

**Chair's Summary Report  
APEC Investment Experts Group (IEG) Meeting  
Washington, DC, United States  
5 March 2011**

**1. Introduction**

The first IEG meeting for 2011 was held on 5 March 2011 in Washington, D.C., United States. The meeting was chaired by the IEG Convenor, Toru Shimizu, and attended by approximately 40 representatives from 20 member economies, and representatives from ABAC, UNCTAD, World Bank and from Colombia and Costa Rica, both of which are IEG's official guests for 2009-2011. The APEC Secretariat's Directors for Program of IEG and Communication also attended.

**2. Opening Remarks by APEC IEG Convenor**

IEG Convenor, Mr Shimizu, expressed condolences to the casualties and the damage caused by the recent earthquake in New Zealand and wished early recovery. Then he welcomed the delegates and the IEG guests, Colombia and Costa Rica, and sought cooperation for an effective meeting.

**3. Adoption of Agenda (2011/SOM1/IEG/001)**

The meeting adopted the Draft agenda, with the presentations by the SOM Chair's representative and CTI Chair to take place upon their arrival.

**4. APEC/CTI's priorities and expected outcomes from CTI and sub-fora for 2011**

Ms Arrow Augerot, representing the SOM Chair's Office, briefed the meeting of APEC's priorities for 2011 i.e., Strengthening Regional Economic Integration and Expanding Trade; Promoting Green Growth and Expanding regulatory cooperation and Advancing Regulatory Convergence. She cited the Public-Private Dialogue on Investment held on 4 March as great example of close relationship with the private sector and expected the relationship to be strengthened. She expressed her expectation on the Group's contribution to CTI's discussion on the next generation trade and investment issues and, sought cooperation of IEG. She also noted the instruction from the SOM Chair that APEC economies work to achieve concrete deliverables in 2011, noting that there will be a strong focus on "getting things done."

Ms Monica Contreras, CTI Chair, briefed the meeting on CTI's Work Programme for 2011 with priorities given to Bogor Goals, Regional Economic Integration, Green Growth and Regulatory Cooperation, and expected outcomes for 2011 and IEG's contribution thereto.

IEG Convenor appreciated their briefing and committed that the Group would work closely with them and looked forward to their support to IEG's work.

**5. Reports on Activities and Developments since the last IEG Meeting held in Sendai, Japan on 20 September 2010.**

**(a) IEG Convenor's Update (2011/SOM1/IEG/002)**

IEG Convenor made a brief report on the IEG- and investment-related activities since IEG3 held in September 2010 and also highlighted outcomes from CSOM and Leaders' Declarations in Yokohama in November 2010 as well as from ISOM in December 2010 which had discussed the Bogor Goals, Regional Economic Integration, APEC Leaders' Growth Strategy and Regulatory Convergence/Cooperation. He touched upon the APEC key priorities for 2011 and, reminded the Group of its role in and contribution to the APEC priorities.

The meeting endorsed the Chair's Summary Report of IEG3 2010 which had been reviewed and approved intersessionally prior to the meeting (2011/SOM1/IEG/003).

**(b) APEC Secretariat Report (2011/SOM1/IEG/004)**

APEC Secretariat presented a brief report on APEC-wide developments, highlighting staff changes at the Program Directors, outreach efforts by the Executive Director and arrival of a new Director of the APEC Policy Support Unit. The Group was informed that BMC decided to consider in-principle approval of Concept Notes (prioritized by the Principal Decision makers) at BMC1 on 7 March instead of intersessional approval. Therefore, the result of the BMC's in-principle decision on IEG's three Concept Notes was not available by the time of IEG1 as it had been initially expected. Nonetheless, APEC Secretariat advised proposing members to start developing full project proposals to save time for improving the quality and for IEG members, especially QAF members to be ready to work further intersessionally.

The Session 2 project assessment process would start in parallel, for which the deadline for submission of Concept Notes to IEG would be on 28 March followed by intersessional approval, ranking and prioritization among the IEG members and, to the Secretariat not later than 7 April. APEC Secretariat asked members to let it know if members planned to submit Concept Notes. The submission deadline of Concept Notes for the Session 3 would be 29 September with approval expected by the end of December.

APEC Secretariat Communication Unit made a presentation on the Secretariat's outreach activities and offered assistance to the Group's needs.

## **6. IEG Projects**

### **Advanced Principles & Practices for more Predictability & Stability – Analytical Studies on Practices and Capacity Building**

Completion Report of "Capacity Building for Dispute Prevention and Preparedness (CTI 42/2010T)" (2011/SOM1/IEG/005) was tabled for information.

#### **(a) Reports on Ongoing 2010/2011 Projects:**

- **Core Elements Project – Moving beyond Phase III – Activity 2&3 A Handbook and Seminar for Negotiators (CTI 15/2010T)**

Mexico and Chile reported to the meeting on the progress of the preparation of a Handbook and the Seminar to be held on 11-13 April in Santiago, Chile to review and discuss the final version of the Handbook (2011/SOM1/IEG/006). Preparation of a draft Handbook was almost completed and an e-link to illustrative entries (<https://www.g15law-unctadpilog.org/ebook/index.asp>; ID&Password are ebookuser) was circulated among IEG members for comments on format and general approach by 15 March. Members were encouraged to submit their comments on the e-link to the consultant, the Project Overseers and UNCTAD and, to send their experts to the Seminar. The Handbook would be uploaded on APEC and UNCTAD websites. Japan appreciated the initiatives of Chile and Mexico and informed that it was ready to send an expert as speaker and, also commended that the Handbook would be a good tool for experts negotiating international investment agreements.

- **Core Elements Project – Moving beyond Phase III – Activity 5 Intensive Training Course (CTI 16/2010T)**

Peru reported on the progress of the project, in particular, the organization of a 5-day Training Course to be held on 7-11 March in Lima, Peru and appreciate members' interest and support (2011/SOM1/IEG/007).

- **Core Elements Project – Moving beyond Phase III – Activity 1 Study on Core Elements of IIAs in domestic investment frameworks (CTI 28/2010T)**

United States reported to the meeting that the contract had been secured and the initial work had commenced. Preliminary draft would be ready soon within a next few weeks and circulated among members well in advance to IEG2. The draft would be discussed at IEG2 and finalized at IEG3. (2011/SOM1/IEG/008)

- **Core Elements Project – Moving beyond Phase III – Activity 4 Study on transparency in IIAs (CTI 30/2010T)**

Japan reported on the progress of the project (2011/SOM1/IEG/009). The first draft report would be circulated to the IEG soon and, updated with inputs and feedback from economies. The updated report would be shared with the business community through IEG to ABAC and through a public-private dialogue on investment planned for 2011.

