



INVESTMENT POLICY MONITOR



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H I G H L I G H T S

- The global spread of COVID-19 exerts impact on foreign investment policies. The devastating economic effects of the pandemic are expected to drive down global FDI flows by 40%, to its lowest level of the past two decades. Policy response varies from country to country. Many have adopted a series of policy measures aimed at supporting investors and their economies in general or are planning to do so. Others have put in place measures to protect critical domestic infrastructure and industries, particularly in the health sector. The crisis may also have implications for the negotiations of international investment agreements. More generally, the G20, G7 as well as some other groupings have issued statements in support of investment and global value chains. All this will also have lasting impact on future investment policymaking.
- During the regular review period of this Monitor (November 2019 - February 2020), twenty-eight countries took 38 investment policy measures. Seventy-five per cent of these measures were designed to create more favourable investment conditions for both foreign and domestic investors. This ratio is slightly lower than that from January to October 2019, but broadly in line with the longer-term policy trend.
- Numerous countries adopted new liberalisation measures in various industries. Greece partially privatised the natural gas sector, and India as well as Indonesia took some liberalisation steps in coal mining and the financial sector respectively. Also, China, the United Arab Emirates and Viet Nam eased some entry barriers for foreign investors.
- Almost half of the countries introduced new policy measures to facilitate and promote investment. For instance, Algeria, Azerbaijan, Colombia, Indonesia, Kenya, Panama, and the United States of America introduced or revised fiscal incentive regimes to promote investment. North Macedonia, Oman, Ukraine, and Uzbekistan adopted policy measures to simplify investment procedures, such as an investment portal, a one-stop-shop mechanism or the adoption of new legislation on special economic zones.
- Another prominent feature of investment policies in the review period is a further increase in measures related to the screening of foreign investment for national security reasons. France expanded its foreign investment screening regime and broadened the sectoral scope of the screening mechanism by including numerous key activities. Italy widened the scope of disclosure requirements and extended the timeframe for review procedures. Japan obligated certain foreign investors to seek prior notification from the government before obtaining 1 per cent or higher stake in a listed Japanese firm - lowering the threshold from the current 10 per cent. Romania may now reject petroleum concession agreements to non-EU entities for national security reasons. The United States of America expanded the scope of transactions subject to national security-related reviews. Germany is considering reinforcing its existing screening regimes for foreign investment.
- Countries signed at least three international investment agreements (IIAs), bringing the total number of IIAs to 3, 292. At least five terminations of bilateral investment treaties (BIT) became effective during the reporting period. As has been the case in recent years, newly concluded agreements

continue to include reform-oriented provisions in line with UNCTAD's policy toolkits such as the Reform Package for the International Investment Regime and the Investment Policy Framework for Sustainable Development. By the end of February 2020, there were 2, 661 IIAs in force.

- The reporting period saw other important developments relating to international investment policymaking at the national, regional and multilateral levels. National and regional levels developments include, notably, the adoption by some countries of new model BITs as well as guiding principles for investment policymaking, the coming into effect of Brexit, the near complete ratification of the United States–Mexico–Canada Agreement (USMCA), and the continued negotiations of other mega regional agreements such as the EU–China investment agreement.
- Several notable developments also took place at the multilateral level including continued discussions on investor-State dispute settlement (ISDS) reform within the context of UNCITRAL's Working Group III and ICSID. Additionally, WTO's structured discussions on investment facilitation for development were scheduled to move into negotiating mode as of March 2020. Due to the COVID-19 pandemic, many investment-focused initiatives and events, including high level meetings and summits, have been cancelled or postponed.

A. The COVID-19 crisis and its impact on foreign investment policies

The global spread of COVID-19 impacts on foreign investment policies. Although the extent of this impact is currently difficult to assess, the recent Global Investment Trends Monitor of UNCTAD predicts a drastic drop in global FDI flows by up to -40% during 2020-2021,¹ reaching the lowest level of the past two decades. Numerous countries have adopted a variety of policy measures aimed at supporting investors and their economies in general or are planning to do so. Some measures have the goal of protecting critical domestic infrastructure and industries, in particular the health sector. In addition, the crisis may also have implications for the negotiations of international investment agreements. More generally, the G20, G7 as well as some other country groups have issued statements in support of investment and global value chains. All this will have last impact on future investment policy making.

1. Measures aimed at investment aftercare and retention

On 18 February 2020, China was the first country to announce a set of measure to promote and facilitate foreign investment. The “Circular on Responding to Novel Coronavirus Pneumonia, Stabilizing Foreign Trade and Foreign Investment and Promoting Consumption” provides for the promotion of paperless management of foreign investment records and issuance - free of charge - of factual proofs of force majeure for foreign companies failing to execute contracts on time due to the epidemic. Foreign investors are also to be counselled on various supportive policies and measures on responding to the Coronavirus.² Additionally, on 9 March 2020, the Chinese Government published “Notice on Further Deepening Reform for Improving Works on Foreign Investment Projects in Response to the Epidemic Situation”.³ It first and foremost envisages government assistance to foreign-invested projects and enterprises in resuming business and production. It provides for additional FDI-specific measures, including simplifying approval procedures for foreign-invested projects optimizing the tax exemption process for imported equipment and protecting the legitimate rights and interests of foreign investors.

¹ https://unctad.org/en/PublicationsLibrary/diaeiainf2020d3_en.pdf

² <http://english.mofcom.gov.cn/article/newsrelease/significantnews/202003/20200302940614.shtml>

³ https://www.ndrc.gov.cn/xxgk/zcfb/tz/202003/t20200311_1222902.html

2. COVID-19 responses by investment promotion agencies

Many investment promotion agencies and ministries dealing with investment promotion and facilitation have reacted rapidly to the COVID-19 pandemic. Increasing numbers had to close their offices but continue to serve clients on-line. *Invest India* created a comprehensive Business Immunity Platform that informs investors and businesses on COVID-19 related developments with daily updates, shares information on health and business-related responses by Indian companies, delivers webinars, developed a Business Continuity Planning toolkit and replies to online inquiries from businesses. *APEX Brazil*, an agency that promotes investment and trade, also lists online COVID-19 related measures for businesses and has a dedicated platform with a COVID-19 market intelligence tool that gives economic and trade updates by sector, a model action plan for businesses in crisis as well as tools and checklists for exporters during COVID-19. The *Ministry of Investment of Saudi Arabia* set-up a COVID-19 Response Centre with a frequently asked questions window and an online COVID-19 Business Continuity Guide. The *Australian Trade and Investment Commission* is organizing webinars for companies on the effects of the virus on Australian-based businesses. The message on *Invest in Denmark's* website reads "Denmark remains open for business." This site offers an array of COVID-19 related information that affects businesses, including government support measures, and provides helpful links to various government websites. *Invest in Estonia* has created a chat box for businesses and investors, provides information on aid packages and offers cooperation with businesses to fight the challenges. *Germany Trade and Invest* likewise developed a COVID-19 special window with information on economic developments, updates on government measures for business and industry and offers online seminars on new developments, including a webinar on the novel "Fast Track Program" for medical apps to respond to the growing demand for digital solutions in the German healthcare system. On 1 April 2020, institutions dealing with investment promotion and facilitation in Australia, Austria, Brazil, Dominican Republic, Estonia, Germany, India, Italy, Kazakhstan, Malta, Mauritius, Saudi Arabia and Switzerland all had set-up special online platforms or started new initiatives as a response to the COVID-19 crisis.

3. Measures aimed at protecting critical domestic infrastructure and other sensitive industries

On 25 March 2020, the European Commission issued the "Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets"⁴ with a goal to "preserve EU companies and critical assets, notably in areas such as health, medical research, biotechnology and infrastructures that are essential for our security and public order, without undermining the EU's general openness to foreign investment". The Guidance calls upon the Member States with already existing FDI screening mechanisms to use them effectively and the remaining Member States to implement such regimes.

Already on 16 March 2020, the European Commission had approved a financial support package in the amount of €80 million to CureVac, a Germany-based innovative biotech company, to promote the development and production of a Coronavirus vaccine in Europe.⁵ The measure was reported to discourage the firm from moving its research facilities to the United States, as suggested by the US administration.⁶

The French government declared that within the framework of its relief package, adopted on 17 March 2020, it will also consider nationalizations if necessary.

In Hungary, Defence Force management groups have been sent out to 140 strategic enterprises. The goal is to coordinate the operations of those service and production capacities, transport, energy and

⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_528

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_474

⁶ <https://www.nytimes.com/reuters/2020/03/17/world/europe/17reuters-health-coronavirus-eu-usa.html>; https://www.reuters.com/article/us-health-coronavirus-eu-usa-idUSKBN2142G1?taid=5e70f7a8f629ab00016ac225&utm_campaign=trueAnthem%3A+Trending+Content&utm_medium=trueAnthem&utm_source=twitter

pharmaceuticals companies, whose functioning is of priority importance in Hungary during the current epidemiological state of emergency, and to ensure their physical security.⁷

On 18 March 2020, the Spanish Royal Decree-Law 8/2020 entered into force. It laid out the policy response of the Spanish government to the Corona-19 spread in many fields. One element of the package is the suspension of the liberalization of the foreign investment regime in Spain. Consequently, a prior authorisation is required for foreign investment in the following areas: critical infrastructure, critical technologies, supply of fundamental inputs, sensitive data sectors, and media.⁸

4. Launching investment initiatives

On 18 March 2020, the Polish government announced to increase public investments programme in the amount of PLN 30 bn as part of its Anticrisis Shield programme.⁹ At the European Union level, on 13 March 2020, the European Commission proposed a comprehensive economic response, including, inter alia, a Coronavirus Response Investment Initiative in the amount of EUR 37 billion to support small business and the health care sector.¹⁰

5. General State aid packages for the economy, including investment

Numerous countries around the globe have announced financial support programmes for their domestic economies - the exact amount of such aid is still in flux. As of 31 March 2020, such announcements had been made, inter alia, by the governments of Australia (AUD 320 billion), Canada (CAD 85 billion), China (RMB 300 billion), France (EUR 345 billion), Germany (EUR 450 billion), Japan (YEN 30 trillion), New Zealand (NZD 12,1 billion), Poland (PLN 212 billion), Republic of Korea (KRW 100 trillion), Spain (EUR 200 billion), Switzerland (CHF 42 billion), United Kingdom (GBP 350 billion), and the United States (USD 2 trillion).

