THE GROWTH TRIANGLE OF SINGAPORE, MALAYSIA AND INDONESIA

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I. INTRODUCTION

The "Growth Triangle" of Singapore, Malaysia¹ and Indonesia,² represents a strategic partnership among the three Southeast Asia countries to share their complementary resources and capabilities in order that each country can develop at a faster pace and enjoy growth out of proportion to the size of its local economy.³ Although much has been written and spoken about the dynamic economies of Asia, little has been discussed about the emerging cooperative efforts of clusters of countries in that region, such as the "Growth Triangle."⁴

¹ More specifically, the state of Johor which is one of the thirteen states in the Federation of Malaysia.
² More specifically, the Riau islands which comprise one of Indonesia's twenty-seven provinces.
⁴ Another possible cooperative effort may emerge in the form of "Greater China," consisting of mainland China, Taiwan and Hong Kong.
The idea of a Growth Triangle was first proposed in December 1989 by then Singapore Deputy Prime Minister Goh Chok Tong. The concept aims to take advantage of the complementary resources of each party to the tripartite arrangement and the proximity of the three countries to each other. Although Singapore has reached a stage where labor and space are at a premium, it can still contribute management expertise, excellent infrastructure, and advanced transport and communications systems. On the other hand, Johor and the Riau Islands contribute land, gas, water, other natural resources, and labor in abundance. Because the three economies are at different, but complementary, stages of development, Goh Chok Tong envisioned that the "Growth Triangle" would offer investors a complete operating area. Labor-intensive industries could establish themselves in the Riau Islands, intermediate-level industries might set up facilities in Johor, and high-technology companies would find a niche in Singapore. The top leadership in all three countries have embraced the concept and have given it widely publicized official endorsement.

Thus far, the "Growth Triangle" has been implemented through a series of bilateral arrangements, rather than through one multilateral agreement, with development primarily led by the private sector. The three governments in turn coordinate investments, immigration, and other policies and plans to adjust to the requirements of the private sector. Currently, cooperation and development are confined to the geographical areas with the closest proximity to Singapore, namely the Riau Islands of Indonesia and the Malaysian State of Johor. The following section highlights the major projects undertaken pursuant to the "Growth Triangle" initiative.

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6 Johor is the southernmost state in Peninsula West Malaysia. It is separated from Singapore in the south by the Johor Straits.
7 Part of the Indonesian archipelago.
8 SINGAPORE BULLETIN, supra note 5, at 5.
9 For example, Sumitomo Electric is expanding its wire harness manufacturing operations in Batam Island (in Indonesia) and Johor, while maintaining technical support facilities in Singapore. Similar arrangements are being set up by Smith Corona, Philips, and Western Digital.
II. JOINT EFFORTS

A. Singapore-Indonesia Efforts

In August 1990, Singapore and Indonesia signed a series of agreements, known as the "Riau Accords," to jointly develop and promote Indonesia's Riau Islands. The agreement covers the development of industrial estates, tourist resorts, and water catchment areas. In order of development progress, Batam Island has completed its first phase of construction, Bintan Island has completed its blueprint for development and begun construction, and Karimun Island is currently the subject of joint venture negotiations.

Batam Island is located 12.5 miles southeast of Singapore. It represents the most advanced development under the Growth Triangle cooperative efforts. The key feature of Batam's development is the 500 hectare, $200 million Batam Industrial Park. The first phase of the park was completed in 1992 with cumulative investment in the island reported at $560 million. The park allows manufacturers to take advantage of Indonesia's low wages by locating their labor-intensive operations in Batam. Wages for production workers in Batam range from $80 to $160 a month, compared to wages ranging from $380 to $700 a month in Singapore. At the same time, manufacturers can keep their management, design, and marketing functions in Singapore and take advantage of Singapore's port, airport, telecommunications, and international linkages.

Unlike Batam, development on Bintan Island centers around a 19,000 hectare beach resort. Bintan, with its eleven miles of pristine beaches, is more suited to tourism, light industry, and development of water resources. A master plan for the island's development has been completed, with preliminary proposals dividing the land up for use as accommodation (hotels, villas, and condominiums), resort facilities (golf courses and marinas), reservoirs and catchment areas, and infrastructure (airstrips, ferry points, and

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11 SINGAPORE-JOHOR-RIAU, supra note 5, at 1.
13 Batam, Bintan, and Karimun are all part of the Riau islands.
14 The second phase will cover another 10 hectares and will cost US$150 million.
15 SINGAPORE-JOHOR-RIAU, supra note 5, at 1.
16 SINGAPORE-JOHOR-RIAU, supra note 5, at 1.
17 Id.
roads). The resort, when completed, will boast more than 8000 rooms in its twenty hotels, nine condominium complexes, twenty-seven villa clusters, and thirteen or more golf courses. Bintan and Singapore will be marketed as a common tourist destination, because Bintan is located just twenty-eight miles southeast of Singapore. This Singapore-Indonesian joint venture resort will rely on Singapore for air and sea links and allow Bintan to tap into Singapore’s annual flow of five million tourists.

Finally, the newest island to be jointly developed by Singapore and Indonesia is Karimun Island. Joint ventures are being negotiated between Singaporean and Malaysian companies for the establishment of granite quarry, shipyard, and oil terminal projects on the island.

B. Singapore-Malaysia-Indonesia Efforts

There is no formal bilateral agreement between Singapore and Malaysia or Indonesia and Malaysia for the pursuit of development under the Growth Triangle initiative. However, the lack of formality has not deterred cooperation among Singapore, Johor, and Batam.

A 600 hectare technology park is being planned by authorities in Johor, Singapore, and Batam for development in Skudai, Johor. The proposed park is expected to house various high-technology industries, and is to be the largest in the region, dwarfing even the well-known 500 hectare high-tech park in Kaoshiung, Taiwan. It is reported that Johor State will take a majority stake in the project with at least five percent offered to each of the other two participants. The park is in line with the state’s industrial plan to move into intermediate and high-technology industries.

III. INDIVIDUAL COUNTRY REGIMES

It must be emphasized that the Growth Triangle “is not a common market or free trade area . . . . Neither is it a region of harmonized tax and investment codes.” Instead, efforts under the Growth Triangle initiative

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20 SINGAPORE BULLETIN, supra note 5, at 1.
22 SINGAPORE-JOHOR-RIAU, supra note 5, at 1.
are concentrated on cooperation among the governments of Singapore, Malaysia, and Indonesia to facilitate investment and development in the three countries. It is therefore not surprising that each of the "Growth Triangle" countries still maintain individual investment regulations, tax regimes, and incentive schemes reflecting each country's stage of development.

The following sections will examine the investment regime of each of the "Growth Triangle" countries and highlight issues of special interest to foreign investors. The countries will be discussed in the order of their development: Singapore (the most advanced of the three countries), Malaysia (which is going through an intermediate stage of development), and Indonesia (which has joined the race to become an industrialized economy).

A. Singapore

1. Introduction

a. General History and Background

Singapore is a 240 square mile island\textsuperscript{23} located just off the southernmost tip of Peninsular West Malaysia.\textsuperscript{24} Its immediate neighbors are the state of Johor\textsuperscript{25} in the north and the island of Sumatra in the south.\textsuperscript{26} Singapore is also blessed with a strategic location at the crossroads of international trade routes between the Pacific and Indian Oceans, as well as being located in the heart of the resource-rich region of Southeast Asia. This geographical advantage coupled with a natural deep-water harbor has enabled Singapore to become one of the busiest ports in the world.

Singapore's population of 2.7 million has a literacy rate of eighty-eight percent\textsuperscript{27} for persons above the age of ten years.\textsuperscript{28} Although the island

\textsuperscript{23} Aside from the main island, there are 58 islets within Singapore's territorial waters. MINISTRY OF COMMUNICATIONS AND INFORMATION, SINGAPORE: FACTS AND PICTURES, 1 (1990).

\textsuperscript{24} Malaysia is a federation of 13 states divided into two distinct geographical regions. West Malaysia is a peninsula consisting of 11 states. East Malaysia, which encompasses the remaining 2 states, is located on the island of Borneo.

\textsuperscript{25} The southernmost state in Peninsular West Malaysia.

\textsuperscript{26} Sumatra is one of the main islands that form the Indonesian archipelago.

\textsuperscript{27} As of 1989.
has no significant natural resources, the government recognizes that:

people are, and will always be our most precious resource. More than anything else, it is the effort of Singaporeans, with their drive and talent, that has made the country what it is today.  

Despite the country's multi-ethnic background (77.7% Chinese, 14.1% Malay, 7.1% Indian, and 1.1% others), racial issues have not been a significant problem in the country because of the government's policy of integrating the people. There are four official languages in Singapore: Malay, Chinese-Mandarin, Tamil, and English. The first three languages are representative of the three major races in the country; English was included as an official language for practical reasons. Malay is the national language and English is the language of administration.  

Singapore declared its independence in 1965, after two years as part of the Federation of Malaysia and over 100 years of British rule. Under the Singapore Constitution, government is divided into three independent branches: the executive, the judiciary, and the legislature. Executive powers of government are vested in the Cabinet, which is comprised of the Prime Minister and twelve Ministers; judicial power is vested in the Supreme Court and subordinate courts. The responsibility of legislation is with Parliament,

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28 The high literacy rate in the country is the product of the country's investment in education. The government's philosophy is:

Education is investment in our people. Measured in terms of our national budget, our investment in education is second only to defence. The investment is paying off. We now enjoy the second highest standard of living in Asia.


29 Id. at 19.

30 For example, in government-sponsored housing development projects, a concerted effort was made to house the minority groups among the Chinese majority.


32 Id. The use of English is also a reflection of Singapore's colonial past.

33 Id.

34 From September 16, 1963 through August 8, 1965. Id. at 9-11.

35 The Federation consisted of Malaya, Singapore, Sarawak, North Borneo (now the state of Sabah), and Brunei. Id.

36 British rule was interrupted by four years of Japanese occupation, from 1941 through September 1945. Id.
which is unicameral. Legislation becomes law after being passed by Parliament and assented to by the President. The President is elected by Parliament for a term of four years, and appoints as Prime Minister a member of Parliament who commands the confidence of the majority of Parliament. The life of Parliament is five years.

b. Singapore Economy

i. The Past

The development of the Singapore economy can be divided into three phases. The first phase spans the period shortly after the country’s independence, from 1966 through 1973. During this period, the government focussed on creating an industrial base as the engine of growth for the economy. A massive industrialization program was launched. The Jurong Town Corporation, a statutory board, was formed in 1968 to develop and manage industrial estates. In the same year, the Economic Development Board was reorganized, allowing the Board to better carry out its functions: to plan, develop, coordinate, and promote local, and more importantly, foreign investment in manufacturing and related service industries. Trade liberalization in the country during the first phase fortuitously coincided with strong growth in world trade. This in turn allowed Singapore to reap the benefits of free trade, and contributed to an average Gross Domestic Product (GDP) growth of 12.3% per annum.

In the second phase, 1974 through 1977, Singapore suffered from the effects of the early 1970’s oil shocks, but continued to upgrade its industrial base to accommodate more sophisticated areas of production. GDP growth slowed down to 6.4% per annum during the second phase.

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37 The People’s Action Party (PAP) has dominated Parliament since 1959. The PAP government is known for its lack of corruption, and emphasis on industrial planning and social engineering.


39 SINGAPORE: FACTS AND PICTURES, supra note 23, at 43.

40 A statutory board that was established in 1961. Id. at 39.

41 Id. at 12.

42 Id. at 39.


44 Id.

45 Id.
During the third phase, 1978 through 1984, the government began a program of radical economic restructuring in response to the global oil crisis. The goal was to transform Singapore into a center of excellence for technology, manufacturing, and services. To this end, education policies were modified and technology and computer education were emphasized in order to prepare the future workforce for a technologically-advanced economy. To motivate industries to move in the same direction, financial incentives were offered to industrial enterprises and productivity movements were launched.

Recognizing that social instability would undermine plans for the economy, the Singapore government tried to ensure that the basic necessities, such as food and shelter, were available. Public housing was given top priority. As a result, blocks of apartments sprang up and housing estates grew. To ensure that housing was affordable, these apartments were sold at very low cost. To further facilitate home ownership, Singaporeans were allowed to use their Central Provident Fund savings to buy the apartments. Today, some eighty-seven percent of the population resides in the apartments, and about seventy-nine percent of these apartments are owned by the people.

During the second half of the 1980's, Singapore maintained the policies set in the third phase of development, and the government remained committed to attracting foreign investment. The success of this policy over the last decade is underscored by foreign investment which accounts for seventy-seven percent of total manufacturing investment during the period.

Singapore has come a long way after over twenty years of economic planning. It has graduated from the ranks of a developing nation to become a newly-industrialized economy. Today, it is the world's primary

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46 The first industrial robot was installed in Singapore in 1980. By 1989, a total of 380 robots had been installed, most of which were used for assembly operations, followed by materials handling, spray painting, and welding. Fifty-seven per cent (57%) of the robots were employed in the electronics and electrical industries.

