).	1 day	N/A
2.	Pre	TWP authorization is issued by the National Migration Institute and submitted to a Mexican diplomatic post (Embassy or Consulate).	5–7 weeks	30 days
3.	Pre	The expatriate appears before the Mexican Embassy or Consulate for an interview in order to get the provisional TWP stamped in the applicant's passport.	Depends on the availability of appointment dates at the diplomatic post, however normally the temporary visa is issued within 2 weeks of the application date.	N/A
4.	Pre	Once the expat enters Mexico he/she will be given a Multiple Migration Form "FMM" (*Forma Migratoria Múltiple*) by the migration agents. The expat must then fill in a FMM exchange petition online to obtain the TWP and appear personally before the National Migration Institute to submit the original FMM and application form and receive the TWP photo ID.	Varies in every Migration office. Some issue the TWP immediately, some take up to 10 days.	The applicant has 30 days after entering Mexico for the first time to obtain the TWP. National Migration Institute must issue TWP photo ID in 30 days.
5.	Post	Tax Identity Number and Social Security Institute (IMSS) registration.	Same day	Same day

TABLE 29. Employing skilled expatriates in Peru

APPLICATION PROCESS AND TIMELINE FOR OBTAINING A TEMPORARY WORK PERMIT IN PERU				
Order	**Pre or Post**	**Procedural Step**	**Average completion time in practice**	**Average completion time by law**
1.	Pre	The hiring company must submit the employment contract approval application to the Ministry of Labor, along with the following documents: a. Three copies of the employment contract; b. Company's sworn statement regarding compliance with the quotas and restrictions; c. Employee's professional degree certificate, certificate of work experience.	1 week	1 week
2.	Pre	Once the employment contract is approved and notified to the employer's address, a copy of the approval has to be either notarized by a public notary or certified by the notary of the General Director of Immigration and Naturalization (DIGEMIN).	2 days	2 days
3.	Pre	Once the employment contract is approved, the hiring company must submit an application to the DIGEMIN to start the visa approval process along with the following documents: a. Copy of the approved labor contract; b. Copy of the first page of the passport; c. Copy of the Migration Card (T.A.M.); d. Migratory fee as applicable.	6 weeks	4 weeks
4.	Pre	Appear for an interview at the INTERPOL office along with a copy of the application submitted to the DIGEMIN and the applicant's passport.	1 day	1 day
5.	Pre	The DIGEMIN considers the report issued by the Interpol and then makes a final decision on the granting of the work visa.	7 days	5 days
6.	Post	Once the work visa is granted, the skilled expat must be registered in the Foreign Citizen Registry of DIGEMIN, after which a Foreign citizen identification card (*Carne de Extranejria*) shall be issued to him/her. For this purpose, the foreign employee must submit the following documents to DIGIMEN: a. Form F-004 (provided by DIGEMIN); b. A receipt evidencing the payment of the administrative fees (US$13 approximately); c. *Banco de la Nacion* receipt of payment of US$15, which is the registration fee for the Foreign Citizen Registry; d. Payment of an annual fee of US$20.00 at DIGEMIN.	1 day	N/A
7.	Post	Once the work visa is obtained, the foreign employee must be registered in the company's payroll. Only upon completion of this registration can the foreign employee render services to the company.	1 day	N/A