Ms Anna Joubin-Bret, UNCTAD, added explanation on the current status of each component of the entire Core Elements projects beyond Phase III and provided its outlook that all components would be concluded by mid-2011 (2011/SOM1/IEG/022). She concluded that UNCTAD was currently exploring new areas for APEC-UNCTAD cooperation on investment issues and international investment law.

IEG Convenor commended that Core Elements projects had been making a great achievement. He touched upon his own efforts for introduction of the achievement of APEC activities at the World Investment Forum in Xiamen in September, ASEAN-OECD Investment Policy Conference in Jakarta in November, and at the OECD Symposium on IIA in Paris in December 2010. He encouraged members to disseminate these good achievements so that others could join APEC's efforts.

**(b) New Project Proposals for 2011-2012**

- **Core Elements Project – Moving beyond Phase III – Activity 6 APEC-UNCTAD Workshop on Investor-State Dispute Settlement**

[The Concept Note of this project (2011/SOM1/IEG/010) had been already submitted to BMC for its consideration of in-principle approval of funding. The result of BMC decision was not available at the time of the meeting.]

The Philippines explained the major points of the concept of the project and sought cooperation of the members to develop it into full project proposal and successful submission to BMC for its final approval. A capacity building three-day workshop would be planned in June/July 2011 in Manila.

**7. IEG Projects  
Facilitation for Better Business Environment**

**(a) IFAP Progress and discussion**

Australia as lead of the IEG Small Group for IFAP implementation reported IEG's work to date, referring to its three tasks, i.e., selection of 15 actions for priority implemented in 2008-2010, examination of its existing work programme and achievements, and consideration how to address the most pressing capacity building and technical assistance gaps in the priority action areas of IFAP (2011/SOM1/IEG/011). She then explained several recommendations for consideration, which included reestablishment of a small working group with a view to invigorating the IFAP and its tasks and, shifting focus from seminars/workshops to implementation of outcomes and recommendations of studies, reports and surveys.

Australia proposed that it would refine the document and circulate it among IEG members for comments in April, which would be discussed at IEG2 and reported to CTI2 in May.

United States commended Australia for chairing the IFAP Small Group. He commented that IEG had already done a good work contributing to the IFAP implementation and fulfilling the IFAP goals, on transparency, and improving rule making. He suggested that IEG would need some ways to analyze on what other areas in IFAP to be addressed and to demonstrate to stakeholders on its achievements. He emphasized that ABAC and business community

would like to see the progress and achievements and wished some progress to be made in the next meetings.

ABAC mentioned that the progress of IFAP had been a subject of its attention in the last years and that business community was concerned to see the progress. Regretting the disagreement on KPIs after some time, he wanted to have clear understanding on -the divergent views on KPIs which delayed the progress. Australia responded that the divergence was on the methodology.

After intensive discussion, Convenor suggested that the Group discuss further steps of IFAP at IEG in a concrete manner with a revised paper to be submitted by Australia soon. He added that the points made by the United States were quite relevant and focus should be on more result-oriented debate.

- **Investing Across Borders: an important diagnostic tool to assist in IFAP implementation – Stage 1 (CTI 43/2009T)**

[Discussed under 7(c) together with the new project proposal, “Investing Across Borders: an important diagnostic tool to assist in IFAP implementation – Stage 2”]

Australia tabled the progress of the project including summary of the draft APEC tailored report of Report and future efforts **(2011/SOM1/IEG/012)**. Convenor invited representatives of the World Bank (WB) /Investment Climate Service to brief on the draft report which had been circulated among IEG members prior to the meeting.

WB presented the overview of IAB and GIPB (Global Investment Promotion Benchmarking) and comparison of APEC performance with other regions in 5 thematic areas, i.e., investing across sectors, starting a foreign business, accessing industrial land, arbitrating commercial disputes and GIPB. The survey involved total of 250 data points per economy in 33 sectors and over 2,400 expert respondents in 92 economies across 7 regions. Data would be submitted to the APEC Secretariat as one of deliverables. WB touched upon the limitation of the methodology in indicators/benchmark projects, which were all laid out and spelled in the Report. The Report would not present individual economy’s results but present APEC as a region and comparison to other geographic regions.

China thanked WB in completing the report which covered broad geographical scope of economies. She made a few comments on selection of covered areas, structure and design of indicators and measurement which could not reflect complete picture of the investment climate or make quite different results than real situation of individual regimes and climate and, suggested that limitation should be expressed in the Report.

United States congratulated Australia and WB for the report and admired that the report was entirely transparent. He reminded the Group that the report was not the final authoritative work but had enormous value as diagnostic tool. The purpose of the project was not to create APEC-specific index but to provide APEC with a study which found that APEC was a region which could improve in certain areas.

Philippines thanked Australia and WB and, echoed some of the China’s comments. She saw difficulty of economy-based ranking and, mentioned that the reform efforts were more important than ranking itself and that benchmarking exercise was natural for the Philippines. She would bring back the report to the government for improvement and would submit comments later.

Chile also shared concern expressed by China, pointing that some issues are not accurate such as restriction to transportation in Chile and arbitration.

WB thanked members for their comments and responded to them. He acknowledged the China’s reference to specific limitations. He also elaborated the genesis of the project that the report focused selectively and deliberately on those areas WB had seen regulatory

impediments in sectors for some time and could be addressed by administration. Logic behind the selection of topics was also explained.

After substantial discussion, Convenor stressed the need to continue discussion on substantial aspect of the project and to complete the project. Noting a number of comments mutually conflicting, Convenor proposed the Group to approve the report as such at IEG1 and, for some members requesting more time to digest the report, to give 4 weeks for submission of comments in written form which would be attached to the Chair's Summary Report. The Group had no objection to the proposal. The deadline for submission of written comments to APEC Secretariat and IEG Convenor was set on 3 April. *[Please refer to the attached comments from China; the Philippines and Hong Kong, China.]*

**(b) Reports on Ongoing/Completed 2010/2011 Projects**

**- Development of APEC Guide to Investment Regimes e-Portal and Electronic Publication (CTI 01/2009)**

Australia reported the completion of the project in February with on-line publication of the 7th edition of the APEC Guide to Investment Regimes and its revision in January 2011 and suggested that more improvement be considered and made in a few years' time **(2011/SOM1/IEG/013)**. APEC Secretariat also presented the users' manual of the e-Portal and thanked members' focal points for their kind cooperation.

Members commented that the e-Portal should be more user-friendly and be developed as public on-line database. APEC Secretariat explained that the APEC's AIMP could not host such an interactive and public on-line database due to technical difficulty and lack of human resources and that was why the e-Portal had been designed as such.

Convenor commented that IEG agreed the usefulness of the Guide but technical side need be considered. He invited further comments from the other economies and suggested that the Group discuss further at IEG2.

