

**Timor-Leste Land Law Program
Funded by USAID East Timor**

**Comparative Study
Facilitating Foreign Investment through
Property Lease Options**

Prepared by: HBW International Inc.

**485 McGill, Suite 700
Montreal, Quebec, Canada
H2Y 2H4
Tel : (514) 849-2403
Fax : (514) 849-4907**

September 10, 2003

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INTRODUCTION

The Constitution of Timor-Leste provides that only nationals can own land. Such a restriction is common in neighboring countries, due in part to fears that national control over resources will be lost and that benefits will go disproportionately to external interests¹. Although positive in many regards, such a restriction can have the effect of reducing the attractiveness of a country to foreign investment. This has led governments to adopt specific measures to facilitate foreign investment within the legal framework of a foreign ownership restriction.

In the context of the Land Law Program in Timor-Leste, ARD Inc. has asked HBW International Inc. to prepare a comparative study reviewing and analyzing foreign investment facilitation options attempted by certain selected countries, with a particular focus on property lease options.

The content of the study has been based on a set of written Terms of Reference (TOR) prepared by Jamie Thomson, the Senior Technical Advisor on the project from ARD's head office, and on telephone conversations with Mr. Thomson and with Edwin Urresta, ARD's Deputy Chief of Party for the Project in Timor-Leste. The phone conversations highlighted the importance of making certain changes to the written TOR, and these are reflected in this report.²

As agreed, this report is divided into two main sections. First, a series of case studies are presented which summarize relevant policy options and strategies that have been used to attract foreign investment within legal frameworks that restrict foreign ownership of land. The case studies include Cambodia, Hawaii, Moçambique, Papua New Guinea, Thailand and Indian Reservations in the USA. Although the focus of the study is property lease options, ARD emphasized that a review of 'non-land specific' options would also be relevant. A distinction has therefore been made between those policy options that are 'land-specific', such as property leases, and those that are 'non-land specific'.³

The second section of the study analyzes the advantages and disadvantages of the various land-specific and non-land-specific options and strategies based on available information, and highlights certain other factors which play an important role in successfully attracting foreign investment.

¹ Forum Economic Ministers Meeting (2001) at p. 26.

² The agreed changes to the written TOR include: 1) omit the suggested case study on Malaysia and include case studies on both Thailand and Moçambique; 2) omit deliverable 'c' from the list of deliverables (i.e., the recommendations); 3) the deadline for a draft of deliverable 'a' is 5 September 2003, and the deadline for a final version of the full product including a final versions of deliverables 'a' and 'b' is 11 September 2003; 4) the title of the study was changed from "Foreign Investment Facilitation Options" to the present one; and 5) Section B of the study was changed from "An assessment of the relative effectiveness of each of the options reported" to "An analysis of the various options reported".

³ It should also be mentioned that it was agreed during a phone conversation with Edwin Urresta, the Deputy Chief of Party, that this consultancy should focus on mechanisms that apply to the use of state lands, given that these represent the immediate priority of the Government of Timor-Leste. Nonetheless, it was agreed that mention would be made regarding the use of customary lands where appropriate, given that this information may be useful to the Government of Timor-Leste at a later date.

The research for this comparative study is based primarily on a review of legislation, literature and government information available on the Internet, although the Mozambican case study is partly based on information that was sent in hardcopy form by Professor John Unruh, the project’s Director of Research. The amount of information available regarding each country varied somewhat. We have included in Appendix A a chart comparing certain of the elements found in the various property lease options, in Appendix B sections of relevant legislation and in Appendix C references to appropriate sources.

Finally, as agreed with Edwin Urresta, the 5000 word limit set out in the TOR has not been strictly respected in order to be able to provide as much relevant information as possible concerning relevant policy options and legislative developments.

SECTION A. CASE STUDY POLICY OPTIONS AND STRATEGIES
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I. CAMBODIA

1. Introduction

Cambodia is considered to have an open and liberal foreign investment regime despite the legal prohibitions on foreign ownership of land which first appeared in the 1992 *Constitution of the Kingdom of Cambodia*, and were confirmed in the 1992 *Law on Land* (1992) and the *Law on Investment* (1994).⁴

All land belongs to the state (Article 1, *Law on Land*). Only Khmer legal entities and citizens of Khmer nationality have the right to own land (Article 44 of the *Constitution*). A legal entity is considered to be a Cambodian legal entity when 51% of the shares are owned by Cambodian citizens.

The Council for the Development of Cambodia (CDC) aims to improve the risk-reward ratio for foreign investors. At its request, the *Law on Investment* (1994) and its implementation legislation (1997) established a package of investment incentives which center around leasing options, low tax rates or tax holidays, and a fast-tracked application and approval process.

Cambodia has been successful in attracting foreign investment in the manufacturing sector in two areas: garment projects (attracting more than half of foreign direct investment in the sector) and wood and wood products (accounts for 20%).⁵

⁴ See in particular p.1 of the US Embassy’s paper, “Cambodia Investment Climate” (2002).

⁵ Freeman, N (2002) at p. 13. The top ten countries investing in Cambodia during the period of 1994-2002 were: Malaysia, Taiwan, USA, China, Hong Kong, Singapore, Korea, Thailand, France and the United Kingdom. For details on the investment capital per country, see chart at p. 5 of paper by Thoraxy, H (2002).

2. Policy Options

a) Land-Specific:

- *Lease.* Cambodian land laws allow for leases of up to 70 years, renewable upon request. It is not clear whether there is a limit to the number of renewals. Article 16 of the *Law on Investment* (1994) states that:

Use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request. Upon such use may include the right of ownership of real and personal property situated on the land as may be permitted by law⁶.

Article 17.1 of the *Law of Implementation* (1997) states that:

Aside from ownership, Cambodian investors can benefit from other existing forms of land use such as concession, lease, lending, transfer, grant, etc.⁷

Article 17.3 allows legal entities which have entered into a land lease agreement from the State to sublease to a third party after three years and with government approval.

- *Mortgages.* According to sections 141 to 169, real estate may be mortgaged in favor of creditors. No information was found concerning mortgaging of property leases or moveables or immoveables on the land.
- *Protection against nationalization of private property* Article 9 of the *Law on Investment* (1994) mitigates the risk for foreign investors:

The Royal Government shall not undertake nationalization policy which shall adversely affect private properties of investors in the Kingdom of Cambodia.

b) Non-Land Specific:

⁶ Please note the spelling/grammatical mistakes in the text of the legislation are original and we did not edit them.

⁷ These terms are not defined in the *Law on Implementation*. Although these definitions are probably not applicable to Cambodian law, we include below for the general understanding of the reader, definitions of these terms found in *Black's Law Dictionary*, 5th ed., St Paul, West Publishing, 1979. Concession: "A grant, ordinarily applied to the grant of specific privileges by a government". Lease: "Any agreement which gives rise to relationship of landlord and tenant" or "Contract for exclusive possession of lands for determinate period". Lend: "To part with a thing of value to another for a time fixed or indefinite, with or without compensation." Transfer: "An act of the parties of of the law, by which the title to property is conveyed from one person to another." Grant: "Transfer of title by deed or other instrument."

- *“One-stop service”* This service facilitates investment by streamlining and fast-tracking procedures for the application and approval of investment projects. For example, the processing of investment projects subject to approval by Executive Committee of CDC will take only up to 7 working days.⁸
- *Partnerships between private sector and infrastructure projects.* The Greater Mekong Sub-Region (GMS) program, which is promoted by the Asian Development Bank, attempts to attract private capital into major infrastructure projects, although with limited success⁹.
- *Tax incentives.*
 - i. The standard corporate tax rate in Cambodia is at 20 percent, significantly lower than any other Southeast Asian country.
 - ii. Sectors qualifying for incentives (not exhaustive) include: hi-tech, export, tourism, infrastructure, energy, rural development, environmental protection;
 - iii. Tax holiday of up to 8 years;
 - iv. Reduced corporate investment tax rates – 9 percent after end of holiday for favored projects;
 - v. Import duty exemptions for promoted investments.
 - vi. 5 year loss carry forward.
 - vii. Accelerated depreciation – immediate expensing of plant and equipment investment financed from reinvested profit.¹⁰
- *Bilateral trade agreements increase access to regional markets.* Cambodia is a member of ASEAN free trade area (AFTA) and ASEAN Investment Area (AIA) which grants foreign investors access to greater markets. It has signed bilateral investment agreements with Malaysia, Thailand, France, Switzerland, South Korea, Germany, Singapore, the People’s Republic of China, and the Netherlands, which provides reciprocal national treatment to investors.

II. HAWAII

As the 50th state to join the United States, Hawaii state laws reflect those of the continental U.S. There are no limitations on foreign ownership of land with the exception of lands designated as “Hawaii Home Lands.”

The Hawaii home lands were established through the Hawaii Homes Commission Act, 1920¹¹ and adopted into the Hawaii State Constitution at Article XII. The home lands are

⁸ Thoraxy, H (2002) at p. 7.

⁹ See p. 12 of paper by Freeman, N (2002).

¹⁰ Sources: PriceWaterhouseCoopers cited in Fletcher, K (2002), International Monetary Fund, at pp. 9-10.

protected lands for the use and benefit of the Native Hawaiians. While these lands are not Indian reservations in the same sense as those of the continental U.S., the home lands are held in trust by the State of Hawaii for the Native Hawaiian population. Application for a lease of land within the home lands is restricted to Native Hawaiians who have 50% blood quantum.¹² The leases are for residential, agricultural and ranching purposes only¹³ and are for terms of 99 years with a possibility of renewal for a total leasing term that does not exceed 199 years¹⁴.

After reviewing the information gathered, it would appear that due to land shortages and the long waiting list for Native Hawaiians to obtain a lease, as well as the possibility for foreign investors to purchase land elsewhere in Hawaii, Native Hawaiians are currently not taking steps to implement any strategies to attract foreign investors into their home lands.

III. MOÇAMBIQUE

1. Introduction

Moçambique has chosen to offer foreign investors numerous incentives in the form of tax incentives, open currency exchange and free trade zones but has also adopted a very protective strategy with respect to land ownership.

Although the general right to ownership of property is protected under the Constitution¹⁵, ownership of land either by Moçambicans or by foreigners is not allowed. This prohibition is contained in section 46 of the Constitution, as well as section 3 of the *Land Act* of October 1, 1997. Following a period of debate and investigation concerning land in the 1990s, Moçambique adopted a Land Policy in 1995 and the *Land Act* on October 1, 1997, with a fundamental principle that foreign investment would be encouraged in such a way as not to prejudice local residents¹⁶.

¹¹ Online at: http://www.capitol.hawaii.gov/hrscurrent/Vol01_Chooo1-0042F/06-Hhca/HHCA_0101.htm

¹² *Hawaii Homes Commission Act, 1920*, s. 208(1); Application form for a lease in the Hawaii Home Lands from the Department of Hawaii Home Lands at: <http://www.state.hi.us/dhhl>. The minimum “50% blood quantum” rule is also found in the rest of the U.S. and reflects the federal government policy for defining who qualifies as a Native American.

¹³ See Department of Hawaii Home Lands: <http://www.state.hi.us/dhhl>

¹⁴ *Hawaii Homes Commission Act, 1920*, s. 208(2).

¹⁵ See article 86. It also refers to a right to compensation in case of expropriation.

¹⁶ Garvey at p. 4.

2. Policy Options

a) Land-Specific options:

Some of the strategies chosen by the government of Moçambique to attract foreign investment while not prejudicing the rights of local residents over the land are reflected in the *Land Law* as described below¹⁷:

- *Right to Use and Enjoyment of Land.* Foreigners residing in Moçambique for 5 years and foreign companies registered in Moçambique may apply for Use and Enjoyment Rights if they have an approved investment project (article 11).
- *Length of lease.* Use and Enjoyment rights are for a maximum term of 50 years, renewable once (article 17).
- *Control over investment and improvements.* Foreigners wishing to obtain a right to use and enjoyment must present an exploitation plan (article 19). The applicant may then receive a provisional authorization for a period of 2 years (vs. 5 years for nationals) (article 25). If the foreigner does not carry out the exploitation plan within 2 years without valid explanation, the State may revoke the provisional authorization and seize without indemnification for non-removable investments (article 27). If the applicant does respect the plan, it receives a definitive authorization and title (article 26).
- *Land rights through occupation.* Moçambicans can acquire land rights through occupation (article 12). The titling process requires that the local administrative authorities consult local communities and submit an opinion confirming that the requested area has no occupants, (article 13(3)). If the land is occupied, the requesting entity will presumably need to withdraw its request or negotiate with the land's occupants¹⁸ who enjoy full land rights without written documentation of land use rights, as proof of title can be made by oral testimony (article 15 b).
- *Decentralization.* The responsibility for authorizing land requests in areas not covered by urbanization plans is split among three entities (Article 22).
- *Registration.* Constitution, modification, transmission and extinction of rights are subject to be registered. However, the failure to register does not hinder the possibility of affirming a right obtained by occupation (article 14).

¹⁷ Considering the time and space limits of this paper, we have not analyzed the interaction of the *Land Law* with the Moçambican Civil Code or with traditional laws with respect to land occupation. For such an analysis, albeit dated (1995), please see Garvey (1995) "Análise". Also, please note that we have not reviewed nor been able to obtain a copy of the Technical Annex of Land Act No. 19/97, nor the Ministerial Decision of 29-A/2000 which regulates it. The technical annex according to the faolex site consists of 4 chapters and module forms establishing the delimitation of involved areas for land use planning purposes, specifying different land uses, listing obligations and rights of foreign or national entities, fees to be paid in order to obtain a licence for land exploitation, etc. [faolex.fao.org]

¹⁸ Kloeck-Jensen (1997) at p. 3.

- *Licenses.* In addition to a Use and Enjoyment Title, a license to carry out the specific economic activity must be obtained (article 20). The duration of the license does not necessarily coincide with that of the property right (article 21).
- *Extinction of use rights and improvements.* A Use and Enjoyment right may be extinguished including if a) the exploitation plan or the investment plan are not followed within the appropriate timelines and without justification or if fiscal obligations are not respected (no mention of compensation); or b) for public interest reasons, with just compensation (article 18 (1)). In both cases, non-removable improvements (*benfeitorias*¹⁹) revert in favor of the State.
- *Mortgage.* The Use and Enjoyment rights holder may hypothecate immovable assets and improvements (*benfeitorias*) over which it has legal rights or which it constructed.
- *Moçambican forum.* Conflict resolution over land is resolved in Moçambican forum.
- *Sustainable use of natural resources.* Special protection is provided for zones where conservation or security activities are carried out (article 7 to 9).
- *Local consultation.* In addition to the consultation at article 13(3), local communities participate in the administration of natural resources, resolution of conflicts and delimitation of their occupied land (Article 24(1)). Use of customary norms and practices can be used (24(2)).
- *Higher taxation for foreigners.* Article 28(2) states that preferential tax rates will be established for nationals.

b) Non-Land-Specific:

- *Tax incentives.* A variety of tax incentives are available according to the region of the country and the nature of the investment concerned²⁰. There are also incentives for new ventures or for the rehabilitation of existing or shutdown

¹⁹ Without claiming to provide an opinion with respect to the definition of "benfeitorias" under Moçambican law, the following definition, presumably under Brazilian law, is given in Washington De Barros Monteiro, *Curso de Direito Civil*, Vol. I, Saraiva, 18^a ed., p. 151-2, "benfeitorias são obras ou despesas efetuadas na coisa para conservá-la, melhorá-la ou embelezá-la" available at : http://www.dji.com.br/civil/bens_reciprocamente_considerados.htm#Diferença%20entre%20benfeitoria%20e%20a%20a%20acessão.

²⁰ See sec. 16 of the *Law on Investment* as well as the *Code of Fiscal Benefits for Investments*. For more information on the fiscal incentives see: <http://www.cpi.co.mz/investin.htm#taxinc> and http://www.cpi.co.mz/facts_mz.htm. Customs exemptions are also possible for the importation of capital equipment and raw materials. Deductions can also be obtained for any expenditure on construction and rehabilitation of public roads, schools sewerage and for the training of Mozambican workers.

enterprises²¹. Special regimes are also in place for the hotel and tourism industry as well as the sugar industry²².