47 SINGAPORE: FACTS AND PICTURES, supra note 23, at 12.

48 Commonly referred to as Housing Development Board (HDB) flats because the apartments were developed by the HDB.

49 The Central Provident Fund was formed in 1955 to provide financial protection for workers on their retirement. Both employer and employee are required to contribute an amount equal to a percentage of the employee’s monthly salary to the fund.

50 Singapore has the second highest standard of living in Asia.
producer and exporter of computer disk drives. Conscious efforts to diversify the economic base also ensured that financial and business services led the country’s growth in 1990, which expanded by 14.9%. The country’s Changi Airport is ranked among the world’s busiest and best, and the nation is regarded as the major exhibition center for the region. The “1989 World Competitiveness Report,” published jointly by the World Economic Forum and the International Management Development Institute, ranked Singapore’s road network, air transport, and telecommunications system facilities as the world’s best. Singapore also ranked high in power supply, and its Mass Rapid Transit system was rated second among industrializing countries.

ii. The Future

Singapore witnessed its first transition in leadership in late 1990. Prior to 1990, Lee Kuan Yew, the acknowledged architect of Singapore’s “economic miracle,” had been Prime Minister for the twenty-four years since the country’s independence. In November 1990, he officially resigned to make way for a more “open and caring” approach to government by his successor, Goh Chok Tong.

Shortly after Goh Chok Tong came into power, “The Next Lap,” a manifesto for the new leadership was released. The goal of the new government is to make Singapore a “developed” nation by the end of the century. The manufacturing and service sectors have been selected as the twin engines of growth for the economy. In the manufacturing sector, Singapore will focus on high value-added, high-tech operations, concentrating on design, marketing and final assembly. In the service sector, the government has identified the financial sector as key to the development of

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52 This sector constitutes 32.4% of GDP, compared with 29.1% for manufacturing. Id. at 5.
53 UNITED STATES DEPARTMENT OF STATE, BRIEFING PAPER: SINGAPORE AT A GLANCE, EAP/EP SEEP 40 3/14/91 at 6 [hereinafter BRIEFING PAPER].
54 Id. at 7.
55 This subway system began operation in 1988.
56 In 1965 the country declared its independence.
57 It was released in February 1991.
58 BRIEFING PAPER, supra note 53, at 1.
a regional services base. Future plans call for improving the capital market and related activities, such as portfolio investment.

Corresponding with the government’s ambition to elevate the country into the ranks of a developed nation, the Ministry of Environment unveiled a draft Green Plan in November 1991. The Plan spells out a vision of a model Environment City to be achieved in fifteen years. The most ambitious thrust of this vision is to develop Singapore into a regional center for environmental technology, selling products to and servicing the Asia-Pacific region.

2. Investment in Singapore

a. Introduction

Singapore is the most advanced of the three “Growth Triangle” countries. This is reflected in the country’s selective cultivation of advanced and new technology driven industries, emphasis on research and development, and schemes to constantly upgrade the workforce in order to stay ahead of the competition. These goals have been largely implemented through investment incentives. Further, Singapore has some of the most advanced intellectual property laws in the region, also reflecting the nation’s advanced stage of development. The laws were recently upgraded through recognition of the fact that transfer of technology from overseas is not attractive unless the country embraces strong rules and regulations which protect the intellectual property rights imported to the island.

Despite Singapore’s graduation from the ranks of a third world country, it still maintains its openness to foreign investment. The government recognizes that foreign investment was and will continue to be the key to the country’s rapid growth and development. As such, there are few restrictions on the type of businesses open to foreign investment. However, certain types of business activities do require special approvals or specific licenses.
This section will focus on the manufacturing sector, which continues to be one of the main engines of growth.

i. Vehicles for Investment

A foreign investor may establish itself for business in Singapore by setting up a domestic company, a branch of a foreign corporation, a sole proprietorship, or a partnership. In practice, the two most common vehicles for foreign investment are the incorporation of a subsidiary company or the establishment of a branch. Which alternative structure is more advantageous depends on the particular circumstances of the foreign investor, the nature of the business, and tax considerations.

The option of setting up a representative office is also available if investor activities are restricted to promotion and liaison functions. Licenses for such offices may be obtained from the Trade Development Board of Singapore.

ii. Special Facilities

General Facilities: Manufacturers who wish to set up manufacturing operations in Singapore can choose from a wide range of industrial facilities. For companies that prefer to build their own purpose-oriented factories, industrial land is available for purchase or leasing. To facilitate businesses that want a quick start-up of operations, the Singapore government offers ready-built, single-story standard factories in a variety of models. Finally, multi-story factories for light, non-polluting industries are also available in high-density population centers.

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61 Examples of such business activities include: banking and finance, shipping, insurance, sharebroking, commodities trading, manufacturing of goods listed in the Control of Manufacturers Act, and defense. SECOND ASIA PACIFIC INVESTMENT CONFERENCE, SINGAPORE, ASIA PACIFIC REGIONAL INVESTMENT GUIDE, 18 (1991) [hereinafter REGIONAL INVESTMENT GUIDE].

62 Establishing a partnership or a sole proprietorship is not favored because liability is not limited for these two forms of business.


64 Id.

65 Id.
Research and Development Facilities: To propel the country into the ranks of developed nations, Singapore is channelling a large portion of the country’s resources into research and development. Singapore Science Park, a 108-hectare facility, was set up with fully-prepared sites and ready-built starter units available for rent to research and development organizations. Organizations involved in automation and robotics, information technology, specialty chemicals, marine technology, biotechnology, and the development of medical and scientific instruments have already established themselves in the park. Work is underway to further expand park facilities.

Business Parks: Business parks have been developed to cater to modern businesses and high-tech industries, again in keeping with the country’s goal of becoming a developed nation. These parks are designed to be total business centers, allowing companies to integrate their various functions of research and development, design, production, marketing and distribution in a single location. The first business park was developed by the Jurong Town Corporation at Jurong East.

Free Trade Zones: Five port areas and one air cargo terminal have been gazetted as Free Trade Zones (FTZs) in Singapore. FTZs went into operation in 1969, providing a range of facilities and services for storage and re-export of dutiable and quota-restricted imported goods. For example, imported goods may be stored in FTZs with no time restriction prior to shipment. No custom documentation is required until the goods are released into the domestic market. Goods can also be processed or manufactured in these zones and then re-exported freely with minimal documentation and customs formalities.

iii. Privatization

Traditionally, government-owned enterprises played a major role, especially in the public sector. For example, provision of gas, water, electricity, public transportation, telecommunications, and television broadcasting were administered by government agencies. In the 1980’s the government began its long-term divestment program, with the government reducing its role in business to allow private sector initiative and enterprise

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66 Id.
67 Id.
68 SINGAPORE: FACTS AND PICTURES, supra note 23, at 108.
69 Singapore, supra note 60, at 19.
to generate economic growth.

The government employs a two-step process for privatization of state agencies. First, the agency is converted into a corporation with the government as the sole shareholder. Next, shares in the corporation are offered to the public to encourage private ownership. The ultimate goal of the government is to divest shares in most government-owned enterprises except those that are critical to national interest. Some entities, such as Singapore Airlines, Singapore Bus Service, and Singapore General Hospital have completed the privatization process. Other sectors, such as the telecommunications and postal sectors, have completed the first stage of privatization.

The state-run entity in charge of the telecommunications and postal service sectors has been corporatized into Singapore Telecommunications, which is currently wholly owned by the Ministry of Finance. Shares will be offered to the public in 1993. Foreigners are expected to be offered stock in the company, but a certain percentage will be retained for local investment. Similar plans for privatization are scheduled for the state-run Singapore Stock Exchange and the Singapore Broadcasting Corporation.

b. Incentives

As with most developing countries, tax concessions and tax holidays are the centerpieces of the Singapore government's incentive scheme to encourage investment in selected areas. Initially, incentives were aimed at attracting investment in the manufacturing sector, without discrimination. Today, incentives are directed largely at encouraging existing investors to become more competitive through automation and improvement of their operations, acquisition of new technology and processes, and development of new products and capabilities. The focus of the incentives reflect Singapore's stage in development. New investment in the manufacturing sector is still encouraged, particularly in the design and production of higher value-added products employing medium- or higher-range technology. New technology, such as biotechnology and information technology, is welcomed, as is investment in services and trading sectors. The following are the

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various incentives offered to investors in Singapore.

i. Pioneer Status

A company enjoying Pioneer status is exempt from payment of the thirty-one percent tax on profits arising from pioneer activity for a period of five to ten years. To be eligible for this incentive, a company must be in the business of manufacturing a product which the government considers to have favorable prospects for development. Generally, products with high technological content are favored.

ii. Post Pioneer Incentive

After the expiration of its Pioneer status, a company may be eligible for the Post Pioneer incentive. A qualifying company is permitted to pay tax on profits at the concession rate of ten percent for a period of up to five years. Profits after this period are assessed at the normal rate of thirty-one percent.

iii. Expansion Incentive

Incentives are also offered to encourage existing companies to expand their operations. Exemption from the thirty-one percent tax on profits is offered to qualifying companies on that portion of profits earned in excess of their pre-expansion level. This incentive is available for investments of at least S$10 million\(^2\) in the expansion of existing plants for the manufacture or increased output of an approved product.

iv. Investment Allowance Incentive

An Investment Allowance incentive\(^3\) was created to stimulate investment in new equipment that will increase productivity. Qualifying companies enjoy a tax exemption on income in an amount equal to a portion of the new investment.\(^4\)

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\(^2\) "S$" denotes the Singapore dollar.

\(^3\) This incentive is granted as an alternative to the Pioneer status incentive.

\(^4\) The amount exempt from tax cannot exceed 50% of the new investment.
v. Operational Headquarters Incentive

Foreign investors are encouraged to locate their operational headquarters in Singapore. As incentive, income arising from the provision in Singapore of approved services is taxed at the concession rate of ten percent. Other income from overseas subsidiaries and associated companies may be eligible for effective tax relief also. These tax reliefs are available up to a period of ten years, with provision for extension.

To qualify as an operational headquarters, the Singapore office must manage related companies outside Singapore and provide approved headquarters services to related overseas companies from Singapore.

vi. Research and Development Incentive

In the quest to make Singapore the technological center of Asia, liberal tax incentives are provided to encourage research and development (R&D) organizations to locate in Singapore and to encourage existing investors to conduct R&D on the island. The incentives include a double tax deduction for R&D expenses, and tax depreciation allowances on R&D buildings as "industrial buildings."

vii. Other Incentives

Other incentives offered include the following: the Approved Foreign Loans Scheme, which exempts withholding of interest on minimum loans of S$200,000 from a foreign lender for purchase of production equipment; the Approved Royalties incentive, which exempts royalties in whole or in part from withholding tax; and the Venture Capital incentive, which permits losses incurred from the sale of shares, up to 100% of equity invested, to be set off against an investor's other taxable income.

75 Normally, such expenses are not deductible. PRICE WATERHOUSE, DOING BUSINESS IN SINGAPORE, 29 [hereinafter PRICE WATERHOUSE].
76 Id.
77 However, companies seeking to take advantage of these incentives must be at least 50% owned by Singapore citizens or permanent residents.
3. **Equity Ownership**

Because Singapore’s economy is based on free enterprise, there are generally no restrictions on foreign ownership of business or employment of expertise. Only areas which the government deems to be sensitive to the island’s economy or political stability are restricted from foreign ownership. For example, foreign ownership of locally incorporated banks is limited to forty percent. Similarly, the ownership of companies publishing newspapers is subject to legislative control.

4. **Tax Considerations**

Major tax categories of which investors should be aware are company tax, personal income tax, property tax, and stamp duty. There are no capital gains, value added, or general sales taxes in effect. Companies are taxed at the rate of thirty-one percent on profits, and residents are subject to an income tax on a sliding scale, up to a maximum rate of thirty-three percent. Non-residents pay a flat income tax rate of thirty-one percent. Generally, tax is payable on income earned or received in Singapore. Tax is also payable on an annual basis for real estate and certain items of personal property, such as motor vehicles. Finally, investors must also be aware that documented transactions in Singapore frequently attract stamp duty, which is generally assessed in proportion to the value of the transaction.

5. **Protection of Intellectual Property Rights**

For many years, Singapore depended on British legislation for the protection of intellectual property rights on the island. Singapore did not have its own copyright laws until 1987. Prior to that date, copyright protection was only available under British laws, which were incorporated by reference into the Singapore legal system. Even today, protection of patent rights in Singapore is only possible through registration of patents in the United Kingdom.

The Copyright Act, which was enacted by the Singapore Parliament in 1987, provides comprehensive protection for all literary and artistic works, including computer software, motion pictures, sound recordings, books and other modern and traditional media. As mentioned above, Singapore still uses the United Kingdom Patents Act for registration of patents. Singapore’s Registry of Trade Marks and Patents will only register and protect patents
that have been registered in the United Kingdom.\textsuperscript{78}

Trademarks also are protected under the Trade Marks and Patents Act, which is fashioned after British legislation. The first or intended user of a mark is entitled to registration under the Act. Anyone who has applied for registration in the U.K., or in another country which has reciprocal trademark relations with Singapore, may also apply for the mark in Singapore. An amendment to the law was passed recently, extending trademark protection to a wide range of service industries.\textsuperscript{79}

6. \textit{Land Rights}

Foreign ownership of land in Singapore is largely restricted to residential property. Because of the limited availability of land and housing on the island, foreigners must obtain special approval for the purchase of residential property in the country. The only exception is the purchase of private apartments located in buildings with more than six stories or levels. Title in residential property generally takes two forms: estates in fee simple, which confer absolute ownership for an indefinite period of time, or leasehold titles, which generally are granted for periods of ninety-nine or 999 years.