Russia informed the meeting that it was ready to submit its responses. APEC Secretariat would immediately re-open the e-Portal for submission until 31 March and the revision would be published in early April. Other members could update or submit their inputs as well.

**(c) Investing Across Borders: an important diagnostic tool to assist in IFAP implementation – Stage 2**

Convenor advised that the Group could do something more on the new proposal having recognized various opinions expressed at the discussion on the IAB Stage 1 report.

Australia announced that it would withdraw the Concept Note of IAB Stage 2 from Session 2 considering the Stage 1 report and members' comments thereon.

*[Due to the announcement of withdrawal, the Group decided to delete the document **(2011/SOM1/IEG/014)** from the list of the meeting documents.]*

**New project proposals**

Russia and China expressed their intention to submit new proposals for Session 2. Russia was currently considering a project on improving conditions of cross-border movement with UNCTAD and would submit it before 28 March, either via IEG or BMG or other appropriate fora. China would submit a concept note regarding information exchange program of cross-border low carbon investment to identify low carbon investment demand/supply in the economies and the whole APEC region and to make recommendation to the Ministers/Leaders in Hawaii. China welcomed any economies as co-sponsors and asked them to send their intention. Finally, the United States noted that it would submit a concept note after the meeting for a follow-up to the capacity-building project on dispute prevention successfully implemented in 2010. The delegate noted that the proposal would also seek to

fulfill recommendations that emerged from the public-private dialogue the day before, and invited input from members on which topics would be of greatest interest.

**(d) Projects led by other fora related to the IEG activities**

- **EC Project “Ease of Doing Business Capacity Building Workshop for Dealing with Permits – Reforming the Regulatory System for Construction Permits” (EC 02/2010T)**

Singapore briefed the meeting on the outcomes of the workshop held on 18-22 October 2010 in Singapore (2011/SOM1/IEG/015). The workshop aimed at experience sharing to raise APEC economies’ awareness of successful reforms/systems in dealing with permits, one of the priority areas of the APEC Ease of Doing Business Action Plan, in Singapore as the Champion Economy or from the region from which members could learn. It was well received and highly rated by the participants.

- **SME Working Group Project “Best Practice Guide: Improving business regulation in APEC member economies, based on knowledge shared from the Ease of Doing Business/Private Sector Development Workshops series” (SMEWG 01/2010T)**

New Zealand briefed the meeting on the result of the project.

**(e) Public-Private Dialogue on Investment**

[Discussed after agenda 10. ABAC]

Convenor informed the meeting that he had been quite impressed by interactive ambient discussion, which was the first time for IEG to have direct horizontal debating platform.

Japan thanked all panelists and participants for their contribution to the Dialogue which offered effective opportunity to share information on best practices and challenges. He touched upon several issues discussed at the Dialogue. He valued that the Dialogue was successful as first and important step for the future dialogue and proposed that such an activity continue with cooperation of economies.

Canada and United States supported Japan on the needs to continue a public-private dialogue in the future as open and transparent investment regimes would create more favorable investment environment, enhance investment protection, transparency and predictability in the investment. United States supported the idea to hold the next dialogue in Russia next year where APEC could report to the business sector on its activities and achievement. He proposed actions that the IEG could take in the next year to address recommendations raised in each of the areas discussed in the dialogue, noting that the IEG should follow up with the Finance Ministers Process on work that this group is doing on financing for public-private partnership investment projects.

IEG Convenor shared the members’ views that this type of dialogue would be extremely useful for private and government representatives. He felt a sort of consensus of continuing a dialogue in the course of IEG under various modus operandi by economy. The Group agreed to the Convenor’s proposal that concrete suggestions by the United States be considered in the following weeks and that a more precise report of the Dialogue be circulated in advance to IEG2 for members’ insights and suggestions with a view to crystallizing future path on how to conduct future dialogues at IEG2.

**8. IEG Projects  
Promotion for More Investment Opportunities**

**(a) Reports on Ongoing 2010/2011 Projects**

- **Filling the Infrastructure gaps in APEC developing economies (CTI 11/2009A)**

APEC Secretariat reported the meeting on the current status of the project and result of the recent discussion with Viet Nam on implementation. The project had been extended until the end of August this year but was behind the revised timeline due to several unexpected situation. APEC Secretariat introduced that Viet Nam had informed that their project team would be reinforced with a new Project Overseer and that they had requested another extension until the end of December 2011. APEC Secretariat would wait for the revised timeline and take necessary procedures for extension.

**(b) New Project Proposals for 2011-2012**

**- Organizing an APEC Seminar on Infrastructure Investment in 2011**

[The Concept Note of this project **(2011/SOM1/IEG/018)** had been already submitted to BMC for its consideration of in-principle approval of funding. The result of BMC decision was not available at the time of the meeting.]

While recognizing the implementation of the APEC Strategy on Investment formulated in 2010 is one of the major tasks given to IEG this year, Japan informed that this project could contribute to the "Promotion" pillar of the Strategy. A one-day seminar will be organized on the margin of SOM3 to grasp the present infrastructure projects, and exchange information on recent technology and projects in order to promote infrastructure investment in the region. The seminar would build upon the existing initiatives and discussions that are around the issue of infrastructure within APEC including the discussion under the Public-Private Dialogue on investment, and the workshop on infrastructure financing scheduled in mid-June under the Senior Finance Officials Meeting. Japan sought support of the member economies.

**9. Outreach and collaborative activities of APEC with ABAC, guest economies, and International Organizations**

**ABAC**

ABAC representative recommended the Group to further facilitate investment by establishing a consultative mechanism to discuss ways in which investment environment could be improved. In this regard, ABAC welcomed the Public-Private Dialogue held on 4 March. He informed the meeting of ABAC's views on investment issues which needed to be addressed in IEG work this year including proposed amendment to the existing Non-Binding Investment Principles (NBIPs) **(2011/SOM1/IEG/019)**.

IEG Convenor reminded the meeting that last year IEG had received a letter from ABAC on updating NBIP and a draft proposal. He mentioned that it was high time for IEG to update NBIPs but it might take some time to make concrete updated principles.

United States reiterated that the Public-Private Dialogue on Investment held on 4 March had given a lot of inputs from the private sector. Two main focuses of the United States were to ensure energetic dialogue with the private sectors and to get things done. Updating NBIP was the one asked by the business community also at the constructive dialogue in Sendai last year. He proposed to discuss the subject at IEG2 and IEG3 in an open setting, on off-the-record basis. In the report, it should be simply noted that IEG discussed with a view to revising it. Chile welcomed the proposal made by the United States. Hong Kong, China welcomed the opportunity for further discussion on ABAC's suggestions, and would like to see how to take into account ABAC's and members' views should members agree to proceed with the revision.