- *Industrial Free Zones / Free Trade Zones / Rapid Development Zones.* The government has also opted for the creation of “Industrial Free Zones” and “Rapid Development Zones.”²³
- *Conversion of currency and transfer policies.* Moçambique offers liberalised banking and foreign exchange as well as unrestricted exporting of foreign investors profit, payment of royalties and other charges abroad²⁴.
- *Protection of property rights.* Sec. 13 of the *Law on Investment* guarantees the security and legal protection of property rights, including those termed “industrial property rights.”²⁵
- *Performance requirements.* Specific performance requirements are built into mining concessions and management contracts, and sometimes into the sale contracts for privatized entities. Investments involving the government as a partner usually incorporate milestones that must be met for the investor to continue with the project²⁶.
- *Regulatory system.* The Investment Promotion Centre (CPI) must approve any foreign investment project. There are application procedures and document requirements in place²⁷. According to section 15 of the *Regulations of the Investment Law*, the investment "approval" process should take 10 days if no objections are voiced by the relevant authorities.
- *Treaties and Bilateral Agreements.* Moçambique signed bilateral investment agreements with South Africa, Portugal, Zimbabwe, Algeria, Egypt, Indonesia, Italy and Mauritius. Moçambique is party to the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* and to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. Also, Moçambique joined the Multilateral Investment Guarantee Agency (MIGA) in 1994²⁸.

²¹ For more information on the fiscal incentives see: <http://www.cpi.co.mz/investin.htm#taxinc>

²² For more information on the special regimes see the CPI – Investment Promotion Centre at: http://www.cpi.co.mz/inv_special.htm

²³ See Sections IV and V of the Code of Fiscal Benefits for Investments. For a specific example see the Zambezi River Valley information at the CPI – Investment Promotion Centre: <http://www.cpi.co.mz/investin.htm#taxinc>

²⁴ For more detail see sec.'s 14 and 15 as well as Chapter III of the Law on Investment and <http://www.cpi.co.mz/investin.htm#taxinc> and <http://strategis.ic.gc.ca/SSG/da91294e.html>

²⁵ See <http://strategis.ic.gc.ca/SSG/da91294e.html>

²⁶ <http://strategis.ic.gc.ca/SSG/da91294e.html>

²⁷ For more detail, see their website at: <http://www.cpi.co.mz/index.htm>

²⁸ <http://strategis.ic.gc.ca/SSG/da91294e.html>

IV. PAPUA NEW GUINEA

1. Introduction

Papua New Guinea (PNG) is by far the largest country in the Pacific Islands region with approximately 462,000 km². Land in PNG is either held customarily (comprising of 97% of total area) or by the State (the remaining 3%)²⁹.

Papua New Guinea (PNG) welcomes foreign investment despite the prohibition concerning foreign investors or non-citizens from owning freehold land³⁰. As we shall see below, leasehold land for specified purposes is available for long-term tenure. The Constitution supplemented by the Investment Promotion Act also provides that property shall not be acquired compulsorily except for a public purpose defined by law, in accordance with law and with just compensation paid³¹.

Leasing of customary lands is generally done under the “Lease-Lease-back” scheme set out at sections 11 and 102 of the *Land Act* whereby the State leases the land from customary landowners and then leases it back to, typically, one of them for a fixed period at a fixed rent. This Scheme is intended to facilitate local small-scale enterprises³². It would appear however that foreigners can also lease customary land with the approval of the community and that such arrangements have been reached for several major projects³³.

In contrast to customary land leasing, we have found little literature concerning leasing of government land. The *Land Act* does however contain a detailed framework for the lease of government lands, which we briefly detail below.

2. Policy Options

a) Land-Specific options:

By drafting a detailed framework in the *Land Act* with respect to leasing of government lands, the government of PNG has apparently chosen leasing of government lands as a strategy to attract foreign investment. Although the drafting of the legislation may be too detailed for the purpose of the East-Timorese Decree-Law, attention can be drawn to certain useful elements in the legislation.

²⁹ Lakau (1991).

³⁰ Reference is made to this prohibition in the Business Guide to Papua New Guinea published by the Investment Promotion Authority as well as in other sources. We were unable however to find the precise reference in legislation. References refer to the 1996 *Land Act*, but this act does not contain a clear limitation on foreign ownership. Also, please note that we were unable to obtain a copy of the PNG constitution which may contain the restriction. A request was placed with the Embassy in Washington, but none has been received yet.

³¹ Industry Canada (1997), at p. 5.

³² Forum Economic Ministers Meeting (2001) at p. 57.

³³ Industry Canada (1997), at p. 2.

- *Transparency.* Section 68 imposes a requirement that all the lands available for leasing under the act be advertised in the national Gazette and that specific information about the lease be included. The names of successful applicants are then published (section 74).
- *Leases for specific purposes.* Types of leases which are offered include agricultural leases (section 87), and business and residence leases (sections 92 to 95). Specification of classes of business may be included in the lease. In all cases, the term may not exceed 99 years. No provision is made for renewal. There are also urban development leases, which are offered through tender and are for a maximum period of 5 years (sections 103 to 110).
- *Improvements.* In the case of agricultural leases, conditions prescribing minimum improvements to be carried out by the licensee must be included (section 88).
- *Subdivision of leases.* State leases may be subdivided if certain conditions are met (section 130).
- *End of lease.* In certain circumstances, the lessee is entitled to payment for improvements on expiration of lease (section 119).
- *Licenses.* The legislation also sets out another option, which is that of the grant of a license (sections 125 and 126), which can be used if the government wishes to allow for a very specific use of land for a limited time period.
- *Enforcement.* The act grants certain powers to government officials, including to inspect the land leased to ensure that the conditions of the lease are observed (sections 136 to 141), and sets out offences (sections 144 to 152). The Minister can also forfeit State leases if conditions are not complied with (section 122).
- *Mortgages.* Secured interests in chattels are recognized and registered. Customary land cannot be mortgaged³⁴.

b) Non-Land-Specific:

- “*One-stop information center*” The Investment Promotion Authority (IPA) established by the *Investment Promotion Act, 1992* provides information to foreign investors for a fee on: land in Papua New Guinea, wages, taxation and customs, foreign investment guidelines, foreign exchange controls, telecommunications and environment & conservation³⁵.

³⁴ Industry Canada (1997), at p. 2.

³⁵ See the IPA’s website: <http://www.ipa.gov.pg/ipa.htm>

- *Tax incentives*: PNG offers tax breaks for export industries (3 years) and “pioneer-industries” (products or services not yet established in PNG) (5 years); incentives in the form of accelerated depreciation in the first year for capital investments in the agriculture or fishing industries and in new industries; 10-year tax exemptions for new business activities in designated rural development areas; tax deductions for staff-training³⁶;
- *Investment Agreements*: PNG is a member of the Multilateral Investment Guarantee Agency (MIGA) which promotes foreign direct investment into emerging economies, and a party to the *Convention On The Settlement of Investment Disputes Between States and Nationals Of Other States* (ICSID) and the 1958 *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

V. THAILAND

1. Introduction

Although there is no restriction in the Thai constitution, section 86 of the *Act promulgating the Land Code B.E. 2497 (2001)*³⁷ prohibits foreigners from owning land in Thailand. The prohibition applies to foreign individuals and companies. Additionally, it applies to Thai registered companies, which are owned or controlled by foreigners. The definition of a foreigner includes Thai registered companies or partnerships in which more than 49% of the capital is owned by foreigners or of which more than half the shareholders or partners are foreigners (section 97)³⁸.

However, the Royal Thai Government (RTG) does welcome foreign investment, and investors who are willing to meet certain requirements can apply for special investment privileges through the Board of Investment (BOI)³⁹. Furthermore, rights in property are guaranteed by the Constitution against nationalization without fair compensation⁴⁰.

a) Land-Specific options:

1) Specific exemptions to the prohibition on foreign ownership.

Thai legislation allows for a number of exemptions to the prohibition on foreign ownership of land, often subject to the discretionary authority of government officials.

³⁶ See Business guide, as well as the Forum Economic Ministers Meeting (2001) section on PNG.

³⁷ Please note that much of the above legislation has not been verified. English translations of much of the Thai legislation noted above are not readily available on the Internet. Hard copies were requested from the Embassy in Vancouver but it is doubtful whether these exist and whether they will be provided. We have therefore based ourselves on sites explaining the legislation.

³⁸ Thailand Expat Forum at: <http://www.thaivisa.com/380.0.html>

³⁹ For more information, see the Board of Investment website: <http://www.boi.go.th/>

⁴⁰ See articles 48 and 49 of the Constitution.

- For example, section 27 of the *Investment Promotion Act* authorizes the BOI to grant a foreign owned company permission to own land for the purpose of conducting the promoted activity. The area of the land must be approved by the BOI, which will review the land and proposed construction plans to determine that the land's size is suitable for the promoted activity. The use of the land must be limited to the promoted activity, and if the promoted business is later dissolved the land must be sold within one year of the termination of that business. The BOI exception to the prohibition against foreigners owning land is primarily limited to the ownership of land and factory for a promoted manufacturing activity⁴¹.
- Also, under the *Industrial Estate Authority of Thailand Act*, a foreign manufacturer may own land in an industrial estate in accordance with the provisions of the Act, and as the Board of Industrial Estate Authority of Thailand deems appropriate⁴².
- Also, section 19 of the *Condominium Act (No. 3) B.E. 2542 (1999)* prohibits ownership of condominium units by a foreigner unless the foreigner qualifies for foreign ownership under specific circumstances. For example, qualified foreigners may own individual condominium units provided that the total area of foreign-owned units within the condominium project does not exceed 49 percent of the total area of all units within the project⁴³.

2) Long term leases

Another option for foreigners is to lease land.

- *Terms of lease.* The *Act Governing the Lease of Immovable Property for Commercial & Industrial Purposes B.E. 2542 (1999)* has increased the maximum length of leases from 30 to 50 years. Leases can be renewed after 50 years for another 50 years. This only applies to immovable property for commercial and industrial reasons and only the owner can lease it. The lease must be in writing and registered⁴⁴.
- *Transfer of lease.* If the lessee dies the inheritor can take over. The lessee can sub lease or transfer lease rights, either wholly or in part, to a third party⁴⁵.
- *Lease rights as security.* The *Act Governing the Lease of Immovable Property for Commercial & Industrial Purposes B.E. 2542 (1999)* allows lease rights to be mortgaged as security⁴⁶.

⁴¹ Thailand Expat Forum at: <http://www.thaivisa.com/380.0.html>

⁴² RussThai Consulting Co. Ltd. At: <http://home.swipnet.se/~w-10652/thailand4.html>

⁴³ See sec. 19 of the *Condominium Act (No. 3) B.E. 2542 (1999)* annexed below.

⁴⁴ Chiangmai Law Services at: <http://www.chiangmailaw.com/leasing.htm>

⁴⁵ Thailand Department of Lands at: http://www.dol.go.th/guide/alien_commerce_eng.htm

⁴⁶ Chiangmai Law Services at: <http://www.chiangmailaw.com/leasing.htm>

- *Conditions.* The foreign company leasing land has to have one of the following:
 - a) Commercial business with at least 20M baht in investment.
 - b) Industrial businesses that qualify for promotion under the *Investment Promotion Act*.
 - c) Be a commerce or industry which benefits the economic and social interests of the country⁴⁷.

- *Additional Conditions.* The property leased must be located in an industrial area as set out in the *City Planning Act* or by the Industrial Estate Authority of Thailand. The Land Department must approve leases of over 100 rai. Foreign leases must comply as well with the *Foreign Business Act*⁴⁸.

b) Non-Land-Specific:

- *Thai-foreign joint ventures.* Foreigners may form joint venture companies with majority Thai ownership with adequate safeguards for the foreign minority interest⁴⁹.

- *Case-specific incentives.* The BOI has a wide range of discretionary powers to encourage foreign investment. Their incentives include tax privileges, relaxation of restrictions on foreign participation, business protection and many others⁵⁰. The BOI's objective is to be less a regulator than a facilitator of foreign investment. They will work with individual investors to develop customized packages of support for each project, depending on its contribution to economic development. One of their goals is to speed up processing times by streamlining procedures and cutting through unnecessary "red-tape."

- *Cooperative agreements.* The BOI is actively and aggressively marketing Thailand with overseas offices and is seeking cooperative agreements with public and private sector organizations, including other investment agencies, banks, and provincial governments⁵¹.

- *Marketing pacts.* The BOI has already inked joint marketing pacts with five international banks and several investment promotion agencies⁵².

⁴⁷ Thailand Department of Lands at: http://www.dol.go.th/guide/alien_commerce_eng.htm

⁴⁸ Thailand Department of Lands at: http://www.dol.go.th/guide/alien_commerce_eng.htm

⁴⁹ Thailand Expat Forum at: <http://www.thaivisa.com/380.0.html>

⁵⁰ For more information, see the Board of Investment website: <http://www.boi.go.th/>

⁵¹ Board of Investment website, BOI Strategies: http://www.boi.go.th/english/7_Strategies.pdf

⁵² Board of Investment website, BOI Strategies: http://www.boi.go.th/english/7_Strategies.pdf

VI. USA INDIAN RESERVATIONS

1. Introduction

The 562 tribal nations that are located in the United States are recognized by the federal government as domestic dependent nations. This means that subject to a restricted application of federal and state law, they are self-determining nations within the territorial boundaries of their reservations. Native American tribes have the power to establish tribal governments, create and enforce their own laws and judicial system, determine tribal membership, regulate and tax tribal property, regulate domestic relations and commerce and control over any foreigners entering their territory.

Tribal governments and members of the tribes do not own the reservation lands in fee simple, however. The lands are held in trust by the United States government for the Native American tribes and Alaskan Natives. Native American tribes benefit from “sovereign immunity” which means that their lands and other immovables on the reservations cannot be seized by non-member creditors. Land and other immovables can therefore not be used as collateral to obtain a bank loan. Non-members of a tribe cannot own land on a reservation.

2. Policy options

a) Land-specific

The nature of land holding on American Indian reservations tends to limit the number of options available to Native American tribes that want to encourage investment by non-members of the tribes. The most common option for foreign investors wishing to use native land is leasing.

- *Government Approval.* Since the lands are held in trust by the United States government and not owned in fee simple by the tribes, the United States is involved in decisions concerning the terms and conditions of the lease. The United States government temporarily terminates its trust or fiduciary responsibility during the term of the lease, so that the tribe will be responsible for breaches of the lease agreement⁵³. The lease, as well as any sub-leases, must be approved by the tribal government as well as the Department of the Interior⁵⁴.
- *Types of leases.* These leases with non-tribal members most often involve land development in the form of mining of resources, farming, ranching or gaming establishments (casinos)⁵⁵, although they have also given rise to development of

⁵³ U.S. Code, Title 25, Chapter 12, Section 415(e).

⁵⁴ U.S. Code, Title 25, Chapter 3, Section 81.

⁵⁵ The Harvard Project on American Indian Economic Development at <http://www.ksg.harvard.edu/hpaied>. See in particular: Cornell, Stephen and Kalt, Joseph P. eds. “What Can Tribes Do? Strategies and Institutions in American Indian Development.”

office complexes, manufacturing plants and site management in the form of golf courses⁵⁶.

- *Term of lease.* The term of the lease may vary depending on the reservation at issue, although the maximum term is 99 years⁵⁷.
- *Mortgage.* The Secretary of the Interior, representative of the federal government in its trust responsibility with American Indian tribes, has the decision-making authority with respect to tribes wanting to borrow against the value of the reservation land for a mortgage, since the land itself cannot be used as collateral. If the mortgage is obtained from private sources (i.e. a bank outside the reservation), the federal government must guarantee re-payment of the loan (not in excess of 90% of unpaid principal and interest due on a loan),⁵⁸ or insure the loan so the lender will be reimbursed for losses on the loan, not in excess of 90% of the loss on any one loan or not in excess of 15% on the aggregate of such loans⁵⁹. The tribe also has the option of obtaining a loan from the federal government for economic development purposes, although not more than 50% of the loan can be invested in non-Indian organizations.⁶⁰

b) Non-land specific

- *Tax benefits.* A foreign investor that wants to do business on an American Indian reservation can benefit from certain federal tax benefits. Non-Indian businesses operating on a reservation will receive such benefits as accelerated depreciation of structures bought or built on reservations and a tax credit up to 20% of the benefits paid to Indian employees.⁶¹

SECTION B. ANALYSIS

I. LAND-RELATED OPTIONS

As seen above in the case studies, the main option used by governments to attract foreign investment within their legal frameworks prohibiting foreign ownership of land has been the property lease. Below we analyze the advantages and disadvantages of certain of the

⁵⁶ Healey, Andrea and Teichgraeber, Tara. “Valley tribes encourage business growth” *The Business Journal*. Online at: <http://www.bizjournals.com/phoenix/stories/2000/07/03/>.

⁵⁷ U.S. Code, Title 25, Chapter 12, Section 415(a).

⁵⁸ U.S. Code, Title 25, Chapter 17, Section 1481(a). See also: Healey, Andrea and Teichgraeber, Tara. “Valley tribes encourage business growth” *The Business Journal*. Online at: <http://www.bizjournals.com/phoenix/stories/2000/07/03/>

⁵⁹ U.S. Code, Title 25, Chapter 17, Section 1481(a).

⁶⁰ U.S. Code, Title 25, Chapter 17, Section 1462(b).