Commercial properties, especially in the industrial estates, are generally available on a 30-year lease basis. Commercial properties consisting of 99 year leaseholds are also available for purchase by foreign investors.

7. \textit{Labor Regulations}

Unlike other developing countries, there is generally no restriction on the employment of expatriates in foreign investment companies. There is no requirement that specific positions or numbers be filled by domestic workers. However, expatriate employees must obtain the approval of the immigration authorities before they are permitted to work in Singapore. In this regard, they are subject to the same regulations as other immigrants.\textsuperscript{80}

\textsuperscript{78} Application for a Singapore patent should be made to the Singapore Registry of Trade Marks and Patents within 3 years from the date of sealing in the United Kingdom. The Singapore patent is valid for the life of the United Kingdom patent.

\textsuperscript{79} \textit{BRIEFING PAPER}, \textit{supra} note 53, at 4.

\textsuperscript{80} Qualification and background checks will be conducted on such expatriate employees.
The Employment Act sets out the minimum conditions of employment in Singapore. The Act provides for the hours of work,\textsuperscript{81} public holidays,\textsuperscript{82} overtime and bonus payments, annual leave,\textsuperscript{83} sick leave, and maternity leave. The minimum period of notice to be given to terminate employment is also provided under the Act.

Singapore's Central Provident Fund is a variation of the American Social Security Scheme. All employees are required to contribute a portion of their monthly salary into individual accounts under the Fund. Employers also must contribute to the Fund an amount (usually less than the employees' contributions) equal to a portion of employees' salaries. Monthly contributions by employees and employers, together with interest earned, are made available to employees upon their reaching the age of fifty-five years. Prior to reaching that age, employees may use the funds for the purchase of residential property or blue chip stock shares, or for the payment of medical expenses.

8. Exchange Controls

In 1978, all exchange control regulations were dismantled. As a result, no approvals or formalities are required for any payment, remittance, or capital transfer in any currency into or out from the country.

9. Political Risks

Compared with other countries in Southeast Asia, Singapore has been very fortunate to enjoy stable government since its independence in 1965. The People's Action Party has dominated the country's politics during the period since independence, and the government's emphasis has been on providing for education and basic needs such as housing and food. The Party has encountered little political opposition, because with their basic needs attended to by the government, most of Singapore's citizens have responded to social and parental pressures by channelling their energies towards economic rather than political endeavors. This in turn contributed to the stability of the

\textsuperscript{81} Ordinary hours of work are limited to forty-four hours per week with one rest day.
\textsuperscript{82} Eleven paid public holidays are mandated under the Act.
\textsuperscript{83} At least seven days of annual leave must be provided for employees in their first year of employment with a company. An extra day is mandated for every subsequent year of employment up to a maximum of fourteen days.
government in terms of lack of opposition to the existing government.

10. Double Taxation Agreements

Singapore has entered into double taxation treaties with twenty-six countries. Apart from tax treaties, double taxation relief is also provided under domestic law. A Commonwealth tax relief is given on a reciprocal basis for income arising from certain British Commonwealth countries, such as Brunei and Hong Kong. Further, a unilateral tax credit is granted to Singapore residents for tax paid in Indonesia, the United States, and certain Middle Eastern countries, with regard to income derived from prescribed professional, consulting, and other services. A deduction is also granted by way of concessions, so that only net income derived from nontreaty countries is taxed in Singapore. This has the effect of allowing foreign tax to be paid as a deduction.

B. Malaysia

1. Introduction

a. General History and Background

Located in the tropics close to the equator, Malaysia is a federation of thirteen states and is divided into two distinct geographical regions: West Malaysia and East Malaysia. West Malaysia, which encompasses eleven states, stretches from the border with Thailand in the north, down the length of the peninsula to the southernmost state of Johor, which is just

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84 The 26 countries are Australia, Bangladesh, Belgium, Canada, the People’s Republic of China, Denmark, Finland, France, Germany, India, Israel, Italy, Japan, Korea, Malaysia, Netherlands, New Zealand, Norway, Philippines, Sri Lanka, Sweden, Switzerland, the Republic of China (Taiwan), Thailand, the United Kingdom, and the United States (shipping and air transport only).
85 Neither country has a tax treaty with Singapore. PRICE WATERHOUSE, supra note 75, at 100.
86 Id. at 101.
87 The states of West Malaysia (and their capitals) are Perlis (Kangar), Penang (George Town), Kedah (Alor Sar), Perak (Ipoh), Selangor (Shah Alam), Negeri Sembilan (Seremban), Melaka (Melaka), Johor (Johor Baru), Pahang (Kuantan), Trengganu (Kuala Trengganu), and Kelantan (Kota Bharu).
across the border from Singapore. East Malaysia is located on the island of Borneo, separated from the peninsula by 440 miles of the South China Sea. It is comprised of the two states of Sabah and Sarawak. West Malaysia and East Malaysia collectively occupy a land area of 127,320 square miles.

Malaysia is a multi-racial society of eighteen million people, mostly Malays, and Chinese. The predominant religions are Islam and Buddhism. Although Malay is the national language, English is widely spoken in the business world.

Peninsular Malaysia, previously known as "Malaya," gained its independence from Great Britain in 1957. In 1963 it united with the states of Sarawak, Sabah, and Singapore to become the Federation of Malaysia. Singapore left the Federation in 1965 to become an independent republic.

The Malaysian Federal Constitution provides for government by parliamentary democracy with a constitutional monarchy. The head of state is the Yang di-Pertuan Agong, who is elected every five years by his brother Sultans, the hereditary rulers of nine of the states. Governing power is divided between the federal and state governments as defined in the Federal Constitution.

The federal legislature consists of the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives). A Prime Minister, elected from amongst members of the Dewan Rakyat, is head of the Cabinet. Executive powers are vested in the Prime Minister.

b. Malaysian Economy

i. Past Two Decades

Over the past two decades, Malaysia has deliberately moved away from a commodity-based economy by actively encouraging the manufacturing sector and by emphasizing foreign investment and trade. Traditionally, the mainstays of the Malaysian economy were rubber, tin, and palm oil. In 1989, Malaysia produced 1.6 million tons of rubber and mined 52,000 tons of tin, making it one of the largest producers of the two commodities in the world. Malaysia was the founding member of the Association of National Rubber Producing Countries, host to the International Rubber Council, 88 89

88 60% of the population.
89 31% of the population.
90 The Council manages market prices through a large buffer stock.
and founder of the Association of Tin Producing Countries. In 1988, Malaysia was the leading producer of palm oil, commanding sixty percent of the world’s palm oil market. Malaysia is also one of the world’s leading exporters of raw hardwood, cut timber, and cocoa.

With the government’s policy shift from commodities to manufacturing, Malaysia emerged as the world’s largest exporter of integrated circuits and other semiconductor devices. This new economic policy resulted in a 1,100% increase in the country’s output, a seventy percent reduction in poverty, and a five-fold increase in per capita real income. The success of Malaysia’s transformation into a manufacturing-based economy is underscored by the tripling of manufactured products as a portion of exports. In 1976, manufactured goods only accounted for twenty percent of exports, but by 1991, it tripled to take up sixty percent of exports. Currently, twenty-five percent of the country’s output is derived from industrial production.

ii. Next Two Decades

Over the next two decades and by the year 2020, it is Prime Minister Mahathir’s ambition for Malaysia to become an industrialized nation. “Vision 2020,” the title given to this ambitious plan, was launched by the July 1991 Sixth Malaysia Plan, which budgeted public and private investment at $38 billion for the period 1991-1995. The bulk of public spending will be targeted at upgrading the nation’s infrastructure to support the quickly expanding economy. The government also plans to continue

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91 Its six member-countries account for 95% of the total world output of tin.
93 EMBASSY OF THE UNITED STATES, KUALA LUMPUR, UNITED STATES DEPARTMENT OF STATE, ECONOMIC TRENDS REPORT, 3 (Mar. 1992) [hereinafter TRENDS REPORT].
94 Id.
95 Id.
96 Mr. Mahathir has held the position of Prime Minister since 1981.
97 Public sector capital spending by the government was budgeted at US$7 billion for the period, and the remaining US$31 billion would be domestically-financed through private investment. The focus of the public spending will be on upgrading the nation’s infrastructure—to support industrial expansion—while private investment will be targeted at increasing capital-intensive manufacturing. TRENDS REPORT, supra note 93, at 2.
98 Id. at 3.
withdrawing from major sectors of the economy in order to allow the private sector to operate efficiently. To this end, over six projects are scheduled to be privatized between 1991 and 1992, in addition to the thirty-seven projects privatized between 1983 and 1991.

2. Investment in Malaysia

a. Introduction

Malaysia represents the transition phase between Singapore’s advanced stage of development and Indonesia’s initial stage of development. Malaysia’s recent reduction and eventual phasing-out of selected investment incentives, which are largely geared toward labor-intensive industries, is testimony to the country’s progression beyond initial development. As discussed in the investment incentives section below, the government’s current emphasis is on capital- and technology-intensive industries.

i. Vehicles for Investment

A foreign investor has four options for investing in Malaysia. It can register itself as a foreign company, incorporate a separate company in Malaysia, form a sole proprietorship, or form a partnership or a joint venture company with a local partner.

Technically, any foreign company having a place of business or carrying on a business in Malaysia may register itself as a foreign company in Malaysia. However, registration has become increasingly difficult. The Ministry of Domestic Trade and Consumer Affairs must approve the registration of such companies. It appears that generally only those foreign companies engaging in activities endorsed by the government are approved for registration.

A second option available to investors is the incorpora-

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99 Id. at 2.
101 Id.
102 A foreigner is permitted to set up a business alone in Malaysia. However, the prior approval of the Ministry of Trade and Industry is required. G. TIANWAH, DOING BUSINESS IN MALAYSIA, 10.
103 Pursuant to the Business Registration Act, a partnership can be established by two or more persons with the maximum number of partners being twenty persons. Id.
104 REGIONAL INVESTMENT GUIDE, supra note 61, at 37.
tion of a public or private company in Malaysia pursuant to the Companies Act of 1965. The decision to incorporate a private or public company depends on the size of the membership desired and whether shares in the company will be offered to the public. Next, although the option of registering a sole proprietorship or partnership under the Registration of Business Ordinance 1956, is available, it is not popular among investors because of the potential for unlimited liability and expansion constraints. Finally, an investor may set up a joint venture with a local partner to invest in Malaysia. This mode of investment is encouraged by the government, especially if there is a transfer of technology and technical skill to Malaysia. However, investors must comply with the equity guidelines discussed below.

**ii. Special Facilities**

To cater specifically to the needs of manufacturing and exporting companies the Malaysian government has established special facilities, such as industrial estates, free zones, and licensed manufacturing warehouses.

To alleviate the problems of establishing the infrastructure when setting up manufacturing facilities, the Malaysian government constructed industrial estates fully-equipped with connecting roads, water and power supplies, and telecommunication facilities. Factories in these estates are promoted as being in "move-in" condition and are generally geared toward manufacturing. Some estates are tailored to attract specific industries. For example, Kulim Hi-Tech Industrial Park is being developed in the State of Kedah specifically to attract high-technology industries. Several key commercial attractions offered by the park are low cost, a guaranteed supply of power, and the provision of waste disposal facilities.

Next, to facilitate the export of goods by manufacturers, free zones (FZs) were created. Manufacturers in the zones are subject to minimum customs control and formalities in their import of raw materials, parts, machinery, and equipment. There are ten Fzs in Malaysia.\(^\text{105}\) As a practical alternative to Fzs, Licensed Manufacturing Warehouses (LMWs) were created. To allow individual facilities to enjoy the benefits of Fzs without having to re-locate physically to an FZ, LMW status may be granted to individual facilities.

\(^{105}\) They are located in Bayan Lepas, Prai, Mukim Pringgit, Bukit Baru, Tanjong Kilan, Sungei Way, Ulu Klang, Telok Panglima Garang, Pasir Gudang, and Jelapang. MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY, MALAYSIA: INVESTMENT IN THE MANUFACTURING SECTOR, 51 (1992) [hereinafter MIDA].
LMWs enjoy the same minimal customs control and formalities as factories in Fzs.

iii. Labuan, International Financial Center

In 1989, as an additional effort to enhance Malaysia as an attractive investment center, the government conferred on Labuan the status of "International Offshore Financial Center (IOFC)." Labuan\textsuperscript{106} consists of a cluster of seven islands\textsuperscript{107} located just off the coast of Sabah in East Malaysia. Traditionally, the mainstays of Labuan’s economy were oil and gas operations, shipbuilding and repair work, manufacturing, and entrepot trading.\textsuperscript{108} As an IOFC, Labuan imposes little or no tax on income, profit, dividend, and interest earned or derived from offshore business activities or transactions by offshore multinational corporations. There is generally no exchange control or limitations on transboundary movement of funds into and out of Labuan. Neither is there any stamp duty, death, inheritance, or estate duties or value added tax. In sum, the government made Labuan a tax haven.