Convenor concluded to proceed with the United State's proposal to have concrete agenda items and to discuss on off-the-record basis with a view to having possible update of NBIP. He mentioned that it would be a good contribution to this year's objectives as the representative from the SOM Chair's Office had mentioned.

**IEG Guests for 2009-2011**

Colombia and Costa Rica were invited to present features of their economies and the activities related to investment **(2011/SOM1/IEG/023, 020)**. Colombia introduced their practice in comparison with the APEC NBIPs, showing that Colombia complied with every one of the APEC NBIPs or even with the majority of the ABAC's recommended update. Costa Rica briefed its short- and long-term policies on investment which was a tool to achieve sustainable development, and expressed its interest in continued participation in IEG activities. Members appreciated both for their presentations.

#### **10. Convenor's Report to CTI**

IEG Convenor presented a draft Report to CTI including the IEG Work Plan for 2011 **(2011/SOM1/IEG/021)**. IEG Convenor informed that the reference to the IAB Stage 2 would be deleted. The meeting agreed that the members would submit comments, if any, by 8pm on 5 March to the APEC Secretariat and that the IEG Convenor would revise the draft if necessary and submit to CTI. *[Post-meeting note: No substantial comments were received. The Convenor's Report was finalized and submitted to CTI on 6 March and tabled at CT11 on 8-9 March.]*

#### **11. Date and Venue of the Next Meeting**

US representative informed that the schedule of the SOM2-related meeting was under consideration and that tentatively, IEG2 was planned during 7-9 May. Exact dates and the venue would be announced later to the members through the APEC Secretariat.

#### **12. Classification**

The Group reviewed the draft document classification list of the meeting. Following the withdrawal announcement by Australia of the Concept Note of IAB Stage 2, the document **(2011/SOM1/IEG/014)** was deleted from the list. Presentation materials submitted during the meeting would be added. The Group approved the revised list.



## China's Comments on IAB report

As we understand, Investing Across Borders (IAB) report intends to benchmark policies and regulations of 92 economies over the world, and presents cross-economy indicators through analyzing laws, regulations and practices affecting FDI. It provides a useful exercise; however, while there are some significant limitations and weaknesses in both substance and methodologies from our perspectives.

1. **The structure and design of indicators and topics:** Appropriate selection without prejudice on the design of indicators is most important to create objective result of assessment. Inefficient or biased selection of topics and coverage of indicators would lead to different outcomes of the evaluation.

- **Short-term vs. long-term indicators**

IAB favors “actionable reform-oriented indicators”-“topics that could be affected by public policy in the short term and information that could be captured through surveys of local experts” and “based on observable facts”-the selection of topics focus on short term variables such as time(days), steps/procedures(to measure foreign business start-up), rather than those long term variables or topics, such as macroeconomic performance, labor and production costs, market conditions, etc. from a wider range of variables. Different policies of an economy are integrated and coherent. Long term policy reforms may not be easily observed in the short term, while they are significantly more important than short-term improvements and benefits to the strategic economic development of an economy. We suggest that long term indicators be incorporated into IAB report to provide a more balanced structure of indicators with stronger explanatory power.

- **Exclusion of SEZs, EPZs, etc. and investment incentives**

We notice a robust development of Special economic development zones (SEZs), export processing zones (EPZs), and economic development zones in the APEC region, especially in the developing economies. Such zones provide FDI with much more favorable treatment in all aspects of the life circle (from start-up to the end of operation). Exclusion of such zones from coverage of data and topics would not provide an accurate and comprehensive analysis on all economies. It is the same reason for exclusion of FDI incentives which are common practices in many developing APEC economies, which adds value to treatment of foreign investment.

2. **Investing across sectors**

- **Investing across sectors vs. implementation of IFAP**

One of the 4 major thematic topics covered by IAB is “investing across sectors”. According to the purpose of the IAB project in IEG, it aimed to provide a diagnostic tool to assist in IFAP implementation. However, “investing across sectors” indicators are all related to measuring extent of openness to FDI and existing impediments concerning market access in 33 areas in host economies. These indicators

are irrelevant to IFAP which is about foreign investment facilitation activities rather than investment liberalization.

- **Ownership restriction**

Regarding the topic on “investing across sectors”, IAB singled out restrictions on foreign equity ownership of correspondent host economies. Such restrictions are only one aspect of measuring how open economies are to FDI, and findings on ownership restrictions may not be necessarily separate from other factors.

- **Sectors restricting FDI**

There are 11 sectors which are extracted from 33 selected ones to measure the openness of economies to FDI. We notice that the majority of the selected sectors are service sectors. What are the considerations that such sectors fully represent a market’s openness to foreign investment? Furthermore, among these sectors, there are many sub-sectors under each one, and the extent of openness to FDI is uneven.

### **3. Methods on sample and data collection**

- **IAB data vs. consultation with respondents**

The report acknowledges that IAB data are not based on a statistically significant sample of respondents in each economy. Consultations with local respondents have been used to compensate the shortfall of samples. However, experience, judgment and expertise of expert respondents are vital to the accuracy of the analysis. Some data shown in the individual economy profile are not accurate.

- **The biggest business city of an economy**

To choose the largest business city of each target economy as sample for data collection may create great degree of variation especially for large economies with big diversity internally. Weighted average estimates or similar calculation methods should be considered to take into account such existing diversities.

- **Samples on wholly foreign-owned subsidiary**

We should recognize that only wholly foreign-owned, locally incorporated subsidiaries are covered in the samples is insufficient for data collection.

- **Start up procedures, days/steps**

We notice that among “starting a foreign business” indicators, total number of procedures, days/steps required to establish a foreign business are counted. However, the time and needed procedures depend on many factors such as the nature and size of investment. Needed time for setting up a foreign company can differ from one investment to another. For example, those which are highly restricted by the host economy or involves huge capital may take longer time, while those which are not restricted or small in size may take shorter time. Furthermore, needed time may even differ among different geographical locations.

Other factors such as simplification measures, decentralization efforts taken by host economies could also affect the time/procedures required. In some cases, when facilitation measures such as one-stop shop practices are in place, procedures/formalities could be handled simultaneously, and the total time can be cut down and the process can be speeded up. In this sense, the indicators of time and procedures should be treated carefully and thoroughly.

- **Calculation on procedures**

Those procedures/formalities which do not become real obstacles (impossible to be denied by authorities of host government) should not be counted as one layer of procedure/step or more time required. Examples of such are formalities and files from customs offices, taxation bureau, and foreign exchange administration.

- **Industrial restrictions and environmental regulations**

Industrial restrictions or regulations can be real obstacle to refuse entry of a FDI; therefore, they should be covered under indicators to provide a more comprehensive analysis on foreign investment climate of an economy. So are environmental regulations, since environment costs vary from one location to another as well as environment regulations can be useful or abused by host economies to impede FDI.