⁶¹ U.S. Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart D, Section 45 A.

elements found in the case studies with respect to property leases, as well as two other minor land-related options used to attract foreign investment. We then briefly analyze the advantages and disadvantages of certain of the non-land-related facilitating options adopted by the countries examined and finish by reviewing certain other factors which play an important role in successfully attracting foreign investment.

1. Leases

a) Length of leases

The case studies in Part A have indicated that although durations vary, all countries have legislated in favor of a maximum length for leases of land⁶².

Country	Maximum length of lease (in years)
Cambodia	70, renewable
Hawaii	99, renewable, maximum 199
Moçambique	50, renewable for 50
Papua New Guinea	99
Thailand	50, renewable for 50
US Indian Reservations	99

The length of the lease must be sufficient to allow time for investors to realize an adequate return on their investment. Such considerations may have led to Thailand's recent switch from 30 to 50 year leases, and there is ongoing debate in Thailand regarding whether 99 year property leases should be allowed⁶³.

A recent study prepared for the Pacific Islands meeting of economic ministers in 2002 has concluded that terms of less than 30 years are particularly detrimental to attracting foreign investment. It states that longer term leases need to be granted in particular in the tourism and agricultural sectors, as short term leases do not provide tenants with the security of tenure to invest in improvements or to shift to permanent cropping systems⁶⁴.

Some countries, such as Fiji, have different maximum terms for different types of leases. For example, agricultural leases have a maximum term of 30 years, residential leases 99 years, commercial leases and industrial leases 99 years⁶⁵. An interesting option could allow longer terms if the investor is investing larger amounts or is accepting conditions more favorable to the government.

⁶² In some Pacific nations not included in the case studies, these maximum lengths can be quite shorter, such as 15 years in the case of Tuvalu, 20 in the case of Samoa and 21 in the case of Kiribati. See Forum Economic Ministers Meeting (2002) at p. 2.

⁶³ Brits at p. 8.

⁶⁴ Forum Economic Ministers Meeting (2002) at p. 2.

⁶⁵ Forum Economic Ministers Meeting (2001) at p. 50.

b) Lease Conditions⁶⁶

As in the case of a loan with a bank or a subsidy agreement with a government entity, the lease contract provides an excellent opportunity for governments leasing land to include a series of conditions which must be respected by the foreign lessee.

Pre-requisites. A number of countries require that certain conditions be fulfilled before the lease is issued. In Vanuatu, proof of financial resources and a description of the proposed development must be provided⁶⁷. In Moçambique, foreigners must present an exploitation plan to obtain a provisional lease and this plan must be carried out within two years, otherwise the State may revoke the provisional lease and seize without indemnification any non-removable investments.

Performance requirements. Once the lease has been issued, many jurisdictions provide for termination of leases if its conditions are not respected. For example, in Papua New Guinea, conditions prescribing minimum improvements to be carried out by the licensee are included in agricultural leases. Government officials can inspect the land to ascertain whether conditions are being respected and if not, the lease can be forfeited. In Moçambique, once a definitive lease has been issued, it may be extinguished if the exploitation plan or the investment plan are not followed within the appropriate timelines, or if fiscal obligations are not respected.

Although imposing certain conditions can be very useful in encouraging economic development, caution should also be taken to avoid overly cumbersome mechanisms that may discourage foreigners from investing in the country. For example, although it is too early to tell whether the Moçambique temporary permit and revocation mechanism has had a deterrent effect on foreign investors, there was a sentiment within the investment community in 1996 that these mechanisms might open the possibility to the government using them to regain control at will of foreign-controlled lucrative industries⁶⁸.

Also, requiring too much detail in the required investment plan could discourage investors who may feel that this limits their decision-making and presents an opening for governments to revoke a lease based on non-execution of a minor aspect of the plan.

Royalties. Rather than using a fixed rent, the government can negotiate for royalties based on a percentage of the profits made from the use of the land, in addition to a fixed rent⁶⁹.

⁶⁶ **NOTE:** We did not focus on finding models of leases of government land, as this was not the purpose of this study. If this could be of assistance to the Land Law Program however, we would be glad to draft a model lease agreement in the future for the purpose of leasing government land.

⁶⁷ Forum Economic Ministers Meeting (2002) at p. 6.

⁶⁸ Telephone interview on September 4, 2003 with Professor John Unruh, In-country Project Manager for the Land Tenure Centre Project in Mozambique.

⁶⁹ See for example revenue-sharing agreements with Indian tribes in the USA:
http://www.users.qwest.net/~kryopak/ft_peck.html

Environmental considerations. Environmental standards should also be included in the lease, as well as provisions for renegotiation if environment conditions change over the years.

Accountability. Business incentive accountability laws can also be passed to ensure accountability for companies entering into leases, such as project disclosure, tracking and evaluation⁷⁰. Failure to do so can have disastrous consequences, such as in the case of a mining agreement concluded with the Navajo and the Hopi in the US⁷¹.

c) End of the lease

Improvements. An essential element of allowing successful leasing of land is a clear end of lease process, with provisions for lease renewal within the confines of the law, and recognition of the need for compensation for capital improvements to land in the event of non-renewal. In Fiji for example, where no compensation is payable, agricultural land and improvements have become neglected as leases draw to a close⁷².

In Moçambique, non-removable improvements revert in favor of the State if a lease has been revoked for public interest reasons or because conditions have not been respected. No provision is made however regarding improvements at the end of a lease coming to term normally. Papua New Guinea compensates lessees for improvements if renewal of the lease has been refused.

Although attractive for investors, compensation for improvements may place the government in a difficult situation if it does not have the capacity to pay and is forced to renew the lease. The land would *de facto* become permanently alienated. A compromise could perhaps be that a) the investor has an obligation to invest a certain amount per year, therefore these improvements would not be compensated as they were required under the lease; and b) there would only be an obligation to compensate the *useful* improvements made over and above those required under the lease⁷³.

Renewal. Provision should be made for renewal of leases well before their expiry, as otherwise security of leases declines and this is reflected in reduced interest in land-based investment⁷⁴.

⁷⁰ See Hawaii Institute for Public Affairs, “A new economy in Hawaii”, March 2003. Available at: <http://www.hawaiibusiness.cc/includes/policyreview/policyreview.pdf>

⁷¹ A provision in the agreement allowed the mining company to use approximately a billion gallons of water a year, from the only water source for the Hopi and Navajo reservation lands in the area in order to run a coal slurry line. Over the years, groundwater levels dropped and wells and springs dried. See Nies, Judith. “The Black Mesa syndrome”, Orion, September 1998. Available online at: http://www.arts.envirolink.org/arts_and_activism/JudithNies.html

⁷² Forum Economic Ministers Meeting (2002) at p. 3.

⁷³ **NOTE:** An in-depth analysis of rules with respect to improvements in civilian jurisdictions in a private law context could be useful to decide on specific rules with respect to improvements.

⁷⁴ Forum Economic Ministers Meeting (2002) at p. 2.

d) Mortgages

Financial institutions frequently prefer land as collateral for credit operations because it is less open to destruction, its depreciation is small and its value is not eroded by inflation⁷⁵. If foreigners are not allowed to own land, access to credit may be more difficult as the assets they may mortgage are more limited.

Mortgaging of property other than land is provided for in the legislation of the countries studied. For example, in Moçambique, the rights holder may hypothecate immovable assets and improvements (*benfeitorias*) over which it has legal rights or which it has constructed. In PNG, secured interests in chattels are recognized and are registered. In Thailand, lease rights can be mortgaged and seized.

Legislation of civilian jurisdictions such as in the Province of Quebec in Canada also allow for lease rights and moveable property (chattels) to be mortgaged⁷⁶. A movable hypothec can also be taken on fruits and products of the soil, but it only takes effect when they become movables with a separate existence from the immovable to which they were attached⁷⁷. In the case of Indian reserves in Canada, lease rights can be mortgaged and seized even though land on reserves cannot be mortgaged⁷⁸.

2. Other Options

a) Exemptions from the restriction on foreign ownership

As we have seen in section A, Thailand allows for a number of exemptions to its prohibition on foreign ownership of land, often subject to the discretionary authority of government officials. We have not come across studies documenting that this specific use of discretion has given rise to corruption. However, lack of transparency regarding precise rules of land administration and granting discretionary powers to members of the land management system is generally not recommended due to the risk of arbitrariness and possibility for corruption⁷⁹.

b) Licenses

The Papua New Guinea *Land Act* provides for licenses of a maximum of one year which may be granted including to strip, dig, take way any valuable material or substance, to graze stock, for fishermen's residences or for any other temporary purpose approved by the Minister. Although we have not found any literature analyzing the pros and cons of the use of a license versus the use of a lease, such an option may be relevant if the land is to be used concurrently for other purposes by the government or other occupants.

⁷⁵ Binswanger, H. K. Deininger and G. Feder (1995), "Agricultural Land Relations in the Developing World" 75 *American Journal of Agricultural Economics* in Forum Economic Ministers Meeting (2001) at p. 11.

⁷⁶ Article 2066 of the Quebec Civil Code.

⁷⁷ Article 2698 of the Quebec Civil Code.

⁷⁸ *Western International Construction Ltd. Vs. Sarcee Development* [1979] DLR 3rd 424 (Alb. C.A.).

⁷⁹ Forum Economic Ministers Meeting (2001) at p. 39.

II. NON-LAND RELATED STRATEGIES

1. Joint ventures

In the countries examined, companies are generally considered “national” when nationals own 51% of the shares. One way for foreign investors to have access to land without contravening the restriction on foreign ownership is therefore to form a joint venture with nationals and own a minority interest in the company owning the land.

This can be attractive as it encourages joint ventures with nationals and can lead to the transfer of knowledge. However, in some countries, finding local partners who have sufficient capital to invest can be difficult⁸⁰ and in some cases local partners are merely used to circumvent the restriction and do not actually play a role in the company. For this reason, some states provide that the restriction applies to the person who actually receives the benefit of the land (the “ultimate benefit” test)⁸¹.

2. One-stop service

Cambodia, Moçambique, Papua New Guinea, and Thailand all have some form of one-stop service to facilitate investment by streamlining and fast-tracking procedures for the application and approval of investment projects. In PNG the service does not apparently succeed in centralizing all services needed by investors, but it does provide them with information and assistance in obtaining relevant government approvals⁸². Investors in Cambodia did report that comparatively less red tape was required than other countries in the region⁸³.

3. Tax incentives

All the jurisdictions reviewed offer a series of tax incentives to foreign investors. Although use of tax incentives is very prevalent around the world, it is not clear that regimes of complicated, discriminatory tax incentives are more effective at enticing investment than simple regimes with moderate, uniform tax rates.⁸⁴ Tax incentives may distort investment, reduce revenue, and increase corruption (when they are awarded through discretion) and administrative costs. In addition, tax rates on the narrower base have to be higher than otherwise, which can lead to tax evasion, through smuggling for instance, or by motivating taxpayers to migrate to the informal sector.⁸⁵ It has been

⁸⁰ This was apparently a concern in Mozambique. Telephone interview on September 4, 2003 with Professor John Unruh, In-country Project Manager for the Land Tenure Centre Project in Mozambique.

⁸¹ See Hodgson, S., Cullinan, C., Campbell, K., (1999) at pp. 15-17, 30.

⁸² Industry Canada (1997), “Investment Climate in Papua New Guinea”, at p. 1.

⁸³ Industry Canada (1995), “Investment Climate in Cambodia”, at p. 4 of 6.

⁸⁴ Fletcher, R (2002) at p. 5.

⁸⁵ Hagemann, RP (2002) at p. 2.

reported that the South-East Asia region is moving away from tax incentives as a way to encourage foreign direct investment.⁸⁶

Tax incentives may be useful in some cases, however, such as to promote tax-sensitive investments or to address market failures and equity concerns. In the latter cases, an important question to ask is whether tax incentives are the most cost-effective means of achieving the desired objective.⁸⁷

4. Bilateral investment treaties

PNG, Moçambique, Cambodia and Thailand are all party to various bilateral investment treaties (BITs) and are members of the Multilateral Investment Guarantee Agency (MIGA), which offers political risk insurance (guarantees) to investors and lenders and hence encourages foreign investment in developing countries⁸⁸.

Bilateral investment agreements have been heralded as an important means of attracting foreign investment. However, one study has found that there is in fact little evidence that over the past twenty years BITs have stimulated additional investment to developing countries.⁸⁹ Furthermore, as recent claims brought under treaties are now bringing to light the potential magnitude of the obligations assumed by the host countries, policy makers should scrutinize the terms of these agreements and the strength of the rights given to investors to evaluate the potential costs as well as the benefits of entering into BITs.⁹⁰

III. IMPORTANT FACTORS IN SUCCESS OF OPTIONS

1. Certainty of the Law

a) Transparency

Transparency. One element which is important for attracting foreign investors and creating a functioning land market is transparency. The government should provide information on the laws, regulations and process pertaining to the leasing of land. Publication of court decisions concerning land, making information on the transfer of land public and ensuring land prices are transparent can also improve transparency⁹¹.

An example of this transparency can be found in section 68 of PNG's *Land Act* which requires that lands available for leasing be advertised, including with the following information:

⁸⁶ Tseng, W (2002), at pp. 2-3.

⁸⁷ Fletcher, R (2002) at p. 6.

⁸⁸ Multilateral Investment Guarantee Agency. Online at: <http://www.miga.org/screens/about/about.htm>

⁸⁹ Hallward-Driemeier, M (2003) at p. 23.

⁹⁰ Hallward-Driemeier, M (2003) at pp. 1-2.

⁹¹ Forum Economic Ministers Meeting (2001) at p. 38.

- (a) the type of lease available to be granted;
- (b) the purpose of the lease;
- (c) the length of the lease;
- (d) a description of the land to be leased;
- (e) the amount of rent or royalties
- (f) the terms and conditions of the lease;

Including such detailed information prior to negotiations with a lessee may however be problematic as the government will not be in a position to negotiate freely with the prospective lessee. It could be possible to have a two-step process, a first advertisement including brief information, and a second advertisement including more detailed information once the lease has been negotiated with the foreign investor⁹².

Registration. Creating a transparent and comprehensive registration system which records all transfers of land as well as all leases of land is important to ensure that property rights are enforced. Recording property rights also allows government to use land as a source of taxation revenue.

Thailand has a very efficient systematic land titling and registration procedure and has largely served as a model for systematic land titling in the region⁹³. Cambodia has not been so successful, as even though the Land Law provides a framework for recording titles, the titling system is not fully functional and the majority of property owners have no documentation of any kind to prove their ownership⁹⁴.

Consideration will also need to be given to the issue of recognizing non-registered rights such as rights obtained by occupation. Attention could be paid to Mozambique's legislation which provides that non-registration is not a bar to affirming a right of use. This provision could however have the effect of reducing certainty of title and therefore the value of the lease. It may also act as a disincentive to registration of rights.

Centralization of title register. One aspect of registration is whether to have a centralized or decentralized system. In Mozambique, three entities share jurisdiction over emission of land use titles. If information is not shared adequately this could lead to conflicting authorizations being given, and this was a danger that was discussed when the *Land Law* was passed⁹⁵. Although decentralization can be very successful such as in Thailand where the title register is maintained in 76 provincial and 272 branch land offices, strong central control also is important⁹⁶.

⁹² For other examples of lease advertising see information concerning the Fort Peck Indian Reservation in the United States, which holds oil and gas extraction lease sales two times a year, with a minimum of forty-five (45) day advertisement. See http://www.users.qwest.net/~kryopak/ft_peck.html

⁹³ Brits at p. 8.

⁹⁴ United States of America Embassy in Cambodia (2000), "Cambodia Investment Climate" at p. 5.

⁹⁵ Telephone interview on September 4, 2003 with Professor John Unruh, In-country Project Manager for the Land Tenure Centre Project in Mozambique.

⁹⁶ Brits at p. 6.

b) Rule of law

Rule of law. The capability of attracting foreign investment will be influenced by the prevalence of the rule of law, which includes the principle that Courts and the bureaucracy being bound by the law of the land. Also important is that foreigners be assured that their lease right will be valid as long as it is not revoked in a legal way, such as through expropriation and with compensation. This is guaranteed in diverse forms under Cambodian, Moçambican, Papua New Guinean, Thai and US law and also reflects prevailing standards of international law.

Dispute resolution mechanisms. High costs (in time and money) as well as ineffectiveness and a lack of trust of dispute resolution will generally lower the value of the land⁹⁷ and may discourage foreign investors from investing. Alternative dispute resolution may be a preferred option because of its perceived efficiency, cost, choice of mediator, privacy and its ability to allow the parties to maintain a viable commercial relationship⁹⁸.

Another possibility is a specialized tribunal which would deal solely with land disputes, such as the Cree-Naskapi Commission established in Northern Quebec, Canada, to investigate any claim concerning land issues under the *Cree-Naskapi Act*⁹⁹. In the case of leases of state land it could be attractive to have a joint private/public institution which would create a sense of confidence in foreign investors that the decision is being taken by an independent entity¹⁰⁰. In the case of land disputes relating to customary land, it would obviously be important to train decision-makers in local customs¹⁰¹.