These economic relief packages may include employment incentives directed at supporting businesses in preserving jobs in the crisis. These incentives may take form of direct employment subsidies. For example, the Australian government announced on 30 March 2020 a AUD \$130 billion "JobKeeper Payment programme".¹¹ Under the scheme, employers economically impacted by COVID-19 will be entitled to a fortnightly payment of AUD \$1,500 per employee for a maximum of 6 months. Secondly, employment-related responses may draw on existing support schemes for those particularly vulnerable in the labour market, including young people and those without stable working conditions. In this regard, the Swiss government, on 20 March 2020, decided to extend and simplify its short-time work allowances system ("*Kurzarbeitsentschädigungen*")¹² to also apply to employees with fixed-term contracts, temporary arrangements and apprenticeships. The processing of requests was shortened with advance payments possible. Finally, employment incentives may refer to social security contributions. For instance, the "Anticrisis Shield" adopted by the Polish government and now being proceeded in the Parliament envisages exemptions for 3 months from social security contributions for microbusinesses (firms with up to 9 employees and independent contractors).¹³ This is in addition to the direct wage subsidies for employers in the amount up to 40% of the average monthly salary.

6. International investment agreements

The COVID-19 outbreak could also have an impact on the number of international investment agreements (IIAs) concluded in 2020. The conclusion of an IIA requires intensive negotiations involving the travel of government officials, the organization of domestic consultation meetings, as well as a number of

⁷ <https://www.kormany.hu/en/ministry-of-defence/news/hdf-management-groups-will-be-appearing-at-the-affected-enterprises-on-thursday-morning>

⁸ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-3824

⁹ <https://www.gov.pl/web/koronawirus/tarcza-antykryzysowa-ma-ochronic-firmy-i-pracownikow-przed-skutkami-epidemii-koronawirusa>

¹⁰ https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/economy_en

¹¹ <https://treasury.gov.au/coronavirus/households>

¹² <https://www.seco.admin.ch/seco/de/home/seco/nsb-news.msg-id-78515.html>

¹³ <https://www.gov.pl/web/koronawirus/pakiet-dot-tarczy-antykryzysowej-uchwalony-przez-sejm>

procedural steps that vary from one country to another. To date, a number of negotiating rounds for BITs and TIPs have been cancelled or postponed due to the outbreak.¹⁴ This is in addition to postponement of a number of high-level bilateral Summits that typically address trade and investment agreements.¹⁵ Looking at the figures, the impact of COVID-19 on the number of newly concluded IIAs is clear. In the first three months of 2020 only two new IIAs were concluded, this is compared with 10 IIAs concluded in the same period in the year 2019. The extent of the impact of the COVID-19 on the total number of IIAs for the year 2020 will depend on the spread of the virus during the second part of the year. That being said, it is likely that 2020 will register the lowest number of IIAs concluded since 1985.

7. International policy statements in support of investment and value chains

On 26 March 2020, G20 Leaders held, by videoconference, an extraordinary summit on Covid-19. Inter alia, they committed to do whatever it takes and to use all available policy tools to minimize the economic and social damage from the pandemic, restore global growth, maintain market stability, and strengthen resilience. They reiterated their goal to realize a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, and to keep our markets open.¹⁶

On 30 March 2020, G20 Trade and Investment Ministers issued a statement recognizing, inter alia the importance of international investment. They committed to seek mitigating the impact of the crisis on international trade and investment, to work together to deliver a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, and to keep markets open. They called on the international organizations to provide an in-depth analysis of the impact of COVID-19 on world trade, investment and global value chains.¹⁷

The G20 Finance Ministers and Central Bank Governors met virtually on 31 March 2020 to coordinate their efforts in response to the COVID-19 pandemic and agree on a roadmap to implement the commitments made at the virtual G20 Leaders' Summit that was held on 26 March 2020 under the Saudi G20 Presidency, including, inter alia, delivering a joint G20 Action Plan in Response to COVID-19.¹⁸

On 16 March 2020, the G7 leaders published a statement on COVID 19, in which they expressed, inter alia, their support for global trade and investment. To this end, they announced to mobilize the full range of instruments, including monetary and fiscal measures, as well as targeted actions, to support immediately and as much as necessary the workers, companies, and sectors most affected.¹⁹

Also, on 25 March 2020, a group of countries (Australia, Brunei Darussalam, Canada, Chile, Myanmar, New Zealand and Singapore) issued a joint statement, confirming their commitment to open supply chains.²⁰

B. National investment policies

During the regular review period of this Monitor (November 2019 –February 2020), 28 countries took 38 investment policy measures (table 1). The majority of them were geared towards creating more favourable investment conditions. Investment liberalisation, promotion and facilitation measures were adopted in numerous industries including energy, mining, financial services, tourism and information technology. Developing countries and transition economies have been especially active.

¹⁴ Examples include the postponement of negotiations for a Brazil-Nigeria BIT; delays for the negotiations of the new Investment Protocol of the African Continental FTA; and the postponement of the EU-United Kingdom free trade agreement.

¹⁵ See for example the postponement of the EU-India Summit which was scheduled to take place on 13 March 2020 and the EU-China Summit which was scheduled for end of March 2020.

¹⁶ <http://www.g20.utoronto.ca/2020/2020-g20-statement-0326.html>

¹⁷ <http://www.g20.utoronto.ca/2020/2020-g20-trade-0330.html>

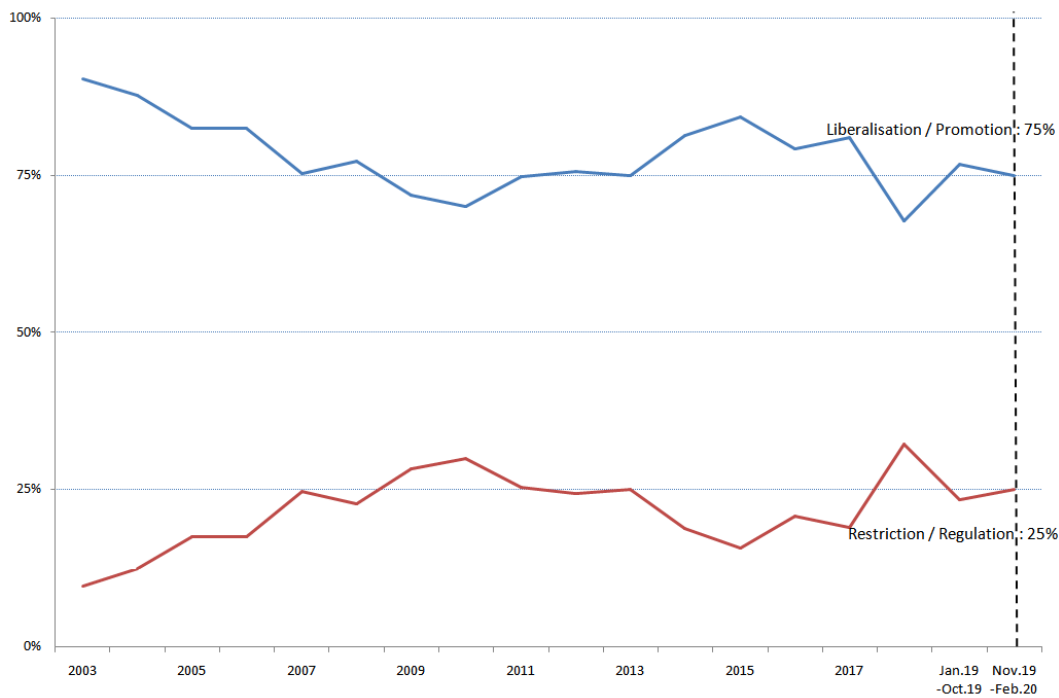
¹⁸ <http://www.g20.utoronto.ca/2020/2020-g20-finance-0331.html>

¹⁹ <https://www.consilium.europa.eu/en/press/press-releases/2020/03/16/g7-leaders-statement-on-covid-19/>

²⁰ <https://www.channelnewsasia.com/news/singapore/coronavirus-covid-19-economy-supply-chains-trade-12573940>

The ratio of more restrictive or regulatory investment policy measures, which were adopted or took effect during the review period stands at 25 percent. After having reached a peak of 34 percent in 2018, this percentage decreased and is now once again in line with the longer-term policy trend (figure 1). New investment restrictions or regulations for foreign investors continued to be mainly rooted on national security grounds about foreign ownership of critical infrastructures, core technologies, or other sensitive assets. All such measures were adopted by advanced economies.

Figure 1: Changes in national investment policies, 2003 - February 2020*



Source: UNCTAD.

* The data in the figure do not include measures related to the general business climate, such as corporate taxation, environmental or labor legislation.