- **Working permits and visa application**

Difficulty to acquire visa and working permits are common in different regions of the world. They should be regarded as impediments to foreign investment and should be covered under IAB indicators.

- **Ownership of private land**

Prohibition on private ownership of land may not be an impediment on acquisition of land needed by foreign investment.

CHAPTER/SECTION/PAGES OF THE REPORT	COMMENTS/PROPOSED REVISIONS
<p><b>CHAPTER 2 - OVERVIEW</b></p> <p>1. East Asia and the Pacific (p.20-21)</p> <p>a. Investing Across Sectors</p> <p>b. Accessing Industrial Lands</p>	<ul style="list-style-type: none"> <li>• Change the word “many” to “relatively more” in the last sentence of para 2 as follows:   “East Asia and the Pacific has more restrictions on foreign equity ownership in all sectors than any other region. At the same time, the region displays the greatest intraregional variance, with less populous economies being more open. For example, Singapore and Hongkong, China have few restrictions, while Indonesia and the Philippines impose foreign equity limits in many relatively more service sectors.”</li>   <li>• Delete 4<sup>th</sup> sentence, “In the Philippines a foreign company cannot mortgage lease land or use it as collateral to buy production equipment”, to read as follows:   Except for Malaysia, Thailand, Singapore and Chinese Taipei, none of the 13 economies surveyed in East Asia and the Pacific allows private ownership of land. Accordingly, foreign companies lease rather than buy land in the region. But lease rights are not particularly strong. <del>In the Philippines, a foreign company cannot mortgage leased land or use it as collateral to buy production equipment.</del> Singapore offers the strongest lease rights, allowing investors to use land as collateral to buy production equipment. Singapore offers the strongest lease rights, allowing investors to use land as collateral and to sublease and subdivide it. The same required to lease a private land ranges from 1 month in Thailand to 4 months in Vietnam. Leasing land from the government takes 3 months in Indonesia- and almost a year in Malaysia. Overall, access to and availability of land information are low in the region.</li> </ul> <p><b><u>Justification:</u></b>  This is not generally true. Section 3, 2<sup>nd</sup> paragraph of RA 7652 otherwise known as the “Investors’ Lease Act” provides that “The Leasehold right acquired under long-term lease</p>

CHAPTER/SECTION/PAGES OF THE REPORT	COMMENTS/PROPOSED REVISIONS
<p>c. Arbitrating Commercial Disputes</p>	<p>contracts entered into pursuant to this Act may be sold, transferred or assigned: xxx”.</p> <ul style="list-style-type: none"> <li>• Delete “Philippines” in the 5<sup>th</sup> sentence “Enforcement of arbitration awards is slow in most of the region, taking more than a year in the Philippines and Thailand”.</li> </ul> <p><b><u>Justification:</u></b> Basis for this conclusion is not clear.</p>
<p>2. Table 2.11 Summary of Investing Across Borders (IAB) Indicators particularly Philippines (p. 29)</p>	<p>On Investing across sectors: Foreign equity ownership</p> <ul style="list-style-type: none"> <li>• Electricity: 65.7 Clarification is sought on the figure. It is informed that 40% foreign equity may be allowed in the generation of power utilizing certain natural resources, transmission that requires public utility franchise, as well as in the operation and management of public utilities in the distribution of power.</li> </ul>
<p>3. Table 3.81: GIPB 2009 APEC Results (p.94)</p>	<ul style="list-style-type: none"> <li>• The low average score on inquiry handling assessment by the Investment Promotion Intermediaries or agents among APEC countries will serve as a reminder of an urgent need for continuous trainings on investment facilitation skills, specifically in the areas of responsiveness and customer care to attract prospective foreign investments.</li> <li>• It is suggested that, in comparing investment promotion and facilitation (IPF) practices across the APEC Member Economies, the individual country characteristics such as the form/type of government among others should be taken into account in the assessment.</li> </ul>
<p><b>CHAPTER 5 – PROFILES OF APEC MEMBER ECONOMIES</b> 4. Profile Highlights of the Philippines (p.153)</p>	<p>While, generally, the conclusions reached in this Study cannot be altered, we recommend that at least, they be presented in the following manner:</p> <p><u>Investing across sectors</u> “Among the 87 countries covered by the Investing Across Sectors indicators, the Philippines</p>

CHAPTER/SECTION/PAGES OF THE REPORT	COMMENTS/PROPOSED REVISIONS
	<p><i>allows limited foreign equity ownership in certain industries, in particular in the primary and service sectors. For example, in the mining, oil and gas industries, the Philippine Constitution allows foreign capital participation up to a maximum share of 40%. Further, foreign ownership in those sectors, may be allowed up to 100% if the investor with a minimum requirement of \$50 million enters into a financial or technical assistance agreement (FTAA) with the government for a term of 25 years. In the service sectors, a similar foreign equity participation of 40% is allowed in companies providing public utilities (telecommunications, electricity and transportation). The media industries (newspaper publishing and television broadcasting) are reserved for Filipinos.”</i></p> <p><u>Accessing industrial land</u>  Delete the sentence <i>“Only absolute owners of the land may mortgage it.”</i>  This is not absolutely true. Section 3, 2<sup>nd</sup> paragraph of RA 7652 otherwise known as the “Investors’ Lease Act” provides that <i>“The leasehold right acquired under long-term lease contracts entered into pursuant to this Act may be sold , transferred or assigned: x x x.”</i></p>

## Comments of Hong Kong, China – IAB response

### Comment Item 1.

#### Hong Kong, China's comment:

##### Investing Across Sectors

2. In P. 144 of the report, the following is stated -

"All of the 33 sectors covered by the indicators are fully open to foreign investment. However in the telecommunications, banking, insurance and media sectors, companies need prior consent from the authorities for investments above a specific amount." (Lines 3-5 of "Investing Across Sectors")

We are of the view that the word "telecommunications" should be deleted from the above, for there is not any restriction on foreign investments in the telecom sector, not to mention seeking the consent from the relevant authority for investments above a specific amount.

#### IAB's response:

Ad 2.: Telecommunications sector, as defined and measured by IAB is open to foreign investment. Still, the data collected by IAB suggests the following: Although there are no express restrictions to foreign ownership, interests in shares exceeding 15% of voting shares in a licensee may not be transferred or acquired (directly or indirectly) within three years following the grant of a license without prior approval from the Broadcasting Authority (s13 J Telecommunications Ordinance, cap 106). This is further consistent with the information that IAB collected on licensing, that in case of telecommunication in Hong Kong, China: Since August 2008, a Unified Carrier License from the Office of Telecommunications Authority (OFTA) is required by all new / renewal carrier license applications. This is a single license for all types of carrier services - fixed, mobile or fixed-mobile converged services. The IAB team concluded that there is a certain restriction on share transfers.