Annex 6: Converting and Transferring Currency country details

TABLE 30. Converting and transferring currency in Brazil

Indicator	Restrictions	Classification
Receiving investment inflows:		
Equity capital inflows	Documentation and registration required for all inflows	Administrative requirement
Foreign loan inflows	Registration required prior to loan inflow for subsequent repayments to be made	Administrative requirement
Repatriating investments and income:		
Outflows of liquidated capital/capital gains	Registration required before transfer, with supporting documentation	Administrative requirement
Dividend payments abroad	Registration required before transfer, with supporting documentation (reported average number of days required for the transfer: 3)	Administrative requirement
Foreign loan interest and principal payments abroad	Timing restriction, as payments must be made per initial repayment schedule; documentation required (reported average number of days required for the transfer: 6)	Moderate control
Making payments abroad:		
Payments for imported goods	Registration required before payment with documentation	Administrative requirement
Payments for imported services	Registration required before payment with documentation	Administrative requirement
Payments for international travel	Documentation required for all payments	Administrative requirement
Personal payments/transferring wages abroad	Documentation required for all payments	Administrative requirement
Holding foreign exchange:		
Domestic foreign exchange bank accounts	Not allowed for most types of firms	Extreme control
Foreign bank accounts in foreign exchange	Periodic reporting on the account required	Unrestricted
Export proceeds	None	Unrestricted

TABLE 31. Converting and transferring currency in Chile

Indicator	Restrictions	Classification
Receiving investment inflows:		
Equity capital inflows	Notification of the inflow is required	Unrestricted
Foreign loan inflows	Notification of the inflow is required	Unrestricted
Repatriating investments and income:		
Outflows of liquidated capital/capital gains	Notification of the outflow is required	Unrestricted
Dividend payments abroad	Notification of the outflow is required (reported average number of days required for the transfer: 1)	Unrestricted
Foreign loan interest and principal payments abroad	Notification of the outflow is required (reported average number of days required for the transfer: 3)	Unrestricted
Making payments abroad:		
Payments for imported goods	None	Unrestricted
Payments for imported services	None	Unrestricted
Payments for international travel	None	Unrestricted
Personal payments/transferring wages abroad	None	Unrestricted
Holding foreign exchange:		
Domestic foreign exchange bank accounts	None	Unrestricted
Foreign bank accounts in foreign exchange	Notification of opening the account required	Unrestricted
Export proceeds	None	Unrestricted

TABLE 32. Converting and transferring currency in Colombia

Indicator	Restrictions	Classification
Receiving investment inflows:		
Equity capital inflows	Must be transacted through formal exchange market with declaration	Administrative requirement
Foreign loan inflows	Registration required prior to receiving loan; must be transacted through formal exchange market with declaration	Administrative requirement
Repatriating investments and income:		
Outflows of liquidated capital/capital gains	Must be transacted through formal exchange market with declaration	Administrative requirement
Dividend payments abroad	Must be transacted through formal exchange market with declaration (reported average number of days required for the transfer: 1)	Administrative requirement
Foreign loan interest and principal payments abroad	Must be transacted through formal exchange market with declaration (reported average number of days required for the transfer: 3)	Administrative requirement
Making payments abroad:		
Payments for imported goods	Must be transacted through formal exchange market with declaration	Administrative requirement
Payments for imported services	None	Unrestricted
Payments for international travel	None	Unrestricted
Personal payments/transferring wages abroad	None	Unrestricted
Holding foreign exchange:		
Domestic foreign exchange bank accounts	Not allowed	Extreme control
Foreign bank accounts in foreign exchange	Registration of the account is required to use account for certain transactions	Administrative requirement
Export proceeds	Funds abroad must be kept in a certain type of registered account	Administrative requirement

TABLE 33. Converting and transferring currency in Mexico

Indicator	Restrictions	Classification
Receiving investment inflows:		
Equity capital inflows	None	Unrestricted
Foreign loan inflows	None	Unrestricted
Repatriating investments and income:		
Outflows of liquidated capital/capital gains	None	Unrestricted
Dividend payments abroad	None (reported average number of days required for the transfer: 1)	Unrestricted
Foreign loan interest and principal payments abroad	None (reported average number of days required for the transfer: 2)	Unrestricted
Making payments abroad:		
Payments for imported goods	None	Unrestricted
Payments for imported services	None	Unrestricted
Payments for international travel	None	Unrestricted
Personal payments/transferring wages abroad	None	Unrestricted
Holding foreign exchange:		
Domestic foreign exchange bank accounts	None	Unrestricted
Foreign bank accounts in foreign exchange	None	Unrestricted
Export proceeds	None	Unrestricted