In the quest to make Labuan the Switzerland of Asia, a host of legislation\textsuperscript{109} was also enacted to provide for a high degree of secrecy for corporations in the territory. These laws limit public inspection of company files and prohibit disclosure of information about shareholdings or beneficial ownership and management of business, financial, or other affairs. Bank account-holders are also provided anonymity and secrecy through the Offshore Banking Act 1990. Offshore operations that are encouraged in Labuan include banking operations, trust and fund management, insurance and related business, and investment holding companies.

\textsuperscript{106} In 1984 Labuan was declared a Federal Territory, bringing the islands under the administration of the Prime Minister’s Department. The other Federal Territory is Kuala Lumpur, which is located within the State of Selangor.

\textsuperscript{107} Islands of Labuan, Burung, Dahat, Kuraman, Papan, Rusukan Besar and Rusukan Kecil. MINISTRY OF FINANCE, MALAYSIA, LABUAN: AN INTERNATIONAL OFFSHORE FINANCIAL CENTRE, 1.

\textsuperscript{108} Labuan is a free port; that is, no taxes are levied on goods with the exception of petroleum and petroleum products. \textit{Id.}

iv. Privatization

Malaysia first announced its national policy of privatization in 1983. This announcement signalled the government’s intent to reduce its presence in the economy, decrease both the level and scope of public spending, and allow market forces to govern economic activities. Between 1983 and 1991, thirty-seven projects were privatized. Sixty more projects, ranging from abattoirs and airports to rice mills and shipyards, were scheduled to be sold between 1991 and 1992. The purpose of privatization is threefold: to relieve the government’s financial burden, improve economic efficiency and growth, and meet the national policy targets.

In 1990, the government completed the next phase of its privatization “masterplan.” The plan picked 246 public enterprises to be privatized over three periods of time. In the past, privatization was by sale of equity or assets to the public and to a lesser extent through leasing, management contracts and a combination of sale of assets and leasing. Pursuant to the master plan, these methods will be used in addition to licensing, management buy-outs, and build-operate-transfer arrangements.

b. Incentives

With the past two decades’ emphasis on and success in diversification of the Malaysian economy into manufacturing, it is not surprising that a majority of Malaysia’s investment incentives are tailored to the manufacturing sector. Additional incentives are also provided to promote export, research and development, training of local personnel, proper treatment of hazardous waste and location of operational headquarters in Malaysia. Incentives are also offered, but to a lesser degree, for investments in the agricultural and tourism sectors.
Tax relief is the primary form of investment incentive offered, with the principal incentives embodied in the Promotion of Investment Act of 1986 and the Income Tax Act of 1967. Because companies in Malaysia pay two primary taxes, incentives are designed to relieve investors, in whole or in part, from payment of these taxes. However, the success of transforming Malaysia into a manufacturing-based economy has recently prompted the government to shift its policy. Malaysia no longer relies heavily on tax reliefs to attract investments. The following discussion will examine the incentives available to foreign investors setting up manufacturing facilities in Malaysia and highlight the shift in government policy, where applicable.

i. Incentives for Manufacturing

Pioneer Status: Prior to November 1991, the centerpiece of Malaysia's investment scheme was the conferral of Pioneer Status on qualifying companies. At that time, companies enjoying Pioneer Status were totally exempt from income tax for an initial period of five years, with eligibility for a five-year extension of the status. Recently, government policy on Pioneer Status has changed.

“Our [Malaysia's] emphasis now will be on capital- and technology-intensive industries. . . . Too many incentives given continuously will pamper and reduce the efficiency of companies and will not enable them to become competitive.”

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116 The development tax is gradually being phased out and will be completely abolished in 1993. MIDA, MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY, Review of Tax Incentives, MALAYSIA INDUSTRIAL DIGEST, 3 (Oct.-Dec. 1991) [hereinafter Tax Incentives].

117 See supra discussion on Pioneer Status, Investment Tax Allowance and Reinvestment Allowance.

118 The Minister of International Trade and Industry determines the list of activities and products to be promoted in Malaysia. The grant of Pioneer Status depends on whether a company will engage in a promoted activity or in the production of a promoted product. The current list of promoted activities is gazetted under Gazette Notification No. P.U. (A) 391 dated November 1, 1986. [hereinafter Gazette Notification].

119 MIDA, supra note 105, at 11.

The above statement by Malaysia’s Finance Minister summarizes the shift in Malaysia’s policy. First, the government has become selective in promoting foreign investment—labor-intensive industries, which were promoted in the 1970’s, are no longer encouraged. Instead, capital- and technology-intensive industries are actively promoted. Second, the government has indicated that continuation of generous tax incentives may be counterproductive by allowing marginally competitive companies to operate without contributing to the maintenance of public services that such companies enjoy.

Consistent with the shift in policy, local tax considerations are now a less important element of foreign investment decisions. After November 1991, for companies granted Pioneer Status, only thirty percent of profits are taxable for a period of five years from the date of production, without option for renewal of such status. “With this change, companies with pioneer status will effectively be subject to a tax rate of eleven percent (based on Malaysia’s company tax of thirty-five percent and current development tax of two percent).”

Investment Tax Allowance: Tax allowances for qualifying capital expenditures are also granted to promote activities or products selected by the Ministry of Trade and Industry. Prior to November 1991, tax allowances were granted for up to 100% of a company’s qualifying capital expenditure. The new government policy mandates that allowances can be made up to a maximum of sixty percent of such expenditures. A tax allowance may be granted only if the qualifying expenditure is made

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121 The First Outline Perspective Plan covering the years 1971 through 1990, touted Malaysia’s low cost labor and abundant resources as key attractions to foreign investment.
122 TRENDS REPORT, supra note 93, at 3.
123 Id. at 9.
124 Exceptions to the general policy may be made for those strategic projects of national importance that have a significant impact on the Malaysian economy. These exceptions will be considered by the government for 100% tax exemption on a case-by-case basis. Tax Incentives, supra note 116, at 3.
125 Id.
126 The current list of promoted activities is reported in the Gazette Notification, supra note 119.
127 MIDA, supra note 105, at 12.
128 Id. at 10-11.
within five years from the date of approval of a project. Even then, allowance is subject to a cap equal to seventy percent of the company’s income. However, any unused allowance in excess of the seventy percent may be carried forward to subsequent years of assessment.

Reinvestment Allowance: A third category of incentives being reduced and gradually phased out by the Malaysian government is the reinvestment allowance. This allowance is available to manufacturing companies for expenses incurred in the expansion or modernization of projects or for diversification into related products. This allowance, equal to forty percent of the capital expenditure incurred, will not be available after 1996.

ii. Incentives for Export

Malaysia has a comprehensive export promotion scheme. Incentives are provided at almost every stage of an export-sale. For example, tax relief is available for the importation of raw materials used to manufacture export products, manufacture of export products, the promotion of export sales, export sales themselves, the financing and insurance of export sales, and finally, the warehousing of goods destined for export. These incentives may be enjoyed by manufacturers in addition to other tax relief discussed above.

Exemption from Custom Duty: Companies that manufacture goods for export are granted full exemption from customs duty on imported raw materials that are incorporated into export goods. However, this

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129 Id. at 10; TIANWAH, supra note 102, at 53. Prior to November 1, 1991, companies could be granted investment tax allowance on 100% of the qualifying capital. Tax Incentives, supra note 116, at 2.

130 MIDA, supra note 105, at 10-11.

131 Tax Incentives, supra note 116, at 3.

132 MIDA, supra note 105, at 12; TIANWAH, supra note 102, at 53.

133 Id.

134 Dr. Arjunan Subramaniam, Taxation in Malaysia and Tax Incentives for the Manufacturing Sector, in MALAYSIA 22 (Conway Data, Inc. Survey).

135 Even if the product is destined for the local market, full exemption from customs duty on imported raw materials may still be available. Full exemption may be granted if it is demonstrated that the finished product itself is not subject to duty and that the manufacturing company has complied with the New Economic Policy. Otherwise, partial exemption resulting in payment of only 2% or 3% import duty may be granted. However, no exemption will be granted where the raw materials are subject to import duty of 3% or less. MIDA, supra note 105, at 21-22.
exemption is available only if the imported raw materials are not available in Malaysia, or, if available, are not of acceptable quality or price.  

**Export Credit Refinancing Scheme:** To alleviate the financial burdens associated with exporting, Malaysia's central bank, Bank Negara, administers an Export Credit Refinancing (ECR) Scheme. Under the scheme, short-term credit at preferential rates of interest is made available to qualifying exporters through commercial banks. Bank Negara, in turn, refines the short term loans.

Eligibility of goods for refinancing under the ECR scheme is determined by a "negative list." Products that are not listed are eligible for financing provided they have a minimum of twenty percent value-added and contain a minimum of thirty percent local content. These criteria are implemented flexibly. Bank Negara grants exemptions on a case-by-case basis for products that do not fulfill the local content and value-added criteria.

ECR financing is available for the full value of exports. The maximum period of financing ranges from four to six months. The minimum amount for financing is M$10,000 and the maximum amount is M$5 million. To reduce the risks to commercial banks providing ECR facilities to exporters, all commercial banks were given export credit insurance guarantees by the government in 1989.

**Abatement of Adjusted Income:** Manufacturing companies considered residents of Malaysia also enjoy an abatement of income from exported products that were manufactured in Malaysia, regardless of whether their

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136 *Id.* at 21.
137 Two types of facilities are available: (1) pre-shipment ECR facility, where working capital is provided to direct and indirect exporters (domestic suppliers of inputs to final exporters); (2) post-shipment ECR facility, which is provided to enable Malaysian exporters to obtain immediate funds upon shipment of eligible goods sold on credit terms.
138 The current preferential rate is 6% per annum. *Id.* at 11.
139 The exporter may invoice his exports in any currency, but financing is made only in Malaysian ringgits.
140 This is a list of products that are not eligible for ECR.
141 In 1990, crude rubber, vegetable oil products, cocoa products, agricultural food products and textile products were exempted from these requirements.
142 TIANWAH, supra note 102, at 54; MIDA, supra note 105, at 12.
143 *Id.*
144 "M$" denotes the Malaysian dollar; MIDA, supra note 105, at 13.
145 TIANWAH, supra note 102, at 54.
146 *Id.*
goods are exported directly or through agents. This abatement is equal to the ratio of fifty percent of export sales to total sales. However, this incentive will be reduced to twenty-five percent for the year of assessment 1994 and abolished in 1995.

Double Deduction for Export Credit Insurance Premiums: To encourage export penetration of non-traditional markets, double deductions are allowed for export credit insurance premiums charged by approved insurers.

Five Percent Export Allowance: Recognizing that manufacturers may elect to sell their goods overseas through trading companies, the Malaysian government also provides incentives to trading companies that export domestic products. Such trading companies are entitled to an export allowance equal to five percent of the free-on-board (FOB) value of the exported goods. This allowance will be reduced to three percent for the year of assessment 1994 and abolished in 1995.

Double Deduction for Promotion of Exports: To alleviate the financial burden of promoting domestic products overseas, double deductions are allowed for expenses incurred by resident companies on export promotion and sales. Activities qualifying for such deductions include overseas advertising, supply of free samples abroad, export market research, preparation of tenders for supply of goods overseas, supply of technical information abroad, participation in exhibitions approved by the Ministry of Trade and Industry, export public relations services, overseas travel by employees, and maintenance of sales offices overseas for the promotion of exports.

Industrial Building Allowance (IBA): Finally, tax relief is also available for buildings and bulk storage installations used to warehouse goods for export. An initial IBA equal to ten percent is granted for qualifying structures followed by an annual allowance of twenty percent.
iii. Incentives for Research and Development

In its quest to become a developed nation by the year 2020, Malaysia recognizes that it can no longer be content to produce goods that are developed abroad. Consequently, the government places great emphasis on the promotion of research and development (R&D) in the country.