Table 1. Summary of national investment policy measures adopted between November 2019 and February 2020

	Entry and establishment (12)	Treatment (5)	Promotion and facilitation (16)	General business climate (9)
Algeria (*)		1	1	
Argentina			1	2
Azerbaijan			1	
China (*)	2	1	1	
Colombia (*)			1	1
Egypt		1		
France	1			
Greece	1			
India	1			
Indonesia	1		1	
Italy	1			
Japan	1			
Kenya			1	

Mexico				1
Morocco				1
Myanmar				1
Nigeria		1		
North Macedonia			1	
Oman			1	
Panama			1	
Qatar				1
Romania	1			
Somalia				1
Ukraine			1	
United Arab Emirates	1			
United States of America	1		1	
Uzbekistan (*)		1	4	
Viet Nam	1			1

Source: UNCTAD.

* Measures are double-counted because they related to more than one type.

1. Entry/Establishment of investment

Eleven countries – China, France, Greece, India, Indonesia, Italy, Japan, Romania, United Arab Emirates, United States of America and Viet Nam – adopted new policy measures relating to the entry and establishment of foreign investors. The majority of them relaxed restrictions on foreign ownership or opened up new business opportunities.

Among the most noteworthy investment liberalisation measures are:

- China allowed Chinese natural persons to establish new foreign-funded enterprises with foreign investors directly.
- Greece enabled the National Natural Gas Company to spinoff into three separate undertakings, two of which are to be completely privatised.
- India opened the coal mining sector for non-coal companies, which are now allowed to bid for coal mines.
- Indonesia established a mechanism to allow foreign bank branches to transform into Indonesian banks.
- The United Arab Emirates broadened the definition of “qualified investors”.
- Viet Nam increased the foreign ownership cap for domestic airlines.

New regulatory or restrictive investment policies relate particularly to national security concerns:

- France expanded its foreign investment screening regime by lowering the threshold for triggering mandatory investment reviews for non EU/EEA investors from 33.33 per cent of the share capital or voting rights of a French entity to 25 per cent and broadened the sectoral scope of the screening mechanism, including numerous key activities. The measure will apply to authorization requests submitted as of April 2020.
- Italy amended the existing FDI screening regime to broaden the scope of information that investors need to disclose and extended the timeframe of screening procedures.
- Japan tightened existing regulations by requiring foreign investors to seek prior notification from the Government before obtaining a 1 percent or higher stake in a listed Japanese firm related to national security - lowering the previous threshold of 10 percent. The law has not yet entered into force.

- Romania empowered its National Agency for Mineral Resources to refuse the awarding of a petroleum concession agreement to any non-EU entities on grounds of national security.
- The United States of America expanded the scope of transactions subject to national security-related reviews and introduced certain changes to make the review process more effective and efficient.
- Concerning possible future legislative actions in this area, the German Ministry of Economics and Energy published in January 2020 a draft amendment to the existing regulations aiming at including, among others, all transactions likely to affect public order or security in the screening review - not only those, which actually pose a threat.

2. Treatment of established investment

Five countries – Algeria, China, Egypt, Nigeria, and Uzbekistan – took measures with respect to the treatment of investors after establishment in the host country.

- Algeria amended, inter alia, provisions related to the duration of a hydrocarbon contract.
- China introduced detailed implementing regulations for the newly enacted foreign investment law.
- Egypt obligated all companies to submit certain information and data to the Government in order to calculate the foreign investment capital.
- Nigeria increased the Government's share of profits from oil activities conducted under production-sharing contracts.
- Uzbekistan introduced a new multi-tiered mechanism for investor-state dispute settlement.

3. Promotion/Facilitation of investment

Thirteen countries – Algeria, Argentina, Azerbaijan, China, Colombia, Indonesia, Kenya, North Macedonia, Oman, Panama, Ukraine, United States of America and Uzbekistan – adopted measures concerning the promotion and facilitation of investment. Most of these measures encourage investment through providing investment incentives or facilitating investment procedures. For instance,

- Algeria introduced a set of fiscal incentives to attract foreign investment in the oil and gas sector.
- The new government of Argentina suspended the existing incentives regime that aimed at promoting investments requiring significant R&D and technological know-how.
- Azerbaijan expanded tax incentives for industrial and hi-tech parks.
- China published a set of trial measures to promote foreign investment in the Yangtze River Delta area.
- Colombia established a preferential corporate tax regime for investment projects, which will produce large amounts of taxable income and create a multitude of jobs.
- Indonesia set out tax incentives for business investing in specific industries and provinces.
- Kenya revised its taxation system to provide exemptions for investment in various sectors.
- North Macedonia adopted a new law to encourage, attract and create favourable conditions for strategic investments.
- Oman established an investment portal designed to enable local companies to attract foreign investors worldwide.
- Panama amended its incentive regime for investment in the tourism sector to promote investment and financing of new tourism projects or their extensions.

- Ukraine simplified and lowered the costs of the registration procedure for representative offices of foreign business entities.
- The United States of America clarified the tax incentive program in so-called “Opportunity Zones”.
- Uzbekistan established a presidential advisory body for investment; adopted the Law on Special Economic Zones; and created a one-stop-shop mechanism to facilitate investment.

4. General business climate

Eight countries – Argentina, Colombia, Mexico, Morocco, Myanmar, Qatar, Somalia, and Viet Nam – took measures affecting the general business climate.²¹ Argentina adopted a new sales tax on vehicles. Colombia lowered the corporate income tax rate and simplified its tax regime for certain services. Mexico and Qatar revised tax laws to align their legal frameworks with global standards. Morocco raised corporate tax rates. Myanmar introduced a modern insolvency regime, based on the UNCITRAL Model Law on Cross-Border Insolvency. Somalia ratified its first petroleum law. Viet Nam amended its labour code to allow Vietnamese employers to make multiple labour contracts with foreign employees.

C. International investment policies

1. International investment agreements signed, terminated and entered into force

During the reporting period, at least three international investment agreements (IIAs) were signed, bringing the total number of IIAs to 3,292 by the end of February 2020. All three IIAs were bilateral investment treaties (BIT). Additionally, at least three IIAs entered into force during the reporting period.²²

At least five terminations of IIAs took effect, exceeding the number of newly concluded treaties. Terminated IIAs include BITs between Ecuador and Italy (effective 01 February 2020); Costa Rica and Republic of Korea (effective 01 November 2019); Bosnia and Herzegovina and Italy (effective 10 February 2020); Australia and Peru (11 February 2020); and Poland and the United Kingdom (effective 22 November 2019).

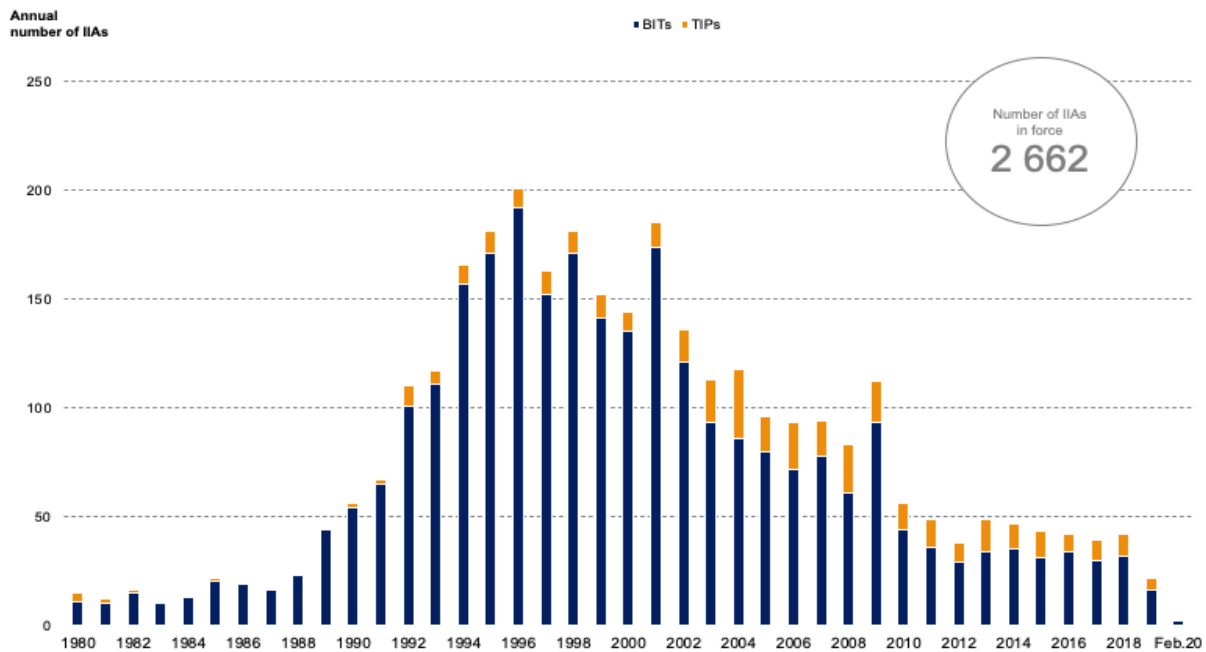
Table 2. List of IIAs signed between 1 November 2019 and 29 February 2020

	Name of the Agreement	Date of signature
1	Bilateral Investment Treaty between Taiwan Province of China and Viet Nam	18 December 2019
2	Bilateral Investment Treaty between Japan and Morocco	8 January 2020
3	Bilateral Investment Treaty between Brazil and India ²³	25 January 2020

²¹ The following examples are a non-exhaustive overview.