2. Popular support

Without popular support, land reform policies shall inevitably fail. Wachter and English's study of World Bank titling projects concluded that with few exceptions, these interventions were largely unsuccessful, in part due to lack of political support¹⁰². In Papua New Guinea for example, there were violent protests in 1995 opposing the Land

⁹⁷ Forum Economic Ministers Meeting (2001) at p. 29.

⁹⁸ Forum Economic Ministers Meeting (2001) at p. 32.

⁹⁹ For more information on the powers of the Commission, see sections 158 and ff. of the *Cree-Naskapi (of Quebec) Act* available at <http://laws.justice.gc.ca/en/c-45.7/text.html>.

¹⁰⁰ See Wan-Soon "Foreign Direct Investment in Korea: the Role of the Ombudsman" for more information of the Office of the Investment Ombudsman set up to tackle foreign investors' problems in running their operations in Korea.

¹⁰¹ For a discussion on this subject, see: Forum Economic Ministers Meeting (2002) at p. 13-14. We have also drafted a paper on the subject based on experience in Canada entitled "Canadian Examples of State Accommodation of Aboriginal Diversity/Needs" to be posted on the World Bank's website dealing with law reform: <http://www1.worldbank.org/publicsector/legal/reforminglaws.htm>. We would be pleased to provide ARD with a copy if desired.

¹⁰² Wachter D., English, J., *The World Bank's Experience with Land Titling*, Divisional Paper number 1993-35, Policy and Research Division, Environment Department, World Bank, March 1992, in Brits, at p. 11. The other factors were: conflicting bureaucratic priorities or infighting, lack of institutional capacity or unwillingness to commit adequate resources and the underestimation of the complexity or costs of the tasks to be carried out.

Mobilization Programme proposed by the International Monetary Fund and the World Bank¹⁰³ and it was withdrawn in 1996¹⁰⁴.

a) Consultation

Consultation forms a useful tool for government to gauge what the public wants from land administration and it will increase the chances that the local population comprehends the system better and accepts it¹⁰⁵. Depending on the amount of public participation the government wishes to foster, various mechanisms could be used.

Once a government lease has been advertised, a period of consultation could be provided for, with the possibility of modifying the terms of the lease following the population's input. When feasible, another possibility would be to have the citizens affected by the lease of government lands decide by vote whether or not to accept the lease. Different quorums for the vote could be required depending on the length of the term of the lease, as is the case in Cree and Naskapi communities in Northern Quebec, Canada¹⁰⁶. When customary lands are the object of a lease, obtaining the consent of the community would generally need to be obtained¹⁰⁷.

b) Respect for cultural norms

Social, cultural and spiritual values of local populations may not always be represented during negotiations between foreign investors and government officials concerning leasing of government lands. It may therefore be important to develop a mechanism to ensure local participation as seen above in the Moçambican section.

CONCLUSION

From the review of policy options and strategies adopted by Cambodia, Moçambique, Papua New Guinea, Thailand and US Indian Reservations to attract foreign investment

¹⁰³ Seneviratne, Kalinga, for Third World Network Features, "IMF plan rejected by PNG people", 6 September 1995. Available at: <http://www.hartford-hwp.com/archives/24/083.html>

¹⁰⁴ See PNG Business Guide on Land Tenure.

¹⁰⁵ See more in-depth discussion at Forum Economic Ministers Meeting (2001) at p. 37-38 and 42.

¹⁰⁶ Under section 132 of the Cree-Naskapi Act, for a grant of a lease to be valid it must be approved by the electors of the Indian band at a special band meeting or referendum at which:

- (a) at least 10% of the electors of the band voted in the case of term of 10 to 25 years; or
- (b) at least 25% of the electors of the band voted in the case of a term of 25 to 75 years (the maximum).
- (c) If the lease has a term of less than 10 years, no approval is needed.

Any period in respect of which a grantee has a right of renewal is deemed to be included in the original term of the grant.

Note: During a telephone interview on September 5, 2003, with Phillip Awashish, Commissioner of the Cree-Naskapi Commission, he informed us that no real problems had been reported with respect to the established quorums, although Cree First Nations have indicated that they would prefer to have more flexibility in determining the quorums themselves.

¹⁰⁷ See sections PNG *Land Law* on lease of customary lands.

within their legal framework prohibiting foreign ownership, it is clear that the most common option used to enable investors to use land through mechanisms other than ownership is the property lease option. Important elements included in the legislation reviewed concerning property leases include: the length of the lease, the types of conditions to be included in the lease, mortgageability of the lease or of the immovable or movable property on the leased land, compensation for improvements, registration of property rights, transparency of the allocation of leases process and consultation of the population.

Foreigners have also had access to land through non-land related strategies, by becoming for example minority shareholders of land-owning companies controlled by nationals. Other non-land related strategies to attract foreign investment have included having a one-stop service for foreign investors, tax incentives and the conclusion of bilateral investment treaties, which would appear to have had limited success.

What seems most certain from the experience of Cambodia, Moçambique, Papua New Guinea, Thailand and US Indian Reservations is that it is possible to successfully attract foreign investment notwithstanding an unequivocal prohibition on foreign ownership of land¹⁰⁸. With appropriate property lease mechanisms, Timor-Leste's Constitutional prohibition on foreign ownership of land should not therefore constitute an impediment to the attraction of foreign investment.

¹⁰⁸ According to the UN Conference on Trade and Development, in 2001, Cambodia received \$113M in foreign direct investment, Moçambique received \$255.4M, Papua New Guinea received \$178.7M and Thailand received \$3,759M. See online: <http://www.unctad.org/Templates/WebFlyer.asp?intItemID=2110&lang=1>

Appendix A:
Comparative Chart With Respect To Certain Elements of Property
Leases

Country	Length of Lease (in years)	Conditions Required for Lease	Status of Improvements	Mortgage	Consultation Mechanisms
Cambodia	70, renewable	Approval by the Council for Development of Cambodia.	Not available	Land can be mortgaged. Information about mortgaging of leases is not available.	None
Hawaii Native Lands	99, renewable, maximum 199	At the moment, Native Hawaiians appear to not be offering leases to non-Native Hawaiians.	Not available	Not available	Not available
Moçambique	50, renewable for 50	Exploitation plan to obtain provisional lease must be carried out within 2 years, or State may revoke provisional lease and seize without indemnification of non-removable investments. Definitive lease may be revoked if investment or exploitation plan is not respected.	Non-removable improvements revert in favor of the State if a lease has been revoked for public interest reasons, or because conditions have not been respected.	The rights holder may hypothecate immovable assets and improvements (<i>benfeitorias</i>) over which it has legal rights or which it has constructed.	The titling process requires that the local administrative authorities consult local communities and submit an opinion confirming that the requested area has no occupants. In addition, local communities participate in the administration of natural resources, resolution of conflicts and delimitation of their occupied land.
Papua New Guinea	99	Minimum improvements must be carried out by the licensee for agricultural leases. Minister can forfeit leases if conditions are not complied with.	PNG compensates lessees for improvements if renewal of the lease has been refused.	Secured interests in chattels are recognized and are registered. Customary land cannot be mortgaged.	Section 68 of the <i>Land Law</i> requires that lands available for leasing be advertised, with detailed information. Lease of customary land requires

					community approval.
Thailand	50, renewable for 50	The foreign company leasing land must meet certain criteria concerning amount of investment, compliance with laws and the property must be located in specific industrial areas.	Not available	Lease rights can be mortgaged and seized.	Not available
USA Indian Reservations	99	Government approval for decisions involving terms and conditions of lease. Lease and sub-lease must be approved by tribal government and Department of Interior. Tribes may use revenue-sharing agreements rather than fixed-rent.	Not available	Land cannot be used as collateral. Loans can be guaranteed by federal government.	Some tribes hold lease sales two times a year, with a minimum of forty-five day advertisement.
Other	Fiji has different maximum terms for different types of leases. Under the <i>Cree-Naskapi Act</i> in Canada, the maximum length of leases is 75 years.	In the context of non-native lands, Hawaii has proposed that business incentive accountability laws be passed to ensure project disclosure, tracking and evaluation	Not available	In civilian jurisdictions such as Quebec, Canada, lease rights and moveable property including crops can be mortgaged. For Indian reserves in Canada, lease rights can be mortgaged even though land on reserves cannot be.	Where customary lands are the object of a lease among the Cree Indigenous Peoples in Canada, the consent of the community must be obtained with quorums proportional to the length of the lease.

APPENDIX B: LEGISLATION¹⁰⁹

I. CAMBODIA

Constitution of the Kingdom of Cambodia (1992)

Online at: <http://www.embassy.org/cambodia/government/constitution.htm>

Article 44: All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by the law.

The right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance.

Article 58: State property notably comprises land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, bases for national defense and other facilities determined as State property.

The control, use and management of State properties shall be determined by law.

Land Law of the Kingdom of Cambodia (1992)

Online at: http://www.bigpond.com.kh/Council_of_Jurists/Foncier/fon001g.htm

Article 1: All the land in Cambodia belongs to the State and shall be governed and protected in agreement by the State. The State does not recognize the land property right existing before 1979. The property right and any other rights related to the land shall be governed by this law.

Article 5: Private right is not given in forestry reserve, fishery reserve, water reservoir for mining purposes, cultural and historical patrimonies, monasteries, deep forests, schools, parks, public hills, old public buildings, land reserved for road construction and road maintenance, rail-road, rivers and seas.

Kram(Law) on Investment (1994)

Online at: <http://www.embassy.org/cambodia/invest/investmentlaw.html>

Article 1: This law governs all investment projects made by investors who are Cambodian citizens and/or foreigners within the Kingdom of Cambodia.

Article 8: Investors shall be treated in a non-discriminatory manner as set out by law, except for ownership of land as set forth in the Constitution of Kingdom of the Cambodia.

Article 9: The Royal Government shall not undertake nationalization policy which shall adversely affect private properties of investors in the Kingdom of Cambodia.

¹⁰⁹ Please note the spelling/grammatical mistakes in the text of the legislation are original and we did not edit them.

- Article 10: The Royal Government shall not impose price control on the products or services of investors who have received prior approval from the Government.
- Article 16: In accordance with the Constitution and relevant laws and regulations pertaining to the ownership and use of land:
1. Ownership of land for the purpose of carrying on promoted investment activities shall be vested only in natural persons holding Cambodian citizenship or in legal entities in which more than 51% of the equity capital are directly owned by natural persons or legal entities holding Cambodian citizenship.
 2. Use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request. Upon such use may include the right of ownership of real and personal property situated on the land as may be permitted by the law.

Anukret (Sub-Decree) on the Implementation of the Law on Investment of the Kingdom of Cambodia (1997)
Online at: <http://www.embassy.org/cambodia/investment/invetlaw.htm>

- Article 4.1: The Kingdom welcomes investment in all economic sectors from foreign nationals save for where particular activities are specifically restricted by laws, regulations, notifications or anukrets.
- Article 16.1: Ownership of land for the purpose of investment by Cambodian nationals or Cambodian legal entity shall comply with the [Land Law](#) of the Kingdom of Cambodia as promulgated by Kret No. 100 Kr. Dated October 13, 1992.
- Article 16.2: The investor shall comply with all the formalities of land ownership registration at the Land Title Department of the locality.
- Article 16.3: In accordance with the Constitution of the Kingdom of Cambodia, foreign nationals and foreign-controlled entities shall not own or hold an interest in land in the Kingdom.
- Article 17.1: Aside from ownership, Cambodian investors can benefit from other existing forms of land use such as concession, lease, lending, transfer, grant, etc.
- Article 17.2: Use of land shall be permitted to investors, including long-term leases of up to a period of 70 years, renewable upon request. Upon such use may include the right of ownership of real and personal property situated on the land as may be permitted by the law.
- Article 17.3: Foreign nationals and Foreign controlled entities shall be allowed to lease land in the Kingdom of Cambodia provided their lease are duly notarized by the competent authority and specify the terms and conditions, the agreed fair market value of the lease payment, and specific lease period.

Nationals and legal entities which have entered into a land lease agreement from the State shall have the right to sublease to a third party, whether a natural or juridical person, provided there is prior consent from the competent government authority and after the expiry of a three (3) years period counting from the date the initial lease agreement was signed. The three (3) year period shall not apply for special cases.

II. HAWAII

Hawaii Homes Commission Act, 1920

Online at:

http://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/06-Hhca/HHCA_0101.htm

§205. Sale or lease, limitations on. Available lands shall be sold or leased only:

- (1) In the manner and for the purposes set out in this title; or
- (2) As may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act; except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title. [Am L 1963, c 207, §2; am L 1997, c 197, §3]

§207. Leases to Hawaiians, licenses.

(a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaʻole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee's home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquacultural lot, as the case may be, as provided in this section.

(b) The title to lands so leased shall remain in the State. Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this title, as the department may prescribe. The department shall, whenever tracts are available, enter into such a lease with any applicant who, in the opinion of the department, is qualified to perform the conditions of such lease.

(c) (1) The department is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains, and the like. The department is also authorized to grant licenses for lots within a district in which lands are leased under the provisions of this section, for:

(A) Churches, hospitals, public schools, post offices, and other improvements for public purposes; and

(B) Theaters, garages, service stations, markets, stores, and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians).

(2) The department is also authorized to grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges.

(3) Any license issued under this subsection shall be subject to such terms, conditions, and restrictions as the department shall determine and shall not restrict the areas required by the department in carrying on its duties, nor interfere in any way with the department's operation or maintenance activities. [Am Feb. 3, 1923, c 56, §1, 42 Stat 1222; May 16, 1934, c 290, §2, 48 Stat 779; Jul. 10, 1937, c 482, 50 Stat 504; May 31, 1944, c 216, §§3, 4, 58 Stat 264; Jun. 14, 1948, c 464, §§1, 2, 62 Stat 390; Jun. 18, 1954, c 321, §1, 68 Stat 263; Aug. 23, 1958, Pub L 85-733, 72 Stat 822; am L 1963, c 207, §2; am L 1981, c 90, §1; am L 1983, c 125, §2; am L 1984, c 27, §1 and c 37, §2; am L 1985, c 69, §1 and c 159, §2; am L 1997, c 196, §2]

§208. Conditions of leases. Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

(1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.

(2) The lessee shall pay a rental of \$1 a year for the tract and the lease shall be or a term of ninety-nine years; except that the department may extend the term of any lease; provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.

(3) The lessee may be required to occupy and commence to use or cultivate the tract as the lessee's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.

(4) The lessee thereafter, for at least such part of each year as the department shall prescribe by rules, shall occupy and use or cultivate the tract on the lessee's own behalf.

(5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the lessee's interest in the tract; except that the lessee, with the approval of the department, also may transfer the lessee's interest in the tract to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild. A lessee who is at least one-quarter Hawaiian who has received an interest in the tract through succession or transfer may, with the approval of the department, transfer the lessee's leasehold interest to a brother or sister who is at least one-quarter Hawaiian. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians or qualified relative who is at least one-quarter Hawaiian approved of by the department or for any indebtedness due the department or for taxes or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the lessee's interest in the tract or improvements thereon; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians, lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.

(6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of

Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

(7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.

(8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease. [Am Jul. 10, 1937, c 482, 50 Stat 504; Nov. 26, 1941, c 544, §2, 55 Stat 783; Aug. 21, 1958, Pub L 85-710, 72 Stat 706; am L 1963, c 207, §2; am L 1967, c 146, §§1, 2; am L 1973, c 66, §1; am L 1974, c 175, §1; am L 1978, c 229, §5; am L 1981, c 90, §2; am L 1985, c 60, §2 and c 284, §1; am L 1990, c 305, §1; am L 1997, c 196, §3; am L 1999, c 17, §1; am L 2002, c 12, §1].

The Constitution of the State of Hawaii

Online at: <http://www.capitol.hawaii.gov/>

ARTICLE XII

HAWAIIAN AFFAIRS

HAWAIIAN HOMES COMMISSION ACT

1. Anything in this constitution to the contrary notwithstanding, the Hawaiian Homes Commission Act, 1920, enacted by the Congress, as the same has been or may be amended prior to the admission of the State, is hereby adopted as a law of the State, subject to amendment or repeal by the legislature; provided that if and to the extent that the United States shall so require, such law shall be subject to amendment or repeal only with the consent of the United States and in no other manner; provided further that if the United States shall have been provided or shall provide that particular provisions or types of provisions of such Act may be amended in the manner required for ordinary state legislation, such provisions or types of provisions may be so amended. The proceeds and income from Hawaiian home lands shall be used only in accordance with the terms

and spirit of such Act. The legislature shall make sufficient sums available for the following purposes:

1. development of home, agriculture, farm and ranch lots;
2. home, agriculture, aquaculture, farm and ranch loans;
3. rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved;
4. the administration and operating budget of the department of Hawaiian home lands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law.

Thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands under any provision of law or from water licenses shall be transferred to the native Hawaiian rehabilitation fund, section 213 of the Hawaiian Homes Commission Act, 1920, for the purposes enumerated in that section. Thirty percent of the state receipts derived from the leasing of lands cultivated as sugarcane lands on the effective date of this section shall continue to be so transferred to the native Hawaiian rehabilitation fund whenever such lands are sold, developed, leased, utilized, transferred, set aside or otherwise disposed of for purposes other than the cultivation of sugarcane. There shall be no ceiling established for the aggregate amount transferred into the native Hawaiian rehabilitation fund. [Ren and am Const Con 1978 and election Nov 7, 1978].

ACCEPTANCE OF COMPACT

2. The State and its people do hereby accept, as a compact with the United States, or as conditions or trust provisions imposed by the United States, relating to the management and disposition of the Hawaiian home lands, the requirement that section 1 hereof be included in this constitution, in whole or in part, it being intended that the Act or acts of the Congress pertaining thereto shall be definitive of the extent and nature of such compact, conditions or trust provisions, as the case may be. The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian homes projects for the further rehabilitation of the Hawaiian race shall be faithfully carried out. [Ren and am Const Con 1978 and election Nov 7, 1978].

COMPACT ADOPTION; PROCEDURES AFTER ADOPTION

3. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the constitution of this State, as provided in section 7, subsection (b), of the Admission Act, subject to amendment or repeal only with the consent of the United States, and in no other manner; provided that
 - (1) sections 202, 213, 219, 220, 222, 224 and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212 and other provisions relating to the powers and duties of officers other than those charged with the administration of such Act, may be amended in the constitution, or in the manner required for state legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund and the Hawaiian home-

development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for state legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of such Act, shall not be increased, except with the consent of the United States;

(2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for state legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and

(3) that all proceeds and income from the "available lands," as defined by such Act, shall be used only in carrying out the provisions of such Act. [Add 73 Stat 4 and election June 27, 1959; ren and am Const Con 1978 and election Nov 7, 1978]

PUBLIC TRUST

4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.

OFFICE OF HAWAIIAN AFFAIRS; ESTABLISHMENT

OF BOARD OF TRUSTEES

5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members. [Add Const Con 1978 and election Nov 7, 1978]

POWERS OF BOARD OF TRUSTEES

6. The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board. [Add Const Con 1978 and election Nov 7, 1978].

TRADITIONAL AND CUSTOMARY RIGHTS

7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978].

Hawaii Land Reform Act, Hawaii Revised Statutes

Online at: <http://www.capitol.hawaii.gov>

[§516-83] Legislative findings and declaration of necessity; purpose. (a) The legislature finds that:

- (1) There is a concentration of land ownership in the State in the hands of a few landowners who have refused to sell the fee simple titles to their lands and who have instead engaged in the practice of leasing their lands under long-term leases;
- (2) The refusal of such landowners to sell the fee simple titles to their lands and the proliferation of such practice of leasing rather than selling land has resulted in a serious shortage of fee simple residential land and in an artificial inflation of residential land values in the State;
- (3) Due to such shortage of fee simple residential land and such artificial inflation of residential land values, the people of the State have been deprived of a choice to own or take a lease of the land on which their homes are situated and have been required instead to accept long-term leases of such land which contain terms and conditions that are financially disadvantageous, that restrict their freedom to fully enjoy such land and that are weighted heavily in favor of the few landowners of such land;
- (4) The economy of the State and the public interest, health, welfare, security, and happiness of the people of the State are adversely affected by such shortage of fee simple residential land and artificial inflation of residential land values and by such deprivation of the people of the State of the choice to own or take a lease of the land on which their homes are situated and the required acceptance of such long-term leases of such lands;
- (5) The acquisition of residential land in fee simple, absolute or otherwise, at fair and reasonable prices by people who are lessees under long-term leases of such land and on which such land their homes are situated and the ability of such people to fully enjoy such land through ownership of such land in fee simple will alleviate these conditions and will promote the economy of the State and public interest, health, welfare, security, and happiness of the people of the State;
- (6) The cost of living in Hawaii is and has been high. In recent years inflation has drastically increased the cost of living in the State. The spiraling cost of living affects all people through erosion of the purchasing power of whatever monetary resources they command. For a growing proportion of Hawaii's population, quite possibly a majority, the high cost of living is denying them such basic necessities as sufficient nutritional intake, safe and healthy housing accommodations, clothing, and adequate preventive and curative health services. A substantive and significant contributing factor to the high and rising cost of living is the high cost of land whether leasehold or fee. Stabilizing the costs of land or, at least, slowing the artificial inflation of land values would curb the rising cost of living in Hawaii and, ultimately, contribute to the welfare of all people of the State by improving their standard of living;
- (7) The Constitution of the State of Hawaii provides the State the power to provide assistance for persons unable to maintain a standard of living compatible with decency and health. The rising cost of land tied to other cost of living increases is swelling the ranks of those persons unable to maintain a decent and healthful standard of life. If the inflationary trend of land continues unchecked, the resultant inflationary total cost of living could create such a large population of persons deprived of decent and healthful standards of life that the consequent disruptions in lawful social behavior could irreparably rend the social

fabric which now protectively covers the life and safety of all Hawaii's people. The threat posed by this possibility is sufficiently real and imminent to warrant state action to redistribute land as a means of curbing continuing inflationary rises in land values;

(8) The right to own land is not an irrevocable grant of a special privilege where it operates against the general welfare of the many for the particular benefit of the few;

(9) Land, in common with other natural resources, is of finite quantity; a fact particularly obvious in Hawaii. In recent decades there has been growing general agreement that the wise conservation, preservation, use and management of exhaustible natural resources such as land are matters mandating an active governmental role. There is an intimate relationship between the monetary values accorded land in Hawaii and the stability and strength of the State's economy as a whole. Land values, artificially inflated by the high concentration of ownership, skew the state economy toward unnecessarily high levels. The pervasive and substantial contribution made to inflation by high land values creates a potential for economic instability and disruption. Economic inflation, instability and disruptions have real and potential damaging consequences for all members of an affected society. Checking inflation, improving the stability of the economy, and forestalling disadvantageous economic disruptions all are productive of general benefit to all members of the Hawaiian society. The sound and wise conservation, preservation, use and management of land cannot be separated from the subject of patterns of land ownership. To accomplish the public purposes of wisely conserving, preserving, using, and managing the land in the State requires changing present patterns of land ownership. Public laws, expenditures, programs, and policies which contribute to the realization of these public purposes serve a public use since they ultimately benefit the entire community. Changing present patterns of land ownership by allowing lessees under long-term leases of residential land to purchase in fee simple, absolute or otherwise, the land on which their homes are situated, through governmental intervention including exercise of the power of eminent domain to acquire fee simple title to such land and public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State, will help satisfy the pressing public necessity for a secure, strong and stable economy;

(10) The State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter is for the public use and purpose of protecting the public safety, health and welfare of all people in Hawaii;

(11) Inflation lessens the quality of life of all members of this afflicted society and is particularly invidious in its impact on the ninety plus per cent of the population who are in the poverty, and low through middle income groups. The State has limited abilities to curb inflation and, perhaps, the only useful means available is the State's power to control land values. There is a pressing public necessity for the State to do whatever it can to curb inflation and to keep the cost of living at a level where it is possible and manageable to provide all citizens a decent and healthful standard of life. The public use and purpose of providing all citizens a decent and healthful standard of life will be directly and substantially furthered by the State's acquisition of residential lands held in fee simple, through the exercise of the power of eminent domain, for the purposes of this chapter;

(12) The use of the power of eminent domain to condemn the fee simple title to residential land and the payment of just compensation therefor for the purpose of making the fee simple title thereto and the use thereof available for acquisition by people who are lessees under long-term leases of such land and on which such land their homes are situated is for a public use and purpose;

(13) Legislation providing to people who are lessees under long-term leases of residential land on which their homes are situated the ability to fully enjoy such land through ownership of such land in fee simple, absolute or otherwise, is for a public purpose.

(b) It is therefore declared to be necessary and it is the purpose of this chapter to alleviate the conditions found in subsection (a) of this section by providing for the right of any person who is a lessee under a long-term lease of residential land in the State to purchase at a fair and reasonable price the fee simple title to such land, by providing for the condemnation of the fee simple title to such land and the payment of just compensation therefor by the State through the use of the power of eminent domain and by providing for the public financing of such purchase and such condemnation and payment through the issuance of bonds, the expenditure of general revenue funds, and the use of private funds which are at the disposal of the State. [L 1975, c 186, §2]

CHAPTER 182, Hawaii Revised Statutes, Vol. 3

Online at: http://www.capitol.hawaii.gov/hrscurrent/vol03_ch0121-0200d/hrs0182/hrs_0182-.htm

RESERVATION AND DISPOSITION OF GOVERNMENT MINERAL RIGHTS

§182-7 Lease. (a) Prior to the public auction contemplated in section 182-4 or 182-5, or the granting of mining lease without public auction contemplated in section 182-5, the board of land and natural resources shall cause a mining lease for the land in question to be drawn. The lease shall describe the land and shall contain, in addition to such other provisions which the board may deem appropriate, specific provisions as provided in this section.

(b) The term of the lease shall be sixty-five years or for a lesser period at the discretion of the board.

(c) The payments to the State as fixed by the board shall be specified; provided that:

(1) In the case of bauxite, bauxitic clay, gibbsite, diaspore, boehmite, and all ores of aluminum, the amount of royalties for each long dry ton of ore as beneficiated shall not be less than twenty-five cents or the equivalent of the price of one pound of virgin pig aluminum, whichever is higher, nor shall it exceed the equivalent of the price of three pounds of virgin pig aluminum;

(2) The rate of royalty for ore processed into aluminous oxide in the State shall be set at eighty per cent of the rate of royalty for ore not processed to aluminous oxide in the State; and

(3) The royalty shall be fixed at a rate which will tend to encourage the establishment and continuation of the mining industry in the State.

The prices of virgin pig aluminum for the purpose of determining the royalties under this section shall be the basic price on the mainland United States market for virgin pig, not refined, f.o.b. factory. The royalties shall be in lieu of any severance or other similar tax on the extracting, producing, winning, beneficiating, handling, storing, treating, or transporting of the mineral or any product into which it may be processed in the State, and shall not be subject to reopening or renegotiating for and during the first twenty years of the lease term.

In the event the lessee desires to mine other minerals, the lessee, before mining the minerals, shall so notify the board in writing, and the board and the lessee shall negotiate and fix the royalties for the minerals.

Any other law to the contrary notwithstanding, thirty per cent of all royalties received by the State from geothermal resources shall be paid to the county in which mining operations covered under a state geothermal resource mining lease are situated.

(d) The lessee shall covenant and agree that the lessee shall commence mining operations upon the leased lands within three years from the date of execution of the lease; provided that so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one such lease on the same minerals, the covenant shall be suspended as to all other leases held by the lessee.

Any interested party may, however, request that a mining lease contain a research period under which the lessees shall be required to expend money in research and development to establish a method to make economical the mining and processing of the mineral deposits contained in the lease. If the board determines that the research period would be beneficial it shall fix the period of research and shall also fix a minimum expenditure for labor performed or money spent by the lessee in research and development and the method by which the lessee shall establish that such expenditure in fact be made. In such leases, the obligation to commence mining operations within three years shall not commence until the expiration of the research period.

(e) For the period of the lease the lessee shall have the exclusive right of possession of the minerals leased and the exclusive rights to mine and remove the minerals by means which shall be reasonable and satisfactory to the board and to occupy and use so much of the surface of the land as may reasonably be required, subject to the provisions of section 182-3. The right to use the surface shall include the right to erect transportation facilities thereon, construct plants for beneficiating, drying, and processing the minerals for electric power generation and transmission and such other uses as may be necessary or convenient to the winning and processing of the minerals; provided that the lessee shall comply with all water and air pollution control laws, and rules of the State or its political subdivisions.

(f) The lessee may retain all minerals separated from the land as a part of the process of mining the minerals specified in the mining lease; provided that the lease may prescribe the accounting and testing procedures by which the amount and quality of such additional materials shall be determined for the purpose of computing the excise tax thereon. [L 1963, c 11, pt of §1; Supp, §99A-7; HRS §182-7; am L 1978, c 135, §5; am L 1991, c 315, §1]

III. MOÇAMBIQUE

Constitution of Moçambique (1990)

Article 46: 1. Ownership of land is vested in the State.
 2. Land may not be sold, mortgaged, or otherwise encumbered or alienated.
 3. As a universal means for the creation of wealth and social well-being, the use and enjoyment of land shall be the right of all the Moçambican people.

Article 86: 1. The State shall recognize and guarantee the right to ownership of property.
 2. Expropriation may only take place on grounds of public need, use or interest, as defined by law, and there shall be just compensation.

Land Act (1997)

Please refer to pdf document sent with the final draft and which is also available online at: [Faolex.lex.org](http://faolex.lex.org), in Portuguese. Click on land and do a search under “Moçambique”. No English version of the Act was readily available.

Law on investment (1993), Law No. 3/93, approved on the 24th June

Available in English at: http://www.cpi.co.mz/inv_leg.htm

Available in Portuguese at: www.ccpm.pt/lei_3_93.htm

CHAPTER II

Guarantees and Fiscal Incentives

Article 13 (Protection of property rights)

1. The Government of Mozambique shall guarantee the security and legal protection of property on goods and rights, including industrial property rights, comprised in the approved investments carried out in accordance with this Law and its Regulations.

2. When deemed absolutely necessary for weighty reasons of national interest or public health and order, the nationalization or expropriation of goods and rights comprised in an approved and realised investment under this Law shall be entitled to just and equitable compensation.

3. In the event of any complaint submitted by an investor under the terms regulated by the Council of Ministers not being resolved within a period of ninety (90) days, and when such fact has led the investor to incur in financial losses on the invested capital, the said investor shall have the right to a just and equitable compensation for such losses incurred and which are of evident responsibility of Government institutions.

4. For the purpose of determining the value of compensation or remuneration to be paid under paragraphs 1 and 2 of this Article, the evaluation of goods and/or rights nationalised or expropriated, including financial losses suffered by an investor which are of evident responsibility of Government institutions, will be carried out within ninety (90) days by a team especially appointed or by an auditing company of recognised expertise and competence.

5. The payment of the compensation or remuneration referred to in the preceding paragraphs of this Article shall take place within ninety(90) days counted from the date of acceptance by the competent Government

authority. The time for assessment for decision making on the evaluation made and submitted to the competent Government authority shall not exceed forty-five (45) days counted from the date on which the evaluation dossier was submitted and received.

Article 14 (Remittance of funds abroad)

1. The Government of Mozambique, in accordance with the conditions set down in the authorisation or other relevant legal instruments to the investment, shall guarantee the remittance of funds abroad in connection with:

- a) exportable profits resulting from investments eligible for export of profits under the provisions of the Regulations of this Law;
- b) royalties or other payments for remuneration of indirect investments associated to the granting and transfer of technology;
- c) amortization of loans and payment of interest on loans contracted in the international financial market and applied in investment projects in the country;
- d) the proceeds of any compensation paid in conformity with the provisions of paragraph 2 of Article 13;
- e) invested and re-exportable foreign capital, independently of eligibility (or not) of the investment project to export profits under the Regulations of this Law.

2. The remittances referred to in paragraph 1 above shall comply with the formalities set down in Article 15 below.

Article 15 (Formalities for remittances abroad)

1. In harmony with the definition in paragraph 1p) of Article 1, provided that the applicable tax obligations and the exchange formalities have been satisfied, foreign investors with approved investments carried out in accordance with this Law and its Regulations are entitled to transfer abroad up to the whole amount of the profits accrued to them in each financial year.

2. The document which confirms, for the purpose of remittance of profits abroad, the investment effectively made and the fulfilment of fiscal obligations, shall be issued by the Ministry of Planning and Finance within thirty (30) days counted from the date of submission of the relevant application.

3. Remittances of re-exportable capital or of the proceeds of compensation or remuneration provided for in Article 13 shall be carried out in instalments timed over a period not exceeding five years and in a such a way as to avoid disturbing the balance of payments.

4. Remittance of exportable profits and of invested re-exportable capital shall be processed in foreign currency of the investor's choice in accordance with the provisions of this Law and its Regulations and the terms of the authorization granted for the project.