In the light of these findings, the IAB team would suggest following wording:

**However in the banking, insurance and media sectors, companies need prior consent from the authorities for investments above a specific amount. In telecommunications, a transfer of more than 15% of the voting shares within three years after receiving a license from the Office of Telecommunications Authority (OFTA) has to be approved by the Authority.**

#### Hong Kong, China's further comment

- (a) For clarity purpose, we suggest refining the first sentence of IAB's proposed wordings to **"However in the banking, insurance and media free-to-air television sectors, companies need prior consent from the authorities for investments above a specific amount."**
- (b) The requirement in respect of seeking approval from the Broadcasting Authority for a change in the right to shares exceeding 15% of the total voting shares (section 13J of the Telecommunications Ordinance) applies to sound broadcasting services only, which are not regarded as telecommunications services under the present regime. In this connection, the IAB team may wish to note that the regulation of sound broadcasting services come under Part IIIA of the Telecommunications Ordinance (including section 13J of the Telecommunications Ordinance). However, the requirements in respect of ownership, etc. in that Part are applicable to sound broadcasting services only but not telecommunications services. Meanwhile, the Unified Carrier Licence does not cover sound broadcasting licences – which requires separate licensing under Part IIIA of the Telecommunications Ordinance – but only fixed, mobile or fixed-mobile converged telecommunications services.

In the circumstances, we maintain that there is not any form of foreign ownership restriction in providing telecommunications services in Hong Kong, China (HKC) and suggests that the second sentence proposed by IAB above be revised to **"In radio broadcasting services, a transfer of more than 15% of the voting shares in a licensee within three years after granting of a licence has to be approved by the Broadcasting Authority."**

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## Comment Item 2.

Hong Kong, China's comment:

3. Besides, we note that the railway transportation sector is referred to as a "state monopoly", which is not the case. We suggest rewording the phrase "is a state monopoly" with "consists of one operator which is a listed company, with the Government as its major shareholder".

IAB's response:

The IAB team suggests following rephrasing:

**Full foreign ownership is also allowed in the railway transportation sector. Rail transport is currently provided by a single publicly-listed company with the government as a major shareholder.**

Hong Kong, China's further comment

We note IAB's advice that as defined in the IAB report, railway transportation refers to freight transport only. It would be inappropriate to say that **"Full foreign ownership is also allowed in the railway transportation sector."** as MTR Corporation Limited has been given a 50-year franchise (starting from December 2007) to operate the Mass Transit Railway and KCRC Railways, and these cover the entire railway system in Hong Kong currently. There is currently no rail freight operation in HKC - MTR Corporation Limited ceased its freight business in June 2010. For clarity purpose, we propose deleting the first sentence and the following revision (in blue) for the second sentence **"Rail passenger transport is currently provided by a single publicly-listed company with the government as a major shareholder. There is currently no rail freight operation in HKC."**

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## Comment Item 3.

Hong Kong, China's comment:

We would also like to seek clarifications on what is "open" in the context of the sentence concerning railway transportation, i.e. whether it refers to foreign companies undertaking railway construction/maintenance as a contractor; foreign companies taking up railway operation itself; or whether it simply refers to the fact that anyone (foreign companies or otherwise) can acquire shares of MTR Corporation Limited, which is a listed company in Hong Kong.

IAB's response:

"Open" in the context of the survey question refers to both, green field investment and the acquisition of shares of an existing company but not the subcontracting of services. "Railway transportation" only means transport services and not infrastructure development or maintenance. As defined on p. 106 of the report, railway transportation refers to FDI concerning "a foreign company seeking to provide railway freight transport using its own rolling stock (wagons and locomotives). Excluded from the definition are (1) passenger transport, (2) ownership and/or operation of railroad infrastructure, and (3) ownership and/or operation of terminals."

As a result, IAB proposes that the full revised paragraph reads as follows,

**Hong Kong, China, is one of the most open economies to foreign direct investment (FDI) as measured by the Investing Across Sectors indicators. All of the 33 sectors covered by the indicators are fully open to foreign investment. However in the banking, insurance and media sectors, companies need prior consent from the authorities for investments above a specific amount. In telecommunications, a transfer of more than 15% of the voting shares within three years after receiving a license from the Office of Telecommunications Authority (OFTA) has to be approved by the Authority. Full foreign ownership is also allowed in the railway transportation sector. Rail transport is currently provided by a single publicly-listed company with the government as a major shareholder. Due to its small size and resulting absence of**



**certain industries, Hong Kong, China has no or limited legislation regulating entry of FDI in some sectors, for example mining, oil and gas.**

Hong Kong, China's further comment

Please refer to our aforementioned comments on the "Investing Across Borders" indicator for our specific suggestions on the above proposed wordings.

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**Comment Item 4.**

Hong Kong, China's comment:

Starting a Foreign Business

4. In P. 144 of the report, the findings that HKC takes 7 days and 4 procedures to establish a foreign-owned limited liability company and the minimum paid-in capital at the time of establishment is a nominal HK\$1 are incorrect. According to the advice of our Companies Registry, irrespective of whether the local company is foreign-owned or not, the sub-indicators of time, procedures and minimum paid-in capital are the same as those for the "Starting a Business" indicator in the Doing Business Report 2011, i.e. for submission of incorporation applications on paper, it takes 6 days and 3 procedures to establish a foreign-owned limited liability company in HKC and the minimum paid-in capital is HK\$0 at the time of establishment. From 21 February 2011 onwards, for electronic incorporation, HKC takes only 3 days to complete 3 procedures.

IAB's response:

The IAB team assigns 1 day and one additional procedure for the authentication of documents of a foreign company. Thus taking into account the translation and notarization/authentication that are usually necessary for legitimating any interaction with a public authority.

**The IAB team suggests to keep the number of days and procedures unchanged.**

Regarding the minimum paid-in capital, the IAB team agrees that there is no minimum paid-in capital and will delete the second half of the above mentioned sentence: ~~... and the minimum paid-in capital at the time of establishment is a nominal HK\$1.~~

Ad 4.: "electronic incorporation"

Regarding electronic incorporation, the IAB data cannot be adjusted to account for changes occurring after the data collection period has ended (in Dec 2010.) However, we will add the following text, **"Recently introduced electronic registration should make the process even faster."**

Hong Kong, China's further comment

For incorporating a "local company" in HKC, the applicant is required to submit an incorporation form and a copy of the Memorandum and Articles of Association to the Companies Registry for registration. It is mentioned on page 45 that "The Starting a Foreign Business indicators of the Investing Across Borders project document the **additional procedures required** of foreign companies looking to engage in international business transactions. These procedures include: Authentication of the parent company's legal documents abroad." Here, "required of" should refer to the official requirement of the authority, and "additional procedures" to procedures that apply to foreign investors but not domestic investors. In HKC, notarization/authentication of documents as supporting evidence for legitimating the interaction with the Registry are not required. Moreover, we are of the view that any translation and notarization/authentication of documents are "internal" procedures of the company to be formed and should be undertaken prior to submission of application. Hence, the procedure and time should not be taken into account when counting the number of days and procedures of interaction with the Registry. If the company's internal procedures of translation and notarization/authentication were to be taken into account, this "minimum charge" of 1 day and 1 procedure would have had to be applied to all economies equally and, as a result, unfavourably and unfairly inflated the time and procedures taken for economies that do not require these procedures vis-à-vis those that do require these procedures. We therefore maintain the view that it takes 6 days and 3 procedures to establish a foreign-owned limited liability company in HKC.