²² Australia – Hong Kong investment agreement entered into force on 17 January 2020; Australia – Peru Free Trade Agreement entered into force on 11 February 2020; and the Central America – Republic of Korea Free Trade Agreement entered into force on 1 November 2019.

²³ This report counts the Cooperation and Facilitation Investment Agreement (CFIA) between Brazil and India as a BIT.

Figure 2. Trends in IIAs signed, 1980–Feb.2020*


Source: UNCTAD IIA Navigator

* Preliminary data for 2020.

The following review is based on IIAs concluded during the reporting period for which texts are currently available.²⁴

The *Japan–Morocco BIT*, signed on 18 December 2019, contains a preamble recognizing that health, safety and environmental measures should not be relaxed and reaffirming the parties’ right to regulate in the public interest. It features an asset-based definition of investment that excludes certain assets such as debt securities and claims to money (portfolio investments are not excluded). The agreement includes provisions on most favoured nation (MFN) treatment and national treatment (NT) with respect to investment activities in cases of “like circumstances”. The agreement accords fair and equitable treatment (FET) and full protection and security (FPS) in accordance with customary international law and additionally clarifies that FET includes the obligation not to deny justice. The FPS provision requires parties to ensure the necessary level of police protection under customary international law. The agreement covers direct and indirect expropriation and states, in an annex, the indicative criteria for a finding of indirect expropriation. It contains no provisions on corporate social responsibility (CSR) but provides a clause on “not lowering of standards” in addition to the reference in the preamble. General and security exceptions are included. The agreement provides investor–State dispute settlement (ISDS) with a three-year time limit for the submission of claims.

The *Brazil–India BIT*, signed on 25 January 2020, makes a reference to sustainable development and reaffirms the parties’ right to regulate in the public interest in its preamble. It adopts an enterprise-based definition of investment and specifies in a non-exhaustive manner some of the characteristics of an investment (the commitment of capital, the objective of establishing a lasting interest, the expectation of gain or profit and the assumption of risk).²⁵ Certain assets are excluded from the scope of the BIT (e.g. judicial, administrative or arbitral judgments, portfolio investments, claims to money, etc.). The agreement contains no clause on MFN treatment but includes a provision on post-establishment NT qualified with a reference to “like circumstances”. The BIT omits FET and FPS but requires parties not to subject

²⁴ A detailed analysis of IIAs signed in 2019, including their content and prevalence of sustainable development features, will be available in the World Investment Report (WIR) 2020 (Chapter III), to be launched in June 2020.

²⁵ The BIT also requires a covered investment to be one that is owned or controlled, directly or indirectly, by an investor of the other party or over which the latter exerts a significant degree of influence.

investments to denial of justice, fundamental breach of due process, targeted discrimination, manifestly abusive treatment, or discrimination. The agreement includes a clause on expropriation or nationalization subject to the four conditions for lawful expropriation but specifies that only direct expropriation is covered. It contains a “not lowering of standards” clause; provisions on labour, environmental, and health matters; a CSR clause with a list of principles and standards for responsible business conduct; and a commitment of the parties to fight corruption, money laundering and terrorism financing. Security and general exceptions are included. As for dispute settlement, the agreement omits ISDS, replacing it with dispute prevention and State-State dispute settlement mechanisms. In terms of institutional arrangements, the BIT provides for the establishment of joint committees and ombudspersons or national contact points to oversee investment cooperation and information exchange and to support investors by addressing their requests and complaints.

2. Other Developments in international investment policymaking

Developments at the national and regional level

Morocco’s new model BIT. In December 2019, Morocco published its model BIT aimed at fostering sustainable development by striking a balance between investors rights and the safeguarding of adequate regulatory space for States. One notable feature of the model is that it requires an investment to contribute to the sustainable development of the host country and, additionally, sets out indicators for measuring such contribution: increased production capacity, economic growth, quality of jobs created, duration of the investment, technology transfer and reduction of poverty.

United States ratification of the United States–Mexico–Canada Agreement. Following the approval, in December 2019, of the United States–Mexico–Canada Agreement (USMCA) by the United States House of Representatives, on 29 January 2020 the agreement was signed into law by the President, marking the United States’ effective ratification of the new agreement. This follows Mexico’s earlier ratification in June 2019, making Canada the only party yet to ratify the agreement.

Australia’s free trade agreements entry into force. Australia’s free trade agreements with Hong Kong and Peru entered into force on 17 January 2020 and 12 February 2020, respectively. Both agreements contain investment chapters, and in the case of Hong Kong the new investment chapter replaces the Australia-Hong Kong BIT dating from 1993. Both investment chapters include ISDS mechanisms, albeit subject to certain carve-outs such as the exclusion of public health measures in line with Australia’s established practice.

Brexit and future EU–United Kingdom relationship. On 31 January 2020, the United Kingdom’s withdrawal from the EU officially came into effect. The Withdrawal Agreement concluded between the EU and the United Kingdom provides for an eleven-month transition period, from 1 February 2020 to 31 December 2020, during which the United Kingdom will continue to apply EU trade policy and will continue to be covered and bound by trade agreements between the EU and third countries. The EU is in the process of notifying third countries of this. During the transition period, the United Kingdom will be able to negotiate and sign trade agreements which, however, will only be able to enter into force at the end of the transition period. After the transition period, EU trade Agreements will cease to apply to the United Kingdom. On 25 February and 27 February 2020, the EU²⁶ and the United Kingdom,²⁷ respectively, published their respective decisions authorising the opening of, and setting out the directives for, the negotiations on the future EU–United Kingdom trade relationship.

To prepare for the end of the transition period, the United Kingdom has continued to conclude so-called “rollover”, or continuity agreements, to replicate the effects of the current agreements and prevent

²⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/guide-negotiations_en

²⁷ <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>

disruption of trade relationships with the relevant third countries as a result of Brexit. As of 4 February 2020, the United Kingdom had concluded 20 continuity agreements that together cover 49 partner countries. Additionally, the United Kingdom is engaged in ongoing discussions with 16 countries.

Ratification of the Tripartite Free Trade Area Agreement. On 20 January 2020, Namibia ratified the Tripartite Free Trade Area Agreement, becoming the eighth country to do so. Namibia was preceded by Burundi, which deposited its instrument of ratification in November 2019.²⁸ 14 ratifications are required for the Agreement to enter into force. The total membership of the Tripartite Free Trade Area consists of 29 countries,²⁹ which are members of three regional blocs, i.e. The Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC).

EU-China investment agreement negotiations. The 25th and 26th rounds of the EU-China investment agreement negotiations took place in Brussels, Belgium, from 16-19 December 2019 and between 16-17 and 20-21 January 2020. Revised market access offers were exchanged during the 25th round, the previous offers dating back to July 2018. In addition to this, the discussions during both rounds covered various topics including investment liberalisation, State-owned enterprises, State-State dispute settlement, sustainable development, transparency, and labour related issues. The parties' ambition is to finalize the negotiations which formally started in 2013, in 2020. Prior to the COVID-19 pandemic, the next round of negotiations was to be held between 4-6 March 2020 in Beijing, China.³⁰

Joint D-8 Organization for Economic Cooperation – UNCTAD Guiding Principles for Investment Policymaking. In January 2020, country members of the D-8 Organization for Economic Cooperation (Bangladesh, Egypt, Nigeria, Indonesia, Iran, Malaysia, Pakistan, and Turkey) formally endorsed a set of Guiding Principles for Investment Policymaking jointly developed jointly with UNCTAD. The Principles were developed in line with the recommendations of the UNCTAD-D-8 Expert Meeting on “International Investment Policy Reform for Sustainable Development” held in Istanbul, Turkey in September 2019, which “called on UNCTAD and the D-8 organization to develop non-binding development-oriented guiding principles for investment policymaking for D-8 countries”. The non-binding Guiding Principles provide guidance for investment policymaking with a view, among others, to promoting inclusive economic growth and sustainable development; promoting coherence in national and international investment policymaking; fostering an open, transparent and conducive global policy environment for investment; and aligning investment promotion and facilitation policies with sustainable development goals.

Modernization of the Energy Charter Treaty. The Modernization Group of the Energy Charter Treaty (ECT) held its first meeting on 12 December 2019, in Brussels, Belgium.³¹ The group was established and mandated by the Energy Charter Conference to start and conduct negotiations on the modernization of the ECT with a view to conclude negotiations expeditiously. While the discussions have not been made public, the negotiations are expected to take into account previously identified topics such as the definition of investment, the right to regulate, MFN clause, the definition of indirect expropriation, sustainable development and corporate social responsibility.³² The Modernization Group is slated to hold three more negotiations rounds in April, July and October 2020, followed by a stocktaking meeting by the Conference in December 2020 to look at the progress made.³³

²⁸ Other member States that have ratified the TFTA Agreement are Botswana, Egypt, Kenya, Uganda, Rwanda and South Africa.

²⁹ The countries are Angola, Botswana, Burundi, Comoros, Democratic Republic of Congo (DRC), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Sudan, Tanzania, Tunisia, Uganda, Somalia, South Africa, South Sudan, Swaziland, Zambia and Zimbabwe.