TABLE 34. Converting and transferring currency in Peru

Indicator	Restrictions	Classification
Receiving investment inflows:		
Equity capital inflows	Registration required, following the inflow	Unrestricted
Foreign loan inflows	Interest rate ceiling (no more than 3% above rate prevailing in foreign originating market)	Moderate control
Repatriating investments and income:		
Outflows of liquidated capital/capital gains	Notification of the capital decrease required	Unrestricted
Dividend payments abroad	None (reported average number of days required for the transfer: 2)	Unrestricted
Foreign loan interest and principal payments abroad	None (reported average number of days required for the transfer: 3)	Unrestricted
Making payments abroad:		
Payments for imported goods	None	Unrestricted
Payments for imported services	None	Unrestricted
Payments for international travel	None	Unrestricted
Personal payments/transferring wages abroad	None	Unrestricted
Holding foreign exchange:		
Domestic foreign exchange bank accounts	None	Unrestricted
Foreign bank accounts in foreign exchange	None	Unrestricted
Export proceeds	None	Unrestricted

Endnotes

1 This introductory section draws largely on "New Trends and Realities in Foreign Direct Investments in Latin America," a background paper written by CAF - Banco de Desarrollo de América Latina. This background paper is available on request as a source of additional data, details, and research citations regarding FDI in Latin America.

2 This text box draws largely on "Does Doing Business Matter for Foreign Direct Investment?" from *Doing Business 2012* (World Bank 2012).

3 See for example Djankov et al. 2002 and López-Claros 2012.

4 See Annex 1 for a complete list of countries covered in the FDI Regulations database.

5 Additional details on the case studies used across the five topics are available upon request from the FDI Regulations project.

6 Additional details on the methodology, as well as country-level data available from a previous related dataset called Investing Across Borders, can be found online at www.investingacross-borders.org

7 A rule-of-thumb threshold is that a 10 percent equity ownership in a foreign enterprise represents sufficient managerial control to be counted as FDI; see for example the IMF Balance of Payments Manual and the UNCTAD classification of FDI.

8 Other countries in the region have also been very successful at attracting FDI, such as Panama. The selection of these 5 was limited to the pool of 15 Latin American economies covered by the FDI Regulations project.

9 See for example Duggan et al. 2013, Arnold et al. 2011, and Fernandes and Paunov 2012.

10 FDI database of UNCTAD (www.unctad.org) and World Development Indicators database of the World Bank Group (data.worldbank.org).

11 Chile, the internal waterways freight transportation; Colombia, the television broadcasting; Honduras, the electric power transmission; Bolivia, the oil & gas; Haiti, banking and Peru, the international passenger air transport.

12 According to Article 3 of Law 3.059, cabotage is reserved for Chilean vessels. Foreign merchant vessels can participate in cabotage, following a public bidding contest, when the freight volume is less than 900 tons and there are no Chilean vessels available, or when freight volume is more than 900 tons. Relevant regulation for this restriction is also found in the requirements to register a Chilean vessel under Article 11 of Law 2.222. Nevertheless, Chilean Law recognizes the international reciprocity principle, whereas the Maritime Authority could free from these requirements any fishing company incorporated under Chilean law, which is owned mainly by foreign investors, and on condition that, in the country of origin of those foreign investors, foreign vessels can be registered for carrying out fishing activities according to the said principle.

13 According to Article 1 of Law 680, foreign investment in television broadcasting is capped at 40% of the total ownership of a company.

14 Peruvian law establishes a 49% threshold limit for foreign ownership on this activity. However, according to Article 160 of Law 27261, Supreme Decree 050-2001-MTC, after 6 months following incorporation, foreign companies or individuals may own up to 70% of voting shares of these corporations.