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## Comment Item 5.

### Hong Kong, China's comment:

#### Arbitrating Commercial Disputes

5. We see merits to, in addition to setting out HKC's system of arbitration under the study period, also introduce the new arbitration regime of HKC under the Arbitration Ordinance (Cap. 609) to give a full and most up-to-date picture. In this context, we suggest to modify the relevant text in P.144 of the report as follows (changes to the original texts are highlighted in blue for easy reference):

"Arbitration in Hong Kong, China, is governed by Arbitration Ordinance (Cap 341), first enacted in 1963 and subject to subsequent amendments. Hong Kong, China currently has different regulation of the domestic and international arbitration. The international regime follows closely the UNCITRAL Model Law and applies some of the Model Law's provisions by references (e.g., Article 1(3) on the definition of international). Draft legislation is currently under consideration to unify the two regimes based upon the UNCITRAL Model Law. All commercial disputes are arbitrable unless contrary to public policy. Parties are free to appoint arbitrators of any nationality or professional qualifications, and may choose foreign lawyers to represent them in proceedings in Hong Kong, China. Confidentiality of the arbitration proceedings is recognized as a matter of common law and is reflected in Sections 2D & 2E of the Arbitration Ordinance (Cap 341). Domestic arbitrations are typically submitted to the Hong Kong International Arbitration Centre.

In 2009, the Hong Kong International Arbitration Centre handled 429 arbitration cases with 309 cases international in nature and 120 domestic. International Chamber of Commerce presence was also established in Hong Kong, China in 2009 and serves mainly international arbitrations. The Court of First Instance of the High Court has jurisdiction to rule on the enforcement of domestic and international arbitration awards and its decision is not subject to further appeal. On average, it takes around 3 weeks to enforce an arbitration award rendered in Hong Kong, China, from filing an application to a writ of execution attaching assets.

A new Arbitration Ordinance (Cap. 609), which unifies the arbitration regimes for domestic and international arbitration, was enacted on 11 November 2010 and will come into effect on 1 June 2011 to replace the old Arbitration Ordinance. The new law is based on the UNCITRAL Model Law and gives legal effect to those provisions of the Model Law that are to apply in Hong Kong. Those provisions, with such modifications or supplements where necessary, are arranged in the same order as the Model Law. Following the Model Law, the new law provides that an arbitral award may be set aside on the ground that the award is in conflict with the public policy. Parties are free to appoint arbitrators of any nationality or professional qualifications, and may choose foreign lawyers to represent them in arbitral proceedings in Hong Kong, China. A major feature of the new law is the provisions on the protection of confidentiality in arbitration proceedings as well as court hearing related to those proceedings. Court proceedings relating to arbitration are not to be heard in open court. Such proceedings will be heard in open court only if any party so applying can satisfy the court that for good reasons the proceedings ought to be heard in open court. The new law also provides that unless otherwise agreed by the parties or under statutory exceptions, no party may publish, disclose or communicate any information relating to arbitral proceedings and awards."

### IAB's response:

The IAB data cannot be adjusted to account for changes occurring after the data collection period has ended (in Dec 2010.) However, we will add the following text at the outset of the highlights, and adjust the rest of the text accordingly:

**A new Arbitration Ordinance (Cap. 609), which unifies the arbitration regimes for domestic and international arbitration, was enacted on 11 November 2010 and will come into effect on 1 June 2011 to replace the old Arbitration Ordinance. For following description refers to the arbitration regime effective at the time of the IAB data collection in 2010....**

### Hong Kong, China's further comment

We are content with the above suggested revisions.

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## Comment Item 6.

### Hong Kong, China's comment:

7. We also have the following minor comments:
- (a) the entire report: the use of the term "country(ies)" is prevalent. It is for consideration whether all should be replaced by "economy(ies)";
  - (b) p 28, Table 2.11: the row of Hong Kong, China is misaligned and some of the figures are hidden; and
  - (c) p 46, Box 3.23: the economies in "East Asia and the Pacific" should be separated by semi-colons rather than commas.

### IAB's response:

Ad 7. (a): The IAB team will change all designations as "country(ies)" into "economy(ies)".

Ad 7. (b): The misalignments will be fixed and all values made visible.

Ad 7. (c): The IAB team suggests the following to make the designation of Hong Kong, China self-evident:

"... China, Hong Kong, China; Indonesia, ..."

### Hong Kong, China's further comment

We are content with the above suggested revisions.

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## Comment Item 7.

### Hong Kong, China's comment:

6. In P. 46, we noted that certain information in box 3.23 concerning the Hague Apostille Convention is inaccurate. Our suggested amendments are marked in the attached file below.

### **Box 3.23: The Hague Apostille Convention**

The Hague Apostille Convention of 1961<sup>47</sup> abolishes the legalization requirements of foreign public documents between states which are party to the Convention. Under the Convention, the legalization requirements mean the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. The Convention has replaced the cumbersome formalities of this lengthy process with the issuance by the competent authority of the State from which the document emanates of an apostille certificate that authenticates the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. For companies, this is especially useful as it greatly facilitates the recognition of the parent companies' documents during the registration process in a new country.

Currently, a total of 99 states are Contracting States to the Hague Apostille Convention— over 40 of them are countries surveyed by IAB.

Following is the list of the countries measured by IAB. **The Convention applies to those in bold font** but not to those in regular font. (The Convention will also enter into force for Kyrgyz Republic on 31 July 2011.)

#### Sub-Saharan Africa

Angola, Burkina Faso, Cameroon, Côte d'Ivoire, Ethiopia, Ghana, Kenya, **Liberia**, Madagascar, Mali, **Mauritius**, **Mozambique**, Nigeria, Rwanda, Senegal, Sierra Leone, **South Africa**, Sudan, Tanzania, Uganda, Zambia.