³⁰ https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158555.pdf

³¹ <https://www.iisd.org/itn/2020/03/10/ect-modernization-conference-meets-in-december-2019-sets-stage-for-2020-negotiating-meetings/>

³² For the comprehensive list of topics for modernization of the ECT, see

https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2018/CCDEC201818_-_STR_Modernisation_of_the_Energy_Charter_Treaty.pdf

³³ <https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2019/CCDEC201910.pdf>

Developments at the multilateral level

United Nations annual forum on business and human rights. The yearly UN annual forum on business and human rights was held from 25 to 27 November 2019, in Geneva, Switzerland. The forum was established by the UN Human Rights Council in 2011 to discuss trends and challenges in the implementation of the UN Guiding Principles on Business and Human Rights, promote dialogue and cooperation on issues linked to business and human rights, as well as identify good practices. The 2019 edition was themed “Time to act: Governments as catalysts for business respect for human rights” and focused on the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthening accountability. It followed up on the 2018 edition where the key message was that governments must step up their action and leadership to meet their duty to protect against business-related human rights abuse.³⁴

UNCITRAL Working Group III on investor-State dispute settlement reform. From 20 to 24 January 2020, the UNCITRAL Working Group III on investor-State dispute settlement (ISDS) reform resumed its 38th session in Vienna, Austria. The session’s deliberations addressed the following possible reform options: stand-alone review or appellate mechanism, standing multilateral investment court, and selection and appointment of arbitrators and adjudicators.

On a stand-alone or appellate mechanism, considerations of the topic included discussions on whether such option may further contribute to the fragmentation of the system or lead to a more coherent one; the nature and scope of appeals that would be admissible, specifically the grounds for appeal, the decisions subject to appeal or the effect of an appeal; and issues related to the enforcement of decisions rendered through a permanent appellate mechanism particularly in relation to both participating and non-participating States.

On the subject of a standing multilateral investment court, the discussions focused on the costs and sources of financing. With respect to the costs, key components of the budget were identified, e.g. the remuneration of the adjudicators, cost related to the administration of the case, and the cost of administrative staff supporting. The potential sources of financing include contributions of participating States, user-pay system, voluntary contributions, or mixed contribution formulas. It was emphasized that the establishment of a permanent body should not lead to unjustifiable increase in burden of developing States in comparison with the existing system.

In relation to the selection and appointment of ISDS tribunal members, possible reform options considered by the Working Group included the establishment of a roster of qualified candidates and the setting up of a permanent body composed of full-time adjudicators. Suggestions on the various models for establishing a roster and the type of roster (whether indicative or closed roster) were made and questions on whether such roster could address identified concerns (e.g. conflict of interest, lack of diversity, etc.) were raised. Issues concerning the composition of a permanent body, including the selection process of adjudicators, their qualifications and requirements, and the assigning of cases to adjudicators were also debated.

Before being postponed due to the COVID-19 pandemic, the next session of the Working Group was scheduled for 30 March – 3 April 2020 to consider, among other things, dispute prevention, mitigation and mediation; treaty interpretation by States parties; security for costs and frivolous claims; and multilateral instrument on ISDS reform.³⁵

ICSID rules and regulations amendment proposal. On 28 February 2020, the ICISD Secretariat published its fourth working paper with proposed changes to modernize its rules for resolving disputes between foreign investors and States (Working Paper # 4). The paper builds on the proposals that were

³⁴ <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx>

³⁵ <https://undocs.org/en/A/CN.9/1004/Add.1>

originally published in August 2018 (Working Paper #1), March 2019 (Working Paper #2), and August 2019 (Working Paper #3) and follows extensive consultations with ICSID member States and the public. While there are few changes between Working Papers #3 and #4, some of the notable amendments introduced by the latest paper include, in relation to third party funding, the obligation by the parties to disclose the name and address of any non-party from which they received funding, directly or indirectly. In relation to proceedings, proposed changes included the possibility for a tribunal to hold first sessions in person or remotely, and to hold first sessions on the basis of written submissions by the parties in certain circumstances. Worthy of note is also the ability given to a tribunal to order security for costs, although this is a feature that was already envisaged in Working Paper #3. As for the next steps, the Secretariat's goal is to place the proposed amended rules before the membership for a vote in the latter half of 2020 and, if adopted, to have these in place by early 2021.³⁶

World Trade Organization's (WTO) structured discussions on investment facilitation for development. During this IPM's reporting period, several developments have occurred in relation to the structured discussions on investment facilitation for development under the WTO. Following the last stock-taking and next steps meeting held on 18 July 2019, a working document reflecting areas of common ground and of common interest and compiling the potential elements for a multilateral framework on investment facilitation for development was prepared and circulated to the participating members. A series of thematic substantive meetings was subsequently organized, during the period of September-December 2019, to discuss the sections of the working document in order to determine where there is convergence, along with streamlining that text so that it could serve as a basis for potential future negotiations.³⁷

The working document comprises seven sections reflecting elements hitherto identified as potential provisions of the multilateral framework. Section I sets out the scope and the general principles. Section II on transparency and predictability of investment measures includes possible provisions on publication and availability of measures, notification to the WTO and enquiry points. Section III on streamlining and speeding up administrative procedures and requirements addresses issues concerning the reduction and simplification of administrative procedures and documentation requirements, authorization/approval of procedures for investments, periodic review of administrative procedures and requirements. Section IV includes propositions on focal points/Ombudsperson mechanisms, domestic coordination and cross-border cooperation. Section V addresses special and differential treatment for developing countries and least developed countries. Section VI relates to Micro, Small and Medium Sized Enterprises, corporate social responsibility and anti-corruption. Lastly, Section VII concerns institutional arrangements.³⁸

As for the next steps, during an informal ministerial meeting held on 23 January 2020 in Davos, Switzerland, the participating members have re-affirmed their commitment to work towards a concrete outcome on an investment facilitation agreement for the WTO Twelfth Ministerial Conference (MC12). To this effect, they have confirmed the decision to move into negotiating mode as of March 2020.³⁹ However, at the time of writing, the MC12, initially scheduled for June 2020, had been cancelled due to the COVID-19 pandemic.

³⁶ https://icsid.worldbank.org/en/Documents/WP_4_Backgrounder_EN.pdf

³⁷ <https://iisd.org/sites/default/files/publications/investment-facilitation.pdf>, p.9

³⁸ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=257405,256934,256914,255867,255870,255632,255695,255535,255468,255205&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

³⁹ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=260850,260575,260600,259659,259660,259472,259063,259060,258904,258408&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False

ANNEX. Investment policy measures taken between November 2019 and February 2020

Description of Measure	Date	Source
Algeria		
Treatment / Promotion and facilitation	The new hydrocarbon law, approved by the National Assembly on 14 November 2019, introduced the following changes, among others: <ul style="list-style-type: none"> - Taxes and other duties have been abolished where the entity is established for the benefit of the state and local authorities. - Foreign workers in the refining and petrochemical fields will be exempted from social security tax, provided they continue to contribute to a social security fund in their country of origin. - The duration of a hydrocarbon contract includes a 30-year exploration and exploitation period and may be extended for a maximum period of 10 years. - It reintroduces production sharing agreements and reduces the complexity of the previous petroleum framework by simplifying the structure of the fiscal terms. Also, royalty/tax participation contracts or risk service agreements will be available. Foreign capital will continue to be limited to a 49% participation stake and foreign entities will need to pay surface tax, royalty, hydrocarbon revenue tax, and additional income tax. 	14 November 2019 Oil& Gas, "Key changes in Algeria's hydrocarbon law: DWF", 19November 2019
Argentina		
General business climate	On 23 December 2019, the Law on Social Solidarity and Productive Recovery in the context of Public Emergency N°27,541 came into force. Article 50 introduced a new sales tax, modifying the Internal Revenue Law. The new tax applies to land vehicles for private use and other leisure-oriented motor vehicles (motorcycles, watercraft, aircraft) whose price exceeds 1,3 million ARG pesos before tax (approx. 21,000 \$USD). The measure applies to both imported and locally manufactured equipment. The tax rate varies between 20% and 35%, depending on the value of goods.	23 December 2019 Sistema Argentino de Información Jurídica, "Ley de Solidaridad Social y Reactivación Productiva en el Marco de la Emergencia Pública", 23 December 2019
General business climate	The Government passed Executive Decree N° 14/2020 raising the minimum wage for the workforce in the private sector. The rise amounts to 4000 ARG pesos for a monthly salary (approximately 64 US dollars as of 26/02/2020). The regulation entered into force on 3 January 2020.	3 January 2020 EIU, "Fernández mandates private-sector wage increase", 6 January 2020
Promotion and facilitation	On 20 January 2020, the Government announced the suspension of the incentives scheme under Law N° 27.506. The regime aimed to promote investments requiring significant R&D and technological know-how. The regime offered a reduced income tax rate of 15%, exemption from value-added tax, deduction of a fixed amount of employer contributions, and a tax credit for the payment of income tax and value-added tax.	20 January 2020 DLA Piper, "Argentina suspends Promotional Regime of the Knowledge-based Economy", 28 January 2020