5. Upon compliance with the provisions of paragraphs 1 to 4 of this Article, the transfer of funds abroad under the present Law and its Regulations shall take place, provided that the following have been met:

- a) the constitution or replenishment of legal reserve fund;
- b) the payment of any outstanding taxes;
- c) the provisions necessary to ensure the timely repayment of loan instalments and interest on loans contracted for the realization of the investment;

- d) adequate provisions to guarantee the repayment of loan instalments and interest on loans to fall due before further funds sufficient to meet such responsibilities are generated.
6. The remittance of exportable profits in each financial year, shall be promptly processed as long as the positive balance of foreign exchange generated by the undertaking or combination of several undertakings carried out by the same investor or group of associated investors allows the necessary coverage.
7. In case of insufficient exchange funds to cover the remittance of profits abroad in any given financial year by a project that have not generated a net surplus of foreign currency, the remaining balance shall be carried forward for its remittance abroad to the following financial year or years.
8. The transfer abroad of exportable profits generated by foreign investment which demonstrated the effective substitution and/or reduction of imports or that proved it has effectively saved foreign exchange for the country, but that does not have foreign exchange fund to cover such transfer, shall be allowed and effected under the terms to be agreed with the relevant foreign investor.
9. The remittance abroad of re-exportable invested capital shall be processed with observance of the provisions of paragraphs 3 and 4 of this Article, proportionately to the participation of direct foreign investment in the share capital in the undertaking, based on the result value of the liquidation, sale or compensation, total or partial, of such undertaking or, furthermore, provided that the authorization period of the direct foreign investment has expired without renewal.

Article 16 (Incentives)

1. In addition to the guarantees of ownership and of remittance of funds abroad provided for in Articles 13 to 15 above, the Government of Mozambique shall also guarantee the concession of tax and customs incentives granted in the Code of Fiscal Benefits for investments made in Mozambique in accordance with this Law and its Regulations.
2. The right to enjoy the incentives provided for in paragraph 1 of this Article shall be irrevocable throughout the validity of the relevant period contemplated for in the Code of Fiscal Benefits for investments made in Mozambique, given that the conditions upon which the concessions were granted remain unchanged.
3. The Council of Ministers shall approve, by Decree, the Code of Fiscal Benefits referred to in paragraphs 1 and 2 of this Article.

CHAPTER III

Financing and Exchange Operations

Article 17 (Financing of direct investment)

1. Direct investment in projects to be carried out in the country under this Law and its Regulations shall be financed by own equity capital made available by the respective investors.
2. Financing made available through shareholder's loans and/or additional supplies of capital made available by the investors' own resources, and for which remuneration shall not bear interest charges made on the undertaking in which they have been applied, shall also be considered as components of direct investment.

Article 18 (Access to domestic credit)

Companies formed and registered with the participation of direct foreign investment are entitled to access to domestic credit borrowing on the same terms and conditions applicable to Mozambican companies and in conformity with the relevant legislation in force in the country.

Article 19 (Allocation of foreign exchange)

1. For those undertakings whose activities generate foreign exchange, the Bank of Mozambique may, upon a submission by the respective companies of their yearly plan of foreign exchange requirements, authorize the retention, in foreign currency accounts, of a proportion of the foreign currency revenue generated by such undertakings.

2. For those cases not covered by the paragraph 1 of this Article, appropriate arrangements shall be adopted for each undertaking taking into account its economic interest and social importance.

Article 20 (Exchange Operations)

Exchange operations and the conversion of foreign currency into local currency and vice-versa shall be processed in accordance with the legislation and rules in force in the country regarding such matters.

Regulations of the Law on investment Decree no 14/93
of 21st July

Available in English at: http://www.cpi.co.mz/inv_leg_reg.htm

Available in Portuguese at: www.ccpm.pt/lei_3_93.htm

Article 14 (Approval proposal)

1. Completed the verification of each investment proposal, the Investment Promotion Centre shall prepare the approval proposal to be submitted to the consideration and decision of the competent decision-making authority.

2. The approval proposal shall contain the draft of the Provincial Governor's Order, Ministerial Order or Internal Resolution of the Council of Ministers and the Specific Terms of Authorization applicable to the project under consideration, and the Specific Terms of Authorization shall, inter alia, contain:

- a) the identification of the investors;
- b) the designation and activity of the project and of goods and/or services envisaged by the project, and an indication of the targets and results to be attained;
- c) the location and scope of activity of the project;
- d) the regime of the authorization of the concession or license to exploit natural resources and to use infrastructures and equipment;
- e) the value of the resources and other goods and services referred to in paragraph d) above, as well as the forms of payment for the use of such goods and services;
- f) the nature, value and forms of the realisation of the investment concerned;

- g) the legal status of the enterprise to be formed or established for the project, as well as the list of the possible shareholders or partners, the distribution of capital shares, the total value of the initial capital and the dates they are to be paid up;
- h) the import-export regime and the nature of the commodities to be imported and exported;
- i) the number and the categories of the national and foreign workers to be employed, and the training schemes envisaged for Mozambican workers;
- j) the incentives to be granted and the regime for remittance abroad of profits accruing to foreign investors;
- k) the time period for starting the implementation of the undertaking, or of each phase of its implementation, as appropriate;
- l) the area and availability of the land required for the project, with favourable supporting information from the National Directorate of Geography and Surveys or by the City Council, as applicable;
- m) any other relevant issues to be included in the authorization.

Article 15 (Competence and time-limits for decision making on investments)

1. Decision making for the approval of carrying out the investment projects received in the country shall be taken by:

a) the Provincial Governor, within the maximum time-limit of three (3) working days after the reception of each approval proposal for carrying out investment projects of amounts equal to or higher than the countervalue of five thousand United States dollars up to one hundred thousand United States dollars;

b) the Minister of Planning and Finance, within the maximum time-limit of three (3) working days after the reception of each approval proposal for carrying out investment projects which are eligible for the remittance of profits abroad as well as any national investment project, when the total value of the project does not exceed the countervalue of one hundred million dollars of United States.

c) the Council of Ministers within the time-limit of ten (10) working days after the reception of each investment approval proposal for carrying out the following type of projects:

i) investment projects which values exceed the countervalue of one hundred million of United States dollars;

ii) projects requiring land concessions of areas equal to or higher than five thousand (5,000) hectares for agricultural purposes and ten thousands (10,000) hectares for livestock and forestry purposes;

iii) any other project with foreseeable serious implications of political, social, economic, financial concerns or of any other nature which should be pondered and decided upon by the Council of Ministers.

2. Based on weighty consideration of the political, financial, economic, social and any other complexities and implications of an investment project, the Investment Promotion Centre may submit investment proposals, under competence of the authorities referred to in subparagraphs a) to c) of previous paragraph to the consideration of the Minister of Planning and Finance for referring them to the decision-making by the Prime Minister.

Article 16 (Confirmation of tacit approval)

1. Elapsed over three (3) or ten (10) working days, counted from the date of reception of the approval proposal submitted as per the provisions of, respectively, the sub-paragraph a) and b) and the sub-paragraph c), both of paragraph 1 of the previous article, without a decision having been taken on the proposal, the Investment Promotion Centre shall confirm the tacit authorization granted by the relevant decision-making authority for carrying out the investment project in conformity with the precise terms of the approval proposal submitted to such authority for decision making purpose.

2. It is null and void any other decision taken on the same date or after the confirmation of the tacit authorization granted and confirmed in accordance with the provision of the previous paragraph.

Article 17 (Notification of the decision taken)

1. Decision taken on investment project by the provincial Government shall be notified to the project's proponents by the provincial delegate of the Investment Promotion Centre. Such notification shall be made within two (2) working days of the date the decision has been taken and shall include the terms of the authorization granted to the project.

2. The investment Promotion Centre shall within the time-limit of two (2) working days counted from the date of the decision taken as per the provisions of articles 15 and 16 on each investment project proposal notify the relevant proponent investors and inform them the decision taken as well as the relevant terms of the authorization being such decision taken a favourable one.

3. Notification of authorization granted by the competent authority confers on the investors the right to immediately begin to implement the authorized project in accordance with the terms of the authorization and the provisions of the legislation applicable on specific matters.

4. Proponents whose investment projects have been rejected may reformulate their proposals and submit them anew in accordance with the provisions of Articles 9 and 11, as applicable, for the reconsideration of the decision taken.

Code of Fiscal Benefits for Investments

Available in English at: http://www.cpi.co.mz/inv_leg_code.htm

REPUBLIC OF MOZAMBIQUE

Council of Ministers
DECREE 16/2002
of 27 June

SECTION IV Rapid Development Zones

Article 33 (Eligible Activities)

1. New undertakings located in geographic areas denominated Rapid Development Zones (ZRD) and carrying out eligible activities as defined in this article, shall enjoy the fiscal benefits provided for in this section.

2. The following regions in Mozambique, namely the Zambezi Valley, Niassa Province, Nacala District, Moçambique Island and Ibo Island, are considered to be Rapid Development Zones (ZRD).

3. The Zambezi Valley is defined as the geographical area that includes:

- a) All of the districts in the province of Tete;
- b) The districts of Morrumbala, Mopeia, Chinde, Milange, Mocuba, Maganja da Costa, Nicoadala, Inhassunge, Namacurra and Quelimane in the province of Zambézia;
- c) the districts of Gorongosa, Maringué, Chemba, Caia, Marromeu, Cheringoma and Muanza in the province of Sofala;
- d) the districts of Barué, Guro, Tambara and Macossa in the province of Manica.

4. The following activities are eligible:

- a) Agriculture;
- b) forestry;
- c) Aquaculture;
- d) Livestock raising;
- e) Lumbering;
- f) Game animal exploitation;
- g) Water supply;
- h) Electric energy generation, transmission and distribution;
- i) Telecommunications;
- j) Construction of public utility infrastructure;
- k) Construction of housing;
- l) Construction of agricultural infrastructure;
- m) Construction of hotel, tourism and similar infrastructure and operation;
- n) Construction of commerce infrastructure;
- o) Industry;
- p) Cargo and passenger transport;
- q) Education;
- r) Health.

5. Individual and collective persons who carry out the same activity or other activities in other parts of Mozambique shall be entitled to enjoy the fiscal benefits provided for in this article only in respect of the activities that are listed in the previous clause and that are carried out in the Rapid Development Zone (ZRD).

6. The fiscal and customs benefits provided for in this section are not cumulative with the other special benefits set forth in this Code.

7. The regime provided for in this section shall remain in force until 31 December 2015. Thereafter the undertakings qualifying for this regime shall be subject to the normal tax system as of 1 January 2016.

Article 34 (Exemptions from Customs Duties)

- 1. Undertakings in the activities listed in the previous article that are carried out in a Rapid Development shall benefit from an exemption from import duties on the importation of goods included in classes "K" and "I" of the Customs Tariff Schedule.
- 2. The exemption referred to in the previous clause shall only be available during the first three years of the implementation of the project and provided that there do not exist similar locally produced goods having the same quality and/or technical specifications.

Article 35 (Fiscal benefits in respect of Income)

- 1. The undertakings carried out under the terms of the Investment Law in activities listed in this section which are located in a Rapid Development Zone shall, during five tax years, benefit from an investment tax

credit (CFI) set at an amount equal to 20% of the total realised investment, that is deductible from the Corporate Income Tax payable up to an amount equal to the amount of tax payable.

2. In the case of a taxpayer subject to the Personal Income Tax (IRPS), the deduction of the investment tax credit (CFI) referred to in the previous clause shall be made only in respect of the tax on the total revenues belonging to the Second Category of IRPS derived from the activity benefiting from the incentive. The deduction shall be up to the amount of such tax assessed.

3. The portion of the tax credit not used in a tax year may be deducted in the subsequent years. The tax credit shall expire in the fifth tax year counting from the date of commencement of operation in the case of new projects.

Article 36 (Exemption from Real Property Transfer Tax (SISA))

1. The transfer of State property to third parties is exempt from real property transfer tax (SISA) provided that the property in question is infrastructure to be used in the development of economic activities listed in article 33.4 of this Code.

2. The exemption referred to in the preceding clause shall not apply to any other transfers of property. However such other transfers shall, for five (5) years from the date of commencement of activity, benefit from the reduction of the rate of the real property transfer tax as stipulated in article 21 of this Code.

Article 37 (Benefits Complementares)

The undertakings qualifying for the fiscal benefits under this section shall also enjoy the benefits provided for in articles 18 to 21 of this Code.

SECTION V Industrial Free Zones

Article 38 (Indirect Tax Exemptions)

1. The Developers of Industrial Free Zones are entitled to an exemption from customs duties on the importation of construction materials, machinery, equipment, accessories, accompanying spare parts and other goods destined to the exercise of the activity licensed as an Industrial Free Zone.

2. Industrial Free Zone Enterprises are entitled to an exemption from customs duties on the importation of goods and merchandise destined to be used in the implementation of projects and the operation of the activities that have been authorised under the terms of the Industrial Free Zone Regulations, approved by Decree 62/99 of 21 September.

3. The exemptions referred to in clauses 1 and 2 of this article extends to the Value Added Tax (VAT) and the Specific Consumption Tax (SCT), and includes internal acquisitions as provided in the VAT Code approved by Decree 51/98 of 29 September [as amended] and in the SCT Code approved by Decree 52/98, of 29 of September[as amended].

4. The exemptions provided for in this article do not include food, alcoholic beverages, tobacco, clothing and other articles of personal and domestic use.

Article 39 (Taxes on income)

1. The Developers of Industrial Free Zones and the Industrial Free Zone Enterprises holding an IFZ Certificate shall, for the period of ten (10) years, benefit from a sixty (60%) percent reduction in the rate of Corporate Income Tax (IRPC) on the profits derived from the exercise of activities licensed under the IFZ Regulations approved by Decree 62/99 of 21 September [as amended].

2. The enterprises that benefit from the tax regime referred to in the previous clause, shall have duly organised accounts and records in accordance with the Corporate Income Tax Code and shall file the appropriate statement with the local tax office in accordance with the schedule established in the tax legislation.

Article 40 (Real Property Transfer Tax (SISA) Exemption)

IFZ Developers and IFZ Enterprises are exempt from real property transfer tax (SISA) payable on the acquisition and use of immovable assets.

IV. PAPUA NEW GUINEA

Sections from the *Land Act*, 1996. Available online at: <http://faolex.fao.org/faolex/index.htm>

No html version was found.

4. NATIONAL TITLE TO LAND.

- (1) All land in the country other than customary land is the property of the State, subject to any estates, rights, titles or interests in force under any law.
- (2) All estate, right, title and interest other than customary rights in land at any time held by a person are held under the State.

11. ACQUISITION OF CUSTOMARY LAND FOR THE GRANT OF SPECIAL AGRICULTURAL AND BUSINESS LEASE.

- (1) The Minister may lease customary land for the purpose of granting a special agricultural and business lease of the land.
- (2) Where the Minister leases customary land under Subsection (1), an instrument of lease in the approved form, executed by or on behalf of the customary landowners, is conclusive evidence that the State has a good title to the lease and that all customary rights in the land, except those which are specifically reserved in the lease, are suspended for the period of the lease to the State.
- (3) No rent or other compensation is payable by the State for a lease of customary land under Subsection (1).

68. ADVERTISEMENT OF LANDS AVAILABLE FOR LEASING.

- (1) Except where land has been exempted from advertisement under Section 69, the Departmental Head shall give notice, by advertisement in the National Gazette, of all lands available for leasing under this Act.
- (2) An advertisement under Subsection (1) shall contain the following information:
 - (a) the type of lease available to be granted;
 - (b) the purpose of the lease;
 - (c) the length of the lease;
 - (d) a description of the land to be leased;
 - (e) the amount of rent (if any) payable for the first period of the lease;
 - (f) in the case of a special purposes lease – any royalties that are payable;
 - (g) the terms and conditions of the lease;
 - (h) the reserve price;
 - (i) such other information as the Departmental Head thinks fit or the Minister directs.
- (3) A statement contained in an advertisement under this section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.

74. PUBLICATION OF NAMES OF SUCCESSFUL APPLICANTS, ETC., IN THE NATIONAL GAZETTE

The Departmental Head shall publish in the National Gazette

- (a) the name of the successful applicant for each State lease, together with particulars of the lands to be leased to him; and
- (b) in respect of that State lease and those lands
 - (i) the name of the applicant considered the second-choice successful applicant; and
 - (ii) the name of the applicant considered the third-choice successful applicant to whom a Letter of Grant may be forwarded in accordance with Sections 75 and 79.

87. GRANT OF AGRICULTURAL LEASE.

Subject to this Act, the Minister may grant a lease for agricultural purposes for such term not exceeding 99 years, and for such area of Government land, as seem to him proper.

88. IMPROVEMENT CONDITIONS.

An agricultural lease shall contain conditions prescribing the minimum improvements to be carried out by the lessee.

92. GRANT OF BUSINESS AND RESIDENCE LEASES.

Subject to this Act, the Minister may grant leases of Government land for business or residence purposes, or for both business and residence purposes.

93. TERMS OF LEASES

A residence lease, business lease or lease for both business and residence purposes may be granted for such term, not exceeding 99 years, as to the Minister seems proper.