East Asia and the Pacific

**Brunei Darussalam**, Cambodia, China, **Hong Kong, China**, Indonesia, Malaysia, Philippines, Papua New Guinea, Singapore, Solomon Islands, Chinese Taipei, Thailand, Viet Nam.

Eastern Europe and Central Asia

**Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan**, Kosovo, Kyrgyz Republic, **Macedonia, FYR, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Turkey, Ukraine.**

Latin America and the Caribbean

**Argentina**, Bolivia, Brazil, Chile, **Colombia**, Costa Rica, **Ecuador**, Guatemala, Haiti, **Honduras, Mexico**, Nicaragua, **Peru, Venezuela, RB.**

Middle East and North Africa

Egypt, Arab Rep., Morocco, Saudi Arabia, Tunisia, Yemen, Rep.

South Asia

Afghanistan, Bangladesh, **India**, Pakistan, Sri Lanka.

high-income OECD

**Australia, Austria**, Canada, **Czech Republic, France, Greece, Ireland, Japan, Korea, Rep., New Zealand, Slovak Republic, Spain, United Kingdom, United States.**

#### IAB's response:

The IAB team would like to thank for government of Honk Kong, China for pointing out IAB's erroneous classification of some of the countries. This will be corrected.

Regarding your proposed changes to the text introducing the table on p. 46, the IAB team would like to propose the following text that incorporates some of Hong Kong, China's edits, yet at the same time characterizes the Convention in accord with its description on the official website,

#### **Box 3.23: The Hague Apostille Convention**

The Hague Apostille Convention of 1961 facilitates the legalization requirements of foreign public documents between states which are party to the Convention. ~~Under the Convention, the legalisation requirements mean the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.~~ The Convention has replaced the cumbersome formalities of this lengthy process with the issuance by the competent authority of the State from which the document emanates of an apostille certificate that authenticates the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. For companies, this is especially useful as it greatly facilitates the recognition of the parent companies' documents during the registration process in a new country.

Currently, a total of 99 states are contracting States to the Hague Apostille Convention— over 40 of them are countries surveyed by IAB.

Following is the list of the countries measured by IAB. **The Convention applies to those in bold font.**

Sub-Saharan Africa: Angola; Burkina Faso; Cameroon; Côte d'Ivoire; Ethiopia; Ghana; Kenya; **Liberia**; Madagascar; Mali; **Mauritius**; Mozambique; Nigeria; Rwanda; Senegal; Sierra Leone; **South Africa**; Sudan; Tanzania; Uganda; Zambia.

East Asia and the Pacific: **Brunei Darussalam**; Cambodia; China; **Hong Kong, China**; Indonesia; Malaysia; Philippines; Papua New Guinea; Singapore; Solomon Islands; Chinese Taipei; Thailand; Viet Nam.

Eastern Europe and Central Asia: **Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Georgia; Kazakhstan**; Kosovo; **Kyrgyz Republic; Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Turkey; Ukraine.**

Latin America and the Caribbean: **Argentina**; Bolivia; Brazil; Chile; **Colombia**; Costa Rica; **Ecuador**; Guatemala; Haiti; **Honduras; Mexico**; Nicaragua; **Peru; Venezuela, RB.**

Middle East and North Africa: Egypt, Arab Rep.; Morocco; Saudi Arabia; Tunisia; Yemen, Rep.

South Asia: Afghanistan; Bangladesh; **India**; Pakistan; Sri Lanka.

High-income OECD: **Australia; Austria**; Canada; **Czech Republic; France; Greece; Ireland; Japan; Korea, Rep.; New Zealand; Slovak Republic; Spain; United Kingdom; United States.**

Hong Kong, China's further comment

We believe it is incorrect to state that the Convention "facilitates" the legalization requirements. As seen from the title of the Convention, the Convention in fact "abolishes" such legalization requirements (in order to facilitate the circulation of public documents). If it is the intention of the IAB team to follow the language used in an official document of the Hague Conference, we propose to replace the first two sentences in the Box 3.23 by "**The Apostille Convention facilitates the circulation of public documents executed in one State party to the Convention and to be produced in another State party to the Convention. It does so by replacing the cumbersome and often costly formalities of a full legalisation process (chain certification) with the mere issuance of an Apostille (also called Apostille Certificate or Certificate)**" which is extracted from the relatively recent official document of the Hague Conference at <http://www.hcch.net/upload/outline12e.pdf>.

So long as the Report will be published on or after 31 July 2011, it is not necessary to add the qualifier that the Convention will come into force for Kyrgyz Republic on 31 July 2011, as previously suggested.

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**Comment Item 8.**

Hong Kong, China's Additional Comments on "Accessing Industrial Land"

With a view to providing an accurate and more comprehensive picture on the applicable arrangements for HKC, we suggest to replace the original content with the following for the "highlights" in P.144 of the report:

"Virtually all land in Hong Kong is leased or otherwise held from the Government of the Hong Kong Special Administrative Region (HKSAR). In the early days, leases were for terms of 75, 99 or 999 years, subsequently standardised in the urban areas of Hong Kong Island and Kowloon to a term of 75 years, renewable at a re-assessed annual rent under the provisions of the Government Leases Ordinance. Leases for land in the New Territories and New Kowloon were normally sold for the residue of a term of 99 years less three days from 1 July 1898.

From 27 May 1985 (the date of entry into the Joint Declaration) to 30 June 1997, the policy with regard to land grants and leases accorded with the provisions of Annex III to the Joint Declaration. Normal land grants throughout the whole of the territory were made for terms expiring not later than 30 June 2047. They were granted at a premium and nominal rental until 30 June 1997, after which date an annual rent equivalent to three percent of rateable value of the property would be charged.

On 15 July 1997, Executive Council (ExCo) endorsed various provisions covering land leases and related matters under the HKSAR Government.

One of the general land grant policies as endorsed by ExCo is that new leases of land shall be granted for a term of 50 years from the date of grant (except new special purpose leases for recreational purposes and petrol filling stations, new special purpose leases covered by franchises or operating licences and short term tenancies) at premium, and subject to payment from the date of grant of an annual rent equivalent to 3% of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter.

Unless there is a provision in the lease / land grant that prohibits against assignment or sub-letting, the leases of land are freely transferable. All lease documents and ownership information are accessible from the Land Registry of Hong Kong, China.

The sale of new leases of land by the HKSARG is largely by way of public auction or tender. Under the annual Land Sale Programme, the Lands Department of HKSARG publishes lists of sites available for sale upon application or by tender. The lists contain information on lot number, location, use, site area, and the estimated earliest available date or the estimated tender invitation date for each of the sites. For more information, please visit:-

<http://www.landsd.gov.hk/en/landsale/application.htm>  
<http://www.landsd.gov.hk/en/landsale/forecast.htm>  
<http://www.landsd.gov.hk/en/landsale/coming.htm>

Thank you.

- The IAB team