<p>The following areas of economic activity were promoted by the "Regime for the Promotion of the Knowledge Economy" under Law N°27.506: computer and digital software and services; audiovisual production and post-production; biotechnology, bio economy, biology, biochemistry, microbiology, bioinformatics, molecular biology, neurotechnology, genetic engineering, geoengineering; geological and prospecting services and services related to electronics and communications; exported professional services; nanotechnology and nanoscience; aerospace and satellite industry, space technologies; engineering for the nuclear industry; manufacturing of automation solutions (artificial intelligence, robotics and industrial internet, internet of things, sensors, additive manufacturing, augmented and virtual reality); and research and development in engineering activities, exact and natural sciences, agricultural sciences and medical sciences.</p>			
Azerbaijan			
Promotion and facilitation	<p>On 1 January 2020, the latest Tax Code amendment entered into force. Residents of industrial and hi-tech parks in Azerbaijan are now exempted from income, land and property taxes for 10 years -- up from previously 7 years. Furthermore, the period of VAT and custom duties exemption on importation of equipment and facilities for construction of production facilities was extended to 10 years.</p>	1 January 2020	Department of Interstate Economic Cooperation, UNCTAD survey on national investment policy Measures and legislation relating to foreign investment, 29 November 2019
China			
Entry / Treatment	<p>On 26 December 2019, the Regulations for the Implementation of the Foreign Investment Law of the People's Republic of China were issued by the State Council. They came into force on 1 January 2020. Key points include among others:</p> <ul style="list-style-type: none"> - Five-year transitional period arrangement; - Allows Chinese natural persons to establish new foreign-funded enterprises with foreign investors directly; - Emphasizes the free remittance of the legal income of foreign investors and foreign employees; - Details the protection of intellectual property rights and trade secrets; - Defines the compensation standard for expropriation under special circumstances; - Provides equal treatment of domestic and foreign enterprises; - Clarifies fund raising means for foreign-funded enterprises. 	26 December 2019	Lexology, "An overview of the key points of the Regulations for the Implementation of the Foreign Investment Law", 22 January 2020
Promotion and facilitation	<p>The Shanghai Market Supervision Administration ("Shanghai MSA"), the Jiangsu MSA, the Zhejiang MSA and the Anhui MSA have recently jointly published three trial measures in relation to foreign-invested enterprises ("FIEs"). These measures are the Administrative Measures on Permitting Domestic Natural Persons to Invest In and Establish FIEs ("Measures on Domestic Natural Persons Establishing</p>	1 January 2020	Lexology, "Yangtze River Delta further facilitates Foreign Investment", 3 January 2020

FIEs”), the Trial Measures on Simplifying Registration Materials and Implementing Mutual Recognition of Subject Qualification Evidence Documents (“Measures on Simplifying ID Documents”) and the Trial Measures on Foreign Natural Persons Holding Permanent Resident ID Cards Establishing Science and Technology Enterprises (“Measures on Permanent Resident Foreigners Establishing Sci-tech Enterprises”). These three Measures have come into force on 1 January 2020 and will remain valid until 31 December 2021. They will apply within the territorial jurisdictions of Shanghai, Jiangsu, Zhejiang and Anhui.

1. Measures on Domestic Natural Persons Establishing FIEs

Within the Validity Period and the Territory, Chinese domestic residents who hold an ID card of the People's Republic of China will be permitted to invest in and establish foreign-invested enterprises jointly with foreign natural persons, enterprises or other organizations within the Territory. This is generally not permitted under the current Chinese laws on national level and administrative practice.

2. Measures on Simplifying ID Documents

Within the Validity Period and the Territory, the formality requirements on identity documents of foreign investors, i.e. passports of foreign individuals and incorporation registration certificates of foreign companies (the “ID Documents”) will be simplified.

3. Measures on Permanent Resident Foreigners Establishing Sci-tech Enterprises

Within the Validity Period and the Territory, foreigners holding a Permanent Resident ID Card will be permitted to use their Permanent Resident ID Card as their identity document to establish or invest in “sci-tech enterprises”. Sci-tech enterprises are enterprises engaging in development and transfer of technologies, technical consultancy, service and testing, or R&D, production and distribution of hi-tech products or services. The industrial sectors of the sci-tech enterprises shall not be subject to the “Negative List” administration and the legal forms of such enterprises are limited to limited liability companies, partnerships and sole proprietorship enterprises.

Entry

On 1 January 2020, the new Foreign Investment Law of China and its implementing regulations came into effect. The highlights of the new FIL are described in the IPM22 of 13 December 2019.

1 January
2020

Lexology, “China set to implement the new Foreign Investment Law”, 10 January 2020

Colombia

Promotion and facilitation / General business climate	<p>On 27 December 2019, the Colombian Government enacted a new Law for Economic Growth (Nº2010), which reforms several elements of the national tax regime and introduces a new scheme of fiscal incentives for investment. The new legislation came into effect on that same date.</p> <p>Main features of the new bill include, inter alia, a phased reduction of the corporate income tax rate from 32% to 30% up to 2022, a new simplified tax regime for professional, consulting and scientific services, and a new "Mega-investments regime" for qualifying projects.</p> <p>The "Mega-investments regime" grants a preferential corporate tax rate of 27% for a 5-year period. Eligibility requires an investment amounting to at least 30 million tax value units (UVT, roughly 295 million US dollars) and the creation of at least 400 new jobs directly related to the investment project. For high tech projects the required amount of jobs created is reduced to 250. All industries are eligible for this preferential regime, with the sole exception of exploration and extraction of non-renewable natural resources.</p>	27 December 2019	Deloitte, "Amended tax reform legislation enacted", 14 January 2020; KPMG, "Ley de Crecimiento – Aspectos Relevantes – Ley 2010" 13 January 2020
Egypt			
Treatment	<p>The Prime Minister recently issued Decree no. 2731 for 2019, amending the Executive Regulations of the Investment Law no. 72 for 2017. The Decree is effective as of 7 November 2019.</p> <p>According to the Decree, all companies incorporated or to be incorporated in Egypt -regardless the legal regime applied thereto- shall provide the General Authority for Investment and Free Zones with certain information and data in order to calculate the direct and indirect foreign investment capital.</p> <p>In case of breach of or non-compliance with the submission obligation, the legislator provides a fine of a maximum of L.E.50.000 to be imposed on the person in charge of the effective management of the legal entity if it is proven that it is aware of such breach or non-compliance.</p>	7 November 2019	Lexology, "On a New Foreign Investment Data Reporting Requirement in Egypt", 3 December 2019
France			
Entry	<p>On 31 December 2019, Decree No. 2019-1590 expanded and clarified the foreign investment screening regime in France along with implementing a Ministerial Order. The provisions of the Decree and the Ministerial Order will apply to authorization requests submitted as of 1 April 2020.</p> <p>The aim of the new Decree is to grasp new strategic sectors, refine certain concepts and provide a clearer review framework for investors.</p> <p>The new regulation lowered the thresholds triggering mandatory investment reviews for non EU/EEA investors from 33.33% of the share capital or voting rights of a French entity to 25%. Furthermore, it broadens the sectoral scope of the mechanism by adding the following activities: activities relating to the print and digital press; activities relating to agricultural products when they contribute to food security; and</p>	31 December 2019	White & Case, "New expansion and clarification of Foreign Direct Investments control regime in France", 1 January 2020

	<p>R&D activities relating to energy storage and quantum technologies.</p> <p>Additionally, the screening will focus on ascertaining whether a foreign investor has links to a foreign government or a foreign public body. Thus, investors are obligated to provide information in their applications on any potential significant capital ties or financial support received from a State or public body outside the European Union over the last five years. The decree also sets the per diem financial penalty at EUR 50,000, which the Minister may impose on investors in addition to other injunctions.</p>		
Greece			
Entry	<p>On 3 December 2019, Law 4643/2019 was published in the Official Journal of Greece. It aims, inter alia, at liberalizing the energy market and promoting renewable energy sources. Under the new regime, the Public Natural Gas Company (DEPA) will be spun-off into three undertakings, two of which - DEPA Infrastructure and DEPA International Projects - will be privatized.</p>	3 December 2019	International Law Office, "Liberalisation of energy market: DEPA privatisation", 20 January 2020
India			
Entry	<p>On 10 January 2020, the Mineral Laws (Amendment) Ordinance, 2020 was promulgated. The Ordinance amended the Mines and Minerals (Development and Regulation) Act, 1957 and the Coal Mines (Special Provisions) Act, 2015. This ordinance opened up coal mining in the country to non-coal companies, removing the previous restriction, which allowed only companies in coal mining to bid for coal mines. Any company meeting the minimum criteria is now allowed to bid for coal mines.</p>	10 January 2020	PRS Legislative Research, "The Mineral Laws (Amendment) Ordinance, 2020", 10 January 2020
Indonesia			
Promotion and facilitation	<p>On 13 December 2019, the Indonesia issued Government Regulation 78 of 2019, which sets out a variety of tax incentives for businesses investing in specific industries and provinces in the country. The regulation came into effect on the same day.</p> <p>The incentives include among others:</p> <ul style="list-style-type: none"> - A 30% deduction from net income based on the value of qualifying investments in tangible fixed assets including land used for the main business activities. The incentive is provided over six years (5% per year). - Accelerated depreciation of tangible fixed assets and accelerated amortization of intangible assets obtained in the context of qualifying investment. - A 10% withholding tax on dividends paid to non-resident taxpayers, other than permanent establishments in Indonesia, or lower rates according to an applicable tax treaty; and - An extended loss carry-forward period by up to 5 years (up to 10 years total) depending on the sector of investment, the size of investment, the number of jobs created, whether R&D costs for product development or production efficiency is at least 5% of the investment, and whether exports represent at least 	12 December 2019	ASEAN Briefing, "Indonesia's Income Tax Incentives: Opportunities in Specific Sectors and Regions", 18 December 2019