94. SPECIFICATION OF CLASSES OF BUSINESS.

A business lease or lease for both business and residence purposes may specify the class or classes of business for which the land may be used.

95. LAND IN PHYSICAL PLANNING AREAS.

Subject to Sections 69 and 73, before a lease under this Division of land in a physical planning area is granted, the land shall, in the first instance, be offered for lease by tender.

102. GRANT OF SPECIAL AGRICULTURAL AND BUSINESS LEASES.

- (1) The Minister may grant a lease for special agricultural and business purposes of land acquired under Section 11.
- (2) A special agricultural and business lease shall be granted –

- (a) to a person or persons; or
 - (b) to a land group, business group or other incorporated body, to whom the customary landowners have agreed that such a lease should be granted.
- (3) A statement in the instrument of lease in the approved form referred to in section 11(2) concerning the person, land group, business group or other incorporated body to whom a special agricultural or business lease over the land shall be granted, is conclusive evidence of the identity of the person (whether natural or corporate) to whom the customary landowners agreed that the special agricultural and business lease should be granted.
- (4) A special agricultural and business lease may be granted for such period, not exceeding 99 years, as to the Minister seems proper.
- (5) Rent is not payable for a special agricultural and business lease.
- (6) Sections 49, 68 to 76 inclusive, 82, 83, 84 and 122 do not apply to or in relation to a grant of a special agricultural and business lease.
- (7) Notwithstanding anything in this Act, a special agricultural and business lease shall be effective from the date on which it is executed by the Minister and shall be deemed to commence on the date on which the land subject to the lease was leased by the customary landowners to the State under Section 11.

Note: Considering the length of sections 103 to 110, we have not typed in all these sections. Please refer to the pdf FAOLEX version. Should you wish these to be typed, we will be happy to do so.

119. PAYMENT FOR IMPROVEMENTS ON EXPIRATION OF LEASE.

- (1) In this section
- “improvements” means improvements made, or in respect of which a payment has been made, by the outgoing lessee, that are suitable to the land and add to its leasing value, other than improvements in respect of which the lessee has received payment under this section;
- “value” means the value on the day after the date of expiration of the lease.
- (2) Where, after the expiration of the term of a State lease of land on which there are improvements, the lessee is granted
- (a) a further lease of the land; or
 - (b) a lease of part only, or that includes part only, of the land,
- the provisions of Section 84 do not apply in respect of the improvements in relation to the further lease, unless he has received payment for the improvements under this section.
- (3) Subject to this section, where on the expiration of the term of a State lease of land on which there are improvements the lessee applies for and is not granted a further lease of the land, or is granted a further lease of part only, or that includes part only, of the land, the Minister shall, within six months after the expiration, pay to the outgoing lessee the value of the improvements on the land, or on the part of the land not included in the further lease, as the case may be.

- (4) Where, within the period of six months referred to in Subsection (3), a State lease of the land or part of the land the subject of the expired lease is granted to a person other than the outgoing lessee, the Minister shall pay to the outgoing lessee, on or before the date of grant of the new lease, the value of the improvements on the land or that part of the land, as the case may be.
- (5) Subject to Subsections (6) and 13), this section does not entitle a lessee who does not apply for a further lease of the land the subject of his lease to payment for improvements on the land at the expiration of the lease, but he may remove such of the improvements as are severable on or before the expiration, doing as little damage as may reasonably be to the land.
- (6) Where a lease is surrendered under this Act, the lessee may remove such of the improvements as are severable on or before the surrender, doing as little damage as may reasonably be to the land.
- (7) If the outgoing lessee and the incoming lessee (if any)
- (a) agree as to
 - (i) the amount to be paid for improvements for which the outgoing lessee is entitled to receive payment by the State or that he is entitled to remove under this section; and
 - (ii) the time and manner of payment; and
 - (b) notify the Minister in writing of their agreement before the date on which a lease is granted to the incoming lessee,
- then
- (c) the amount payable in respect of the improvements under Section 84 is payable by the upcoming lessee to the outgoing lessee; and
 - (d) the Minister ceases to be liable under this section to pay the value of the improvements to the outgoing lessee; and
 - (e) Section 84 does not apply in respect of those improvements in relation to the new lease
- (8) This section does not apply to or in relation to a lease that is forfeited under this Act.
- (9) Where between
- (a) the date of the expiration of the term of a State lease of land on which there are improvements for which the outgoing lessee is entitled to receive payment or which he is entitled to remove under this section; and
 - (b) the date of the grant of a State lease of the land or a part of the land of the outgoing lessee or another person,
- the State derives revenue, part or all of which is directly attributed to those improvements on the land or that part of the land, the Minister shall pay to the lessee, from time to time as the Minister determines, the revenue or such part of the revenue as is directly attributable to the improvements, less the amount of any expenditure incurred by the State in maintenance and other costs in respect of the improvements.
- (10) Without prejudice to any other remedies that are available, the Minister may deduct from moneys payable by him under this section

- (a) moneys due during the term of the lease and outstanding to the State in respect of the term, or in respect of the land the subject of the lease; and
 - (b) if the outgoing lessee has continued to occupy the land after the expiration of the term of the lease – any occupation fee outstanding.
- (11) The lessee of a special purposes lease or mission lease may remove, on or before the expiration of the lease, such of the improvements on the land the subject of the lease as are severable, doing as little damage as may reasonably be to the land, but otherwise is not entitled to payment under this section in respect of the improvements.
- (12) The amount to be paid under this section shall be determined, and is recoverable, as nearly as may be in the same manner as compensation under Part IV.
- (13) For the purposes of this section, where a lease expires and a further lease cannot be granted because the land the subject of the lease is reserved from lease or further lease under this Act
- (a) the lessee shall be deemed to have applied for and not to have been granted a further lease over that land; and
 - (b) the period of six months specified in Subsection (3) shall be deemed to expire at the end of the period of one month after the date of expiration of the lease.

125. GRANT OF LICENCE.

- (1) Subject to Subsection (2), the Minister or his delegate may grant a licence in the approved form to a person to enter on Government land for one or more of the following purposes:
- (a) to graze stock or a specified kind of stock; or
 - (b) to strip, dig and take away any valuable material or substance; or
 - (c) for fishermen’s residences and drying grounds; or
 - (d) for any other temporary purpose approved by the Minister.
- (2) A licence shall not be granted for a purpose that would be in contravention of zoning requirements under the **Physical Planning Act 1989**, any other law relating to physical planning, or any law relating to the use, construction or occupation of buildings or land.
- (3) A licence under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the licence thinks proper, and, subject to those conditions, empowers the licensee –
- (a) to make such temporary improvements and do such things on the land the subject of the licence as are necessary or convenient for the purposes of the licence; and
 - (b) to remove such of those improvements as are severable on or before the termination of the licence, doing as little damage as may reasonably be to the land.
- (4) A licence under this section continues in force for a period, not exceeding one year, specified in the licence.
- (5) In addition to or in substitution for the prescribed fee for a licence, where a licence is issued under this section for a purpose specified in Subsection (1)(b) the licence is subject to the payment of such royalties (if any) on the material or substance stripped, dug or

taken away and to such restrictions and conditions as are prescribed or as to the Minister or officer granting the licence seem proper.

- (6) A licence granted under this Division may be revoked by the Minister for failure to comply with, or for a contravention of, the conditions of the licence.

126. GRANT OF LICENCE OVER RESUMED LAND.

- (1) Notwithstanding any other law, the Minister, or any officer authorized by him in writing for that purpose, may grant a licence in a form approved by the Minister to the person from whom any land has been acquired under this Act or a repealed Land Act, or where that person does not apply for a licence, to some other person, for the purpose of allowing him to use the land for the purpose or purposes for which it was used immediately before the date of acquisition or any other purpose.
- (2) A licence under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the licence thinks proper, and, subject to those conditions, empowers the licensee to make such improvements and do such things on the land the subject of the licence as are necessary or convenient for the purpose of the licence.
- (3) A licence under this section continues in force for such period as is specified in the licence.
- (4) A licence granted under this section is subject to the payment of
 - (a) the fee; and
 - (b) the amount of premium,fixed in relation to it by the Minister.
- (5) A licence granted under this Division may be revoked by the Minister at any time for failure to comply with a condition of the licence.

130. APPROVAL OF SUBDIVISION.

- (1) A lessee may apply to the Minister for approval to subdivide the land included in his lease.
- (2) An application under Subsection (1) shall –
 - (a) be written; and
 - (b) be accompanied by a plan showing the manner in which it is proposed to subdivide the land; and
 - (c) where any part of the land is within a physical planning area, be accompanied by planning permission for the subdivision under the **Physical Planning Act 1989**.
- (3) The Minister may –
 - (a) approve an application under Subsection (1); and
 - (b) refuse the application but, where the application is accompanied by planning permission for the subdivision under the **Physical Planning Act 1989**, shall not refuse the application for any physical planning reason.

- (4) The Minister shall notify the lessee of his decision in writing and, if he has approved the application, he shall specify in the notification –
 - (a) any reservations, covenants, conditions and provisions that he thinks are necessary to be included in each lease of the land if it is subdivided; and
 - (b) the fees and deposits to be paid by the lessee in respect of the grant of new leases for the subdivided portions of the land.

- (5) If the lessee –
 - (a) has paid all rent due under the lease; and
 - (b) accepts the reservations, covenants, conditions and provisions specified in the notification; and
 - (c) has paid the fees and deposits in respect of the grant of the new leases, he may surrender his lease, and in that case he shall be granted a new lease over each of the subdivided portions of the land.

- (6) A surrender of a lease under Subsection (5) –
 - (a) shall be made within 30 days or within such further time as the Minister allows, after the date of the notification of the approval of the subdivision; and
 - (b) has effect from the date of commencement of the new leases.

- (7) A new lease granted under this section shall –
 - (a) be of the same kind as the surrendered lease, unless the Minister in any particular case directs otherwise; and
 - (b) preserve the lessee's rights (if any) in respect of improvements on any land included in the new lease; and
 - (c) be for a period that will expire on the same date as the surrendered lease would have expired, unless the Minister, on the recommendation of the Land Board, fixes a later date; and
 - (d) contain, in addition to the matters provided for elsewhere in this Act, the reservations, covenants, conditions and provisions specified in the notification given under Subsection (4).

136. INSPECTION OF LAND SUBJECT TO IMPROVEMENT CONDITIONS.

- (1) The Minister, the Departmental Head, or a person authorized in writing by the Minister or the Departmental Head may inspect any land included in a State lease in order to ascertain whether the conditions to which the lease is subject have been or are being observed.

- (2) In the case of a pastoral lease, the Minister, the Departmental Head or a person authorized in writing by the Minister or the Departmental Head may, by written notice, require the lessee, for the purpose of an inspection, to muster and produce on the land comprised in the lease, on a day and to the person respectively named in the notice, all stock on the land.

- (3) A lessee who fails without reasonable excuse (proof of which is on him), to comply with the requirements of a notice under Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

137. POWER TO EXAMINE LAND.

- (1) A person authorized in writing by the Minister to act under this section may, for the purpose of ascertaining whether any land is suitable for a public purpose or of surveying or obtaining information in relation to any land that he thinks suitable for such a purpose –
- (a) enter on the land, or on adjoining land, with such persons, vehicles and things as he thinks proper; and
 - (b) make surveys, take levels, sink pits, examine the soil and do any other thing in relation to the land.
- (2) If a person hinders or obstructs a person authorized under this section to enter on land in the exercise of any of his powers under this section in relation to the land, the District Court may, on the application of the person so authorized, grant a warrant authorizing a member of the Police Force –
- (a) to enforce the entry on the land; and
 - (b) to prevent hindrance or obstruction to the exercise of any such power in relation to the land.

138. TEMPORARY OCCUPATION.

A PERSON AUTHORIZED BY THE minister may, with such other persons as he thinks necessary, enter land –

- (a) being within a distance a distance of 180m from the nearest boundary of any Government land and
- (b) not being a garden, orchard or plantation attached or belonging to a house, or a park planted walk or a venue, or ground ornamentally planted; and
- (c) not being nearer than 450m to the dwelling-house of the occupier of the land, and may occupy the land so entered for so long as is necessary for the purposes of any works connected with the carrying out of a public purpose.

139. TAKING OF MATERIALS, ETC., FROM ADJACENT LAND.

- (1) Subject to Subsection (2), a person authorized by the Minister under Section 138 to enter land may –
- (a) in connection with the carrying out, on or from that land, of a public purpose –
 - (i) construct, build or place plant, machinery, equipment or goods; and
 - (ii) take or deposit sand, clay, stone, earth, gravel, timber, wood or other materials or goods; and
 - (iii) make roads, cuttings or excavations, and
 - (iv) erect workshops, sheds and other buildings of a temporary character; and
 - (v) manufacture and work materials of any kind; and
 - (b) demolish, destroy or remove plant, machinery, equipment, goods or buildings constructed, built, placed or erected on land under Paragraph (a).

- (2) The power to take clay, stone or earth under this section shall not be exercised in respect of a stone or slate quarry, brickfield or other like place commonly worked or used for getting that material for the purpose of sale or disposal.

140. FENCING OF LAND TEMPORARILY OCCUPIED.

- (1) a person entering and temporarily occupying land under this part shall, if required by the owner or occupier of the land to do so, separate land occupied under this Part from adjoining land by a sufficient fence with such gates as are necessary for the convenient occupation of the land.
- (2) A fence and gate erected under Subsection (1) remaining the property of the State and may be removed at the termination of the occupation, with as little damage as may reasonably be to the land.

141. COMPENSATION FOR DAMAGE.

- (1) In this section, “court of competent jurisdiction” means –
 - (a) in relation to land other than customary land –
 - (i) the National Court; or
 - (ii) a District court that has jurisdiction –
 - (A) in actions for the recovery of debts up to an amount not less than the amount of compensation claimed; and
 - (B) in respect of the locality in which the land, or part of the land, is situated; and
 - (b) in relation to customary land, the Land Titles Commission.
- (2) Where the owner of an interest in land suffers loss or damage by reason of the exercise, in relation to the land, of the powers conferred by this part (otherwise than by Section 136), the State is liable to pay to him such compensation as is determined by agreement between the owner and the Minister, or, in the absence of agreement, by action by the owner against the State in a court of competent jurisdiction.

144. TRESPASS, ETC., ON CERTAIN LAND.

- (1) A person who, without authority –
 - (a) injures, fells, barks or destroys a tree growing on Government land or customary land; or
 - (b) cuts, saws, removes or sells timber lying or being on any such land; or
 - (c) removes or takes away or severs, excavates, quarries or digs for, with intent to remove or take away, any mineral or any stone, sand, gravel or other material from any such land,

is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

- (2) In addition to a penalty imposed for an offence against this section, a person convicted under this section shall pay to the Minister or, in the case of customary land to the Custodian for Trust Land for distribution to the customary landowners, the value as determined by the court by which he was convicted of any tree, timber, mineral or thing in respect of which the offence was committed.
- (3) A member of the Police Force or a person authorized for the purpose by the Minister or the Departmental Head of the Province may arrest without warrant a person found committing an offence against this section and immediately cause him to be dealt with according to law.

145. UNLAWFUL OCCUPATION OF GOVERNMENT LAND AND CUSTOMARY LAND.

- (1) A person who, without authority, enters, occupies or uses Government land or customary land, is guilty of an offence.

Penalty: For a first offence – a fine not exceeding K500.00 or imprisonment for a term not exceeding 6 months.

For a second or subsequent offence – a fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months.

- (2) It is not a defence that the entry, use or occupation of the land was under a claim of right.

Note: Please note that two pages of the Act are missing in this version. No other version was available. A request was placed with the embassy in Washington, with no success to date. If necessary, a request could probably be made with the IPA to obtain a complete copy.

V. THAILAND

Note: Please note that much of the above legislation has not been verified. English translations of much of the Thai legislation noted above are not readily available on the Internet. Hard copies were requested from the Embassy in Vancouver but it is doubtful whether these exist, let alone whether they will be provided.

Constitution of the Kingdom of Thailand 1997, available at: <http://www.krisdika.go.th/pdfPage.jsp?page=eng&type=laws&lawType=law1&lawCode=%25c306&lawID=%25c306-10-2540-A0001> (No restriction on foreign ownership of land).

Act promulgating the Land Code B.E. 2497 (2001), sec. 86, 97

Investment Promotion Act, sec. 27 - authorizes the Board of Investment (BOI) to grant a foreign owned company permission to own land for the purpose of conducting the promoted activity. The BOI exception to the prohibition against foreigners owning land is primarily limited to the ownership of land and factory for a promoted manufacturing activity¹¹⁰.

Foreign Business Act (1999) – regulates foreign investment in Thailand.