To encourage R&D in industries, double deductions are granted for revenue expenditure on scientific research approved by the Minister of Finance, allowances are available for expenditure on buildings used for approved research, capital allowances are made for plant and machinery used for approved research, and double deductions are granted for cash contributions made to approved research institutions. For companies established to undertake R&D in assessment year 1992, additional incentives are available. These incentives include a tax holiday for five years, and a carry-forward of accumulated losses sustained during the tax relief period to the post-tax relief period.

iv. Incentives for Training

The IBA is also extended to cover expenses on buildings that are used for approved industrial training in order to promote the upgrading of workers’ skills and to improve productivity. In addition, companies in the manufacturing, construction and tourism sectors may claim double deductions for expenses incurred on approved training.

v. Incentives for Storage, Treatment and Disposal of Hazardous Waste

Similar to other developing nations in Asia, Malaysia paid little attention to environmental protection during its early years of development. However, Malaysia now encourages establishment of facilities for the storage and disposal of toxic and hazardous waste. Pioneer Status is granted to

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154 An industrial building allowance of 10% is allowed for the initial period, and thereafter an annual allowance of 2% is available. Id. at 15.
155 Id.
156 Id.
157 Id.
158 Id.
companies directly involved in the storage, treatment, and disposal of toxic and hazardous wastes in an integrated manner.\footnote{Id. at 16.}

Companies that generate waste, and wish to establish facilities to store, treat, or dispose of their waste, either on-site or off-site, are eligible for a special allowance at an initial rate of 40% and an annual rate of 20% for all capital expenditures.\footnote{Id.} Imports of machinery, equipment, and components and raw materials necessary for the storage, treatment, and disposal of toxic and hazardous waste are exempted from import duty and sales tax to encourage companies to establish such facilities.\footnote{Id.}

\textit{vi. Incentives for Operational Headquarters}

Foreign companies are encouraged to establish their overseas operational headquarters in Malaysia. Tax incentives offered include a concession rate of tax at 10% on management fees arising from R&D work carried out in Malaysia\footnote{Id.} and exemption from tax of dividends received from investments made in subsidiary/associate companies. Concessionary tax is available for a minimum of five years and a maximum of ten years,\footnote{Id.} while tax exemption on dividend income is available for ten years.\footnote{Id.}

To qualify for the incentives, the operational headquarters must engage in the following activities in Malaysia: (1) administration, business planning, and coordination; (2) sourcing of raw materials, components, and other manufactured products; (3) R&D services and product development; (4) regional technical support and maintenance; (5) marketing control and sales promotion planning; and (6) regional training and personnel management. These incentives are not available to foreign-owned multinational companies in the finance and service sectors.\footnote{Id.}
3. Guidelines on Equity Ownership

Equity distribution in a Malaysia-incorporated company is determined by principles governing foreign ownership and ownership by *bumiputras* (native-born Malays).

### a. Foreign Equity Ownership

Because the Malaysian government places high priority on exports, the level of foreign ownership in a company is tied to the company’s export orientation. Other factors such as the use of advanced technology and production of high priority goods also affect the share of foreign equity permitted. Although foreign equity ownership is restricted, the restrictions are not dependent on whether a company’s products compete with products manufactured locally for domestic consumption.

There are essentially six categories of foreign equity ownership permitted:

1. For projects that export 80% or more of their production, there is no restriction on foreign equity ownership; that is, foreigners can own up to 100% of the project.
2. For projects that export between 51% and 79% of their production, the maximum foreign equity ownership is 51%.
3. For projects that export 50% to 80% of their production, foreign equity ownership up to 100% is allowed provided that:
   - the foreign investor invests M$50 million or more in fixed assets (excluding land) or implements projects that have at least 50% value-added; and
   - the company’s products do not compete

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166 TIANWAH, *supra* note 102, at 60-61; MIDA, *supra* note 105, at 5-6.
167 Sales to Foreign Trade Zones and Licensed Manufacturing Warehouses are considered exports. MIDA, *supra* note 105, at 5.
168 Exceptions permitting foreign ownership up to 79% may be made depending on factors, such as the level of technology, spin-off effects, size of the investment, location, value-added and utilization of raw materials and components.
with products presently being manufactured locally for the domestic market.

(4) for projects that export between 20% to 50% of their production, foreign equity ownership of between 30% and 51% is permitted.\footnote{For projects that involve the extraction or mining and processing of mineral ores, majority foreign equity participation of up to 100% is permitted. To determine the percentage, certain criteria will be taken into consideration: (1) the level of investments, technology, and risk involved in the projects; (2) the availability of Malaysian expertise in the areas of exploration, mining, and processing of the minerals concerned; and (3) the degree of integration and the level of value-added involved in the projects. MIDA, \textit{supra} note 105, at 7-8.}

(5) for projects exporting less than 20% of their production, the maximum foreign equity ownership permitted is 30%.

(6) for projects that manufacture high technology products or high priority products for the domestic market, foreign equity ownership up to 51% is permitted.

The above categorization of foreign equity permitted does not apply to projects involving non-renewable resources.\footnote{The National Economic Plan has since been replaced by the National Development Policy of 1990.}

\textit{b. Non-Foreign Equity Ownership}

Malaysia’s guidelines on the distribution of non-foreign equity ownership reflect a uniquely Malaysian concern, which is declared to be economic disparity between the Malays and the Chinese. These guidelines must be viewed in the context of the National Economic Plan (NEP).\footnote{Again exceptions may be made depending on the factors discussed in item (2). Under the exceptions, foreign equity ownership could be raised to 51%.

\textit{Non-Foreign Equity Ownership}}
native-born Malays, by 1990. As part of the NEP, guidelines were drawn giving Malays priority in owning the non-foreign equity portion of companies. These guidelines remain in place today.

According to the guidelines, where foreign equity is less than 100%, the balance of the equity taken up by Malaysians should be allocated according to the following principles:¹⁷³

(1) For projects initiated by foreigners and where no local partners have been identified:

1) If 70% or more of the equity is held by foreigners, the balance of the equity will be reserved for bumiputras; and

2) If less than 70% of the equity is held by foreigners, 30% will be reserved for bumiputras and the balance for non-bumiputras. If the equity reserved for bumiputras is not taken up, the Ministry of Trade and Industry will allocate part of the balance to non-bumiputras.

(2) For projects initiated by bumiputras on a joint-venture basis with foreigners:

1) If 70% or more of the equity is held by foreigners, the balance of the equity will be reserved for the bumiputras concerned; and

2) If less than 70% of the equity is held by foreigners, the balance will also be reserved for bumiputras. However, if bumiputras are unable to take up the entire balance, the Ministry of Trade and Industry will allocate part of the balance to non-bumiputras.

(3) For projects initiated by non-bumiputras on a joint-venture basis with foreigners:

1) If 70% or more of the equity is taken up by foreigners, the balance of the equity will be allocated to the non-bumiputras concerned; and

¹⁷² Literally, "sons of the soil."
¹⁷³ MIDA, supra note 105, at 6-7.
2) If less than 70% of the equity is taken by foreigners, 30% will be allocated to the non-bumiputras concerned and the balance will be reserved for bumiputras.\[^{174}\]

4. Transfer of Technology

Although high-technology enterprises are encouraged to invest in Malaysia, the government is concerned that the investment in fact benefits the country. As a result, government guidelines must be followed for the transfer of technology to Malaysia. All agreements covering technology transfer must be approved by the Ministry of International Trade and Industry.\[^{175}\] Furthermore, the guidelines require a host of provisions\[^{176}\] to be included in these agreements to ensure that obligations of both parties are clearly defined. The declared purpose of the approval process and the mandatory provisions is to ensure that "fair" deals are made. For the same reason, down payments for technical know-how are discouraged because they commit the local partner at the start without guarantee of successful commercial production. Similarly, remuneration for technology transfer must be based on net sales,\[^{177}\] and capitalization of know-how is discouraged.

On the other hand, investors transferring technology to Malaysia are concerned that their intellectual property rights be adequately protected. If there is no protection or protection is inadequate, technology that is unique can be freely copied and used in competition against investors. Malaysia was once lagging in its intellectual property laws, however, the current emphasis on the transfer of advanced technology and the experience of having been placed on the United States Special 301 Watch List\[^{178}\] have resulted in major improvements in Malaysian intellectual property laws.

Malaysia has enacted legislation covering the three major areas of intellectual property: patents, copyrights and trademarks. For patents, the

\[^{174}\] Under special circumstances, the non-bumiputras may be permitted to take up the entire balance of the equity as decided by the Ministry of Trade and Industry. Id. at 7.

\[^{175}\] MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY, MALAYSIA: YOUR PROFIT CENTRE IN ASIA, 14 (March 1991).

\[^{176}\] The provisions cover the definition of technology to be transferred, access to improvements, remuneration, method of payment, training, patents and trademarks, confidentiality, warranties, taxes, sales territory, and governing laws.

\[^{177}\] Acceptable rates range between one percent and five percent.

\[^{178}\] Malaysia is no longer on the Watch List. TRENDS REPORT, supra note 93, at 9.
Patents Act of 1983 and Patents Regulations of 1986 provide domestic protection for 15 years, and Malaysia is a signatory to the Paris Convention. The Trademarks Act of 1976 and Trade Marks Regulation of 1983 are also available to protect trademarks in Malaysia for an unlimited period of time. Finally, the Copyright Act of 1987, which replaced the 1969 Act, governs the protection of copyrights in Malaysia. This Act represents a significant improvement in the country's copyright laws because it provides more comprehensive coverage. A new feature of the 1987 Act is the inclusion of enforcement procedures which include the power to enter premises suspected of having infringed copyrights, power to search and seize infringing copies, and the creation of a special team of officers to enforce the Act. This new law, which took effect in 1987, significantly reduced copyright piracy. To provide additional protection to foreign works, Malaysia acceded to the Berne Convention on October 1, 1990.

5. Labor Regulation

a. Expatriate Staff

Malaysia regulates the employment of expatriate staff because of its concern with upgrading the skills of Malaysian workers and increasing employment in the country. As such, the number of expatriate staff permitted is tied to the capitalization of a company. Companies with foreign paid-up capital of US$2 million and above are permitted to employ five expatriates, with additional expatriate employment subject to the approval of the government. For other companies, key positions may be filled by expatriates provided that the foreign paid-up capital is approximately M$500,000. Executive positions may also be filled by expatriates if professional qualifications and practical experience are required, but Malaysians must be trained to take over the positions after ten years.

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179 Pursuant to legislation, an application for a patent can be made directly in Malaysia and registration is effective for the whole of Malaysia. The Act provides that a patent shall expire fifteen years after the date of its grant.
180 Prior to 1987, the period of protection was twenty-five years.
181 MIDA, supra note 105, at 32-33.
182 Id.
183 Id.
The Employment Act of 1955 is the principal legislation governing the conditions of employment in Malaysia. Among other things, the Act sets out the minimum conditions of employment: paid public holidays, \(^{184}\) paid annual leave, \(^{185}\) paid sick leave, \(^{186}\) normal hours of work, \(^{187}\) payment for overtime work, \(^{188}\) and payment of maternity allowance. \(^{189}\) Employers are also required to contribute an amount equal to eleven percent of employees monthly wages to a fund established under the Employees Provident Fund Act of 1951. \(^{190}\) However, this requirement does not apply to expatriate-employees and domestic servants. \(^{191}\)

Other legislation that employers must be aware of are the Employees' Social Security Act of 1969 and the Workmen's Compensation Act of 1952. The former requires companies that employ five or more employees and whose wages do not exceed M$1,000 a month per employee to insure their employees. \(^{192}\) The latter prescribes the amount of compensation payable to employees or their dependents in the event of employees' injury or death in the course of employment.

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\(^{184}\) Laws of Malaysia, Act 265 (Employment Act), § 60D (1985) (ten paid public holidays in one calendar year).

\(^{185}\) Eight days of paid annual leave for employees with less than two years of service, twelve days of paid annual leave for employees with two or more years but less than five years of service, and sixteen days for those with more than five years of service. \textit{Id.} at § 60E.

\(^{186}\) Fourteen to twenty-two days of sick leave depending on the length of service. However, where hospitalization is necessary, up to an aggregate of sixty days. \textit{Id.} at § 60F.

\(^{187}\) Not to exceed eight hours a day or forty-eight hours a week. \textit{Id.} at § 60A.

\(^{188}\) One and a half times the ordinary rate of pay. \textit{Id.} at § 37.

\(^{189}\) At the ordinary rate of pay, subject to a minimum rate of M$6.00 per day for sixty days. \textit{Id.}

\(^{190}\) Employees are required to contribute nine percent of their monthly salary to the fund, which is payable to employees in full on their reaching the age of fifty-five years. MIDA, \textit{supra} note 105, at 37.

\(^{191}\) "Domestic servants" generally refers to people employed to work in or connected with work in a private dwelling house including valets, gardeners, and those who are paid from the personal funds of their employers.

\(^{192}\) Employers must insure their workers under two schemes: (1) Employment Injury Scheme, and (2) Invalidity Pension Scheme. The employer is solely responsible for paying the premiums due under this scheme but shares the contribution under the Invalidity Pension Scheme equally with the employee. MIDA, \textit{supra} note 105, at 37-38.
6. Exchange Controls

Malaysia has a liberal exchange control regime, and non-residents may undertake direct investment in the country without permission from the Controller of Foreign Exchange. However, companies controlled by foreigners are discouraged from funding their investment in Malaysia with business loans because the government is concerned that foreign investments be long-term propositions, as opposed to ventures for quick profits without any semblance of permanence. The government also prefers that such companies furnish their own funds to capitalize their projects.

Repatriations of profits or capital are freely permitted, subject only to a statistical reporting in cases of remittances exceeding M$10,000 each or its equivalent in foreign currency. Technically, such payments must be authorized by the Controller of Foreign Exchange, but local banks are empowered to make such authorizations.

For companies that export, although their proceeds may be in foreign currency, the proceeds must be repatriated to Malaysia within the period of payment specified in the export contract. This period may not exceed a maximum of six months from the date of export.