	30% of sales in a year for investments in certain sectors.		
Entry	On 23 December 2019, Indonesia's Financial Services Authority (Otoritas Jasa Keuangan or OJK) issued Regulation No. 41/POJK.03/2019 on the Merger, Consolidation, Acquisition, Integration and Conversion of Commercial Banks. The regulation came into effect on 26 December 2019. The key change is the introduction of branch conversion and integration – mechanisms allowing foreign bank branches to become Indonesian banks. The regulation also introduces procedural changes designed to ensure execution certainty of bank M&A transactions, including extending the OJK's role in supervising bank M&As.	26 December 2019	Coventus Law, "New Regulation on Indonesian Bank M&A And Foreign Bank Branch Corporatisation", 14 January 2020
Italy			
Entry	On 21 November 2019, Law No. 133/2019 entered into force, establishing the "National Cyber Security Perimeter". Its aim is to "ensure a high level of security of networks, information systems and IT services of public administrations, national bodies and operators, public and private". Within 4 months, the Italian Government should create a list of entities and companies subject to security-related obligations. Simultaneously, the new law amends once again the existing FDI screening regime in Italy. It broadens the scope of information that needs to be disclosed by foreign investors and extends the timeframe of screening procedures from 15 to 45 days. It also adds a new screening condition, against which foreign contracts and acquisitions are evaluated. Now, also the vulnerabilities that could compromise integrity and security of networks and data passing through these networks should be taken into account. While assessing a foreign acquisition, the new amendment requires to evaluate, whether 1) the buyer is directly or indirectly controlled by a public administration, including state bodies or armed forces, of a country not belonging to the European Union, including through the ownership structure or substantial financing; 2) the buyer has already been involved in activities that affect security or public order in a Member State of the European Union; and 3) there is a serious risk that the buyer undertakes illegal or criminal activities. Finally, the Law No. 133/2019 envisages sanctions for completing a foreign acquisition or contract without authorization. Anyone involved may be subject to an administrative fine of up to 150 per cent of the value of a transaction, but not less than 25 % of the value. This is in parallel to the obligation to restore, on its own expenses, the situation before the execution of a transaction.	21 November 2019	Baker & McKenzie, "The National cyber security perimeter – Italy's approach to protecting its key communications infrastructure and services", 20 December 2019
Japan			
Entry	On 22 November 2019, Japan's parliament passed a bill, which would revise the Foreign Exchange and Foreign Trade Act. This bill will tighten regulations on	22 November 2019	The Japan Times, "Japan passes bill to tighten rules on foreign

foreign investments in listed Japanese companies related to national security, including arms production and nuclear energy. The revised Foreign Exchange and Foreign Trade Act will require overseas investors to seek prior notification from the Government before obtaining a 1 percent or higher stake in a listed Japanese firm engaged in business related to weapons, nuclear energy, semiconductors, railroads and other areas, lowering the threshold from the current 10 percent. The amended law is expected to take effect in spring 2020.

investments related to national security”, 22 November 2019

Kenya

Promotion and facilitation	<p>The President of Kenya assented to an Act of Parliament, the Finance Act 2019 (“Act”) on 7 November 2019. The Act proposes key amendments to various tax legislation in Kenya including: The Income Tax Act, Value Added Tax, Excise Duty Act, Tax Procedures Act and Miscellaneous Fees and Levies Act.</p> <p>Inter alia, the Act exempts companies that implement projects under an affordable housing scheme upon recommendation by the cabinet secretary responsible for housing from thin capitalization provisions. This is meant to encourage nonresident persons to invest into the affordable housing scheme.</p> <p>Also, the Act exempts investee companies of a real estate investment trusts (“REITs”) from income tax except for payment of a withholding tax on interest income and dividends to the extent that the shareholders are not exempt from income tax. This is meant to promote investments into REITs and to align the previous exemption of REITs with that of the investee companies.</p> <p>Finally, the Act has widened the scope of the existing capital gains tax exemptions.</p>	7 November 2019	EY, “Kenya enacts Finance Act, 2019”, 15 November 2019
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Mexico

General business climate	<p>The National Congress has enacted a bill that reforms several provisions of the Income Tax Law, the Value-Added Tax Law, the Special Tax on Production and Services Law and the Federal Taxation Code. The bill was published in the Official Gazette on 9 December 2019 and entered into force on 1 January 2020.</p> <p>The reform bill amends tax declaration procedures and the way tax legislation is applied.</p> <p>The new bill seeks to align Mexico's legal framework on taxation with OECD's Base erosion and profit shifting package (BEPS).</p> <p>Inter alia, treatment of VAT collection has been reformed. Foreign entities selling certain services via digital platforms that are not established in Mexico but trading with recipients within the country, will have to register in Mexico. These entities will be subject to VAT payment and to the new tax withholding obligation.</p> <p>Further amendments on tax transparency rules, regarding foreign entities settled in a third country in which they are not subject to taxes, will become effective in 2021.</p>	1 January 2020	KPMG, “Mexico: Tax reform for 2020; focus on international taxation, digital taxation, other items”, 12 December 2019
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Morocco			
General business climate	<p>Morocco has enacted the Finance Law for 2020, which was published in the Official Gazette on 14 December 2019. The measures generally apply from 1 January 2020, although the Country-by Country (CbC) reporting requirements mentioned below apply for reporting fiscal years beginning on or after 1 January 2021.</p> <p>Key points include among others:</p> <ul style="list-style-type: none"> - The standard progressive corporate tax rates are increased from 17.5% to 20%. The 17.5% rate is increased to 20% on taxable income exceeding MAD 1,000,000 for companies operating in certain sectors, including export, tourism, real estate development, education, and specific mining activities. A 28% top rate is introduced on taxable income exceeding MAD 1,000,000 for industrial companies with net income below MAD 100 million. - The Casablanca Finance City (CFC) regime is amended, including, inter alia, the replacement of the 8.75% and 10% corporate tax rates with a standard 15% rate and the introduction of a tax exemption for professional service providers in the CFC for the first five years of operation. - The five-year tax exemption for companies in Export Free Zones is repealed, with the Free Zone regime replaced by an Industrial Acceleration Zone regime that provides for five-year exemption, after which a 15% tax rate applies. - CbC reporting requirements have been introduced for multinational enterprises. 	1 January 2020	Orbitax, "Morocco Finance Law for 2020 Enacted", 22 January 2020
Myanmar			
General business climate	<p>On 14 February 2020, Myanmar passed its new Insolvency Law, which replaces the Yangon Insolvency Act of 1909 and the Myanmar Insolvency Act of 1920. The law aims to provide a modern insolvency regime by adopting the United Nations Commission on International Trade Law (UNCITRAL) Model Law on cross-border insolvency. This law provides a model framework for solving financial distress for companies that have creditors or assets in more than one state. The law helps to facilitate the rescue of financially troubled companies, thereby protecting investments and employment regardless of jurisdiction. Businesses that are financially distressed can either choose a form of liquidation (closing the business and distributing its assets to any claimants) or pursue a rehabilitation process (satisfying creditors with any future earnings so that the business can continue). Under the new law, businesses pursuing the rehabilitation process must hire an insolvency practitioner, also known as the rehabilitation manager. The new law will become effective after a notification is issued by the President of Myanmar.</p>	14 February 2020	ASEAN Briefing, "A Guide on Myanmar's New Insolvency Law", 19 February 2020
Nigeria			

Treatment	<p>On 4 November 2019, Nigeria's President gave his assent to the Deep Offshore and Inland Basin Production Sharing Contracts (Amendment) Bill 2019, amending the 1993 law. The Amendment increases the Government's share of profits from oil activities conducted under production-sharing contracts. It contains a flat 10% royalty on all offshore projects over 200 meters deep and a 7.5% royalty on frontier and inland basins, as well as an additional sliding-scale royalty when prices reach above US\$35/barrel.</p>	5 November 2019	<p>EU, "Amendments to production-sharing contracts passed into law", 5 November 2019</p>
North Macedonia			
Promotion and facilitation	<p>The Law for Strategic Investment was published on 20 January 2020 in the Official Gazette of the Republic of North Macedonia. Its aim is to encourage, attract and create conditions for strategic investments in the country. It newly defines a strategic investment project as a project which fulfills one or more purposes as described in the law. Such investment is entitled to special treatment.</p> <p>The status is awarded to investment projects of at least EUR 100 million on the territory of at least two or more municipalities, at least EUR 50 million in cities, including the City of Skopje, or at least EUR 30 million in villages. Additionally, an investment has to be in one of the following sectors: energy and infrastructure; transport and telecommunications; tourism; manufacturing; agriculture, forestry and water economy; food industry; health care; industrial and technological parks; wastewater and waste management; IT zones; sport; science and education; and construction of large multifunctional construction complexes of construction buildings that cover more than one of the areas mentioned above. The status may also be granted in any other sector, if the investment exceeds EUR 150 million.</p> <p>The selection of investors is based on an open tender. Once proposals are received, negotiations between the Government and an investor commences in order to conclude a special investment project contract. It sets out special conditions and preferential treatment accorded to an investor.</p>	20 January 2020	<p>Karanovic & Partners, "Law on Strategic Investments adopted in North Macedonia", 31 January 2020</p>
Oman			
Promotion and facilitation	<p>On 24 November 2019, Oman's investment promotion and export development agency ("Ithraa") unveiled the "Invest in Oman" portal. It has been designed specifically to enable local companies and entrepreneurs to showcase their projects and connect them with investors worldwide.</p>	24 November 2019	<p>Times of Oman, "Ithraa launches new investment portal", 25 November 2019</p>
Panama			
Promotion and facilitation	<p>On 2 January 2020, the new Law no. 122 was promulgated. It amends the incentive regime for investment in the tourism sector. Its goal is to promote investment and financing of new tourism projects or their extensions, but it is limited to investments outside the district of Panama. It provides a 100</p>	2 January 2020	<p>Dentons, "Incentives for the promotion of tourism activity in Panama", 20 January 2020</p>