15 According to Article 181 of Law No.7,565/86 at least 80% of the shares of an airline Company must be held by Brazilian nationals. Pursuant to Article 222 of the Brazilian Federal Constitution, and Article 4 of Law 10.610/2004, at least 70% of the corporate capital of a newspaper publishing company must be held by Brazilian nationals. Pursuant to Article 222 of the Brazilian Federal Constitution, and Article 2 Section XVIII Subsection c) of the Law 12.485/2011, at least 70% of the corporate capital of a newspaper publishing company must be held by Brazilian nationals.

16 Article 2, Section I, subsection a) and Article 8, Sections X and XI of the Regulations of the Foreign Investment Law and the National Registry of Foreign Investments.

17 Article 7 and 8 of the Mexican Foreign Investment Law.

18 Article 2, Section I, Subsection b) of the Regulations of Foreign Investment Law and the National Registry of Foreign Investments; and Article 3 of the Law of the Public Service of Electric Energy.

19 In Colombia, there are currently only two broadcasting television channels. However, a public bid for granting a concession for a third channel is expected to take place before the 2014 elections.

20 Examples of this include ownership and operation licensing of an international gateway for telecommunications, limits on opening multiple brand stores or restrictions or products for retail, and licensing requirements of professionals providing services on a cross-border basis.

21 Data will be used for contextual purposes to compare SEZ regimes and practices worldwide.

22 Data was gathered based on the assumption that the foreign-owned subsidiary on which the survey is centered is a manufacturing plant, engaged in international trade.

23 China is a good example. According to a study published by the World Bank in 2011, the total GDP of the major state-level zones in China accounted for 22% of national GDP, 46% of foreign direct investment and 10% of employment (mostly skilled jobs). If other sub-national level SEZs were included, the figures would be even higher. For additional information about SEZ regimes in China, see Zhihua Zeng 2011.

24 Public land includes state- or crown-owned land or land currently held by the national, municipal/sub-national government, or any other administrative sub-division, as applicable in the country surveyed.

25 Article 396 of the new Bolivian Constitution.

26 The full text of the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, of October 5, 1961, as well as additional details, may be found at: http://www.hcch.net/index_en.php?act=conventions.pdf&cid=41

27 For methodological purposes, the FDI Regulations indicators quantify this step as adding only 1 day to the overall establishment process, since the time involved depends mainly on the authorities in the country of origin of the parent company which may differ from one country to another.

28 A paper on Arbitrating and Mediating Disputes highlighting these results and more is available in draft form. For more information on this, please consult the FDI Regulations team.

29 This impact includes possible national court interference or assistance with arbitration proceedings, having laws applicable to the arbitration agreement—unless the parties have agreed otherwise—and, last but not least, enforcement by the national court of foreign arbitral awards.

30 In Argentina, provisions on commercial arbitration are scattered throughout the Civil Code, the Commercial Code, and the National Code of Civil and Commercial Procedure.

31 These countries are Chile, Colombia, Costa Rica, Ecuador, Guatemala, and Nicaragua.

32 All LAC countries except for Argentina, Brazil, and the Dominican Republic.

33 The National and International Arbitration Statute of Colombia (Law 1563/2012) of July 12, 2012.

34 Law No. 8937 on International Commercial Arbitration Law, based on the Model Law of the United Nations Commission on International Trade Law of April 27, 2011.

35 Law No. 64 of the Bolivian Attorney General's Office of December 5, 2010, and Chapter 4 of the Federal Commerce Code of Mexico.

36 Article 1(3)(b)(i) of UNCITRAL Model Law.

37 Article 62 of Law 1563/2012.

38 Decision of the Superior Court of Justice of Brazil, May 23, 2011.

39 David A. Shirk. 2011. "Justice reform in Mexico: change and challenges in the judicial sector," *Mexican Law Review*, Vol.III, no.2., Jan.–Jun. 2011.

40 A paper on Employing Skilled Expatriates highlighting these results and more is available in draft form. For more information on this, please consult the FDI Regulations team.