7. Political Risks

Article 13 of the Malaysian Constitution safeguards foreign investments from expropriation and guarantees them from nationalization without compensation. In addition, the Malaysian government concluded

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194 A company may borrow up to a total amount of M$10 million from all sources in Malaysia without the prior approval of the Controller of Foreign Exchange. But, at least 60% of its credit facilities must be obtained from financial institutions incorporated in Malaysia. For financing in excess of M$10 million, the approval of the Controller is required.
196 Id.
197 Other than the currencies of South Africa and Israel.
198 MIDA, supra note 105, at 39-42.
199 MALAYSIA, YOUR PROFIT CENTRE IN ASIA, supra note 175, at 15; REGIONAL INVESTMENT GUIDE, supra note 61, at 36.
bilateral Guarantee Agreements\textsuperscript{200} with nineteen countries\textsuperscript{201} and multilateral Guarantee Agreements with two international groupings.\textsuperscript{202} To date, none of these agreements have been invoked against Malaysia.

Under the Guarantee Agreements, the Malaysian government generally agrees to provide investors from the foreign signatory-country with protection against nationalization and expropriation and with prompt and adequate compensation upon the occurrence of these events.\textsuperscript{203} They also provide for free transfer of profits, capital, and other fees by foreign investors from Malaysia.

8. \textit{Double Taxation Agreements}

Malaysia has limited the problem of double taxation by entering into taxation agreements with various countries. To date, it has signed thirty-two such agreements dealing with double taxation.\textsuperscript{204}

The double taxation agreements generally provide that profits earned by a foreign investor are taxed in the foreign country on condition that the investor does not have a permanent establishment in Malaysia.\textsuperscript{205} In the latter case, only profits derived from the permanent establishment is taxed in Malaysia, and relief will be granted by the foreign country for payment of such taxes.\textsuperscript{206} Further, dividends derived from Malaysia by residents of foreign countries are exempt from tax in Malaysia, and depending on the agreements, interest on approved loans and/or approved industrial royalties may be exempt from tax in Malaysia.\textsuperscript{207}

\begin{thebibliography}{9}
\bibitem{200} \textit{Id.} at 69; MIDA, \textit{supra} note 105, at 8.
\bibitem{201} The countries are Austria, Belgio Luxembourg Economic Union, Canada, China, France, Finland, Germany, Italy, Korea, Kuwait, the Netherlands, Norway, Romania, Sri Lanka, Sweden, Switzerland, the United Arab Emirates, The United Kingdom, and The United States of America.
\bibitem{202} The international groupings are the Association of South East Asian Nations and the Organization of Islamic Conference.
\bibitem{203} \textit{Id.} at 8-9.
\bibitem{204} Participating countries include Australia, Austria, Bangladesh, Belgium, Canada, China, Denmark, France, Finland, Germany, Hungary, India, Indonesia, Italy, Japan, Korea, the Netherlands, New Zealand, Norway, the Philippines, Pakistan, Poland, Romania, Singapore, Sweden, Sri Lanka, Switzerland, Thailand, the United Kingdom, the Union of Soviet Socialist Republics, the United States of America, and Yugoslavia.
\bibitem{205} MIDA, \textit{supra} note 105, at 25-26.
\bibitem{206} \textit{Id.}
\bibitem{207} \textit{Id.}
\end{thebibliography}
9. Arbitration

As early as 1966, the Malaysian Government adopted\textsuperscript{208} the Convention on the Settlement of Investment Disputes. Foreign investors in Malaysia may therefore use the International Center of Settlement of Investment Disputes as an arbitral forum to resolve disputes.\textsuperscript{209} In 1985, Malaysia also ratified the New York Convention for reciprocal enforcement of foreign arbitral awards. The Convention provides for mutual recognition and enforcement of arbitration decisions by ratifying countries.

Malaysia also set up the Regional Centre for Arbitration in the federal capital of Kuala Lumpur in 1978. The center was established as a non-profit administrative agency for the conduct of international commercial arbitrations in the region. Its main function is to serve the needs of international organizations and business communities that need reliable international arbitration to settle their disputes. As host government, Malaysia provides the premises and an annual grant for the Centre to carry out its objectives and functions. Since 1986, there have been nineteen international arbitrations at the Centre.\textsuperscript{210}

C. Indonesia

1. Introduction

a. General History and Background

Indonesia consists of 13,000 islands,\textsuperscript{211} making the country the largest archipelago in the world. Scattered on seven seas,\textsuperscript{212} the islands are hemmed in by the Indian Ocean and the Pacific Ocean. From east to west, the greatest distance between the islands is approximately 3,175 miles, and

\textsuperscript{208} Id.

\textsuperscript{209} Pursuant to the Convention, the International Center for Settlements of Dispute was created to act as an arbitral forum for the resolution of disputes between contracting states and nationals of other contracting states.

\textsuperscript{210} MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY, MALAYSIA INDUSTRIAL DIGEST, 3 (Oct-Dec. 1991).

\textsuperscript{211} However, only about 6,000 islands are inhabited.

\textsuperscript{212} Java Sea, Flores Sea, Banda Sea, Arafura Sea, Maluku Sea, Sulawesit Sea and Sulu Sea.
from north to south the distance is about 1,173 miles.213 The five main islands in the archipelago are Sumatra, Java, Kalimantan, Sulawesi, and Irian Jaya, with the capital, Jakarta, located in Java.

Indonesia has a population of 183 million,214 making it the fifth most populous nation in the world. Two thirds of the population live in Java, giving Java one of the highest rural population densities in the world.215 The population is characterized by great diversity in ethnicity as underscored by the number of languages spoken—there are 365 languages and dialects spoken in Indonesia, but a majority of the population understands the national language, Bahasa Indonesia.216 The common bond among most of the diverse masses is religion: eighty-six per cent of the population is Muslim.217 Another source of unification is “Pancasila.” In 1945, the government embraced “Pancasila” (five principles of belief in one supreme god, humanity, unity, democracy, and social justice) as the unifying philosophy of the country.218 To date, the five principles are still celebrated as the forces of cohesion in the nation.

Indonesia became a republic when it declared its independence from Holland in 1945. In the same year, the country adopted its own Constitution, which provides for sharing of powers among the executive, legislature, and judiciary.219 The President is the chief executive of the country, vested with broad powers of authority. He is elected by the People’s Consultative Assembly (Majlis Permusyawaratan Rakyat) for a five-year term. The Assembly is the highest state body with 1,000 members.220 It meets once every five years to elect a President and Vice-President and to establish the broad outlines of state policy. Legislative functions in Indonesia are performed by the People’s House of Representatives, which is comprised of

213 INVESTMENT COORDINATING BOARD, INDONESIA, INDONESIA: A GUIDE FOR INVESTORS, 4.
216 THE INDONESIAN BUSINESS SCENE, supra note 214, at 2.
217 Seven per cent of the population are Christians and the remainder are Hindus/Buddhists. Id.
218 INDONESIA, A GUIDE FOR INVESTORS, supra note 213, at 5.
219 Id.
400 elected members and 100 members appointed from the military. This body drafts and passes legislation, budgets, decrees, and laws proposed by the executive branch. Finally, the judicial system is headed by the Supreme Court, which supervises and controls all the lower courts: courts of first instance (Pengadilan Negeri), courts of second instance (Pengadilan Tinggi), and courts of appeal. The judicial system is designed to be an independent arm of the government and enforces the laws of the country before a three-judge trial system.

b. Indonesian Economy

i. Past Decade

In 1980, oil accounted for seventy-five per cent of Indonesia’s export earnings and seventy per cent of government revenues. The disadvantage of such a narrowly based economy was felt when the price of crude oil dropped from a peak of over US$34 a barrel in 1981 to about US$12 a barrel in 1986. This fall in prices prompted the government to embark on a program to diversify the economy in the 1980’s. Dr. Sumarlin, the Minister for Finance, summed up the reasons for the diversification as follows:

As you well know, reforms are generally the “child of crisis,” seldom taken for their own sake. For Indonesia, pressures for significant change began in 1983 and were threefold: First was the decline in oil prices that started in 1983 and continued until 1986—when the price dropped to less than $10 a barrel. Second was a global recession that occurred during roughly the same time. And third was a global currency realignment which saw the dollar depreciate against other major currencies. Consequently, the dollar portion of our debt payment rose by roughly $1.5 billion at the same time that earnings from our oil exports dropped by

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211 Id.
221 Id.
222 Id.
224 TRENDS IN DEVELOPING ECONOMIES, supra note 215, at 278.
225 Id.
nearly $6 billion in 1986—about 10 per cent of our GDP at that time.

These pressures led us to a two-fold realization. We could no longer rely on oil as the engine of economic growth; we had to diversify our economic base. And second, faced with a scarcity of government financial resources due to the oil price collapse, the main impetus for economic diversification and growth should be the private not public sector.  

Indonesia launched a program to give freer rein to the private sector and to lessen the economy’s dependence on petroleum as a source of export earnings and tax revenue. The program was implemented through deregulation of the economy and de-bureaucratization of government processes. It began in 1983 by loosening controls on the financial sector. Major policy deregulation initiatives, designed to improve efficiency and international competitiveness in the economy, were also adopted. These included the streamlining of investment application procedures, relaxation of foreign ownership restrictions, broadening of business areas open to foreign investment, reduction of import monopolies and non-tariff barriers, elimination of duties on goods for re-export, and provision of special privileges for export-oriented investments.

The success of the government’s program is exemplified by the nation’s diversified economy today. In the past years, Indonesia’s dependence on oil and gas for export earnings has decreased. Oil and gas exports now account for thirty-nine percent of export earnings, compared to eighty percent of export earnings previously. In contrast, exports of manufactured goods have grown at an annual rate of forty percent in the last five years. Manufacturing accounted for 14.9% of GDP in 1990. Although exports of manufactured products have grown in recent years, oil remains Indonesia’s largest foreign-exchange earner, but with less dominance than in the

227 William Keeling, Survey of Indonesia, Fin. Times, June 24, 1992, at § III.
228 Id.
However, the government remains committed to the diversification process despite some improvement in oil prices.

ii. The Future

Indonesia is going through the final phase of its 25-Year Long Term Development Program. In 1969, President Suharto declared the ultimate goal of the 25-Year program: to elevate Indonesia into the ranks of a newly industrialized nation by 1994. This program is being implemented through five-year development plans. The country now is in the midst of its fifth and final Five-Year Development Plan, known as Repelita V. Repelita V began in 1989 and is scheduled for completion at the end of 1994.

The aim [of the plan] is to achieve a balanced economic structure, with emphasis on the agricultural sector for consolidating food self-sufficiency and promoting product diversity, and on the industrial sector for promoting industries that export, absorb substantial manpower, process agricultural products and produce industrial machinery. Development in other fields, such as social and political affairs, is undertaken in line with economic development efforts in a mutually reinforcing manner.

Of relevance to foreign investors is the expressed desire to continue promoting "[i]nvestment activities, domestic as well as foreign" in Indonesia. The government continues to believe that private investment will remain the fuel to the nation's engine of growth. Foreign investment continues to be welcomed in sectors that produce essential goods and

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229 Oil and gas accounted for 36% of total exports in 1991, against 82% a decade earlier. Indonesia is the world's fourteenth largest producer of oil and remains as Asia's only member of the Organization of Petroleum Exporting Countries (OPEC). Adam Schwarz, Pressure Controls, FAR EASTERN ECONOMIC REVIEW, April 2, 1992 at 36, 39.


233 Id.
services, expand exports, require large-scale investment and relatively high-technology, and support the growth of national enterprises. A constant theme throughout Repelita V is the need to create jobs for the more than two million new entrants into the job market each year.\textsuperscript{234}

2. Investment in Indonesia

a. Introduction

Indonesia’s infancy stage of development is reflected by Tungky Ariwibowo’s (Indonesia’s Deputy Ministry of Industry) statement: “Our primary competitive advantages are our natural and human resources. These factors will not change.”\textsuperscript{235} Consistent with initial stages of development in a country, the Indonesian government highlights the nation’s wealth of raw materials\textsuperscript{236} and large pool of young and low cost labor as the two main advantages of investing in the country. The country is well-endowed with natural resources (petroleum, natural gas, coal, nickel, tin, copper, gold, and aluminum) and a low cost labor force that increases by 2.4 million each year,\textsuperscript{237} providing investors with a continuously expanding pool of la-

\textsuperscript{234} UNITED STATES DEPT OF COMMERCE, supra note 230, at 3.
\textsuperscript{235} Schwarz, supra note 229, at 52.
\textsuperscript{236} THE WORLD BANK, INDONESIA: SUSTAINABLE DEVELOPMENT OF FORESTS, LAND, AND WATER, A WORLD BANK COUNTRY STUDY, xii (1990).

In contrast with many developing countries, Indonesia is very fortunate in terms of her natural endowments. The country has:

(a) a wealth of energy resources, including petroleum and coal, plus the potential for increased hydro and geothermal energy;
(b) rich soils in Java and Bali, and good soils in parts of Sumatra, Sulawesi and many other islands; and
(c) closed canopy forest in more than half of the country, a higher proportion than in any other large country in Asia.

In the last two decades, this wealth of natural resources coupled with good macroeconomic management has helped sustain impressive rates of growth and achieve substantial reductions in poverty.