Condominium Act (No. 3) B.E. 2542 (1999), sec. 19

Section 4 The provision of Section 19 bis of the Condominium Act B.E. 2522 amended by the Condominium Act (No. 2) B.E. 2534 shall be repealed and replaced by the following provisions:

“Section 19 bis In each condominium, aliens or juristic persons stated in Section 19 may have ownership in a condominium unit, when added together, must not exceed forty nine percent of the total space of all units in that condominium at the time of applying for the condominium to be registered under Section 6.

Any condominiums whereby an aliens or juristic person under Section 19 holding the ownership in condominium units in a proportion exceeding as allowed by paragraph one, such condominium shall be situated in the area of Bangkok Metropolis, municipal area or local public administrative area specified in the Ministerial Regulation; and the land, where the condominium is situated including the land allotted for common use, shall not exceed 5 rai.

The acquisition of ownership under paragraph two of the alien or juristic person under Section 19 shall be in compliance with the rules, procedures and conditions provided in the Ministerial Regulation.”

Ministerial Regulation No. 9 (B.E. 2543) issued under the *Condominium Act B.E. 2522*

By virtue of Section 5 of the Condominium Act B.E. 2522 and Section 19 bis paragraph three of the Condominium Act B.E.2522 amended by the Condominium Act (No.3) B.E.2542, this Ministerial Regulation shall be issued by Minister of Ministry of Interior as follows:

1. In this Ministerial Regulation:

“alien” means alien or juristic person deemed by law to be an alien under Section 19.

¹¹⁰ Thai Expat Forum at: <http://www.thaivisa.com/380.0.html>

2. Any condominium whereby an alien wishes to hold the ownership of condominium unit in a higher proportion than forty nine percent of the total space of all units in the condominium. Such condominium, upon application for registration under Section 6, shall be complied with the following criterion:

(1) Having not less than forty condominium units;

(2) Have already been registered at least 1 year before the date an alien applies to receive the transfer of ownership of the condominium unit;

(3) Shall not be located in a military safety zone under the law on Military Safety Zone.

3. An alien shall utilize a condominium unit in a way that is not contrary to the local custom or good living of the local community.

4. An alien who is informed in writing from the competent official shall facilitate the competent official to ensure the application for ownership and the utilization of the condominium units are in accordance with rules and conditions prescribed by law.

Act Governing the Lease of Immovable Property for Commercial & Industrial Purposes B.E. 2542 (1999)

Industrial Estate Authority of Thailand Act

VI. USA INDIAN RESERVATIONS

U.S. Code, Title 25, Chapter 3, Section 81.

Online at: <http://www4.law.cornell.edu/uscode/25/81.html>

81. Contracts and agreements with Indian tribes

(a) Definitions

In this section:

- (1) The term "Indian lands" means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.
- (2) The term "Indian tribe" has the meaning given that term in section 450b(e) of this title.
- (3) The term "Secretary" means the Secretary of the Interior.

(b) Approval

No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

(c) Exception

Subsection (b) of this section shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

(d) Unapproved agreements

The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) of this section if the Secretary (or a designee of the Secretary) determines that the agreement or contract -

- (1) violates Federal law; or
- (2) does not include a provision that -
 - (A) provides for remedies in the case of a breach of the agreement or contract;
 - (B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or
 - (C) includes an express waiver of the right of the Indian tribe to assert sovereign

immunity as a defense in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

(e) Regulations

Not later than 180 days after March 14, 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b) of this section.

(f) Construction

Nothing in this section shall be construed to -

- (1) require the Secretary to approve a contract for legal services by an attorney;
- (2) amend or repeal the authority of the National Indian Gaming Commission under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or
- (3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe.

U.S. Code, Title 25, Chapter 12

Online at: <http://www4.law.cornell.edu/uscode/25/>

415. - Leases of restricted lands

(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary.

All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant") [1] the Moapa Indian reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, Yavapai-Prescott Community Reservation¹¹¹, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of the lands comprising

¹¹¹ It was written like this in the original. The name of the reservation should probably be preceded by "the".

the Moses Allotment Numbered 10, Chelan County, Washington,¹¹² and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation,, lands held in trust for the Cherokee Nation of Oklahoma, lands held in trust for the Pueblo of Santa Clara, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the Confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years.

Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

415(c) -

Approval of leases

The Secretary of the Interior shall approve no lease pursuant to sections 415 to 415d of this title that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the lease

U.S. Code, Title 25, Chapter 17

Online at: <http://www4.law.cornell.edu/uscode/25/ch17.html>

FINANCING ECONOMIC DEVELOPMENT OF INDIANS AND INDIAN ORGANIZATIONS

General Provisions

1451. - Congressional declaration of policy

It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.

1462. - Economic development; educational loans; limitation of loans to or investments in non-Indian organizations

¹¹²Some places in the text include double commas. It was like this in the original text.

Loans may be made for any purpose which will promote the economic development of

- (a) the individual Indian borrower, including loans for educational purposes, and
- (b) the Indian organization and its members including loans by such organizations to other organizations and investments in other organizations regardless of whether they are organizations of Indians: Provided, That not more than 50 per centum of loan made to an organization shall be used by such organization for the purpose of making loans to or investments in non-Indian organizations.

1481. - Statement of purpose

In order to provide access to private money sources which otherwise would not be available, the Secretary is authorized

- (a) to guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual Indians; and
- (b) in lieu of such guaranty, to insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan

U.S. Code, Title 26, Chapter 1, Subchapter A, Part IV, Subpart D, Section 45 A Online at:
<http://www4.law.cornell.edu/uscode/26/>

45A. Indian employment credit

(a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of - (1) the sum of -

- (A) the qualified wages paid or incurred during such taxable year, plus
- (B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs

For purposes of this section -

(1) Qualified wages

(A) In general the term "qualified wages" means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with targeted jobs credit The term "qualified wages" shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

(2) Qualified employee health insurance costs

(A) In general the term "qualified employee health insurance costs" means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed \$20,000.

(c) Qualified employee

For purposes of this section -

(1) In general

Except as otherwise provided in this subsection, the term "qualified employee" means, with respect to any period, any employee of an employer if -

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) Individuals receiving wages in excess of \$30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of \$30,000.

(3) Inflation adjustment

The Secretary shall adjust the \$30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d).

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term "qualified employee" shall not include -

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) Indian tribe defined

The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined

The term "Indian reservation" has the meaning given such term by section 168(j)(6).

(d) Early termination of employment by employer

(1) In general

If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer -

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted

In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases

(A) In general

Paragraph (1) shall not apply to -

- (i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,
- (ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or
- (iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated -

- (i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or
- (ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of -

- (A) determining the amount of any credit allowable under this chapter, and
- (B) determining the amount of the tax imposed by section 55.

(e) Other definitions and special rules

For purposes of this section -

(1) Wages

The term "wages" has the same meaning given to such term in section 51.

(2) Controlled groups

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable

Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws

Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) Special rule for short taxable years

For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination

This section shall not apply to taxable years beginning after December 31, 2003.

APPENDIX C: REFERENCES

I. GENERAL

Brits, A.-M., Grant, C., and Bruns, T., “Comparative Study of Land Administration Systems”, prepared for a World Bank Asia Program Regional Workshop on Land Policy Issues held June 4-6 2002 in Phnom Penh. Available online at:

<http://www.sli.unimelb.edu.au/subjects/451/418/WORLDBANK/Comparative%20Study%20-%20Annex%201.pdf>

Cree-Naskapi (of Quebec) Act available at <http://laws.justice.gc.ca/en/c-45.7/text.html>.

Forum Economic Ministers Meeting (2002), “Land Issues”, Paper prepared for the Pacific Islands Forum Economic Ministers’ meeting in Port Vila, Vanuatu, 3-4 July, 2002. Available online at:

<http://www.forumsec.org.fj/Home.htm>

Forum Economic Ministers Meeting (2001), “Land Issues in the Pacific”, Paper prepared for the Pacific Islands Forum Economic Ministers’ meeting in Rarotonga, Cook Islands, 19-20 June, 2001. Available online at: [http://www.forumsec.org.fj/docs/FEMM/2001/femc03%20land%20issues%20\(final\).pdf](http://www.forumsec.org.fj/docs/FEMM/2001/femc03%20land%20issues%20(final).pdf)

Hallward-Driemeier, M (2003) “Do Bilateral Investment Treaties Attract FDI? Only a bit ... and they could bite” World Bank, DECRG. Online at: http://econ.worldbank.org/files/29143_wps3121.pdf

Hodgson, S., Cullinan, C., Campbell, K., “Land Ownership and Foreigners: A Comparative Analysis of Regulatory Approaches to the Acquisition and Use of Land by Foreigners”, FAO Legal Papers Online # 6, December 1999. Available online at: www.fao.org/legal/default.htm

Multilateral Investment Guarantee Agency. Online at: <http://www.miga.org/screens/about/about.htm>

Wan-Soon, Kim, “Foreign Direct Investment in Korea: the Role of the Ombudsman”, prepared for the Asia Development Bank. Available at:

http://www.adb.org/Documents/Conference/Sustainable_Recovery_Asia/adb15.pdf

Quebec Civil Code, available at: <http://www.canlii.org/qc/sta/ccq/whole.html>

II. CAMBODIA

Ching Wong, Y and Adams, A (2002) “Trends in Global and Regional Foreign Direct Investment Flows”, Regional Office For Asia and the Pacific International Monetary Fund, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Mr. Freeman is Senior Adviser for Mekong Capital Ltd.

Online at:

[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/wong.pdf>

[html]:

<http://www.google.ca/search?q=cache:9O4kHxLn6UoJ:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/wong.pdf+trends+in+global+regional+foreign+ching+wong&hl=en&ie=UTF-8>

Council for the Development of Cambodia (2002) “Cambodia Investment and Trade 2002”, Presentation by H.E. Mr. Cham Prasidh, Minister of Commerce and Vice-Chairman of the Council for the Development of Cambodia, Phnom Penh, June 24, 2002; online at:

http://www.google.ca/search?q=cache:jnVPfY6dGsgJ:www.moc.gov.kh/speeches/prese-uganda_trade_minister.pdf+cambodia+investment+trade+2002&hl=en&ie=UTF-8

- Fletcher, R (2002) “Tax Incentives in Cambodia, Lao PDR, and Vietnam”, International Monetary Fund, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Online at:
[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/fletcher.pdf>
[html]: <http://www.google.ca/search?q=cache:w6IgwFpE5FMJ:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/fletcher.pdf+tax+incentives+fletcher&hl=en&ie=UTF-8>
- Freeman, NJ (2002), “Foreign Direct Investment in Cambodia, Laos, and Vietnam: A Regional Overview”, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Mr. Freeman is Senior Adviser for Mekong Capital Ltd.
Online at:
[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/freema.pdf>
[html]: <http://www.google.ca/search?q=cache:yY8GDU258BIJ:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/freema.pdf+foreign+direct+investment+freeman+mekong+regional+overview&hl=en&ie=UTF-8>
- GoCambodia (2002) “Land and Construction”, online reference document,
Online at: http://www.gocambodia.com/laws/land_construction.asp
- Hagemann, RP (2002) “Comments on Cambodia’s Foreign Direct Investment: Situation and Strategy”, ”, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Online at:
[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/hagama.pdf>
[html]: http://www.google.ca/search?q=cache:xt_6ph_DNIwJ:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/hagama.pdf+comments+hagemann+thoraxy&hl=en&ie=UTF-8
- Massman, O (2002) “Foreign Direct Investment – The Legal Environment”, Baker & McKenzie, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Online at:
[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/massma.pdf>
[html]: <http://www.google.ca/search?q=cache:mxO9weGfThUJ:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/massma.pdf+foreign+direct+investment+massmann+baker+oliver&hl=en&ie=UTF-8>
- Thoraxy, H (2002) “Cambodia Country Report”, Cambodian Investment Board, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Online at:
[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/thoraxy.pdf>
[html]: <http://www.google.ca/search?q=cache:TpfOM6MSHrYJ:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/thoraxy.pdf+cambodia+country+report+thoraxy&hl=en&ie=UTF-8>
- Tseng, W (2002) “FDI Conference – Concluding Remarks”, International Monetary Fund, Paper prepared for the IMF Conference on Foreign Direct Investment: Opportunities and Challenges for Cambodia, Laos and Vietnam. 16-17th August 2002, Hanoi. Online at:
[pdf]: <http://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/closing.pdf>
[html]: <http://www.google.ca/search?q=cache:DNr-EkWmsd4J:www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/closing.pdf+wanda+tseng+fdi&hl=en&ie=UTF-8>
- United States of America Embassy in Cambodia (2000), “Cambodia Investment Climate”, online at:
<http://usembassy.state.gov/cambodia/wwwf0004.pdf>

III. HAWAII

Cruz, Cathy S. “The Japanese still have the lion’s share of Hawaii’s foreign investments.” *Hawaii Business Magazine*, April 2001 (<http://www.hawaiibusiness.cc>; <http://www.capitol.hawaii.gov>; <http://www.state.hi.us/dhh>)

IV. MOÇAMBIQUE

CPI – Investment Promotion Centre at: <http://www.cpi.co.mz/index.htm>

Garvey, Jennifer A. “Moçambique National Land Policy & Programme Implementation Strategy”, approx. 1995. Paper copy of paper provided by Prof. J. Unruh. Ms. Garney was a lawyer with the Mineral Resources Ministry.

Garvey, Jennifer A. “Análise do direito de uso e aproveitamento de terra ao abrigo da lei de terras e seu regulamento ‘conteúdo e terminologia’”, presented at Land Comissão Seminal, January 9, 1995. Paper copy of paper provided by Prof. J. Unruh. Ms. Garney was a lawyer with the Mineral Resources Ministry.

Industry Canada (1998), “Investment Climate in Mozambique”, information based on the U.S. Department of Commerce’s STAT-USA service, January 23, 1998. Available online at: <http://strategis.ic.gc.ca/SSG/da91294e.html>

Kloeck-Jensen, Scott. “Analysis of the Parliamentary Debate and New National Land Law for Mozambique”, September 1997, unpublished paper, provided by Prof. Unruh. Mr Kloeck-Jensen was Resident Project Manager for the Land Tenure Centre Project in Mozambique.

V. PAPUA NEW GUINEA

Lakau AAL (1991), State acquisition of customary land for public purposes in Papua New Guinea, Department of Surveying and Land Studies, Papua New Guinea University of Technology, Lae, PNG, 124 pp plus appendices in Armitage L (2001) “Customary Land Tenure In Papua New Guinea: Status And Prospects”. Ms. Armitage is professor at Queensland University of Technology, Brisbane, Australia. Available online at: <http://dlc.dlib.indiana.edu/documents/dir0/00/00/10/43/dlc-00001043-00/armitage.pdf>.

Industry Canada (1997), “Investment Climate in Papua New Guinea”, information based on the U.S. Department of Commerce’s STAT-USA service, August 21, 1997. Available online at: <http://strategis.ic.gc.ca/SSG/da91494e.html>.

Investment Promotion Authority of Papua New Guinea, “Business Guide to Papua New Guinea”. Available online at <http://www.pngbd.com/business/?page=guide/ipa/>. Consulted September 2, 2003.

PNG Land Symposium, “Culture vs. Progress: the Melanesia Philosophy of Land and Development in Papua New Guinea”, collection of papers presented at this conference held at the Divine Word University, Boroko, Papua New Guinea, June 3-4, 2001. Available online at: <http://www.rtapng.com.pg/pngland.html>.

Seneviratne, Kalinga, for Third World Network Features, “IMF plan rejected by PNG people”, 6 September 1995. Available at: <http://www.hartford-hwp.com/archives/24/083.html>

VI. THAILAND

Board of Investment website: <http://www.boi.go.th/>

Chiangmai Law Services at: <http://www.chiangmailaw.com/leasing.htm>

Industry Canada (1998), “Investment Climate in Thailand”, information based on the U.S. Department of Commerce’s STAT-USA service, July 24, 1998. Available online at: <http://strategis.ic.gc.ca/SSG/da91856e.html>

RussThai Consulting Co. Ltd. at: <http://home.swipnet.se/~w-10652/thailand4.html>

Thai Expat Forum at: <http://www.thaivisa.com/380.0.html>

Thailand Department of Lands at: http://www.dol.go.th/eng_version/menu.php

VII. USA INDIAN RESERVATIONS

Cohen, Felix S. *Handbook of Federal Indian Law*. (Virginia: The Michie Company), 1982. (See also: <http://www.doi.gov>; <http://www.navajocentral.org/>; <http://www.ksg.harvard.edu/hpaied>)

Cornell, Stephen and Kalt, Joseph P. eds. “What Can Tribes Do? Strategies and Institutions in American Indian Development.” (See: The Harvard project on American Indian Economic Development at: <http://www.ksg.harvard.edu/hpaied>)

Healy, Andrea and Teichgraeber, Tara. (2000) “Valley tribes encourage business growth” *The Business Journal* (<http://www.bizjournals.com/phoenix/stories/2000/07/03/>; <http://www.americanwest.com/pages/navajo2htm>)

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