41 The Personalized Employment Pass, can be issued for a maximum of a 5-year non-renewable period, and is designed to offer greater flexibility, enabling the holder to take up to 6 months between jobs to evaluate opportunities, without having to leave Singapore. If employment by a Singapore-registered company is not obtained at the end of the 6-month period, the pass may be cancelled.

42 Employment Pass and former Employment Pass holders fulfilling certain criteria may also be eligible for a Personalized Employment Pass.

43 The Nationality Act contains specific requirements for foreigners to obtain citizenship in Korea.

44 The application must be submitted with support from the sponsoring company.

45 One may apply for Indonesian citizenship after having resided in Indonesia for 5 consecutive years or for 10 non-consecutive years; others requirements are contained in Law Number 12 of 2006 on Citizenship. The duration of the process is 6 months.

46 However, there are two exceptions to this rule: a) For execution of projects/contracts granted by Indian missions, a maximum of 1% of the total persons employed may be foreign highly skilled and professionals, with a maximum cap of 20; b) for power and steel sector projects the limitation is 1% with a maximum cap of 40. If additional foreigners are needed clearance from the Indian government is required.

47 However, the Ministry of Home Affairs (MHA) has recently relaxed the norms for change of employer, where the change is within the parent/subsidiary or within subsidiaries (group companies) subject to fulfillment of the following conditions: a) the change of employment would be permitted only for senior-level positions, namely managerial, senior executive, or skilled positions; b) The foreign national must fulfill all the other EV conditions; c) a declaration from the holding company, that the company in which the change of employment has been requested is its subsidiary; d) a no-objection letter from the company where the foreign national is seeking change of employment; e) justification from the holding company warranting change of employment; f) change of employment between the companies as mentioned above may be permitted only once during the 5-year maximum duration of the EV; and g) the 5-year maximum duration begins from the date of issue of the original TWP.

48 This data is from the MIGA-EIU Political Risk Survey 2012; see Multilateral Investment Guarantee Agency 2013.

49 This regional information is based on an average across economies in each region that are covered by FDI Regulations.

50 Current transactions, according to international balance of payments classifications, broadly include payments for goods and services and transfers of employee and investment income. These are differentiated from capital and financial transactions, which relate to the transfer of assets, such as direct or portfolio investment.

51 Article VIII of the IMF's Articles of Agreement defines the general obligations of IMF members, which include avoiding restrictions on current payment. See VIII (2) at: http://www.imf.org/external/pubs/ft/aa/index.htm

52 Note that foreign direct investment in Brazil may also be made using domestic currency held in domestic accounts in Brazil, although the case study underlying the CTC analysis focuses on inflows of foreign exchange.

53 Best practices do suggest that it is preferable to leave such decisions in the hands of commercial banks, as opposed to having specific documentation requirements dictated by the government. One example is the Financial Action Task Force's recommendation that private financial institutions implement due diligence for anti-money-laundering purposes. The ideal practice would be a middle-ground, in which private banks are able to implement documentation requirements in a way that does not unduly inhibit business transactions.

54 See the Financial Action Task Force Recommendations at: www.fatf-gafi.org/recommendations. Recommendation #10 in particular recommends that customer due diligence be carried out by commercial banks for transactions that exceed a risk threshold of USD/EUR 15,000.

55 Article 130 of the Agrarian Law establishes a 49% threshold limit for foreign investment in T series shares, which represent the contributed capital for agricultural, livestock, or forestry land. Article 7 Section III Subsection r) of the Foreign Investment Law also regulates and limits such activity for foreign investment.

56 *Idem*.

57 100%, except for radioactive mineral which are reserved for the government as established by Article 5 Section V of the Foreign Investment Law.