\textit{Id.}

\textsuperscript{237} Schwarz, supra note 229, at 33.
In 1967, Indonesia enacted the Foreign Investment Law to attract foreign investment in the country. This legislation broadly provides for the sectors open to foreign investment, policy on use of local labor, incentives for and conditions of investment, assurances against nationalization, and responsibilities of investors. The Law also offers various assurances including the right to: (1) transfer dividends in the original currency of the invested capital at the prevailing exchange rate; (2) transfer funds to pay costs relating to the employment of foreign personnel in Indonesia; (3) remit loan interest payable and make loan principal repayments; (4) repatriate capital arising from the sale of equity to Indonesian citizens; and (5) transfer compensation received in the event of nationalization.

### i. Sectors for Investment

Article 5 of the Foreign Investment Law, 1967 expressly provides that the government will determine “the fields of activity open to foreign investment.” In fact, only industries that are vital to the country’s security and stability are closed to or restricted from foreign investment. Pursuant to Article 6(2), industries vital to national defense, such as production of arms, ammunition, explosives, and war equipment, are absolutely closed to foreign investment. However, public utilities, such as telecommunications, drinking water, public railways, power, aviation, mass media, shipping, and harbors, are not absolutely closed to foreign investment. Foreign investment in these sectors may be permitted if the government retains sufficient control in their management. In addition, the government periodically issues a “Negative List” through the Investment Coordinating Board (Badan Koordinasi Penanaman Modal or BKPM). Sectors described in the list are closed to or restricted from foreign investment, depending on the level of export.

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238 Sixty per cent of the population is below twenty-five years of age. See generally American Chamber of Commerce, Indonesia, Indonesian Economic Overview, 1 (June 1991).

239 LAW NO. 1 OF 1967, CONCERNING FOREIGN INVESTMENT (Indon.), Supp. no. 2818 [hereinafter Foreign Investment Law].


241 FOREIGN INVESTMENT LAW, 1967, arts. 19, 21; GAUTAMA, supra note 223, at 285.

242 FOREIGN INVESTMENT LAW, supra note 239, at art. 6(1).
Currently, there are sixty such sectors listed, and another thirty-eight sectors are reserved for small-scale industries.

**ii. Vehicles for Investment**

The major forms of business organizations in Indonesia are regulated by the Civil Code and Commercial Code of 1848. These forms are basic partnership (Perserikata Perdatan), open partnership (Firma), limited partnership (Commanditaire Vennootschap), and limited liability company (Perseoraan Terbatas).

For foreign investors who intend to conduct business in Indonesia, the vehicle of investment is limited to the form of a Pernaman Modal Asing ("PMA") company. A PMA company enjoys limited liability; that is, investors are liable only up to the amount of their equity in the company. The Foreign Investment Law does not require foreign investors to form new PMA companies. Investors may either establish a new company or buy shares in an existing company. However, both alternatives are tied to the same condition—the field of investment must not be closed to foreign investment.

If a foreign company does not plan to conduct business in Indonesia, "it may set up a representative office by appointing an Indonesian citizen, an Indonesian company, or an individual foreigner." Pursuant to ministerial regulations, representative offices may be established to perform auxiliary services, such as "acting as an intermediary, handling promotional activities, and gathering information for a head office abroad," but cannot engage in

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244 Based on the Civil Code; Commercial Code 1848 which is the Dutch Commercial Code.
245 GAUTAMA, supra note 223, at 276-279.
246 This is required by the Foreign Capital Investment Law.
247 The disadvantage of buying into an existing company is that the amount of foreign equity permitted is limited. A foreign investor's maximum equity ownership is limited to eighty percent and on condition that sixty-five percent of the production is exported. Otherwise, a foreign investor has to be content with forty-nine percent equity ownership in the existing company. To acquire interest in an existing company, an investor may either purchase shares from existing shareholders or shares newly-issued by the company. The share price is subject to negotiation between the parties.
248 GAUTAMA, supra note 223, at 283 (citing Decree of the Minister of Trade, No. 78/Kp/111/78, regarding regulation concerning business licenses for foreign representatives).
trade or enter into contracts.\textsuperscript{249} Such offices are licensed\textsuperscript{250} by the Ministry of Trade.

\textit{iii. Special Facilities}

To boost foreign trade and encourage export-oriented industries, Indonesia plans to establish bonded or duty-free zones. These zones will combine free trade zones with industrial estates, and be characterized by full infrastructural support in the form of advanced cargo handling systems, shipping, and communications. It is envisioned that manufacturers will be able to import, store, and tranship raw materials and components in these zones, duty free, when these raw materials and components are used in the production of goods for export.

Nine bonded or duty-free zones have been planned.\textsuperscript{251} Currently, Batam island is the only zone near completion. Already, multinationals, such as Philips, Sony, and Toshiba have registered for space in the industrial park\textsuperscript{252} and twelve foreign firms have been granted permission to operate in Batam.\textsuperscript{253}

\textit{iv. Privatization}

The Indonesian government has embarked on the privatization of state-owned companies by sale of shares to the public.\textsuperscript{254} Fifty-two state-owned companies, known as \textit{Badan Usaha Milik Negara}, have been earmarked for this process. According to the Ministry of Industry, the purpose of privatization is to increase public participation in financing the expansion of such companies.

Government regulations have also been issued to provide guidelines for the administration of state-owned companies after they are privatized. These regulations provide for exemption from several obligations\textsuperscript{255} presently imposed on such companies.

\begin{flushleft}
\textsuperscript{249} RICHARD I. MANN, \textsc{Business in Indonesia}, 225.
\textsuperscript{250} Licenses are issued for two-year periods. GAUTAMA, \textit{supra} note 223, at 284.
\textsuperscript{251} INTERNATIONAL \textsc{Business}, 28 (Nov. 1991).
\textsuperscript{252} Id.
\textsuperscript{253} SINGAPORE \textsc{Business Times}, July 26, 1991.
\textsuperscript{254} DR. KOMAR KANTAATMADJA, \textsc{Indonesia}, 11 (April 11, 1991).
\textsuperscript{255} Such as procedures for procurement of goods and services, sale and transfer of goods, use of foreign export credits and consent of the Foreign Minister for foreign loans. \textit{Id}.
\end{flushleft}
b. Incentives

   i. Tax Concessions

   Depreciation and Amortization: Unlike most developing countries, Indonesia does not offer tax holidays or tax concessions for revenues or profits derived from foreign investment in the country. Instead, incentives for investment take the form of generous depreciation and amortization rates for capital goods. The rate of depreciation and amortization of tangible and intangible assets vary depending on the term of their useful lives. Only assets with more than one year of useful life may be depreciated. Four rates of depreciation available are:

- A fifty per cent rate may be applied to assets with useful lives not exceeding four years.  
- A twenty-five per cent rate may be applied to assets with useful lives exceeding four years but less than eight years.  
- A ten per cent rate may be applied to assets with a useful life exceeding eight years.  
- A five per cent rate may be applied to assets in the building category.

The first three categories of assets may be depreciated using the declining balance method, but the five per cent rate must be applied on a straight line basis. Similarly, generous amortization rates are available for intangible assets.

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256 The cost of acquiring land is not depreciable. INVESTMENT COORDINATING BOARD, supra note 213, at 10.

257 Examples are furniture and equipment made from wood or rattan and motor vehicles. Id.

258 Examples are furniture and equipment constructed from metal, office machines, drilling equipment used in oil and natural gas mining, heavy machinery and equipment, ships, aircraft and communications equipment. Id.

259 Examples are pipes, oil and gas storage and holding tanks, railway engines, wagons, containers and docks. Id.
ii. General Customs Incentives

In addition, import of capital goods directly related to production processes enjoy exemptions from or concessions on import duty\(^{260}\) and deferment of Value Added Tax\(^ {261}\) and Sales Tax on Luxury Goods.

iii. Incentives for Export

To increase its foreign exchange earnings, Indonesia encourages exports through a variety of incentives. Duty drawback is available for Value Added Tax previously paid by manufacturers on the purchase of goods, materials, and services that are used in the manufacture of exported goods. Export credit at subsidized rates ranging from 14% to 14.5% is made available to national and joint venture companies.

Companies that export sixty-five per cent or more of their products are further rewarded with other incentives. Their foreign joint venture partners may own up to ninety-five of such companies. Imports of machines, machine tools, and raw materials by these companies are totally exempt from import duty and Value Added Tax. Even goods and materials purchased domestically for use in the production of export-goods may be fully exempt from Value Added Tax and Luxury Tax.

The Indonesian government took additional steps to boost exports in 1992 by encouraging local banks to channel cheaply-raised funds offshore to exporting companies. In response to the government’s encouragement, Commercial Bank Bali raised $100 million in loans offshore and announced a scheme to offer these funds to exporting companies at an interest rate of one per cent per month.\(^ {262}\) This extremely low rate contrasts with the normally high local interest rate of thirty percent in Jakarta in 1992.\(^ {263}\)

3. Equity Ownership and Contribution

a. Foreign Equity Ownership

Prior to the recent amendment, all foreign investment in Indonesia had to

\(^ {260}\) For example, machinery, equipment, spare parts and auxiliary equipment. Id. at 12.

\(^ {261}\) Up to the date of commercial production.

\(^ {262}\) Id.

\(^ {263}\) Victor Mallet, Survey of Indonesia, FIN. TIMES, June 24, 1992, at 111.
take the form of joint ventures with Indonesian partners. The only exception was investment in Batam island, where foreigners were permitted to set up wholly-owned subsidiaries for investment in the island; that is, 100% foreign ownership in the company was permitted. For investment in other parts of Indonesia, the level of foreign shareholdings was determined according to conditions, such as project location, total investment, and extent of export.

In April 1992, the Indonesian government issued a directive, with immediate effect, permitting foreign investors to hold 100% equity in new companies. This new directive, however, applies only to investments with paid-up capital of over US$50 million in Java and Sumatra. Projects with lesser capitalization must be located in remote provinces in order to qualify for 100% foreign equity ownership. The new directive does not tie 100% foreign equity ownership to exports by the company. But at least 5% of the foreign equity must be transferred to an Indonesian company or national within five years after production begins, and within twenty years, the Indonesian stake must rise to 20%. There is no export requirement for such companies.

Government officials hope that the new rules will help bring investment

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264 Even then, 100% foreign ownership is permitted in Batam only if the investment is at least US-$250,000 and the total production is exported. After five years from the start of commercial production, foreign ownership must decrease to at least 95%. Richard I. Mann, Batam: Step by Step Guide for Investors, 53 (1990).

265 In most cases, the government permits foreigners to own up to 80% of PMA companies at inception. However, the Indonesian partner must become a majority shareholder with at least 51% equity in the company within fifteen years. This period may be extended by application to BKPM. The two main exceptions to this general rule are:

1. A joint venture that exports all of its production and is located in a bonded zone is allowed to have up to 95% foreign ownership. There is no requirement for the reduction in foreign ownership over time.

2. A joint venture that invests at least US$10 million and has operations located in certain specified locations or exports at least 65% of its production may have up to 95% foreign ownership. But, the foreign ownership must decrease to at least 80% within ten years and to 49% within fifteen years.

Investment Coordinating Board, supra note 213, at 22.


267 Id.

268 Id.

269 Id.
to eastern Indonesia, which has lagged behind in development compared with the western part of the country.\footnote{Richard Borsuk, Indonesia to Let Foreigners Own 100\% of Projects, ASIAN WALL ST. J., April 16, 1992 at 1.}

\textit{b. Currency of Investment}

Foreign investment must be made in United States dollars.\footnote{REGIONAL INVESTMENT GUIDE, supra note 61, at 79 (1991).} Because the capitalization of an investment company is declared in the local currency, \textit{rupiahs}, the foreign investor's share, although paid in United States dollars, will be converted into rupiahs at the fixed conversion rate.\footnote{Id.} A foreign investor will be notified of the conversion rate upon issuance of the investment approval. Generally, the rate will be the middle rate of the Bank Indonesia on the date of approval.\footnote{Id.}

\textit{c. Financing of Investment}

When deciding whether to approve foreign investment projects, the Indonesian government will, among other things, look at the total investment to be made and the method of financing such investment. In principle, the minimum total investment must be US$1 million for approval, but investments as low as US$250,000 have been approved. These principles are not absolute.\footnote{Id.}

Government guidelines require the debt and equity ratio of an investment company to be three to one (3(loan):1(equity)).\footnote{Id.} Again exceptions may be made and on occasion higher ratios may be approved. It is the government's preference for the debt portion of the capitalization to be funded offshore. However, companies may tap domestic sources for investment and working capital loans, either from foreign banks in Indonesia or Indonesian private banks.\footnote{Id.}
4. Tax Considerations

There are broadly three levels of taxes that investors should be aware of in Indonesia: state or national tax, regional tax, and customs and excise taxes. State tax generally takes the form of corporation tax, income tax, value-added tax, sales tax on luxury goods, stamp tax, property tax on land and buildings, and fiscal exit tax. Regional taxes consist of development tax, motor vehicles tax, and other minor taxes. Finally, customs and excise taxes are payable on exports and imports.

Taxes imposed at the state or national level are the most relevant to investors. Taxes most commonly paid by investors are corporate, income, and sales taxes. The Corporation Tax Ordinance of 1925 imposes tax on income derived from business operations resident in Indonesia. Because investors are required to set up a PMA company when investing in Indonesia, this brings the company within the taxing authority of the Ordinance. Qualifying companies have to pay taxes on their worldwide income at rates ranging from 20% to 45%. However, foreign companies holding shares in the PMA company are considered non-resident, and are only taxed on income derived from Indonesia. Similarly, income tax is imposed on the worldwide income of residents and on Indonesian-source income of non-residents. The Income Tax Ordinance of 1944 imposes income tax on a graduating scale ranging from 20% to 35%.