	percent tax credit for capital invested in bonds, shares and other financial instruments issued by tourism companies.		
Qatar			
General business climate	On 11 December 2019, Qatar published Executive Regulations to the Income Tax Law No 24 of 2018 in the official Gazette with immediate effect. The Regulations focus on reforming the local tax administration system to align with Qatar's international taxation commitments towards greater transparency and also aim to foster growth of foreign direct investment in line with Qatar Vision 2030.	11 December 2019	PWC, "Qatar: Qatar publishes the Executive Regulations to the New Tax Law", 11 December 2019
Romania			
Entry	On 27 February 2020, the Government Emergency Ordinance was adopted amending the Petroleum Law No. 238/2004. Under the new law, the National Agency for Mineral Resources is now competent to refuse any concession and execution of oil operations for the exploration, development and exploitation of an oil field to a non-EU entity on national security grounds. In the same vein, any transfer of a concession requires governmental approval; otherwise it is null and void.	27 February 2020	CMS Legal, "Romania passes new rules for petroleum concessions acquisitions and divestitures", 6 March 2020
Somalia			
General business climate	On 18 January 2020, the Somalian President ratified the country's first Petroleum Law. It sets the groundwork for creating a regulatory regime, introduces various environmental and transparency measures, encourages foreign investment and establishes the Somalia Petroleum Authority and Somali National Oil Company (Sonoc).	18 January 2020	The Ministry of Petroleum and Mineral Resources of the Federal Republic of Somalia, "Landmark Petroleum Law completes legislative process with Presidential Ratification", 8 February 2020
Ukraine			
Promotion and facilitation	On 2 November 2019, Decree No. 893 on "Certain Issues of Registration of Representative Offices of Foreign Business Entities in Ukraine", adopted by the Cabinet of Ministers of Ukraine, entered into force. It simplifies the registration procedure by lowering the costs for foreign investors from USD 2,500 to UAH 1,930 (the equivalent of the subsistence minimum). Timelines have been shortened from 60 to 20 business days. Nevertheless, special rules apply to residents of an aggressor state.	2 November 2019	ASTERS, "Government Simplifies the Registration of Representative Offices of Foreign Companies in Ukraine", 7 November 2019
United Arab Emirates			
Entry	The United Arab Emirates Securities and Commodities Authority (SCA) has issued Decision No. 37 (R.M) of 2019, effective 1 December 2019, amending the definition of "Qualified Investor" in all regulations issued by the SCA. The definition now additionally includes the following:	1 December 2019	JDSupra, "UAE Regulator Updates 'Qualified Investor' Definition", 21 January 2020

- Foreign governments and their entities, institutions, and authorities or companies wholly owned by any of them.
- UAE corporate entities meeting certain financial requirements.
- Individuals accredited by the SCA or a similar regulator (a supervisory authority), which is an ordinary member or an associated member of the International Organization of Securities Commissions (IOSCO), including the UK Financial Conduct Authority and the US Securities and Exchange Commission) to perform functions related to financial activities or services.

United States of America

Promotion and facilitation	<p>On 19 December 2019, the US Treasury Department together with the Internal Revenue Service adopted the final regulations relating to tax incentives in so-called "Opportunity Zones". They aim to provide clarity in the existing tax framework. The tax incentive program is meant to allow taxpayers to defer tax on certain capital gains and reduce it up to 15%. The Opportunity Zones have been created under the Tax Cuts and Jobs Act in designated economically distressed communities with the goal to attract investment.</p>	19 December 2019	U.S. Department of the Treasury, "Treasury and IRS Issue Final Regulations on Opportunity Zones", 19December 2019
Entry	<p>On 13 January 2020, the US Department of the Treasury released regulations implementing the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) that strengthened the Committee on Foreign Investment in the United States (CFIUS) and its jurisdiction. The regulations became effective on 13 February 2020. Among the key provisions of the regulations are:</p> <ul style="list-style-type: none"> - The CFIUS is competent to screen non-controlling investment in critical technology, critical infrastructure and sensitive personal data businesses. This is, however, limited to instances, when a foreign investor gains 1) an access to material non-public technical information in possession of the U.S. business related to critical technology or covered investment critical infrastructure; 2) a membership or observer rights on, or the right to nominate an individual to the board of directors; or 3) an involvement in decision-making of the U.S. business engaged in critical technologies, critical infrastructure and processing sensitive data of the U.S. citizens. Some of the provisions from the new regulations had already been enacted in a pilot programme, but now there are of general application. - In relation to controlling investments, the regulations provide a complex and broad definition of "control". It covers not only the majority of shares, voting rights or board representation, but also a dominant minority or formal or informal arrangements to act in concert. In addition, special considerations will be given to ascertain links with foreign governments. - The disclosure obligations are set forth in a detailed manner. For example, a foreign investor is required to provide information and organizational charts on both 	13 February 2020	U.S. Department of the Treasury, "Fact Sheet: Final CFIUS Regulations Implementing FIRRMA", 13 January 2020

pre- and post-transactions of an immediate parent company, the ultimate parent, and each intermediate parent with names, principal places of business, places of incorporation, nationality, and ownership percentages.

- Strict sanctions are provided for. A fine up to \$250,000 per violation may be imposed for a misstatement or omission or false certification in the fillings. A lack of mandatory fillings or a violation of a mitigation agreement is sanctioned with the same fine that may be increased up to the value of the transaction.

- The regulations clarify the conditions, under which foreign acquisitions of real property and related rights in the US are subject to screening. In general, this is real estate located in close proximity of airports, seaports or military installations.

Uzbekistan

Promotion and facilitation	<p>On 13 November 2019, the President of Uzbekistan established the Council of Foreign Investors. It is an advisory body to the President responsible for advising the Government on the most important areas of investment, industrial, technological and innovative development of the country. The membership in the Council will include leaders and representatives of foreign companies, banks, investment funds, international financial institutions and foreign financial organizations, including the European Bank for Reconstruction and Development.</p>	13 November 2019	Investment Promotion Agency of the Republic of Uzbekistan, "Foreign Investors Council established under the President of Uzbekistan", 13 November 2019
Treatment / Promotion and facilitation	<p>On 27 January 2020, the Law on Investments and Investments Activities entered into force. It establishes a comprehensive regime for protection and promotion of foreign and domestic investments, as it brings together all former legislative acts on this matter, including the Law on Foreign Investments, on Guarantees and Measures to protect the rights of foreign investors, and on Investment Activities. Although the new law preserves most guarantees and incentives provided for foreign investors, it introduces some changes in the investment regime in Uzbekistan. These include:</p> <ul style="list-style-type: none"> - a requirement that investment agreements shall have anti-corruption and anti-monopoly matters; - additional benefits for investment in priority sectors granted on a case-by-case basis; - investment subsidies relating to the financing of the construction of external engineering and communications networks; - creation of a one-stop-shop service provided by the Ministry of Investment and Foreign Trade; - a new multi-tiered mechanism for investor-state dispute resolution. 	27 January 2020	Dentons, "Reforms in the investment legislation of Uzbekistan", 9 January 2020
Promotion and facilitation	<p>On 31 January 2020, Presidential Decree No. UP-5930 was issued. It extends the list of public services available online to include e.g. taxpayer registration, generation of extracts from the register of companies and applying for import and export permits relating to wildlife. It also sets the programme for further</p>	31 January 2020	GRATA International, "In Uzbekistan additional 10 state services will be provided in online format", 25February2020

Promotion and facilitation	<p>digitization and introduction of information systems in public administration relating to foreign work permits, construction permits and related services, environmental permits, licences in medical and pharmaceutical sectors, tourism, ICT, and all matters relating to electricity, heating and water supply.</p> <p>On 18 February 2020, the Law on Special Economic Zones was published in the official gazette. It determines the basic concepts and provisions for the creation, extension of the period of operation and liquidation, borders change, management, participants' status, customs regulation, taxation and land use.</p> <p>The law defines 5 types of zones, including: free economic zones; special scientific and technological zones; touristic-recreational zones; free trade zones; and special industrial zones. Within a zone, its participants may enjoy special custom treatment, tax and custom privileges as well as preferential access to land.</p> <p>The new legislation introduces also some requirements for investors. For example, at least 90% of employees of a zone participant should consist of Uzbek nationals.</p> <p>The new law will enter into force after 3 months from its publication. It repeals the old law from 1996.</p>	18 February 2020	GRATA International, "In Uzbekistan the Law 'On Special Economic Zones' has been adopted", 24February 2020
Viet Nam			
General business climate	<p>On 20 November 2019, the Viet Nam National Assembly adopted a new Labour Code, which will come into effect on 1 January 2021. Among others, it is now explicitly allowed for Vietnamese employers and foreign employees to enter into multiple labour contracts with a definite term not exceeding the term of their work permits.</p> <p>There will be additional requirements for employees to be exempt from work permits. Specifically, foreigners who are owners or members of a limited liability company or the chairman or members of the board of management of a joint stock company will be exempt from work permit requirements, subject to the fulfillment of a new requirement on the minimum amount of contributed capital, to be prescribed by the Government.</p> <p>The term of a work permit under the Labour Code has a maximum of two years and can be extended only once for another maximum two-year term.</p>	20 November 2019	Viet Nam Briefing, "Vietnam Approves Labor Code for 2021", 10 December 2019
Entry	<p>On 18 November 2019, the Viet Nam Government issued a decree to change air transport business requirements with a view to creating more favorable conditions for new enterprises. Under Government Decree 89/2019/ND-CP, foreign-invested airlines will be subject to a foreign ownership cap of 34 percent, up from the previous 30 percent. The decree came into effect on 1 January 2020.</p>	1 January 2020	Vietnam Law, "Air transport business requirements relaxed for newcomers", 30 November 2019



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