58 Article 27 of the Mexican Constitution and Article 5 Section I and II of the Foreign Investment Law determine that oil and gas activities are the exclusive prerogative/responsibility of the Mexican state. However, Article 2 Section I Subsection a) of the Regulations of the Foreign Investment Law and the National Registry of Foreign Investments establishes that the activities related to transport, storage and distribution of gas, as differentiated from liquefied petroleum gas, are not exclusive to the Mexican state and that, therefore, foreign investment is allowed in such activities. Article 8 Sections X and XI determine that foreign investment is allowed in 49% of the capital stock regarding the building of pipelines for transportation of oil and petroleum products as well as the drilling of oil and gas wells. Such threshold may be increased through a permit from the National Commission on Foreign Investment.

59 100% except for activities related with the production of petrochemical products; Article 5 Section II of the Foreign Investment Law.

60 As established by article 27 of the Mexican Constitution, Article 5 Section III of the Foreign Investment Law and Article 1 of the Law of the Public Service of Electric Energy, this activity is reserved exclusively to the Mexican State. Nevertheless, Article 2 Section I Subsection b) of the Regulations of the Foreign Investment Law and the National Registry of Foreign Investments and Article 3 of the Law of the Public Service of Electric Energy determines that electric energy is not considered public service under the following conditions: (i) generation of electric energy for self-supply, cogeneration or small scale production; (ii) generation of electric energy carried out by independent producers for sale to the Federal Electricity Commission; (iii) generation of electric energy for export, derived from cogeneration, independent production, and small scale production; (iv) importation of electric energy by individuals or legal entities, intended exclusively for self-supply for their own use; (v) generation of electric energy intended for use in emergencies caused by interruptions in the public service of electric energy.

61 *Idem*.

62 *Idem*.

63 Articles 4 and 6 of the Law of Public Service of Electric Energy.

64 *Idem*.

65 However, according to Article 8 Section XII of the Foreign Investment Law, the 49% limit may be increased with authorization by the National Commission on Foreign Investment.

66 Under the North America Free Trade Agreement among United States, Canada, and Mexico, 100% of foreign investment (from the U.S. or Canada) is admitted in truck companies devoted to international cargo, but not for domestic cargo. However, in practice there have been serious obstacles in implementing these permits. According to the Transitory Article Sixth of the Law on Foreign Investment, as of January 2004, foreign investment may participate up to 100% in the capital stock of Mexican companies without obtaining a favorable resolution from the National Commission of Foreign Investment regarding international freight transport by road.

67 A favorable resolution of the Foreign Investment Commission is required in order for foreign ownership to exceed 49% according to Article 8 Section II of the Foreign Investment Law.

68 However, national passenger air transport is limited to 25% according to Article 7 Section II Subsection a) of the Foreign Investment Law.

69 In accordance with Article 8 Section I of the Law of Foreign Investments, in order to have more than 49% shares of foreign ownership, a company must have authorization from the National Commission of Foreign Investments.

70 Article 7 Section III Subsection q) of the Foreign Investment Law establishes a threshold with regard to printing and publishing of newspapers with exclusive distribution on Mexican territory.

71 Article 6 Section III of the Foreign Investment Law establishes that television and radio broadcasting activities are exclusive to Mexican companies or Mexican companies with foreign exclusion clauses.

72 With regard to mobile telecommunications, the 49% threshold may be exceeded if there is authorization from the the National Commission of Foreign Investment according to Article 12 of the Telecommunications Law and Article 8 Section IX of the Foreign Investment Law.

73 *Idem*.

74 According to Article 6 Section V of the Foreign Investment Law, the only restriction in this sector is the prohibition to establish development banks, which are exclusive to Mexican entities.

75 Article 29 Section I Bis Subsection b) of the General Law of Insurance Institutions establishes that foreign investors may acquire 100% of shares of an insurance company if their home country has signed an International Treaty with Mexico, according to Article 33 A II, B of the General Law of Insurance Institutions.

76 *Idem*.

77 The Law of Foreign Investment only refers to the authorization needed to have participation over 49% of foreign investment in the case of companies that offer legal services.

78 Authorization from the National Commission of Foreign Investment is required for a foreigner to own more than 49% of shares in private higher education, according to Article 8 Section IV of the Foreign Investment Law.

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