Finally, the Sales Tax Act of 1951 imposes sales tax on three categories of activities: (1) transfer of goods from manufacturers to a customer in Indonesia; (2) services rendered independently and for remuneration in Indonesia; and (3) importation of tangible and movable goods into the Indonesian customs area. In all categories, the basis of tax is the sales price made in an arms’ length transaction. Sales tax on domestic transactions range from zero to twenty per cent 20%.

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277 INVESTMENT COORDINATING BOARD, supra note 213, at 28-29.
278 Foreigners are generally not concerned with property tax because it is very low; 0.5% under the Property Tax Act of 1932; and payable only by individuals and not legal entities. GAUTAMA, supra note 223, at 310-311.
279 INVESTMENT COORDINATING BOARD, supra note 213, at 29.
280 Such as household tax, foreigners tax, entertainment tax, road tax, advertisement tax, and radio and television tax. Id.
281 Id.
282 GAUTAMA, supra note 223, at 312.
5. **Protection of Intellectual Property Rights**

In recent years, Indonesia has made improvements to its intellectual property laws to bring them closer to the standards of developed nations. In 1987, an improved copyright law was enacted.\(^{283}\) It provided for automatic court proceedings for copyright violations and stiff maximum penalties.\(^{284}\) Indonesia also entered into bilateral agreements on copyright protection with the European Community in 1988 and with the United States in 1989.\(^{285}\)

Similarly, patent protection was strengthened in 1989 when the Indonesian Parliament passed a law revoking all existing patent regulations.\(^{286}\) Under the new law, patents are protected for fourteen years from the date of receipt of the patent application, and protection may be extended for a further two years after expiration.\(^{287}\) Indonesia is a member of the Paris Convention on Patents and is a signatory to the Hague Agreement of 1925.\(^{288}\)

6. **Land Rights**

Article 14 of the Foreign Investment Law provides that "[t]o meet the requirements of foreign enterprises, land may be provided, with the right of construction, the right of exploitation, and the right of use in accordance with prevailing regulations."

The concept of freehold land does not exist in Indonesia. Instead, interest in land is divided and parcelled out according to various uses and subject to separate ownerships. Of relevance to investors are three types of land rights under Basic Agrarian Law:

(1) *Hak guna usaha* or the right of exploitation is the right to use state-owned land of not less than twenty-five hectares for purposes of agriculture, including plantations, fishing, and cattle raising;\(^{289}\)

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\(^{283}\) *INVESTMENT COORDINATING BOARD, supra* note 213, at 23.

\(^{284}\) *Id.*

\(^{285}\) *Id.*


\(^{287}\) *Id.* at 12.

\(^{288}\) *INVESTMENT COORDINATING BOARD, supra* note 213, at 23.

\(^{289}\) This right is limited to Indonesian nationals or legal entities domiciled in Indonesia and is granted for thirty years usually. It can be leased out to joint ventures but cannot be used as collateral for loans.
(2) *Hak guna bangunan* or the right of building;\(^{290}\) and
(3) *Hak pakai* or the right of use.

Foreign investment companies must obtain the approval of BKPM's regional office before acquiring land for use in the direct operations of the company.\(^{291}\)

7. Labor Regulation

a. Expatriate Staff

The basic philosophy of the Indonesian Government is that expatriates should only be employed in positions that cannot be filled by Indonesian nationals.\(^{292}\) Recognizing that Indonesia does not have sufficient workers at the managerial level, Article 9 of the Foreign Investment Law gives the owner of foreign capital full authority to appoint the management of the enterprise in which his capital is invested. The official reason given is that "[t]his is only proper since the capital investor will want to assign the management of the enterprise to persons trusted by him."\(^{293}\)

Although the Foreign Investment Law authorizes foreign investors to appoint its own management, the enterprise must use Indonesian labor for non-managerial positions. The enterprise can only engage expatriates for these positions when such positions cannot be filled by Indonesians.\(^{294}\) Even then, the enterprise must provide regular training, locally or overseas, to enable the gradual "Indonesianization" of expatriate positions.\(^{295}\)

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\(^{290}\) This is the right to construct and own buildings with title typically granted for twenty to thirty years.

\(^{291}\) Very recently, a new set of economic reforms were announced. Richard Borsuk, *Jakarta Announces Economic Reforms*, ASIAN WALL ST. J., July 8, 1992, at 3. Of special significance to foreign investors is a presidential decree permitting foreigners to lease land for up to thirty years with possible renewals. *Id.* Under previous rules, only domestic investors could obtain licenses for unrestricted lease and use of land for decades. *Id.*

\(^{292}\) INVESTMENT COORDINATING BOARD, *supra* note 213, at 28.

\(^{293}\) *Id.* at 19.

\(^{294}\) *Id.* at 28.

\(^{295}\) FOREIGN INVESTMENT LAW NO. 1 OF 1967, art. 12 (Indonesia). Companies engaging expatriates are required to submit a manpower utilization plan at the initial stage of application for project approval, stipulating the number of expatriates a firm wishes to employ, and a timetable for their replacement with nationals.
b. Conditions of Employment

The Ministry of Manpower regulates all employment practices in Indonesia. The normal procedure is to engage Indonesian workers on the basis of an initial three-month probation. If the worker is found to be unsatisfactory during that period, the worker may be dismissed.

After the probation period, dismissal of workers must be approved by the Department of Manpower. It is usual to give employees three written warnings prior to termination. But in cases of serious offenses, such as theft, the employee may be terminated forthwith. Incompetence is normally not accepted as a valid reason for termination of employment. Upon termination, an employee is entitled to severance pay. The amount varies depending on the length of employment. An employee who resigns is not entitled to severance pay.

The Ministry of Manpower also regulates the conditions of employment, such as basic working period, minimum wage rate, annual leave, sick leave, maternity leave, and absence from work to attend government and recognized religious duties. In 1977, the government implemented the Social Insurance Program (ASTEK) under which private and state-owned companies that employ more than twenty-five persons or have a payroll exceeding 11 million rupiahs are required to participate in the program.

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296 INVESTMENT COORDINATING BOARD, supra note 213, at 23.
297 Id. at 24.
298 Id.
299 Warnings are deemed to expire as follows: first warning, after six months; second warning, after nine months; and third warning, after twelve months. Id. at 24.
300 Id.
301 The severance pay is computed as follows: One to two months wages is paid for each year of service up to four years, plus one to two months pay for each subsequent five years of service. Id.
302 The basic working week is not more than forty hours.
303 This is regulated through the Letter of Decision issued by the Minister of Manpower. It is applied to each province and reviewed after certain periods. Jakarta Announces Economic Reforms, supra note 291, at 3.
304 At least two weeks per year. INVESTMENT COORDINATING BOARD, supra note 213, at 28.
305 A period of up to twelve months. INVESTMENT LAW AND REGULATIONS, 1991 (Elucidation of Law No. 1 of 1967 Concerning Foreign Investment).
306 Three months usually. INVESTMENT COORDINATING BOARD, supra note 213, at 28.
8. Exchange Controls

Indonesia does not impose any foreign exchange controls. Investors may freely transfer funds to or from the country.307 Similarly, profits, capital, expatriate earnings, etc., may be repatriated to the home country without prior approval of the government.308

9. Political Risks

The Foreign Investment Law of 1967 expressly guarantees against nationalization of a company's assets without fair compensation.309 In addition, Indonesia concluded bilateral investment guarantee agreements with Denmark, Norway, Belgium, Switzerland, France, the United Kingdom, West Germany, and South Korea.310 These agreements generally cover compensation if nationalization or expatriation occurs or if damage or loss is caused by incidents of war, revolution, or insurrection and guarantee payments for approved remittance pursuant to investment in case of non-convertibility of the currency.

10. Double Taxation Agreements

To create a favorable investment climate, Indonesia also entered into double taxation agreements to ensure that investors are not taxed twice on profits or income accruing from their Indonesian investment.311 Indonesia entered into these agreements with the Netherlands, Belgium, the United Kingdom, West Germany, Canada, France, Thailand, the Philippines, the United States, Austria, Denmark, East Germany, India, Japan, New Zealand, Finland, Norway, the Republic of Korea, Sweden, and Switzerland.312

11. Arbitration

As a result of Indonesia's participation in the Convention of Settlement of

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307 FOREIGN INVESTMENT LAW, supra note 239, at art. 19.
308 Id.
309 FOREIGN INVESTMENT LAW, supra note 239, at art. 21.
310 Id. at 42.
311 Id.
312 Id.
Investment Disputes, disputes stemming from investment in Indonesia between a foreign investor and the Indonesian Government can be referred to the World Bank International Center for the Settlement of Investment Disputes in Washington.\textsuperscript{313}

Because many arbitrations are conducted outside Indonesia, enforcement of foreign arbitration awards in Indonesia raises controversy. Such awards would have no practical value at all if no mechanism for enforcing them existed in Indonesia. To address this problem, Indonesia became a party to the New York International Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1981. However, in 1984 the Indonesian Supreme Court held that the government’s adherence to the Convention was ineffective without implementing regulations.\textsuperscript{314} As a result, the Indonesian Supreme Court adopted Supreme Court Regulation No. 1 of 1990 in March of that year. This regulation established the mechanism for the enforcement of foreign arbitration awards by appointing the Central Jakarta District Court as the competent court for recognition and enforcement of foreign arbitral awards. A foreign arbitral award will be recognized and enforced in Indonesia provided that: (1) it is rendered in a country that is a party to the Convention, (2) its subject matter is limited to the field of commercial law, (3) it is not contrary to Indonesian public policy, and (4) an “exequatur” or declaration of fiat executive\textsuperscript{315} is obtained from the Indonesian Supreme Court. The regulation also provides for seizure of assets and goods belonging to a respondent according to the procedures of the general civil process laws.\textsuperscript{316}

\section*{12. \textit{Countertrade Requirements}}

When an Indonesian government-sponsored contract is concluded with a foreign company, a “counterpurchase” requirement is imposed on that

\begin{itemize}
\item \textsuperscript{313} \textit{Id.} There is growing trend in Indonesia commercial contracts, to apply the UNCITRAL arbitration rules. There is also a tendency to refer to the Asian-African Legal Consultative Committee Regional Arbitration Center in Kuala Lumpur. \textsc{Gautama, supra} note 223, at 383.
\item \textsuperscript{314} \textit{Id.} at 384-385.
\item \textsuperscript{315} An “exequatur” may be obtained by application to the Chairman of the Supreme Court or an authorized representative. However, it will not be given if the award is clearly contrary to the fundamental principles of the Indonesian legal system or public policy. \textsc{Kantaat-Madja, supra} note 286, at 13.
\item \textsuperscript{316} \textit{Id.}
\end{itemize}
company. This requires the company to purchase goods of similar value in Indonesia. In the past, such counterpurchase requirements have totalled several billion dollars, but they have decreased in recent years.317

III. CONCLUSION

Although Singapore, Malaysia, and Indonesia have agreed to strategically promote the "Growth Triangle" as a region of development, the foregoing discussions indicate that each country has a different investment regime. The differences in the regimes are necessary to reflect the different stages of development in each country.

Singapore, which is the most advanced in the process of becoming a developed nation, is naturally focused on high technology manufacturing, advanced research and development, and environmental protection. Consequently, the country's investment incentives are tailored to attract investment in these areas. The incentives emphasize automation, acquisition of new technology and processes, and development of new products.

Malaysia is going through the intermediate stage of development. Therefore, the country is moving away from labor-intensive industries and is decreasing and phasing out investment incentives in this area. Instead, the incentives are now re-directed at intermediate-level industries, which are not highly labor-intensive but involve some level of high technology and research and development.

Finally, Indonesia, with its abundance of labor and natural resources, is undergoing the initial phase of industrialization. This is reflected in the country's generous investment incentives and constant liberalization of its investment laws—within the first seven months of 1992 the country amended its laws to permit 100% foreign ownership of new companies and abolished the restriction against foreigners leasing land for up to thirty years.

In sum, the concept of the "Growth Triangle" holds great promise for Singapore, Malaysia, and Indonesia. Although the three countries are in different stages of development as reflected by their different investment regimes, the resources and capabilities of the countries complement each other. The "Growth Triangle" offers, within a small geographic region, sophisticated technical expertise and advanced infrastructure in Singapore, abundant raw materials and very low cost labor in Indonesia, and moderately-priced manufacturing facilities in Malaysia. As observed in a discussion

317 THE INDONESIAN BUSINESS SCENE, supra note 214, at 9.
of the “Growth Triangle” initiative:

[International economic activities are becoming increasingly concentrated in a few strategic nodes, such as London, New York, Tokyo and Hong Kong. “Each strategic center attracts business from an extended hinterland and prospers out of proportion to the size of the local economy.” . . . “Each is a hub, servicing the region and linking it to the world.”]^{318}

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^{318} U.S. EMBASSY ECONOMIC AND POLITICAL SECTION, supra note 51, at 7.